



MEMORANDUM

TO: HONORABLE MAYOR & CITY COUNCIL MEMBERS

FROM: JOEL ROJAS, AICP, COMMUNITY DEVELOPMENT DIRECTOR

DATE: AUGUST 5, 2014

SUBJECT: FINAL ENVIRONMENTAL IMPACT REPORT (FINAL EIR) AND CODE AMENDMENT FOR THE *ZONE 2 LANDSLIDE MORATORIUM ORDINANCE REVISIONS* (Case No. ZON2009-00409); Location: "Zone 2" of the City's Landslide Moratorium Area

REVIEWED: CAROLYNN PETRU, ACTING CITY MANAGER ^(P)

Project Manager: Eduardo Schonborn, AICP, Senior Planner

RECOMMENDATION

1) Adopt Resolution No. 2014-___, certifying the Environmental Impact Report, making certain environmental findings pursuant to CEQA, adopting a Statement of Overriding Considerations, and adopting a Mitigation Monitoring and Reporting Program; and , 2) Introduce Ordinance No. ___, revising the City's Landslide Moratorium Ordinance to establish an exception category to allow the development of the 31 undeveloped (non-Monks plaintiffs' lots) lots in Zone 2.

EXECUTIVE SUMMARY

In 2009, the City Council directed Staff to pursue a "two-track" environmental review of revisions to the City's Landslide Moratorium Ordinance in response to the Court of Appeal's adverse decision in the *Monks* case. Based upon this direction, a Mitigated Negative Declaration (MND) was certified by the City Council in conjunction with the first "track" of this process to revise the Landslide Moratorium Ordinance to allow the *Monks* plaintiffs to apply for Landslide Moratorium Exceptions (LMEs) for their sixteen (16) vacant lots in Zone 2. The second "track" is the enactment of additional revisions to the Landslide Moratorium Ordinance to allow the submittal of applications to develop the 31 remaining undeveloped lots in Zone 2. This second step has included the preparation of an Environmental Impact

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Report (EIR) to assess the potential environmental impacts arising from the adoption of an ordinance that would allow the owners of the other thirty-one (31) vacant lots in Zone 2 to pursue development of their properties along with any cumulative impacts of allowing development of all forty-seven (47) of these properties.

The Final EIR and the draft Ordinance have been prepared and are now being presented to the City Council to consider certification of the environmental document and adoption of the proposed Ordinance revisions.

BACKGROUND

In 2002, a group of *Portuguese Bend* property owners filed a Moratorium Exclusion application to exclude their undeveloped lots within the area known as "Zone 2" from the provisions of the Landslide Moratorium. Shortly after this application was deemed incomplete for processing, the applicants filed suit against the City. Eventually, the case (*Monks v. Rancho Palos Verdes*) was decided in the applicants'/plaintiffs' favor. In December 2008, the California Court of Appeal reversed the favorable decision of the trial court and found that the City had "taken" the plaintiffs' property by virtue of the adoption of Resolution No. 2002-43, which required plaintiffs and other owners of undeveloped properties in Zone 2 to prove a zone-wide factor of safety of 1.5 before individual development applications in that area could be approved by the City. Following the decision by the Court of Appeal, the City's options were either to acquire the properties from the plaintiffs or to remove the regulatory impediments that prevented the development of the sixteen (16) *Monks* plaintiffs' lots. Due to the potential economic impact to the City that would arise from the purchase of these 16 properties (which was estimated to be between \$16 million and \$32 million), the City Council determined that the development impediments should be removed. Accordingly, the City Council immediately rescinded Resolution No. 2002-43.

As a result of the adverse decision by the Court of Appeal, Staff identified several alternatives in considering a proposed code amendment. On June 2, 2009, Staff presented an update on the status of the Code Amendment to the City Council, which included laying out options for the environmental analysis of the proposal. The City Council directed Staff to pursue a "two-track" parallel process, whereby a Code Amendment to allow development of the sixteen (16) *Monks* plaintiffs' lots would be pursued immediately, followed by a similar amendment to allow development of the other 31 undeveloped lots in Zone 2.

In September 2009, the City Council adopted an amendment to the Landslide Moratorium Ordinance, which created a new Landslide Moratorium Exception category (i.e., Category "P") to allow the owners of the sixteen (16) *Monks* plaintiffs' lots to apply for LMEs for the

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construction of new homes (Ordinance No. 498)¹. In December 2009, a further revision to the amendment to the Landslide Moratorium Ordinance (Ordinance No. 501U) was approved by the City to allow site grading for the development of each of the *Monks* plaintiffs' lots not to exceed 1,000 cubic yards of combined cut and fill, and with no import in excess of 50 cubic yards. A Mitigated Negative Declaration (MND) was certified by the City Council in conjunction with these actions. Property owners challenged the City Council's determination by filing a lawsuit. (*Enstedt et al. v. City of Rancho Palos Verdes*). The City and the attorneys for the *Monks* plaintiffs defended the City's action, and the Superior Court ruled in the City's favor. The lawsuit was settled, and the appeal was dismissed.



On October 14, 2009, the City commenced the processing of a further revision to the Landslide Moratorium Ordinance (Chapter 15.20 of the Rancho Palos Verdes Municipal Code) to allow for the future development of the remaining 31 undeveloped lots in Zone 2 that were not part of the *Monks v. City of Rancho Palos Verdes* case.

¹ As of the writing of this Staff Report, all 16 *Monks* plaintiff lots have been issued LMEs. Further, five (5) *Monks* plaintiffs have obtained building permits to commence construction of their residences, and are at various stages of construction. Of the five, three residences have been completed and the associated building permits "finalized."

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The City and its environmental consultant (Rincon Consultants) began the CEQA review of the Zone 2 Landslide Moratorium Ordinance Revisions project by evaluating the project's potential impacts based on an environmental checklist. As a result, an Initial Study was prepared in accordance with CEQA. The City distributed the Initial Study to the public, accompanied by a Notice of Preparation (NOP) for preparation of the EIR, on January 3, 2011, initiating a 30-day public scoping period. The purpose of the NOP was to indicate formally that the City was preparing a Draft EIR for the *Zone 2 Landslide Moratorium Ordinance Revisions* project and, as Lead Agency, to solicit input regarding the scope and content of the Draft EIR. The NOP was distributed to all Responsible Agencies, as well as other agencies; to property owners within Zone 2 and within a 500-foot radius of Zone 2; to those registered on the list-serve for this project; and the Notice was posted on the City's website. During the NOP period, a public hearing was conducted with the City Council to provide the public with an additional venue to provide verbal comments.

After the NOP comment period ended, the Draft EIR was prepared by Rincon Consultants taking the public comments on the NOP into account. After completing the Draft EIR, the document was made available to the public on September 21, 2012, for a 60-day public comment period that concluded on November 20, 2012. During the Draft EIR comment period, a public hearing was conducted with the City Council to provide the public with an additional venue to provide verbal comments on the Draft EIR.

On March 6, 2014, the Final EIR was completed and Notice was provided via mail and publication in the *PV Peninsula News* that a public hearing was scheduled with the City Council on April 15, 2014 to consider certification of the Final EIR and approval of the proposed Code Amendment. A Notice of the meeting was also provided by email to the 397 people registered on the City's list-serve message system for this project. The Final EIR includes responses to 36 comment letters and responses to the issues raised verbally by the 12 public speakers during the November 7, 2012 City Council hearing². On April 15, 2014, the City Council continued the public hearing to the May 6, 2014 City Council meeting to allow additional time for the public to submit comments on the proposed *Zone 2 Landslide Moratorium Ordinance Revisions*.

On May 6, 2014, the City Council heard public testimony on the Final EIR, the Draft CEQA findings and the proposed Draft Ordinance revising the City's Landslide Moratorium Ordinance. Due to comments that were submitted to the City on the Final EIR, the City Council continued the public hearing to June 17, 2014 to allow staff and its consultants to address the additional comments made by the public and any issues raised by the City Council. At the June 17, 2014 meeting, the City Council continued the public hearing to the August 5, 2014 City Council meeting to accommodate the time and resources needed to review and address to the comments on the Final EIR

² Notwithstanding the extensive comment period that was provided, many additional comments have been submitted in response to the notice of public hearing for this proposed code amendment.

PROPOSED PROJECT

Consistent with the Council’s 2009 direction, a Code Amendment is now being considered that would revise the City’s existing Landslide Moratorium Ordinance to create another exception category (exception category “R”) that would permit the owners of the thirty-one (31) undeveloped lots in Zone 2 not identified as the *Monks* plaintiffs to develop those lots with new single family residences. The development criteria for these lots are identical to the criteria that were adopted for the *Monks* lots and are proposed to include the following:

- A total of thirty-one new single-story, ranch-style residences with attached or detached three-car garages, with a minimum living area of 1,500 square feet and maximum living area of 4,000 square feet or 15% of gross lot area, whichever is less;
- Less than 1,000 cubic yards of grading (cut and fill combined) per lot, with no more than 50 cubic yards of imported fill per lot;
- Maximum 25% (RS-1) or 40% (RS-2) net lot coverage;
- Maximum building height of 16 feet for residences and 12 feet for detached accessory structures;
- Minimum front setbacks of 20 feet, minimum rear setbacks of 15 feet, minimum street-side setbacks of 10 feet, and minimum interior side setbacks of five feet, with setbacks along private street rights-of-way measured from the easement line rather than the property line; and,
- No subdivision of existing lots within Zone 2.

DISCUSSION

DRAFT PROPOSED ORDINANCE

The proposed revisions to the current Moratorium Ordinance create a new exception category (i.e., Category “R”), which is identical to the existing Category “P” for the 16 *Monks* lots in that it allows the development of new residences, accessory structures and limited grading on 31 existing undeveloped lots. Zone 2 would be defined as the “Area Outlined in Green” on a map to be retained in the City’s files and posted on the City’s website, and the remaining 31 undeveloped lots would be clearly identified on this map. The proposed language for Section 15.20.040(R) would be as follows:

The construction of residential buildings, accessory structures, and grading totaling less than one thousand cubic yards of combined cut and fill and including no more than fifty cubic yards of imported fill material on the remaining thirty-one (31) undeveloped lots in Zone 2 of the "Landslide Moratorium Area" as outlined in green on the landslide moratorium map on

file in the Director's office, identified as the lots that were not the plaintiffs in the case "Monks v. City of Rancho Palos Verdes, 167 Cal. App. 4th 263, 84 Cal. Rptr. 3d 75 (Cal. App. 2 Dist., 2008)"; provided, that a landslide moratorium exception permit is approved by the Director, and provided that the project complies with the criteria set forth in Section 15.20.050 of this Chapter. Such projects shall qualify for a landslide moratorium exception permit only if all applicable requirements of this Code are satisfied, and the parcel is served by a sanitary sewer system. Prior to the issuance of a landslide moratorium exception permit, the applicant shall submit to the Director any geological or geotechnical studies reasonably required by the City to demonstrate to the satisfaction of the City geotechnical staff that the proposed project will not aggravate the existing situation.

In addition to this language, cross-references to this new exception category would be added in Sections 15.20.050 (Landslide Mitigation Measures Required), and 15.20.060 (Application).

The new Code language would only apply to the 31 undeveloped lots in Zone 2 that were not owned by the plaintiffs in the legal case titled "*Monks v. City of Rancho Palos Verdes*". The revisions would allow these owners to apply for Landslide Moratorium Exception (LME) permits for the development of new, single-family residences and related accessory structures (except pools and spas). With the approval of an LME, these property owners would then be allowed to apply for the necessary Planning entitlements and Building permits to build new, permanent structures on these undeveloped lots. Such structures would be subject to all of the underlying zoning restrictions and development standards that apply to similarly zoned properties located elsewhere in the City, including (but not limited to) an approved geology report, which analyzes the particular property and the proposed project, and a finding of neighborhood compatibility with the character of the immediate neighborhood. Other types of projects on the developed lots in Zone 2—such as additions and reconstruction of residences damaged or destroyed by land movement or other hazards—would still be permitted under the current provisions and restrictions imposed by Landslide Moratorium Ordinance exception Categories 'B', 'H', 'K', 'L' and 'Q'.

ENVIRONMENTAL ASSESSMENT (I.E., EIR)

The City, through its environmental consultant (Rincon Consultants), evaluated the proposed project's impacts on the environment through the preparation of an Environmental Impact Report (EIR). With regard to the scope of the document and what is assessed, the scope is already dictated by CEQA's environmental checklist. This checklist contains various environmental factors that are reviewed, such as aesthetics, biological resources, public services, traffic, etc. More specifically, these factors contain questions that are more pointed as to what impacts are assessed within these environmental factors. In the course of this evaluation, certain impacts of the project were found to be less than

significant due to the inability of a project of this scope to create such impacts or the absence of project characteristics producing effects of this type; other impacts were found to be potentially significant, but could be mitigated to a less than significant level; and, one impact was found to be significant and unavoidable, even after mitigation.

Potentially Significant Impacts: The EIR concluded that the proposed project could result in potentially significant impacts to several issue areas, which as a result were studied further in the EIR. The following issues were found to result in potentially significant impacts:

- Aesthetics,
- Air Quality,
- Biological Resources,
- Cultural Resources,
- Fire Protection,
- Geology and Soils,
- Hydrology and Water Quality,
- Noise,
- Traffic and Circulation, and
- Utilities and Serves Systems.

However, based on the EIR analysis, it was concluded that the issues identified above could be mitigated to a less than significant level through the imposition of certain mitigation measures. These potential impacts and the appropriate mitigation measures related to these environmental factors are summarized in the Executive Summary attached to this Staff Report and the associated EIR, and would subsequently become part of an adopted Mitigation Monitoring and Reporting Program.

Significant and Unavoidable Impacts: The EIR concluded that the proposed project could result in a potentially significant cumulative impact to Traffic, whereby the impact would remain significant and unavoidable after mitigation. Specifically, the EIR concluded that there would be a significant and unavoidable impact to two traffic intersections, namely the intersection at Forrestal and PV Drive South, and the intersection at Seahill Drive-Tramonto Drive and PV Drive South. To the extent this impact remains significant and unavoidable, for the City Council to certify the EIR, the City Council must adopt a "Statement of Overriding Considerations" determining that such impact is acceptable. This issue is further discussed below.

Final EIR:

The Final EIR document mirrors the Draft EIR in format. The key difference is that the Final EIR contains a "Response to Comments" section and minor modifications to the text

of the document for clarification or edits as a result of the comments received from the public during the formal 60-day comment period. The Final EIR includes responses to 36 comment letters received during the Draft EIR comment period, and responses to the issues raised verbally by the 12 public speakers during the November 7, 2012 City Council hearing. In accordance with CEQA requirements, the responses to comments focus on those comments that pertain to environmental issues. As a result of the responses to comments on the Draft EIR, modifications were made to the document, the text modifications in the Final EIR are shown in underline for language added and ~~striketrough~~ for language deleted. Modifications to the mitigation measures are also summarized in Table ES-1 of the Executive Summary section (attached) of the Final EIR, and are also shown in underline for language added and ~~striketrough~~ for language deleted.

Once the Final EIR (which includes responses to comments) was completed, a Notice was provided informing the public of the availability of the document and informing the public of a public hearing to consider certification of the Final EIR and consideration of the associated Code Amendment regarding the proposed Zone 2 Landslide Moratorium Ordinance revisions.

As a result of the public hearing notice, Staff received 15 additional comments regarding the Final EIR, most of which are detailed comments on the content of the Final EIR. The issues listed below reflect the topics raised by the various commenters on the Final EIR document:

- Access, hydrology, emergency access and cumulative projects;
- Geology and landslide movement, soils issues, impacts to Zone 5, groundwater and hydrology, drainage, and emergency access;
- Portuguese Bend Community Association's responsibilities, roadway design, factor of safety, Altamira Canyon, runoff and infiltration;
- Concerns with the proposed mitigation measures, impacts to the local roadways, traffic, and the alleged misinterpretation of the Monks decision.
- Flooding, storm drains and drainage problems, slope stability and landslide movement;
- Allowing subdivisions of larger lots; and,
- Impacts of existing construction.

Although CEQA does not mandate a formal comment period for a Final EIR nor mandate that comments received on a Final EIR be responded to (since the public comment period is at the Draft EIR stage), due to the sensitive nature of the proposed Ordinance Revisions, at the May 6, 2014 meeting, Staff recommended that the item be continued to accommodate the time and resources needed to review and address or respond to the comments on the Final EIR. The hearing was continued to June 17, 2014 and subsequently to the August 5, 2014 City Council meeting.

Responses to the comments on the Final EIR are contained in the attached document. Although it is a physical stand-alone document, it is incorporated into the Final EIR by reference. Although these comments were received in response to the Final EIR, the topics and issues raised are similar to those raised during the Draft EIR process. Accordingly, Staff believes that no new impacts have been identified to warrant recirculation of the document or significant amendments to the analysis contained therein.

Thus, as a result of the comment and circulation periods associated with the Initial Study and the subsequent Draft EIR; the responses to comments on the Draft EIR and the corresponding edits made to the Final EIR; as well as the responses to the comments received on the Final EIR, Staff believes that no new impacts have been identified to warrant recirculation of the March 2014 Final EIR document or significant amendments to the analysis contained therein.

EIR Findings:

Pursuant to CEQA requirements, the City is required to adopt two sets of findings prior to approving a project that will generate a significant impact on the environment: 1) Statement of Facts and Findings, and 2) a Statement of Overriding Considerations.

Statement of Facts and Findings: The Statement of Facts and Findings identifies the significant impacts, presents facts supporting the conclusions reached in the analysis, makes one or more of the following three findings for each impact, and explains the reasoning behind the City's findings. The possible findings are as follows:

1. Changes or alteration have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR.
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained works, make infeasible the mitigation measures or project alternatives identified in the Final EIR.

In summary, Staff believes that Finding No. 1 can be adopted since changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the Final EIR. Based upon the mitigation measures identified in the EIR document, this finding can be made and adopted.

Statement of Overriding Considerations: The Statement of Overriding Considerations is required when a project will cause an unavoidable significant impact that cannot be mitigated. The EIR prepared for the proposed project identifies potentially significant

environmental impacts within one issue area related to Traffic, which cannot be fully mitigated and is therefore considered significant and unavoidable. Specifically, in regards to Traffic (as indicated above), the proposed project would result in an unavoidable impact to two intersections as explained in more detail below.

The potential increase in vehicles traveling on the surrounding roadway network from build-out under the proposed ordinance revisions would not result in significant impacts at any of the study area intersections under “existing plus project conditions”. However, the increase in vehicle trips under “cumulative conditions” would result in significant impacts at three of the study area intersections. Mitigation Measure T-1(a) would reduce impacts to a less than significant level at the intersection of Hawthorne Boulevard and Via Rivera. However, mitigation measures T-1 b through c (see pages ES-22 and ES-23, in the attached Executive Summary) were found to be infeasible and would not reduce cumulative impacts to a less than significant level at Forrestal Drive and Palos Verdes Drive South, and at Seahill Drive-Tramonto Drive and Palos Verdes Drive South. As a result, the impacts at these two intersections would therefore be Class I, *significant and unavoidable*.

As a result, a Statement of Overriding Considerations must be adopted. In adopting a Statement of Overriding Considerations, Staff believes that the following finding can be made:

1. Specific economic, legal, social, technological, or other considerations, including considerations discussed in the Statement of Overriding Considerations, outweigh the unavoidable adverse environmental effects; therefore the adverse environmental effects are considered acceptable.

Staff believes that to the extent that significant Traffic impacts would remain at the two intersections discussed above as a result of the cumulative conditions even after mitigation, this impact is acceptable and is outweighed by social, economic and other benefits of the project. Further, the alternatives that were identified in the Final EIR would not provide the project benefits to the same extent as the proposed project. Below, Staff has provided its reasons for adopting the Statement of Overriding Considerations:

1. Staff believes that all feasible mitigation measures have been imposed to lessen project impacts to less than significant levels; and furthermore, that alternatives to the project are infeasible because while they have similar or fewer/reduced environmental impacts, they do not provide all of the benefits of the project, or are otherwise socially or economically infeasible when compared to the project, as described in the Statement of Facts and Findings.
2. Staff believes that the City could be exposed to legal challenge from the owners of the 31 developable *non-Monks* parcels if the Zone 2 Landslide Moratorium Ordinance Revisions are not adopted. The identified significant impacts at two

intersections would not be severe enough to outweigh the potential adverse impact to the City of a successful legal challenge, which could result in lawsuits against the City claiming millions of dollars in damages.

3. Staff believes that it is in the best interest of the City and the Zone 2 property owners to allow all owners of the undeveloped lots in Zone 2 the same opportunity to apply to build single family residences on their currently undeveloped parcels so they are treated similarly to the sixteen *Monks* parcels.
4. Staff believes that while Mitigation Measure T-1(c) may be feasible, the benefit of preserving the value of the semi-rural character of the proposed intersection area outweighs the significant impact on traffic and circulation in the area. It is in the best interest of the City and the community to maintain the aesthetic character of the area in which the traffic signal would be installed rather than mitigate the potential impact to traffic and circulation.

Therefore, having reviewed and considered the information contained in the Final EIR, Technical Appendices and the public record, Staff believes that a Statement of Overriding Considerations has been balanced against the unavoidable adverse impacts in reaching a decision on this project, and that a Statement of Overriding Considerations can be adopted.

ADDITIONAL INFORMATION

As the City Council is aware, Stewart Miller submitted an email to the City requesting that action on the item be continued to a future date to allow him and the public additional time to review the responses to comments that were submitted on the Final EIR (see attached). Mr. Miller predicates his request on the assumption that there will be extensive amendments required to the Final EIR as a result of the additional public comments and that an extension of time will be necessary for all parties to review and digest these changes and any further responses to them.

As indicated above, the topics and issues raised in the comments received on the Final EIR are similar to those raised during the Draft EIR process. No new substantive impacts have been identified that were not already covered or addressed in the Final EIR document. Thus, no significant amendments to the analysis or conclusions have been made to the EIR document since it was presented to Council in March 2014. On this basis, Staff does not believe recirculation of the document is warranted.

Notwithstanding Staff's position, the City Council has the ability to further continue the public hearing to allow for the requested additional time, if the City Council so desires. Accordingly, Staff presented this as an alternative below.

CONCLUSION

For the reasons described throughout this report, based upon the discussion and analyses contained in the EIR document, the analyses contained in the various Staff Reports for this project, and the conditions that have been included to mitigate impacts, Staff recommends that the City Council adopt Resolution No. 2014-___, certifying the Environmental Impact Report, making certain environmental findings pursuant to CEQA, and adopting a Mitigation Monitoring and Reporting Program; and, 2) Introduce Ordinance No. ___, revising the City's Landslide Moratorium Ordinance to establish an exception category to allow the development of the 31 undeveloped (non-Monks plaintiffs' lots) lots in Zone 2.

ALTERNATIVES

In addition to Staff's recommendation, the following alternative are available for consideration by the City Council:

1. Continue the public hearing to a date certain to allow additional time for the public to review the responses to the comments received on the Final EIR; or,
2. Identify any issues of concern and provide Staff with direction in addressing such issues; or,
3. Take no action and table this item, thereby not adopting any amendments to the City's Landslide Moratorium Ordinance and not establishing an exception category to allow the development of the 31 undeveloped (non-Monks plaintiffs' lots) lots in Zone 2

Attachments:

- Email from Stewart Miller requesting additional time
- Resolution No. 2014-___, certifying the Environmental Impact Report with Exhibit "A" titled "Facts, Findings and Statement of Overriding Considerations regarding the Environmental Effects for the Crestridge Senior Housing Project", and Exhibit "B" titled "Mitigation Monitoring and Reporting Program"
- Draft Ordinance
- Responses to comments on the Final EIR
- Executive Summary of the Zone 2 Final EIR
- Final EIR (previously distributed on a CD)