From: yogesh goradia [mailto:y_goradia@hotmail.com]
Sent: Sunday, August 30, 2009 3:50 PM
To: kitf@rpv.com
Subject: Zone 2, Portugese Band

I have been living in RPV for over 30 years and happen to own an undeveloped lot in the zone 2 area of Portugese Band.

I attended a preliminary meeting a few months ago that dealt with various issues if the existing moratorium was lifted as a result of the Appeals court decision on the Monks vs. RPV lawsuit. I do not recall any mention at that meeting of the proposed option in your Notice of August 10 (which I just received!) that would only lift the moratorium on the 16 Monks lots. It is only reasonable to assume that the court intended the decision to apply to the entire Zone 2 and not just the 16 Monk lots. The city's current proposal amounts to saying "sue the city if you want to lift the moratorium on your zone 2 lot!"

What I would propose is (1) lift the moratorium on all the 47 lots in zone 2 (2) then, if the City wants to exclude any particular lot, let it present the arguments as to why that lot should be excluded. The present proposal is grossly unfair to the owners of the 31 excluded lots and I am afraid it might invite further litigation.

Yogesh Goradia

From: "Kit Fox" <kitf@rpv.com>
Sent 8/31/2009 8:03:44 AM
To: "'Carla Morreale'" <carlam@rpv.com>
Subject: FW: Revised MND for Zone 2 Landslide Moratorium Ordinance Revisions dated August 10,2009

Late Correspondence on Zone 2

Kit Fox, AICP
Associate Planner
City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275
T: (310) 544-5228
F: (310) 544-5293
E: kitf@rpv.com

-----Original Message-----
From: Jeremy Davies [mailto:jdavies@kuboaa.com]
Sent: Sunday, August 30, 2009 11:48 AM
To: clark@rpv.com; stevew@rpv.com; tom.long@rpv.com; douglas.stern@rpv.com; kendyda@rpv.com
Cc: joelr@rpv.com; kitf@rpv.com
Subject: Revised MND for Zone 2 Landslide Moratorium Ordinance Revisions dated August 10,2009

Dear Mayor Clark, Mayor Pro Tem Wolowitz, Council members Long, Stern and Dyda,

I respectfully submit the following comments on the proposed revised MND in recognition that the City is attempting to balance the difficult position into which it has been placed following the "Monks" Appellate Court decision. I also incorporate by reference my comments included in my letter to Council of February 25 in as much as detailed concerns in that letter have not been addressed in the revised MND.

1) I believe that a full EIR is required in accordance with CEQA requirements BEFORE project development and that such EIR must include not only the Monks lots but all lots in Zone 2 that may be developed. A segmented MND is neither adequate nor acceptable for fairness to both the existing homeowners and the lot owners. I endorse Staff's recommendation for a full EIR contained in their staff report dated June 2, 2009. No adequate reason has been provided to deny staff's recommendation.

2) By separating out the Monks lots, which are not contiguous, into a separate project without a full impact EIR, any future EIR for the remaining 31 undeveloped lots (and potential other developments-see 4 below) considered by the City will be inappropriately distorted.

3) The EIR must be tailored to address the unique characteristics of Zone 2 and the contiguous zones, particularly as they relate to transportation, road access conditions and hydrology conditions and mitigation recommendations-it cannot be a "cookie cutter" EIR. Input from geological specialists and other specialists and the PBCA Community should be required for the EIR design.

4) The EIR must take into account additional potential subdivisions and developments in or adjacent to Zone 2 for which the City has already been advised in writing (some of this potential development is alluded to in Item 10 of the revised MND).

5) The revised MND states that the Public Works Department has now concluded that the sewer system does have adequate capacity to serve the Monks lots. What were the assumptions used in terms of residence size, # of bathrooms etc. (the average size of existing homes in Zone 2 is probably less than 3,000sq ft)?

Yours sincerely
Jeremy Davies

From: Marianne Hunter [mailto:2hunter@cox.net]
Sent: Monday, August 31, 2009 11:25 AM
To: City Council
Cc: joelr@rpv.com; kitf@rpv.com
Subject: EIR not MND for Zone 2

Dear Mayor Clark, Mayor Pro Tem Wolowitz, Councilmen Long, Stern and Dyda

I'm writing to voice my concern over a MND rather than a full EIR in Zone 2. Relating to 16 lots separately rather than the total affect of the 47 lots (plus potential subdivisions) and the wild west effect of tear-down and rebuild of existing homes once the door is open, is a potential disaster.

Roads in present condition are inadequate
Affect on Hydrology of the area has not been studied
Safety during emergencies (brought home this week) has not been studied
Best science for building on the landslide has not been determined for the safety of the new family and the neighborhood they are joining.

We need a complete EIR of at least Zone 2 to determine if and how building can be safely done without threat to any. The rush created by *Monks et al* is because we all (the City, PB residents and Monks) know that the needed study data is not yet available and the answers may prove restrictive or cost prohibitive when done. To say we can fix problems after the fact (problems we may not even be aware of now) when big problems we have known of for years such as the severely eroding canyon remain untended, would be irresponsible and reckless.

We must be smart, follow CEQA rules and have our plan BEFORE we move ahead, not after.

Sincerely,

William Hunter

From: Marianne Hunter [mailto:2hunter@cox.net]
Sent: Monday, August 31, 2009 11:24 AM
To: City Council
Subject: FW: Revised MND for Zone 2 Landslide Moratorium Ordinance Revisions dated August 10,2009

Subject: Revised MND for Zone 2 Landslide Moratorium Ordinance Revisions

Dear Mayor Clark, Mayor Pro Tem Wolowitz, Councilmen Stern, Long and Dyda;

We understand that the City is in a difficult position vis-à-vis the MONKS Appellate Court decision and the ability of the City to act in the best interests of it's future and ours.
We believe that in order to be in compliance with CEQA the City MUST have a complete EIR of all lots in Zone 2 before any project development in it is permitted. Our City staff has recommended a full EIR, and no reasonable argument has been put forward to deny that recommendation.
Allowing a MND of some lots, positioned among homes and other lots, does not address reality. It opens the door, not only in Portuguese Bend but elsewhere in the City, for developers to use this as precedent for avoiding the expense of study/mitigation of safety issues. This opens the City to lawsuit and citizens to potential harm.

Another repercussion of an MND for these disconnected lots is the impact on future full EIR data: we understand that those 16 lots, which would have had only the MND, would then be excluded from inclusion in any future EIR, thus skewing a true report.
We will not accept a piecemeal, incomplete band-aid approach as a true evaluation of the highly fragile stability and other limitations of this area. Zone 2 is NOT an island; it is connected to, dependant upon and has an affect upon the zones surrounding it where people live, where people travel, where utilities are run. Only a complete EIR can evaluate the roads, drainage, slide factors, emergency access etc. This can be done only with independent experts in each field and including the local fire department; ACLAD; GHAD and experienced resident witnesses. Anything less does not fulfill the duty of the City to reasonably provide for the safety of all of its residents and those traveling through it. Using only select snapshots as a guide, the City does not have all the information to make sound judgments. For example: Public Works has put forward that the current sewer system is adequate for development of the 16 Monks lots. What was/was not taken into consideration for that conclusion? Has the number of bathroom/bedrooms allowed been defined? Was the fact that the sewer lines outside PB on PV Drive South failed twice in the last year (including last week) taken into consideration?
If only an MND is required and a failure causes harm, all of RPV's citizens will be liable for the costs of judgments from lawsuits against the City.
We believe that only a complete EIR can address the reasonable possibility of developing the Monks lots and the sub-divisions and single lots that are already waiting in the wings to develop in and around Zone 2.
Again, these lots and Zone 2 are not islands and it is not reasonable or responsible of the City to treat them as if they are.
Thank you for taking this into consideration.
Sincerely,
William and Marianne Hunter, Portuguese Bend

From: Carolynn Petru [carolynn@rpv.com]
Sent: Monday, August 31, 2009 3:54 PM
To: terit@rpv.com
Cc: 'Toni Harris'; 'Kit Fox'
Subject: FW: City Council meeting 9/1/09

From: Stuart Miller [mailto:stuartmiller@earthlink.net]
Sent: Monday, August 31, 2009 3:30 PM
To: Carolyn Lehr
Subject: City Council meeting 9/1/09

Dear Ms. Lehr:

I am one of the attorneys for the *Monks* plaintiffs. Please add my name to those who wish to speak at the City Council meeting tomorrow night regarding the proposed revisions to the Landslide Moratorium Ordinance. Because there may be community opposition to the proposal, I request that I be scheduled toward the end of the public comment period so I will have an opportunity to clarify any misconceptions about the case expressed to the Council.

Thank you very much.

Sincerely,

Stuart Miller

stuartmiller@earthlink.net

From: Gordon Leon [mailto:gordon.leon@gmail.com]
Sent: Monday, August 31, 2009 10:07 PM
To: Joel Rojas; citymanager@rpv.com; cc@rpv.com; Cassie Jones
Subject: Comments regarding NMD for 9/2 City Council Meeting

To: Director of Planning and City Council August 31, 2009

From: Gordon Leon

Subject: Modification of the Landslide Building Moratorium and the Negative Mitigation Declaration

I would like to reiterate my letter of March 1st. The city's new plan to use a NMD for the 16 Monk lots and an EIR for the remaining Zone 2 lots does not address the fundamental issues associated with development in Portuguese Bend. Furthermore, it relieves the 16 lots from any mitigations that might be found necessary in a subsequent EIR. This is why CEQA does not allow projects to be approved piecemeal.

The Portuguese Bend residents are very concerned about the stability of their homes, when development in Zone 2 and any similar areas is allowed. The Portuguese Bend landslide stability is a fragile equilibrium. Over the past 30 years, it has been preserved by controlling ground water by the Abalone Cove Landslide Abatement District pumping an average of 300,000 gallons of water a day and limitations on development due to the building moratorium. While the appellate court decision requires issuance of building permits or compensating to lot owners, it also requires the city to coordinate a set of building guidelines (restrictions) with the lower court. The existing residents are at risk if the new development aggravates the landside.

I support staff's recommendation to establish a 5 member advisory committee to work with planning to develop building restrictions. I recommend that the committee include Bob Douglas or another geologist who is knowledgeable about the Portuguese Bend Landslide, a member recommended by the Portuguese Bend Community Association to represent the residents, a member to represent the lot owners, a structural engineer experience in building in active landslides, and a lawyer experience in zoning and land use in geologically hazardous areas.

The Negative Mitigation Declaration (NMD) is inadequate to address the issues associated with the removal of the moratorium. I recommend that a comprehensive Environmental Impact Statement (EIR) be performed to provide a thoughtful mitigation of the issues associated with building on the largest active landslide in the United States. The standard NMD does not address the following pertinent issues:

1. **The NMD under estimates the volume of development.** It asserts that only 47 vacant lots will be developed over an extended period of time. The Monk decision will affect all 111 lots in Zone 2 as well as the geographically equivalent sub dividable adjacent areas. (eg Point View, Vanderlip, and other large lot owners) This will likely add another 100 to 150 lots, so the total

housing units is more likely to be 200-250 units. The moratorium has inhibited re-building and remodeling of existing homes for over 30 years. This pent up demand is likely to result in a large amount of rebuilding as soon as the rules change.

2. **The NMD does not adequately address storm water runoff.** The conventional approach is to direct the rainwater into storm drains. The land movement would rupture normal subterranean storm drains so the roads in Portuguese Bend serve that function as they drain into Altimira Canyon. The County of Los Angeles elected not to improve Altamira Canyon, which currently allows storm water run off into the landslide fissures. Significant mitigation is required to accommodate the storm water from roofs and hard scape associate with 200-250 new units. This issue has not been addressed or mitigated in the MND.
3. **The access to the new development in Zone 2 is on roads that traverse the less stable areas of the landslide.** Knowledgeable geologists have said that the vibrations from heavy trucks could likely destabilize the landslides in the more active areas. This will cause damage to houses in Zone 5 and could lead to failure of Narcissa Drive. This issue has not been addressed or mitigated in the MND.
4. **Residents will not be able to access Palos Verdes Drive South.** The traffic on PV Drive South has grown significantly over the past few years and will increase dramatically when the Teranea Resort is opened. It is already difficult to enter at Narcissa Drive and Peppertree Drive. The additional houses will make this situation untenable. The MND does not address or mitigate this issue.
5. **Construction vehicles will block the roads in Portuguese Bend for emergency vehicles.** On street parking is not allowed in PBCA because all of the roads are fire roads. Construction vehicles often park on the streets, creating a safety issue for the existing residents. The MND does not address or mitigate this issue.
6. **Many of the proposed lots are not serviced by fire hydrants, power, water, or sewer.** The MND does not address or mitigate this issue.
7. **Building techniques that improve the stability of a build able lot often have negative impact on adjacent lots.** An example is the compaction ongoing on Cinnamon Lane has caused cracks in the neighboring house. The MND does not address or mitigate this issue.

There are a significant number of issues that are not addressed or mitigated to an insignificant level by the MND. I recommend that a full EIR be performed to allow experts to help formulate the mitigation restrictions to protect the city and the existing residents from destabilization of the landslide by development in Portuguese Bend. I also support the staff's recommendation to form an advisory committee to help in the formulation of guidelines and restrictions to protect the city and residents of Portuguese Bend.

Gordon Leon

Portuguese Bend Resident

Gordon.Leon@gmail.com

310-463-9244

From: Martin Burton [mailto:mburton@gilchristrutter.com]
Sent: Monday, August 31, 2009 6:16 PM
To: clark@rpv.com; stevew@rpv.com; tom.long@rpv.com; douglas.stern@rpv.com; kendyda@rpv.com
Cc: joelr@rpv.com; kitf@rpv.com; clynch@rwglaw.com
Subject: Objections to MND for Landslide Moratorium Ordinance Revisions; Planning Case No. ZON2007-00007

I have attached a courtesy copy of a letter objecting to the Mitigated Negative Declaration to the proposed Landslide Moratorium Ordinance Revisions. Hard copies, with one set of attachments, will be delivered at tomorrow night's City Council hearing.

Please call me with any questions.

Thank you.

Martin N. Burton, Esq.
Gilchrist & Rutter Professional Corp.
1299 Ocean Avenue, Suite 900
Santa Monica, CA 90401
Tel: (310) 393-4000
Fax: (310) 394-4700

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August 31, 2009

Via Personal Delivery

Mayor Larry Clark
Mayor Pro Tem Steve Wolowicz
Councilmember Thomas D. Long
Councilmember Douglas W. Stern
Councilmember Ken Dyda
Rancho Palos Verdes City Council

Re: Mitigated Negative Declaration For Zone 2 Landslide Moratorium Ordinance Revisions Dated August 10, 2009, Planning Case No. ZON2007-00007 (the "**August Mitigated Negative Declaration**" or "**August MND**")
City Council Hearing: Tuesday, September 1, 2009

Dear Mayor Clark, Mayor Pro Tem Wolowicz, and Councilmembers Long, Stern, and Dyda:

This office represents Dr. Lewis A. Enstedt, a resident of the City of Rancho Palos Verdes, and the Portuguese Bend Alliance For Safety, an unincorporated association. We are writing to object to the August Mitigated Negative Declaration as failing to comply with the requirements of the California Environmental Quality Act, Cal. Pub. Res. Code §§ 21000, *et seq.* ("**CEQA**"), and its guidelines, 14 Cal. Code Regs. §§ 15000, *et seq.* (the "**CEQA Guidelines**") to fully identify, analyze and mitigate the significant environmental impacts arising from the proposed Zone 2 Landslide Moratorium Ordinance Revisions (the "**Landslide Revisions**" or "**Project**"). As we urged in our letter to the City Council dated March 3, 2009, which discussed the mitigated negative declaration dated February 9, 2009 (the "**February MND**" or the "**February Mitigated Negative Declaration**"), the City Council should reject the August MND and require the preparation of a full environmental impact report ("EIR").

The February MND analyzed proposed Landslide Revisions which would allow for the development of the entire 47 lots at the Project site ("Zone 2" or "Portuguese Bend"). As we advised the City, the February MND was inadequate and a full EIR was required. With City Staff publicly acknowledging the validity of our concerns, the City stopped processing the February MND while it developed and considered several alternatives in preparation for a June 2, 2009 City Council hearing.

One alternative presented by City staff to the Council was to prepare a mitigated negative declaration covering just the 16 lots at issue in *Monks v. City of Rancho Palos Verdes*, 167 Cal. App. 4th 263 (2008) ("*Monks* lots"). Staff concluded, however, that the alternative including only the 16 Monks lots "faces the same legal challenges from the opponents of the current

[Landslide Revisions, which addresses the development of all 47 lots], as well as those of the owners of the other thirty-one (31) vacant lots in Zone 2, who could claim that their ability to develop should be considered at the same time." (June 2, 2009 City staff report regarding Planning Case No. ZON2009-00007 at p. 24-6.)

Instead, in the June 2, 2009 staff report, City staff recommended the preparation of an EIR to analyze the impact of the development of all 47 lots at the Project site. At the June 2, 2009 City Council hearing, the City Council directed staff to pursue both approaches: analyze the potential environmental impact resulting from the development of the 16 *Monks* lots, while simultaneously preparing an EIR to analyze the impact of the development of the entire 47 lots and, presumably, other projects planned in the community.

The fact that the City has amended the Landslide Revisions to allow only the development of the 16 Monks lots still does not justify the preparation of a mitigated negative declaration rather than a full-blown EIR. In taking both approaches, the City essentially concedes that the entire 47 lots will be developed and that such development requires an EIR.

The City cannot break off a single project, such as the Landslide Revisions, into smaller individual subprojects to avoid responsibility for considering the environmental impact of the project as a whole, as it does here by first preparing the August MND to analyze the development of the *Monks* lots and later conducting a full-blown EIR to analyze the impact of the development of the entire 47 lots at the Project site. (*Orinda Ass'n v. Board of Supervisors*, 182 Cal. App. 3d 1145, 1171 (1986).) CEQA "cannot be avoided by chopping up proposed projects into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial." (*Id.; see also Ass'n for a Cleaner Env't v. Yosemite Community College Dist.*, 116 Cal. App. 4th 629, 638 (2007); *Lincoln Place Tenants Ass'n v. City of Los Angeles*, 130 Cal. App. 4th 1491, 1507 (2005).)

The attorneys for the 16 *Monks* lot owners, having won a determination that the City's original moratorium on development amounts to a taking, have argued to the City that the 16 *Monks* lot owners are somehow exempt from any further City or state regulation, including CEQA, zoning, and building requirements. The attorneys for the 16 *Monks* lot owners have threatened that if the City attempts to apply ordinary CEQA, zoning, and building and safety restrictions to the 16 *Monks* lots, they will challenge the City's actions as a permanent taking and be entitled to damages for the taking. Thus, the City's two-pronged approach is nothing more than an attempt to appease the lawsuit-threatening 16 *Monks* lot owners and their attorneys in their improper attempts to evade CEQA (hence, the August MND), while silently acknowledging

that a mitigated negative declaration is simply inappropriate for this Project (hence, the simultaneous preparation of a full-blown EIR for the 47 lots).

The August MND is barely revised from the February MND, which City Staff had publicly acknowledged to be subject to challenge. However, the August MND seeks to shield itself from challenge by claiming throughout that "the approval of the proposed project will not directly grant any entitlement to develop these lots." The City's reliance on this argument is misplaced. The scope of review under CEQA is not confined to immediate effects but extends to reasonably foreseeable indirect physical changes to the environment. (Pub. Res. Code § 21065; 14 Cal. Code Regs. § 15378(a).) CEQA applies to the reasonably foreseeable environmental impacts that will ultimately result from the proposed project. (*See, e.g. Bozung v. LAFCO*, 13 Cal. 3d 263, 277 (1975) (holding annexation plan was a project because its ultimate effect would be to permit subdivision and development of land that had been in agricultural use).) Attorneys for the Monks lot owners have stated openly their clients intend to develop their lots as soon as possible. The fact that the lots at the Project site will be entitled and developed after the Landslide Revisions are adopted is clearly a reasonably foreseeable effect and must be considered in an environmental review of the Landslide Revisions. The Landslide Revisions commit the City to a course of conduct that will ultimately result in the development of all 47 lots.

As we advised the City in our letter to the City Council dated March 3, 2009, CEQA establishes a low threshold for requiring the preparation of an EIR. (*See Mejia v. City of Los Angeles*, 130 Cal. App. 4th 322 (2005) ("*Mejia*").) If substantial evidence supports a fair argument that a proposed project may have a significant impact on the environment, an EIR must be prepared. (*No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68 (1974).) Any doubts about whether to engage in the lesser environmental review of an MND and the greater environmental review of an EIR are resolved in favor of the latter. (*Id.*) Given the potential significant environmental impacts of the Project, and the inadequacies of the proposed "mitigation" measures, an EIR and not a mitigated negative declaration is required to study the direct and indirect environmental effects of the Landslide Revisions. Failure to prepare a full-blown EIR in connection with the Landslide Revisions will constitute a violation of CEQA and its Guidelines, and will subject the City to costly litigation.

A mitigated negative declaration can be adopted only if the project's effects can be mitigated to the extent that there is no substantial evidence that the project may have a significant effect on the environment. (Pub. Res. Code § 21080(c); 14 Cal. Code Regs. I 15063(b)(2), 15064(f)(2) – (3), 15070.) Where there is substantial evidence that the project may have a

significant effect on the environment, as there is here, a full EIR is required. (14 Cal. Code Regs. §§ 15063(b)(1), 15064(f)(1).) The courts have often found that where regulation could result in development, an EIR is required to adequately evaluate the significant environmental impacts which may result from the development. (*See, e.g., City of Livermore v. LAFCO*, 184 Cal. App. 3d 531 (1986) (requiring EIR for revisions to guidelines because change in policies could affect location of development, resulting in significant environmental impacts).)

Here, we advised the City in our letter dated March 3, 2009 that there is substantial evidence that the Landslide Revisions may result in the development of more than 47 new residences which may have a significant effect on the environment that cannot be mitigated. The City never issued a point by point response to the issues and objections raised in the March 3, 2009 letter. Indeed, the City failed to address the issues and objections raised in our March 3, 2009 letter altogether. Instead, the City conceded that an EIR would be necessary to study the impact of the future development of 47 lots, but, in order to expedite development on the *Monks* lots, improperly narrowed the scope of review in the August MND to only 16 lots to justify the preparation of a mitigated negative declaration rather than an EIR. However, even the development of the 16 lots at issue in the *Monks* action requires the preparation of an EIR. Moreover, the City is legally obligated to review the environmental impacts resulting from the development of all 47 lots. The City must consider the whole of the action and cannot divide a single project, such as the Landslide Revisions, into smaller individual subprojects to avoid responsibility. (*Orinda*, 182 Cal. App. 3d at 1171; *Ass'n for a Cleaner Env't*, 116 Cal. App. 4th at 638; *Lincoln Place Tenants Ass'n*, 130 Cal. App. 4th at 1507.) Accordingly, the August MND, which fails to address any of the flaws in the February MND, is wholly inadequate and the City must prepare an EIR if it intends to allow for any development of new residences in Zone 2.

As we already noted in our March 3, 2009 letter, the February Mitigated Negative Declaration was fundamentally flawed for at least three reasons, none of which have been addressed by the City in any responses to comments on our March 3, 2009 letter, or in the August MND. First, the February Mitigated Negative did not accurately represent the scope of the Landslide Revisions' impact on the Project site. Particularly is this true given the small and semi-rural nature of the Portuguese Bend community. The CEQA Guidelines call for the lead agency to exercise "careful judgment" when determining whether an impact is significant or not, as "an activity which may not be significant in an urban area may be significant in a rural area." 14 Cal. Code Regs. §15064(b).

Second, the February MND did not take into account the likely subdivision, or lot-splitting, of undeveloped lots to create even more homes, which it should have done as, under

California law, the City's environmental review of the Project must include reasonably foreseeable consequences of the Project that will significantly change the scope or nature of the Project or its environmental effects. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of California*, 47 Cal. 3d 376 (1988).)

Third, the February Mitigated Negative did not analyze the cumulative impacts of simultaneous, or near-simultaneous, construction – from the 47 lots or from surrounding projects. The February MND instead made the flawed assumption that "[s]ince the subject lots are owned by numerous individual owners, they are very unlikely to be developed concurrently, but rather on a piecemeal basis over a period of many years." (February MND at p. 23.) This assumption ignored the fact that the owners of some or all of the undeveloped lots have been attempting to develop these lots for over thirty (30) years, since the City first enacted a moratorium on the construction of new homes in the Project site, and now that the City is attempting to lift restrictions on development, it is certainly reasonably foreseeable that these lots will undergo construction as soon as feasible, if not by the existing lot owners, then by their successors. Even if development is piecemeal, it is still development and its cumulative impacts must be analyzed.

The City amended the Landslide Revisions to only allow for the development of the 16 lots at issue in the *Monks* action. Consequently, the August MND only analyzes the impact from the development of the 16 *Monks* lots and emphasizes throughout its pages that "the approval of the proposed project will not directly grant any entitlement to develop these lots." However, in amending the Landslide Revisions to only allow for the development of 16 lots, and consequently preparing a MND that only analyzes the impact from the development of those 16 lots, the City impermissibly circumvents CEQA by dividing the Project into smaller subprojects to avoid responsibility for considering the environmental impact of the project as a whole. (*Orinda*, 182 Cal. App. 3d at 1171.) That this is the City's goal is especially clear in light of the fact that the City is simultaneously performing a full-blown EIR to study the impact of the development of the entire 47 lots.

The entitlement and development of the lots are a clearly foreseeable effect of the Landslide Revisions. A governmental decision that is a precursor to development, expanded use, or other impacts is subject to CEQA and such consequences must be analyzed. (*Bozung*, 13 Cal. 3d 263; *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.*, 139 Cal. App. 4th 1356, 1379 (2006).)

The City cannot avoid its legal obligations under CEQA by narrowing the scope of review to only 16 lots and excluding the foreseeable likelihood that the lots will be entitled. Rather, the Landslide Revisions must be considered in light of the possibility that all 47 lots are entitled and developed. And, as we previously advised the City, the assumption that "the future development of up to 47 single-family residences" will either have less than significant impacts or that the impacts can be mitigated premise is fundamentally flawed.

Under California law, if there is substantial evidence to support a fair argument that the proposed project may have a significant impact on the environment, the existence of contrary evidence is insufficient to avoid an EIR. (*See No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d 68 (1974); *see also Friends of "B" St. v. City of Hayward*, 106 Cal. App. 3d 988, 1002 (1980).) The relevant question is whether the effects of the Project are significant when viewed in connection with past, current, and probable future projects. (14 Cal. Code Regs. § 15065(a)(3).) Here, there is substantial evidence to support a fair argument that the Landslide Revisions, and the likely development of all 47 lots rather than only 16, may have significant effects on the environment that are not mitigated by the measures proposed in the August MND. Therefore, an EIR is required. (*Id.*) Below, we discuss the substantial evidence supporting the necessity of an EIR and analyze the flaws in the alleged "mitigation" measures proposed in the August Mitigated Negative Declaration as they apply to Air Quality, Biological Resources, Geology/Soils, Greenhouse Gases, Hydrology/Water Quality, Population/Housing, Transportation/Traffic, Utilities/Service and Aesthetics. Given the overwhelming evidence that an EIR is required, the City's failure to prepare an EIR in connection with the Project violates CEQA and will result in significant damage to the environment and community.

I. Air Quality

The August Mitigated Negative Declaration alleges that, with mitigation, the Landslide Revisions will have less than significant impacts on air quality. However, as with the February MND, its analysis is focused solely on construction air quality impacts and makes no mention whatsoever of long-term air quality impacts, project-specific and cumulative, arising from increased vehicle trips as a result of the development. The analysis largely depends on the fact that the development of the lots will occur "on a piecemeal basis over a period of many years." (August MND at p. 8.) As discussed above, this assumption underestimates the likelihood that the owners of the undeveloped lots, many of whom have been attempting to develop their lots for over thirty (30) years, will begin construction simultaneously, i.e., as soon as feasible. As discussed above, this assumption is also based on an improperly narrow scope of review which

analyzes the impact of development on only 16 lots. A proper environmental analysis needs to consider the impact of development of the entire 47 lots as a whole.

The August Mitigated Negative Declaration provides that if the "worse case" scenario were to occur, and all the lots were developed simultaneously, the mitigation measures provided would still make the air quality impacts less than significant. (*Id.*) However, the only mitigation measures provided are (1) that the applicant "shall be responsible for all dust and erosion control measures required by the Building Official" and (2) that the hours trucks and other construction vehicles are allowed to park, queue and/or idle at the Project site are restricted as provided in the City's Municipal Code. (*Id.*) Yet, neither one of these measures actually mitigates the effect of construction on the air quality. Nor do they address the cumulative effects of simultaneous construction on the air quality of the Project site, which is semi-rural. The first measure relies on prospective action to be taken by the future applicants and the Building Official, without any evidence of the likelihood of effective mitigation. Such reliance is an unacceptable mitigation measure. (*See Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 308-15 (1988) (disapproving a condition to a negative declaration that required sludge disposal plan to be approved by Regional Water Quality Control Board and the Department of Public Health).) The second measure does not address the possibility of subdivision, or lot-splitting, and environmental effects stemming from the construction of more than 47 new single-family residences, or even the construction of more than 16 new single-family residences, as purportedly addressed in the August MND.

II. Biological Resources

Although the August Mitigated Negative Declaration acknowledges that at least two (2) of the *Monks* lots contain patches of coastal sage scrub ("CSS") and that several of the undeveloped lots in Zone 2 abut the City-owned Portuguese Bend Reserve and the privately owned Filiorum properties, both of which contain substantial and cohesive patches of sensitive CSS habitat, it fails to analyze any impacts and proposes unacceptable and inadequate mitigation measures. (August MND at p. 9.)

The City cannot delay its analysis to a later date. Instead of actually analyzing and mitigating the impact of the development on the CSS habitat, the August MND, like the February MND, essentially requires implementation of mitigation measures to be recommended in a future study. This is an unacceptable mitigation measure which essentially postpones analysis of the issue. (*See Sundstrom*, 202 Cal. App. 3d at 308-09.) Specifically, the August MND states that applicants for development on lots identified as containing sensitive habitat

"shall be required to prepare a biological survey ... [which] shall identify the presence or absence of sensitive plan and animal species on the subject property, and shall quantify the direct and indirect impacts of the construction of the residence upon such species." (August MND at p. 9.) Where an agency fails to evaluate a project's environmental consequences, it cannot support a decision to adopt a negative declaration. (*Sundstrom*, 202 Cal. App. 3d at 311.) Here, the August MND fails to evaluate the Project's environmental consequences with regard to the possible loss of coastal sage scrub, a sensitive plant community, and instead puts the onus on applicants to do so at a later date. Such deferred analysis of mitigation is impermissible.

Furthermore, as we noted in our March 3, 2009 letter, the City fails to evaluate the Project's possible environmental consequences on sensitive wildlife species in or around the Project site, such as the cactus wren, Cooper's hawk, Palos Verdes Blue, southern California rufous-crowned sparrow, and coastal California gnatcatcher, all of which may be found in the surrounding areas, if not on the Project site itself. The courts have found that "absent a current biotic assessment, the conclusions and explanations provided [by the lead agency in an initial environmental review] do not preclude the reasonable possibility that birds, including species of special concern and others, may roost or nest on the property, that small mammals may use the property as a movement corridor, and that development of the site and elimination of the corridor may have a significant impact on animal wildlife." (*Mejia*, 130 Cal. App. 4th at 340.) Here, the existence of sensitive wildlife species in the areas surrounding the Project site suggests that the Project may have significant impact on animal wildlife, thereby meriting further review and analysis in an EIR.

Moreover, the MND does not even consider the possibility of design measures that could preserve habitat for sensitive species on site, but identifies as its only mitigation measure "payment of a mitigation fee." (MND at p.9.) This is no mitigation but the admission of a potential significant impact.

Lastly, despite the fact that we have brought this issue to the City's attention in our March 3, 2009 letter, the August MND still fails to address the environmental consequences the Project may have on sensitive inter-tidal species located at the juncture where the Altamira Canyon, situated in Zone 2, drains into the Pacific Ocean at the Abalone Cove Shoreline Park. This juncture is the site of a State Ecological Reserve, a highly sensitive resource. Additional storm water runoff from the Project will carry and deposit silt in this Reserve, significantly harming the sensitive inter-tidal species within this Reserve, yet the August MND does not address this potentially significant impact.

III. Geology/Soils

The August Mitigated Negative Declaration also fails to adequately evaluate the effect of development on the geology and soil in Zone 2. As the City is aware, geology and soils stability were issues discussed in the *Monks* action. However, although the Court of Appeal ruled the City could not impose an ordinance depriving the *Monks* plaintiffs of all economically beneficial use of the 16 lots at issue, the Court never sought to prevent the full environmental review of the Project pursuant to CEQA or the mitigation of the environmental impact resulting from the foreseeable development of 47 or more lots.

The City cannot simply escape its obligations under CEQA by revising the Project to allow only for the development of the *Monks* lots now and preparing a full-blown EIR analyzing the impact of developing the entire 47 lots, which is clearly reasonable foreseeable, at a later date. Doing so does not negate the fact that the evidence suggests that the development of at least 47 new single-family residences would have a significant effect on the geology and soils at the Project site, which is susceptible to landslides. The *Monks* court cites the City's own expert witness as saying that "allowing construction on *all 47 undeveloped lots* 'would have a tendency to further reduce the factor of safety.'" (*Id.* at 308 (emphasis in original).)

Nevertheless, the August Mitigated Negative Declaration states that there will be less than significant impacts, with mitigation. However, in addition to improperly narrowing the scope of review, the August MND again defers analysis and adopts unacceptable and inadequate mitigation measures, ones that essentially require the implementation of mitigation measures to be recommended in a future study. (*See Sundstrom*, 202 Cal. App. 3d at 308-15.) The August Mitigated Negative Declaration states "given the known and presumed soils condition in and around Zone 2, it is expected that soil investigations...will be required prior to the development of any new residences" and requires that "applicants shall prepare an erosion control plan for the review and approval of the Building Official." (August MND at p. 11-12) These are impermissible attempts to delay the formulation of real mitigation measures to a future date.

The August Mitigated Negative Declaration fails to adequately consider slope stability and possible slope failure during the construction process and thereafter. Instead, the August MND proposes that "applicants shall submit for recordation a covenant agreement to construct the project strictly in accordance with the approved plans." (August MND at p. 12.) This alleged mitigation measure is an empty requirement – one that essentially requires the applicant to agree to construct a project within the parameters of the approved project, which applicants are presumably obligated to do regardless of any covenant agreement.

The effect of development on the Project site, given the "known and presumed soil conditions in and around Zone 2," is a highly controversial and complex matter that requires the preparation of an EIR. As the August MND notes, "the entirety of Zone 2 is located within an area that is potentially subject to earthquake-induced landslides." (August MND at p. 11.) Indeed, the August Mitigated Negative Declaration acknowledges "the soils of the Palos Verdes Peninsula are generally known to be expansive and occasionally unstable." (*Id.*) This is an understatement given the well-known history of landslides within and bordering the Project site.

As we noted in our March 3, 2009 letter, the City already has substantial evidence of the possible environmental effects of construction and development in Zone 2 based on the history of Portuguese Bend and Abalone Cove. In the 1950's, the Portuguese Bend Landslide destroyed 130 homes. In 1975, a second large landslide occurred, the Abalone Cove Landslide, and resulted in a lawsuit between plaintiff residents and defendants the City, the Rancho Palos Verdes Redevelopment Agency, and the County of Los Angeles. The parties eventually entered into a settlement agreement (the "Horan Settlement Agreement") wherein defendants agreed to allocate approximately $10 million to fund landslide abatement work and a maintenance fund. However, these funds were never properly utilized and, although a panel of experts generated several proposals to stabilize the region, including making the two segments of the channel impervious in order to prevent ground water recharge by storm runoffs, grading and sealing ground fissures and depressions in the area, correcting street and culvert drainage, and placing fill along the beach, the City has implemented virtually none to date, and the region remains unstable. In fact, the Abalone Cove Landslide reactivated a few years ago and threatens to reactivate every time there is a heavy rain in the area.

One of the few steps the City has taken to stabilize the land at the Project site was installing "dewatering" wells to remove groundwater and installing a sewer system "to reduce the amount of groundwater" within the area. (*Monks*, 167 Cal. App. 4th at 272; August MND at p. 12.) However, what stability this provided will be jeopardized by any new development. Indeed, a July 2009 draft Abalone Cove Landslide Abatement District Report notes that it is clear that additional dewatering wells are needed just to support the development already at Portuguese Bend. Additional development, as allowed by the Landslide Revisions, would exacerbate the situation in the sensitive region. Furthermore, recent tests indicate that, as a result of the "dewatering" wells, a second slide plane has been discovered at approximately 180 feet below the surface at the Project site. Any new development could clearly affect this deeper slide plane or be affected by this deeper slide plane and result in significant environmental impacts on the geology and soil in Zone 2.

In addition, although both the February MND and the August MND acknowledge that new residences constructed at the Project site "will be required to connect to either the existing sanitary sewer system or to an approved holding tank system if the sanitary sewer system is not available..." (February MND at p. 12, August MND at p. 12), neither Mitigated Negative Declaration adequately address the significant environmental impacts of connecting these new residences to the sewer system, the possible alternatives beyond temporary holding tanks if the sewer system is unable to handle the new residences, and the likelihood that these new residences and their landscaping plans will increase the amount of groundwater in the area thereby increasing the risk of landslides.

Perhaps most importantly, the MND fails to consider the significant effect the development will have on the two (2) access roads leading into the Project site, which are known to traverse through manifestly unstable areas and are therefore highly sensitive to further burden. Pepper Tree Road passes through the Portuguese Bend landslide area – a known active landslide; and Narcissa Drive cuts across Zone 5, which suffered the Abalone Cove landslide in 1975. The August MND contains absolutely no discussion about the Project's impact on these highly sensitive streets, the only access ways to the project. Rather, the August MND apparently relies on the fact that it is only analyzing the impact of 16 new single-family residences to deflect these concerns. As discussed above, this is an improperly narrow scope of review. Moreover, even the addition of 16 new single-family residences could have a significant impact on the roads. Portuguese Bend residents must repair and rebuild these access roads, which are paid for by the Portuguese Bend Community Association. The addition of new single-family residences, whether 16 or 47 and more, would increase the burden on the access roads yet the August MND fails to analyze how this increased usage will affect the geology and soils underlying the access roads.

Furthermore, these roads were essentially designed to act as storm drains in the 1940's but are insufficient now. The exponential increase in the number of cars and the size of homes in the past several decades have drastically impacted the amount of water that accumulates in the area. This problem is exacerbated by the proliferation of new approved developments located upstream, which further increases the amount of water accumulating at the Project site. The nearby Terranea Resort has already caused tremendous strain on the area's water drainage and geographic stability. The Plumtree development to the northwest of the Project site and the Beanfield development to the southwest of the Project site are each expected to create over 20 additional homes. Two new developments are also expected, one in the northeast of the Project site, near Del Cerro Park and another near Vanderlip Drive. The Landslide Revisions, in conjunction with these new developments, will have a sweeping environmental impact on the

Project site, which is already known for its geographic instability. Increased impermeable surface from the new homes would increase water to Altamira Canyon with resulting increase in groundwater levels that could further destabilize the Project site. Yet, the August MND fails to analyze any of these impacts.

Lastly, the August Mitigated Negative Declaration does not examine the issue of the Cabrillo earthquake fault, which was identified in another project located only a few miles from Portuguese Bend, and fails entirely to discuss or analyze whatsoever how new development will affect the stability of Zone 5, which experts have acknowledged as unstable and which abuts Zone 2 to the south.

IV. Greenhouse Gas Emissions

The August MND also contains no serious discussion attempting to quantify greenhouse gas emissions or to show with any level of good faith what specific mitigation measures will address those impacts. Scientific accuracy is not required – but a good faith attempt to quantify the impact and address it is required. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs*, 91 Cal.App.4th 1344 (2001).) Instead, the August MND again appears to rely on the fact that it is only analyzing the impact of 16 new single-family residences to deflect these concerns. As discussed above, this is an improperly narrow scope of review and, moreover, does not address the issue.

The August MND implausibly suggests that the "development of new homes on the *Monks* plaintiffs' lots in Zone 2 would tend to counteract the negative effects of sprawl by 'in-filling' an established residential neighborhood rather than converting raw land to urban use" and therefore "the GHG emissions associated with the proposed project would be less than significant." (August MND at p. 13.) This assertion is utterly without merit as it relies on the faulty premise that the development of the lots in Zone 2 would somehow prevent the conversion of raw land to urban use, which is not the case. Nothing about the Project prevents or counteracts "sprawl." Instead, the Project allows for increased development in a semi-rural environment. (August MND at p. 6.) Accordingly, the City must seriously consider and quantify the greenhouse gas emissions resulting from this increased development, not deflect the issue by claiming the development somehow offsets "sprawl."

V. Hydrology/Water Quality

The August Mitigated Negative Declaration states that the Project will have less than significant impacts on hydrology and water quality, with mitigation. As a preliminary matter, as discussed above, the August MND improperly narrows the scope of review of Hydrology/Water Quality by carving out the 16 *Monks* lots and studying the impact of development on those lots separately from the impact of development on the entire 47 lots. A proper environmental analysis needs to consider the impact of development of the entire 47 lots as a whole.

Moreover, in evaluating the potential environmental impacts of the Landslide Revisions on hydrology and water quality, the August MND acknowledges that development will "increase the amount of impermeable surface area" yet fails to consider the significant environmental impact of groundwater draining into the Altamira Canyon, which has been designated a sensitive United States Geological Survey "blue line" stream. (August MND at p. 15.) The drainage from Altamira Canyon not only goes near the tide pools, it is within a short distance of a nursery school, the Portuguese Bend Nursery School, which is located near the beach. Altamira Canyon has been subject to severe flooding problems caused by storm water runoff, yet the August MND does not consider whether, or how, the Project may exacerbate an existing deficient storm water drainage system. Furthermore, storm water in Altamira Canyon, which empties into the Pacific Ocean, can create severe beach side erosion causing the shoreline to retreat. This potential significant environmental impact is also ignored in the August MND.

The August MND also does not consider the significant impact of grading and construction activities that have the potential to result in erosion of exposed soils and transportation of sediment into Altamira Canyon. Construction-related and urban-related contaminants may also result in the pollution of runoff waters that would discharge into natural drainage channels. In fact, some of the proposed mitigation measures could exacerbate the problem. For example, the August MND states that "roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course." (August MND at p. 16.) As the panel of experts convened by the Horan Settlement found, such runoff would undoubtedly result in more erosion and the transportation of sediment into Altamira Canyon.

The August MND also fails to analyze the impacts associated with the fact that, pursuant to the City's guidelines, the new single-family residences at the Project site could be 4,000 square feet or more. As residents of Portuguese Bend can attest, this is approximately twice as large as the average home currently in Portuguese Bend. Such new single-family residences

would drastically increase the amount of water on the surrounding roads and increase the amount of water that would drain into Altamira Canyon.

Although the MND acknowledges that development "would alter the topography...in Zone 2 and increase the amount of impermeable surface area," it proposes inadequate and unacceptable mitigation measures. (August MND at p. 15.) For example, one of the MND's "mitigation" measures provides that "[i]f lot drainage deficiencies are identified by the Director of Public Works, all such deficiencies shall be corrected by the applicant." (MND at p. 16.) This does not analyze or "mitigate" the environmental effects. Rather, it defers analysis of impacts and mitigation to the future by providing that "lot drainage deficiencies" (and any environmental impact said deficiencies may have) will be identified by the Director of Public Works and mitigated by applicants at a later date.

Similarly, the August MND provides that "[a]ll landscaping irrigation systems shall be part of a water management system approved by the Director of Public Works" (August MND at p. 16) who will presumably review the environmental impacts of said landscaping irrigation systems at a future date and impose mitigation measures as necessary. As discussed above, mitigation measures which impermissibly defer analysis to future review of environmental impacts or which requires implementation measures be recommended in a future study are impermissible.

None of the alleged "mitigation" measures proposed in the August MND are sufficient. As discussed above, as a result of the Horan Settlement Agreement, a panel of experts generated several proposals to stabilize the region, including making the two segments of the channel impervious in order to prevent ground water recharge by storm runoffs, grading and sealing ground fissures and depressions in the area, correcting street and culvert drainage, and/or placing fill along the beach. Any serious environmental analysis needs to consider these proposals and the underlying drainage problems which would be exacerbated by any development.

Drainage studies done of the nearby Altamira Canyon have indicated that the stream bed slopes in the upper reaches of Altamira Canyon undercut the side slopes and create high-velocity, debris-laden flows to lower, more residentially developed area, that the corrugated metal pipe culverts in the area are seriously undersized, inadequate, and in some cases entirely severed, that there is severe downcutting and erosion of the watercourse between Narcissa Drive and Sweetbay Road, and that the type of grass and brush indigenous to the area is not an effective debris retardant and lends itself to brush fires. As evidenced by the recent brush fires, which started on August 27, 2009, the type of grass and brush indigenous to the area is not an

effective debris retardant, posing significant and dangerous environmental consequences. Development would only worsen those problems. Furthermore, development could decrease the amount of trees and scrub, which are important water extractors, result in an increase in run-off from in both the upper and lower watersheds, trigger creep of the deeper slide plane, increase the amount of sediment and detrimentally affect epibenthic growth, and contribute to massive photoplankton blooms that injure sea life. Yet, the August MND does not discuss or address any of these issues.

VI. Population/Housing

The August Mitigated Negative Declaration states that the Project will have less than significant impacts on population and housing because the Project "would result in an increase of only 0.1% [of the City's population]," based on a projected 16 new single-family residences. (August MND at p. 18.) However, as discussed above, this reasoning is flawed in that the August MND improperly narrows the scope of review on the issue of Population/Housing by carving out the *Monks* lots and studying the impact of development on those lots separately from the impact of development on the entire 47 lots. A proper environmental analysis needs to consider the impact of development of the entire 47 lots as a whole.

In fact, it is reasonably foreseeable that there will be an increase of more than 47 new single-family residences, and likely more by itself than the sixty (60) additional housing units the entire City is allotted through June 30, 2014 by the Southern California Association of Governments. Moreover, this statistic ignores the significant impact on population and housing that the Project will have on the local region, namely the Portuguese Bend area. Even an increase of 47 new single-family residences would represent a seventy-three percent (73%) increase in population and housing at the Project site. Therefore, the City needs to evaluate the potential significant environmental impacts of substantial grown in Portuguese Bend through an EIR.

VII. Transportation/Traffic

The August Mitigated Negative Declaration states that the Project will have less than significant impacts on transportation and traffic. Again, this conclusion is largely based on the August MND's impermissibly narrow scope of review. A proper environmental analysis needs to consider the impact of development of the entire 47 lots as a whole, which could result in more than 47 new single-family residences. Furthermore, this conclusion rests on the flawed premise that new construction will be done on a "piecemeal" basis "over a period of many

years." (August MND at p. 20.) Piecemeal development over a period of many years is precisely the kind of development that must be analyzed for cumulative impacts.

The August Mitigated Negative Declaration does not consider the local effects on Portuguese Bend of such a drastic increase in residences, which could amount to a 73% increase, or more, in traffic in the area. The roads in Portuguese Bend cannot withstand such a high increase in use. The Project site has already seen a large increase in traffic, which it cannot withstand, as a result of the nearby Terranea Resort development. As discussed above, the two (2) access roads leading into Portuguese Bend already traverse concededly unstable areas. The Portuguese Bend Community Association collects dues to support the maintenance of the roads at the Project site and it cannot bear the burden of maintaining the roads were usage to be increased by 73% or more.

Furthermore, as residents of Portuguese Bend can and will attest, the Project site clearly does not have adequate parking capacity, either for construction vehicles or additional residences. All roads at Portuguese Bend are fire roads wherein no parking is allowed, as fire trucks cannot negotiate the roads with either cars or construction vehicles parked on them. The lack of adequate parking, even for emergency vehicles, was underscored during the recent, August 2009, brush fires as emergency vehicles had difficultly negotiating the roads and residents were forced to direct excess traffic, such as news vehicles, away from the area because the Project site could not handle large volumes of traffic. Yet, the August MND wholly fails to address this significant impact. Instead, it misleadingly emphasizes in multiple places that "approval of the proposed project will not directly grant any entitlement to develop these lots," notwithstanding the fact that the entitlements are a reasonably foreseeable effect of the Project and must be considered in the CEQA analysis.

VIII. Utilities/Service Systems

The August Mitigated Negative Declaration states that the Project will have less than significant impacts on utilities and service systems, with mitigation. However, the August MND again unacceptably defers analysis and mitigation until a future date. (*See Sundstrom*, 202 Cal. App. 3d at 308-15.) Rather than fully analyzing the possible problems the new developments could cause on the sewer system and the possible measures to address it, the MND essentially provides that the "Public Works Department" will review and mitigate the problem at a future date. (August MND at p. 22.)

For example, the August MND provides "[i]f the Director of Public Works determines that the sanitary sewer system cannot accommodate a new connection at the time of building permit issuance, the project shall be connected to a City-approved holding tank system until such time as the sanitary sewer system can accommodate the project." (*Id.*) This is wholly unacceptable. The August MND indicates a possible significant environmental impact may exist with regard to the sewer system, yet does nothing more to analyze the issue or mitigate it. Instead, it defers analysis to the Director of Public Works at the time of permit issuance. This undermines the entire intent of the environmental review process, which must take into account the cumulative and reasonably foreseeable effects of a project before its approval. Review cannot be done on a piecemeal basis after the fact. Furthermore, such a holding tank system – the size, number and location of which are nowhere mentioned – will itself result in likely environmental impacts, yet the August MND doesn't even discuss those impacts.

Additionally, the August MND does not consider the significant environmental impact of the construction required to connect the additional developments to the sewer system and/or holding tanks. However, an EIR must be prepared if a project will result in reasonably foreseeable indirect physical changes that may have a significant adverse effect on the environment. (*See County Sanitation Dist. No. 2 v. County of Kern*, 127 Cal. App. 4th 1544 (2005) (finding EIR was required for ordinance restricting disposal of sewage sludge because of indirect impacts, including need for alternative disposal, increased hauling, and possible loss of farmland in reaction to the new restrictions); *see also Heninger v. Board of Supervisors*, 186 Cal. App. 3d 601 (1986) (requiring EIR for ordinance allowing private sewage disposal systems because of possible groundwater degradation in case of system failure).)

Lastly, the fact that the City's Public Works Department has "recently confirmed...that the Abalone Cove system does have adequate capacity to serve the *Monks* plaintiffs' lots" (August MND at p. 22) is not evidence that the Project will not have a significant environmental impact as the Project must be considered in light of the potential development of all 47 lots and adjacent development proposed for the area, not merely the 16 *Monks* lots. Furthermore, the August MND provides no basis for this assertion from the City's Public Works Department. Nor does it state what assumptions the City made to reach this conclusion, such as its assumptions regarding the size of the new developments and the number of bathrooms contained therein.

IX. Aesthetics

The August Mitigated Negative Declaration contends that the Landslide Revisions will have less than significant impacts on aesthetics, with mitigation. However, again, this analysis is

based on an improperly narrow scope of review, one which only considers the effects of 16 lots, rather than the entire 47 lots. Furthermore, like the February MND, the August MND fails to consider the short-term construction impacts on Portuguese Bend. Although the August Mitigated Negative Declaration admits that the Landslide Revisions could lead to future development (although it disingenuously claims throughout that the Project will not directly grant any entitlements to develop the lots, despite the fact that said entitlements are a clearly foreseeable effect of the Project), its evaluation of the aesthetic impact of this development does not take into account the fact that during construction, grading activities would remove much of the vegetation on the site. Furthermore, stockpiled soils, equipment and building materials would be visible from off-site areas, thereby further degrading the aesthetic quality of the Project site and associated views, likely for the next 15-20 years.

The visual impacts of development at the Project site would be significant. Views for current residents of Portuguese Bend, as well as views for passersby, would change from undeveloped open space to a developed condition. This substantially degrades the existing visual character of the Project site and its surroundings. Yet, as a mitigation measure, the August Mitigated Negative Declaration provides only that the new residences "shall be subject to neighborhood compatibility analysis under the provisions of...[the City's] Municipal Code." (August MND at p. 6) This "mitigation" measure fails to consider other design criteria or guidelines, such as the Community Associations' Architectural Standards. Moreover, it does not mitigate the significant visual impact of development at the Project site replacing previously undeveloped open space.

Lastly, the August Mitigated Negative Declaration alleges the environmental impact caused by the additional lighting required for the new developments is "mitigated" because "[e]xterior illumination for new residents shall be subject to the provisions of...[the City's] Municipal Code." (August MND at p. 6.) However, the addition of 47 or more new residences would increase the light and glare in the Portuguese Bend community, which is semi-rural (August MND at p. 6), by 73% or more. The August MND fails to account for the significant impact the increased residences would have on the specific Project site.

In sum, we urge the City Council to reject the August Mitigated Negative Declaration. The August MND improperly narrows the scope of review and underestimates the effects of the Landslide Revisions. The City must consider the impact of the future development of all 47 currently undeveloped lots in Zone 2. There is substantial evidence the Project will have significant environmental impacts which are not addressed or are inadequately addressed in the August Mitigated Negative Declaration. The environmental issues at the Portuguese Bend area

are numerous and complex and a full-blown Environmental Impact Report is required. By failing to require an EIR, the City is endangering the environment of the Portuguese Bend area and putting the health and safety of its citizens at risk.

Please include this letter and attachments in the record of proceedings on this matter.

Very truly yours,

GILCHRIST & RUTTER
Professional Corporation

Martin N. Burton
Of the Firm

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Attachments
cc: Joel Rojas, Director of Planning, Building and Code Enforcement
Carolyn Lehr, City Manager
Carla Morreale, City Clerk
Yen N. Hope, Esq.

September 1, 2009

City Council
City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

Re: Revised Proposed Mitigated Negative Declaration, Zone 2
State Clearinghouse No. 2009021050
Planning Case No. ZON2009-00007

Dear City Council Members:

We have reviewed the above referenced Mitigated Negative Declaration (MND). We own a lot within Zone 2, but were not party to the recent lawsuit. We are concerned that the City is proposing to separate out California Environmental Quality Act (CEQA) review of the sixteen "Monks Plaintiffs" lots from the remainder of the Zone 2 lots and, in addition, we have concerns with the adequacy of the public noticing for the project. Following are our comments and concerns in greater detail.

The City is proposing to separate out the lots of the "Monks plaintiffs" from the remainder of the Zone 2 lots for purposes of CEQA processing, processing the sixteen "plaintiff" lots as a MND while requiring an Environmental Impact Report for the balance of the Zone 2 lots. The initial MND circulated for public review included in its review and assessment all Zone 2 lots. The Revised MND limits its review only to the sixteen plaintiff lots.

The City, based on substantial geologic input over time, grouped these lots together as a single zone (Zone 2) based on their similarities. The current CEQA review process proposes to separate Zone 2 lots, not based on any factual, physical, or environmental distinctions but solely in response to the valid concerns of the recent court decision (Monks v. City of Rancho Palos Verdes). However, the court's decision does not relieve the City from applying all CEQA and other legally required standards to this matter. In the court's decision it found the City's prohibition of development of lots in Zone 2 to be a taking and impermissible impediment to development of the lots. With the exception of the numerical differences resulting from potential development of 16 lots versus 47, no changes to impacts resulting from the proposed limitation solely to the "plaintiffs lots" is introduced in the proposed revised MND. No basis for separating out the sixteen lots is given, except that these lots were part of a lawsuit against the City.

Without making a factual, physical, and/or environmental distinction between the sixteen lots of the "Monks plaintiffs" and all lots within Zone 2, the City leaves itself open to further legal challenge regarding development within Zone 2.

Indeed, development of many of the "plaintiff" lots is more problematic than the "remainder" lots as many "plaintiff" lots abut significant open land. Potential future development of the "plaintiff" lots will introduce issues including biological impacts and fire safety that the "remainder lots" do not.

Although we fully recognize the City's need to respond in a timely fashion to the judge's decision with regard to the Zone 2 lawsuit, we question whether the current path is the most protective not only of the "Monk's plaintiff's" interest, but also the City's liability. We believe that if an Environmental Impact Report is appropriate for the "remainder" lots, it should also be required for the "Monks plaintiffs" lots. The City must respond to the court's decision, but it must also do what is most protective for all interested parties including current residents of the Portuguese Bend community, all owners of lots in Zone 2, and for the residents of the City in general. We believe that the lots of Zone 2 can be developed, but that any development of the area must be done in a careful and prudent manner. We urge the City not to take to separate CEQA paths for the lots in Zone 2.

In addition we have concerns with the public noticing for the subject project. The Public Notice for the project is dated August 10, 2009. The hearing date identified on the notice is September 1, 2009. As required by CEQA and as stated on the notice, public comments are accepted for a period of 30 days. The time lapse between the date of the notice and the hearing date does not allow for the required thirty day comment period.

Also with regard to the public noticing process required by CEQA, we question whether all Zone 2 lot owners received notice of the City's pending action. As mailing addresses of all lot owners are publicly available from the County Assessor's office, due diligence on the City's part would require that lot owners receive notice via U.S. Mail. Lot owners may or may not live within the area of a local newspaper of general circulation and so newspaper notice would not be effective. As this matter affects all lot owners in Zone 2, each lot owner should receive public notices, as they would have to be considered interested parties.

Thank you for the opportunity to comment.

Respectfully submitted,

Robert Bacon
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Rancho Palos Verdes
90275

Sept 1, 2009, RPV City Council Meeting

Mayor Clark and Councilmen Wolowicz, Long , Stern and Dyda:

My name is Robert Douglas and I live at 33 Sweetbay Road, RPV

I am the Chairman of the Board of Directors of the Abalone Cove Landslide Abatement District (ACLAD).

I speak to you tonight to urge the Council to undertake an EIR of all of Zones 2 and 3 and adjacent upslope portions of zone 1. These zones include the 47 undeveloped lots and other vacant lands that are likely targets for future development.

I urge this action for two reasons:

1. **The key question is the stability of the ancient, inactive landslide complex,** which includes all of the above zones.

How stable is the ancient landslide? In the Monks case, the courts answered the question by stating the stability was "uncertain" despite the numerous geotechnical investigations that span 40 years. The only definitive answer is provided by the Portuguese Bend landslide. Accidentally and inadvertently human activities triggered a reactivation of a portion of the ancient landslide complex in 1956 and as you are all aware, the movement has not stopped in over 50 years. Today the landslide is best characterized as a slow moving earth flow.

An EIR of the area should try to address the question of stability and in so doing may need to drill and instrument a series of boreholes in order to obtain answers to fundamental geological questions about the landslide complex. Without answers to these questions, the current "uncertainty" will prevail and lead to future challenges and lawsuits.

2. **The second most important problem in the area is the management of storm water runoff.** Storm water infiltrates and becomes groundwater and groundwater is the activator of landslide movement. Thus, the control of storm water runoff is directly linked to the stability question.

The last hydrological investigation of the Altamira watershed was done over 20 years ago and since then the methodology and science has changed. The Los Angeles County Flood Control agency, for example, uses different values for calculating 50 yr and 100 yr events and evaluating runoff volumes then it did in the past which in turn directly affects the size and location of storm drain culverts. The last study of the storm drain system within the Portuguese Bend community was done in the early 1990s and only about half of the recommended improvements made then were ever implemented. A complete analysis of the hydrology and storm drain system in the area should be a major part of the EIR.

In order to address these two topics, an EIR is needed of the entire area.

Finally, Lowell Wedemeyer and I have separately offered to the Council some written comments and suggestions aimed at improving the quality of the geotechnical reports and reducing the problems involved in evaluating the landslides. We hope that you will review these documents and would be happy to discuss them with you.

Thank you.