CITY OF RANCHO PALOS VERDES

MEMORANDUM

TO: HONORABLE MAYOR & CITY COUNCIL MEMBERS

FROM: JOEL ROJAS, AICP, DIRECTOR OF PLANNING, BUILDING AND CODE ENFORCEMENT

DATE: SEPTEMBER 1, 2009

SUBJECT: PLANNING CASE NO. ZON2009-00007 (CODE AMENDMENT AND ENVIRONMENTAL ASSESSMENT): REVISIONS TO THE LANDSLIDE MORATORIUM ORDINANCE (CHAPTER 15.20 OF THE RANCHO PALOS VERDES MUNICIPAL CODE) TO ESTABLISH AN EXCEPTION CATEGORY TO ALLOW FOR THE FUTURE DEVELOPMENT OF THE SIXTEEN (16) *MONKS* PLAINTIFFS' UNDEVELOPED LOTS IN ZONE 2

REVIEWED: CAROLYN LEHR, CITY MANAGER

Project Manager: Kit Fox, AICP, Associate Planner

RECOMMENDATION

1) Receive public comments on the revised Mitigated Negative Declaration;
2) Introduce Ordinance No. ___, revising the City's Landslide Moratorium Ordinance to establish an exception category to allow the development of the sixteen (16) *Monks* plaintiffs' lots in Zone 2; and,
3) Continue this matter to September 15, 2009.

EXECUTIVE SUMMARY

The *Monks* decision has required the City to take action to revise its regulation of land use and development within the Landslide Moratorium Area. The first step was the adoption of Resolution No. 2009-06, which repealed the requirement for the demonstration of a 1.5:1 factor of safety within Zone 2. The second step is the enactment of revisions to the Landslide Moratorium Ordinance to allow the submittal of applications to develop undeveloped lots in Zone 2. This second step begins tonight with the presentation of the

draft Ordinance to create an exception category to allow the development of the sixteen (16) *Monks* plaintiffs' lots in Zone 2.

BACKGROUND

On December 17, 2008, the California Supreme Court denied the City's petition for review in the case of *Monks v. City of Rancho Palos Verdes*. Accordingly, the City Council must take the actions that are necessary to comply with the Court of Appeal's decision. As discussed in a previous Staff report, the City has a choice of either purchasing the plaintiffs' properties (for an amount that is estimated to be between $16 and $32 million) or removing the City's regulations that the Court of Appeal found to be impermissible impediments to development of the plaintiffs' lots.

Since the City does not have sufficient funds in its reserves to purchase the plaintiffs' properties, the first step in the process was the repeal of Resolution No. 2002-43. That resolution required property owners in Landslide Moratorium Area Zone 2 to establish a 1.5:1 factor of safety before they could develop their lots, and was the purported catalyst for the filing of the *Monks* lawsuit. On January 21, 2009, the City Council adopted Resolution No. 2009-06, which repealed Resolution No. 2002-43.

The second step in response to the Court of Appeal's decision is to enact revisions to the current Landslide Moratorium Ordinance to allow the development of undeveloped lots in Zone 2. The *Monks* plaintiffs own sixteen (16) undeveloped lots in the area identified as "Zone 2" in the memorandum of May 26, 1993, by the late Dr. Perry Ehlig, within which a total of forty-seven (47) undeveloped lots have been identified. Staff initially presented a draft Ordinance and Mitigated Negative Declaration (MND) for the City Council's consideration on March 3, 2009. Based upon written and oral comments presented at that meeting, it was clear that there was public opposition to creating an exception category that would extend the "benefits" of the *Monks* decision to all forty-seven (47) undeveloped lots in Zone 2. It was also clear that, based upon the scope of the proposal and the number of potential future homes that might be built, there were public concerns about the adequacy of the environmental analysis of the proposal. Therefore, the City Council took no action on the matter on March 3, 2009.

On June 2, 2009, Staff presented an update on the status of this 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 addressing only the sixteen (16) *Monks* plaintiffs' lots would be prepared with a revised MND, and a similar amendment addressing all forty-seven (47) undeveloped lots in Zone 2 would be prepared with an Environmental Impact Report (EIR). The revisions proposed by Staff tonight would simply allow for the potential future development of the *Monks* plaintiffs' undeveloped lots in Zone 2, but would not alter the

Landslide Moratorium Ordinance affecting any other zones or areas and would not allow the subdivision of any of the existing lots within the Landslide Moratorium Area.

DISCUSSION

Revised Proposed Ordinance

The proposed revisions to the current Moratorium Ordinance will allow the development of sixteen (16) of the undeveloped lots in Zone 2 by creating a new exception category (i.e., Category 'P'), which is similar to the former Category 'K' for the *Seaview* area (i.e., the "Area Outlined in Blue") in that it allows the development of new residences, accessory structures and minor, non-remedial grading on undeveloped lots. As defined in the Development Code, "minor grading" is limited to less than fifty cubic yards (<50 CY) of combined cut and fill with a maximum depth of less than five feet (<5'-0") on slopes of less than thirty-five percent (<35%) steepness. 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 *Monks* plaintiffs' sixteen (16) undeveloped lots would be clearly identified on this map. The proposed language for Section 15.20.040(P) would be as follows:

> *The construction of residential buildings, accessory structures, and minor grading (as defined in Section 17.76.040.B.1 of the Rancho Palos Verdes Municipal Code) on the sixteen (16) undeveloped lots identified as "Monks plaintiffs' 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; 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), 15.20.060 (Application) and 15.20.110 (Required Connection to Operational Sanitary Sewer System).

The direct effect of these revisions would be to allow the owners of the sixteen (16) *Monks* plaintiffs' undeveloped lots in Zone 2 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 and Building approvals to build new, permanent structures on 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 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 exception Categories 'B', 'H', 'K' and 'L'.

CEQA Compliance

Based upon the limited scope of the proposed revisions to the Landslide Moratorium Ordinance, Staff determined that the proposed project could have significant impacts upon the environment unless mitigation measures were imposed. Accordingly, a revised draft Mitigated Negative Declaration (MND) was prepared for the project, and is being circulated in accordance with CEQA. The 30-day public comment period for the MND ends on September 9, 2009. For this reason, Staff is only recommending that the City Council accept public comment on the project and MND at tonight's meeting, with final action to be taken on September 15, 2009. This will allow time for Staff to prepare any needed response to public comments on the MND prior to its certification by the City Council.

The draft MND identified several potential environmental effects that require mitigation to reduce their impacts to less-than-significant levels. Many of these effects are short-term and construction-related, such as air quality, biological resources, cultural resources, geology, noise and the like. Others are longer-term operational impacts such as aesthetics, hazards, hydrology, utilities and service systems. Staff believes that the recommended mitigation measures will reduce all of the impacts identified to less-than-significant levels.

Public correspondence received in response to the notice for the MND is attached to tonight's report. Subsequent correspondence that is received after the distribution of tonight's agenda packet will be distributed as "Late Correspondence" at tonight's meeting. A summary of the issues raised and Staff's responses (as of the date this report was completed) are as follows:

- Robert Douglas and Lowell Wedemeyer: Drs. Douglas and Wedemeyer have submitted their suggestions for an alterative to the current Landslide Moratorium Ordinance in response to the *Monks* decision. Staff believes that there may be value in exploring their suggestions at such time in the future as the City Council may reconsider the entire Landslide Moratorium (see "Additional Information"

below). However, at this time Staff does not believe that a complete "overhaul" of the Landslide Moratorium Ordinance is warranted or necessary in order to address the issue of the sixteen (16) *Monks* plaintiffs' undeveloped lots. Furthermore, if such an action were undertaken at this time, it is highly likely that the *Monks* plaintiffs would allege that such a process would give rise to the payment of damages to them for the permanent taking of their properties.

- Robert Maxwell: Mr. Maxwell has addressed the City Council under "Audience Comments" at previous City Council meetings (most recently on August 4, 2009), asking for the preparation of an Environmental Impact Report (EIR) related to revisions to the City's Moratorium Ordinance. Based upon the City Council's direction of June 2, 2009, an EIR will be prepared for the upcoming Code Amendment that addresses all forty-seven (47) vacant lots in Zone 2.

- Aktar Emon: Mr. Emon owns an undeveloped lot in Zone 2 but is not a *Monks* plaintiff. He asks for all of the undeveloped lots in Zone 2 to be included as a part of the Code Amendment. Based upon the City Council's direction of June 2, 2009, this will be addressed in the next phase of this process.

- Jack Downhill: Mr. Downhill asks for his property to be included within the scope of the current Code Amendment, given that it is also in Zone 2 and abuts a *Monks* plaintiff lot. However, Mr. Downhill's 6.94-acre property at 20 Vanderlip Drive is developed and the proposed Code Amendment only applies to the development of undeveloped lots. Mr. Downhill also expresses interest in subdividing his property, which is currently prohibited throughout the Landslide Moratorium Area under Section 15.20.020 of the Rancho Palos Verdes Municipal Code. However, the filing of a subdivision map would be allowed pursuant to the approval of a Moratorium Exclusion request. The *Monks* plaintiffs did not raise the issue of subdivision in their claim nor was this issue addressed in the Court of Appeal's decision. Although it may be appropriate to consider the issue of subdivision within the Landslide Moratorium Area in the future, Staff does not believe that it is necessary or prudent to include this issue as a part of the City's current response to the *Monks* decision.

- Neil Siegel and Robyn Friend: Mr. Siegel and Ms. Friend argue that the Code Amendment should encompass all forty-seven (47) undeveloped lots in Zone 2, as originally proposed by Staff in March 2009. As discussed above, the City Council has recently directed Staff to prepare a parallel Code Amendment and EIR to address the potential future development of all of the undeveloped lots in Zone 2, including the thirty-one (31) lots that are not owned by *Monks* plaintiffs.

CONCLUSION

As discussed above, the City Council has already taken the first step to address the Court of Appeal's decision by repealing Resolution No. 2002-43. Revising the Landslide Moratorium Ordinance to allow the development of the sixteen (16) *Monks* plaintiffs' undeveloped lots in Zone 2 would be the next step in the implementation the Court's decision. By allowing the owners of these undeveloped lots to pursue the development of these properties, Staff believes that the City should be able to avoid having to pay compensation to the *Monks* plaintiffs for the taking of their properties, and will eliminate the second impediment to the filing of applications to develop the undeveloped properties in Zone 2.

In conclusion, Staff recommends that the City Council receive public comments on the proposed Mitigated Negative Declaration; introduce Ordinance No. ___, revising the City's Landslide Moratorium Ordinance to establish an exception category to allow the development of the sixteen (16) *Monks* plaintiffs' undeveloped lots in Zone 2; and continue this matter to September 15, 2009, for the certification of the Mitigated Negative Declaration and the adoption of Ordinance No. ___.

ADDITIONAL INFORMATION

As mentioned above, Staff has been directed to pursue a "two-track" parallel approach to amending the City's Landslide Moratorium Ordinance to allow for the future development of all of the undeveloped lots in Zone 2. This second phase would extend the results of the *Monks* decision to all of the owners of undeveloped lots in Zone 2. Staff recommends this action because none of the geologists who have analyzed the geology of Zone 2 geology, including Dr. Ehlig and Cotton Shires, have drawn any distinction between the *Monks* plaintiffs' sixteen (16) lots and the other thirty-one (31) undeveloped lots located within Zone 2. Staff expects to present a contract for the preparation of the EIR for this second phase for the City Council's consideration before the end of this year. The preparation of an EIR usually requires between six (6) months and one (1) year to complete. Accordingly, an ordinance that would expand the application of the ordinance to all forty-seven (47) lots in Zone 2 should be presented to the City Council sometime during 2010.

Beyond Zone 2, there remain questions about the development of undeveloped lots in other portions of the Landslide Moratorium Area or the subdivision of large parcels that are located within and outside of Zone 2. To address these outstanding issues, Staff recommends seeking the advice of a technical panel of geologists and geotechnical engineers to provide guidance to the City Council regarding the next steps that should be taken to address the impact of the *Monks* decision on the greater Landslide Moratorium Area. The charge given to the panel would be to determine whether there is a reasonable probability of significant damage to persons or property if development were allowed in each of the geologic areas that are within the boundaries of the Landslide Moratorium

Area, so that development either should be prevented or allowed in each of those geologic areas. Possible outcomes of such a review might include (but not be limited to):

- Repealing the entire Landslide Moratorium Ordinance and establishing criteria that would allow for safe development within each geologic area; or,

- Refining the boundaries of the "undevelopable area" under the Landslide Moratorium Ordinance to include only those areas where there is a reasonable probability of significant damage or injury to persons or property.

Staff recommends that a 5-member panel be created comprised of three (3) geologists or geotechnical engineers who are familiar with the City and its landslides and two (2) other well-known geologists who have not performed work within the City. Staff intends, with the City Council's authorization, to present the recommendations of the technical review panel next year. However, in order to proceed with this review, Staff will need to bring a request for a budget adjustment back to the City Council for consideration at a future meeting. As the City Council may recall, in May 2006 the City Council authorized a $50,000 budget adjustment for a geotechnical review panel to study surface cracking in the *Seaview* tract (i.e., "Zone 4" of the Landslide Moratorium Area). Given that the scope of the task to be undertaken by the 5-member review panel includes the review of the entire Landslide Moratorium Area, Staff expects that the cost of this review will be at least $100,000.

FISCAL IMPACT

Revising the Moratorium Ordinance to allow the development of the *Monks* plaintiffs' sixteen (16) undeveloped lots in Zone 2 may lead to increased revenues in the form of Planning and Building permit fees. The development of these undeveloped lots will also increase their assessed valuation, leading to increased property tax revenue to the City and the Redevelopment Agency. In addition, the adoption of these revisions is the second step in the process that that will avoid having the City spend money to purchase the *Monks* plaintiffs' properties as a result of the decision in the *Monks* case. With respect to the work of the 5-member review panel, Staff estimates that this may cost the City well upwards of $100,000.

In addition, the City has received a threat of litigation if this Code Amendment for only the sixteen (16) Monks plaintiffs' lots is processed without the preparation of an EIR. Accordingly, it can be expected that the City will incur additional legal expenses as a result of this action.

Attachments:

- Draft Ordinance No. ___
- Revised Draft Mitigated Negative Declaration
- Public correspondence
- Correspondence from Gilchrist & Rutter (submitted March 3, 2009
- City Council Minutes (excerpt) and Staff report of June 2, 2009
- City Council Minutes (excerpt) and Staff report of March 3, 2009

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES ADOPTING AMENDMENTS TO CHAPTER 15.20 (MORATORIUM ON LAND USE PERMITS) OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO ESTABLISH AN EXCEPTION CATEGORY TO ALLOW FOR THE FUTURE DEVELOPMENT OF THE SIXTEEN (16) *MONKS* PLAINTIFFS' UNDEVELOPED LOTS IN ZONE 2

WHEREAS, on December 17, 2008, the California Supreme Court denied the City's petition for review in the case of *Monks v. City of Rancho Palos Verdes*, so the City Council must consider the actions that are necessary to comply with the Court of Appeal's decision; and,

WHEREAS, on January 21, 2009, the City Council adopted Resolution No. 2009-06 repealing Resolution No. 2002-43, which had required property owners in Zone 2 to establish a 1.5:1 factor of safety before they could develop their lots and was the purported catalyst for the filing of the *Monks* lawsuit; and,

WHEREAS, next action necessary to comply wit the Court of Appeal's decision is to enact revisions to the current Moratorium Ordinance to allow the development of the *Monks* plaintiffs' sixteen (16) undeveloped lots in Zone 2; and,

WHEREAS, pursuant to the provisions of the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.* ("CEQA"), the State's CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.*, the City's Local CEQA Guidelines, and Government Code Section 65962.5(f) (Hazardous Waste and Substances Statement), the City of Rancho Palos Verdes prepared an Initial Study and determined that, by incorporating mitigation measures into the Negative Declaration, there is no substantial evidence that the approval of Planning Case No. ZON2009-00007 would result in a significant adverse effect on the environment. Accordingly, a Draft Mitigated Negative Declaration was prepared and circulated for public review for thirty (30) days between August 10, 2009 and September 9, 2009, and notice of that fact was given in the manner required by law; and,

WHEREAS, after notice issued pursuant to the provisions of the Rancho Palos Verdes Municipal Code, the City Council conducted a public hearing on September 1, 2009, and _____, 2009, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed revisions to Chapter 15.20 as set forth in the City Council Staff reports of those dates; and,

WHEREAS, at its _____, 2009, meeting, after hearing public testimony, the City Council adopted Resolution No. 2009-__ making certain findings related to the requirements of the California Environmental Quality Act (CEQA) and adopting a Mitigation Monitoring Program and Mitigated Negative Declaration for the proposed project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES ORDAIN AS FOLLOWS:

Section 1: The City Council has reviewed and considered the amendments to Chapter 15.20 of Title 15 of the Municipal Code.

Section 2: The City Council finds that the amendments to Chapter 15.20 of Title 15 of the Municipal Code are consistent with the Rancho Palos Verdes General Plan in that they uphold, and do not hinder, the goals and policies of those plans, in particular to balance the rights of owners of undeveloped properties within the Landslide Moratorium Area to make reasonable use of their properties while limiting the potential impacts resulting from such use upon landslide movement, soil stability and public safety within and adjacent to the Landslide Moratorium Area.

Section 3: The City Council further finds that the amendments to Chapter 15.20 of Title 15 of the Municipal Code are consistent Court of Appeal's decision in *Monks v. City of Rancho Palos Verdes* in that they will allow the potential future development of the sixteen (16) *Monks* plaintiffs' undeveloped lots within Zone 2 of the Landslide Moratorium Area with new, single-family residences, thereby achieving parity with the rights enjoyed by the owners of the developed lots in Zone 2 of the Landslide Moratorium Area.

Section 4: The City Council further finds that there is no substantial evidence that the amendments to Chapter 15.20 of Title 15 of the Municipal Code would result in significant environmental effects or a substantial increase in the severity of such effects. The City Council considered the Mitigated Negative Declaration prior to making its decision regarding the code amendments contemplated herein.

Section 5: The City Council further finds that the amendments to Chapter 15.20 of Title 15 of the Municipal Code are necessary to protect the public health, safety, and general welfare in the area.

Section 6: Based upon the foregoing, Section 15.20.040 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

The moratorium shall not be applicable to any of the following:

A. Maintenance of existing structures or facilities which do not increase the land coverage of those facilities or add to the water usage of those facilities;

B. Replacement, repair or restoration of a residential building or structure which has been damaged or destroyed due to one of the following hazards, 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:

1. A Geologic Hazard. Such structure may be replaced, repaired or restored to original condition; provided, that such construction shall be limited to

the same square footage and in the same general location on the property and such construction will not aggravate any hazardous geologic condition, if a hazardous geologic condition remains. Prior to the approval 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. The applicant shall comply with any requirements imposed by the city's geotechnical staff and shall substantially repair the geologic condition to the satisfaction of the city geotechnical staff prior to the issuance of a final building permit. Upon application to the director, setbacks may conform to the setbacks listed below:

Minimum Setback Standards

Front	*Interior side*	*Street side*	*Rear*
20	*5*	*10*	*15*

2. *A Hazard Other Than a Geologic Hazard. Such structure may be replaced, repaired or restored to original condition; provided, that such construction shall be limited to the same square footage and in the same general location on the property and such construction will not aggravate any hazardous condition, if a hazardous condition remains. Prior to the approval 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. Upon application to the director, setbacks may conform to the setbacks listed in subsection (B)(1) of this section;*

C. *Building permits for existing structures which were constructed prior to October 5, 1978, for which permits were not previously granted, in order to legalize such structure(s). Such permits may only be granted if the structure is brought into substantial compliance with the Uniform Building Code;*

D. *The approval of an environmental assessment or environmental impact report for a project as to which the city or redevelopment agency is the project applicant;*

E. *Projects that are to be performed or constructed by the city or by the Rancho Palos Verdes redevelopment agency to mitigate the potential for landslide or to otherwise enhance public safety;*

F. Remedial grading to correct problems caused by landslide or to otherwise enhance public safety, performed pursuant to a permit issued pursuant to Section 17.76.040(B)(3) of this Code;

G. Geologic Investigation Permits. Prior to the approval of such a 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 investigation will not aggravate the existing situation;

H. Minor projects on a lot that is in the "landslide moratorium area," as outlined in red on the landslide moratorium map on file in the director's office, and currently is developed with a residential structure or other lawfully existing nonresidential structure and involves an addition to an existing structure, enclosed patio, conversion of an existing garage to habitable space or construction of a permanent attached or detached accessory structure and does not exceed a cumulative project(s) total of one thousand two hundred square feet per parcel; 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 and does not include any additional plumbing fixtures, unless the lot is served by a sanitary sewer system. The one thousand two hundred square foot limitation on cumulative projects that can be approved on a lot pursuant to this subsection includes the construction of a new garage, which can be approved pursuant to subsection L of this section. November 5, 2002, is the date that shall be used for determining the baseline square footage, based upon city and county building permit records, for purposes of calculating the square footage of any cumulative project(s) and of any additions that may be constructed pursuant to this subsection. Minor projects involving the construction of an enclosed permanent detached accessory structure, which are located in an area that is not served by a sanitary sewer system, shall include a requirement that a use restriction covenant, in a form acceptable to the city, that prevents the enclosed permanent detached accessory structure from being used as a separate dwelling unit shall be recorded with the Los Angeles County register-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior to the approval of a landslide moratorium exception permit for such minor projects, 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;

I. Construction or installation of temporary minor nonresidential structures which are no more than three hundred twenty square feet in size, with no plumbing fixtures and which do not increase water use, may be approved by the director. If

the lot is served by a sanitary sewer system, the permit may allow the installation of plumbing fixtures. All permits shall include a requirement that a use restriction covenant, in a form acceptable to the city which prevents the structure from being used for any purpose other than a nonhabitable use, is recorded with the Los Angeles County registrar-recorder. A minor nonresidential structure is defined as temporary if the Building Code does not require it to be erected upon or attached to a fixed, permanent foundation and if, in fact, it will not be erected upon or attached to such a foundation. Prior to approval of the application, 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;

J. *Submittal of a lot-line adjustment application;*

K. *Minor projects on a lot that is in the "landslide moratorium area," as outlined in blue on the landslide moratorium map on file in the director's office, and currently is developed with a residential structure or other lawfully existing nonresidential structure and involves an addition to an existing structure, enclosed patio, conversion of an existing garage to habitable space or construction of a permanent attached or detached accessory structure and does not exceed a cumulative project(s) total of one thousand two hundred square feet per parcel; 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 and does not include any additional plumbing fixtures, unless the lot is served by a sanitary sewer system. The one thousand two hundred square foot limitation on cumulative projects that can be approved on a lot pursuant to this subsection includes the construction of a new garage, which can be approved pursuant to subsection L of this section. November 5, 2002, is the date that shall be used for determining the baseline square footage, based upon city and county building permit records, for purposes of calculating the square footage of any cumulative project(s) and of any additions that may be constructed pursuant to this subsection. Minor projects involving the construction of an enclosed permanent detached accessory structure, which are located in an area that is not served by a sanitary sewer system, shall include a requirement that a use restriction covenant, in a form acceptable to the city, that prevents the enclosed permanent detached accessory structure from being used as a separate dwelling unit shall be recorded with the Los Angeles County register-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior the approval of a landslide moratorium exception permit for such minor projects, 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;

L. *Construction of one attached or detached garage per parcel that does not exceed an area of six hundred square feet, without windows or any plumbing fixtures, on a lot that currently is developed with a residential structure or other lawfully existing nonresidential structure; 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. If the lot is served by a sanitary sewer system, the permit may allow the installation of windows and plumbing fixtures in the garage. The approval of a landslide moratorium exception permit for such a project shall be conditioned to require that a use restriction covenant, in a form acceptable to the city, that prevents the garage from being used for any purpose other than parking of vehicles and storage of personal property is recorded with the Los Angeles County registrar-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior to the approval of a landslide moratorium exception permit for such garage, 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's geotechnical staff that the proposed project will not aggravate the existing situation;*

M. *Submittal of applications for discretionary planning permits for structures or uses which are ancillary to the primary use of the lot or parcel, where there is no possibility of any adverse impact upon soil stability. Examples of these types of applications include special use permits for minor, temporary uses and events; fence, wall and hedge permits that do not involve grading or the construction of retaining walls; permits for the keeping of large domestic animals and exotic animals; conditional use permits for the establishment of a use or activity at or on an existing structure where no structural modifications are required; and such other uses, activities and structures that the city geotechnical staff determines to have no potential for adverse impacts on landslide conditions;*

N. *Minor projects on those lots which are currently developed with a residential structure, which do not involve new habitable space, which cannot be used as a gathering space and viewing area, and which do not constitute lot coverage;*

O. *Permits issued pursuant to Section 15.20.110 of this chapter to connect existing structures with functional plumbing fixtures to an operational sewer system;*

P. *The construction of residential buildings, accessory structures, and minor grading (as defined in Section 17.76.040.B.1 of the Rancho Palos Verdes Municipal Code) on the sixteen (16) undeveloped lots identified as "Monks plaintiffs' 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; 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.

Section 7: Based upon the foregoing, Section 15.20.050 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

Within the landslide moratorium area as identified in Section 15.20.020 of this chapter, the city shall require that appropriate landslide abatement measures be implemented as conditions of issuance of any permit issued pursuant to this chapter. With respect to proposed projects and uses requiring a landslide moratorium exception permit pursuant to Sections 15.20.040(B), (H), (K), (L) and (P), which must satisfy all of the criteria set forth in this section, the conditions imposed by the city shall include, but not be limited to, the following:

A. If lot drainage deficiencies are identified by the director of public works, all such deficiencies shall be corrected by the applicant.

B. If the project involves additional plumbing fixtures, or additions of habitable space which exceed two hundred square feet, or could be used as a new bedroom, bathroom, laundry room or kitchen, and if the lot or parcel is not served by a sanitary sewer system, septic systems shall be replaced with approved holding tank systems in which to dispose of on-site waste water. The capacity of the required holding tank system shall be subject to the review and approval of the city's building official. For the purposes of this subsection, the addition of a sink to an existing bathroom, kitchen or laundry room shall not be construed to be an additional plumbing fixture. For those projects which involve additions of less than two hundred square feet in total area and which are not to be used as a new bedroom, bathroom, laundry room or kitchen, the applicant shall submit for recordation a covenant specifically agreeing that the addition of the habitable space will not be used for those purposes. Such covenant shall be submitted to the director for recordation prior to the issuance of a building permit. For lots or parcels which are to be served by a sanitary sewer system on or after the effective date of the ordinance codified in this section (July 6, 2000), additional plumbing fixtures may be permitted and the requirement for a holding tank may be waived, provided that the lot or parcel is to be connected to the sanitary sewer system. If a sanitary sewer system is approved and/or under construction but is not yet operational at the time that a project requiring a landslide moratorium exception permit is approved, the requirement for a holding tank may

be waived, provided that the lot or parcel is required to be connected to the sanitary sewer system pursuant to Section 15.20.110 of this chapter, or by an agreement or condition of project approval.

C. *Roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course.*

D. *If required by the city geotechnical staff, the applicant shall submit a soils report, and/or a geotechnical report, for the review and approval of the city geotechnical staff.*

E. *If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to support and participate in existing or future sewer and/or storm drain assessment districts and any other geological and geotechnical hazard abatement measures required by the city. Such covenant shall be submitted to the director prior to the issuance of a building permit.*

F. *If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to an irrevocable offer to dedicate to the city a sewer and storm drain easement on the subject property, as well as any other easement required by the city to mitigate landslide conditions. Such covenant shall be submitted to the director prior to the issuance of a building permit.*

G. *A hold harmless agreement satisfactory to the city attorney promising to defend, indemnify and hold the city harmless from any claims or damages resulting from the requested project. Such agreement shall be submitted to the director prior to the issuance of a building permit.*

H. *The applicant shall submit for recordation a covenant agreeing to construct the project strictly in accordance with the approved plans; and agreeing to prohibit further projects on the subject site without first filing an application with the director pursuant to the terms of this chapter. Such covenant shall be submitted to the director for recordation prior to the issuance of a building permit.*

I. *All landscaping irrigation systems shall be part of a water management system approved by the director of public works. Irrigation for landscaping shall be permitted only as necessary to maintain the yard and garden.*

J. *If the lot or parcel is served by a sanitary sewer system, the sewer lateral that serves the applicant's property shall be inspected to verify that there are no cracks, breaks or leaks and, if such deficiencies are present, the sewer lateral shall be repaired or reconstructed to eliminate them, prior to the issuance of a building permit for the project that is being approved pursuant to the issuance of the moratorium exception permit.*

K. *All other necessary permits and approvals required pursuant to this code or any other applicable statute, law or ordinance shall be obtained.*

Section 8: Based on the foregoing, Section 15.20.060 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

A. *Applicants for an exception to this chapter under Sections 15.20.040(B), (H), (K), (L) and (P), shall file an application for a landslide moratorium exception permit with the director. The application shall be signed by the property owner, and shall include the following:*
   1. *A letter, signed by the property owner, setting forth the reason for request, as well as a full description of the project;*
   2. *Copies of a site plan, showing accurate lot dimensions; the location, dimensions, and heights of all existing and proposed structures; the location of the existing and proposed septic systems and/or holding tank systems; and the location of the existing and/or proposed sanitary sewer system, if the site is or will be served by a sanitary sewer system. The number of copies required shall be determined by the director;*
   3. *Information satisfactory to the city's geotechnical staff (including but not limited to geological, geotechnical, soils or other reports) reasonably required by the city to demonstrate that the proposed project will not aggravate the existing situation;*
   4. *A fee as established by resolution of the city council;*
   5. *If grading is proposed, a grading plan showing the topography of the lot and all areas of project cut and fill, including a breakdown of the earthwork quantities.*

B. *A landslide moratorium exception permit application shall become null and void if, after submitting the required application to the director, the application is administratively withdrawn by the director because the application is allowed to remain incomplete by the applicant for a period which exceeds one hundred eighty days, or if the application is withdrawn by the applicant.*

Section 9: Based on the foregoing, Section 15.20.110 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

Any owner of a lot or parcel within the "landslide moratorium area," as outlined in red or green on the landslide moratorium map on file in the director's office, which is developed with a residential structure or any other structure that contains one or more operational plumbing fixtures and is served by a sanitary sewer system, as defined in this chapter, shall connect such structure(s) to the sanitary sewer system within six months after the commencement of operation of the sanitary sewer system. Either the director or the director of public works shall determine whether a lot or parcel is served by a sanitary sewer system, whether a structure contains one or more operational plumbing fixtures, or whether the connection to the sewer system is performed properly, including, without limitation, removal, or the discontinuation of the use, of any existing septic system.

Section 10: After the effective date of this Ordinance, it shall apply to all Landslide Moratorium Exception permits and any subsequent development applications submitted on or after the effective date of this Ordinance.

Section 11: The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted in the manner prescribed by law.

PASSED, APPROVED AND ADOPTED THIS ____ DAY OF _____ 2009.

_____
MAYOR

ATTEST:

_____
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)ss
CITY OF RANCHO PALOS VERDES)

I, CARLA MORREALE, City Clerk of the City of Rancho Palos Verdes, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance No. ___ passed first reading on _____, 2009, was duly and regularly adopted by the City Council of said City at a regular meeting thereof held on _____, 2009, and that the same was passed and adopted by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
CITY CLERK

City of Rancho Palos Verdes
ENVIRONMENTAL CHECKLIST FORM

1. Project title:
Zone 2 Landslide Moratorium Ordinance Revisions
Planning Case No. ZON2009-00007
(Code Amendment and Environmental Assessment)
SCH No. 2009021050

2. Lead agency name/ address:
City of Rancho Palos Verdes
Department of Planning, Building & Code Enforcement
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

3. Contact person and phone number:
Kit Fox, AICP, Associate Planner
City of Rancho Palos Verdes
(310) 544-5228

4. Project location:
Sixteen (16) *Monks* Plaintiffs' Lots in "Zone 2" of the Landslide Moratorium Area (as depicted in Figure 1 and Table 1)
City of Rancho Palos Verdes
County of Los Angeles

5. Project sponsor's name and address:
City of Rancho Palos Verdes
Department of Planning, Building & Code Enforcement
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

6. General plan designation:
Residential, ≤1 DU/acre and Residential, 1-2 DU/acre

7. Coastal plan designation:
Not applicable

8. Zoning:
RS-1 and RS-2

9. Description of project:
The proposed "Zone 2 Landslide Moratorium Ordinance Revisions" would create a new exception category in the City's Landslide Moratorium Ordinance (Chapter 15.20 of the Rancho Palos Verdes Municipal Code) to allow the development of sixteen (16) undeveloped lots in Zone 2 of the City's Landslide Moratorium Area. This action is in response to the California State Court of Appeal's decision in the case of *Monks v. Rancho*

Palos Verdes, which found that the City's prohibition against the development of undeveloped lots in Zone 2 was a taking and an impermissible impediment to the development of the plaintiffs' lots. Within Zone 2, there are currently forty-seven (47) undeveloped lots, of which sixteen (16) lots are owned by the plaintiffs in the *Monks* case. The proposed exception category would apply only to the *Monks* plaintiffs' sixteen (16) lots

The proposed substantive revisions to the Landslide Moratorium Ordinance include the addition of subsection P to Section 15.20.040 (Exceptions), to wit:

The construction of residential buildings, accessory structures, and minor grading (as defined in Section 17.76.040.B.1 of the Rancho Palos Verdes Municipal Code) on the sixteen (16) undeveloped lots identified as "Monks plaintiffs' 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; 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. If the Director of Public Works determines that the sanitary sewer system cannot accommodate the project 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. In such cases, once the sanitary sewer system becomes available to serve the project, as determined by the Director of Public Works, the holding tank system shall be removed, and the project shall be connected to the 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.

Non-substantive revisions to the Landslide Moratorium Ordinance that are also proposed include the addition of cross-references to the new subsection P and the map of Zone 2 in Sections 15.20.050 (Landslide Mitigation Measures Required), 15.20.060 (Application) and 15.20.110 (Required Connection to Operational Sanitary Sewer System).

10. Description of project site (as it currently exists):

The project site measures approximately one hundred twelve (112) acres and consists of one hundred eleven (111) lots, of which sixty-four (64) lots are developed and forty-seven (47) lots are undeveloped. Of these undeveloped lots, sixteen (16) lots are owned by *Monks* plaintiffs, which are the subject of the proposed Code Amendment. The vast majority of the developed lots are improved with single-family residences and related accessory structures and uses. The largest developed lot in Zone 2 is occupied by the Portuguese Bend Riding Club, a nonconforming commercial stable that was established prior to the City's incorporation in 1973. Private streets within Zone 2 are maintained by the Portuguese Bend Community Association. The majority of the undeveloped lots contain non-native vegetation, and some have small, non-habitable structures (i.e., sheds, stables, fences, etc.) for horsekeeping or horticultural uses.

11. Surrounding land uses and setting:

	Land Uses	Significant Features
On-site	Developed and undeveloped residential lots in the *Portuguese Bend* community, including the Portuguese Bend Riding Club	See description above.
Northeast	Developed residential lots in the *Portuguese Bend* community and City-owned open space land in the Portuguese Bend Reserve of the Palos Verdes Nature Preserve	Three (3) developed residential lots are located at the northeast corner of Narcissa Drive and Vanderlip Drive, within Zone 1 of the Landslide Moratorium Area. The Portuguese Bend Reserve, acquired by the City in 2005 and also within Zone 1, contains a variety of natural vegetation communities and is a part of the larger Palos Verdes Nature Preserve.
Northwest & West	Developed residential lots in the *Portuguese Bend* community and vacant, residentially-zoned land owned by York Long Point Associates (Upper & Lower Filiorum)	The Vanderlip Estate is located at the northerly terminus of Vanderlip Drive, within Zone 1 of the Landslide Moratorium Area. Also within Zone 1 are the Filiorum properties. Upper Filiorum contains a variety of natural vegetation communities, and the City is in on-going negotiations to acquire this property as an extension of the larger Palos Verdes Nature Preserve. Lower Filiorum is the subject of a current application for a Moratorium Exclusion to allow for future residential development.
South, Southeast & East	Developed and undeveloped residential lots in the *Portuguese Bend* community	Surrounding lots in these areas are located in Zone 5 (the area affected by the 1978 Abalone Cove landslide), Zone 6 (the active Portuguese Bend landslide area) and Zone 3 (located between Altamira Canyon and the westerly edge of the Portuguese Bend landslide area). Some existing residences in these areas have experienced distress as the result and past and current land movement.

12. Other public agencies whose approval is required:
None.

Figure 1
Aerial Photo and Boundary of "Zone 2," Identifying *Monks* Plaintiffs' Lots

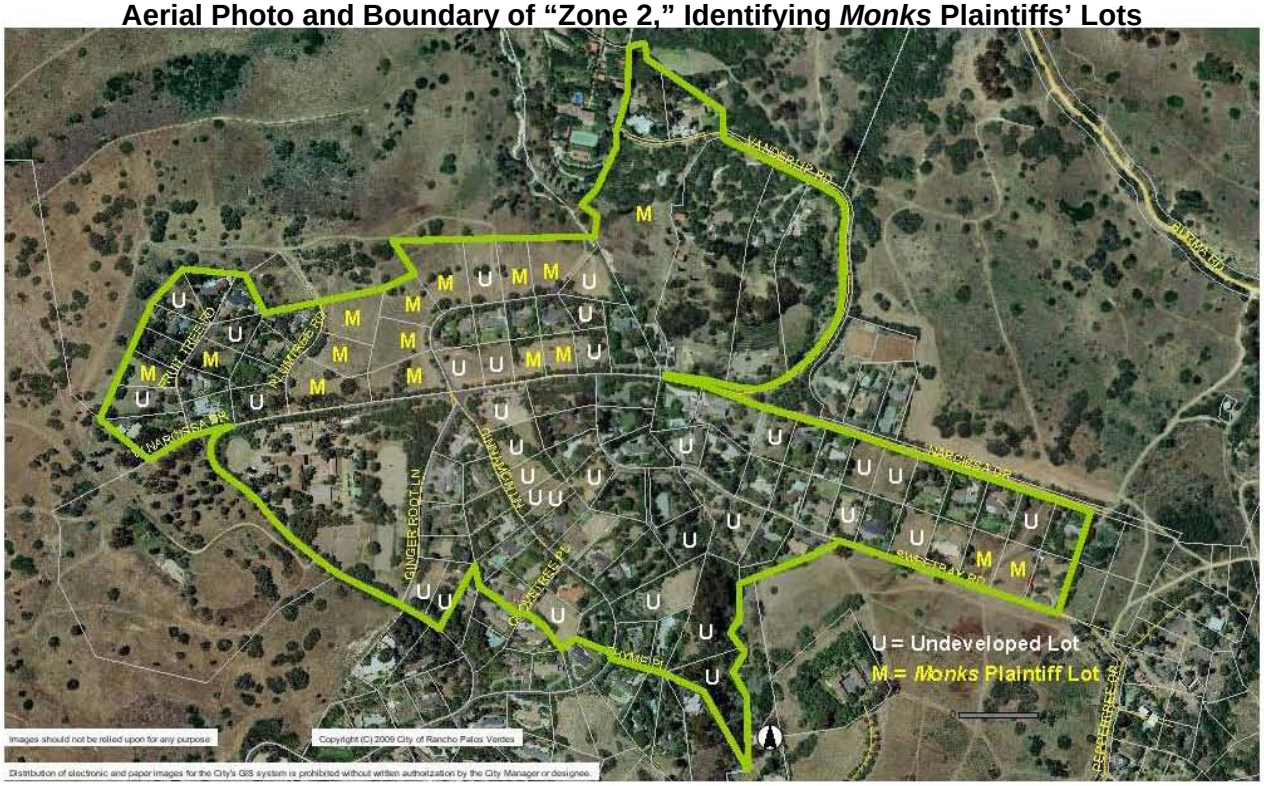

Table 1
List of Monks Plaintiffs' Undeveloped Lots

Assessor's Parcel No.	Legal Description	Owner(s)
7572-002-029	Parcel 1, Parcel Map 8947	Vanderlip
7572-009-005	Lot 20, Block 3, Tract 14195	Monks
7572-009-006	Lot 21, Block 3, Tract 14195	Monks
7572-009-007	Lot 22, Block 3, Tract 14195	Haber
7572-009-014	Lot 7, Block 4, Tract 14195	Stewart
7572-009-021	Lot 14, Block 4, Tract 14195	Barnett
7572-010-011	Lot 3, Block 3, Tract 14195	Smith
7572-010-012	Lot 4, Block 3, Tract 14195	Broz
7572-010-021	Lot 13, Block 3, Tract 14195	Ruth
7572-010-022	Lot 14, Block 3, Tract 14195	Agahee
7572-010-024	Lot 16, Block 3, Tract 14195	Case
7572-010-025	Lot 17, Block 3, Tract 14195	Clark
7572-010-026	Lot 18, Block 3, Tract 14195	Cruce & Compton
7572-010-027	Lot 19, Block 3, Tract 14195	Tabor
7572-011-008	Lot 8, Tract 14500	Teh
7572-011-009	Lot 9, Tract 14500	Kiss

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicted by the checklist on the following pages.

☐ Aesthetics	☐ Agricultural Resources	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Geology/Soils
☐ Greenhouse Gas Emissions	☐ Hazards & Hazardous Materials	☐ Hydrology/Water Quality
☐ Land Use/Planning	☐ Mineral Resources	☐ Noise
☐ Population/Housing	☐ Public Services	☐ Recreation
☐ Transportation/Traffic	☐ Utilities/Service Systems	☐ Mandatory Findings of Significance

DETERMINATION:

On the basis of this initial evaluation:

☐ I find that the project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☒ I find that, although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required but must analyze only the effects that remain to be addressed.

☐ I find that, although the proposed project could have a significant effect on the environment, because all potentially significant effects, (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed on the proposed project, nothing further is required.

Signature: _____ Date: August 10, 2009

Printed Name: Kit Fox, Associate Planner For: City of Rancho Palos Verdes

EVALUATION OF ENVIRONMENTAL IMPACTS:

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
1. AESTHETICS. Would the project:					
a) Have a substantial effect on a scenic vista?	1				X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historical buildings, within a state scenic highway?	8			X	
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	11		X		
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	11		X		

Comments:

a) The *Monks* plaintiffs' lots in Zone 2 do not fall within any scenic vista identified in the City's General Plan. As such, the proposed project will have no substantial effect upon a scenic vista.

b) The approval of the proposed project could lead to the potential, future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Since these lots are undeveloped, there are no historical buildings or other structures that could be damaged as a result of the approval of the proposed project, although it is possible that some mature shrubs and trees might be removed as a result of future development. As such, damage to any scenic resources as a result of the proposed project will be less than significant.

c) The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. The development of these lots may alter the semi-rural visual character of Zone 2 by increasing the number and density of man-made structures in the neighborhood. Therefore, in order to reduce the visual character impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:

AES-1: All new residences shall be subject to neighborhood compatibility analysis under the provisions of Section 17.02.030.B (Neighborhood Compatibility) of the Rancho Palos Verdes Municipal Code.

d) The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Zone 2 is a semi-rural area and does not have street lights, so nighttime illumination of the neighborhood is generally limited to exterior lighting for existing single-family residences. The potential construction of sixteen (16) new single-family residences will increase the amount of nighttime lighting in the neighborhood. Therefore, in order to reduce the light and glare impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:

AES-2: Exterior illumination for new residences shall be subject to the provisions of Section 17.56.030 (Outdoor Lighting for Residential Uses) of the Rancho Palos Verdes Municipal Code.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
2. AGRICULTURE RESOURCES[1]. Would the project:					
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resource Agency, to non-agricultural use?	8				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	8				X
c) Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland, to a non-agricultural use?	8				X
Comments: a-c) The *Monks* plaintiff's lots in Zone 2 are zoned for single-family residential use at densities of up to two (2) dwelling units per acre (i.e., RS-1 and RS-2). Fifteen (15) of the *Monks* plaintiffs' lots are zoned RS-2 with the remaining lot zoned RS-1. Although non-commercial agricultural use is permitted in these zones, there is no agricultural use in the area at present. The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Furthermore, none of these lots qualify as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, nor are any of the lots in Zone 2 subject to a Williamson Act contract. Therefore, the proposed project will have no impact upon agricultural resources.					
3. AIR QUALITY[2]. Would the project:					
a) Conflict with or obstruct implementation of the applicable air quality plan?	3		X		
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	3		X		
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?	3		X		
d) Expose sensitive receptors to substantial pollutant concentrations?	3		X		

1 In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the Californian Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as a optional model to use in assessing impacts on agriculture and farmland.

2 Where available, the significant criteria established by the applicable air quality management or air pollution control districts may be relied upon to make the following determinations.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) Create objectionable odors affecting a substantial number of people?	2, 11			X	

Comments:

a-d) The *Monks* plaintiffs' lots in Zone 2 are located within the South Coast Air Basin, which is an area of non-attainment for Federal air quality standards for ozone (O_3), carbon monoxide (CO), and suspended particulate matter (PM^{10} and $PM^{2.5}$). The proposed project would limit the amount of non-remedial grading for the development of up to sixteen (16) new single-family residences to less than fifty cubic yards (50 CY) each, for a cumulative total of less than 800 cubic yards. The sixteen (16) undeveloped Monks plaintiffs' lots in Zone 2 are owned by fifteen (15) separate private individuals or entities. Since 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. The average site size for the undeveloped lots in Zone 2 is one (1) acre. The movement of soil and the operation of construction equipment have the potential to create short-term construction-related air quality impacts upon nearby sensitive receptors, such as single-family residences. Based upon the South Coast Air Quality Management District (SCAQMD) guidelines for estimating air quality impacts from construction activities, the development of individual 1-acre parcels would not exceed Localized Significance Thresholds (LSTs) for nitrous oxides (NO_X), CO, PM^{10} or $PM^{2.5}$. In a "worst case" scenario wherein all of the undeveloped lots were developed simultaneously, the total quantity of earth movement would still be less than 800 cubic yards, and with the imposition of the recommended mitigation measures, the impacts of this grading would still be less than significant. In addition, some of the proposed residences might have fireplaces. SCAQMD has adopted rules regulating wood-burning devices, which include a prohibition against the installation of wood-burning fireplaces in new construction beginning in March 2009. Therefore, in order to reduce the air quality impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:

AIR-1: During construction, the applicant shall be responsible for the implementation of all dust and erosion control measures required by the Building Official.

AIR-2: Trucks and other construction vehicles shall not park, queue and/or idle at the project sites or in the adjoining public or private rights-of-way before 7:00 AM, Monday through Saturday, in accordance with the permitted hours of construction stated in Section 17.56.020.B of the Rancho Palos Verdes Municipal Code.

e) Since the zoning of the *Monks* plaintiffs' lot in Zone 2 does not permit industrial or commercial uses, no objectionable odors are expected to be generated as a result of the proposed project.

4. BIOLOGICAL RESOURCES. Would the project:					
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	6, 8		X		
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	6, 8		X		

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Have a substantial adverse effect on federally protected wetlands, as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.), through direct removal, filling, hydrological interruption, or other means?	6, 8		X		
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	6, 8			X	
e) Conflict with any local polices or ordinances protecting biological resources, such as tree preservation policy or ordinance?	11			X	
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	6		X		

Comments:

a-c, f) According to the City's vegetation maps, fourteen (14) of the *Monks* plaintiffs' lots are depicted as "Developed" or "Disturbed," with some smaller patches of "Grassland" and "Exotic Woodland." These vegetation communities are generally not identified as sensitive by State and Federal resource agencies. However, two (2) of the Monks plaintiffs' lots in the upper reaches of Altamira Canyon contain patches of coastal sage scrub (CSS) habitat. Several of the undeveloped lots in Zone 2—including seven (7) of the *Monks* plaintiffs' lots—abut the City-owned Portuguese Bend Reserve or the privately-owned Filiorum properties, both of which contain more substantial and cohesive patches of CSS habitat nearby. The Portuguese Bend Preserve is currently a part of the City's larger Palos Verdes Nature Reserve, and the City has been actively pursuing the acquisition of portions of the Upper Filiorum property for inclusion in the Reserve for many years. As such, it is possible that the development of at least seven (7) of the *Monks* plaintiffs in Zone 2 might have significant impacts upon sensitive CSS habitat, either through the direct removal of habitat during construction or as a result of Fire Department-mandated fuel modification on- and/or off-site (i.e., in the Reserve) after construction of new residences is complete. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Nevertheless, in order to reduce the biological resources impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:

BIO-1: For lots that are identified as containing sensitive habitat on the City's most-recent vegetation maps and/or that abut any portion of the current or proposed future boundary of the Palos Verdes Nature Preserve, the applicant shall be required to prepare a biological survey as a part of a complete application for the construction of a new, single-family residence. Said survey shall identify the presence or absence of sensitive plant and animal species on the subject property, and shall quantify the direct and indirect impacts of the construction of the residence upon such species, including off-site habitat impacts as a result of Fire Department-mandated fuel modification. The applicant and/or any successors in interest to the subject property shall be required to mitigate such habitat loss through the payment of a mitigation fee to the City's Habitat Restoration Fund.

d) According to the City's vegetation maps, fourteen (14) of the *Monks* plaintiffs' lots are depicted as "Developed" or "Disturbed," with some smaller patches of "Grassland" and "Exotic Woodland." These vegetation communities are generally not identified as sensitive by State and Federal resource agencies. Although there are patches of "Exotic

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Woodland" and CSS habitat on two (2) *Monks* plaintiffs' lots along Altamira Canyon, these patches are small and isolated, providing limited connectivity for movement or migration. As such, the impact of the proposed project upon wildlife corridors is expected to be less than significant. e) The City has a Coastal Sage Scrub Conservation and Management Ordinance, which is codified as Chapter 17.41 of the Rancho Palos Verdes Municipal Code. This ordinance only applies to parcels over two (2) acres in size that contain CSS habitat. Only one (1) of the *Monks* plaintiffs' lots exceeds this size threshold and contains CSS habitat. As such, any conflicts of the proposed project with local policies or ordinances protecting biological resources are expected to be less than significant.					
5. CULTURAL RESOURCES. Would the project:					
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	8				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	5		X		
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	5		X		
d) Disturbed any human remains, including those interred outside of formal cemeteries?	5		X		
Comments: a) The approval of the proposed project could lead to the potential, future development of up to sixteen (16) single-family residences on undeveloped lots. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Nevertheless, since the lots have remained undeveloped since their creation in the late 1940s, their potential, future development would have no impact upon any historical resources. b-d) According to the City's Archaeology Map, the subject site is within a possible area of archaeological resources. The approval of the proposed project would only permit shallow surface excavations less than five feet (5'-0") in depth. In addition, past disking and brush clearance of these undeveloped lots have repeated disturbed the ground surface over a period of many years. Nevertheless, it is possible that subsurface cultural resources may exist on some of the *Monks* plaintiffs' lots in Zone 2. Therefore, in order to reduce the cultural resources impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended: CUL-1: Prior to the issuance of a grading permit, the applicant shall consult with the South Central Coastal Information Center (SCCIC) regarding any known archaeological sites on or within a half-mile radius of the subject property. CUL-2: Prior to the issuance of a grading permit, the applicant shall conduct a Phase 1 archaeological survey of the property. The survey results shall be provided to the Director of Planning, Building and Code Enforcement for review prior to grading permit issuance. CUL-3: Prior to the commencement of grading, the applicant shall retain a qualified paleontologist and archeologist to monitor grading and excavation. In the event undetected buried cultural resources are encountered during grading and excavation, work shall be halted or diverted from the resource area and the archeologist and/or paleontologist shall evaluate the remains and propose appropriate mitigation measures.					

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
6. GEOLOGY/SOILS. Would the project:					
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:					
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?[3]			X		
ii) Strong seismic ground shaking?			X		
iii) Seismic-related ground failure, including liquefaction?			X		
iv) Landslides?			X		
b) Result in substantial soil erosion or the loss of topsoil?				X	
c) Be located on a geological unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?			X		
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), thus creating substantial risks to life or property?			X		
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of wastewater?				X	

Comments:

a, c-d) The proposed project could result in up to 800 cubic yards of grading related to the construction of up to sixteen (16) new single-family residences. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. The maximum permitted depth of cut and/or fill for such grading would be less than five feet (<5'-0"). The *Monks* plaintiffs' lots are located in so-called "Zone 2," which is a subarea within the larger Landslide Moratorium Area of the City. According to the Official Maps of Seismic Hazard Zones provided by the State of California Department of Conservation, the entirety of Zone 2 is located within an area that is potentially subject to earthquake-induced landslides. The subject properties are within the vicinity of the Palos Verdes fault zone, although there is no evidence of active faulting within Zone 2. The soils of the Palos Verdes Peninsula are also generally known to be expansive and occasionally unstable. Given the known and presumed soils conditions in and around the *Monks* plaintiffs' lots in Zone 2, it is expected that soil investigations, reviewed and conceptually approved by the City's geotechnical consultant, will be required prior to the development of any new residences. Therefore, in order to reduce

3 Refer to Division of Mines and Geology Special Publication 42.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
the geology/soils impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended: GEO-1: If required by the City geotechnical staff, the applicant shall submit a soils report, and/or a geotechnical report, for the review and approval of the City geotechnical staff. GEO-2: The applicant shall submit for recordation a covenant agreeing to construct the project strictly in accordance with the approved plans; and agreeing to prohibit further projects on the subject site without first filing an application with the Director pursuant to the terms of Chapter 15.20 of the Rancho Palos Verdes Municipal Code. Such covenant shall be submitted to the Director for recordation prior to the issuance of a building permit. GEO-3: All other necessary permits and approvals required pursuant to the Rancho Palos Verdes Municipal Code or any other applicable statute, law or ordinance shall be obtained. b) During grading and construction operations for any new residences, top soil will be exposed and removed from individual properties. It is the City's standard practice to require the preparation and implementation of an erosion control plan for wind- and waterborne soil for construction projects. The approval of the proposed project will not grant any entitlement to develop these lots. Nevertheless, in order to reduce the erosion impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended: GEO-4: Prior to building permit issuance, the applicant shall prepare an erosion control plan for the review and approval of the Building Official. The applicant shall be responsible for continuous and effective implementation of the erosion control plan during project construction. e) The City has constructed a sanitary sewer system that serves the *Monks* plaintiffs' lot in Zone 2 and other areas of the *Portuguese Bend* community. The purpose of constructing this system was to reduce the amount of groundwater within the Landslide Moratorium Area by eliminating the use of private septic systems, with the ultimate goal or slowing or stopping land movement. New residences that may be constructed on the *Monks* plaintiffs' lot in Zone 2 in the future 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 at the time of building permit issuance. In such cases, if the sanitary sewer system later becomes available, the holding tank system shall be removed and a connection made to the sanitary sewer system. With these requirements, any geology/soils impacts related to septic systems will be less than significant.					
7. GREENHOUSE GAS EMISSIONS. Would the project:					
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment, based on any applicable threshold of significance?				X	
b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?				X	
Comments: a) The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on undeveloped lots. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Based upon data obtained from *CoolCalifornia.org*, the average California household generates thirty-eight (38) tons of carbon dioxide (CO_2) emissions annually. For the proposed project, this could result in increased CO_2 output of at least 608 tons per year at the complete build-out of the *Monks* plaintiffs' lots in Zone 2. Currently, there are no generally-accepted significance thresholds for assessing greenhouse gas (GHG) emissions. However, the potential, future development of residences on the *Monks* plaintiffs' lots in Zone 2 would include features that tend to offset the carbon footprint of their development. For example, the use of water would continue to be carefully controlled within the Landslide Moratorium Area in the interest of minimizing the infiltration of groundwater as a means to enhance soil stability. Reducing the use of water reduces energy use related to the transport of water. New					

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
residences would be constructed to the most current energy efficiency standards of the current Building Code (i.e., Title 24). 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. For all of these reasons, the GHG emissions associated with the proposed project would be less than significant. b) California's major initiatives for reducing climate change or greenhouse gas (GHG) emissions are outlined in Assembly Bill 32 (signed into law in 2006), a 2005 Executive Order and a 2004 Air Resources Board (ARB) regulation to reduce passenger-car GHG emissions. These efforts aim at reducing GHG emissions to 1990 levels by 2020 (a reduction of approximately 30 percent) and then an 80-percent reduction below 1990 levels by 2050. Currently, there are no adopted plans, policies or regulations for the purpose of reducing GHG emissions for the development of new, single-family residences. However, as such plans, policies and regulations are adopted in the future, the development of new homes on the *Monks* plaintiffs' lots in Zone 2 would be subject to and consistent with them. For this reason, the GHG emissions associated with the proposed project would be less than significant.					
8. HAZARDS & HAZARDOUS MATERIALS. Would the project:					
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X	
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X	
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	8				X
d) Be located on a site which is included on a list of hazardous materials sites complied pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	12				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	8				X
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	8				X

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	13			X	
h) Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	9		X		

Comments:

a-b) The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Said potential, future development could also involve up to 800 cubic yards of grading. No hazardous materials or conditions are known or expected to exist on any of the *Monks* plaintiffs' lots in Zone 2. The potential, future development of these lots is expected to utilize conventional, residential construction methods and materials that would not involve the use or transport of hazardous materials. Therefore, the hazards and hazardous materials impacts of the proposed project are expected to be less than significant.

c) The nearest school in the vicinity of the *Monks* plaintiffs' lots in Zone 2 is the Portuguese Bend Nursery School at Abalone Cove Shoreline Park. At its closest point, Zone 2 is approximately one-third (⅓) of a mile from the nursery school.

d) None of the *Monks* plaintiffs' lots in Zone 2 are included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

e-f) The *Monks* plaintiffs' lots in Zone 2 are not located within two (2) miles of Torrance Municipal Airport or in the vicinity of any private airstrip.

g) In 2004, the cities of Rancho Palos Verdes and Rolling Hills Estates adopted a Joint Natural Hazards Mitigation Plan (JNHMP). The purpose of the JNHMP is "to promote sound public policy designed to protect citizens, critical facilities, infrastructure, private property, and the environment from natural hazards." The approval of the proposed project is not incompatible with the purpose of the JNHMP.

h) Based upon the most recent maps prepared by the California Department of Forestry and Fire Protection (CalFire), the entire Palos Verdes Peninsula is within a Very High Fire Hazard Severity Zone. The *Monks* plaintiffs' lots in Zone 2 are generally interspersed between developed lots. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. The Zone 2 area does abut City- and privately-owned open areas to the north and west. Therefore, in order to reduce the wildfire hazard impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:

HAZ-1: New, single-family residences and related accessory structures shall be designed to incorporate all fire protection requirements of the City's most recently adopted Building Code, to the satisfaction of the Building Official.

9. HYDROLOGY/WATER QUALITY. Would the project:					
a) Violate any water quality standards or wastewater discharge requirements?			X		

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?					X
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?			X		
d) Substantially alter the existing drainage pattern of the site or area including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?			X		
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?			X		
f) Otherwise substantially degrade water quality?			X		
g) Place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate map or other flood hazard delineation map?	8				X
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	8				X
i) Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam?	8				X
j) Inundation by seiche, tsunami, or mudflow?	8				X
Comments: a, c-f) The potential, future development of up to sixteen (16) single-family residences would alter the topography of the *Monks* plaintiffs' lots in Zone 2 and increase the amount of impermeable surface area. However, the approval of the					

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
proposed project will not directly grant any entitlement to develop these lots. Potential, future development will result in changes to the current drainage patterns of the area, as well as the potential for erosion and run-off during construction. The *Monks* plaintiffs lots in Zone 2 fall within or adjacent to a designated Environmentally Sensitive Area (ESA) that would require the review and approval by the City's National Pollutant Discharge Elimination System (NPDES) consultant for any project involving the creation of two thousand five hundred square feet or more (≥2,500 SF) of impervious surface. Therefore, in order to reduce the hydrology/water quality impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended: HYD-1: Any development proposal located within, adjacent to or draining into a designated Environmentally Sensitive Area (ESA) and involving the creation of two thousand five hundred square feet or more (≥2,500 SF) of impervious surface shall require the review and approval by the City's National Pollutant Discharge Elimination System (NPDES) consultant prior to building permit issuance. HYD-2: If lot drainage deficiencies are identified by the Director of Public Works, all such deficiencies shall be corrected by the applicant. HYD-3: Roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course. HYD-4: All landscaping irrigation systems shall be part of a water management system approved by the Director of Public Works. Irrigation for landscaping shall be permitted only as necessary to maintain the yard and garden. b) The potential, future development of up to sixteen (16) single-family residences will not involve or require the withdrawal of groundwater because water service to these properties will be provided by the California Water Service Company. g-h) There are no Federally-mapped 100-year flood hazard areas in the City of Rancho Palos Verdes. i) There is no dam or levee anywhere in the vicinity of the *Monks* plaintiffs' lots in Zone 2. j) The *Monks* plaintiffs' lots in Zone 2 do not adjoin an ocean, lake or other body of water, so there is no risk of inundation by seiche, tsunami or mudflow. Furthermore, the lowest elevation of any portion of any undeveloped lot in Zone 2 is roughly 260 feet above mean sea level (MSL).					
10. LAND USE/PLANNING. Would the project:					
a) Physically divide an established community?	8, 2				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal plan, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	1, 2				X
c) Conflict with any applicable Habitat Conservation Plan or Natural Community Conservation Plan?	6		X		
Comments: a) The approval of the proposed project could lead to the potential, future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. These lots are interspersed with the sixty-four (64) developed lots and the thirty-one (31) other undeveloped lots in Zone 2. The development of the *Monks* plaintiffs' lots would not divide the *Portuguese Bend* community; rather, they would constitute "in-fill" development within the community.					

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) The approval of the proposed project could lead to the potential, future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Underlying zoning designations for the *Monks* plaintiffs' lot in Zone 2 (i.e., RS-1 and RS-2) allow single-family residences as the primary permitted use on the zone. c) See Mitigation Measure BIO-1 above.					
11. MINERAL RESOURCES. Would the project:					
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	1				X
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	1				X
Comments: a-b) There are no mineral resources known or expected to exist on the *Monks* plaintiffs lots in Zone 2. In addition, although the approval of the proposed project will not directly grant any entitlement to develop these lots, the approval of the proposed project would also only permit shallow surface excavations less than five feet (5'-0") in depth.					
12. NOISE. Would the project result in:					
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	1			X	
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?				X	
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X	
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			X		
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or a public use airport, would the project expose people residing or working in the project area to excessive noise levels?	8				X

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	8				X

Comments:

a) The City of Rancho Palos Verdes does not have a noise ordinance. However, General Plan Noise Policy No. 5 "[requires] residential uses in the 70 dB(A) location range to provide regulatory screening or some other noise-inhibiting agent to ensure compliance with the noise ordinance." The Noise Levels Contour diagram in the General Plan does not depict the *Monks* plaintiffs' lots in Zone 2 falling with a 70 db(A) noise contour. Therefore, noise impacts upon future residents are expected to be less than significant.

b-d) The approval of the proposed project could result in a cumulative total of 800 cubic yards of grading and the construction of sixteen (16) single-family residences. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. The addition of up to sixteen (16) new residences will increase ambient noise levels in the area as a result of household and vehicle noise. The large lot sizes in the area (i.e., averaging an acre in size) and the presence of existing mature foliage along the private rights-of-way will serve as buffers to the "operational" noise associated with new residences. The movement of soil and the operation of construction equipment have the potential to create short-term construction-related noise and vibration impacts upon nearby sensitive receptors, such as existing single-family residences in Zone 2. Therefore, in order to reduce the construction noise impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:

NOI-1: Permitted hours and days for construction activity are 7:00 AM to 7:00 PM, Monday through Saturday, with no construction activity permitted on Sundays or on the legal holidays specified in Section 17.96.920 of the Rancho Palos Verdes Municipal Code without a special construction permit.

e-f) The *Monks* plaintiffs' lots in Zone 2 are not located within two (2) miles of Torrance Municipal Airport or in the vicinity of any private airstrip.

13. POPULATION/HOUSING. Would the project:					
a) Induce substantial growth in an area either directly (e.g., by proposing new homes or businesses) or indirectly (e.g., through extension of roads or other infrastructure)?	14			X	
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	8				X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	8				X

Comments:

a) The proposed project could result in the construction of up to sixteen (16) new dwelling units. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Based upon the 2009 estimates from the State Department of Finance (DOF) of 2.747 persons per household in the City of Rancho Palos Verdes, these new residences would be expected to accommodate forty-four (44) residents. The DOF estimates the 2009 population of the City of Rancho Palos Verdes as 42,800 persons, so the proposed project would result in an increase of only 0.1%. Furthermore, the most recent Regional Housing Needs Assessment (RHNA) allotment for the City of Rancho Palos Verdes is sixty (60) additional housing units during the period from July 1, 2005 through June 30, 2014. The proposed project could increase the number of housing units in the City, but would not exceed the total units allocated to the City by the Southern California Association of Governments (SCAG) for the current reporting period.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Therefore, the population and housing impacts of the proposed project are expected to be less than significant. b-c) The approval of the proposed project could lead to the future development of up to sixteen (16) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. No existing housing or persons would be displaced as a result of the proposed project.					
14. PUBLIC SERVICES.					
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:					
i) Fire protection?				X	
ii) Police protection?				X	
iii) Schools?				X	
iv) Parks?				X	
v) Other public facilities?				X	
Comments: a) The estimated population of the sixteen (16) new residences that could result from the proposed project is forty-four (44) persons, which amounts to only a 0.1% increase in the City's 2009 estimated population of 42,800. This small increase in population is not expected to place significant additional demands upon public safety services (i.e., fire and police) or other public services (i.e., parks, libraries, etc.). As standard requirements of the construction of new residences, applicants will be required to pay fees to the Palos Verdes Peninsula Unified School District (PVPUSD). In addition, the approval of the proposed project will not directly grant any entitlement to develop these lots. Therefore, the public services impacts of the project are expected to be less than significant.					
15. RECREATION.					
a) Would the project increase the use of neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X	
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?					X
Comments: a) The proposed project is expected to potentially increase the City's population by forty-four (44) persons. Although this amounts to only a 0.1% population increase (based upon 2009 estimates), additional residents will place some additional demands on the City's recreational facilities. However, the approval of the proposed project will not					

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
directly grant any entitlement to develop these lots. Therefore, these impacts upon the use of recreational facilities are expected to be less than significant. b) The proposed project would not include or allow for the development of recreation facilities, based upon the underlying zoning of the *Monks* plaintiffs' lots in Zone 2.					
16. TRANSPORTATION/TRAFFIC. Would the project:					
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	7			X	
b) Exceed either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	7			X	
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?					X
d) Substantially increase hazards due to a design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?					X
e) Result in inadequate emergency access?	13				X
f) Result in inadequate parking capacity?	11				X
g) Conflicts with adopted policies, plans, or programs supporting alternative transportation (e.g. bus turnouts, bicycle racks)?					X
Comments: a-b) Based upon the current 7th Edition ITE Trip Generation Manual (Land Use 210, Single-Family Detached Housing, pp. 268-304), the development of sixteen (16) new single-family residences on the *Monks* plaintiffs' lots in Zone 2 is expected to result in one hundred fifty-three (153) additional average daily trips, thirteen (13) additional AM peak-hour trips and sixteen (16) additional PM peak-hour trips. The City's project thresholds for potentially significant traffic impacts are projects expected to generate more than five hundred (500) average daily trips and/or more than fifty (50) peak-hour trips. With respect to construction traffic, the sixteen (16) undeveloped lots in Zone 2 are owned by fifteen (15) separate private individuals or entities. Since 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. Furthermore, the approval of the proposed project will not directly grant any entitlement to develop these lots. Therefore, the transportation/traffic impacts of the project are expected to be less than significant. c) The proposed project could result in the development of up to sixteen (16) new, single-family residences. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. The construction of these residences will have no impact upon air traffic patterns.					

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
d-e) The proposed project does not include any modifications to existing public or private rights-of-way or changes in current land-use patterns that would create or increase hazardous conditions or hamper emergency access in and to Zone 2 and the *Portuguese Bend* community. f) Pursuant to Section 17.02.030.E of the Rancho Palos Verdes Municipal Code, new single-family residences are required to provide enclosed, off-street parking for two (2) vehicles for residences with less than five thousand square feet (<5,000 SF) of living area, and for three (3) vehicles for residences with five thousand square feet or more (≥5,000 SF) of living area. Although the approval of the proposed project will not directly grant any entitlement to develop these lots, new residences on the *Monks* plaintiffs' lots in Zone 2 will be required to provide sufficient off-street parking to meet these requirements. g) Given the semi-rural character of the area, there are no adopted policies, plans, or programs supporting alternative transportation that include the *Monks* plaintiffs' lots in Zone 2 and/or any abutting public or private rights-of-way.					
17. UTILITIES/SERVICE SYSTEMS. Would the project:					
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	15, 10		X		
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	15, 10		X		
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	15, 10		X		
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X	
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	15, 10		X		
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X	
g) Comply with federal, state, and local statures and regulations related to solid waste?				X	

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact

Comments:

a-c, e) The City has constructed a sanitary sewer system that serves the *Monks* plaintiffs' lots in Zone 2 and other areas of the *Portuguese Bend* community (i.e., the Abalone Cove Sewer System). The purpose of constructing the Abalone Cove system was to reduce the amount of groundwater within the Landslide Moratorium Area by eliminating the use of private septic systems, with the ultimate goal or slowing or stopping land movement. According to the EIR prepared for the project, the Abalone Cove system was originally intended to serve one hundred ten (110) developed and forty-six (46) undeveloped lots in the Abalone Cove area or the *Portuguese Bend* community, which includes the *Monks* plaintiffs' lots in Zone 2. As such, the potential future development of up to sixteen (16) new residences in Zone 2 should be consistent with the planned sewer system capacity, although the approval of the proposed project will not directly grant any entitlement to develop these lots. The City's Public Works Department has recently confirmed, as a part of the update to the City's Sewer Master Plan, that the Abalone Cove system does have adequate capacity to serve the *Monks* plaintiffs' lots. Nevertheless, in order to reduce the utilities/service systems impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:

UTL-1: If 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. In such cases, once the sanitary sewer system becomes available to serve the project, as determined by the Director of Public Works, the holding tank system shall be removed, and the project shall be connected to the sanitary sewer system.

UTL-2: If the project involves additional plumbing fixtures, or additions of habitable space which exceed two hundred square feet, or could be used as a new bedroom, bathroom, laundry room or kitchen, and if the lot or parcel is not served by a sanitary sewer system, septic systems shall be replaced with approved holding tank systems in which to dispose of on-site waste water. The capacity of the required holding tank system shall be subject to the review and approval of the City's Building Official. For the purposes of this mitigation measure, the addition of a sink to an existing bathroom, kitchen or laundry room shall not be construed to be an additional plumbing fixture. For those projects which involve additions of less than two hundred square feet in total area and which are not to be used as a new bedroom, bathroom, laundry room or kitchen, the applicant shall submit for recordation a covenant specifically agreeing that the addition of the habitable space will not be used for those purposes. Such covenant shall be submitted to the Director for recordation prior to the issuance of a building permit. For lots or parcels which are to be served by a sanitary sewer system on or after July 6, 2000, additional plumbing fixtures may be permitted and the requirement for a holding tank may be waived, provided that the lot or parcel is to be connected to the sanitary sewer system. If a sanitary sewer system is approved and/or under construction but is not yet operational at the time that a project requiring a landslide moratorium exception permit is approved, the requirement for a holding tank may be waived, provided that the lot or parcel is required to be connected to the sanitary sewer system pursuant to Section 15.20.110 of the Rancho Palos Verdes Municipal Code, or by an agreement or condition of project approval.

UTL-3: If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to support and participate in existing or future sewer and/or storm drain assessment districts and any other geological and geotechnical hazard abatement measures required by the City. Such covenant shall be submitted to the Director prior to the issuance of a building permit.

UTL-4: If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to an irrevocable offer to dedicate to the City a sewer and storm drain easement on the subject property, as well as any other easement required by the City to mitigate landslide conditions. Such covenant shall be submitted to the Director prior to the issuance of a building permit.

UTL-5: If the lot or parcel is served by a sanitary sewer system, the sewer lateral that serves the applicant's property shall be inspected to verify that there are no cracks, breaks or leaks and, if such deficiencies are present, the sewer lateral shall be repaired or reconstructed to eliminate them, prior to the issuance of a building permit for the project that is being approved pursuant to the issuance of a moratorium exception permit.

d) California Water Service Company (Cal Water) provides the City's water service. Given that the proposed project could potentially increase the number of households and persons in the City by only 0.1%, the increase in demand for water attributable to this project is expected to be minimal compared to the amount of water used in the Cal

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Water service area. In addition, the approval of the proposed project will not directly grant any entitlement to develop these lots. Individual property owners would be responsible for connecting to existing water-distribution facilities in the area, including the costs of making such connections. As such, the water supply impacts of the proposed project are expected to be to less-than-significant. f-g) The proposed project could result in the construction of up to sixteen (16) new dwelling units, which equates to only a 0.1% increase in the number of dwelling units in the City (based upon 2009 estimates). The *Monks* plaintiffs' lots in Zone 2 have access to solid waste disposal services through existing City contracts with residential waste haulers. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. Given the limited potential scope of the proposed project, the solid waste disposal impacts are expected to be less-than-significant.					
18. MANDATORY FINDINGS OF SIGNIFICANCE.					
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?			X		
Comments: The proposed project, with mitigation, will not degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; or reduce the number or restrict the range of a rare or endangered plant or animal. The proposed project will not eliminate important examples of the major periods of California history or pre-history.					
b) Does the project have impacts that are individually limited, but cumulatively considerable?[4]			X		
Comments: The proposed project could result in the development of up to sixteen (16) new, single family residences on existing undeveloped lots. However, the approval of the proposed project will not directly grant any entitlement to develop these lots. On an individual basis, the development of a single-family residence on an existing lot would not be expected to have any adverse impact upon the environment. While the cumulative effects of the near-simultaneous development of up to sixteen (16) such residences may have significant adverse effects, it should be noted that the sixteen (16) Monks plaintiffs' lots in Zone 2 are owned by fifteen (15) separate private individuals or entities. Since 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. Furthermore, with the imposition of the recommended mitigation measures, these potential cumulative impacts will be reduced to less-than-significant levels.					
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X	

4 "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of the past projects, the effects of other current projects, and the effects of probable future projects.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
Comments: As discussed above, all potentially-significant environmental effects of the proposed project can be mitigated to less-than-significant levels. Therefore, the proposed project will have no substantial adverse effects on human beings, either directly or indirectly.					
19. EARLIER ANALYSES.					
Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or Negative Declaration. Section 15063 (c) (3) (D). In this case a discussion should identify the following items:					
a) **Earlier analysis used.** Identify and state where they are available for review.					
Comments: A Supplemental Environmental Impact Report (SEIR) was prepared for the Abalone Cove Sewer System in 1996. A supplement to the SEIR was subsequent prepared in 1998. Copies of these documents are available for review at the Public Works Department of the City of Rancho Palos Verdes, 30940 Hawthorne Boulevard, Rancho Palos Verdes, CA 90275. These documents were utilized as source of background data related to the installation of the Abalone Cove Sewer System, but not as a basis for the analysis of the environmental impacts of the proposed "Zone 2 Landslide Moratorium Ordinance Revisions."					
b) **Impacts adequately addressed.** Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.					
Comments: Not applicable.					
c) **Mitigation measures.** For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions of the project.					
Comments: Not applicable.					
Authority: Public Resources Code Sections 21083 and 21087. **Reference:** Public Resources Code Sections 21080 (c), 21080.1, 21080.3, 21082.1, 21083, 21083.3, 21093, 321094, 21151; *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296 (1988); *Leonofff v. Monterey Board of Supervisors*, 222 Cal. App. 3d 1337 (1990).					
20. SOURCE REFERENCES.					
1	City of Rancho Palos Verdes, Rancho Palos Verdes General Plan, and associated Environmental Impact Report. Rancho Palos Verdes, California as amended through August 2001.				
2	City of Rancho Palos Verdes Zoning Map				
3	South Coast Air Quality Management District. CEQA AIR Quality Handbook. Diamond Bar, California: November 1993 (as amended).				
4	Official Maps of Seismic Hazard Zones provided by the Department of Conservation of the State of California, Division of Mines and Geology				
5	City of Rancho Palos Verdes Archeology Map.				
6	City of Rancho Palos Verdes, Natural Communities Conservation Plan. Rancho Palos Verdes, California as adopted August 2004				
7	Institute of Traffic Engineers, ITE Trip Generation, 7th Edition.				

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
8	City of Rancho Palos Verdes Geographic Information System (GIS) database and maps				
9	State of California, Department of Forestry and Fire Protection, Very High Fire Hazard Severity Zone Maps. Sacramento, California, accessed via website, March 2008				
10	Email correspondence with Senior Engineer Ron Dragoo (February 5, 2009)				
11	City of Rancho Palos Verdes Municipal Code				
12	Hazardous Waste and Substances Site List (i.e., "Cortese List")				
13	Cities of Rancho Palos Verdes and Rolling Hills Estates Joint Natural Hazards Mitigation Plan				
14	City of Rancho Palos Verdes General Plan Housing Element				
15	Abalone Cove Sewer System Supplement Environmental Impact Report				

ATTACHMENTS:

Mitigation Monitoring Program

Kit Fox

From: Carol W. Lynch [CLynch@rwglaw.com]
Sent: Monday, July 27, 2009 11:15 AM
To: joelr@rpv.com; kitf@Rpv.com; jlancaster@zkci.com
Subject: FW: Proposed Ordinance Re Landslides
Attachments: Proposed Landslide Ordinances & Support Memo 090726 Final1-RMV.doc

For our collective review.
-----Original Message-----
From: Lowell R. Wedemeyer [mailto:lowell@transtalk.com]
Sent: Sunday, July 26, 2009 8:08 PM
To: Larry Clark; Steve Wolowicz; Tom Long; Peter C. Gardiner; douglas.stern@rpv.com; Carol W. Lynch; pc@rpv.com
Subject: Proposed Ordinance Re Landslides

HONORABLE MEMBERS OF CITY COUNCIL, RANCHO PALOS VERDES
HONORABLE MEMBERS OF PLANNING COMMISSION, RANCHO PALOS VERDES
CITY ATTORNEY, RANCHO PALOS VERDES

July 26, 2009

We propose that the City of Rancho Palos Verdes adopt the two appended municipal ordinances to address issues that have arisen in the landslide-prone areas of the City.

Each of these proposed ordinances is designed to stand alone, but they also are designed to function cooperatively. We also append explanatory memoranda.

A detailed memorandum with more extensive legal citations prepared by Wedemeyer can be supplied separately.

Robert G. Douglas, Ph. D.,

Lowell R. Wedemeyer, BS, JD.

PROPOSED ORDINANCES AND SUPPORTING MEMORANDA CONCERNING:

QUASI-JUDICIAL FINDINGS, AND

GEOSCIENCE REPORTS

Lowell R. Wedemeyer, BS, JD.

Robert G. Douglas, Ph.D.

July 26, 2009

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SUPPORTING MEMORANDUM

PROPOSED CITY ORDINANCES.

A. GUIDELINES FOR QUASI-JUDICIAL ADMINISTRATIVE FINDINGS WHERE AN ISSUE HAS ARISEN WHETHER THERE IS A "TAKING" BY REGULATORY DENIAL OF DEVELOPMENT RIGHTS. (Proposed City Ordinance)

Lowell R. Wedemeyer, BS, JD, Robert G. Douglas, Ph.D. July 21, 2009 [1]

Where there is an allegation, not completely lacking in merit, that a regulatory denial of a development permission constitutes a "taking" of private property for which "just compensation" is required by the United States Constitution or the California Constitution, then the administrative body having power to make quasi-judicial findings of fact should make explicit written findings of fact on the following issues:

(A) Explicitly identify in writing each harm that it is feared will be caused or aggravated by the proposed project. [2] [3]

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[1] This memorandum is for public policy discussion. No professional legal or geoscience opinion is rendered herein to any person. Legal citations provided by Wedemeyer.

[2] "The "total taking" inquiry we require today will ordinarily entail (as the application of state nuisance law ordinarily entails) analysis of, among other things, the degree of harm to public lands and resources, or adjacent private property, posed by the claimant's proposed activities, see, e.g., Restatement (Second) of Torts §§ 826, 827, the social value of the claimant's activities and their suitability to the locality in question, see, e.g., id., §§ 828(a) and (b), 831, and the relative ease with which the alleged harm can be avoided through measures taken by the claimant and the government (or adjacent private landowners) alike, see, e.g., id., §§ 827(e), 828(c), 830. The fact that a particular use has long been engaged in by similarly situated owners ordinarily imports a lack of any common-law prohibition (though changed circumstances or new knowledge may make what was previously permissible no longer so, see id., § 827, Comment g. So also does the fact that other landowners, similarly situated, are permitted to continue the use denied to the claimant." *Lucas v. South Carolina Coastal Council, (1992), 505 U.S. 1013 at 1030 - 1031, 112 S. Ct. 2886.*

(B) Evaluate in written findings of fact the ***substantiality of each feared harm*** and explicitly identify and disregard harms that are not substantial. In this evaluation, require that each feared harm be scientifically validated where it is feasible to do so in order to insure that the fear of harm both (i) is substantial, and also (ii) is "reasonable" in the sense of scientifically founded. A fear of harm can be identified as "substantial" even though scientific proof is lacking to prove that the fear is "reasonable." As examples, a fear of injury from nuclear explosion, or exposure to carcinogenic substances, or dam collapse, or major landslide could be "substantial" but not be scientifically well-founded, and thus not be "reasonable", in a particular application for development permission. [4]

(C) Identify and isolate for very cautious, case-by-case consideration, the borderline cases where the likelihood of a harm cannot be either proved or disproved scientifically, that is, where there is scientifically irreducible uncertainty as to harm so that the fear of harm cannot be showed to be either reasonable or unreasonable. Make explicit written findings of fact stating any determination that scientifically irreducible uncertainty exists with respect to harm that is found to be

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[3] This threshold step A may already be substantially satisfied if preparation of a California Environmental Impact Report ("EIR") has been required for the project. *California Public Resources Code § 21061.* There conceivably may be additional harm of a type not required to be addressed in an EIR. This step A is essential in the constitutional analysis even if an EIR is not required.

[4] It is because development permission is, or may be, denied that step B in the constitutional "taking" analysis must be performed. Step B differs in this respect from California EIR practice. Certification of a final EIR is required where a development project is approved (*Public Resources Code §§ 21081, 21152),* but not where approval is denied. This step B may overlap with preparations for an EIR because a denial of development permission might occur only after substantial effort has been expended towards preparation of an EIR.

substantial. In these cases of scientifically irreducible uncertainty, the balancing step (E) below becomes critical in the constitutional analysis. [5]

(D) Make written findings whether each substantial harm can be mitigated as a condition of granting development permission. [6]

(E) Balance mitigated harms that have been found to be substantial (whether or not "reasonable") against the "social utility" of the conduct for which a permit is sought, e.g. a permit to build or renovate a residence. [7] [8] (The same preparations employed for a California Environmental Impact Report should enable this step.)

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[5] See *San Diego Gas & Electric Co. v. Superior Court (1996) 13 Cal. 4th 893, 937-938 [55 Cal. Rptr. 2d 724, 920 P.2d 669].* This step C requires use of the best available science and often will entail written findings that distinguish valid science from junk science. For this distinction to be drawn, written regulations must be adopted requiring expert reports to conform to minimum scientific standards. Regulations stating such scientific standards are proposed in a separate memorandum.

[6] This step D also may be achieved during the development of an EIR.

[7] "The second additional requirement for nuisance is superficially similar but analytically distinct: 'The interference with the protected interest must not only be substantial, but it must also be unreasonable' ... , i.e., it must be 'of such a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land.' ... The primary test for determining whether the invasion is unreasonable is whether the gravity of the harm outweighs the social utility of the defendant's conduct ... . Again the standard is objective: the question is not whether the particular plaintiff found the invasion unreasonable, but 'whether reasonable persons generally, looking at the whole situation impartially and objectively, would consider it unreasonable.'" *San Diego Gas & Electric Co. v. Superior Court, supra, 13 Cal. 4th at 937-938 [55 Cal. Rptr. 2d 724, 920 P.2d 669]; Monks v. City of Rancho Palos Verdes (2008) 167 Cal. App. 4th 263 at 303.*

[8] Note that the California Supreme Court deferred to a regulatory body's balancing of harm versus social utility in *San Diego Gas & Electric* where the Commission refused to restrict high voltage power transmission lines when the Commission found that adverse health effects could neither be proved nor disproved by the best science then available. No judicial "taking" decision has been found that approved administrative denial of development permission where the administrative agency justified the denial by fear of a scientifically unprovable harm. Legislative findings that support adoption of a regulatory law, as distinguished from quasi-judicial administrative findings of fact in a particular case, are given little weight in the constitutional analysis. *Lucas v. South*

(F) If the result of Step E is that the mitigated harms outweigh the social utility of the proposed project, so that the requested development permission is to be denied, then identify in written findings less harmful uses, if any, for which social utility does outweigh the mitigated harms. Then development permission can be granted for such less harmful uses. [9] The purpose of this step F is to avoid denial of *all* economically viable use of the applicant's land. [10]

(G) Specify the available regulatory procedures, such as re-zoning or a conditional use permit, that are appropriate to obtain development permission for the less harmful uses that can be permitted.

(H) DO NOT USE ARBITRARY CUT-OFF LIMITS, such as the 1.5 factor of safety, that by-pass steps A though F. These cut-off limits can be used only as screening tools to aid in steps B and C, but never can be

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Carolina Coastal Council (1992) 505 U.S. 1003 at 1023 - 1026, and fns. 11 and 12.

[9] " As we have said on numerous occasions, the *Fifth Amendment* is violated when land-use regulation "does not substantially advance legitimate state interests *or denies an owner economically viable use of his land*." (citations omitted) (emphasis added by U.S. Supreme Court)." *Lucas, supra. 505 U.S. at 1016.*

[10] " JUSTICE STEVENS criticizes the "deprivation of all economically beneficial use" rule as "wholly arbitrary," in that "[the] landowner whose property is diminished in value 95% recovers nothing," while the landowner who suffers a complete elimination of value "recovers the land's full value." *Post*, 505 U.S. at 1064. This analysis errs in its assumption that the landowner whose deprivation is one step short of complete is not entitled to compensation. Such an owner might not be able to claim the benefit of our categorical formulation, but, as we have acknowledged time and again, "the economic impact of the regulation on the claimant and . . . the extent to which the regulation has interfered with distinct investment-backed expectations" are keenly relevant to takings analysis generally. *Penn Central Transportation Co. v. New York City, 438 U.S. 104, 124, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978).* It is true that in at least *some* cases the landowner with 95% loss will get nothing, while the landowner with total loss will recover in full. But that occasional result is no more strange than the gross disparity between the landowner whose premises are taken for a highway (who recovers in full) and the landowner whose property is reduced to 5% of its former value by the highway (who recovers nothing). Takings law is full of these "all-or-nothing" situations." *Lucas, supra, 505 U.S. at 1019, fn. 8.*

used as a substitute for steps A, E and F. For example, permit applications for projects that plainly meet the 1.5 factor of safety could be ministerial approved, but projects that fail to meet the 1.5 factor of safety (and therefore are at risk of denial) must be further evaluated in steps A through F. [11]

[11] These steps A through F cannot prevent a judicial challenge, or guarantee that the administrative decision will prevail. This is because the courts are the final arbiters of constitutional "taking" issues. Steps A through F help insure that the administrative body thoroughly evaluates the "taking" risk and that the administrative record will contain appropriate evidence and provide a better foundation for favorable judicial review. It is likely that a court will give significant deference to written administrative findings of fact based upon such a record. *San Diego Gas & Electric, supra.*

B. STANDARDS TO ENSURE SCIENTIFIC RELIABILITY AND PUBLIC TRANSPARENCY OF EXPERT REPORTS CONCERNING PROPOSED LARGE DEVELOPMENTS. (Proposed City Ordinance)

1.0 PURPOSES. The purposes of this ordinance are as follows:

1.1 To aid evaluations of burdens of proof in administrative fact finding;

1.2 To enable non-scientist and non-expert public officials and voters to achieve more meaningful understanding of expert opinion and technical reports that are proffered in administrative proceedings;

1.3 To enable decision-making public officials and administrative staff to make meaningful inquiries for explanations of reports and opinions to enable them to better understand such reports and opinions; and

1.4. Thereby to improve the quality of public decision making that must rely upon expert opinions and technical reports.

2.0 DEFINITION AND DISTINCTION OF "SKILLED ART" OPINION. To achieve the purposes stated in Section 1, expert opinions and technical reports proffered by the proponent of a proposed project to prove the safety, to identify impacts, or to prove mitigation of impacts of the project, shall comply with the standards stated in this law.

Each such expert opinion and each such technical report shall do the following:

2.1. Shall distinguish explicitly between:

2.1.1 scientifically measured and quantified information and results, as distinguished from

2.1.2 "Skilled art opinion." "Skilled art opinion" shall mean opinion that is presented as being based upon specialized expert experience and/or education, but which extends beyond, or

otherwise is not fully supported by, scientifically measured and quantified information and results. "Skilled art" opinion sometimes is referred to as "expert interpretive" opinion.

2.2. Shall explicitly state scientifically measured and quantified information and results in sufficient detail such that material differences between opinions and reports proffered by different experts can be identified and scientific explanations for differences required;

2.3 Shall distinguish and provide straightforward identification of the "skilled art" portions of such expert's opinion; and

2.4 Shall refrain from and shall eliminate the use of psuedo-scientific quantification to bolster a "skilled art" opinion that otherwise lacks adequate support in scientifically measured and quantified results.

2.5 These standards for expert opinions and reports shall be applied and enforced:

2.4.1 to enable public officials and voters to readily identify and isolate "skilled art" opinion and distinguish it from scientifically measured and quantified results,

2.4.2 so that the merits of each "skilled art" opinion can fairly be evaluated and fairly be compared to differing "skilled art" opinions and reports, and

2.4.3 so that public officials and voters can achieve meaningful understanding of the differences among "skilled art" opinions and reports and identify the reasons for such differences.

3. BASIC STANDARD OF SAFETY. The basic standard of safety pursuant to this law is "reasonably safe in fact", evaluated as follows:

3.1 All relevant scientifically measured and quantified evidence shall be admissible to prove or disprove safety. The significance of such scientifically measured and quantified evidence may be explained

according to scientifically credible theories and standards, if such theories and standards are explicitly identified in the opinion or report.

3.2 "Skilled art" portions of opinions and reports may be admissible concerning safety, impacts and mitigation of impacts but only if and to the extent that

3.2.1 such skilled art portions are segregated, explicitly identified and distinguished as such on the face of the opinion or report; and

3.2.2 the fact-finding administrative body determines:

3.2.2.1 that such "skilled art" portions are validly founded in credible experience and training, and

3.2.2.2 that such "skilled art" opinion merits some weight notwithstanding the existence of scientifically irreducible uncertainties.

4. PUBLIC ACCESS. Applications, including appendices and supporting reports, shall be provided by the Applicant in digital electronic format suitable for duplication to be provided to any registered City Voter, or such Voter's representative, at the cost of duplication. This requirement shall be in addition to any "hard" copies that otherwise may be required by the City. The purpose of this provision is to render it reasonably feasible for any City Voter or any other legitimately interested person to review and evaluate the application, or to obtain expert evaluation of it. Applications, including appendices and reports, shall be continuously paginated in arabic numerals and shall have a reasonably complete table of contents. Cross-references within an application and reports shall reference such arabic pagination.

5. EXPERT PEER REVIEW ENABLEMENT. Each expert opinion and technical report that is proffered in support of an application for development permission for a proposed project to prove safety, feasibility, or mitigation of impacts shall comply with this section 5. Expert reports and opinions shall enable independent, scientific peer review of their contents. This means that each application for a development permission shall state on its face, or in explicitly-referenced appendices, all scientifically relevant facts, test data, mathematical analyses, and expert opinion in such a manner and in such detail that any other qualified expert in the same or an equivalent expert discipline can review the material, can independently evaluate its scientific and engineering merit, and can, if desired, independently replicate the analysis, including any testing. For this purpose:

5.1 Test protocols shall be explicitly stated,

5.2. All test data shall be preserved and made available for expert inspection. Where feasible, test samples shall be preserved and made available for independent review and analysis.

5.3. All material assumptions and theoretical models that are employed in analyses and opinions shall be explicitly stated and either fully stated in the report or referenced to a published full statement thereof.

5.4 Numerical quantities shall be accompanied by an express statement of calculated significant digits and an explicit scientific analysis of range of confidence or range of error and, where scientifically necessary or appropriate, by an express statement of statistical significance.

5.5 Where computer programs are used for calculations, it shall be affirmatively demonstrated that the computer calculations and computer-generated results comply with sub-sections 5.1 - 5.4, inclusive.

5.6. Each portion of any expert opinion and technical reports that does not comply with subparts 5.1 through 5.5 shall be explicitly distinguished and explicitly labeled in the opinion or report as "skilled art."

5.7 If an expert relies upon historic reports or test data of others who were not under the supervision and control of such expert, then the degree of compliance, or non-compliance of that material with subsections 5.1 - 5.5 inclusive shall be explicitly stated. Any "meta-analysis" or other technique used to combine test data collected under differing test protocols or by different investigators shall be explicitly and fully stated to enable scientific peer review.

5.8 Where the applicant contends that compliance with this section 5, or any of its subparts, is not feasible or not possible, the applicant shall so state and shall provide a plain, straight-forward explanation of the reasons for the inability to comply. If a reason for non-compliance is that the subject matter involves uncertainties that are scientifically irreducible, or that cannot feasibly be reduced, then the opinion or report shall so state and explain why.

5.9 Any material failure to comply with this subsection 5 shall be grounds for the following administrative actions:

5.9.1 ministerial or discretionary rejection of any opinion or report that purports to be scientific but fails to comply with the requirements for scientific opinions and reports, and

5.9.2 ministerial or discretionary requirements that before a report can be refiled the report (or the non-compliant portions thereof if they can be isolated and distinguished) must explicitly be labeled as "skilled art" unless there has been full compliance with this section 5.

6. PUBLIC TRANSPARENCY OF APPLICATIONS AND EXPERT REPORTS.

6.1 Each application for development permission shall state the facts and evidence material to the analysis of safety, including risk factors and risk analyses, on the face of the report in plain language and with demonstrative or other visual materials.

6.2 The application shall contain a "plain language" statement of conclusions and supporting evidence. The statement shall explicitly distinguish between scientifically quantified results and "skilled art" opinion, and shall contain explicit references to supporting scientific quantification. The statement shall be crafted to be understood by a Rancho Palos Verdes City Voter having at least a college entry education as a non-science student. This standard shall be equivalent to the then-current, generally-applicable academic standards maintained for high school seniors in the local community by Palos Verdes Peninsula High School or Palos Verdes High School, or their successors.

6.3 It is an objective of this section 6 that non-expert City Officials and Voters shall be enabled to achieve an intelligent, meaningful understanding of the issues so as to cast a vote with genuine understanding of the material public safety issues implicated by the application for development permission.

6.4. It is an objective of this section 6 that experts shall not set and implement public policy on matters of safety, health and welfare, in the guise of expert opinion and expert reports, where such opinions and reports cannot be understood by reasonably willing, non-expert City Officials and Voters without unreasonable effort or expense.

6.5 It shall be a condition precedent to the granting of any permission at any stage for a project that is subject to this law that the decision-making body (any commission having jurisdiction and/or the City Council) first must affirmatively find that the Applicant has complied with sections 5 and 6.

6.6 When evaluating the adequacy of compliance with section 6, the decision-making body may seek evidence, and shall receive any timely proffer of relevant evidence by any interested person, in the form of opinions of professional persons such as professional educators, professional editors, and experienced jury trial lawyers, among others. The decision-making body also may receive and give weight to evaluations by the City Staff.

7.0 DEFINITION OF A "LARGE DEVELOPMENT."

"Large Development" shall mean a development that equals or exceeds any one or more of the following standards:

7.1 Five or more units, whether residential, commercial, industrial or otherwise, in any combination, within a single legal parcel or on contiguous legal parcels that resulted from a subdivision where the final subdivision map was recorded on or after January 1, 2005.

7.2 Any land division creating five or more parcels;

7.3 Construction of any improvement or series of improvements on any one legal parcel that existed before January 1, 2005, or on any series of legal parcels that resulted from a subdivision where the final subdivision map was recorded after January 1, 2005, that either:

7.3.1 exceeds 25,000 square feet of floor area, or

7.3.2 involves any grading in excess of three-quarters of an acre (32,670 square feet) in surface area, or 40,000 cubic yards in volume.

8.0 APPLICATION OF THIS LAW. The standards in this ordinance shall be applied to applications for permission for a proposed project that is a "large development." Such standards may, in the discretion of the decision-making body, be applied to projects that do not meet the definition

of a "large development" but that have the potential for a substantial impact on the environment.

9.0 PUBLIC WORKS. This law shall apply to public works projects that are designed primarily to serve or to enable any proposed project that is a "large development" as defined in subsections 7.1 through 7.3.

C. JUDICIAL BURDENS OF PROOF CONTROL REGULATORY DECISIONS IN CASES OF SCIENTIFICALLY IRREDUCIBLE UNCERTAINTY

Robert G. Douglas, Ph.D., and Lowell R. Wedemeyer, BS ChE, JD. July 21, 2009

THE APPELLATE COURT DECISION [12]

In *Monks v. City of RPV (2008) 167 Cal. App. 4th 263*, the trial court found as a matter of fact, based upon conflicting expert testimony, that it was uncertain whether a landslide would be caused by construction of 16 new residences on vacant lots scattered in a neighborhood of existing, occupied, older residences. The neighborhood is located adjacent to what may be one of the largest, continuously ancient and active landslide complexes on the North American continent, but so far has remained sufficiently stable to sustain the older residences. The trial court ruled that the uncertainty whether new construction would cause instability was sufficient to justify a denial of permits for construction where the consequence, if the risk were realized, was a landslide jeopardizing the entire neighborhood. The neighborhood is zoned residential, and non-residential uses are prohibited, so the denial of permits to build residences left the owners with no right to any substantial development or other economically viable use of their 16 lots.

The California Court of Appeal reversed the trial court. The Court of Appeal after an extensive re-evaluation of the expert geotechnical opinions in the trial record expressly rejected the City's ordinance that prohibited new construction absent proof by the land

[12] This article is intended for general readership. A detailed legal memorandum is provided separately.

owner that the land had a geotechnical Factor of Safety of 1.5. The Court of Appeal ruled that the City had to bear the burden to prove (burden of proof) that construction on this land of uncertain stability would constitute a common law nuisance. The Court of Appeal ruled that the City had proved only that the stability of the land was "uncertain", but such uncertainty was insufficient to discharge the City's burden to prove a common law nuisance before denying all substantial use of the private properties. Thus, in this scientifically uncertain situation the legal result was dictated by allocation to the City of the burden of proving common law nuisance, rather than allocating to the private lot owners the burden of affirmatively proving that their land met the geotechnical standard Factor of Safety of 1.5.

The appellate court ruled that the City's use of the Factor of Safety of 1.5 as a definitive limitation on new construction effected a permanent "taking" for constitutional purposes and remanded the case to the trial court with orders to give the landowners a remedy. The options available to the City apparently are either to purchase the 16 lots at fair market value or to issue building permits for new construction.

REACTION AND AFTERMATH

The Appellate Court ruling surprised City officials. Residents of the Portuguese Bend community, where the 16 vacant lots are located, were stunned and baffled by the Court's decision. They knew that the adjacent landslide had destroyed an entire neighborhood of more than 130 existing homes since the 1950s, and was continuing to expand and damage more existing homes on the edges of the neighborhood. Few of the residents had even heard of

"common law nuisance" and fewer still could make a logical connection between it and what was perceived as a "straight forward" case of lot owners petitioning the City to build in a restricted area with known landslide risk. The residents were left to puzzle over many questions: What was the appellate court's rationale and the evidence which lead the appellate court to reverse two trial court decisions? If the City no longer can use the Factor of Safety as a definitive standard to evaluate landslide stability, then what administrative procedures, if any, are available to the City to control development in this geohazardous area?

The starting point to addressing these and other questions and for formulating future procedures for dealing with development in landslides begins with an understanding of the *Monks* case. This requires an examination of principles which directly underpin the sciences and thus affect both the scientific results and the court rulings that shaped the outcome.

SCIENTIFIC RISK AND UNCERTAINTY

The concepts of "scientific risk and uncertainty" are key to evaluation of the evidence presented in the *Monks* case. The court rulings and the law are shaped by what these terms mean and how they affect scientific endeavors, particularly in evaluating landslide stability.

In applying scientific risk analysis there are different kinds of uncertainty. The differences have enormous implication for how burdens of proof should be allocated as a matter of public policy:

Some scientific fields of endeavor have a high degree of predictability while other disciples inherently have poor predictability because there is irreducible uncertainty in the field of endeavor. In principle, the causes of such irreducible uncertainty can include one or more of the following:

(1) Scientific ignorance, even in theory, of what physical factors determine outcomes (e.g., the timing and magnitude of earth quakes are unpredictable, even on known faults with an extensive, modern history of activity);

(2) Physical outcomes that are dependent upon physical conditions where it is impossible or impractical to measure those initial conditions with sufficient precision to predict the outcomes (non-deterministic chaos);

(3) Infeasibility of quantifying physical factors that are known theoretically to be deterministic. Such infeasibility can arise from inaccessibility (such as great depth, or practically impenetrable barriers, or hazardous conditions) or from the necessity to take enormous numbers of measurements, or from long duration of measurements.

(4) Computational complexity exceeding computing capacity.

EXPERT INTERPRETATION AND SKILLED ARTS.

In the poorly predictable endeavors that are affected by irreducible uncertainty, expert opinions often are really "**expert interpretation**" or "**skilled art**" based on unquantifiable experience. **Expert interpretation** is not used out of laziness, but rather because more

precise quantification is not feasible. Society has learned to value artful skills that arise out of professional training and experience. The United States Patent Office, for example, often refers to "one skilled in the particular art" out of which an invention arises. Courts can accept expert interpretation or artful skilled opinions in appropriate cases.

UNCERTAINTY AND JUNK SCIENCE

Scientifically irreducible uncertainty can create the opportunity for forensic "junk science" disguised as "expert interpretation" or "skilled art" that feeds and exploits community fears. A regulatory tool for detecting such junk science is the adoption and enforcement of regulations that explicitly require expert scientific reports to adhere to well-recognized standards for peer-reviewed scientific results, such as in scientific journals. Experts can be required to segregate and label "hard" science that is based upon scientifically quantified and calculated results versus "unproven hypotheses", "unfounded interpretation," and "speculation" that extend beyond the hard science and are presented as being based upon unqualified expert experience or intuition. A principal vehicle of junk science is a purportedly expert interpretive opinion, rendered in an area of irreducible scientific uncertainty. This happens precisely because charlatans know that there is no feasible scientific way to prove or disprove such an interpretive opinion in the face of irreducible uncertainty. Often such junk interpretations are buttressed with pseudo-scientific numerical calculations that disregard scientific rules limiting the calculations to scientifically significant digits based on

scientifically quantified measurements. There is little regulatory defense against junk opinions if the regulations do not contain enforceable standards for expert reports.

UNCERTAINTY AND RISK

Situations where individual outcomes are unpredictable still may yield to statistical probability on a group or class basis. This is the principle on which insurance is founded. However, events of low probability still may have seriously damaging and even catastrophic outcomes; low statistical probabilities of occurrence cannot guarantee freedom from such outcomes.

Where uncertainty is irreducible, the allocation of the burden of proof determines which party bears the irreducible risk. Where uncertainty is irreducible and the potential outcome is damaging or even catastrophic, the party that is allocated the burden of proof must act as insurer or bearer of last resort of the damaging outcome. This allocation of ultimate risk is a matter of public policy and in the absence of appropriate legislation, this public policy is evaluated by the judiciary. In *Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003* the U.S .Supreme Court evaluated this issue according to the rules of common law nuisance and in *Monks the California* court followed *Lucas*.

Common law jurisprudence characterized irreducible risks of catastrophic outcomes as "acts of God" for which no one was responsible. This concept was codified in the I872 California Civil Code under the equitable principle, "No man is responsible for what

no man can control" and remains in force. Use of burdens of proof in tort law to shift the burden of scientifically irreducible, uncontrollable risks of catastrophic loss can be inconsistent with the principle that no man is responsible for what no man can control.

UNCERTAINTY AND LANDSLIDES

The City of Rancho Palos Verdes encompasses coastal lands that have experienced massive, seriously damaging, uncontrollable landslides. Landslides are complex phenomena with irreducible uncertainties inherent in the natural causation and dynamics of landslide movement. These uncertainties are known to be aggravated by human conduct, but the relationship is inexact and poorly predictable, just as are the natural landslides themselves. Because there are irreducible, scientific uncertainties in landslide evaluation, there also is often a wide range of geotechnical opinions, some of which may be inconsistent and conflicting. Where the uncertainties of landslides are scientifically irreducible, judicial finders of fact have no principled, logical means of eliminating these uncertainties and thus, have no principled, logical means of determining which of the differing expert opinion is correct. Indeed, because of the uncertainties, all of the expert opinion might be wrong. The judiciary cannot change the fact that the analysis of landslides remains an inexact science.

In constitutional theory, the Legislative Branch of Government exercises constitutional power to protect the community against risks of harm. In the City of Rancho Palos Verdes, the City Council is the legislative branch that has the authority to adopt ordinances which it

finds will mitigate exposure of the community to irreducible risks of serious damage. This leaves open the question as to what class of persons should bear the costs of mitigation or avoidance of such risks. In the case of "total takings" the courts have resorted to the rules of common law nuisance to determine which risks should be borne by private persons and which by governmental entities of behalf of the public as a whole.

Based upon the advice of geotechnical experts, mitigation efforts by the City of Rancho Palos Verdes over decades has abated but not cured or prevented Palos Verdes landslides. In the Portuguese Bend area, the City Council determined that there is an uncertain, scientifically irreducible risk of landslide. The City Council defined boundaries of the area and imposed a moratorium on permits for new construction within that boundary. The moratorium boundaries encompass areas of the ancient and active Portuguese Bend landslide, areas that are currently active, slide-adjacent areas of known movement and slide-adjacent areas that expert geotechnical experts evaluated as at risk. As additional scientific evidence has advanced, the correctness of some of these boundaries has come under challenge.

UNCERTAINTY AND THE FACTOR OF SAFETY

Geoscience experts recognize that the evaluation of unstable slopes and the prediction of landslides is an inexact science because it involves irreducible uncertainties. In an effort to quantify the degree of stability and assess risk, geoengineers have developed methods to assess slope stability. The most common is defined as the "factor of

safety" (FOS). In this measure, values of 1.0 theoretically represent slopes in which the driving force of gravity is balanced by resisting forces within the strata (usually internal friction) and the slope is in balance (not moving but poised to move). Values less than 1.0 theoretically indicate that the slope is unstable and prone to failure (movement). The geotechnical profession recommends a FOS of 1.5, where the resisting forces theoretically are 50% greater than the driving forces, as a reasonable measure of slope stability. It is essentially an effort to define a 50% margin of error. While this value is arbitrary and could be set higher or lower than 50%, the geotechnical profession has reached a consensus based upon broad empirical experience that a 1.5 FOS is a reasonable value and supports its use. This value has been adopted statewide and nationwide as the governmental standard for evaluating whether slopes have a sufficiently high likelihood of stability and correspondingly low risk of failure (sliding) to permit construction.

There are devils in the details when a FOS is determined. Uncertainty necessarily arises in the calculation of a factor of safety due to the irreducible uncertainties in landslides. Scientifically quantified measurements are often unavailable or unfeasible to obtain. Because of these irreducible uncertainties, calculation of the FOS can be done only by use of assumptions or extrapolations about the strength of the subsurface strata and other geological parameters. Due to differing assumptions and differing methods, different experts typically produce a different FOS for the same area. In addition, the calculation of a Factor of Safety on a particular parcel of land involves an unproven assumption that the irreducible

uncertainties in predicting a landslide on that particular parcel are less than the 50% margin of error built into the FOS of 1.5, whereas the true error if known might be much greater than 50%. Therefore, calculations of a Factor of Safety of 1.5 on a particular parcel of land will not constitute genuine "hard" science, but rather will be expert interpretation, which could be either meritorious skilled art or junk science. How is a regulatory agency, or the public, to distinguish which calculations of Factor of Safety merit public trust and which are junk science?

In the *Monks* case, the trial judge was so frustrated by the differing geotechnical opinions that he made a formal finding of fact that the safety of the area was "uncertain". In the court of appeal, the trial court's finding of uncertainty ultimately dictated that the City lost due to failure to discharge the City's assigned burden to prove that the land was in fact unsafe for residential construction. One of the problems with a FOS calculation is that the measure displays a precision that superficially appears conform to scientific calculation standards but often rests upon poorly quantified assumptions or extrapolations of scientific data that have been obtained from interpretations of the subsurface strata. A typical example is the calculation of FOS based on geological cross-sections. Cross-sections illustrate the subsurface geology and are constructed from data derived from the surface geology plus sparse subsurface information typically derived from widely spaced boreholes. The geology between the boreholes is projected or interpolated. Rarely do the preparers of cross-sections specify the assumptions or extrapolations used in construction of such geological cross-sections.

The resulting calculated FOS implies a precision and accuracy that is commonly not justified by the geological data that was collected.

UNCERTAINTY AND ADMINISTRATIVE PROCEDURES

The City Council of the City of Rancho Palos Verdes adopted a procedure whereby land owners within the moratorium area can apply to be released from the moratorium and obtain a building permit by meeting a standard "FOS of 1.5" on their lot and adjacent land. In *Monks* the Court of Appeal refused to accept the FOS of 1.5 as a controlling standard for purposes of assessing whether or not there had been a regulatory "taking" that required compensation to be paid by the City. Thus, the question arises: What administrative procedures can the City employ in the future that will provide reliable geological assessment of the landslide so that the City can continue to control development while avoiding a constitutional "taking" that will obligate the City to compensate landowners?

The allocation of burden of proof for irreducible risks lies outside traditional tort rules (other than common law nuisance) because tort rules allocate risks of loss based upon an evaluation of who is in the better position to minimize risks of loss. In the case of irreducible uncertainty, which no one can control, how does the tort law choose who bears the risk of seriously damaging and catastrophic outcomes?

This issue of scientifically irreducible uncertainty was skirted, but not explicitly recognized in *Monks v. City of RPV (2008) Cal. App. 4th 263.* The court held that while the city's building code requires a FOS of at least 1.5 for residential construction, the code should be

accorded no more weight than the South Carolina statute in the *Lucas* case where U.S. Supreme Court ruled that the common law, not statutory law, is determinative in a "categorical taking" of private land by a government agency for which the U.S.Constitution requires payment of just compensation. Similarly, the *Monks* court ruled, although the record in the trial court contains ample evidence about the FOS, in general and as applied to this particular case, state nuisance law focuses on the actual harm posed by plaintiff's intended use of the property, **not scientific labels that merely reflect the uncertainties of the situation**. The *Monks* court ruled that the risk of property damage and personal injury is not sufficient in any practical sense to justify applying the City's landslide area moratorium to the plaintiffs' 16 lots. While the appellate court did not question the use or importance of FOS in assessing whether the land was suitable for residential construction, given the differing and sometimes conflicting views of numerous written reports and several witnesses, the trial court could not make a definitive finding on the safety factor, ultimately deciding that the stability of Zone 2 was **uncertain** . That finding, the appellate court ruled, is simply not adequate to satisfy the City's burden of proof under *Lucas* and state nuisance laws.

In *San Diego Gas & Electric Co. v. Superior Court, (1996) 13 Cal. 4th 893*, the plaintiffs contended that high voltage power line electric and magnetic fields threatened physical harm. The California Supreme Court ruled that the evidence did not support a scientific determination one way or the other on the question whether the fields presented a substantial risk of harm. Even if there were a "reasonable substantial fear" based upon scientific evidence, it

appears that the Court still would balance the "social utility" of the planned conduct against "substantial fear" of physical harm. The Court overrides even a reasonable substantial fear where the social utility of the planned action "outweighs" the feared harm. If the Court concludes that the social utility of the planned action outweighs the feared harm, then the court does not even inquire whether the fear is "reasonable". This is fairly typical of the way in which judges and lawyers, the vast majority of whom are not trained in science, create rules to decide lawsuits without having a deep understanding of the relevant science. Perhaps the most frequently used rules in these situation are rules allocating burden of proof such as, for example, the allocation to the City of Rancho Palos Verdes the burden of proving a public nuisance in the *Monks* case.

Where there is an irreducible uncertainty in measuring the risk of landslides and an inability to predict them, why should the Judicial Branch of Government prohibit the Legislative Branch from adopting and enforcing safety, health and welfare regulations such as in the Moratorium? The answer, evidently, is a policy decision by the judiciary that the burden of risk mitigation or avoidance should be placed on the public by the payment of "just compensation" where the public is the beneficiary of the decision. Based upon the *Monks* decision, it seems likely that California appellate courts will evaluate the nature of the potential harm (e.g., whether it is merely inconvenient or is reasonably and feasibly reparable, on the one hand, versus unreasonably damaging or catastrophic, on the other hand). The Court then will balance that harm against the "social

utility" of proposed conduct, such as a building of residences on the sixteen, in-fill lots in *Monks*.

CONCLUSION

Does the constitutional prohibition against Government taking private property without just compensation override the Legislature's exercise of constitutional Police Power to adopt a regulatory standard to mitigate irreducible risks of landslides? The answer apparently is: sometimes yes, sometimes no. This is because the Court balances the potential harm against the social utility of the conduct that engenders the risk of harm. It seems likely that a substantial, scientifically reasonable fear of an unreasonably damaging or catastrophic landslide would justify a prohibition on building construction. Slow creep that poses little risk to personal injury and causes only slowly progressive structural damage within a landowner's own parcel, and that reasonably can be accommodated by repairs, is not sufficient reason to prohibit construction on that parcel even though the new improvement may require a high frequency of repairs. This leaves open the question whether slow creep that would cause widespread progressive structural damage within multiple parcels of a proposed new subdivision of raw land would justify non-compensable denial of a subdivision development permit, given the community-wide concern in preventing a development that likely would turn into a blighted neighborhood or create damaged structures and constitute a public nuisance. If so, then it would be incumbent upon the administrative agency to identity and permit other economical viable uses for the restricted raw land,

including re-zoning or conditional use permits to allow such economically viable uses.

The critical question is where to draw the line. So far, the courts seem to address this on a case by case basis, sometimes treating reasonableness as a question of fact in each case, and refuse to be bound by legislated governmental regulations that draw hard and fast lines, such as the 1.5 FOS. The best route to effective regulation that minimizes the risk that a court will find a compensable, constitutional "taking" is adoption of regulatory standards that require at least the following:

a) high quality "hard" scientific data and explicit acknowledgment of scientific uncertainties,

b) analysis of expert opinions in the administrative record to identify and isolate "interpretive" opinions rendered in areas of irreducible uncertainties,

c) explicit analysis of identified uncertainties in written findings of fact, and

d) explicit identification of alternative economic uses for which development permissions can be granted.

4. HOW SCIENCE RELATES TO NUISANCE LAW

Lowell R. Wedemeyer, BS, JD. July 21, 2009 [13]

NUISANCE DEFINED. Nuisance is defined by a California statute as follows:

[13] With acknowledgment of contributions by Robert G. Douglas, Ph. D.

> Anything which is ***injurious to health***, including, but not limited to, the illegal sale of controlled substances, or is indecent or ***offensive to the senses***, or ***an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property***, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, ***is a nuisance***. Civil Code § 3479. (The portions in ***bold italics*** potentially apply to land use.)

This, essentially, is a codification of the common law nuisance principles that were created by English judges and were generally used in the American Colonies at the time the U.S. Constitution was adopted. California adopted "common law," including nuisance law, by statute in 1872, shortly after California was granted statehood.

The law distinguishes between a "public" nuisance which affects a community, neighborhood or other large number of persons and a "private" nuisance which affects only a small number of persons. Civil Code §§ 3280, 3281.

Not every injurious, offensive or obstructive condition is a nuisance, but only those that are ***unreasonable***; everyone must put up with some reasonable intrusions, else no one ever could do anything without being a nuisance to someone.

Local community standards determine what is reasonable or unreasonable. As examples, odors of swine manure, or barking sheep dogs, are reasonable in a farming area, but unreasonable in a high density residential neighborhood. These community standards

can be set by legislative enactment, or by judicial interpretation, or, in particular cases, by jury verdict.

D.1. STANDARDS REQUIRING OBJECTIVE SCIENTIFIC EVIDENCE TO PROVE NUISANCE

Community standards, not science, determine what is a nuisance.

However, science can provide the capability to objectively measure a condition. Government then can set objective, measurable standards for what does and does not constitute a nuisance. Scientific measurements thereafter can be made in particular cases to determine whether the legislatively adopted standard has been exceeded.

For example, sound can be scientifically measured in decibels and light in lumens. These scientific capabilities enable legislative adoption of maximum limits stated in decibels and lumens, beyond which sound or light is a nuisance. Sound and light then can be scientifically measured in particular cases to see whether the legislated standards have been exceeded.

A scientific standard or measurement is not always necessary to find a nuisance. A gross stench can readily and sufficiently be identified as offensive by sense of smell. Deafening sounds can be readily designated a nuisance. Chlorine in water can be a helpful disinfectant, or can be a health hazard, depending upon the concentration. Science, however, can make much more discriminating decisions possible in close cases. Grossly excessive

chlorine concentrations can readily be smelled without scientific tests, but concentration can be scientifically measured with much greater precision.

Science can be essential to prove the existence of a nuisance where human senses are incapable of detecting a condition. For example, there is no doubt that excessive ionizing radiation is "injurious to health" so as to constitute a nuisance, but such radiation can only be detected by use of scientific instruments.

D.2. HARD CASES: WHERE SCIENCE CAN NEITHER PROVE OR DISPROVE THE FEARED HARM.

There are situations where a fear of harm exists, but there is great uncertainty whether the fear is justified and neither human senses nor scientific measurements can clearly resolve the issue. We call such a situation a "scientifically irreducible uncertainty." That is, the uncertainty that cannot be further reduced by science, and, of course, also will not yield to human senses.

For example, some people fear that electromagnetic fields from high voltage power transmission lines may cause cancer. Such high-voltage electromagnetic fields can be detected scientifically, though generally not by human senses. However, medical science so far has been unable to either confirm or negate the fear that such scientifically detectable fields cause adverse health effects. This scientifically irreducible uncertainty whether such high-voltage electromagnetic fields are harmful, and thus legally are a nuisance, actually reached the California Supreme Court in *San Diego Gas & Electric Co. v. Superior Court, (1996) 13 Cal. 4th 893.* Because

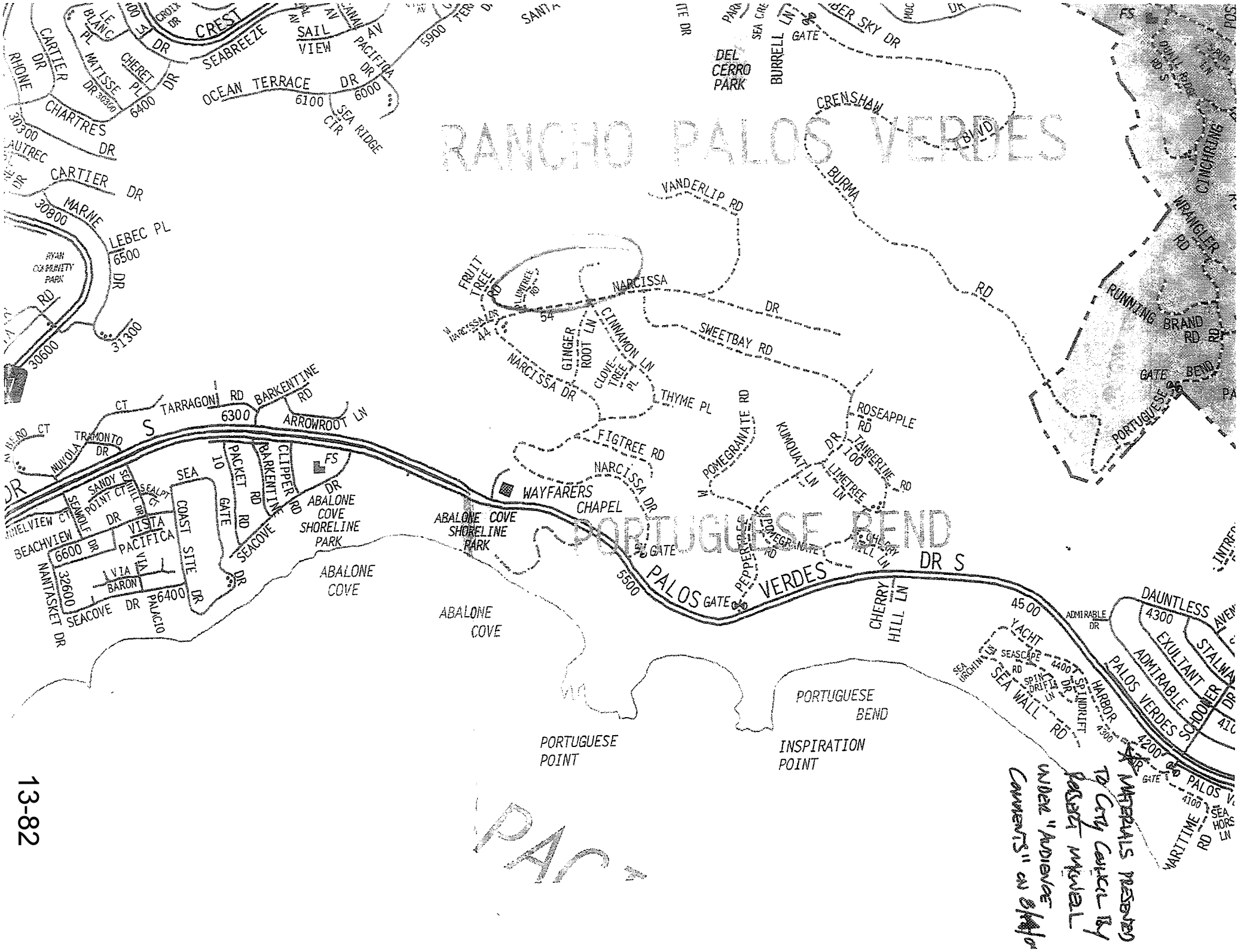
neither human senses nor scientific measurements could resolve the question, the California Supreme Court "balanced" the social utility of electric power transmission against the scientifically unprovable fear of cancer. The Court ruled that the individual plaintiffs had the burden to prove that the power lines created a nuisance, but had failed to carry their burden of proof. Ultimately, the social utility of electric power outweighed the individual plaintiffs' fear where the fear could neither be scientifically proved nor disproved.

D.3. LANDSLIDE PREDICTION INVOLVES SCIENTIFICALLY IRRDUCIBLE UNCERTAINTIES.

In the more extreme situations, of course, both human senses and scientific measurements may readily agree that a landslide is in progress, or conversely that there is no significant risk of landslide. In such easy cases the obviously high or insignificant landslide risk is sufficient for a court to rule based upon human senses when uncontradicted, or even unaided, by the science. In other cases, the geoscience may be conclusive, even if it contradicts human intuition.

In some instances, neither human senses nor scientific measurements are sufficient to reliably predict both whether a landslide will occur. *Monks v. City of Rancho Palos Verdes* may be such a case, though the extent to which the uncertainty was in fact scientifically irreducible is not entirely clear. This is because the City's ordinance did not require that geotechnical reports explicitly disclose scientific uncertainties in the factor-of-safety calculations. As explained elsewhere, it is of critical importance to explicitly verify the extent to which the scientific uncertainties genuinely are irreducible.

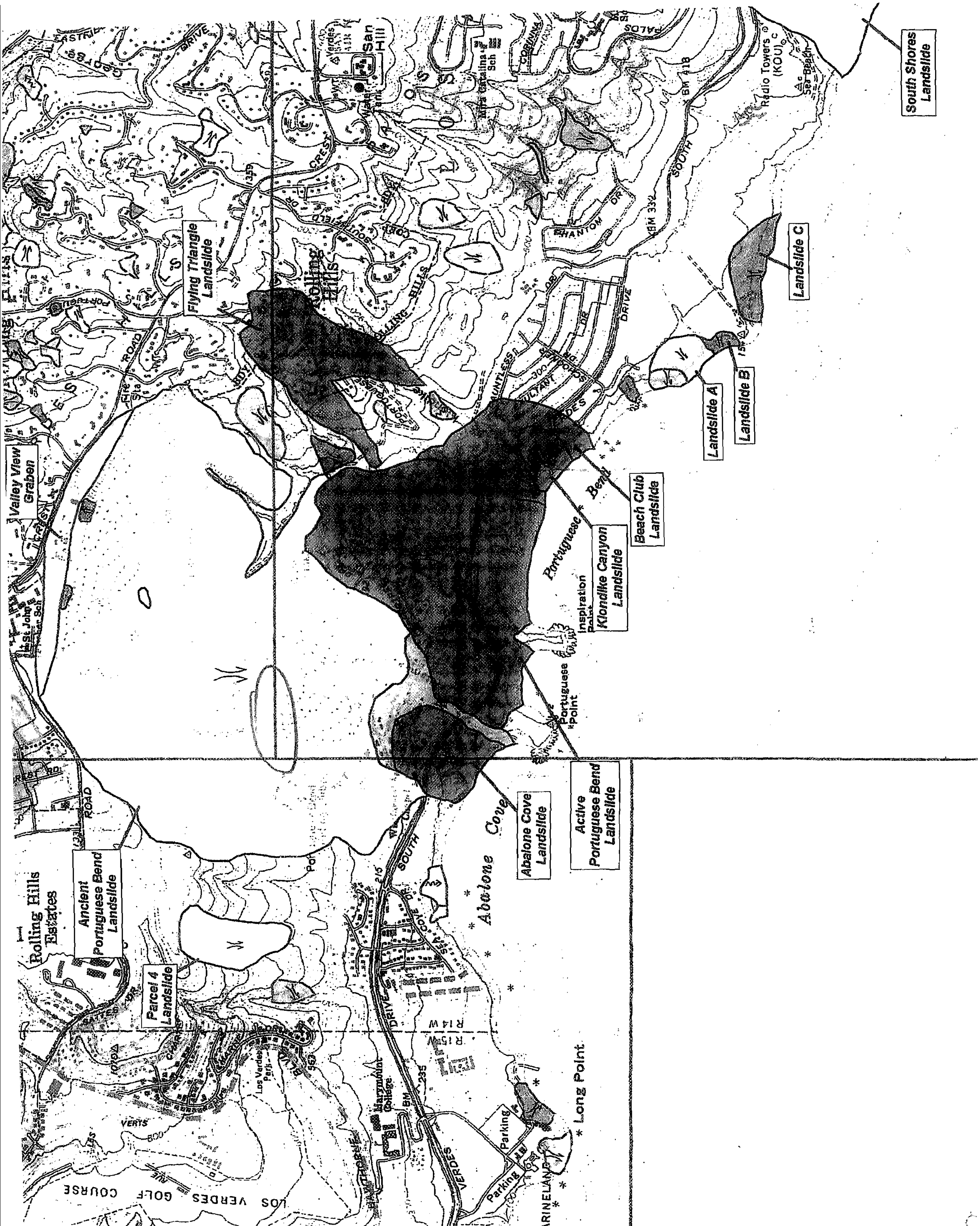
This is essential both to isolate junk science and also to avoid reliance on scientifically unjustified numerical results.



All materials presented to City Council by resident included under "Audience Comments" on 8/16/22

13-82

U = Undeveloped Lot
M = Market Plaza/Mall Lot


South Shores Landslide
Landslide C
Landslide B
Landslide A
Beach Club Landslide
Klondike Canyon Landslide
Active Portuguese Bend Landslide
Abalone Cove Landslide
Flying Triangle Landslide
Valley View Graben
Ancient Portuguese Bend Landslide
Parcel 4 Landslide
Rolling Hills Estates
Rolling Hills
Portuguese Bend
Inspiration Point
Portuguese Point
Abalone Cove
Long Point
MARINELAND
LOS VERDES GOLF COURSE
Marymount College
Radio Towers (KOU)
Sea Beach
San Hill

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Monks ruling reversed, city to head back to court

By Ashley Ratcliff
Peninsula News

RPV — While a trial court sided with the city of Rancho Palos Verdes last year in a four-month courtroom battle that tested the merits of the city's decades-old landslide moratorium ordinance, the tables have turned as a decision reached last week affirms the plaintiffs' stance.

A three-judge panel of the California Court of Appeal's Second Appellate District on Oct. 1 ruled that RPV's regulations that "prevent landowners from developing their property constitute an unconstitutional taking of property requiring compensation," wrote Stuart Miller of Stuart Miller Law Offices and Scott Wellman of Wellman & Warren LLP in a news release. As a result, the attorneys said, the city therefore must either allow development or buy the property at fair market value.

The two Laguna Hills-based attorneys represented 15 plaintiffs who own 16 roughly 1-acre, residential-zoned vacant lots in Monks v. City of Rancho Palos Verdes. The property owners sought to take advantage of their panoramic ocean views and construct single-family homes, but the city's landslide moratorium stands in the way.

"The Court of Appeal said we've been denied all economic use of the property. Once that happens, the city has to prove that our proposed use is so dangerous that it's a public nuisance, that it's actually unreasonably dangerous. The city just did not prove that," Miller told the *News* on Monday.

More specifically, the text of the 49-page opinion said the city failed to meet its "burden of justifying" the landslide moratorium, and did not provide evidence showing that personal injury or property damage would occur, aside from "damage to the plaintiffs' desired homes in the distant future."

Said RPV Mayor Doug Stern on Tuesday, "The court really seemed to reject the factual determinations that had been made at the trial … In a nutshell, [it] seems to be saying, so long as the risk, the harm, is not likely to be an immediate cataclysmic risk to life or limb — but only something that will cause damage over time to the homes, which can be repaired — that we basically can't prevent people from building, if it's that slow kind of damage."

The Court of Appeal's decision reverses a ruling by Judge Cary Nishimoto that determined the city was justified in adding restrictions to its landslide moratorium that require would-be developers of homes in the Portuguese Bend slide area to prove that the property meets the 1.5 factor of safety standard.

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RULING

From Page 1

Nishimoto presided over the hearing that waged from Nov. 20, 2006, to March 28, 2007.

"Any city obviously needs to be careful about development in an ancient landslide area," Nishimoto wrote. "It is only common sense that any city in today's milieu would desire to avoid undisciplined development of lots that do not meet [illegible] logic and geotechnical standards of safety, to avoid even minimal land failure and the anticipated flood of litigation that would follow."

Some of the plaintiffs have waited for more than 30 years to develop their land, Miller said.

"This decision represents a huge victory for property owners throughout California," Miller and Wellman wrote in an Oct. 2 release. "Cities often impose unreasonable restrictions on building under pretexts, such as preserving open space. This case demonstrates that California courts protect the constitutional rights of property owners and that cities may not impose unreasonable restrictions on land use."

This is the third time the plaintiffs have succeeded on an appeal in the Monks litigation, the attorneys said.

But it's not over yet.

The City Council held a closed session meeting on Tuesday and unanimously directed City Attorney Carol Lynch to file a petition for rehearing before the California Court of Appeal, as well as a hearing before the California Supreme Court, Stern said on Wednesday.

"Obviously, we have no idea what any of those courts are going to do until they've ruled on our papers," he said.

"Is this a big deal to our city? Yes, it's a very big deal. Should our residents pay attention? Yes … It's not over," Stern added. "The implications of this are significant. What's going to happen is, it's still an open book, but if someone wants to stick their head in the sand and expect everything to be wonderful, they're sorely mistaken. The residents really need to pay attention to this issue."

Chain of events ending in court

In August 1957, the ancient Portuguese Bend landslide began to move; between January 1974 and March 1976, Abalone Cove landslide — south and southwest of the plaintiffs' lots — began to move. Both remain active, according to the Court of Appeal document.

In 1978, RPV officials imposed a "temporary" moratorium in the city's landslide-prone Portuguese Bend area.

Former RPV City Geologist Perry Ehlig divided the moratorium area into eight geologic areas and considered zones 1, 2 and 3 "completely stable," Miller said. All of the plaintiffs have land in Zone 2, which consists of 111 lots — 64 with homes and 47 that remain undeveloped.

According to Miller, the last time land moved in that area was some 120,000 years ago — "when Homo sapiens first appeared on Earth."

As detailed in the Court of Appeal's recent opinion, the RPV City Council eventually established a process allowing the owners of undeveloped lots to seek an exclusion from the moratorium. The city's municipal code states that to be exempt, the landowner had to show that the proposed residence would "not aggravate any existing geologic conditions in the area."

According to Joel Rojas, RPV director of planning, building and code enforcement, property owners can rebuild their home throughout the moratorium zones if it's damaged or needs repairs,

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Court overturns landslide ruling

RPV: Property owner says ban had taken away the right to build, even if building was unlikely.

By Nick Green
Staff Writer

Rancho Palos Verdes property owners have the right to build on their land even if the ground is moving, a state appellate court has ruled.

The ruling overturned a Torrance Superior Court decision that upheld the city's 30-year-old landslide moratorium ordinance. That law banned new construction in areas considered unstable.

"The city failed to meet its burden of justifying the moratorium," Presiding Judge Robert Mallano wrote on behalf of the 2nd District Court of Appeals. "A permanent ban on home construction cannot be based on a fear of personal injury or significant property damage."

And that ban based on the moratorium amounts to an unconstitutional "taking" of someone's property, the panel said.

Rolling Hills Estates resident John Monks, who challenged the moratorium in the lawsuit that bears his name along with 14 other owners of vacant lots, said the ruling means property owners don't lose their development rights based "on something that would in all probability never occur."

"You start off with the owner having use of their land and if you want to take that use away from them as the city did, you've got to have more than just a suspicion at some point that it's unstable," he said.

Not surprisingly, Mayor Doug Stern — an attorney — offered an opposite interpretation of the decision.

"Taken to its logical extreme, this may to a very large degree eliminate the ability of a city to protect people and property in landslide situations like this," he said.

"This particular justice basically felt, 'Look, if their homes get damaged they can repair them'

MONKS/A14

MONKS

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and therefore he didn't see it as a significant enough risk," Stern added.

The net effect in the city is that the moratorium is essentially eviscerated.

It was a fear of "significant property damage" to surrounding homes that prompted the moratorium in the first place.

Ever since the reactivation of the Portuguese Bend landslide in the mid 1950s, which destroyed scores of homes and prompted a massive lawsuit, policymakers have tread gingerly when it comes to land-use decisions on the landslide-pocked Palos Verdes Peninsula.

The moratorium was widely supported by owners of homes in the area who feared new development could trigger an acceleration in the barely moving landslide.

But Stern and Councilman Tom Long — an attorney who specializes in insurance law — said the ruling could have even broader implications.

For instance, the state bans construction atop earthquake faults, while government agencies have stopped new construction in flood plains, Long said. Presumably, those construction bans are unconstitutional if "a permanent ban on home construction cannot be based on a fear of personal injury or significant property damage."

"What struck me as fascinating is that at the end of the day the court appears to be holding that it is unreasonable for a city to prevent building on land that is either moving or is otherwise known to be unstable," Long said. "It's holding that if we prevent that building we have engaged in an unconstitutional taking (of property). The policy ramifications for this are enormous."

The lower court judge had written that "it is only common sense that any city in today's milieu would desire to avoid undisciplined development of lots that do not meet traditional and current geologic and geotechnical standards of safety."

The appellate court rejected that "common sense" approach, however.

Mallano instead noted that the trial court held "at best there remains uncertainty with respect to the stability" of the area.

"Uncertainty is not a sufficient basis for depriving a property owner of a home," he wrote. "The city must establish a reasonable probability of significant harm to obtain an injunction (the moratorium) against a nuisance."

The judge also held that the city has given so many exemptions to the moratorium for property owners to rebuild damaged homes in the area that "applying the moratorium to plaintiffs' undamaged lots is equally questionable."

Essentially the judge said the burden of proof does not lie with property owners to show their land is stable, as the city requires, but that the city must show that property owners' construction is a threat.

"If they really thought it wasn't safe, they wouldn't let other people build or add on," Monks said. "Their treatment has been inconsistent with fairness and cast doubt on their suspicion the land might not be perfectly safe."

It's unclear what the end result of the ruling will be — and Long said it's unclear whether the judge who made the ruling knows.

"I'm not sure they've figured out what the remedy is — they've thrown it back at the trial court and said, 'You figure it out,'" Long said. "I think we have to issue building permits to people with land that is moving, which strikes me as a little unusual."

nick.green@dailybreeze.com

Geologic findings compel city to rethink landslide policy

By Ashley Ratcliff
Peninsula News

RPV — A report submitted by Zeiser Kling Consultants Inc. last week to the city of Rancho Palos Verdes answered some important questions about the current state of its landslide dilemma.

The Portuguese Bend landslide — the most active slide on the Peninsula — first moved during a wet winter in 1956, when 130 homes were demolished. Abalone Cove and Klondike Canyon are the other landslides that RPV pays close attention to, prompting the city to establish a landslide moratorium in 1978.

"Generally, the entire area of the Portuguese Bend landslide has a much higher risk associated with it than does the developed areas of the Abalone Cove or Klondike Canyon landslide areas. This does not imply that there is no risk associated with living on or developing within the Abalone Cove or Klondike Canyon landslides," the Zeiser Kling report said.

The consultants said based on their prior review of data, there is a direct relationship between movement of the Portuguese Bend and Klondike Canyon landslides.

"If the Portuguese Bend landslide experiences a significant level of movement, either over time or in a catastrophic episode, support for the western flank of the Klondike Canyon landslide could be lost and the Klondike Canyon landslide could be subject to potentially catastrophic movement," the report said.

Zeiser Kling's professional opinion is that the blue (Klondike Canyon) and red (Portuguese Bend and Abalone Cove) landslide areas should be "treated the same from a code standpoint."

On Thursday, Scott Kerwin and Mark McLarty of AMEC Earth & Environmental Inc. and Glenn Tofani of GeoKinetics Inc. submitted their peer review panel assessment to the city that agreed with Zeiser Kling's conclusions.

"The currently available information does not support a distinction between the seaward ('red area') and landward ('blue area') portions of the Klondike Canyon landslide, particularly for those areas in

See LANDSLIDE, Page 3

blue zones.

The City Council will take action on the matter at its June 5 meeting.

In November 2005, council adopted an urgency ordinance that established a 60-day moratorium preventing the issuance of certain permits and the processing of planning approvals in the red and blue landslide areas.

It was extended several times, and Rojas said the current temporary ordinance is set to expire on June 22.

RPV's landslide moratorium was met with frustration from a number of residents throughout the years, the most notable of which ended in the courtroom battle of Monks v. the city of Rancho Palos Verdes last month. The ruling determined that the city was justified in adding restrictions to its landslide moratorium that require would-be developers of homes in the Portuguese Bend slide area to prove that the square-footage limitations.

According to the peer review panel assessment, "The available data and observations also suggest that the blue area is experiencing long-term creep and episodic acceleration of ground movement that are associated with periods of intense and prolonged rainfall. Infiltration from the blue area is also likely to adversely impact the stability of the nearby portion of the red area, which is immediately downgradient."

While the city of RPV examines its problem areas, the California Geological Survey's study released on May 25 reported that there are 175 landslides of different types on the Palos Verdes Peninsula, and 49 of them are active.

Active movement of the Portuguese Bend landslide affects about 80 acres, and one section has moved more than 600 feet since 1956, the CGS report said.

LANDSLIDE

From Page 1

close proximity to observed surface deformation," the peer panel report said.

Joel Rojas, director of planning, building and code enforcement, said findings in both reports prompted the city to take another look at its landslide policies.

"We're recommending that the council adopt another ordinance that essentially repeals the previous urgency ordinances, meaning that the temporary moratorium end, and instead amend the moratorium ordinance itself to implement the recommendations of [Zeiser Kling]," he said.

In other words, RPV will consider continuing to prohibit new development on vacant land, continue to allow minor projects and additions on existing homes, and make the rules the same for the red and

property meets the 1.5 factor of safety standard.

The Zeiser Kling report, penned by Principal Engineering Geologist Jim Lancaster and Principal Geotechnical Engineer Matthew Rogers, also revealed that "from a purely geologic perspective ... development within areas of landslide hazards is unwise at any time unless the landslide instability can be mitigated to a level consistent with at least a minimum code and standards practice as exercised within the professional geologic and geotechnical community."

The city's regulations stipulate that in the red area, residents can't develop new houses on a vacant lot or install swimming pools, but are allowed additions of up to 600 square feet. In the blue area, residents can build on vacant lots; however, Rojas said there aren't any more in the city. Additions are permitted there without

CGS, a division of the California Department of Conservation, categorizes landslides in three ways: active/historic, with very recent movement; dormant or "observed landforms related to landslides subdued by erosion and covered by vegetation" with no recent movement; and dormant-old, in which "observed landforms related to the landslide" are greatly eroded.

Rolling Hills and Rolling Hills Estates are encompassed by a number of dormant and dormant-old landslides, while Palos Verdes Estates has an active landslide around Bluff Cove; the city otherwise has dormant and dormant-old slides, such as in the Agua Amarga Canyon region.

"Small- to medium-sized landslides are scattered across the Palos Verdes Peninsula, primarily occurring as rock slides and falls along steep-sided drainages and sea cliffs," the

CGS report said.

"The largest and highest lensity of mapped landslides" on the Hill include the 'destructive" Portuguese Bend, Abalone Cove, Flying Triangle, Klondike Canyon, Beach Club, South Shores and Point Fermin landslides.

Tim McCrink, CGS senior ngineering geologist, said the eismic hazard zones that the roup identified on the Hill are rone to earthquake-triggered andslides.

"In terms of landsliding otential, because the Palos erdes Peninsula has some historically and currently active arge landslides, it has been the ocus of attention of a lot of ndslide studies by some pretty well-known geologists hrough the years. I don't think 's worse than any areas in the os Angeles region," he said.

McCrink said CGS's landlide inventory maps and eports aim to protect public

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LANDSLIDE

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safety and guide future development on the Peninsula.

"Our perspective is if you know where the problem is before you build on it, you can take actions to mitigate the problems ... It's a much better way to go than to fix a house or a commercial structure that's sitting on a landslide after the landslide starts moving," he said. "Going in with your eyes open is a much better way to deal with the hazard such as a landslide than discovering it after you've built something on it.

"We're not suddenly raising alarms — we're trying to inform people about where these hazards are so that development can account for it rationally," he added.

To view the landslide inventory maps compiled by the California Geological Survey, visit www.consrv.ca.gov/cgs/information/publications/LSIM_SOCAL.htm. Click on the Redondo Beach, Torrance or San Pedro quadrangle maps to see landslides, past and present, on the Peninsula.

City changes landslide policy in accordance with geologists' findings

By Ashley Ratcliff
Peninsula News

RPV — Rancho Palos Verdes' landslide problem, which predates the city's incorporation, was the hot topic of Tuesday night's City Council meeting that resulted in several changes to the current landslide moratorium ordinance.

Mayor Tom Long acknowledged the gravity of council's decision. "The residents who are being affected ... are all the taxpayers in the city who, if we make a bad judgement, the next lawsuit that comes down the pipe is a different outcome than [the] Monks [v. the city of Rancho Palos Verdes decision]," he said. "We need to take the interests of the residents of the city into account [when] making our decision. We need to understand that it's not just those who are here in this room [who are affected]."

After a more than three-hourlong discussion, council voted 4-0 (Councilman Larry Clark was absent) to amend its landslide policy in the following ways:

- Continue to prohibit construction on vacant lots within the landslide moratorium area;

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POLICY

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- Allow a cumulative maximum of 1,200 square feet to additions on a home (including the construction of garages of up to 600 square feet), provided that the geology and soils engineering report and other landslide moratorium regulations are met;
- Apply the same rules to the blue (Klondike Canyon landslide) and red (Abalone Cove and Portuguese Bend landslides) areas, without changing the names of the zones;
- Take out pools and spas from the structures that can be constructed in the blue zone (these structures currently aren't allowed in the red area);
- Require sewer lines to be inspected when any addition or significant alteration to an existing home in the moratorium area is proposed, and require any damaged sewer line to be repaired as a condition of issuing a permit; and
- Direct staff to bring back a recommendation with regard to water-intrusion criteria.

Council's decision came just weeks after Zeiser Kling Consultants Inc. and the city's Peer Review Panel — Scott Kerwin, Mark McLarty and Glenn Tofani — submitted reports to staff that addressed ongoing concerns about the state of landslides in RPV.

Most of council's discussion focused on whether the blue and red zones should have the same rules. Residents who live in the Seaview tract, considered part of the blue zone that was established in 1981, said they shouldn't.

Tim Burrell, a representative of the Seaview Residents Association, said he wanted council to "do the right thing" and apply less strict guidelines to the ordinance with respect to the blue area, which at a quarter-inch-per-year movement has "less risk."

"Nice guys don't come in last," he said. "We have been very cooperative throughout this entire effort ... We're geologically different and we'd like to be treated geologically different ... The essence of the reason why we don't get to be treated differently is, [it may be] theoretically possible that [the Klondike Canyon] slide can cut loose."

However, Burrell said making that assumption is taking a "great big leap of improbability. We're not going to be affected by the hypothesized disaster."

Reading from a 1993 geology report issued by Dr. Perry Ehlig, RPV resident Uday Patel said, "The factor of safety isn't an issue in the Klondike Canyon landslide. The slide is unconventional in that the downhill measure of the slide terminates more than 100 feet below the ground surface."

According to Burrell, the Seaview community experienced a significant reduction in property values as a result of the moratorium conditions. Maintaining a distinction between the red and blue zones could make a difference if residents choose to sell their properties in the future.

> **"We don't have a lot of historical data in the blue area ... The margin of error is sometimes smaller or larger than the variation of data. How are you telling the rest of the neighborhood to pass a law that changes the code without understanding what the details are? Where's the data?"**
>
> — *Mauricio Arregoces*
> *RPV resident*

"Every time we have a hearing like this, all kinds of people start buzzing around, 'Oh, Seaview's got a geology problem' ... We had about a 10- to 15-percent decrease in the values of homes in that first year [the blue area was designated], and almost seven years after that, the number of homes that sold in the blue zone were small ... It does make a financial difference on the values of the neighborhood," he said.

Councilman Douglas Stern said blue zone residents shouldn't be trapped in a situation where they can't moderately expand their homes, but it's not "a wise move" to allow them to essentially build a new home on their existing lots.

"We're trying ... to recognize the overarching concern for needing geological stability as a public safety issue and balance with it the recognition that, like it or not, homes were built without the knowledge of the geological conditions, perhaps," he said. "We are today trying, based on the situation, to accommodate the situation

Kit Fox

From: Kit Fox [kitf@rpv.com]
Sent: Thursday, August 13, 2009 3:05 PM
To: 'A. H. Emon'
Cc: 'joelR@RPV.Com'
Subject: RE: Kit Fox - How about other 31 Undeveloped Lots in Zone 2 of RPV Landslide Moratorium Area?

Dear Mr. Emon:

Thank you for your e-mail. Staff is working on a parallel Code Amendment that will include all 47 undeveloped lots in Zone 2. However, this parallel process will require a more extensive environmental analysis than the process for the 16 *Monks* plaintiffs' lots. We appreciate your patience as we work on these revisions to the City's Landslide Moratorium Ordinance.

Sincerely,

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

From: A. H. Emon [mailto:alif@cox.net]
Sent: Thursday, August 13, 2009 11:20 AM
To: kitf@RPV.Com
Cc: joelR@RPV.Com
Subject: Kit Fox - How about other 31 Undeveloped Lots in Zone 2 of RPV Landslide Moratorium Area?
Importance: High

To: Ms. Kit Fox,
RPV, Associate Planner,

Copy : Mr. Joel Rojas,
RPV Director of Planning, Bldg. & Codes

Dear Ms. Kit Fox,

Hi,

Pleas advise : How about other 31 Undeveloped Lots in Zone 2
of RPV Landslide Moratorium Area?

Mr. Joel Rojas Letter says :
16 Lots are being handled as "Monks Plaintiffs".

I am the owner of one of the other 31 Undeveloped Lots in Zone 2.
I am interested to know of my future for my one Lot?

REQUEST:

Please try to include all of the 47 Undeveloped Lots in Zone 2.
I will appreciate it. Thanks.

Best Regards,

Akhtar H. Emon

6631, El Rodeo Road
Rancho Palos Verdes,
CA 90275
ALIF@Cox.Net

To: The Director of Planning, Building and code Enforcement

8/17/09

Rancho Palos Verdes CA. 90275

Subject: Revised Proposed Mitigated Negative Declaration

(State Clearing House No.2009021050)

As the owner of the parcel identified as Tax ID: 7572-002-024, adjacent to and conterminous with one of the sixteen parcels cited as affected by this action and hence permitted to be developed, I wish to be on record as follows:

1. The adjacent parcel Tax ID: 7572-002-029 created by a lot split on 11/07/89 has been subject to all of the same Zoning and Development Code provisions as my parcel Tax ID 7572-002-024 both prior to and subsequent to the incorporation of Rancho Palos Verdes in 1973.
2. Both properties are a part of Zone 2 and being contiguous have, for all intents and purposes, the same physical and geological qualities.
3. It is, therefore, an absolute breech of logic and, most probably, a breech of the Law to treat them differently.
4. I request therefore that the "exception category" be redefined so as to include my property.
5. I request also that the redefinition be stated such that any parcels created from my property under normal definitions and/or requirements are explicitly included.
6. While the zoning of my 6.9399 acres might imply that 6 or possibly 7 developable parcels could be created, a stipulation not to exceed as few as 4 would be reasonable.
7. I also request that the two letters of comment I submitted Re Planning Case No. ZON2009-00007 be made a part of my response to this proposal.

Signed:

:

Jack Downhill

20 Vanderlip Dr.

Rancho Palos Verdes

RECEIVED

AUG 17 2009

PLANNING, BUILDING AND CODE ENFORCEMENT

Kit Fox

From: Carol W. Lynch [CLynch@rwglaw.com]
Sent: Tuesday, August 18, 2009 10:37 AM
To: David Snow; kitf@rpv.com
Subject: FW: written comments -- revised proposed negative declaration, 10 August 2009 -- Zone 2 of Portuguese Bend

-----Original Message-----
From: Carolynn Petru [mailto:carolynn@rpv.com]
Sent: Tuesday, August 18, 2009 10:33 AM
To: Carol W. Lynch
Subject: FW: written comments -- revised proposed negative declaration, 10 August 2009 -- Zone 2 of Portuguese Bend

Hi Carol –

It doesn't appear that you were copied on this email from Mr. Siegal regarding Zone 2.

CP

From: Siegel, Neil (IS) [mailto:Neil.Siegel@ngc.com]
Sent: Tuesday, August 18, 2009 9:09 AM
To: CC@rpv.com; citymanager@rpv.com; planning@rpv.com
Cc: Siegel, Neil (IS) (Neil.Siegel@ngc.com); Robyn Friend
Subject: written comments -- revised proposed negative declaration, 10 August 2009 -- Zone 2 of Portuguese Bend

18 August 2009

Re: public notice, revised proposed mitigated negative declaration, 10 August 2009

Dear RPV City Council,

I am sure that you are frustrated and distressed about being ordered by a court to approve development, rather than exercising your own control of the process. I, too, would prefer a world in which elected officials make such decisions, but "we are where we are".

I believe, however, that you are about to make a serious mistake. In your original public notice on this matter, you proposed to treat all undeveloped properties within Zone 2 the same, e.g., since you are compelled to allow development of those properties that were a party to the Monks law-suit, you proposed to allow development of ***all undeveloped properties within Zone 2***. In the latest public notice, you propose to allow development ***only*** on the properties party to the Monks law-suit. ***This approach is***, in my view, ***a serious error***, for three reasons:

- **Fairness and equity**. The City has no geological or zoning-management basis for making such a distinction; in fact, the city has ***always*** treated Zone 2 as a single, indivisible entity. To treat the Monks law-suit properties differently than the other undeveloped properties within Zone 2 violates basic notions of fairness, and probably various legal and constitutional mandates for equal protection and equal treatment.

- **Financially unwise**. It seems possible (if not likely) that some of the owners of the undeveloped properties within Zone 2 who were not a party to the Monks law-suit would now sue the city (if the proposed course of action is pursued), following the precedent and arguments of that law-suit, and the arguments of equity mentioned above. It will cost the City a lot of money to defend such suits,

and having lost the Monks law-suit, it seems at least reasonably likely that the City will lose again, and thereby have wasted taxpayer money.

- **Encouraging the wrong sort of civic behavior.** To be blunt, the proposed action would send (again!) the message that the City of Rancho Palos Verdes responds only to law-suits, and that no other form of interaction with the City Council is effective. I believe that this is highly destructive behavior, and the City ought not to take actions that "send such a message" to the public.

Given the combination of the three arguments cited above, I believe that the City Council ought to be gracious to those who did not sue the City, and who have trusted the City Council to be fair and equitable, and therefore **make whatever action they take apply equally to all undeveloped properties within Zone 2**.

Your very truly,

Neil Siegel and Robyn Friend
(neil.siegel@ngc.com, 310-764-3003)

LAW OFFICES
GILCHRIST & RUTTER
PROFESSIONAL CORPORATION

WILSHIRE PALISADES BUILDING
1299 OCEAN AVENUE, SUITE 900
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TELEPHONE (310) 393-4000
FACSIMILE (310) 394-4700
E-MAIL: mburton@gilchristrutter.com

March 3, 2009

Via Personal Delivery

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

Re: Proposed Mitigated Negative Declaration For Zone 2 Landslide Moratorium Ordinance Revisions – City Council Hearing: Tuesday, March 3, 2009

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

We represent Dr. Lewis A. Enstedt, a resident of the City of Rancho Palos Verdes ("City"), and the Portuguese Bend Alliance For Safety, an unincorporated association. We are writing to urge you to reject the Proposed Mitigated Negative Declaration ("Mitigated Negative Declaration" or "MND") for the Zone 2 Landslide Moratorium Ordinance revisions ("Project" or "Landslide Revisions") and instead prepare a full Environmental Impact Report ("EIR"). Failure to prepare a full-blown EIR in connection with the Landslide Revisions will constitute a violation of the California Environmental Quality Act, Cal. Pub. Res. Code §§ 21000, *et seq.* ("CEQA), and its guidelines (14 Cal. Code Regs. §§ 15000, *et seq.* ("CEQA Guidelines"), and will subject the City to costly litigation.

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 Project.

A negative declaration or mitigated negative declaration can be adopted only if there is no substantial evidence that the project may have a significant effect on the environment or 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 affect 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, there is substantial evidence that the Landslide Revisions may result in the development of new residences, which may have a significant effect on the environment that cannot be mitigated. Accordingly, the City cannot adopt the Mitigated Negative Declaration but instead must prepare an EIR.

The Mitigated Negative Declaration repeatedly, and misleadingly, relies on the fact that the Project "could lead to the future development of **up to forty-seven (47) single-family residences** on lots that have remained undeveloped since they were created in the late 1940's" to support the contention that the Project will either have less than significant impacts or that the impacts can be mitigated such that they will be less than significant. (MND, passim.) (Emphasis added.) However, this premise is fundamentally flawed and undermines the MND's analysis and determination that the Project results in less than significant environmental impacts, with mitigation.

First, characterizing the development of 47 new single-family residences as an "insignificant" impact does not accurately represent the scope of the impact on the Project site ("Zone 2" or "Portuguese Bend"). The development of 47 new single-family residences would represent at a minimum **a 73% increase in the number of homes currently situated in Portuguese Bend**. As the Mitigated Negative Declaration states, Zone 2 is a "semi-rural area" that currently only has 64 developed lots, the majority of which are improved with single-family residences. (MND at p. 2). Yet the MND alleges the impacts of these developments would be minimal. For example, the Mitigated Negative Declaration claims that the development of 47 new single-family residences would only represent a two-tenths percent (0.2%) increase in the City's population. (MND at p. 19.) This analysis completely ignores the context of the development's impact. The magnitude of this difference is 365 times the impact on Portuguese Bend than on the City as a whole.

Second, the Mitigated Negative Declaration's reliance on the new development being limited to 47 single-family residences does not take into account the likely subdivision of the 47 undeveloped lots to create even more homes. 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). The Staff Report analyzing the Landslide Revisions ("Staff Report") clearly states that if the Landslide Revisions are adopted "the filing of subdivision maps would be allowed." (Staff Report at p. 4.) Indeed, several residents have already asked the City to address the issue of subdivision in the Landslide Revisions. (Staff Report at p. 10-63, 10-65-68, 10-83.) Nevertheless, the Staff Report improperly dismisses the issue, contending that "[a]lthough it may be appropriate to consider the issue of subdivision...in the future, Staff does not believe that it is necessary or prudent to include this issue as part of the City's current response to the *Monks* decision." However, as subdivision is a reasonably foreseeable consequence of the Project, it is both necessary and prudent to include this issue as part of the environmental review process at this time. The MND not only fails to address the possible impacts such subdivision would have on the environment, it relies on the alleged fact that development would be restricted to only 47 new single-family residences to justify its findings that there will be less than significant impact. (MND, passim.)

Third, the Mitigated Negative Declaration makes the flawed assumption that "[w]hile the cumulative effects of the near-simultaneous development of up to forty-seven (47) [single-family] residences may have significant adverse effects...[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." (MND at p. 23.) CEQA does not recognize the distinction between "concurrent" or "piecemeal" developments but merely whether impacts are "reasonably foreseeable." The assumption that the lots will be developed on a "piecemeal basis over a period of many years," ignores 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. Now that the City is attempting to lift restrictions on development, it is certainly "reasonably foreseeable" that most, if not all, of these lots will undergo construction, whether concurrently or piecemeal, and certainly as soon as feasible. Accordingly, the City must analyze the cumulative impacts of simultaneous, or near-simultaneous, construction. Pub. Res. Code § 21083(b)(2); 14 Cal. Code Regs. § 15065(a)(3). The MND briefly addresses the possibility that the development may occur simultaneously, but dismisses it, alleging that "with the imposition of the recommended mitigation measures, these potential cumulative impacts will be reduced to less-than significant levels." (MND at p. 23) Yet, a review of the mitigation measures contained in the MND reveals that the MND strongly relies on the construction being done piecemeal to justify its findings that the proposed mitigation measures would reduce the environmental impacts to less than significant.

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 foreseeable subsequent developments, may have a significant effect on the environment, which are not mitigated by the measures proposed in the MND. Therefore, an EIR is mandatory. *Id.* Below, we discuss the substantial evidence supporting the finding that an EIR is required and analyze the flaws in the alleged "mitigation" measures proposed in the 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 Mitigated Negative Declaration alleges that, with mitigation, the Landslide Revisions will have less than significant impacts on air quality. However, 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." (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.

The 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) ("*Sundstrom*"). The second measure does not address the possibility of subdivision and environmental effects stemming from the construction of more than 47 new single-family residences.

II. Biological Resources

Although the Mitigated Negative Declaration acknowledges that there are patches of coastal sage scrub ("CSS") habitat identified in Altamira Canyon that traverses several undeveloped lots in Zone 2 and that several of the undeveloped lots in Zone 2 abut the City-owned Portuguese Bend Reserve and the privately owned Filliorum properties, both of which contain substantial and cohesive patches of sensitive CSS habitat (MND at p. 9), it proposes unacceptable and inadequate mitigation measures.

Instead of actually mitigating the impact of the development on the CSS habitat, the MND again essentially requires implementation of mitigation measures to be recommended in a future study. This is an unacceptable mitigation measure. *See Sundstrom*, 202 Cal. App. 3d at 308-09. Specifically, 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." (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 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, the MND 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, 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 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, the MND 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. Additional storm water runoff from the Project could increase silt that could harm the inter-tidal species within this Reserve, yet the MND does not address this potentially significant impact.

III. Geology/Soils

The 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, this was an issue in *Monks v. City of Rancho Palos Verdes*, 167 Cal. App. 4th 263 (2008) ("*Monks*"). Please note however that although the Court of Appeal ruled the City could not impose an ordinance depriving the *Monks* plaintiffs of all economically beneficial use of the sixteen (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 development of 47 or more lots.

Indeed, the evidence suggests that the likely 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. In fact, 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.

Nevertheless, the Mitigated Negative Declaration states that there will be less than significant impacts, with mitigation. However, the MND again 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 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." (MND at p. 11) This is an impermissible attempt to delay the formulation of real mitigation measures to a future date.

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 MND notes, "the entirety of Zone 2 is located within an area that is potentially subject to earthquake-induced landslides." (MND at p. 11.) Indeed, the Mitigated Negative Declaration states "the soils of the Palos Verdes Peninsula are generally known to be expansive and occasionally unstable." (*Id.*) The Mitigated Negative Declaration's proposal that applicants for development submit a "hold-harmless agreement" (*Id.*) does not mitigate the significant environmental effects of development on the geology and soil at the Project site. Rather, it only attempts to mitigate the City's responsibility for damages. This is not a proper subject for an environmental review and is certainly not a proper mitigation measure. If anything, it is evidence that development will have a significant adverse impact on the hillside.

The Mitigated Negative Declaration fails to adequately consider slope stability and possible slope failure during the construction process. The City already has substantial evidence of the possible environmental effects of construction in Zone 2 based on the history of Portuguese Bend. For example, given the history of landslides bordering the Project site, the City has already had to take steps to stabilize the land at the Project site, including, among other things, using "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; MND at p. 12.) This stability can be jeopardized by any new development. In fact, 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 the slide plane and/or be affected by the slide plan and result in significant environmental impacts on the geology and soil in Zone 2.

Furthermore, although the Mitigated Negative Declaration acknowledges 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..." (MND at p. 12), it fails to 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.

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 MND contains absolutely no discussion about the project's impact on these highly sensitive streets, the only access ways to the project. Portuguese Bend residents must repair and rebuild these access roads, which are paid for by the Portuguese Bend Community Association. The addition of 47 new single-family residences or more would increase the burden on the access roads by nearly 75%, yet the MND fails to analyze how this increased usage will affect the geology and soils underlying the access roads.

Lastly, the 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 (see Exhibit A, attached hereto) and which abuts Zone 2 to the south.

IV. Greenhouse Gas Emissions

The MND 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).

V. Hydrology/Water Quality

The Mitigated Negative Declaration states that the Project will have less than significant impacts on hydrology and water quality, with mitigation. However, in evaluating the potential environmental impacts of the Landslide Revisions on hydrology and water quality, the Mitigated

Negative Declaration does not 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." Altamira Canyon has been subject to severe flooding problems caused by storm water runoff, yet the 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 MND.

The 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.

Although the MND acknowledges that development "would alter the topography of the undeveloped lots in Zone 2 and increase the amount of impermeable surface area," it proposes inadequate and unacceptable mitigation measures. (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 "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 MND provides that "[a]ll landscaping irrigation systems shall be part of a water management system approved by the Director of Public Works" (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.

VI. Population/Housing

The 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 0.2% [of the City's population]," based on a projected 47 new single-family residences. (MND at p. 18.) However, as discussed above, this reasoning is flawed in that 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 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 73% increase in population and housing at the Project site. Therefore, the MND needs to evaluate the potential significant environmental impacts of substantial grown in Portuguese Bend.

VII. Transportation/Traffic

The Mitigated Negative Declaration states that the Project will have less than significant impacts on transportation and traffic. Again, this is largely, and mistakenly, premised on the false assumption that there will be no more than 47 new single-family residences and that new construction will be done on a "piecemeal" basis "over a period of many years." (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 MND 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. 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. Yet, the MND wholly fails to address this significant impact.

VIII. Utilities/Service Systems

The Mitigated Negative Declaration states that the Project will have less than significant impacts on utilities and service systems, with mitigation. However, the MND admits "[a]lthough the sewer system EIR indicated the Abalone Cove system could probably support 47 additional

connections, the City's Public Works Department does not have enough data to confirm this assumption at present." (MND at p. 21.) This does not even take into account the fact that the development could well exceed 47 with subdivision. Moreover, the MND again unacceptably defers 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. (MND at p. 21.)

For example, the 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 MND indicates a possible significant environmental impact may exist with regards to the sewer system, yet does nothing more to mitigate it than deferring the problem 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.

Moreover, such a holding tank will itself result in likely environmental impacts, yet the MND doesn't even discuss those impacts.

Additionally, the 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, despite acknowledging that "the City's equipment supplier...has informed the City that their manufacturer no longer recommends the same method of connecting to the system that was used previously...[therefore] system evaluations are needed in order to facilitate [the sewer's] continued safe operation." (MND at p. 22.) 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).

IX. Aesthetics

The Mitigated Negative Declaration contends that the Landslide Revisions will have less than significant impacts on aesthetics, with mitigation. However, the MND fails to consider the short-term construction impacts on Portuguese Bend. Although the Mitigated Negative Declaration admits that the Landslide Revisions could lead to future development, 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.

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 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." (MND at p. 6) This "mitigation" measure does not mitigate the significant visual impact of development at the Project site replacing previously undeveloped open space.

Furthermore, the 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." (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" (MND at p. 2), by 73% or more. The MND fails to account for the significant impact the increased residences would have on the specific Project site; as the CEQA Guidelines provide, "an activity which may not be significant in an urban area may be significant in a rural area." 14 CCR § 15064(b). Lastly, as discussed above, the Mitigated Negative Declaration does not accurately account for the possible number of new developments, which will likely exceed 47 residences after subdivision.

In sum, we urge the City Council to reject the Mitigated Negative Declaration. There is substantial evidence the Project will have significant environmental impacts which are not addressed or are inadequately addressed in the 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 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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cc: Joel Rojas, Director of Planning, Building and Code Enforcement
Carolyn Lehr, City Manager
Carla Morreale, City Clerk
Yen N. Hope, Esq.

Spa, and Outdoor Chimney Barbecue within the Coastal Structure Setback Zone on Property Located at 24 Sea Cove Drive; and, directed staff to return with a resolution to commemorate the Council's decision at the next regular meeting.

Council discussion continued concerning the inability to make the findings necessary to approve the variance; the possibility for the applicant to make an application to redraw the coastal setback line; and, the possibility of the Council's decision to be appealed.

Mayor Clark declared the public hearing closed.

The motion passed on the following roll call vote:

AYES:	Long, Stern, Wolowicz, and Mayor Clark
NOES:	None
ABSENT:	Gardiner

Draft City Budget for Fiscal Year 2009-2010 (602)

This item was continued to the June 16, 2009 City Council meeting.

PAUSE TO CONSIDER THE REMAINDER OF THE AGENDA:

REGULAR NEW BUSINESS:

Recreation Facilities Tactical Goal Update (1201)

Councilman Stern moved, seconded by Mayor Clark, to waive the staff report.

Without objection, Mayor Clark so ordered.

Council and staff discussion ensued on improvements to park sites and alternative funding for the maintenance of certain playing fields.

Mayor Pro Tem Wolowicz moved, seconded by Councilman Long, to receive and file the update on the Recreation Facilities Tactical Goal.

The motion passed on the following roll call vote:

AYES:	Long, Stern, Wolowicz, and Mayor Clark
NOES:	None
ABSENT:	Gardiner

Planning Case No. ZON2009-00007 (Code Amendment and Environmental Assessment): Revisions to the Landslide Moratorium Ordinance (Chapter 15.20 of the Rancho Palos Verdes Municipal Code) to Establish an Exception Category to Allow the Development of Undeveloped Lots in Zone 2 (1801)

Associate Planner Fox provided a PowerPoint presentation and summary staff report on the item.

Council, staff, and speaker discussion included the following topics: the responsibility of the applicants to pay permitting fees; the state law that mandates CEQA requirements; and, how to put a provision in the Code for moratorium exceptions that will allow the individual lots to be developed with the appropriate environmental review for the area.

Councilman Long left the meeting at 10:51 P.M.

Stuart Miller, representing the Monks plaintiffs, addressed the following issues: the belief that the plaintiffs do not have to pay plan check or permitting fees; the development of the individual lots; the payment of fees if the permit is granted; the exemption from CEQA requirements; plans to comply with the City's Building Codes; the focus on the 16 lots which are part of the Monks case; and, the differences between Zones 1, 2, and 3.

Council and staff discussion ensued on the following issues: an EIR that was started in 1997, which was never circulated or certified by the Council; new provisions required by state law as part of an EIR; a certified EIR for Alta Mira Canyon; relevant data that could be used from any existing document for a new EIR; and, the court's opinion on the undeveloped properties in the Zone 2 area.

Councilman Stern moved, seconded by Mayor Clark, to: 1) Receive a status update from staff regarding the revisions to the Landslide Moratorium Ordinance mandated by the *Monks* decision; and, 2) Direct staff to proceed to prepare a Mitigated Negative Declaration for the 16 lots under the *Monks* decision; and to prepare an Environmental Impact Report for the 47 lots in Zone 2, as deemed appropriate by City experts.

The motion passed on the following roll call vote:

AYES:	Stern, Wolowicz, and Mayor Clark
NOES:	None
ABSENT:	Long and Gardiner

One-Year Extension to the Current Five-Year Contract with Los Angeles County for Law Enforcement Services (1206)

Councilman Stern moved, seconded by Mayor Clark, to waive the staff report.

Without objection, Mayor Clark so ordered.

Councilman Stern moved, seconded by Mayor Clark, to: 1) Authorize the Mayor and the City Clerk to execute a one-year extension to the 2004 Five-Year City-County Law Enforcement Services Agreement on behalf of the City; and, 2) Authorize the Mayor to

CITY OF RANCHO PALOS VERDES

MEMORANDUM

TO: HONORABLE MAYOR & CITY COUNCIL MEMBERS

FROM: JOEL ROJAS, AICP, DIRECTOR OF PLANNING, BUILDING AND CODE ENFORCEMENT

DATE: JUNE 2, 2009

SUBJECT: PLANNING CASE NO. ZON2009-00007 (CODE AMENDMENT AND ENVIRONMENTAL ASSESSMENT): REVISIONS TO THE LANDSLIDE MORATORIUM ORDINANCE (CHAPTER 15.20 OF THE RANCHO PALOS VERDES MUNICIPAL CODE) TO ESTABLISH AN EXCEPTION CATEGORY TO ALLOW THE DEVELOPMENT OF UNDEVELOPED LOTS IN ZONE 2

REVIEWED: CAROLYN LEHR, CITY MANAGER

Project Manager: Kit Fox, AICP, Associate Planner

RECOMMENDATION

Receive a status update from Staff regarding the revisions to the Landslide Moratorium Ordinance mandated by the *Monks* decision; and provide direction to Staff as to whether or not the City Council concurs with Staff's recommendation that an Environmental Impact Report should be prepared.

EXECUTIVE SUMMARY

Staff previously prepared a Draft Mitigated Negative Declaration (MND) to assess the environmental effects of the proposed Zone 2 Landslide Moratorium Ordinance Revisions, which would permit the future development of the forty-seven (47) vacant lots in Zone 2. However, based upon public comments and further analysis, Staff now recommends the preparation of an Environmental Impact Report (EIR) for this Code Amendment. Staff seeks the City Council's concurrence on this course of action.

BACKGROUND

At the March 3, 2009, City Council meeting, Staff presented a proposed Code Amendment and Draft MND for revisions to the City's Landslide Moratorium Ordinance in response to the *Monks* decision. Most of the oral and written public comments on the proposal focused on the adequacy and appropriateness of the proposed MND. At the conclusion of the public hearing, the City Council received and filed the Staff report and did not introduce the draft ordinance. At that time, Staff indicated that the MND would be revised, re-noticed and re-circulated for a future City Council meeting. However, upon further analysis and discussions with legal counsel for the *Monks* plaintiffs and the Portuguese Bend Alliance for Safety (PBAS), Staff has concluded that an Environmental Impact Report (EIR) should be prepared for this Code Amendment.

DISCUSSION

As mentioned above, most of the oral and written comments submitted at and prior to the March 3, 2009, City Council meeting challenged the adequacy and appropriateness of the proposed MND. The most thorough dissection of the MND and its perceived inadequacies was contained in correspondence submitted by Martin Burton, Esq. of Gilchrist & Rutter, legal counsel representing PBAS (see attachments). Staff believed (and continues to believe) that the MND could be revised to address the issues of concern raised by PBAS and others. However, as discussed in Mr. Burton's letter, the standard that must be satisfied to demonstrate that an EIR should be prepared for a project is not very difficult to achieve. If substantial evidence is presented that supports a fair argument that a project may have a significant effect on the environment, an EIR must be prepared. This is true even if there also is substantial evidence demonstrating that potential environmental impacts can be mitigated to an insignificant level. Mr. Burton's letter sets forth several factual bases upon which a court could conclude that there is sufficient evidence in the record that would support a fair argument that the development of forty-seven (47) lots could cause a significant environmental impact. Accordingly, it is clear to Staff that if the Council were to approve an MND, that decision would be challenged in court. As such, Staff believes that the most legally defensible course of action is to prepare an EIR for the Zone 2 Landslide Moratorium Ordinance Revisions.

Preparing an EIR analyzing the potential development of the vacant lots in Zone 2 also allows the City Council to consider the impact of the *Monks* decision in making the determination whether to amend the Code to allow development. This is so because the preparation of an EIR would allow the City Council to adopt a Statement of Overriding Considerations. This means that even if a proposed project will cause a significant environmental impact, other overriding considerations may justify approving the project despite its impact upon the environment. Statements of Overriding Considerations may

only be adopted following the preparation of an EIR, and cannot be adopted following the preparation of an MND.

If the City Council concurs with this approach, Staff will prepare and circulate a Request for Proposals (RFP) to obtain the services of a consultant to prepare the EIR. Once an EIR consultant is selected, Staff will bring the consultant's contract back to the City Council for approval, along with a budget adjustment to pay for the cost of preparing the EIR, unless the City Council agrees to incorporate this estimated cost into the City's proposed FY 2009-2010 budget. Staff anticipates that the cost of the EIR will be at least $100,000. Although Staff envisions that, once the Code Amendment is adopted and enacted, the cost of preparing the EIR will eventually be borne by the developers of vacant lots in Zone 2 through the imposition of a development fee to reimburse the City for each lot owner's share of the EIR, the up-front EIR preparation costs will be borne by the City's General Fund. Staff anticipates that it will take roughly two (2) months to select an EIR consultant and approximately a year to prepare the project EIR.

Notwithstanding the foregoing discussion, there is alternative direction that the City Council could provide in this matter, to wit:

1. The City Council could direct Staff to revise, re-notice and re-circulate the MND that was prepared for the March 3, 2009, City Council meeting. The scope of the Code Amendment (i.e., all of the vacant lots in Zone 2) would remain the same as previously proposed. Staff would identify additional mitigation measures to address the environmental effects noted by PBAS and others. The MND would be revised by City Staff, with technical assistance as needed by consultants, and re-circulated for additional public review and comments. This alternative would be less expensive and quicker than the preparation of "full blown" EIR, since Staff estimates that it will take approximately six (6) months to revise and re-circulate the MND. However, this approach will almost certainly be challenged by opponents of the Code Amendment, which will delay the implementation of the Code Amendment and cause the City to spend money on attorney's fees to defend the lawsuit. Staff estimates the City's cost for revising and re-circulating the MND to be roughly $50,000, which may be offset by development fees collected from the owners of vacant lots in Zone 2 in the future. If, as we suspect, the decision to prepare an MND were challenged in court, the City would be required to pay for the cost of defending the case. If the court's decision were adverse to the City, then the City also would be required to prepare and pay for an EIR. In addition, the City could be required to pay the plaintiffs' attorney's fees pursuant to California Code of Civil Procedure Section 1021.5.

2. The City Council could direct Staff to reduce the scope of the Code Amendment to apply only to the *Monks* plaintiffs' sixteen (16) vacant lots. The MND would be

revised, re-noticed and re-circulated. Since the number of potential new homes would be reduced by roughly two-thirds as compared to the current proposal, the significance of the environmental effects of the reduced proposal would be expected to be proportionately less as well. Nevertheless, the "fair argument" standard discussed above still would apply. Staff still would need to identify any additional mitigation measures necessary to address the environmental effects noted by PBAS and others. The reduced-scope MND would be revised by City Staff, with technical assistance as needed by consultants, and re-circulated for additional public review and comments. This alternative would also be less expensive and quicker than the preparation of "full blown" EIR, since Staff estimates that it will take approximately six (6) months to revise and re-circulate the MND. Although the need for consultant assistance will be minimized in this case, Staff will assume the burden of preparing the revised MND, which is estimated to take roughly eighty (80) Staff hours. This alternative probably faces the same legal challenges from the opponents of the current Code Amendment, 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. Accordingly, Staff is not recommending this alternative.

3. As discussed in the March 3, 2009, Staff report, Staff suggests that the "next step" after the revisions affecting Zone 2 are enacted would be to convene a technical panel of geologists and geotechnical engineers to assess the impact of the *Monks* decision on the greater Landslide Moratorium Area. Possible outcomes of such a review might include (but not be limited to) repealing the entire Landslide Moratorium Ordinance and establishing criteria that would allow for safe development within each geologic area; or refining the boundaries of the "undevelopable area" under the Landslide Moratorium Ordinance to include only those areas where there is a reasonable probability of significant damage or injury to persons or property. Staff expects that implementing the necessary Code Amendment to enact these future outcomes will require the preparation of an EIR. As such, the City Council could direct Staff to expand the scope of the current Code Amendment to include the re-assessment of the entire Landslide Moratorium Ordinance. Such direction will require the City Council to select the members of review panel, as well as the selection of a consultant to prepare the EIR. This alternative would be more expensive and lengthy than preparing an EIR that is more limited in scope since Staff estimates that it would take at least two (2) years to convene a panel, obtain the panel's recommendations, select an EIR consultant and prepare an EIR. Furthermore, Staff estimates that it would cost at least $100,000 to pay for the review of the technical panel of geologists and geotechnical engineers, and an additional $200,000 to prepare an EIR that reassesses the entire Landslide Moratorium Area, including Zone 2. Staff believes that this would probably be the most comprehensive approach to address the *Monks* decision.

However, because it would include analysis of portions of the Landslide Moratorium Area that have not been studied as extensively as Zone 2 has, as well as areas that are experiencing significant and continuous land movement, the entire process will be far more complex and time-consuming. Counsel for the *Monks* plaintiffs have advised the City Attorney that they are interested in receiving permits to build as soon as possible and would not be willing to wait any longer than absolutely necessary to receive their approvals from the City (in fact, they may wish to proceed to the next stage of the *Monks* case, which is a jury trial to establish the value of the plaintiffs' lots.) Accordingly, Staff is not recommending this alternative.

Considering all of these alternatives, Staff believes that the preparation of an EIR for the proposed Zone 2 Landslide Moratorium Ordinance Revisions for the forty-seven (47) vacant lots in Zone 2 addresses the potential environmental impacts arising from development of the undeveloped lots in Zone 2, and strikes the most equitable balance between the rights and interests of the *Monks* plaintiffs, PBAS and other *Portuguese Bend* residents and property owners, and the general public.

CONCLUSION

In conclusion, Staff seeks the City Council's concurrence to prepare an EIR for the Zone 2 Landslide Moratorium Ordinance Revisions for the forty-seven (47) vacant lots in Zone 2. Failing that, Staff seeks direction from the City Council regarding alternative courses of action.

ADDITIONAL INFORMATION

As discussed above and in the March 3, 2009, Staff report, the "next step" in addressing the *Monks* decision would be to reassess the entire Landslide Moratorium Ordinance. This reassessment would be intended to address (among other things) the development of undeveloped lots in other portions of the Landslide Moratorium Area; the potential subdivision of large parcels that are located within and outside of Zone 2; and any actual or perceived inequities in the treatment of developed versus undeveloped lots throughout the Landslide Moratorium Area. To accomplish this reassessment, Staff envisions assembling a technical panel of geologists and geotechnical engineers to determine whether there is a reasonable probability of significant damage to persons or property if development were allowed in each of the geologic areas that are within the boundaries of the Landslide Moratorium Area, so that development either should be prevented or allowed in each of those geologic areas. As noted above, Staff estimates that it will cost at least $100,000 in consultant costs to pay for this reassessment. This estimate assumes that the technical review panel will review existing geologic records for the area and that no new geologic investigations or borings are necessary. Furthermore, Staff estimates that it will take six (6) to nine (9) months to complete the reassessment.

If the City Council concurs with Staff's recommendation and proceeds with an EIR to analyze the impacts of new development in Zone 2, Staff intends to bring this "next step" item to the City Council for discussion and direction after the selected EIR consultant begins the preparation of the Zone 2 EIR. Staff estimates that this could occur some time in August 2009. Staff estimates that it will cost at least $150,000 to prepare the EIR that would accompany any future Code Amendment that would result from the technical panel's recommendations. As a result, the total cost of this "next step" is estimated to be at least $250,000. This is in addition to the estimated $100,000 cost of the Zone 2 EIR that is being recommended this evening.

ALTERNATIVES

As discussed above, in addition to Staff's recommendation, the following alternatives are available for the City Council's consideration:

1. Direct Staff to prepare a revised MND for the Zone 2 Landslide Moratorium Ordinance Revisions to address the issues that were raised in previous oral and written comments.

2. Direct Staff to reduce the scope of the Zone 2 Landslide Moratorium Ordinance Revisions from all forty-seven (47) vacant lots to just the sixteen (16) *Monks* plaintiffs' lots, and prepare a revised MND for the Zone 2 Landslide Moratorium Ordinance Revisions to address the issues that were raised in previous oral and written comments.

3. Direct Staff to expand the scope of the Landslide Moratorium Ordinance Revisions to encompass a complete re-assessment of the entire ordinance and the boundaries of the Landslide Moratorium Area, and prepare an EIR for this expanded proposal.

FISCAL IMPACT

Staff expects that the preparation of an EIR to allow the development of the forty-seven (47) vacant lots in Zone 2 will cost at least $100,000. Once Staff has identified a consultant to prepare the EIR, Staff will present the EIR contract and a budget adjustment request for the City Council's consideration, unless the City Council agrees to add this estimated expenditure to the proposed FY 2009-2010 budget. Also, based upon discussions with the legal counsel for both the *Monks* plaintiffs and PBAS, Staff anticipates additional litigation over the EIR. The costs of such possible future litigation cannot be reliably estimated at this time, as it would depend upon the causes of action that are set forth in the complaint.

Attachments:

- City Council Minutes (excerpt) of March 3, 2009
- Gilchrist & Rutter letter of March 3, 2009
- City Council Staff report of March 3, 2009
- Additional public correspondence

Without objection, Mayor Clark so ordered.

Mayor Clark declared the public hearing open.

City Clerk Morreale called the speaker and reported that he was no longer present.

Mayor Clark closed the public hearing.

Councilman Stern moved, seconded by Councilman Long, to direct Staff to proceed with the proposed "clean up" zone change for the East Tract 16540 Portuguese Bend Club properties by changing the current zoning of the neighborhood from two separate Single-Family Residential zoning districts (RS-2 and RS-5) to one Single-Family Residential zone (RS-5) to maintain consistency with the City's Local Coastal Specific Plan and existing development.

The motion carried on the following roll call vote:

AYES:	Long, Stern, Wolowicz, and Mayor Clark
NOES:	None
ABSENT:	Gardiner

PAUSE TO CONSIDER THE REMAINDER OF THE AGENDA:

REGULAR NEW BUSINESS:

Second Amendment to the City Manager's Employment Agreement (1101)

City Attorney Lynch provided a brief report regarding the item and the direction provided by the Council in the Closed Session.

Councilman Long moved, seconded by Mayor Pro Tem Wolowicz, to approve the Second Amendment to the City Manager's Employment Agreement, as amended.

The motion carried on the following roll call vote:

AYES:	Long, Stern, Wolowicz, and Mayor Clark
NOES:	None
ABSENT:	Gardiner

Council Members praised the City Manager's performance and reported that the increase in her salary represented their confidence in her continued good service, teamwork with her peers and senior staff, and excellence in facing multiple challenges and providing service to the community.

Planning Case No. ZON2009-00007 (Code Amendment and Environmental Assessment): Revisions to the Landslide Moratorium Ordinance (Chapter 15.20 of

the Rancho Palos Verdes Municipal Code) to Establish an Exception Category to Allow the Development of Undeveloped Lots in Zone 2 (1801)

City Clerk Morreale reported that late correspondence was distributed prior to the meeting regarding this item.

Councilman Long moved, seconded by Mayor Pro Tem Wolowicz, to waive the staff report and go directly to public speakers.

Without objection, Mayor Clark so ordered.

Martin Burton, attorney with Gilchrist and Rutter Professional Corporation, representing resident Dr. Lew Enstedt and the Portuguese Bend Alliance for Safety, spoke about the Monks case, the proposed MND versus an EIR, CEQA regulations, and impacts on the access roads into Zone 2, where the Monks case has decided that undeveloped lots can be developed. He opined that a full-scale analysis with an EIR discussing all impacts on the environment needed to be addressed and would not be overly burdensome.

Yen Hope, attorney representing Dr. Enstedt and the Portuguese Bend Alliance for Safety, urged the Council to reject the plan for a MND and instead prepare a full EIR for the possible development in Zone 2. She stated that it is clear that an EIR should be prepared to address significant impacts on biological resources, geology and soils, transportation and traffic, population, housing, utilities, services, air quality, greenhouse gases, and issues related to Altamira Canyon and runoff into the ocean.

Yogesh Goradia, Rancho Palos Verdes, reported that he owns one of the Zone 2 lots and that the staff report indicated that individual lot owners may be required to pay for geological or geotechnical studies, which he opined was impractical and would not yield satisfactory results. He pointed out the differences between geology and soils studies and suggested that if there was concern, the City should review all of the geological studies that have been done and decide whether homes should be allowed to be built or not, noting that the City could require soils reports for the individual lots.

Lowell Wedemeyer, Rancho Palos Verdes, reported that he lives near the area under discussion and that the residents are very concerned about possible landslides and soil stability. He noted that there was urgency regarding the sixteen Monks plaintiffs' lots as a result of the court order and opined that the City should proceed under the court order and issue permits, but that there should be the establishment of some standards. He reported that there was an effort in the community to develop more precise geological reports with the development of a new standard in place of the 1.5 factor of safety, which would require the Planning Commission to balance all of the harms from the new development against the social utility of the new construction as required by the California and U.S. Supreme Courts. He noted that it was not clear that the boundaries of Zone 2 are properly aligned geologically and opined that a MND cannot sufficiently address the matter, asking for additional time for the community to examine the situation in order to present a plan to the Council.

Lew Enstedt, Rancho Palos Verdes, stated that due to the fragility of the area it would be prudent for the City to study the issue with an EIR before building permits are issued.

Cassie Jones, Rancho Palos Verdes, stated that there will likely be development in the Zone 2 area and expressed concern regarding the access to the area on roads that are unstable, narrow and problematic; grading problems in the area; and difficulties with water pressure and sewers in the region.

Marianne Hunter, Rancho Palos Verdes, stated she was disappointed that the Council had given up on the Portuguese Bend area, and that the Council was not looking for alternatives to deal with the issues they were facing or calling on the Legislative and Resource Agencies that were available.

Bill Hunter, Rancho Palos Verdes, stated that he learned that one appellant court judge could make a decision that property rights weighed more than the needs of a community, noting that carving up sixteen lots in a landslide area was a bad idea. He urged the Council to require an EIR for the properties in the area.

Gary Stokoe, Rancho Palos Verdes, stated that he was disappointed in the City's response to his concerns and supported the request for an EIR.

Gordon Leon, Rancho Palos Verdes, stated that he had summarized his concerns with the MND in an email to the Council and urged the Council to require an EIR for Zone 2. He expressed concern for the many substandard homes in the Zone 1 and Zone 3 and the pent-up remodeling demand for 64 homes which have been restricted from remodeling for over 30 years, none of which was addressed in the MND.

Dan Pinkham, Rancho Palos Verdes, stated that he supported an EIR for the development of properties in the Zone 2 area, including a study regarding access and fire safety in the area.

Joan Kelly, Rancho Palos Verdes, stated that there would be problems in the Zone 2 region and opined that the City should purchase the land in that area. She noted that a Hold Harmless Agreement would not be worth the paper it was written on.

Tim Kelly, Rancho Palos Verdes, stated that there would be a potential for 47 homes to be built in the Zone 2 region in a very short time and noted that a development of this size in the City would normally require major infrastructure improvements and the City would require an EIR to determine the effects of such a large project. He opined that the City needed to review the development of Zone 2 in such a manner that an undue financial burden would not be placed on those who will not gain financially from the development.

Jeromy Davies, Rancho Palos Verdes, stated he lives on a small cul-de-sac immediately adjacent to 30 percent of the future development of the 47 single family residences referred to in the City's environmental checklist form. He supported an EIR for the development, noting that the Portuguese Bend residents want to ensure that

prior to issuance of permits for new residences, the Zone 2 Ordinance revisions address all of the known impacts to the area.

Lynn Petak, Rancho Palos Verdes, expressed concern with the problems regarding the increase of water from all over the hill that flows down Altamira Canyon and threatens to destroy her property.

Council and staff discussion included the following issues: concern with a MND versus an EIR; focus on the methods to study in order to condition the permits and development as thoroughly as possible to mitigate any negative impacts based on evidence as projects are presented for approval; considerable financial expenses to the City and residents due to past and future potential lawsuits; that the reason behind the adoption of the Landslide Moratorium was based on safety; the process that led up to the determination that an EIR was not necessary; the opportunity to review the additional materials and public input received to evaluate if a MND or a focused EIR would be necessary; and, the proactive support of the City and Council Members and financial risk to the City in the Monks court case.

Councilman Stern moved to continue the item.

City Attorney Lynch stated that the item should be re-noticed and MND re-circulated due to additional mitigation measures that staff will add.

Councilman Stern withdrew his motion to continue the item.

Councilman Long moved, seconded by Councilman Stern, to: 1) Receive public comments; and, 2) Receive and file the report.

Without objection, Mayor Clark so ordered.

ITEM REMOVED FROM THE CONSENT CALENDAR:

Mayor's Appointment to the LAX Community Noise Roundtable

City Clerk Morreale reported that this item had been removed from the Consent Calendar by Councilman Long for separate consideration.

Council discussion followed regarding the possibility of advertising the vacancy to accept applications from the public.

Councilman Stern moved, seconded by Mayor Clark, that the City Council designate Beverly Ackerson as the City's resident representative and Senior Administrative Analyst Gary Gyves as the alternate representative to the LAX Community Noise Roundtable for calendar year 2009 with the issue reevaluated next year to determine whether or not to continue the appointments in calendar year 2010.

The motion carried on the following roll call vote:

CITY OF RANCHO PALOS VERDES

MEMORANDUM

TO: HONORABLE MAYOR & CITY COUNCIL MEMBERS

FROM: JOEL ROJAS, AICP, DIRECTOR OF PLANNING, BUILDING AND CODE ENFORCEMENT

DATE: MARCH 3, 2009

SUBJECT: PLANNING CASE NO. ZON2009-00007 (CODE AMENDMENT AND ENVIRONMENTAL ASSESSMENT): REVISIONS TO THE LANDSLIDE MORATORIUM ORDINANCE (CHAPTER 15.20 OF THE RANCHO PALOS VERDES MUNICIPAL CODE) TO ESTABLISH AN EXCEPTION CATEGORY TO ALLOW THE DEVELOPMENT OF UNDEVELOPED LOTS IN ZONE 2

REVIEWED: CAROLYN LEHR, CITY MANAGER

Project Manager: Kit Fox, AICP, Associate Planner

RECOMMENDATION

1) Receive public comments on the proposed Mitigated Negative Declaration;
2) Introduce Ordinance No. ___, revising the City's Landslide Moratorium Ordinance to establish an exception category to allow the development of undeveloped lots in Zone 2;
3) Continue this matter to a date certain on or after March 11, 2009; and,
4) Authorize Staff to create a 5-member technical panel to review the entire Landslide Moratorium Area in light of the *Monks* decision and make recommendations to the City Council regarding future actions that should be taken.

BACKGROUND

On December 17, 2008, the California Supreme Court denied the City's petition for review in the case of *Monks v. City of Rancho Palos Verdes*. Accordingly, the City Council must take the actions that are necessary to comply with the Court of Appeal's decision. As discussed in a previous Staff report, the City has a choice of either purchasing the

plaintiffs' properties (for an amount that is estimated to be between $16 and $32 million) or removing the City's regulations that the Court of Appeal found to be impermissible impediments to development of the plaintiffs' lots.

Since the City does not have sufficient funds in its reserves to purchase the plaintiffs' properties, the first step in the process was the repeal of Resolution No. 2002-43. That resolution required property owners in Landslide Moratorium Area Zone 2 to establish a 1.5:1 factor of safety before they could develop their lots, and was the purported catalyst for the filing of the *Monks* lawsuit. On January 21, 2009, the City Council adopted Resolution No. 2009-06, which repealed Resolution No. 2002-43.

The second step in response to the Court of Appeal's decision is to enact revisions to the current Landslide Moratorium Ordinance to allow the development of undeveloped lots in Zone 2. The *Monks* plaintiffs own sixteen (16) undeveloped lots in the area identified as "Zone 2" in the memorandum of May 26, 1993, by the late Dr. Perry Ehlig, within which a total of forty-seven (47) undeveloped lots have been identified. The revisions proposed by Staff tonight would simply allow the development of the undeveloped lots in Zone 2, but would not alter the Landslide Moratorium Ordinance affecting any other zones or areas and would not allow the subdivision of any of the existing lots.

DISCUSSION

Proposed Ordinance

The proposed revisions to the current Moratorium Ordinance will allow the development of undeveloped lots in Zone 2 by creating a new exception category (i.e., Category 'P'), which is similar to the former Category 'K' for the *Seaview* area (i.e., the "Area Outlined in Blue") in that it allows the development of new residences, accessory structures and minor, non-remedial grading on undeveloped lots. As defined in the Development Code, "minor grading" is limited to less than fifty cubic yards (<50 CY) of combined cut and fill with a maximum depth of less than five feet (<5'-0") on slopes of less than thirty-five percent (<35%) steepness. 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. The proposed language for Section 15.20.040(P) would be as follows:

> *The construction of residential buildings, accessory structures, and minor grading (as defined in Section 17.76.040.B.1 of the Rancho Palos Verdes Municipal Code) in Zone 2 of the "Landslide Moratorium Area" as outlined in green on the landslide moratorium map on file in the Director's office; 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. If the Director of Public Works determines that the sanitary sewer system cannot accommodate the project 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. In such cases, once the sanitary sewer system becomes available to serve the project, as determined by the Director of Public Works, the holding tank system shall be removed, and the project shall be connected to the 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), 15.20.060 (Application) and 15.20.110 (Required Connection to Operational Sanitary Sewer System).

The direct effect of these revisions would be to allow the owners of the forty-seven (47) undeveloped lots in Zone 2 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, property owners would then be allowed to apply for the necessary Planning and Building approvals to build new, permanent structures on 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 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 exception Categories 'B', 'H', 'K' and 'L'.

If adopted, this proposal would extend the results of the *Monks* decision to all of the owners of undeveloped lots in Zone 2. Staff recommends this action because none of the geologists who have analyzed the geology of Zone 2 geology, including Dr. Ehlig and Cotton Shires, have drawn any distinction between the plaintiffs' sixteen (16) lots and the other thirty-one (31) undeveloped lots located within Zone 2. Accordingly, the proposed ordinance and exception category would apply to all of the forty-seven (47) undeveloped lots in Zone 2.

CEQA Compliance

Based upon the scope of the proposed revisions to the Landslide Moratorium Ordinance, Staff determined that the proposed project could have significant impacts upon the environment unless mitigation measures were imposed. Accordingly, a draft Mitigated Negative Declaration (MND) was prepared for the project, and is being circulated in accordance with CEQA. The 30-day public comment period for the MND ends on March 11, 2009. For this reason, Staff is only recommending that the City Council accept public comment on the project and MND at tonight's meeting, with final action to be taken on a future date certain. This will allow time for Staff to prepare any needed response to public comments on the MND prior to its certification by the City Council.

The draft MND identified several potential environmental effects that require mitigation to reduce their impacts to less-than-significant levels. Many of these effects are short-term and construction-related, such as air quality, biological resources, cultural resources, geology, noise and the like. Others are longer-term operational impacts such as aesthetics, hazards, hydrology, utilities and service systems. Staff believes that the recommended mitigation measures will reduce all of the impacts identified to less-than-significant levels.

Public correspondence received in response to the notice for the MND is attached to tonight's report. Subsequent correspondence that is received after the distribution of tonight's agenda packet will be distributed as "Late Correspondence" at tonight's meeting A summary of the issues raised and Staff's responses (as of the date this report was completed) are as follows:

- Gabrieliño-Tongva Nation: The Gabrieliño-Tongva tribal secretary acknowledges receipt of the notice for the MND, and states that the project would have no impact upon known cultural resources of the tribe. It should be noted, however, that Staff recommends the adoption of mitigation measures to ensure that impacts to any unknown subsurface cultural resources will be less than significant.

- Jack Downhill: Mr. Downhill states that he is in favor of the Zone 2 Landslide Moratorium Ordinance Revisions, but asks for them to be expanded to allow the subdivision of developed and undeveloped lots. Mr. Downhill owns a 6.94-acre developed property at 20 Vanderlip Drive. Section 15.20.020 of the Rancho Palos Verdes Municipal Code prohibits the filing of subdivision maps throughout the Landslide Moratorium Area. However, the filing of subdivision map would be allowed pursuant to the approval of a Moratorium Exclusion request. The *Monks* plaintiffs did not raise the issue of subdivision in their claim nor was this an issue addressed in the Court of Appeal's decision. Although it may be appropriate to consider the issue of subdivision within the Landslide Moratorium Area in the future,

Staff does not believe that it is necessary or prudent to include this issue as a part of the City's current response to the *Monks* decision.

- Blair Van Buren, Jeremy Davies & Lew Enstedt: The owners of the developed properties at 34, 36 and 40 Cinnamon Lane raise concerns about the impact of ground-borne vibration on surrounding properties as a result of the grading and recompaction of lots in Zone 2. Although not stated explicitly, Staff presumes that these concerns arose as a result of the on-going redevelopment of the residence at 38 Cinnamon Lane. The letter's authors recommend limiting the weight of grading equipment as a means to address this concern. Staff believes that this may be a reasonable suggestion. It should also be noted that Staff recommends limiting non-remedial grading on undeveloped lots to less than fifty cubic yards (<50 CY).

- Kathy Snell: Ms. Snell, the owner of a 4.03-acre developed property at 8 Vanderlip Drive, raises a number of questions about the Initial Study/Mitigated Negative Declaration and asks for responses to these questions. Ms. Snell also raises the issue of allowing subdivision within Zone 2 that was raised by Mr. Downhill. Ms. Snell's questions and Staff's responses are attached to tonight's report.

- Michael & Sheri Hastings: The Hastings own a 3.78-acre developed property at 10 Vanderlip Drive. They, too, support adding provisions to the Landslide Moratorium Ordinance to permit subdivision, as suggested by Mr. Downhill and Ms. Snell.

- Dan & Vicki Pinkham: The Pinkhams own and occupy the Narcissa gatehouse at 1 Narcissa Drive. Their developed, 2.04-acre property is located in Zone 5 and would not be subject to the proposed Code Amendment. However, the Pinkhams express concern about the impacts that the approval of the proposed Code Amendment would have in terms of construction traffic impacts upon roadways and developed properties in Zone 5; the introduction of additional surface runoff into Altamira Canyon; and the adequacy of emergency access for the *Portuguese Bend* community. The expected traffic that might be generated by the additional residences does not meet the City's threshold for a traffic impacts analysis. Also, as a mitigation measure, Staff recommends requiring the control of runoff from new structures and landscaping.

CONCLUSION

As discussed above, the City Council has already taken the first step to address the Court of Appeal's decision by repealing Resolution No. 2002-43. Revising the Landslide Moratorium Ordinance to allow the development of the forty-seven (47) undeveloped lots in Zone 2 would be the next step in the implementation the Court's decision. By allowing the owners of undeveloped lots in Zone 2 to purse the development of these properties, Staff believes that

the City will avoid having to pay compensation to the *Monks* plaintiffs (or other owners of undeveloped properties in Zone 2) for the taking of their properties, and will eliminate the second impediment to the filing of applications to develop the undeveloped properties in Zone 2.

In conclusion, Staff recommends that the City Council receive public comments on the proposed Mitigated Negative Declaration; introduce Ordinance No. ___, revising the City's Landslide Moratorium Ordinance to establish an exception category to allow the development of all forty-seven (47) undeveloped lots in Zone 2; and continue this matter to a date certain on or after March 11, 2009, for the certification of the Mitigated Negative Declaration and the adoption of Ordinance No. ___.

ADDITIONAL INFORMATION

Next Steps

With the repeal of Resolution No. 2002-43 and the adoption of Staff's proposed revisions to the Landslide Moratorium Ordinance, the *Monks* plaintiffs will be allowed to file applications to develop their undeveloped properties, as will the owners of the other thirty-one (31) undeveloped lots in Zone 2. However, these actions do not address the development of undeveloped lots in other portions of the Landslide Moratorium Area or the subdivision of large parcels that are located within and outside of Zone 2, nor do they resolve any actual or perceived inequities in the treatment of developed versus undeveloped lots. To address these outstanding issues, Staff recommends seeking the advice of a technical panel of geologists and geotechnical engineers to provide guidance to the City Council regarding the next steps that should be taken to address the impact of the *Monks* decision on the greater Landslide Moratorium Area. The charge given to the panel would be to determine whether there is a reasonable probability of significant damage to persons or property if development were allowed in each of the geologic areas that are within the boundaries of the Landslide Moratorium Area, so that development either should be prevented or allowed in each of those geologic areas. Possible outcomes of such a review might include (but not be limited to):

- Repealing the entire Landslide Moratorium Ordinance and establishing criteria that would allow for safe development within each geologic area; or,

- Refining the boundaries of the "undevelopable area" under the Landslide Moratorium Ordinance to include only those areas where there is a reasonable probability of significant damage or injury to persons or property.

Staff recommends that a 5-member panel be created comprised of three (3) geologists or geotechnical engineers who are familiar with the City and its landslides and two (2) other

well-known geologists who have not performed work within the City. Staff intends, with the City Council's authorization, to present the recommendations of the technical review panel later this year. However, in order to proceed with this review, Staff will need to bring a request for a budget adjustment back to the City Council for consideration at a future meeting. As the City Council may recall, in May 2006 the City Council authorized a $50,000 budget adjustment for a geotechnical review panel to study surface cracking in the *Seaview* tract (i.e., "Zone 4" of the Landslide Moratorium Area). Given that the scope of the task to be undertaken by the 5-member review panel includes the review of the entire Landslide Moratorium Area, Staff expects that the cost of this review will be at least $100,000.

FISCAL IMPACT

Revising the Moratorium Ordinance to allow the development of undeveloped lots in Zone 2 may lead to increased revenues in the form of Planning and Building permit fees. The development of these undeveloped lots will also increase their assessed valuation, leading to increased property tax revenue to the City and the Redevelopment Agency. In addition, the adoption of these revisions is the second step in the process that that will avoid having the City spend money to purchase the *Monks* plaintiffs' properties as a result of the decision in the *Monks* case. With respect to the work of the 5-member review panel, Staff estimates that this may cost the City well upwards of $100,000.

Attachments:

- Draft Ordinance No. ___
- Draft Mitigated Negative Declaration
- Resolution No. 2009-06 (repealing Resolution No. 2002-43)
- Map of Zone 2
- List of Zone 2 Lots
- Dr. Ehlig's memorandum of May 26, 1993
- Public correspondence

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF RANCHO PALOS VERDES ADOPTING AMENDMENTS TO CHAPTER 15.20 (MORATORIUM ON LAND USE PERMITS) OF THE RANCHO PALOS VERDES MUNICIPAL CODE TO ESTABLISH AN EXCEPTION CATEGORY FOR THE DEVELOPMENT OF UNDEVELOPED LOTS IN ZONE 2

WHEREAS, on December 17, 2008, the California Supreme Court denied the City's petition for review in the case of *Monks v. City of Rancho Palos Verdes*, so the City Council must consider the actions that are necessary to comply with the Court of Appeal's decision; and,

WHEREAS, on January 21, 2009, the City Council adopted Resolution No. 2009-06 repealing Resolution No. 2002-43, which had required property owners in Zone 2 to establish a 1.5:1 factor of safety before they could develop their lots and was the purported catalyst for the filing of the *Monks* lawsuit; and,

WHEREAS, next action necessary to comply wit the Court of Appeal's decision is to enact revisions to the current Moratorium Ordinance to allow the development of undeveloped lots in Zone 2, which include the sixteen (16) lots owned by the *Monks* plaintiffs and thirty-one (31) other undeveloped lots; and,

WHEREAS, pursuant to the provisions of the California Environmental Quality Act, Public Resources Code Sections 21000 *et seq.* ("CEQA"), the State's CEQA Guidelines, California Code of Regulations, Title 14, Section 15000 *et seq.*, the City's Local CEQA Guidelines, and Government Code Section 65962.5(f) (Hazardous Waste and Substances Statement), the City of Rancho Palos Verdes prepared an Initial Study and determined that, by incorporating mitigation measures into the Negative Declaration, there is no substantial evidence that the approval of Planning Case No. ZON2009-00007 would result in a significant adverse effect on the environment. Accordingly, a Draft Mitigated Negative Declaration was prepared and circulated for public review for thirty (30) days between February 9, 2009 and March 11, 2009, and notice of that fact was given in the manner required by law; and,

WHEREAS, after notice issued pursuant to the provisions of the Rancho Palos Verdes Municipal Code, the City Council conducted a public hearing on March 3, 2009, and _____, 2009, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed revisions to Chapter 15.20 as set forth in the City Council Staff reports of those dates; and,

WHEREAS, at its _____, 2009, meeting, after hearing public testimony, the City Council adopted Resolution No. 2009-__ making certain findings related to the requirements of the California Environmental Quality Act (CEQA) and adopting a Mitigation Monitoring Program and Mitigated Negative Declaration for the proposed project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES DOES ORDAIN AS FOLLOWS:

Section 1: The City Council has reviewed and considered the amendments to Chapter 15.20 of Title 15 of the Municipal Code.

Section 2: The City Council finds that the amendments to Chapter 15.20 of Title 15 of the Municipal Code are consistent with the Rancho Palos Verdes General Plan in that they uphold, and do not hinder, the goals and policies of those plans, in particular to balance the rights of owners of undeveloped properties within the Landslide Moratorium Area to make reasonable use of their properties while limiting the potential impacts resulting from such use upon landslide movement, soil stability and public safety within and adjacent to the Landslide Moratorium Area.

Section 3: The City Council further finds that the amendments to Chapter 15.20 of Title 15 of the Municipal Code are consistent Court of Appeal's decision in *Monks v. City of Rancho Palos Verdes* in that they will allow the potential future development of the undeveloped lots within Zone 2 of the Landslide Moratorium Area with new, single-family residences, thereby achieving parity with the rights enjoyed by the owners of the developed lots in Zone 2 of the Landslide Moratorium Area.

Section 4: The City Council further finds that there is no substantial evidence that the amendments to Chapter 15.20 of Title 15 of the Municipal Code would result in significant environmental effects or a substantial increase in the severity of such effects. The City Council considered the Mitigated Negative Declaration prior to making its decision regarding the code amendments contemplated herein.

Section 5: The City Council further finds that the amendments to Chapter 15.20 of Title 15 of the Municipal Code are necessary to protect the public health, safety, and general welfare in the area.

Section 6: Based upon the foregoing, Section 15.20.040 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

The moratorium shall not be applicable to any of the following:

A. Maintenance of existing structures or facilities which do not increase the land coverage of those facilities or add to the water usage of those facilities;

B. Replacement, repair or restoration of a residential building or structure which has been damaged or destroyed due to one of the following hazards, 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:

1. A Geologic Hazard. Such structure may be replaced, repaired or restored to original condition; provided, that such construction shall be limited to the same square footage and in the same general location on the property

and such construction will not aggravate any hazardous geologic condition, if a hazardous geologic condition remains. Prior to the approval 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. The applicant shall comply with any requirements imposed by the city's geotechnical staff and shall substantially repair the geologic condition to the satisfaction of the city geotechnical staff prior to the issuance of a final building permit. Upon application to the director, setbacks may conform to the setbacks listed below:

Minimum Setback Standards

Front	***Interior side***	***Street side***	***Rear***
20	*5*	*10*	*15*

2. *A Hazard Other Than a Geologic Hazard. Such structure may be replaced, repaired or restored to original condition; provided, that such construction shall be limited to the same square footage and in the same general location on the property and such construction will not aggravate any hazardous condition, if a hazardous condition remains. Prior to the approval 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. Upon application to the director, setbacks may conform to the setbacks listed in subsection (B)(1) of this section;*

C. *Building permits for existing structures which were constructed prior to October 5, 1978, for which permits were not previously granted, in order to legalize such structure(s). Such permits may only be granted if the structure is brought into substantial compliance with the Uniform Building Code;*

D. *The approval of an environmental assessment or environmental impact report for a project as to which the city or redevelopment agency is the project applicant;*

E. *Projects that are to be performed or constructed by the city or by the Rancho Palos Verdes redevelopment agency to mitigate the potential for landslide or to otherwise enhance public safety;*

F. *Remedial grading to correct problems caused by landslide or to otherwise enhance public safety, performed pursuant to a permit issued pursuant to Section 17.76.040(B)(3) of this Code;*

G. *Geologic Investigation Permits. Prior to the approval of such a 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 investigation will not aggravate the existing situation;*

H. *Minor projects on a lot that is in the "landslide moratorium area," as outlined in red on the landslide moratorium map on file in the director's office, and currently is developed with a residential structure or other lawfully existing nonresidential structure and involves an addition to an existing structure, enclosed patio, conversion of an existing garage to habitable space or construction of a permanent attached or detached accessory structure and does not exceed a cumulative project(s) total of one thousand two hundred square feet per parcel; 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 and does not include any additional plumbing fixtures, unless the lot is served by a sanitary sewer system. The one thousand two hundred square foot limitation on cumulative projects that can be approved on a lot pursuant to this subsection includes the construction of a new garage, which can be approved pursuant to subsection L of this section. November 5, 2002, is the date that shall be used for determining the baseline square footage, based upon city and county building permit records, for purposes of calculating the square footage of any cumulative project(s) and of any additions that may be constructed pursuant to this subsection. Minor projects involving the construction of an enclosed permanent detached accessory structure, which are located in an area that is not served by a sanitary sewer system, shall include a requirement that a use restriction covenant, in a form acceptable to the city, that prevents the enclosed permanent detached accessory structure from being used as a separate dwelling unit shall be recorded with the Los Angeles County register-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior to the approval of a landslide moratorium exception permit for such minor projects, 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;*

I. *Construction or installation of temporary minor nonresidential structures which are no more than three hundred twenty square feet in size, with no plumbing fixtures and which do not increase water use, may be approved by the director. If the lot is served by a sanitary sewer system, the permit may allow the installation of plumbing fixtures. All permits shall include a requirement that a use restriction covenant, in a form acceptable to the city which prevents the structure from*

being used for any purpose other than a nonhabitable use, is recorded with the Los Angeles County registrar-recorder. A minor nonresidential structure is defined as temporary if the Building Code does not require it to be erected upon or attached to a fixed, permanent foundation and if, in fact, it will not be erected upon or attached to such a foundation. Prior to approval of the application, 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;

J. *Submittal of a lot-line adjustment application;*

K. *Minor projects on a lot that is in the "landslide moratorium area," as outlined in blue on the landslide moratorium map on file in the director's office, and currently is developed with a residential structure or other lawfully existing nonresidential structure and involves an addition to an existing structure, enclosed patio, conversion of an existing garage to habitable space or construction of a permanent attached or detached accessory structure and does not exceed a cumulative project(s) total of one thousand two hundred square feet per parcel; 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 and does not include any additional plumbing fixtures, unless the lot is served by a sanitary sewer system. The one thousand two hundred square foot limitation on cumulative projects that can be approved on a lot pursuant to this subsection includes the construction of a new garage, which can be approved pursuant to subsection L of this section. November 5, 2002, is the date that shall be used for determining the baseline square footage, based upon city and county building permit records, for purposes of calculating the square footage of any cumulative project(s) and of any additions that may be constructed pursuant to this subsection. Minor projects involving the construction of an enclosed permanent detached accessory structure, which are located in an area that is not served by a sanitary sewer system, shall include a requirement that a use restriction covenant, in a form acceptable to the city, that prevents the enclosed permanent detached accessory structure from being used as a separate dwelling unit shall be recorded with the Los Angeles County register-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior the approval of a landslide moratorium exception permit for such minor projects, 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;*

L. Construction of one attached or detached garage per parcel that does not exceed an area of six hundred square feet, without windows or any plumbing fixtures, on a lot that currently is developed with a residential structure or other lawfully existing nonresidential structure; 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. If the lot is served by a sanitary sewer system, the permit may allow the installation of windows and plumbing fixtures in the garage. The approval of a landslide moratorium exception permit for such a project shall be conditioned to require that a use restriction covenant, in a form acceptable to the city, that prevents the garage from being used for any purpose other than parking of vehicles and storage of personal property is recorded with the Los Angeles County registrar-recorder. Such covenant shall be submitted to the director prior to the issuance of a building permit. Prior to the approval of a landslide moratorium exception permit for such garage, 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's geotechnical staff that the proposed project will not aggravate the existing situation;

M. Submittal of applications for discretionary planning permits for structures or uses which are ancillary to the primary use of the lot or parcel, where there is no possibility of any adverse impact upon soil stability. Examples of these types of applications include special use permits for minor, temporary uses and events; fence, wall and hedge permits that do not involve grading or the construction of retaining walls; permits for the keeping of large domestic animals and exotic animals; conditional use permits for the establishment of a use or activity at or on an existing structure where no structural modifications are required; and such other uses, activities and structures that the city geotechnical staff determines to have no potential for adverse impacts on landslide conditions;

N. Minor projects on those lots which are currently developed with a residential structure, which do not involve new habitable space, which cannot be used as a gathering space and viewing area, and which do not constitute lot coverage;

O. Permits issued pursuant to Section 15.20.110 of this chapter to connect existing structures with functional plumbing fixtures to an operational sewer system;

P. The construction of residential buildings, accessory structures, and minor grading (as defined in Section 17.76.040(B)(1) of the Rancho Palos Verdes Municipal Code) in Zone 2 of the "landslide moratorium area" as outlined in green on the landslide moratorium map on file in the director's office; 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. If the director of public works determines that the sanitary sewer system cannot accommodate the project 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. In such cases, once the sanitary sewer system becomes available to serve the project, as determined by the director of public works, the holding tank system shall be removed, and the project shall be connected to the 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.

Section 7: Based upon the foregoing, Section 15.20.050 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

Within the landslide moratorium area as identified in Section 15.20.020 of this chapter, the city shall require that appropriate landslide abatement measures be implemented as conditions of issuance of any permit issued pursuant to this chapter. With respect to proposed projects and uses requiring a landslide moratorium exception permit pursuant to Sections 15.20.040(B), (H), (K), (L) and (P), which must satisfy all of the criteria set forth in this section, the conditions imposed by the city shall include, but not be limited to, the following:

A. If lot drainage deficiencies are identified by the director of public works, all such deficiencies shall be corrected by the applicant.

B. If the project involves additional plumbing fixtures, or additions of habitable space which exceed two hundred square feet, or could be used as a new bedroom, bathroom, laundry room or kitchen, and if the lot or parcel is not served by a sanitary sewer system, septic systems shall be replaced with approved holding tank systems in which to dispose of on-site waste water. The capacity of the required holding tank system shall be subject to the review and approval of the city's building official. For the purposes of this subsection, the addition of a sink to an existing bathroom, kitchen or laundry room shall not be construed to be an additional plumbing fixture. For those projects which involve additions of less than two hundred square feet in total area and which are not to be used as a new bedroom, bathroom, laundry room or kitchen, the applicant shall submit for recordation a covenant specifically agreeing that the addition of the habitable space will not be used for those purposes. Such covenant shall be submitted to the director for recordation prior to the issuance of a building permit. For lots or parcels which are to be served by a sanitary sewer system on or after the effective date of the ordinance codified in this section (July 6, 2000), additional plumbing fixtures may be permitted and the requirement for a holding tank may

be waived, provided that the lot or parcel is to be connected to the sanitary sewer system. If a sanitary sewer system is approved and/or under construction but is not yet operational at the time that a project requiring a landslide moratorium exception permit is approved, the requirement for a holding tank may be waived, provided that the lot or parcel is required to be connected to the sanitary sewer system pursuant to Section 15.20.110 of this chapter, or by an agreement or condition of project approval.

C. *Roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course.*

D. *If required by the city geotechnical staff, the applicant shall submit a soils report, and/or a geotechnical report, for the review and approval of the city geotechnical staff.*

E. *If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to support and participate in existing or future sewer and/or storm drain assessment districts and any other geological and geotechnical hazard abatement measures required by the city. Such covenant shall be submitted to the director prior to the issuance of a building permit.*

F. *If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to an irrevocable offer to dedicate to the city a sewer and storm drain easement on the subject property, as well as any other easement required by the city to mitigate landslide conditions. Such covenant shall be submitted to the director prior to the issuance of a building permit.*

G. *A hold harmless agreement satisfactory to the city attorney promising to defend, indemnify and hold the city harmless from any claims or damages resulting from the requested project. Such agreement shall be submitted to the director prior to the issuance of a building permit.*

H. *The applicant shall submit for recordation a covenant agreeing to construct the project strictly in accordance with the approved plans; and agreeing to prohibit further projects on the subject site without first filing an application with the director pursuant to the terms of this chapter. Such covenant shall be submitted to the director for recordation prior to the issuance of a building permit.*

I. *All landscaping irrigation systems shall be part of a water management system approved by the director of public works. Irrigation for landscaping shall be permitted only as necessary to maintain the yard and garden.*

J. *If the lot or parcel is served by a sanitary sewer system, the sewer lateral that serves the applicant's property shall be inspected to verify that there are no cracks, breaks or leaks and, if such deficiencies are present, the sewer lateral shall be repaired or reconstructed to eliminate them, prior to the issuance of a*

building permit for the project that is being approved pursuant to the issuance of the moratorium exception permit.

K. *All other necessary permits and approvals required pursuant to this code or any other applicable statute, law or ordinance shall be obtained.*

Section 8: Based on the foregoing, Section 15.20.060 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

A. *Applicants for an exception to this chapter under Sections 15.20.040(B), (H), (K), (L) and (P), shall file an application for a landslide moratorium exception permit with the director. The application shall be signed by the property owner, and shall include the following:*

1. *A letter, signed by the property owner, setting forth the reason for request, as well as a full description of the project;*
2. *Copies of a site plan, showing accurate lot dimensions; the location, dimensions, and heights of all existing and proposed structures; the location of the existing and proposed septic systems and/or holding tank systems; and the location of the existing and/or proposed sanitary sewer system, if the site is or will be served by a sanitary sewer system. The number of copies required shall be determined by the director;*
3. *Information satisfactory to the city's geotechnical staff (including but not limited to geological, geotechnical, soils or other reports) reasonably required by the city to demonstrate that the proposed project will not aggravate the existing situation;*
4. *A fee as established by resolution of the city council;*
5. *If grading is proposed, a grading plan showing the topography of the lot and all areas of project cut and fill, including a breakdown of the earthwork quantities.*

B. *A landslide moratorium exception permit application shall become null and void if, after submitting the required application to the director, the application is administratively withdrawn by the director because the application is allowed to remain incomplete by the applicant for a period which exceeds one hundred eighty days, or if the application is withdrawn by the applicant.*

Section 9: Based on the foregoing, Section 15.20.110 of Chapter 15.20 of Title 15 of the Rancho Palos Verdes Municipal Code is amended to read as follows:

Any owner of a lot or parcel within the "landslide moratorium area," as outlined in red or green on the landslide moratorium map on file in the director's office, which is developed with a residential structure or any other structure that contains one or more operational plumbing fixtures and is served by a sanitary sewer system, as defined in this chapter, shall connect such structure(s) to the sanitary sewer system within six months after the commencement of operation of the sanitary sewer system. Either the

director or the director of public works shall determine whether a lot or parcel is served by a sanitary sewer system, whether a structure contains one or more operational plumbing fixtures, or whether the connection to the sewer system is performed properly, including, without limitation, removal, or the discontinuation of the use, of any existing septic system.

Section 10: After the effective date of this Ordinance, it shall apply to all landslide moratorium exception permits and any subsequent development applications submitted on or after the effective date of this Ordinance.

Section 11: The City Clerk shall certify to the adoption of this Ordinance and shall cause the same to be posted in the manner prescribed by law.

PASSED, APPROVED AND ADOPTED THIS ____ DAY OF _____ 2009.

_____
MAYOR

ATTEST:

_____
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)ss
CITY OF RANCHO PALOS VERDES)

I, CARLA MORREALE, City Clerk of the City of Rancho Palos Verdes, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Ordinance No. ___ passed first reading on _____, 2009, was duly and regularly adopted by the City Council of said City at a regular meeting thereof held on _____, 2009, and that the same was passed and adopted by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
CITY CLERK

City of Rancho Palos Verdes
ENVIRONMENTAL CHECKLIST FORM

1. Project title:
Zone 2 Landslide Moratorium Ordinance Revisions
Planning Case No. ZON2009-00007
(Code Amendment and Environmental Assessment)

2. Lead agency name/ address:
City of Rancho Palos Verdes
Department of Planning, Building & Code Enforcement
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

3. Contact person and phone number:
Kit Fox, AICP, Associate Planner
City of Rancho Palos Verdes
(310) 544-5228

4. Project location:
"Zone 2" of the Landslide Moratorium Area (as depicted in Figure 1 below)
City of Rancho Palos Verdes
County of Los Angeles

5. Project sponsor's name and address:
City of Rancho Palos Verdes
Department of Planning, Building & Code Enforcement
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

6. General plan designation:
Residential, ≤1 DU/acre and Residential, 1-2 DU/acre

7. Coastal plan designation:
Not applicable

8. Zoning:
RS-1 and RS-2

9. Description of project:
The proposed "Zone 2 Landslide Moratorium Ordinance Revisions" would create a new exception category in the City's Landslide Moratorium Ordinance (Chapter 15.20 of the Rancho Palos Verdes Municipal Code) to allow the development of undeveloped lots in Zone 2 of the City's Landslide Moratorium Area. This action is in response to the California State Court of Appeal's decision in the case of *Monks v. Rancho Palos Verdes*, which found that the City's prohibition against the development of undeveloped lots in Zone 2 was a taking and an impermissible impediment to the development of the plaintiffs' lots. Within

Zone 2, there are currently forty-seven (47) undeveloped lots, of which sixteen (16) lots are owned by the plaintiffs in the *Monks* case.

The proposed substantive revisions to the Landslide Moratorium Ordinance include the addition of subsection P to Section 15.20.040 (Exceptions), to wit:

The construction of residential buildings, accessory structures, and minor grading (as defined in Section 17.76.040.B.1 of the Rancho Palos Verdes Municipal Code) in Zone 2 of the "Landslide Moratorium Area" as outlined in green on the landslide moratorium map on file in the Director's office; 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. If the Director of Public Works determines that the sanitary sewer system cannot accommodate the project 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. In such cases, once the sanitary sewer system becomes available to serve the project, as determined by the Director of Public Works, the holding tank system shall be removed, and the project shall be connected to the 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.

Non-substantive revisions to the Landslide Moratorium Ordinance that are also proposed include the addition of cross-references to the new subsection P and the map of Zone 2 in Sections 15.20.050 (Landslide Mitigation Measures Required), 15.20.060 (Application) and 15.20.110 (Required Connection to Operational Sanitary Sewer System).

10. Description of project site (as it currently exists):

The project site measures approximately one hundred twelve (112) acres and consists of one hundred eleven (111) lots, of which sixty-four (64) lots are developed and forty-seven (47) lots are undeveloped. The vast majority of the developed lots are improved with single-family residences and related accessory structures and uses. The largest developed lot in Zone 2 is occupied by the Portuguese Bend Riding Club, a nonconforming commercial stable that was established prior to the City's incorporation in 1973. Private streets within Zone 2 are maintained by the Portuguese Bend Community Association. The majority of the undeveloped lots contain non-native vegetation, and some have small, non-habitable structures (i.e., sheds, stables, fences, etc.) for horsekeeping or horticultural uses.

11. Surrounding land uses and setting:

	Land Uses	Significant Features
On-site	Developed and undeveloped residential lots in the *Portuguese Bend* community, including the Portuguese Bend Riding Club	See description above.
Northeast	Developed residential lots in the *Portuguese Bend* community and City-owned open space land in the Portuguese Bend Reserve of the Palos Verdes Nature Preserve	Three (3) developed residential lots are located at the northeast corner of Narcissa Drive and Vanderlip Drive, within Zone 1 of the Landslide Moratorium Area. The Portuguese Bend Reserve, acquired by the City in 2005 and also within Zone 1, contains a variety of natural vegetation communities and is a part of the larger Palos Verdes Nature Preserve.
Northwest & West	Developed residential lots in the *Portuguese Bend* community and vacant, residentially-zoned land owned by York Long Point Associates (Upper & Lower Filiorum)	The Vanderlip Estate is located at the northerly terminus of Vanderlip Drive, within Zone 1 of the Landslide Moratorium Area. Also within Zone 1 are the Filiorum properties. Upper Filiorum contains a variety of natural vegetation communities, and the City is in on-going negotiations to acquire this property as an extension of the larger Palos Verdes Nature Preserve. Lower Filiorum is the subject of a current application for a Moratorium Exclusion to allow for future residential development.
South, Southeast & East	Developed and undeveloped residential lots in the *Portuguese Bend* community	Surrounding lots in these areas are located in Zone 5 (the area affected by the 1978 Abalone Cove landslide), Zone 6 (the active Portuguese Bend landslide area) and Zone 3 (located between Altamira Canyon and the westerly edge of the Portuguese Bend landslide area). Some existing residences in these areas have experienced distress as the result and past and current land movement.

10. Other public agencies whose approval is required:
None.

Figure 1

Aerial Photo and Boundary of "Zone 2," Identifying Undeveloped Lots

Environmental Checklist
Case No. ZON2009-00007
February 9, 2009

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicted by the checklist on the following pages.

☐ Aesthetics	☐ Agricultural Resources	☐ Air Quality
☐ Biological Resources	☐ Cultural Resources	☐ Geology/Soils
☐ Greenhouse Gas Emissions	☐ Hazards & Hazardous Materials	☐ Hydrology/Water Quality
☐ Land Use/Planning	☐ Mineral Resources	☐ Noise
☐ Population/Housing	☐ Public Services	☐ Recreation
☐ Transportation/Traffic	☐ Utilities/Service Systems	☐ Mandatory Findings of Significance

DETERMINATION:

On the basis of this initial evaluation:

☐ I find that the project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

☒ I find that, although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

☐ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

☐ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required but must analyze only the effects that remain to be addressed.

☐ I find that, although the proposed project could have a significant effect on the environment, because all potentially significant effects, (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed on the proposed project, nothing further is required.

Signature: _____ Date: February 9, 2009

Printed Name: Kit Fox, Associate Planner For: City of Rancho Palos Verdes

EVALUATION OF ENVIRONMENTAL IMPACTS:

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
1. AESTHETICS. Would the project:					
a) Have a substantial effect on a scenic vista?	1				X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historical buildings, within a state scenic highway?	8			X	
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	11		X		
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	11		X		

Comments:

a) Zone 2 does not fall within any scenic vista identified in the City's General Plan. As such, the proposed project will have no substantial effect upon a scenic vista.

b) The approval of the proposed project could lead to the future development of up to forty-seven (47) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. Since these lots are undeveloped, there are no historical buildings or other structures that could be damaged as a result of the approval of the proposed project, although it is possible that some mature shrubs and trees might be removed as a result of future development. As such, damage to any scenic resources as a result of the proposed project will be less than significant.

c) The approval of the proposed project could lead to the future development of up to forty-seven (47) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. The development of these lots may alter the semi-rural visual character of Zone 2 by increasing the number and density of man-made structures in the neighborhood. Therefore, in order to reduce the visual character impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:

AES-1: All new residences shall be subject to neighborhood compatibility analysis under the provisions of Section 17.02.030.B (Neighborhood Compatibility) of the Rancho Palos Verdes Municipal Code.

d) The approval of the proposed project could lead to the future development of up to forty-seven (47) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. Zone 2 is a semi-rural area and does not have street lights, so nighttime illumination of the neighborhood is generally limited to exterior lighting for existing single-family residences. The potential construction of forty-seven (47) new single-family residences will increase the amount of nighttime lighting in the neighborhood. Therefore, in order to reduce the light and glare impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:

AES-2: Exterior illumination for new residences shall be subject to the provisions of Section 17.56.030 (Outdoor Lighting for Residential Uses) of the Rancho Palos Verdes Municipal Code.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
2. AGRICULTURE RESOURCES. Would the project:					
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resource Agency, to non-agricultural use?	8				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	8				X
c) Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland, to a non-agricultural use?	8				X
Comments: a-c) Zone 2 is zoned for single-family residential use at densities of up to two (2) dwelling units per acre (i.e., RS-1 and RS-2). Although non-commercial agricultural use is permitted in these zones, there is no agricultural use in the area at present. The approval of the proposed project could lead to the future development of up to forty-seven (47) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. However, none of these lots qualify as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance, nor are any of the lots in Zone 2 subject to a Williamson Act contract. Therefore, the proposed project will have no impact upon agricultural resources.					
3. AIR QUALITY. Would the project:					
a) Conflict with or obstruct implementation of the applicable air quality plan?	3		X		
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	3		X		
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?	3		X		
d) Expose sensitive receptors to substantial pollutant concentrations?	3		X		

1 In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the Californian Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as a optional model to use in assessing impacts on agriculture and farmland.

2 Where available, the significant criteria established by the applicable air quality management or air pollution control districts may be relied upon to make the following determinations.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
e) Create objectionable odors affecting a substantial number of people?	2, 11			X	

Comments:

a-d) Zone 2 is located within the South Coast Air Basin, which is an area of non-attainment for Federal air quality standards for ozone (O_3), carbon monoxide (CO), and suspended particulate matter (PM^{10} and $PM^{2.5}$). The proposed project would limit the amount of non-remedial grading for the development of up to forty-seven (47) new single-family residences to less than fifty cubic yards (50 CY) each, for a cumulative total of less than 2,350 cubic yards. The forty-seven (47) undeveloped lots in Zone 2 are owned by forty-five (45) separate private individuals or entities. Since 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. The average site size for the undeveloped lots in Zone 2 is one (1) acre. The movement of soil and the operation of construction equipment have the potential to create short-term construction-related air quality impacts upon nearby sensitive receptors, such as single-family residences. Based upon the South Coast Air Quality Management District (SCAQMD) guidelines for estimating air quality impacts from construction activities, the development of individual 1-acre parcels would not exceed Localized Significance Thresholds (LSTs) for nitrous oxides (NO_X), CO, PM^{10} or $PM^{2.5}$. In a "worst case" scenario wherein all of the undeveloped lots were developed simultaneously, the total quantity of earth movement would still be less than 2,350 cubic yards, and with the imposition of the recommended mitigation measures, the impacts of this grading would still be less than significant. In addition, some of the proposed residences might have fireplaces. SCAQMD has adopted rules regulating wood-burning devices, which include a prohibition against the installation of wood-burning fireplaces in new construction beginning in March 2009. Therefore, in order to reduce the air quality impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:

AIR-1: During construction, the applicant shall be responsible for the implementation of all dust and erosion control measures required by the Building Official.

AIR-2: Trucks and other construction vehicles shall not park, queue and/or idle at the project sites or in the adjoining public or private rights-of-way before 7:00 AM, Monday through Saturday, in accordance with the permitted hours of construction stated in Section 17.56.020.B of the Rancho Palos Verdes Municipal Code.

e) Since the zoning in Zone 2 does not permit industrial or commercial uses, no objectionable odors are expected to be generated as a result of the proposed project.

4. BIOLOGICAL RESOURCES. Would the project:					
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	6, 8		X		
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	6, 8		X		

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Have a substantial adverse effect on federally protected wetlands, as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.), through direct removal, filling, hydrological interruption, or other means?	6, 8		X		
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	6, 8			X	
e) Conflict with any local polices or ordinances protecting biological resources, such as tree preservation policy or ordinance?	11			X	
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	6		X		

Comments:

a-c, f) According to the City's vegetation maps, most of Zone 2 is depicted as "Developed" or "Disturbed," with some smaller patches of "Grassland" and "Exotic Woodland." These vegetation communities are generally not identified as sensitive by State and Federal resource agencies. However, there are some isolated patches of coastal sage scrub (CSS) habitat identified in Altamira Canyon, which traverses several developed and undeveloped lots in Zone 2. In addition, several of the undeveloped lots in Zone 2 abut the City-owned Portuguese Bend Reserve or the privately-owned Filiorum properties, both of which contain more substantial and cohesive patches of CSS habitat nearby. The Portuguese Bend Preserve is currently a part of the City's larger Palos Verdes Nature Reserve, and the City has been actively pursuing the acquisition of portions of the Upper Filiorum property for inclusion in the Reserve for many years. As such, it is possible that the development of some of the undeveloped lots in Zone 2 might have significant impacts upon sensitive CSS habitat, either through the direct removal of habitat during construction or as a result of Fire Department-mandated fuel modification on- and/or off-site (i.e., in the Reserve) after construction of new residences is complete. Therefore, in order to reduce the biological resources impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:

BIO-1: For lots that are identified as containing sensitive habitat on the City's most-recent vegetation maps and/or that abut any portion of the current or proposed future boundary of the Palos Verdes Nature Preserve, the applicant shall be required to prepare a biological survey as a part of a complete application for the construction of a new, single-family residence. Said survey shall identify the presence or absence of sensitive plant and animal species on the subject property, and shall quantify the direct and indirect impacts of the construction of the residence upon such species, including off-site habitat impacts as a result of Fire Department-mandated fuel modification. The applicant and/or any successors in interest to the subject property shall be required to mitigate such habitat loss through the payment of a mitigation fee to the City's Habitat Restoration Fund.

d) According to the City's vegetation maps, most of Zone 2 is depicted as "Developed" or "Disturbed," with some smaller patches of "Grassland" and "Exotic Woodland." These vegetation communities are mainly located around the perimeter of Zone 2 and are generally not identified as sensitive by State and Federal resource agencies. Although there are patches of "Exotic Woodland" and CSS habitat along Altamira Canyon, these patches are small and isolated,

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
providing limited connectivity for movement or migration through Zone 2. As such, the impact of the proposed project upon wildlife corridors is expected to be less than significant. e) The City has a Coastal Sage Scrub Conservation and Management Ordinance, which is codified as Chapter 17.41 of the Rancho Palos Verdes Municipal Code. However, this ordinance only applies to parcels over two (2) acres in size that contain CSS habitat. Only one (1) of the undeveloped lots in Zone 2 exceeds this size threshold and contains CSS habitat. As such, any conflicts of the proposed project with local policies or ordinances protecting biological resources are expected to be less than significant.					
5. CULTURAL RESOURCES. Would the project:					
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	8				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	5		X		
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	5		X		
d) Disturbed any human remains, including those interred outside of formal cemeteries?	5		X		
Comments: a) The approval of the proposed project could lead to the future development of up to forty-seven (47) single-family residences on undeveloped lots. However, since the lots have remained undeveloped since their creation in the late 1940s, their future development would have no impact upon any historical resources. b-d) According to the City's Archaeology Map, the subject site is within a possible area of archaeological resources. The approval of the proposed project would only permit shallow surface excavations less than five feet (5'-0") in depth. In addition, past disking and brush clearance of these undeveloped lots have repeated disturbed the ground surface over a period of many years. Nevertheless, it is possible that subsurface cultural resources may exist on some of the undeveloped lots in Zone 2. Therefore, in order to reduce the cultural resources impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended: CUL-1: Prior to the issuance of a grading permit, the applicant shall consult with the South Central Coastal Information Center (SCCIC) regarding any known archaeological sites on or within a half-mile radius of the subject property. CUL-2: Prior to the issuance of a grading permit, the applicant shall conduct a Phase 1 archaeological survey of the property. The survey results shall be provided to the Director of Planning, Building and Code Enforcement for review prior to grading permit issuance. CUL-3: Prior to the commencement of grading, the applicant shall retain a qualified paleontologist and archeologist to monitor grading and excavation. In the event undetected buried cultural resources are encountered during grading and excavation, work shall be halted or diverted from the resource area and the archeologist and/or paleontologist shall evaluate the remains and propose appropriate mitigation measures.					
6. GEOLOGY/SOILS. Would the project:					
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:					

Issues and Supporting Information Sources:	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?[3]			X		
ii) Strong seismic ground shaking?			X		
iii) Seismic-related ground failure, including liquefaction?			X		
iv) Landslides?			X		
b) Result in substantial soil erosion or the loss of topsoil?				X	
c) Be located on a geological unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?			X		
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), thus creating substantial risks to life or property?			X		
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of wastewater?				X	

Comments:

a, c-d) The proposed project could result in up to 2,350 cubic yards of grading related to the construction of up to forty-seven (47) new single-family residences. The maximum permitted depth of cut and/or fill for such grading would be less than five feet (<5'-0"). Zone 2 is a subarea within the larger Landslide Moratorium Area of the City. According to the Official Maps of Seismic Hazard Zones provided by the State of California Department of Conservation, the entirety of Zone 2 is located within an area that is potentially subject to earthquake-induced landslides. The subject property is within the vicinity of the Palos Verdes fault zone, although there is no evidence of active faulting within Zone 2. The soils of the Palos Verdes Peninsula are also generally known to be expansive and occasionally unstable. Given the known and presumed soils conditions in and around Zone 2, it is expected that soil investigations, reviewed and conceptually approved by the City's geotechnical consultant, will be required prior to the development of any new residences. Therefore, in order to reduce the geology/soils impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:

GEO-1: If required by the City geotechnical staff, the applicant shall submit a soils report, and/or a geotechnical report, for the review and approval of the City geotechnical staff.

GEO-2: A hold-harmless agreement satisfactory to the City Attorney, promising to defend, indemnify and hold the city harmless from any claims or damages resulting from the requested project, shall be submitted to the Director prior to the issuance of a building permit.

3 Refer to Division of Mines and Geology Special Publication 42.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
GEO-3: The applicant shall submit for recordation a covenant agreeing to construct the project strictly in accordance with the approved plans; and agreeing to prohibit further projects on the subject site without first filing an application with the Director pursuant to the terms of Chapter 15.20 of the Rancho Palos Verdes Municipal Code. Such covenant shall be submitted to the Director for recordation prior to the issuance of a building permit. GEO-4: All other necessary permits and approvals required pursuant to the Rancho Palos Verdes Municipal Code or any other applicable statute, law or ordinance shall be obtained. b) During grading and construction operations for any new residences, top soil will be exposed and removed from individual properties. It is the City's standard practice to require the preparation and implementation of an erosion control plan for wind- and waterborne soil for construction projects. Therefore, in order to reduce the erosion impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended: GEO-5: Prior to building permit issuance, the applicant shall prepare an erosion control plan for the review and approval of the Building Official. The applicant shall be responsible for continuous and effective implementation of the erosion control plan during project construction. e) The City has constructed a sanitary sewer system that serves Zone 2 and other areas of the Portuguese Bend community. The purpose of constructing this system was to reduce the amount of groundwater within the Landslide Moratorium Area by eliminating the use of private septic systems, with the ultimate goal or slowing or stopping land movement. New residences constructed in Zone 2 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 at the time of building permit issuance. In such cases, if the sanitary sewer system later becomes available, the holding tank system shall be removed and a connection made to the sanitary sewer system. With these requirements, any geology/soils impacts related to septic systems will be less than significant.					
7. GREENHOUSE GAS EMISSIONS. Would the project:					
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment, based on any applicable threshold of significance?				X	
b) Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?				X	
Comments: a) The approval of the proposed project could lead to the future development of up to forty-seven (47) single-family residences on undeveloped lots. Based upon data obtained from *CoolCalifornia.org*, the average California household generates thirty-eight (38) tons of carbon dioxide (CO_2) emissions annually. For the proposed project, this could result in increased CO_2 output of at least 1,786 tons per year at the complete build-out of the undeveloped lots in Zone 2. Currently, there are no generally-accepted significance thresholds for assessing greenhouse gas (GHG) emissions. However, the future development of residences on the undeveloped lots in Zone 2 would include features that tend to offset the carbon footprint of their development. For example, the use of water would continue to be carefully controlled within the Landslide Moratorium Area in the interest of minimizing the infiltration of groundwater as a means to enhance soil stability. Reducing the use of water reduces energy use related to the transport of water. New residences would be constructed to the most current energy efficiency standards of the current Building Code (i.e., Title 24). The development of new homes on the undeveloped 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. For all of these reasons, the GHG emissions associated with the proposed project would be less than significant. b) California's major initiatives for reducing climate change or greenhouse gas (GHG) emissions are outlined in Assembly Bill 32 (signed into law in 2006), a 2005 Executive Order and a 2004 Air Resources Board (ARB) regulation to					

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
reduce passenger-car GHG emissions. These efforts aim at reducing GHG emissions to 1990 levels by 2020 (a reduction of approximately 30 percent) and then an 80-percent reduction below 1990 levels by 2050. Currently, there are no adopted plans, policies or regulations for the purpose of reducing GHG emissions for the development of new, single-family residences. However, as such plans, policies and regulations are adopted in the future, the development of new homes on the undeveloped lots in Zone 2 would be subject to and consistent with them. For this reason, the GHG emissions associated with the proposed project would be less than significant.					
8. HAZARDS & HAZARDOUS MATERIALS. Would the project:					
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?				X	
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?				X	
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	8				X
d) Be located on a site which is included on a list of hazardous materials sites complied pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	12				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	8				X
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	8				X
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	13			X	

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
h) Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	9		X		

Comments:

a-b) The approval of the proposed project could lead to the future development of up to forty-seven (47) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. Said development could also involve up to 2,350 cubic yards of grading. No hazardous materials or conditions are known or expected to exist on any of the undeveloped lots in Zone 2. The development of these lots is expected to utilize conventional, residential construction methods and materials that would not involve the use or transport of hazardous materials. Therefore, the hazards and hazardous materials impacts of the proposed project are expected to be less than significant.

c) The nearest school in the vicinity of Zone 2 is the Portuguese Bend Nursery School at Abalone Cove Shoreline Park. At its closest point, Zone 2 is approximately one-third (⅓) of a mile from the nursery school.

d) There are no properties within Zone 2 site that are included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5.

e-f) Zone 2 is not located within two (2) miles of Torrance Municipal Airport or in the vicinity of any private airstrip.

g) In 2004, the cities of Rancho Palos Verdes and Rolling Hills Estates adopted a Joint Natural Hazards Mitigation Plan (JNHMP). The purpose of the JNHMP is "to promote sound public policy designed to protect citizens, critical facilities, infrastructure, private property, and the environment from natural hazards." The approval of the proposed project is not incompatible with the purpose of the JNHMP.

h) Based upon the most recent maps prepared by the California Department of Forestry and Fire Protection (CalFire), the entire Palos Verdes Peninsula is within a Very High Fire Hazard Severity Zone. The undeveloped lots in Zone 2 are generally interspersed between developed lots. However, the Zone 2 area does abut City- and privately-owned open areas to the north and west. Therefore, in order to reduce the wildfire hazard impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended:

HAZ-1: New, single-family residences and related accessory structures shall be designed to incorporate all fire protection requirements of the City's most recently adopted Building Code, to the satisfaction of the Building Official.

9. HYDROLOGY/WATER QUALITY. Would the project:					
a) Violate any water quality standards or wastewater discharge requirements?			X		
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?					X

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?			X		
d) Substantially alter the existing drainage pattern of the site or area including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?			X		
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?			X		
f) Otherwise substantially degrade water quality?			X		
g) Place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate map or other flood hazard delineation map?	8				X
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	8				X
i) Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam?	8				X
j) Inundation by seiche, tsunami, or mudflow?	8				X

Comments:

a, c-f) The possible future development of up to forty-seven (47) single-family residences would alter the topography of the undeveloped lots in Zone 2 and increase the amount of impermeable surface area. This will result in changes to the current drainage patterns of the area, as well as the potential for erosion and run-off during construction. Some of the undeveloped lots in Zone 2 fall within a designated Environmentally Sensitive Area (ESA) that would require the review and approval by the City's National Pollutant Discharge Elimination System (NPDES) consultant for any project involving the creation of two thousand five hundred square feet or more (≥2,500 SF) of impervious surface. Therefore, in order to reduce the hydrology/water quality impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:

HYD-1: Any development proposal located within, adjacent to or draining into a designated Environmentally Sensitive Area (ESA) and involving the creation of two thousand five hundred square feet or more (≥2,500 SF) of impervious surface shall require the review and approval by the City's National Pollutant Discharge Elimination System (NPDES) consultant prior to building permit issuance.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
HYD-2: If lot drainage deficiencies are identified by the Director of Public Works, all such deficiencies shall be corrected by the applicant. HYD-3: Roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course. HYD-4: All landscaping irrigation systems shall be part of a water management system approved by the Director of Public Works. Irrigation for landscaping shall be permitted only as necessary to maintain the yard and garden. b) The possible future development of up to forty-seven (47) single-family residences will not involve or require the withdrawal of groundwater because water service to these properties will be provided by the California Water Service Company. g-h) There are no Federally-mapped 100-year flood hazard areas in the City of Rancho Palos Verdes. i) There is no dam or levee anywhere in the vicinity of Zone 2. j) Zone 2 does not adjoin an ocean, lake or other body of water, so there is no risk of inundation by seiche, tsunami or mudflow. Furthermore, the lowest elevation of any portion of an undeveloped lot in Zone 2 is roughly 260 feet above mean sea level (MSL).					
10. LAND USE/PLANNING. Would the project:					
a) Physically divide an established community?	8, 2				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal plan, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	1, 2				X
c) Conflict with any applicable Habitat Conservation Plan or Natural Community Conservation Plan?	6		X		
Comments: a) The approval of the proposed project could lead to the future development of up to forty-seven (47) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. These lots are interspersed with the sixty-four (64) developed lots in Zone 2. The development of these lots would not divide the *Portuguese Bend* community; rather, they would constitute "in-fill" development within the community. b) The approval of the proposed project could lead to the future development of up to forty-seven (47) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. Underlying zoning designations in Zone 2 (i.e., RS-1 and RS-2) allow single-family residences as the primary permitted use on the zone. c) See Mitigation Measure BIO-1 above.					
11. MINERAL RESOURCES. Would the project:					
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	1				X

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan?	1				X
Comments: a-b) There are no mineral resources known or expected to exist on the undeveloped lots within Zone 2. In addition, the approval of the proposed project would only permit shallow surface excavations less than five feet (5'-0") in depth.					
12. NOISE. Would the project result in:					
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	1			X	
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?				X	
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?				X	
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?			X		
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or a public use airport, would the project expose people residing or working in the project area to excessive noise levels?	8				X
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	8				X
Comments: a) The City of Rancho Palos Verdes does not have a noise ordinance. However, General Plan Noise Policy No. 5 "[requires] residential uses in the 70 dB(A) location range to provide regulatory screening or some other noise-inhibiting agent to ensure compliance with the noise ordinance." The Noise Levels Contour diagram in the General Plan does not depict the undeveloped lots in Zone 2 falling with a 70 db(A) noise contour. Therefore, noise impacts upon future residents are expected to be less than significant. b-d) The approval of the proposed project could result in a cumulative total of 2,350 cubic yards of grading and the construction of forty-seven (47) single-family residences. The addition of up to forty-seven (47) new residences will increase ambient noise levels in the area as a result of household and vehicle noise. The large lot sizes in the area (i.e., averaging an acre in size) and the presence of existing mature foliage along the private rights-of-way will serve as					

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
buffers to the "operational" noise associated with new residences. The movement of soil and the operation of construction equipment have the potential to create short-term construction-related noise and vibration impacts upon nearby sensitive receptors, such as existing single-family residences in Zone 2. Therefore, in order to reduce the construction noise impacts of the proposed project to less-than-significant levels, the following mitigation measure is recommended: NOI-1: Permitted hours and days for construction activity are 7:00 AM to 7:00 PM, Monday through Saturday, with no construction activity permitted on Sundays or on the legal holidays specified in Section 17.96.920 of the Rancho Palos Verdes Municipal Code without a special construction permit. e-f) Zone 2 is not located within two (2) miles of Torrance Municipal Airport or in the vicinity of any private airstrip.					
13. POPULATION/HOUSING. Would the project:					
a) Induce substantial growth in an area either directly (e.g., by proposing new homes or businesses) or indirectly (e.g., through extension of roads or other infrastructure)?	14			X	
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	8				X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	8				X
Comments: a) The proposed project could result in the construction of up to forty-seven (47) new dwelling units. Based upon the 2007 estimates from the State Department of Finance (DOF) of 2.769 persons per household in the City of Rancho Palos Verdes, these new residences would be expected to accommodate one hundred thirty (130) new residents. The DOF estimates the 2007 population of the City of Rancho Palos Verdes as 43,092 persons, so the proposed project would result in increase of only 0.2%. Furthermore, the most recent Regional Housing Needs Assessment (RHNA) allotment for the City of Rancho Palos Verdes is sixty (60) additional housing units during the period from July 1, 2005 through June 30, 2014. The proposed project could increase the number of housing units in the City, but would not exceed the total number of units allocated to the City by the Southern California Association of Governments (SCAG) for the current reporting period. Therefore, the population and housing impacts of the proposed project are expected to be less than significant. b-c) The approval of the proposed project could lead to the future development of up to forty-seven (47) single-family residences on lots that have remained undeveloped since they were created in the late 1940s. No housing or persons would be displaced as a result of the proposed project.					

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
14. PUBLIC SERVICES					
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services:					
i) Fire protection?				X	
ii) Police protection?				X	
iii) Schools?				X	
iv) Parks?				X	
v) Other public facilities?				X	

Comments:

a) The estimated population of the forty-seven (47) new residences that could result from the proposed project is one hundred thirty (130), which amounts to only a 0.2% increase in the City's 2007 estimated population of 43,092. This small increase in population is not expected to place significant additional demands upon public safety services (i.e., fire and police) or other public services (i.e., parks, libraries, etc.). As standard requirements of the construction of new residences, applicants will be required to pay fees to the Palos Verdes Peninsula Unified School District (PVPUSD). Therefore, the public services impacts of the project are expected to be less than significant.

15. RECREATION.					
a) Would the project increase the use of neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?				X	
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities, which might have an adverse physical effect on the environment?					X

Comments:

a) The proposed project is expected to potentially increase the City's population by one hundred thirty (130) persons. Although this amounts to only a 0.2% population increase (based upon 2007 estimates), additional residents will place some additional demands on the City's recreational facilities. However, these impacts upon the use of recreational facilities are expected to be less than significant.

b) The proposed project would not include or allow for the development of recreation facilities, based upon the underlying zoning within Zone 2.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
16. TRANSPORTATION/TRAFFIC. Would the project:					
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, or congestion at intersections)?	7			X	
b) Exceed either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	7			X	
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?					X
d) Substantially increase hazards due to a design feature (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?					X
e) Result in inadequate emergency access?	13				X
f) Result in inadequate parking capacity?	11				X
g) Conflicts with adopted policies, plans, or programs supporting alternative transportation (e.g. bus turnouts, bicycle racks)?					X

Comments:

a-b) Based upon the current 7th Edition ITE Trip Generation Manual (Land Use 210, Single-Family Detached Housing, pp. 268-304), the development of forty-seven (47) new single-family residences in Zone 2 is expected to result in four hundred fifty (450) additional average daily trips, thirty-five (35) additional AM peak-hour trips and forty-seven (47) additional PM peak-hour trips. The City's project thresholds for potentially significant traffic impacts are projects expected to generate more than five hundred (500) average daily trips and/or more than fifty (50) peak-hour trips. With respect to construction traffic, the forty-seven (47) undeveloped lots in Zone 2 are owned by forty-five (45) separate private individuals or entities. Since 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. Therefore, the transportation/traffic impacts of the project are expected to be less than significant.

c) The proposed project could result in the development of up to forty-seven (47) new, single-family residences. The construction of these residences will have no impact upon air traffic patterns.

d-e) The proposed project does not include any modifications to existing public or private rights-of-way or changes in current land-use patterns that would create or increase hazardous conditions or hamper emergency access in and to Zone 2.

f) Pursuant to Section 17.02.030.E of the Rancho Palos Verdes Municipal Code, new single-family residences are required to provide enclosed, off-street parking for two (2) vehicles for residences with less than five thousand square feet (<5,000 SF) of living area, and for three (3) vehicles for residences with five thousand square feet or more (≥5,000

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
SF) of living area. New residences within Zone 2 will be required to provide sufficient off-street parking to meet these requirements. g) Given the semi-rural character of the area, there are no adopted policies, plans, or programs supporting alternative transportation that include Zone 2 and/or any abutting public or private rights-of-way.					
17. UTILITIES/SERVICE SYSTEMS. Would the project:					
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	15, 10		X		
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	15, 10		X		
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	15, 10		X		
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?				X	
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	15, 10		X		
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?				X	
g) Comply with federal, state, and local statures and regulations related to solid waste?				X	
Comments: a-c, e) The City has constructed a sanitary sewer system that serves Zone 2 and other areas of the Portuguese Bend community (i.e., the Abalone Cove Sewer System). The purpose of constructing the Abalone Cove system was to reduce the amount of groundwater within the Landslide Moratorium Area by eliminating the use of private septic systems, with the ultimate goal or slowing or stopping land movement. According to the EIR prepared for the project, the Abalone Cove system was originally intended to serve one hundred ten (110) developed and forty-six (46) undeveloped lots in the Abalone Cove area or the *Portuguese Bend* community, which includes Zone 2. As such, the potential future development of up to forty-seven (47) new residences in Zone 2 should be consistent with the planned sewer system capacity. Although the sewer system EIR indicated that the Abalone Cove system could probably support forty-seven (47) additional connections, the City's Public Works Department does not have enough data to confirm this assumption at present.					

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact

The Public Works Department believes that increasing the load to the Abalone Cove system by allowing these additional connections—accommodating unknown quantities of waste water—could pose a problem. Public Works needs additional information, some of which will be addressed during the update of the City's Sewer Master Plan (expected in May 2009), before the impacts of increasing the capacity of the Abalone Cove system currently in place can be fully understood. Additionally, the City's equipment supplier for the grinder pumps used in the Abalone Cove system has informed the City that their manufacturer no longer recommends the same method of connecting to the system that was used previously. As such, the Public Works Department believes that before additional connections are made to the Abalone Cove system, or it is presumed that the system can accommodate additional loads, system evaluations are needed in order to facilitate its continued safe operation. In summary, although the sewer system EIR suggested that up to forty-seven (47) additional connections to the system would be consistent with the Planning document, due to changes in the standard of practice, the Public Works Department is in the process of verifying equipment configuration requirements and verifying actual system capabilities and related expansion requirements. Therefore, in order to reduce the utilities/service systems impacts of the proposed project to less-than-significant levels, the following mitigation measures are recommended:

UTL-1: If 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. In such cases, once the sanitary sewer system becomes available to serve the project, as determined by the Director of Public Works, the holding tank system shall be removed, and the project shall be connected to the sanitary sewer system.

UTL-2: If the project involves additional plumbing fixtures, or additions of habitable space which exceed two hundred square feet, or could be used as a new bedroom, bathroom, laundry room or kitchen, and if the lot or parcel is not served by a sanitary sewer system, septic systems shall be replaced with approved holding tank systems in which to dispose of on-site waste water. The capacity of the required holding tank system shall be subject to the review and approval of the City's Building Official. For the purposes of this mitigation measure, the addition of a sink to an existing bathroom, kitchen or laundry room shall not be construed to be an additional plumbing fixture. For those projects which involve additions of less than two hundred square feet in total area and which are not to be used as a new bedroom, bathroom, laundry room or kitchen, the applicant shall submit for recordation a covenant specifically agreeing that the addition of the habitable space will not be used for those purposes. Such covenant shall be submitted to the Director for recordation prior to the issuance of a building permit. For lots or parcels which are to be served by a sanitary sewer system on or after July 6, 2000, additional plumbing fixtures may be permitted and the requirement for a holding tank may be waived, provided that the lot or parcel is to be connected to the sanitary sewer system. If a sanitary sewer system is approved and/or under construction but is not yet operational at the time that a project requiring a landslide moratorium exception permit is approved, the requirement for a holding tank may be waived, provided that the lot or parcel is required to be connected to the sanitary sewer system pursuant to Section 15.20.110 of the Rancho Palos Verdes Municipal Code, or by an agreement or condition of project approval.

UTL-3: If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to support and participate in existing or future sewer and/or storm drain assessment districts and any other geological and geotechnical hazard abatement measures required by the City. Such covenant shall be submitted to the Director prior to the issuance of a building permit.

UTL-4: If the lot or parcel is not served by a sanitary sewer system, the applicant shall submit for recordation a covenant agreeing to an irrevocable offer to dedicate to the City a sewer and storm drain easement on the subject property, as well as any other easement required by the City to mitigate landslide conditions. Such covenant shall be submitted to the Director prior to the issuance of a building permit.

UTL-5: If the lot or parcel is served by a sanitary sewer system, the sewer lateral that serves the applicant's property shall be inspected to verify that there are no cracks, breaks or leaks and, if such deficiencies are present, the sewer lateral shall be repaired or reconstructed to eliminate them, prior to the issuance of a building permit for the project that is being approved pursuant to the issuance of a moratorium exception permit.

d) California Water Service Company (Cal Water) provides the City's water service. Given that the proposed project could increase the number of households and persons in the City by only 0.2%, the increase in demand for

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
water attributable to this project is expected to be minimal compared to the amount of water used in the Cal Water service area. Individual property owners would be responsible for connecting to existing water-distribution facilities in the area, including the costs of making such connections. As such, the water supply impacts of the proposed project are expected to be to less-than-significant. f-g) The proposed project could result in the construction of up to forty-seven (47) new dwelling units, which equates to only a 0.2% increase in the number of dwelling units in the City (based upon 2007 estimates). The undeveloped lots in Zone 2 have access to solid waste disposal services through existing City contracts with residential waste haulers. Given the limited potential scope of the proposed project, the solid waste disposal impacts are expected to be less-than-significant.					
18. MANDATORY FINDINGS OF SIGNIFICANCE					
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?			X		
Comments: The proposed project, with mitigation, will not degrade the quality of the environment; substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; or reduce the number or restrict the range of a rare or endangered plant or animal. The proposed project will not eliminate important examples of the major periods of California history or pre-history.					
b) Does the project have impacts that are individually limited, but cumulatively considerable?[4]				X	
Comments: The proposed project could result in the development of up to forty-seven (47) new, single family residences on existing undeveloped lots. On an individual basis, the development of a single-family residence on an existing lot would not be expected to have any adverse impact upon the environment. While the cumulative effects of the near-simultaneous development of up to forty-seven (47) such residences may have significant adverse effects, it should be noted that the forty-seven (47) undeveloped lots in Zone 2 are owned by forty-five (45) separate private individuals or entities. Since 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. Furthermore, with the imposition of the recommended mitigation measures, these potential cumulative impacts will be reduced to less-than-significant levels.					
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?				X	

4 "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of the past projects, the effects of other current projects, and the effects of probable future projects.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact

Comments:

As discussed above, all potentially-significant environmental effects of the proposed project can be mitigated to less-than-significant levels. Therefore, the proposed project will have no substantial adverse effects on human beings, either directly or indirectly.

19. EARLIER ANALYSES.

Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or Negative Declaration. Section 15063 (c) (3) (D). In this case a discussion should identify the following items:

a) **Earlier analysis used.** Identify and state where they are available for review.

Comments:

A Supplemental Environmental Impact Report (SEIR) was prepared for the Abalone Cove Sewer System in 1996. A supplement to the SEIR was subsequent prepared in 1998. Copies of these documents are available for review at the Public Works Department of the City of Rancho Palos Verdes, 30940 Hawthorne Boulevard, Rancho Palos Verdes, CA 90275. These documents were utilized as source of background data related to the installation of the Abalone Cove Sewer System, but not as a basis for the analysis of the environmental impacts of the proposed "Zone 2 Landslide Moratorium Ordinance Revisions."

b) **Impacts adequately addressed.** Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

Comments:

Not applicable.

c) **Mitigation measures.** For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions of the project.

Comments:

Not applicable.

Authority: Public Resources Code Sections 21083 and 21087.
Reference: Public Resources Code Sections 21080 (c), 21080.1, 21080.3, 21082.1, 21083, 21083.3, 21093, 321094, 21151; *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296 (1988); *Leonofff v. Monterey Board of Supervisors*, 222 Cal. App. 3d 1337 (1990).

20. SOURCE REFERENCES.

1	City of Rancho Palos Verdes, Rancho Palos Verdes General Plan, and associated Environmental Impact Report. Rancho Palos Verdes, California as amended through August 2001.
2	City of Rancho Palos Verdes Zoning Map
3	South Coast Air Quality Management District. CEQA AIR Quality Handbook. Diamond Bar, California: November 1993 (as amended).
4	Official Maps of Seismic Hazard Zones provided by the Department of Conservation of the State of California, Division of Mines and Geology
5	City of Rancho Palos Verdes Archeology Map.
6	City of Rancho Palos Verdes, Natural Communities Conservation Plan. Rancho Palos Verdes, California as adopted August 2004
7	Institute of Traffic Engineers, ITE Trip Generation, 7th Edition.

Issues and Supporting Information Sources	Sources	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
8	City of Rancho Palos Verdes Geographic Information System (GIS) database and maps				
9	State of California, Department of Forestry and Fire Protection, Very High Fire Hazard Severity Zone Maps. Sacramento, California, accessed via website, March 2008				
10	Email correspondence with Senior Engineer Ron Dragoo (February 5, 2009)				
11	City of Rancho Palos Verdes Municipal Code				
12	Hazardous Waste and Substances Site List (i.e., "Cortese List")				
13	Cities of Rancho Palos Verdes and Rolling Hills Estates Joint Natural Hazards Mitigation Plan				
14	City of Rancho Palos Verdes General Plan Housing Element				
15	Abalone Cove Sewer System Supplement Environmental Impact Report				

ATTACHMENTS:

Mitigation Monitoring Program

RESOLUTION NO. 2009-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES REPEALING RESOLUTION NO. 2002-43 IN RESPONSE TO THE COURT OF APPEAL'S DECISION IN THE *MONKS V. CITY OF RANCHO PALOS VERDES* CASE

WHEREAS, pursuant to the direction of the City Council, Cotton, Shires & Associates prepared a report dated January 14, 2002; and

WHEREAS, on May 20, 2002, at a duly noticed public meeting, the City Council of the City of Rancho Palos Verdes reviewed the report that was prepared by Cotton, Shires & Associates and discussed certain findings that should be made as a result of the report; and

WHEREAS, on June 12, 2002, the City Council adopted Resolution No. 2002-43, which set forth its findings regarding the report that was prepared by Cotton Shires, and directed City Staff to continue to deny requests for development permits for new homes in the Zone 2 area of the Portuguese Bend landslide complex, until an applicant submits a complete Landslide Moratorium Exclusion application that is supported by adequate geologic data demonstrating a factor of safety of 1.5 or greater of the Zone 2 area, which is the same standard that is applied throughout the City, to the satisfaction of the City Geologist; and the City Council approves the Landslide Moratorium Exclusion application, and all other required permits to develop are issued by the City; and

WHEREAS, following the adoption of Resolution No. 2002-43, the owners of sixteen lots within Zone 2 filed a lawsuit entitled *Monks v. City of Rancho Palos Verdes*, alleging an inverse condemnation claim under the State Constitution; and

WHEREAS, the trial court determined that a permanent taking had not occurred and found in favor of the City; and

WHEREAS, on October 22, 2008, the California Court of Appeal reversed the decision of the trial court, finding that since City has allowed existing homes to remain and has allowed the rebuilding and expansion of those homes, preventing the construction of new homes on the plaintiffs' lots was not justified, even though the Factor of Safety for Zone 2 has not been specifically ascertained. The Court of Appeal then stated that: "'Uncertainty' is not a sufficient basis for depriving a property owner of a home. The city must establish a reasonable probability of significant harm to obtain an injunction against a nuisance." The Court of Appeal then held that the City's refusal to allow the plaintiffs to construct homes on their lots is a permanent taking of property for which compensation must be paid by the City; and

WHEREAS, On December 17, 2008, the California Supreme Court denied the City's petition for review in the *Monks* case; and

WHEREAS, the Court of Appeal has issued its remititur sending the case back to the trial court "for further proceedings to determine an appropriate remedy for the permanent taking exacted by the city;"

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. In response to the decision of the California Court of Appeal in the *Monks* case, and as the initial step that will be taken by the City to avoid having to pay compensation to the plaintiffs for a permanent taking of their properties, the City Council of the City of Rancho Palos Verdes hereby repeals Resolution No. 2002-43 so that as of this date, Resolution No. 2002-43 is of no further force and effect.

PASSED, APPROVED AND ADOPTED this 21st day of January 2009.

/s/ Larry Clark
Mayor

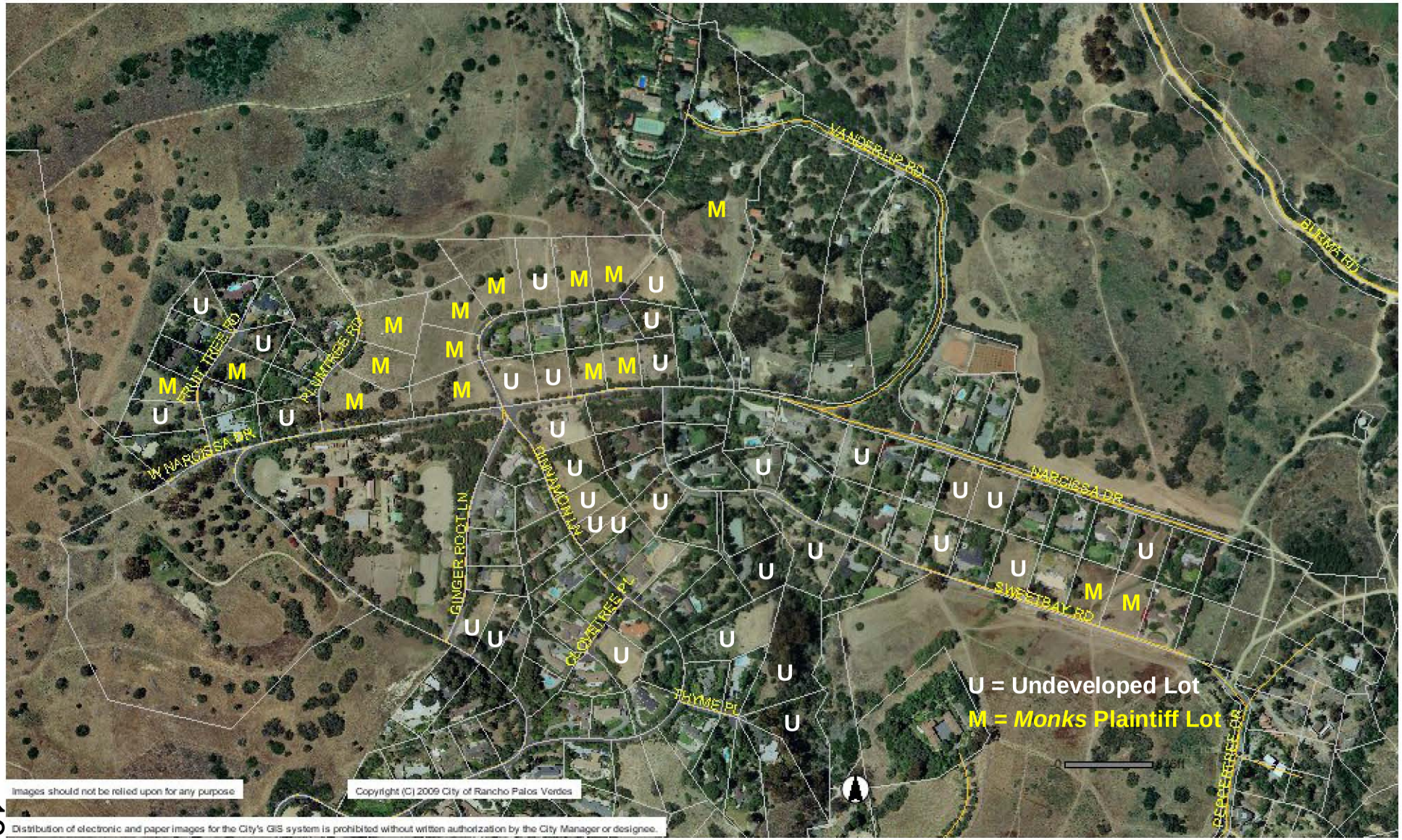
ATTEST:

/s/ Carla Morreale
City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss
CITY OF RANCHO PALOS VERDES)

I, Carla Morreale, City Clerk of the City of Rancho Palos Verdes, do hereby certify that the above Resolution No. 2009-06 was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on January 21, 2009.

Carla Morreale
City Clerk



Boundary of Zone 2 ("Area Outlined in Green"),
Based upon Perry Ehlig's 1993 Map and Description

APN	Address	Legal Description	Owner	Status
7572-002-024	20 Vanderlip Drive	Lots 115, 116 & 117 (por.), LACA 51	Downhill	Developed
7572-002-025	10 Vanderlip Drive	Lot 117 (por.), LACA 51	Roberts	Developed
7572-002-026	8 Vanderlip Drive	Lot 117 (por.), LACA 51	Snell	Developed
7572-002-027	85 Vanderlip Drive	Parcel 1, Parcel Map 2703	Horton	Developed
7572-002-029	N/A *(Vanderlip Drive)*	Parcel 1, Parcel Map 8947	Vanderlip	Undeveloped
7572-002-030	99 Vanderlip Drive	Parcel 2, Parcel Map 8947	Vanderlip	Developed
7572-009-005	N/A *(Plumtree Road)*	Lot 20, Block 3, Tract 14195	Monks	Undeveloped
7572-009-006	N/A *(Plumtree Road)*	Lot 21, Block 3, Tract 14195	Monks	Undeveloped
7572-009-007	N/A *(Plumtree Road)*	Lot 22, Block 3, Tract 14195	Haber	Undeveloped
7572-009-009	5 Plumtree Road	Lot 2, Block 4, Tract 14195	Hoffman	Developed
7572-009-010	3 Plumtree Road	Lot 3, Block 4, Tract 14195	Horn-Trickett	Developed
7572-009-011	N/A *(Plumtree Road)*	Lot 4, Block 4, Tract 14195	Horn-Trickett	Undeveloped
7572-009-012	5 Fruit Tree Road	Lot 5, Block 4, Tract 14195	Maertens	Developed
7572-009-013	6 Fruit Tree Road	Lot 6, Block 4, Tract 14195	Kelly	Developed
7572-009-014	N/A *(Fruit Tree Road)*	Lot 7, Block 4, Tract 14195	Stewart	Undeveloped
7572-009-015	N/A *(Fruit Tree Road)*	Lot 8, Block 4, Tract 14195	Parks	Undeveloped
7572-009-016	15 Fruit Tree Road	Lot 9, Block 4, Tract 14195	Parks	Developed
7572-009-017	13 Fruit Tree Road	Lot 10, Block 4, Tract 14195	Black	Developed
7572-009-018	N/A *(Fruit Tree Road)*	Lot 11, Block 4, Tract 14195	Griffith-Black	Undeveloped
7572-009-019	9 Fruit Tree Road	Lot 12, Block 4, Tract 14195	Heller	Developed
7572-009-020	7 Fruit Tree Road	Lot 13, Block 4, Tract 14195	Ehlenberger	Developed
7572-009-021	N/A *(Fruit Tree Road)*	Lot 14, Block 4, Tract 14195	Barnett	Undeveloped
7572-009-022	N/A *(Fruit Tree Road)*	Lot 15, Block 4, Tract 14195	Westergaard	Undeveloped
7572-009-023	1 Fruit Tree Road	Lot 16, Block 4, Tract 14195	Wright	Developed
7572-009-024	7 Plumtree Road	Parcel B, LLA SUB2004-00001	Tarcha	Developed
7572-010-009	57 Narcissa Drive	Lot 1, Block 3, Tract 14195	Gonzalez	Developed
7572-010-010	N/A *(Narcissa Drive)*	Lot 2, Block 3, Tract 14195	Gutierrez, J.	Undeveloped
7572-010-011	N/A *(Narcissa Drive)*	Lot 3, Block 3, Tract 14195	Smith, G.	Undeveloped
7572-010-012	N/A *(Narcissa Drive)*	Lot 4, Block 3, Tract 14195	Broz	Undeveloped
7572-010-013	N/A *(Narcissa Drive)*	Lot 5, Block 3, Tract 14195	Emon	Undeveloped
7572-010-014	N/A *(Narcissa Drive)*	Lot 6, Block 3, Tract 14195	Nopper	Undeveloped

APN	Address	Legal Description	Owner	Status
7572-010-015	34 Cinnamon Lane	Lot 7, Block 3, Tract 14195	VanBuren	Developed
7572-010-016	36 Cinnamon Lane	Lot 8, Block 3, Tract 14195	Davies	Developed
7572-010-017	38 Cinnamon Lane	Lot 9, Block 3, Tract 14195	Gasteiger-Otterlei	Developed
7572-010-018	40 Cinnamon Lane	Lot 10, Block 3, Tract 14195	Enstedt-Jones	Developed
7572-010-019	N/A *(Cinnamon Lane)*	Lot 11, Block 3, Tract 14195	Gutierrez, J.	Undeveloped
7572-010-020	N/A *(Cinnamon Lane)*	Lot 12, Block 3, Tract 14195	Joannou	Undeveloped
7572-010-021	N/A *(Cinnamon Lane)*	Lot 13, Block 3, Tract 14195	Ruth	Undeveloped
7572-010-022	N/A *(Cinnamon Lane)*	Lot 14, Block 3, Tract 14195	Agahee	Undeveloped
7572-010-023	N/A *(Cinnamon Lane)*	Lot 15, Block 3, Tract 14195	Arizona Land Assoc.	Undeveloped
7572-010-024	N/A *(Cinnamon Lane)*	Lot 16, Block 3, Tract 14195	Case	Undeveloped
7572-010-025	N/A *(Cinnamon Lane)*	Lot 17, Block 3, Tract 14195	Clark	Undeveloped
7572-010-026	N/A *(Cinnamon Lane)*	Lot 18, Block 3, Tract 14195	Cruce-Compton	Undeveloped
7572-010-027	N/A *(Cinnamon Lane)*	Lot 19, Block 3, Tract 14195	Tabor	Undeveloped
7572-011-005	6 Sweetbay Road	Lot 5, Tract 14500	Russi	Developed
7572-011-006	88 Narcissa Drive	Lot 6, Tract 14500	Halderman	Developed
7572-011-007	N/A *(Narcissa Drive)*	Lot 7, Tract 14500	Goradia	Undeveloped
7572-011-008	N/A *(Sweetbay Road)*	Lot 8, Tract 14500	Teh	Undeveloped
7572-011-009	N/A *(Sweetbay Road)*	Lot 9, Tract 14500	Kiss	Undeveloped
7572-011-010	84 Narcissa Drive	Lot 10, Tract 14500	Ohlaker	Developed
7572-011-011	82 Narcissa Drive	Lot 11, Tract 14500	Newsome	Developed
7572-011-012	12 Sweetbay Road	Lot 12, Tract 14500	Taylor	Developed
7572-011-013	N/A *(Sweetbay Road)*	Lot 13, Tract 14500	Petak	Undeveloped
7572-011-014	80 Narcissa Drive	Lot 14, Tract 14500	Stuart	Developed
7572-011-015	N/A *(Narcissa Drive)*	Lot 15, Tract 14500	Johnson	Undeveloped
7572-011-016	15 Sweetbay Road	Lot 16, Tract 14500	Stokoe	Developed
7572-011-017	N/A *(Sweetbay Road)*	Lot 17, Tract 14500	Binder	Undeveloped
7572-011-018	N/A *(Narcissa Drive)*	Lot 18, Tract 14500	Bostrom	Undeveloped
7572-011-019	76 Narcissa Drive	Lot 19, Tract 14500	Venanzi-Worth	Developed
7572-011-020	19 Sweetbay Road	Lot 20, Tract 14500	Peters	Developed
7572-011-021	21 Sweetbay Road	Lot 21, Tract 14500	Sheridan	Developed
7572-011-022	72 Narcissa Drive	Lot 22, Tract 14500	Hilden	Developed

APN	Address	Legal Description	Owner	Status
7572-011-023	N/A *(Narcissa Drive)*	Lot 23, Tract 14500	Bauer	Undeveloped
7572-011-024	23 Sweetbay Road	Lot 24, Tract 14500	Major	Developed
7572-011-025	25 Sweetbay Road	Lot 25, Tract 14500	Petak	Developed
7572-011-026	68 Narcissa Drive	Lot 26, Tract 14500	Bauer	Developed
7572-011-027	60 Narcissa Drive	Lot 27, Tract 14500	McClellan	Developed
7572-011-028	N/A *(Sweetbay Road)*	Lot 28, Tract 14500	McClellan	Undeveloped
7572-011-029	29 Sweetbay Road	Lot 29, Tract 14500	Barth	Developed
7572-011-030	31 Sweetbay Road	Lot 30, Tract 14500	Burt	Developed
7572-011-031	33 Sweetbay Road	Lot 31, Tract 14500	Douglas	Developed
7572-012-016	40 Narcissa Drive	Lot 1, Block 1, Tract 14195	Wolf	Developed
7572-013-001	34 Sweetbay Road	Lot 32, Tract 14500	Teague	Developed
7572-013-002	N/A *(Narcissa Drive)*	Lot 33, Tract 14500	Twidwell	Undeveloped
7572-013-003	N/A *(Cinnamon Lane)*	Lot 34, Tract 14500	Bacon-Vaughn	Undeveloped
7572-013-004	32 Sweetbay Road	Lot 35, Tract 14500	Twidwell	Developed
7572-013-005	30 Sweetbay Road	Lot 36 (North ½), Tract 14500	King	Developed
7572-013-006	N/A *(Sweetbay Road)*	Lot 36 (South ½), Tract 14500	King	Undeveloped
7572-013-007	N/A *(Cinnamon Lane)*	Lot 37 (North ½), Tract 14500	Siegel-Friend	Undeveloped
7572-013-008	N/A *(Cinnamon Lane)*	Lot 37 (South ½), Tract 14500	Reese	Undeveloped
7572-013-009	N/A *(Cinnamon Lane)*	Lot 38 (North ½), Tract 14500	Reese	Undeveloped
7572-013-010	22 Cinnamon Lane	Lot 38 (South ½), Tract 14500	Towle	Developed
7572-013-011	28 Sweetbay Road	Lot 39 Tract 14500	Weiss	Developed
7572-013-012	20 Cinnamon Lane	Lot 40 (North ½), Tract 14500	Greene	Developed
7572-013-013	18 Cinnamon Lane	Lot 40 (South ½), Tract 14500	Saban	Developed
7572-013-014	16 Cinnamon Lane	Lot 41, Tract 14500	Taylor	Developed
7572-013-015	N/A *(Sweetbay Road)*	Lot 42 (South ½), Tract 14500	Smith, R.	Undeveloped
7572-013-016	26 Sweetbay Road	Lot 42 (North ½), Tract 14500	Smith, R.	Developed
7572-013-017	N/A *(Sweetbay Road)*	Lot 43, Tract 14500	Donahower	Undeveloped
7572-013-018	20 Sweetbay Road	Lot 44 (West ½), Tract 14500	Fairchild	Developed
7572-013-019	18 Sweetbay Road	Lot 44 (East ½), Tract 14500	Turner	Developed
7572-014-012	9 Ginger Root Lane	Lot 1, Block 2, Tract 14195	Gallagher	Developed
7572-014-013	7 Ginger Root Lane	Lot 2, Block 2, Tract 14195	MacConnell	Developed

APN	Address	Legal Description	Owner	Status
7572-014-014	5 Ginger Root Lane	Lot 3, Block 2, Tract 14195	Griffin	Developed
7572-014-015	3 Ginger Root Lane	Lot 4, Block 2, Tract 14195	Cooper	Developed
7572-014-016	N/A *(Narcissa Drive)*	Lot 5, Block 2, Tract 14195	Politeo	Undeveloped
7572-014-017	N/A *(Narcissa Drive)*	Lot 6, Block 2, Tract 14195	Leon	Undeveloped
7572-014-023	7 Cinnamon Lane	Lot 12, Block 2, Tract 14195	Eads	Developed
7572-014-024	9 Cinnamon Lane	Lot 13, Block 2, Tract 14195	Maxwell	Developed
7572-014-025	N/A *(Clovetree Place)*	Lot 14, Block 2, Tract 14195	Miller	Undeveloped
7572-014-028	3 Clovetree Place	Lot 17, Block 2, Tract 14195	Gutierrez, C.	Developed
7572-014-029	11 Cinnamon Lane	Lot 18, Block 2, Tract 14195	Such	Developed
7572-014-030	13 Cinnamon Lane	Lot 19, Block 2, Tract 14195	Albuja	Developed
7572-014-031	15 Cinnamon Lane	Lot 20, Block 2, Tract 14195	Vaughan	Developed
7572-014-032	21 Cinnamon Lane	Lot 21, Block 2, Tract 14195	Zumwalt	Developed
7572-014-033	19 Cinnamon Lane	Lot 22, Block 2, Tract 14195	Deane	Developed
7572-016-010	N/A *(Thyme Place)*	Lot 45, Tract 14500	Siegel-Friend	Undeveloped
7572-016-011	N/A *(Cinnamon Lane)*	Lot 46, Tract 14500	Parks	Undeveloped
7572-016-012	3 Thyme Place	Lot 47 (East ½), Tract 14500	Mattis	Developed
7572-016-013	12 Cinnamon Lane	Lot 47 (West ½), Tract 14500	Parks	Developed
7572-016-014	N/A *(Thyme Place)*	Lot 48, Tract 14500	Reeves	Undeveloped

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MEMORANDUM

RANCHO PALOS VERDES

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: DIRECTOR OF PUBLIC WORKS

DATE: JUNE 1, 1993

SUBJECT: GUIDELINES FOR DEVELOPMENT IN THE MORATORIUM AREA

RECOMMENDATION

If Council so desires, direct staff to prepare an ordinance establishing overlay zones to allow development in the Moratorium area under specific guidelines.

BACKGROUND

Council, after discussion with staff including the City Attorney and Dr. Perry Ehlig, previously instructed staff to draft a set of guidelines to be used for potential development in the Moratorium area which considers the unique characteristics of the various areas. We have worked with Dr. Perry Ehlig to draft some guidelines for Council consideration.

ANALYSIS

Staff has investigated the possibility of allowing development of certain areas within the boundaries of the Moratorium area under specified conditions and restrictions. With help from our geologist, Dr. Perry Ehlig, potentially developable zones have been identified which have similar geologic characteristics. Attached is a report which specifically describes these zones and under what conditions and restrictions development could occur.

Rather than remove potentially developable area from the Moratorium area, it is suggested that those areas be granted an exception for development within the specified area. It is clear that there are some areas in the Moratorium can be developed under specific restrictions and conditions.

CONCLUSION

Should Council decide to permit development in the Moratorium area, staff should be directed to prepare an ordinance to facilitate such development.

(1)

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13-171

ALTERNATIVES

The primary alternative is not to allow development at this time and revisit this issue at a future date.

Other alternatives could include restricting development to only one or more of the identified areas.

FISCAL IMPACT

Under the recommended action to prepare an ordinance, the primary cost would be for staff time and the City Attorney to prepare the ordinance along the suggested guidelines. There has not been a budget prepared for this work however, the cost should be somewhat less than $3,000 to complete the ordinance. The positive fiscal impacts on City revenues from permitting development would be substantially although not quantified at this time.

Respectfully Submitted,

Trent D. Pulliam
Director of Public Works

Reviewed,

Paul D. Bussey
City Manager

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TDP/tp

MEMORANDUM

TO: Trent Pulliam, Director of Public Works
City of Rancho Palos Verdes

May 26, 1993

FROM: Perry L. Ehlig, City Geologist

SUBJECT: Suggested Guidelines for Permitting Development in the Moratorium Area

ESTABLISHMENT OF MORATORIUM ZONES

For the purpose of these guidelines, the Moratorium area is divided into the eight zones listed below and shown on the Moratorium Map.

Zone 1 - Unsubdivided land unaffected by large historic landslides and located uphill or to the west of subdivided areas. (about 550 acres)

Zone 2 - Subdivided land unaffected by large historic landslides. (about 130 acres)

Zone 3 - Unsubdivided land unaffected by large historic landslides and located seaward of Sweetbay Road. (about 15 acres)

Zone 4 - Land affected by the Klondike Canyon landslide and adjacent land included in the Klondike Canyon Geologic Hazard Abatement District. (about 100 acres)

Zone 5 - Land affected by the Abalone Cove landslide and adjacent land where minor movement has occurred due to loss of lateral support. (about 90 acres)

Zone 6 - The uphill, westerly and central parts of the Portuguese Bend landslide, where movement can be stopped through mitigation without requiring shoreline protection. (about 210 acres)

Zone 7 - The seaward part of the Portuguese Bend landslide where control of movement requires shoreline protection. (about 75 acres)

Zone 8 - Land affected by the Flying Triangle landslide including immediately adjacent land. (about 25 acres)

DESCRIPTIONS OF ZONES AND SUGGESTED GUIDELINES FOR PERMITTING DEVELOPMENT

ZONE 1

Background

Zone 1 includes about 550 acres of undeveloped land. Most is within the uphill part of a large ancient landslide that was last active about 100,000 years ago. Landslide topography is modified by erosion of canyons, filling of slide depressions and smoothing and flattening of slide scarps. Zone 1 contains some broad areas where slopes are less than 5:1 (horizontal to vertical) but the majority of the area has slopes ranging between 5:1 and 2:1. Slopes steeper than 2:1 occur locally along the sides of canyons.

The large ancient landslide does not underlie all of Zone 1. Land adjoining Palos Verdes Drive South in the southwest part of the zone is unaffected by sliding and probably has a factor of safety in excess of 1.50. Land in the eastern part of the zone is also outside of the large landslide but it contains local landslides.

Extensive geotechnical studies have been conducted throughout Zone 1. Major goals of the studies include (1) locating and determining the configuration of the deepest slide plane, (2) determining ground water conditions beneath the area, and (3) analyzing the stability of the ancient landslide, and (4) evaluating methods of improving the areas stability. Geotechnical studies are essentially complete in the eastern half of Zone 1 but more are needed in the western half.

Suggested Guidelines

1. Any land in Zone 1 which can be shown to have a safety factor of 1.5 or greater in regard to landsliding, or is correctable to a factor of safety of 1.5 through remedial grading, and will upon development have no adverse impact on the stability of adjacent land, shall be granted an exception for habitable development upon completion of all necessary remedial work. (This is consistent with existing City code.)

2. Any land in Zone 1 which can be shown to have a safety factor between 1.30 and 1.50 in regard to the large ancient landslide and has a factor of safety of 1.50 or greater in regard to local slope stability shall be granted an exception for habitable development providing it meets all other requirements in guideline 1 (above) and the following stipulations:
   a. A network of monitoring and producing wells must be installed in accordance with a plan approved by the Rancho Palos Verdes Redevelopment Agency (RDA).
   b. A covenant must be attached to each deed agreeing to participate in the Abalone Cove Geologic Hazard Abatement District (ACLAD) and any other district established for the purpose of maintaining the land in a geologically stable condition.
   c. Surface drainage improvements must be installed in accordance with a plan approved by the RDA.
   d. A sewer system must be installed to serve all habitable structures.
   e. All other RDA and City requirements must be met.

3. Any land in Zone 1 which is to be used for purposes other than habitable structures may be granted an exception for nonhabitable development providing it has a safety factor of 1.15 or greater in regard to the large ancient landslide and it meets the following stipulations:
   a. No land modification may be made which will adversely affect the local or regional stability of the land.
   b. A network of monitoring and production wells must be installed in accordance with a plan approved by the RDA.
   c. A covenant must be signed agreeing to support and participate in ACLAD and any other district established for the purpose of maintaining the land in a geologically stable condition.
   d. Surface drainage improvements must be installed in accordance with a plan approved by the RDA.
   e. All other RDA and City requirements must be met.

(4)

ZONE 2

Background

Zone 2 includes about 130 acres within existing Tract 14195 and Tract 14500 (except lots 1, 2, 3 and 4 which are in the Portuguese Bend landslide), and the subdivided land served by Vanderlip Drive. It is an area of subdued topography within the central part of the large ancient landslide. Slopes of 5:1 and less prevail over most of the central and downhill parts of Zone 2. Slopes generally range between 5:1 and 3:1 in the uphill part.

The flattest parts of Zone 2 overlie a gentle trough in the bedrock structure beneath the slide. The slide base followed the bedrock structure as the slide mass translated across this area. This caused a surface hollow to develop in an east-west direction across this area while the slide was active. The hollow was subsequently filled by stream and slope wash deposits. This created the gentle slopes which drain toward the channels of Altamira Canyon.

Available geologic data indicate the base of the ancient landslide is at depths ranging from 180 to 260 feet below the ground surface in most parts of Zone 2. Four to six deep core holes would be desirable to more precisely establish the location of the slide base beneath parts of this area but new findings are unlikely to have a significant impact on existing interpretations. The slide base is sufficiently flat in the area seaward of upper Narcissa Drive that the overlying slide mass resists movement providing the water table does not rise above its historic levels. Based on well data, the water table was at a depth of 50 to 60 feet beneath most of this area prior to the start of pumping in 1980. The water table is currently at an average depth of about 70 feet.

The 25 undeveloped lots in Tract 14195 and 15 in Tract 14500, and an undetermined number in parcels served by Vanderlip Drive, could be developed without adversely affecting the stability of the large ancient landslide. In fact, if development were combined with installation of additional wells, stability would be improved. Most lots can be developed with minimal grading and without a net import or export of earth. Such grading would have no impact on the stability of the deep-seated slide.

Ground water is the only variable within Zone 2 which affects its stability. Zone 2 currently contains one monitoring well and four producing wells. Eight to ten more monitoring wells are needed to provide a detailed picture of ground water conditions within Zone 2. Four to six more producing wells are needed to better control ground water conditions. If the cost of the needed wells were funded from fees paid for permission to develop vacant lots, development would improve the stability of the large ancient landslide.

Suggested Guidelines

Development of undeveloped lots shall be permitted in existing Tract 14195 and Tract 14500 (except lots 1, 2, 3 and 4 which are in the Portuguese Bend landslide), and the subdivided land served by Vanderlip Drive subject to the following stipulations:

a. The lot owner must sign a covenant agreeing to participate in ACLAD and any other district whose purpose is to maintain the land in a geologically stable condition.

b. The lot owner must pay a fee to help defray the cost of installing additional monitoring and producing wells. Said fee shall not exceed the differential between the sum of ACLAD fees previously assessed to an equivalent sized developed lot and the sum previously assessed to the undeveloped lot. (The annual tax difference between a developed lot and an undeveloped of equal size is determined by the square footage of improvements.)
c. Prior to issuance of a building permit, a geotechnical report must be submitted to and approved by the City's geotechnical reviewers indicating what, if any, local geologic hazards must be corrected prior to construction, and shall specify foundation designs based on field and laboratory studies. Grading exceeding 250 cubic yards shall require special approval by the City staff.
d. If building occurs prior to installation of a sewer system, a covenant must be signed agreeing to a sewer system and providing necessary easements for one.
e. All lot drainage deficiencies, if any, identified by the City staff must be corrected.
f. Runoff from all buildings and paved areas must be contained and directed to the street or to an approved drainage course.
g. All other relevant building code requirements must be met.

ZONE 3

Background

About 15 acres of undevelop land is present within the area bounded by the main channel of Altamira Canyon on the west, Sweetbay Road on the north, and the edge of the Portuguese Bend landslide on the east and southeast. Most of this land has gentle rolling topography and could be developed into residential lots with only minor grading.

Available data indicates the base of the large ancient landslide is nearly horizontal beneath this area and is at a depth of 200 to 250 feet below the ground surface. Three to five deep core holes are needed to confirm this.

Ground water conditions are the main variable affecting the stability of the large ancient landslide beneath this area. The area should remain stable as long as the water table rises no higher than its historic high level. The area contains two producing wells but no monitoring wells. Data from the two wells and projections from wells in the adjoining area indicates the water table is 10 to 15 feet lower than it was in 1983. At present, the water table ranges from about 60 to as much as 130 feet below the ground surface. Three to five monitoring wells and one or two additional producing wells should be installed during development of this area.

Suggested Guidelines

Additional geologic studies are needed to accurately locate the base of the large ancient landslide beneath this area. If the results of such studies are favorable, development could be permitted contingent upon meeting all City requirements pertaining to development of residential tracts and subject to the following stipulations:

a. Ground water monitoring and production wells must be installed in accordance with a plan approved by the RDA.
b. Surface drainage channels must be paved in accordance with a plan approved by the RDA.

c. A sewer system must be installed.
d. A covenant must be attached to each deed requiring the owner to participate in ACLAD and any other district whose purpose is to maintain the land in a geologically stable condition.
e. All other RDA and City requirements must be met.

ZONE 4

Background

The Klondike Canyon Geologic Hazard Abatement District has controlled the Klondike Canyon landslide. The maximum measured horizontal displacement is only 2.5 feet, all of which occurred prior to 1987. The primary cause of instability was the buildup of artesian water pressure beneath the downhill part of the landslide. Control was obtained by pumping water from a well at the beach. Infiltration was reduced by installing a culvert in Klondike Canyon from Palos Verdes Drive South to the beach. Infiltration can be further reduced by lining Klondike Canyon at least as far upstream as the head of the Klondike Canyon landslide. This would would reduce the likelihood of renewed movement in the uphill part of the slide during periods of high rainfall.

The factor of safety is not an issue in the Klondike Canyon landslide. The slide is unconventional in that the downhill edge of the slide's base terminates more than 100 feet below the ground surface. This was made possible by upward bending of the downhill part of the slide. Artesian ground water pressure facilitated the uplift. The factor of safety has not been calculated because of the slide's unconventional nature. Calculations would almost certainly yield a factor of safety well above 1.5 providing there is no artesian uplift pressure.

Zone 4 contains part of the Seaview tract (Tract 22835) and the Portuguese Bend Club. Most lots are already developed within these tracts. About half of Zone 4 consists of undeveloped land located on the ridge between Klondike Canyon and the Portuguese Bend landslide.

Suggested Guidelines

1. Lot owners in the Seaview tract and Portuguese Bend Club may rebuild or make additions to existing buildings subject to the following stipulations:
   a. The owner must sign a covenant agreeing to support and participate in the Klondike Canyon Geologic Hazard Abatement District and any other district whose purpose is to maintain the land in a geologically stable condition.
   b. The building must connect to the Los Angeles County sewer system or to an approved holding tank. There shall be no on-site disposal of waste water.
   c. Prior to issuance of a building permit, a geotechnical report must be submitted to and approved by the City's geotechnical reviewers indicating what, if any, local geologic hazards must be corrected prior to construction, and specifying foundation designs based on field and laboratory studies.
   d. Roof runoff from all buildings and paved areas on the site must be contained and directed to the street or an approved drainage course.
   e. All lot drainage deficiencies, if any, identified by the City staff must be corrected.
   f. All other relevant building code requirements must be met.

2. Undeveloped land within the Klondike Canyon Geologic Hazard Abatement District is mainly west of Klondike Canyon and north of Palos Verdes Drive South and is accessed from the east edge of the active Portuguese Bend landslide. Development of this land shall be held in obeyance until the adjacent part of the Portuguese Bend landslide is stabilized.

Zone 5

Background

The Abalone Cove landslide has been stabilized by lowering the water table. Most movement occurred prior to 1985. Only creep at rates of less than an inch per year and local readjustments have occurred since 1985. Existing abatement activities appear adequate to prevent renewed slide movement during rainy periods. Nonetheless, it would be prudent to limit building to that permitted by the current City guidelines for this area until slide creep has stopped and planned abatement measures, such as drainage improvements, sewers and shoreline protection are completed.

Suggested Guidelines

1. Development shall be limited to that currently permitted by City guidelines for this area until after planned remediation is completed and slide creep has stopped.
2. After the above condition are met, building shall be permitted subject to all conditions imposed in Zone 2, and:
   a. a sewer system must either be in operation or a holding tank must be utilized. No on site sewage disposal will be permitted.
   b. A geotechnical study must be made to determine the suitability of the site for all proposed improvements and to provide foundation design specifications for proposed buildings. In addition, foundations must be inspected and approved by a geotechnical consultant during construction.
   c. A covenant must be signed by the owner specifying that the City shall be held harmless in the event that ground settlement or other forms of ground movement damage improvements.

Zone 6

Background

The Portuguese Bend landslide can be divided into a landward zone (Zone 6) which can be stabilized without shoreline protection, and a seaward zone (Zone 7) which requires shoreline protection for stabilization. Palos Verdes Drive South forms the approximate boundary between the two zones.

Zone 6 includes about 210 acres in and adjacent to the landward and central parts of the Portuguese Bend landslide. As a result of remediation, movement has stopped or nearly stopped in the northern and western parts of Zone 6. Movement continues at a rate of one to three feet per year in the central and southeastern part of Zone 6 but is less than one-tenth the rate of movement prior to remedial grading in 1986.

Remediation to date includes (1) removal of water from 17 wells distributed throughout the area, (2) the moving of about one million cubic yards of earth so as to restore drainage and reduce driving force in the northern and eastern parts of the area, and (3) installation of a temporary culvert to conduct runoff to the ocean. Movement can be stopped throughout Zone 6 by additional improvements in surface drainage and additional remedial grading.

In the area west of Portuguese Canyon most of Zone 6 is subdivided into lots, part of which have houses on them. This and the subsurface structure of the landslide limit slide abatement to installation of wells, improvements in surface drainage and installation of a sewer system in most parts of the subdivided area. Lot boundaries should be reestablished before major surface modifications are permitted. The slide has displaced lot improvements, streets and utilities from their original locations. As a result, lots are no longer in their legally described locations. The amount of displacement varies from one part of the slide to another. In places, the original lot boundaries have been distorted and fragmented by abrupt changes in displacement across slide ruptures. The only viable solution is to void the original descriptions of lot locations and establish new ones.

East of Portuguese Canyon, Zone 6 is undeveloped. As a result, remedial grading can be performed without interference from existing improvements. The slide base is relatively shallow in the northeast part of this area. It may be feasible to remove the northeast part of slide and replace it with compacted fill founded on firm bedrock. This would create a slide-free area with a factor of safety in excess of 1.50.

Suggested Guidelines

1. As long as this part of the slide continues to move, improvements shall be limited to landslide abatement and other improvements permitted by current City guidelines for this area.
2. After the landslide has stopped moving and there is reasonable assurance that movement will not resume at a future time, land ownership boundaries shall be reestablished. This may be done under the auspices of the Redevelopment Agency but the costs must be paid by land owners.
3. Following reestablishment of legal lot boundaries, building shall be permitted in the subdivided part of Zone 6 subject to the same conditions imposed in Zone 5 under suggested guideline 2.
4. After reestablishment of legal land ownership boundaries, the unsubdivided parts of Zone 6 shall be subject to the same suggested guidelines as Zone 1.

ZONE 7

The 75 acres of the Portuguese Bend landslide located seaward of Palos Verdes Drive South is poorly controlled by existing abatement activities. Permanent control will require shoreline protection. No development should be permitted in this area until after enactment of a plan of control which includes shoreline protection.

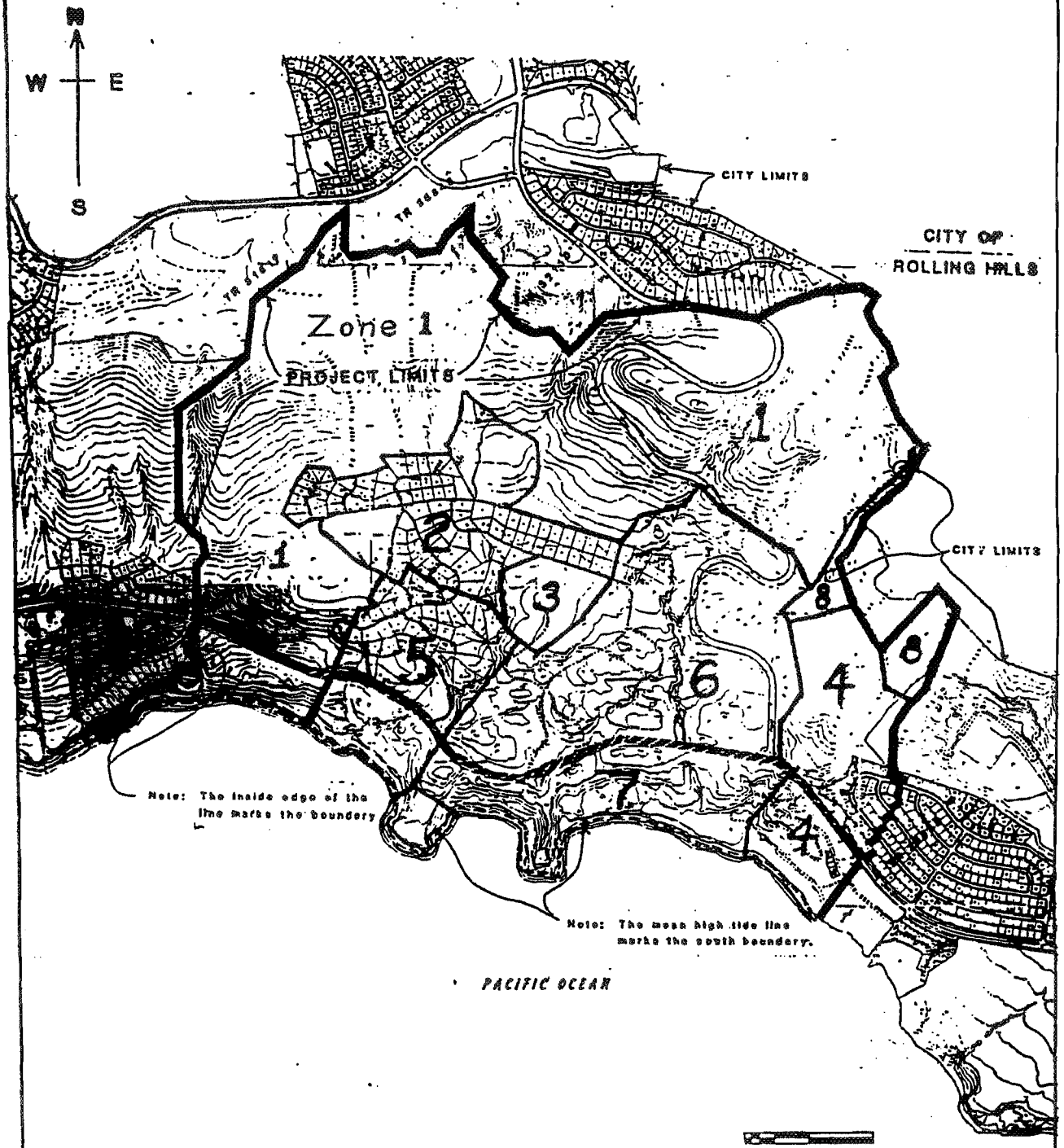
Zone 8

The Flying Triangle is currently uncontrolled. No development should be permitted within it or land affected by it until the Flying Triangle landslide has stopped moving and is under the control of an abatement district.

RANCHO PALOS VERDES REDEVELOPMENT AGENCY

LANDSLIDE AREA

CITY OF RANCHO PALOS VERDES



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Gabrielino Tongva Nation

A California Tribal Sovereign

Post Office Box 86908 - Los Angeles, CA 90086

February 13, 2009

Joel Rojas
Director of Planning, Building &
Code Enforcement
City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275-5391

Re: Notice of Proposed Mitigated Negative Declaration - Planning Case No. ZON2009-00007 (Code Amendment & Environmental Assessment) - "Zone 2 Landslide Moratorium Ordinance Revisions"

Dear Mr. Rojas,

This letter is in response to your request for comments on the proposed Mitigated Negative Declaration. Since the City of Rancho Palos Verdes is within the traditional tribal territory of the Gabrielino Tongva Nation it is my responsibility to respond with the concern that the proposed revisions as described in your correspondence may have an impact to the cultural resources of our tribe.

I have no objections to the proposed revisions at this time.

I look forward to corresponding with you on cultural resource issues and matters of environmental compliance. Please feel free to contact me at any time.

Sincerely,

Sam Dunlap
Tribal Secretary
(909) 262-9351 cell
samdunlap@earthlink.net

To: The Director of Planning, Building and Code Enforcement

February 18, 2009

Rancho Palos Verdes, CA> 90275

Subject: Proposed Mitigated Negative Declaration

Planning Case No: ZON2009=00007

As the owner of one of the lots in Zone 2 of the Landslide Moratorium Area I wish to be on record as follows:

1. I am in favor of the enactment of the Ordinance Revisions.
2. I would like to request that the Code amendment be modified to explicitly clarify the term "Undeveloped" to recognize the existence of certain lots which because of their size should be eligible to be subdivided or lot split into several individual lots consistent with the overall zoning of the immediately surrounding properties. Failure to do so would constitute an unconstitutional taking of my property under the California Constitution.
3. My property in particular Tax ID #7572-002-024 is 6.9399 acres which in another location could be subdivided into six, or perhaps even seven, separate parcels. Obviously all of the provisions of this process, in general, would need to be observed as well as those specific to this area such as sewer provisions.
4. Every aspect of governance of this parcel over a period of years such as: ACLAD, County Flood Control, County Park, and West Basin Standby Fees etc. have been applied in a manner consistent with allowable separation of this property into several building lots. The zoning designation of this property in accordance with City Ordinance No. 405 Code Table 02A Exhibit "B" is District RS-1.which means one unit per acre. I have found that my tax on that kind of Tax item to be between 7 and 8 times larger than those of RS-3 and smaller Districts.

Signed:

Jack Downhill

20 Vanderlip Dr.

Rancho Palos Verdes, CA 90275

34, 36 and 40 Cinnamon Lane
Rancho Palos Verdes
California 90275

February 13, 2009

Mr Joel Rojas
Director of Planning, Building and Code Enforcement
City of Rancho Palos Verdes
30940 Hawthorne Blvd
RPV CA 90275-5391

Construction Standards Zone 2 Landslide Moratorium Ordinance Revisions
and
38 Cinnamon Lane Soil Compaction

Dear Mr Rojas,

We the undersigned homeowners of the three above properties were subjected to three days of a 10,000 lb soil compactor the week before last on the property at 38 Cinnamon Lane which is being reconstructed. The vibration to our homes was frightening and may have resulted in new cracks on our properties.

The new owners of the property confirmed that the geologist's report filed as part of the planning process required that the soil be compacted with this equipment. This means that the City in issuing its building permit approved such use of an equipment that is inappropriate in an area such as ours subject to potential landslide and instability. In addition, use of such heavy equipment close to existing constructed homes is clearly a potential threat to home and personal safety, an aggravation to existing instability and a nuisance.

We urge you in considering what criteria you select to permit construction on empty lots in this delicate environment that you do not permit 10,000lb compaction equipment. We understand that soil compaction can be achieved with much less intrusive machines. Furthermore, having compacted the soil on this lot about 75% has now been removed through digging trenches and holes for foundations!

Also in issuing permits we request that the City criteria clearly identify in its Moratorium Exclusion Documents and in its heading on every building permit issued reference to the court decision on the Monks case and reference to previously filed public documents as appropriate.

Respectfully,

Blair Van Buren

Jeremy Davies

Lew Enstedt

Cc Mayor and Council Members

Kit Fox

From: KSnell0001@aol.com
Sent: Sunday, February 22, 2009 7:10 PM
To: planning@rpv.com; cityclerk@rpv.com; kitf@rpv.com
Cc: KSnell0001@aol.com
Subject: Zone 2 Landslide Moratorium Ordinance Revisions - Case No ZON2009-00007

February 22, 2009

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

Re: Proposed Mitigated Negative Declaration for Planning Case No.ZON2009-00007 (Code Amendment and Environmental Assessment) for the proposed "Zone 2 Landslide Moratorium Ordinance Revisions"

To be included in Public Meeting March 3, 2009 or when heard by the City Council

Mayor and Council members:

The proposed "Zone 2 Landslide Moratorium Ordinance Revisions" have neglected to add a pathway for the four parcel owners of 8, 10, 20 & 98 Vanderlip Driveway in Zone 2 to request a lot split to have R-1 one acre lots as designated by the RPV zoning code. The owner of the parcel at 98 Vanderlip Driveway is a plaintiff in the case of Monks v. Rancho Palos Verdes.

The City's prohibition against lot splits in Zone 2 is a "taking and an impermissible impediment to the development" of the parcel owners' property. A case can be made showing a "taking" based on the California State Court of Appeal's decision in the case of Monks v. Rancho Palos Verdes. Why are the parcel owners on Vanderlip Drive being discriminated against? Will it be opening the door to development in Zone 1? Wasn't the door opened with the Court of Appeals decision in favor of the plaintiffs?

#60 Narcissa and an adjacent lot totaling 1.5 acres sold for $2,436,525.00 last September. This is an example of property values in Zone 2 and represents potential losses for those parcel owners in Zone 2 who are not allowed to split their parcels. Estimate value of one acre housing site in Zone 2 = One million dollars.

Property off of Vanderlip Driveway has a higher degree of stability (exceeding 1.5) than most of the other properties located in Zone 2. A new exception category in the City's Landslide Moratorium Ordinance is requested to provide the ability to request lot splits in Zone 2. Allowing lot splits in Zone 2 would provide up to 15 new building sites, one of which is now included in "...sixteen (16) lots that are owned by the plaintiffs in the Monks case."

The plan of Rancho Palos Verdes Redevelopment Agency called for over 500 new homes. Tax increment funding continues to be received by the RDA based on the RDA's plan to remove blight and allow the construction of the new homes including low income housing.

The RDA planned for the same 15 building sites off of Vanderlip Driveway in Zone 2 once "the blight" was cleared. Building homes on 1 acre sites can't be realized without a revision in the "Zone 2 Landslide Moratorium Ordinance" to allow a process to apply for a lot split.

The Abalone Cover Sewer line capacity was designed to accommodate these same potential 15 building sites off of Vanderlip Driveway. Sewer line laterals to serve the future homes were installed in anticipation of the lot splits and construction as promised by the former City Council members.

Abalone Cove Abatement District (ACLAD) assesses an annual Benefit Assessment to pay for landslide abatement. The parcels on Vanderlip Drive in Zone 2 have paid annually since 1984 based on 1 acre=1 unit. The parcel owners in Zone 2 on Vanderlip Drive have paid ACLAD over $150,000.00 since 1984 to abate the slide so they can sub-divide and build. Zone 2 hasn't moved for over 100,000 years.

Miss-information about the GPS monument on upper Cinnamon moving was reported by a City Council member during the last hearings on the Moratorium Ordinance. I was surprised by this very serious accusation made by a council member during the hearing and gave up asking for the right to build. Factual information was released after the hearings that the monument was moved during street paving. When the monument was placed back, it was not placed exactly back in the same spot. LOL>

Roads, utilities and sewers are in for the 15 new building sites in Zone 2 on Vanderlip Driveway. Minor grading will be necessary for some of the lot after one acre lot splits are allowed.

In approximately 1985, the then Mayor Jackie Bacharach and City Council took away the right of sub-dividing in the moratorium area with the promise that it would be reinstated in a few years after the slide was abated. Mayor Bacharach further stated that paying the "benefit assessment" to ACLAD would benefit the property owners by stopping the slide and allowing subdivision and building to take place. LOL>

The City of Rancho Palos Verdes approved a lot split for John & Suzanne Vanderlip in the 1990's that created the lot on the south side known as 98 Vanderlip. A Monk litigate now owns the property. Los Angeles County allowed lot splits of 8, 10 and 20 Vanderlip Drive in the early 1970's. L. A. County continued granting lot splits and sub-divisions through the mid 1980's u til the City placed restrictions on them. Lot splits were granted after that by exception until the City Council placed severe restrictions on the Moratorium area with the coming of the NCCP. All lots were not sub-divided back in the 1940's.

Perry L. Ehlig, City Geologist recommended guidelines for permitting development in the moratorium area to the City Council dated May 26, 1993. Zones were established by Dr. Ehlig and approved by the City Council. Dr. Ehlig reported for Zone 2:

> "...parcels served by Vanderlip Drive could be developed without adversely affecting the stability of the large ancient landslide. Most lots can be developed with minimal grading."

Allowing the lot splits in Zone 2 will improve fire safety with developed lots next to the potential Nature Preserve. Now there are weeds. The increased payments to ACLAD will assist with de-watering and projects. The increase tax increment going to RDA will allow further slide abatement for Zones 4, 5, 6, 7 and 8.

In the 1990's, John and Suzanne Vanderlip were allowed to build a double lined pool to Dr. Ehlig's pool specifications in the Moratorium area. Not allowing the construction of pools and fountains in the Moratorium area is also a further taking of property rights.

Your earliest attention to allowing a path for lot splits is required to prevent further financial loss and hardship to the property owners in Zone 2 on Vanderlip Driveway. Additional delays or Court action will cause substantial losses due to property values going down with the declining economy. Time is critical to stop the losses. I would like to split off and sell 2 lots to reduce the burden of maintenance, responsibility and cost then retire.

Why does one have to sue to protect property rights? Will my neighbors and I follow the path of John Monks before we are able to split and build?

In Memory of John Monks:

"...I think we all agree that the right for individuals to own and make use of property is absolutely basic in a free, democratic society. Governmental prohibitions, conditions and restrictions on such ownership and use only be imposed for good and clear cause and even then, if severe, may require compensation... "
John Monks September 13, 2000

"...the finatncial burden has been extreme and I wish to have the right o use and build on my land which is stable. You must agree with me that is unreasonable that while I continue to pay taxes and upkeep on my land, it is not I who benefits..." John Monks October 4, 2000

I am personally very sad that John Monks didn't live long enough to enjoy his property. As a resident and tax payer in Rancho Palos Verdes, I am very disturbed over the amount of attorney's fees the City of Rancho Palos Verdes pays for litigation when a good negotiator could work most things out.

References:
Monks V. Rancho Palos Verdes including but not limited to California State Court of Appeal's decision, testimony & depostions of all experts, all court transcripts and everything related to the case including RPV Hearing records, correspondence and attachments.
Palos Verdes MLS for the last 10 years for homes that have sold in and outside the Moratorium area.
Les Evans' memorandum of January 25, 1997 and its attachments
Report of Keith Ehlert, C.E.G. 1242 & Stephen W. Ng, 6E 637.
Executive Summary of Panel of Experts stating Zone 2 meets 1.5 stability factor locally.
Rancho Palos Verdes Redevelopment Agency EIR and Plan. Records receipts of Tax Increments that have been paid to RPV RDA, to date, and disbursements including low income housing funds
L. A. County & Friends of the Bend VS Rancho Palos Verdes Redevelopment Agency
Abalone Cove Sewer District EIR and Plan, amendments, supplements, hearings and correspondence
Stuart et all VS County of Los Angeles, Rancho Palos Verdes, (RDA)
Horan vs County of Los Angeles, Rancho Palos Verdes,
Rancho Palos Verdes Municipal Code & General Plan and all amendments
Changes to Rancho Palos Verdes Landslide Moratorium Area from 1973 to current date, all Environmental Impact Reports, staff correspondence, hearing documents
MEMORANDUM: To: Trent Pulliam From: Perry L. Ehlig, City Geologist dated May 26, 1993 Establishment of Moratorium Zones & map
All correspondence to/from Perry Ehlig and Rancho Palos Verdes
Records of Lot Split for John & Suzanne Vanderlip for the parcel of 99 Vanderlip Driveway creating 98; 75, 79 & 83 Narcissa; 8, 10,20 Vanderlip and all other lot splits and boundary realignments.
Records of Dr. Ehlig's pool double walled guidelines
Records of approval of pool for John & Suzanne Vanderlip for 99 Vanderlip Driveway
Records of Fountains & Pool permits within moratorium area
All filmed Rancho Palos Verdes City Council meetings and Redevelopment meetings back to 1979

Thank you for your consideration in protecting property rights.

Kathy Snell
8 Vanderlip Driveway
Rancho Palos Verdes, Ca 90275
310 707 8876

Kit Fox

From: KSnell0001@aol.com

Sent: Sunday, February 22, 2009 7:10 PM

To: PLANNING@RPV.COM; cityclerk@rpv.com; kitf@rpv.com

Cc: KSnell0001@aol.com

Subject: PROPOSED MITIGATED NEGATIVE DECLARATION - Comments ZON2009-00007

February 22, 2009

City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, Ca 90275

Re: Comments to Proposed Mitigated Negative Declaration for Planning Case No.ZON2009-00007

Gentlepersons,

Please reference the Checklist Form:

9. Description of project:

Why were the parcels on Vanderlip Driveway in Zone 2 excluded? Does not allowing lot-splits cause "...a taking and an impermissible impediment to the development of..." property?

If not, why are the NON-Monks litigants with lots in Zone 2 allowed to build?

10. Description of project site

The description is not correct because Dr. Ehlig's memo of May 26, 1993, described:

"Zone 2- Subdivided land unaffected by large historic landslides. (about 130 acres)

Background

Zone 2 includes about 130 acres within existing Tract 14195 and Tract 14500 (except lots 1, 2, 3, and 4 which are in the Portuguese Bend landslide), and the subdiv ded land served by Vanderlip Drive."

Dr. Ehlig's original map indicated that 75, 79 and 83 Narcissa, 85, 99 and 100 Vanderlip Drive were in Zone 1 but his explanation in his memo of May 26, 1993 indicates Zone 2:

Zone 1 includes about 550 acres of **undeveloped** land.

In addition, Dr. Ehlig always made it very clear at all hearing and meetings that he drew the Zones along property lines and kept all home out of Zone 1 (undeveloped). The map Dr. Ehlig used was pre-lot splits on Vanderlip Driveway and upper Narcissa causing the upper Narcissa lots and 3 developed parcels on Vanderlip to be accidentally excluded on Dr. Ehlig's map.

The map needs to be updated to match Dr. Ehlig's memo.

11. Surrounding land uses and setting:

Northeast:

The three developed residential lots are not in Zone 1. They are in Zone 2 as confirmed by Dr Ehlig's memo of May 26, 1993, (Zone 1 is all undeveloped).

Northwest & West:

The Vanderlip Estate, 100 Vanderlip Drive, is not in Zone 1 but in Zone 2 There are NO homes within Zone 1.

Figure 1, Page 4

The Zone 2 boundary lines needs to be moved to show 75, 79 and 83 Narcissa and 85, 99 and 100 Vanderlip included. The L A County map that Dr. Ehlig used didn't show newer lot-splits so he neglected to draw them into Zone 2 but his written explanation of the zones clearly includes all homes in other than Zone 1.

Vanderlip **RD** should be Vanderlip **DR**

Are the lot line adjustments for York included in Zone 1 or Zone 2? Where are they shown on the map?

Determination: Page 5

"...revisions in the project have been made by or agreed to by the project proponent."

Who is the project proponent?

Evaluation of Environmental Impacts: Page 6, 7, 10 comments a)

Comments: b) c) d)

"...on lots that have remained undeveloped since they were created in the late 1940's."

Correction: 98 Vanderlip was created in the 1990's. Lots were created in 1990's, 1980's and 1970's. Are lot line adjustments included?

Interior bright lights, when placed in-front of windows, can shine into neighbors' homes and can be very disturbing to the occupants.

Issues and Supporting information. Geo-5 e) Page 12

"The City has constructed a sanitary sewer system..."

Meetings, hearings, EIR's all show that the Rancho Palos Verdes RDA had the system constructed not the City. Settlement money from the Horan Law suit paid for the sewer. Has RDA transferred ownership to the City?

The sewer design was to include enough capacity for Zones 2, 3 and 5. The pipe on PVDS was designed to handle Zone 6 (Peppertree area) to connect to sewer on Palos Verdes Drive South and carry all to the West. Laterals were put in for all vacant lots and potential home sites on parcels needing lot-splits.

If the sewer system was not designed properly that could be very serious. Where is the sewer system overloaded? Wouldn't it be less expensive to correct the sewer system then digging holes and buying sewer holding tanks, then incurring the expense to remove them?

Vanderlip Driveway and some homes NE of Altamira Canyon were to have a gravity flow sewer system. Since Narcissa would have to be closed overnight due to the too big drainage pipe that Charlie Abbott had put in at Altamira Canyon at Upper Narcissa, Dean Allison made a decision on site to have the gravity flow sewage re-routed to the pump going down Sweetbay. Then the sewage gets pumped back up to Narcissa where it came from. Rather than replacing the pump, the gravity line should be put in crossing the Canyon and continuing by gravity to the L. A. County pumping station on PVDS. Correcting the sewer line to where it was designed to go would free up space in the sewer lines on Sweetbay.

Issues and Supporting Information

Comments: a) b) "...lots that remained undeveloped...late 1940's..."

Correction: 98 Vanderlip was created in the 1990's. Other "lots" were created in 1990's, 1980's and 1970's. Are lot line adjustments included?

h) "Very High Fire Hazard Severity Zone" Allowing lot-splits in Zone 2 will enable the new lots to be built upon thus removing weeds that fuel the fires. Not allowing the lot-splits and building will keep the weeds on parcels on Vanderlip Driveway. The weeds act like wicks spreading fire. The current Fire Code only provides for a 200' weed abatement set back from existing structures. Some parcels are 1000' long. Once the lots are split and the houses built, Vanderlip Driveway residents will provide a buffer to stop wild fire from coming into the community from the NCCP area.

10. Land Use/Planning Page 16

a) Does this plan conform with the RDA? Where are the low to moderate income homes?

By not having a path to apply for lot splits within Zone 2 and giving space to lot owners in the sewer system, discriminate against the parcel owners who have had to pay two and three times more for ACAD projects then the lot owners? Once the parcel owners sue and win in court to be granted lot splits, all of the sewer capacity may be gone.

Comments:

b) "...undeveloped since they were created in the late 1940's."

Correction: 98 Vanderlip was created in the 1990's. Other "lots" were created in 1990's, 1980's and 1970's. Are lot line adjustments included?

12. Noise Comments: Page 17

a) My neighbor drives an ATV up and down their 3.9 acres and on the street. The ATV is so LOUD. The mature foliage does not buffer the noise.

b-d) The large lot sizes in the area do **not** average one acre in size unless lot splits are included.

Comments: b-c) Page 18

Correction: 98 Vanderlip was created in the 1990's. Other "lots" were created in 1990's, 1980's and 1970's. Are lot line adjustments included?

17. Utilities/Service Systems Page 21

Comments:
a-c, e) "The City has constructed a sewer..."

Meetings, hearings, EIR's all show that the Rancho Palos Verdes RDA had the system constructed not the City. Has the RDA transferred ownership of the sewer to the City?

"The Abalone Cove system was originally intended to serve on hundred ten (110) developed and forty-six (46) undeveloped lots in the Abalone Cove area..."

During The Abalone Cove Sewer EIR hearings, the Envirodyne Engineers from Consoer Townsend in Federal Way, Washington said that the capacity would be designed to accommodate the Abalone Cove Landslide area built out to maximum density based on zoning. Under Horan Settlement Funds, part of the judgement was set aside to help stabilize the slide and paid for the sewers in Zone 2, Zone 3 and Zone 5. Zone 1 was excluded from the sewer funding.

How many existing homes were there when the "110 developed" sites were computed. Does that include extra capacity for parcels that have houses and would be allowed to split later? Did sewer capacity allow for the parcel on Sweetbay (Zone 3)? Why would laterals be put in to service future homes on parcels that required lot-splits if the capacity was not planned for? Was fraud involved? Who made the mistake by not allowing for enough capacity?

The Abalone Cover Sewer line capacity was to be designed to accommodate Zone 2, 3 and 5 that included existing houses, vacant lots, and potential building sites off of Vanderlip Driveway and Zone 3. Sewer line laterals to serve the future home sites were installed in anticipation of the lot splits and construction as promised by the former City Council.

Page 22:

"...manufacturer no longer recommends the same method of connecting to the system that was used previously...?

Why does the manufacturer of the grinder pump not recommend this method? When did it change? What went wrong?

UTL-1 through 5. What does UTL stand for?

Is the language in 1-5 now in the Moratorium Ordinance or is it going to be?

Where can I find the attachment: Mitigation Monitoring Program?

This negative declaration is incomplete because it does not include the additional 15 home sites that will be created when a pathway to request a lot splits is added to the Zone 2 Landslide Moratorium Ordinance Revisions."

Thank you in advance for your answers to my questions.

Kathy Snell
#8 Vanderlip Driveway
Rancho Palos Verdes, Ca 90275
310 707 8876

CITY OF RANCHO PALOS VERDES

PLANNING, BUILDING, & CODE ENFORCEMENT

25 February 2009

Kathy Snell
8 Vanderlip Driveway
Rancho Palos Verdes, CA 90275

SUBJECT: Response to Your Comments on the Draft Mitigated Negative Declaration for the Zone 2 Landslide Moratorium Ordinance Revisions

Dear Ms. Snell:

Thank you for your email of 22 February 2009. Since you specifically requested a response to your questions, I have prepared this letter for your reference. It will be provided to the City Council along with a copy of your email as a part of the March 3, 2009, Staff report.

Your comments are reproduced in **bold face** type below, followed by Staff's responses in regular type:

9. Description of project:

Why were the parcels on Vanderlip Driveway in Zone 2 excluded? Does not allowing lot-splits cause "...a taking and an impermissible impediment to the development of..." property? If not, why are the non-*Monks* litigants with lots in Zone 2 allowed to build?

Response 1: Developed and undeveloped parcels on Vanderlip Drive are not excluded from Zone 2, with the exception of 100 Vanderlip Drive. The issue of allowing subdivision in Zone 2 is not now at issue because it was not an issue raised in the *Monks* case. This does not mean, however, that this issue might not be explored in the future. With respect to the issue of takings, any lot that currently is developed with a residential single-family dwelling would not be in the same situation as a completely undeveloped lot, which was the situation in the *Monks* case where the court found that a property owner cannot make reasonable use of his or her property under the City's current standards. Of course, this would be an issue that a court would be required to decide. The City Council has the option to limit the scope of this Code Amendment to the sixteen (16) *Monks* plaintiffs' lots. As a worst-case scenario, however, the Initial Study/Mitigated Negative Declaration assumes that all forty-seven (47) undeveloped lots in Zone 2 might be allowed to develop.

10. Description of project site:

The description is not correct because Dr. Ehlig's memo of May 26, 1993, described:

> **"Zone 2- Subdivided land unaffected by large historic landslides. (about 130 acres)**
>
> **Background**
>
> **Zone 2 includes about 130 acres within existing Tract 14195 and Tract 14500 (except lots 1, 2, 3, and 4 which are in the Portuguese Bend landslide), and the subdivided land served by Vanderlip Drive."**

Dr. Ehlig's original map indicated that 75, 79 and 83 Narcissa, 85, 99 and 100 Vanderlip Drive were in Zone 1 but his explanation in his memo of May 26, 1993 indicates Zone 2:

> **"Zone 1 includes about 550 acres of undeveloped land."**

In addition, Dr. Ehlig always made it very clear at all hearing and meetings that he drew the Zones along property lines and kept all home out of Zone 1 (undeveloped). The map Dr. Ehlig used was pre-lot splits on Vanderlip Driveway and upper Narcissa causing the upper Narcissa lots and 3 developed parcels on Vanderlip to be accidentally excluded on Dr. Ehlig's map.

The map needs to be updated to match Dr. Ehlig's memo.

Response 2: Staff respectfully disagrees with your interpretation of the boundary of Zone 2. Based upon our review of Dr. Ehlig's 1993 map and memorandum, Staff believes that 100 Vanderlip Drive and 75, 79 and 83 Narcissa Drive are in Zone 1, not Zone 2.

11. Surrounding land uses and setting:

Northeast:

The three developed residential lots are not in Zone 1. They are in Zone 2 as confirmed by Dr Ehlig's memo of May 26, 1993 (Zone 1 is all undeveloped).

Northwest & West:

The Vanderlip Estate, 100 Vanderlip Drive, is not in Zone 1 but in Zone 2. There are NO homes within Zone 1.

Response 3: See Response 2 above.

Figure 1, Page 4

The Zone 2 boundary lines needs to be moved to show 75, 79 and 83 Narcissa and 85, 99 and 100 Vanderlip included. The LA County map that Dr. Ehlig used didn't show newer lot-splits so he neglected to draw them into Zone 2 but his written explanation of the zones clearly includes all homes in other than Zone 1.

Vanderlip RD should be Vanderlip DR.

Response 4: The Zone 2 boundary line on Figure 1 does include 85 and 99 Vanderlip Drive. As stated above in Response 2, based upon our review of Dr. Ehlig's 1993 map and memorandum, Staff believes that 100 Vanderlip Drive and 75, 79 and 83 Narcissa Drive are in Zone 1, not Zone 2. Your comment about "Vanderlip Road" is duly noted; this was an error in the City's geographic information system (GIS), which we have now corrected.

Are the lot line adjustments for York included in Zone 1 or Zone 2? Where are they shown on the map?

Response 5: The only approved lot line adjustment involving the holdings of York Long Point Associates and Zone 2 occurred at the north end of Plumtree Road. The approval of this lot line adjustment did not change the boundary of Zone 2 as delineated by Dr. Ehlig in 1993.

Determination: Page 5

"...revisions in the project have been made by or agreed to by the project proponent."

Who is the project proponent?

Response 6: The City is the project proponent for this Code Amendment.

Evaluation of Environmental Impacts: Page 6, 7, 10 comments a)

Comments: b) c) d)

"...on lots that have remained undeveloped since they were created in the late 1940's."

Correction: 98 Vanderlip was created in the 1990's. Lots were created in 1990's, 1980's and 1970's. Are lot line adjustments included?

Response 7: Parcel Map No. 8947, which created the properties at 98 and 99 Vanderlip Drive, was recorded in February 1982. It appears that this subdivision was allowed to occur because it was in the Planning review process before the City prohibited the submittal of

new parcel maps in the Landslide Moratorium Area. Although most of the undeveloped lots in Zone 2 were created in the late 1940s, Staff will revise the language in the Initial Study/Mitigated Negative Declaration to indicate that some undeveloped lots in Zone 2 were created at later dates. With respect to lot line adjustments, new undeveloped lots cannot be created by this method. However, any existing undeveloped lots in Zone 2 that were the result of previously-approved lot line adjustments would be covered under the Code Amendment as currently proposed.

Interior bright lights, when placed in front of windows, can shine into neighbors' homes and can be very disturbing to the occupants.

Response 8: The City's Municipal Code does not regulate interior illumination in single-family residences. As such, Staff does not find that this is a significant environmental impact that warrants mitigation.

Issues and Supporting information. Geo-5 e) Page 12

"The City has constructed a sanitary sewer system..."

Meetings, hearings, EIR's all show that the Rancho Palos Verdes RDA had the system constructed not the City. Settlement money from the Horan Law suit paid for the sewer. Has RDA transferred ownership to the City?

The sewer design was to include enough capacity for Zones 2, 3 and 5. The pipe on PVDS was designed to handle Zone 6 (Peppertree area) to connect to sewer on Palos Verdes Drive South and carry all to the West. Laterals were put in for all vacant lots and potential home sites on parcels needing lot-splits.

If the sewer system was not designed properly that could be very serious. Where is the sewer system overloaded? Wouldn't it be less expensive to correct the sewer system then digging holes and buying sewer holding tanks, then incurring the expense to remove them?

Vanderlip Driveway and some homes NE of Altamira Canyon were to have a gravity flow sewer system. Since Narcissa would have to be closed overnight due to the too big drainage pipe that Charlie Abbott had put in at Altamira Canyon at Upper Narcissa, Dean Allison made a decision on site to have the gravity flow sewage re-routed to the pump going down Sweetbay. Then the sewage gets pumped back up to Narcissa where it came from. Rather than replacing the pump, the gravity line should be put in crossing the Canyon and continuing by gravity to the L.A. County pumping station on PVDS. Correcting the sewer line to where it was designed to go would free up space in the sewer lines on Sweetbay.

Response 9: The Abalone Cove Sewer System was constructed under the supervision of the City's Public Works Department, but you are correct in noting that it was actually a project of the City's Redevelopment Agency. Staff will endeavor to correctly distinguish between the activities of the City and the Agency throughout the Initial Study/Mitigated Negative Declaration. With respect to the capacity of the sewer system, the Public Works Department is currently undertaking an update to the City's Sewer Master Plan, which will help to determine the capacity of the existing sewer system to accommodate additional connections. Until this assessment is complete, it is premature to speculate about possible "corrections" to the system or its actual capacity to serve additional connections. In addition, the system was not designed to accommodate the subdivision of existing lots.

Issues and Supporting Information

Comments: a) b) "...lots that remained undeveloped...late 1940's..."

Correction: 98 Vanderlip was created in the 1990's. Other "lots" were created in 1990's, 1980's and 1970's. Are lot line adjustments included?

Response 10: See Response 7 above.

h) "Very High Fire Hazard Severity Zone." Allowing lot-splits in Zone 2 will enable the new lots to be built upon thus removing weeds that fuel the fires. Not allowing the lot-splits and building will keep the weeds on parcels on Vanderlip Driveway. The weeds act like wicks spreading fire. The current Fire Code only provides for a 200' weed abatement set back from existing structures. Some parcels are 1000' long. Once the lots are split and the houses built, Vanderlip Driveway residents will provide a buffer to stop wild fire from coming into the community from the NCCP area.

Response 11: As noted in Response 1 above, the issue of allowing subdivision in Zone 2 is not now at issue because it was not an issue raised in the *Monks* case. This does not mean, however, that this issue might not be explored in the future. In the meantime, the City continues to rely upon annual weed abatement for both developed and undeveloped lots as a means of fuel modification to control the spread of wildfire throughout the City. In addition, the City implements the latest Building Code requirements for fire protection for new construction and additions/remodeling.

10. Land Use/Planning: Page 16

a) Does this plan conform with the RDA? Where are the low to moderate income homes?

Response 12: Allowing the development of one home on each lot within Zone 2, in accordance with the same requirements and regulations that govern the repair or

reconstruction of existing structures in a manner that does not affect the stability of the area and properly directs water from such projects, does not conflict with the Redevelopment Plan and its purposes. There is no relationship between the Redevelopment Agency's activities and the proposed Code Amendment, other than the fact that the subject properties fall within the Agency project area. The proposed Code Amendment would not change the underlying zoning of or permitted uses for these properties, which are regulated by the City. State law gives the Board of the Agency the authority to determine if lower-income housing is to be built within the project area or elsewhere within the City. This is not an issue that is before the City Council as a part of this Code Amendment.

By not having a path to apply for lot splits within Zone 2 and giving space to lot owners in the sewer system, discriminate against the parcel owners who have had to pay two and three times more for ACLAD projects then the lot owners? Once the parcel owners sue and win in court to be granted lot splits, all of the sewer capacity may be gone.

Response 13: See Responses 1 and 9 above.

Comments:

b)"...undeveloped since they were created in the late 1940's."

Correction: 98 Vanderlip was created in the 1990's. Other "lots" were created in 1990's, 1980's and 1970's. Are lot line adjustments included?

Response 14: See Response 7 above.

12. Noise Comments: Page 17

a) My neighbor drives an ATV up and down their 3.9 acres and on the street. The ATV is so LOUD. The mature foliage does not buffer the noise.

Response 15: Mature foliage is frequently utilized for sound attenuation, especially along roadways. This is discussed in the Sensory Environment Element of the City's General Plan. The focus of the noise impact analysis in the Initial Study/Mitigated Negative Declaration is typical single-family household and vehicle noise, as well as temporary construction-related noise.

b-d) The large lot sizes in the area do not average one acre in size unless lot splits are included.

Response 16: Staff has calculated the total acreage of the one hundred eleven (111) developed and undeveloped lots in Zone 2—based upon the County Assessor's figures—as 111.97 acres. This averages out to 1.01 acre per lot, based upon the existing lot sizes.

Comments: b-c) Page 18

Correction: 98 Vanderlip was created in the 1990's. Other "lots" were created in 1990's, 1980's and 1970's. Are lot line adjustments included?

Response 17: See Response 7 above.

17. Utilities/Service Systems Page 21

Comments:

a-c, e) "The City has constructed a sewer..."

Meetings, hearings, EIR's all show that the Rancho Palos Verdes RDA had the system constructed not the City. Has the RDA transferred ownership of the sewer to the City?

> **"The Abalone Cove system was originally intended to serve on hundred ten (110) developed and forty-six (46) undeveloped lots in the Abalone Cove area..."**

During The Abalone Cove Sewer EIR hearings, the Envirodyne Engineers from Consoer Townsend in Federal Way, Washington said that the capacity would be designed to accommodate the Abalone Cove Landslide area built out to maximum density based on zoning. Under Horan Settlement Funds, part of the judgment was set aside to help stabilize the slide and paid for the sewers in Zone 2, Zone 3 and Zone 5. Zone 1 was excluded from the sewer funding.

How many existing homes were there when the "110 developed" sites were computed. Does that include extra capacity for parcels that have houses and would be allowed to split later? Did sewer capacity allow for the parcel on Sweetbay (Zone 3)? Why would laterals be put in to service future homes on parcels that required lot-splits if the capacity was not planned for? Was fraud involved? Who made the mistake by not allowing for enough capacity?

The Abalone Cover Sewer line capacity was to be designed to accommodate Zone 2, 3 and 5 that included existing houses, vacant lots, and potential building sites off of Vanderlip Driveway and Zone 3. Sewer line laterals to serve the future home sites were installed in anticipation of the lot splits and construction as promised by the former City Council.

Page 22:

"...manufacturer no longer recommends the same method of connecting to the system that was used previously...?

Why does the manufacturer of the grinder pump not recommend this method? When did it change? What went wrong?

Response 18: See response 9 above. Also, the 1996 Final Environmental Impact Report for the Abalone Cove Sewer System states that is was intended to serve one hundred ten (110) "existing dwelling units" and forty-six (46) "vacant parcels within the community of Abalone Cove." Thus, the subdivision of existing lots was not contemplated at that time.

UTL-1 through 5. What does UTL stand for?

Is the language in 1-5 now in the Moratorium Ordinance or is it going to be?

Response 19: "UTL" is merely an abbreviation for "Utilities/Service Systems." Similar 3-letter abbreviations are used to identify mitigation measures throughout the Initial Study/Mitigated Negative Declaration. Proposed Mitigation Measures UTL-2 through UTL-5 reflect existing language in Section 15.20.050 of the Landslide Moratorium Ordinance. Proposed Mitigation Measure UTL-1 is new language that would be added as a part of proposed Section 15.20.040(P).

Where can I find the attachment: Mitigation Monitoring Program?

Response 20: The Mitigation Monitoring Program will be prepared and attached once the City Council is ready to take action on the Mitigated Negative Declaration. It will list all of the mitigation measures identified in the Initial Study/Mitigated Negative Declaration and adopted by the City Council; the timing of their implementation; and who is responsible for their implementation and monitoring. At this point, Staff is only soliciting comments on the Initial Study/Mitigated Negative Declaration and is not recommending that the City Council take action on it.

This negative declaration is incomplete because it does not include the additional 15 home sites that will be created when a pathway to request a lot splits is added to the Zone 2 Landslide Moratorium Ordinance Revisions.

Response 21: See Response 1 above. Also, if and when the City Council decides to consider allowing subdivision in the Landslide Moratorium Area, that future Code Amendment will also be subject to the review of its environmental impacts. Since subdivision is not within the current scope of this project, Staff respectfully disagrees that the Initial Study/Mitigated Negative Declaration is "incomplete."

If you have any questions or need additional information, please feel free to contact me at (310) 544-5228 or via e-mail at *kitf@rpv.com*.

Sincerely,

Kit Fox, AICP
Associate Planner

cc: Carolyn Lehr, City Manager
Carol Lynch, City Attorney
Joel Rojas, Director of Planning, Building and Code Enforcement
Greg Pfost, Deputy Planning Director
Jim Bell, Director of Public Works
Ron Dragoo, Senior Engineer
Project file (ZON2009-00007)

For K. H Fox

Michael and Sheri Hastings,
10 Vanderlip Drive,
Rancho Palos Verdes, CA 90275

February 19, 2009

Dear Sir,

This is a written comment in response to the "MITIGATED NEGATIVE DECLARATION" regarding the proposed "Zone 2 Landslide Moratorium Ordinance Revisions" letter dated February 9, 2009.

The Hastings own the property at 10 Vanderlip Drive which is within the Zone 2 area of the Landslide Moratorium. We support the revisions to the Landslide Moratorium Ordinance and the addition of subsection P to Section 15.20.040. In addition we would like to add the provisions for property owners in the Zone 2 area to be able to submit to the City of Rancho Palos Verdes, applications for a lot split.

The current Landslide Moratorium Ordinance document mentions provisions for a lot line adjustment but does not reference applications for lot splits at all. In April of 2006 I approached the Director of Planning for the City of Rancho Palos Verdes and asked about applying for a lot split on our property at 10 Vanderlip Drive and was told that lot splits were not allowed in the Landslide Moratorium area since development was not allowed on undeveloped lots. With the proposed change in subsection P to allow development of undeveloped lots in Zone 2, property owners in Zone 2 should be allowed to apply for a lot split. The City needs to add a paragraph in the Landslide Moratorium Ordinance document that specifies the City's position on lot splits within the Landslide Area and Zone 2.

Thank You,

Michael Hastings

Sheri Hastings 310-544-1064

13-203

Kit Fox

From: KSnell0001@aol.com

Sent: Monday, February 23, 2009 9:56 PM

To: kitf@rpv.com

Cc: KSnell0001@aol.com

Subject: PROPOSED MITIGATED NEGATIVE DECLARATION - Comments ZON2009-00007

February 23, 2009

City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, Ca 90275

Re: Comments to Proposed Mitigated Negative Declaration for Planning Case No.ZON2009-00007

Mayor and Council members,

Please reference the Environmental Checklist:

6. Geology/Soils

When the Island View area was developed, all drain water was re-directed away from the Portuguese Bend slide, the East fork of Altamira Canyon and Hawthorne Blvd. to Altamira Canyon. Today one can watch a car being washed near the Crest and Crenshaw area and follow the water to Altamira Canyon, not down the canyon that nature would have taken the water.

Altamira Canyon Abatement District installed de-watering wells that pumps out the underground water coming from Island View. Why do people downstream have to pay to pump this water out of the ground? The water has overburdened and eroded Altamira Canyon in Zone 5 to the point that additional water could be disastrous.

Without a controlled drainage channel through Altamira Canyon, an increase in run off could devastate the walls in the canyon below the project area in Zone 5. A 10 foot pipe properly lined with concrete would be appropriate. With the right design and ensuring that there is no stored water on site, the property owners on Altamira Canyon in Zone 5 would agree to allow an easements for the pipe.

Reference the Altamira Canyon Drainage Repair Report by Los Angeles County. This report called for the pipe/lining of Altamira Canyon in the early 1970's. Lois LaRue called the head of Altamira Canyon...Boulder Dam. When one sees the water that crashes down the canyon from Island View area, they know why Lois called it Boulder Dam.

Funding for the pipe or lining:

The interest on the $1,000,000.00 from the Horan Settlement Agreement could pay for **all** of the maintenance of the ACLAD de-watering wells which is permitted under the Horan Settlement Agreement. ACLAD would assess for a pipe/lining project to line Altamira Canyon in segments and build it as money is received. The RDA tax increment funds will

increase as more homes are built and assessed (including Vanderlip Driveway). The new tax increment funds could further pay for the project. A drainage fee would be collected during the permit process based on the amount of area that becomes impervious.

Has the City considered giving a credit (discount in cost of building permits) to home owners who install holding tanks to capture rain water from their roofs and/or a tank to store shower water to use for irrigation?

Home owners in Zone 5 on the canyon have reported that their homes may be taken by erosion. More drainage water could cause the instability of the area including Palos Verdes Drive South and the beach.

Thank you for your consideration.

Kathy Snell
#8 Vanderlip Driveway
Rancho Palos Verdes, Ca 90275
310 707 8876

RECEIVED
FEB 24 2009
PLANNING, BUILDING AND
CODE ENFORCEMENT

To: Rancho Palos Verdes City Hall
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275

Larry Clark-Mayor
Steve Wolowicz-Mayor Pro Tem
Thomas D. Long-councilmember
Douglas W. Stern-councilmember
Peter Gardiner-councilmember

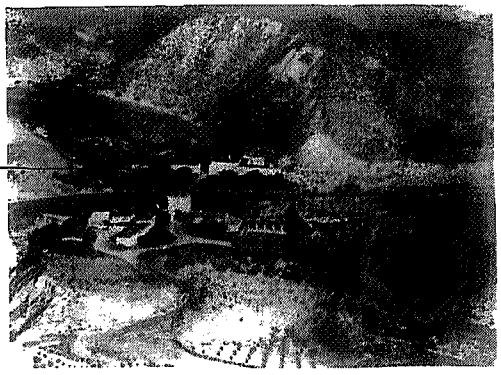
Joel Rojas, Director of Planning, Building and Code Enforcement

From: Dan and Vicki Pinkham
#1 Narcissa Drive, RPV, CA 90275

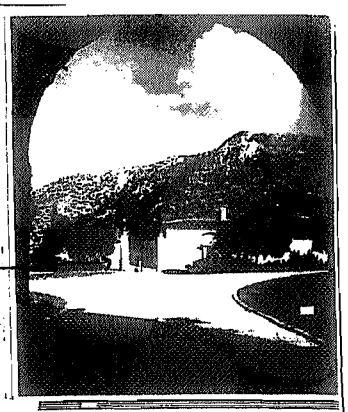
PROPOSED MITIGATED NEGATIVE DECLARATION

My husband and I live at #1 Narcissa Drive. Our house is in zone 5, and was the first house built on Palos Verdes Drive South. It is situated at the right hand side entrance of the Portuguese Bend Homeowners Association, often referred to as the Gate House.

ORIGINAL
1 LANE
1929



ORIGINAL
1929
ENTRANCE

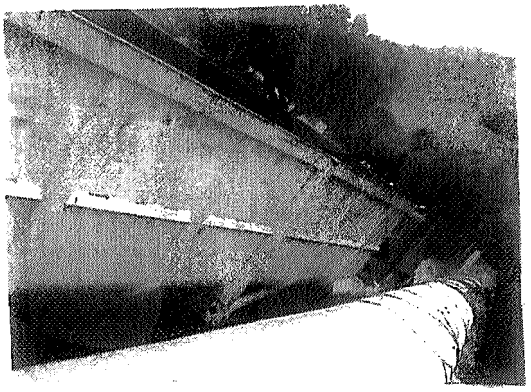


pictorial record of the Palos Verdes Peninsula, California
published as an anniversary supplement by "The Bulletin"

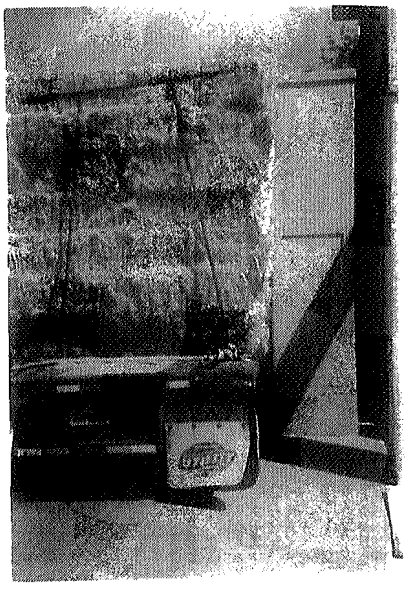
Since 1925, this entrance road has gone from a small single lane to a very narrow two-lane road.

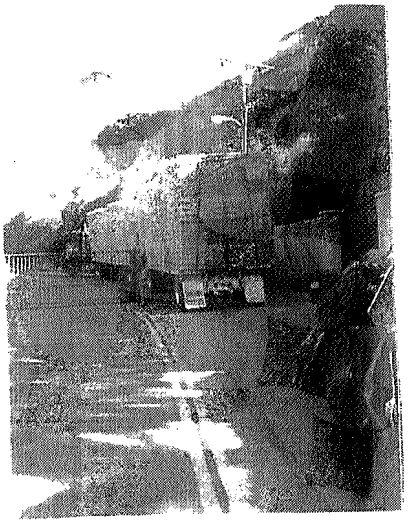
In 1925, before the 1929 stock market crash, there were not to be as many lots. Then, with the new economic crisis, smaller lots and more lots were incorporated for the sell off. Our home, the Gate House, and Narcissa Drive had already been built and designed for lighter vehicles and less traffic. Over the years, there have been enormous life style changes. Besides the increase in number of homes, there has been a huge rise in traffic ranging from gardeners, maintenance, housekeeping, healthcare workers, several different trash collectors, traffic to service the commercial stables, an increase in large horse trailers and horse boarders making daily trips to care for and ride their horses. Additionally, many private residents have rented out rooms and sections of their property for horse boarding. Even the Vanderlip estate has many additional rentals.

This brings us to many real concerns. This potential development will increase the very large, oversized and massive construction trucks that will pass through a very fragile zone 5. Example, land graders, tractor trailers, cement trucks, containers for brush removal and hundreds of subcontractors trucks each driving within 28" INCHES of our home and 1" INCH from our pillars and walls.



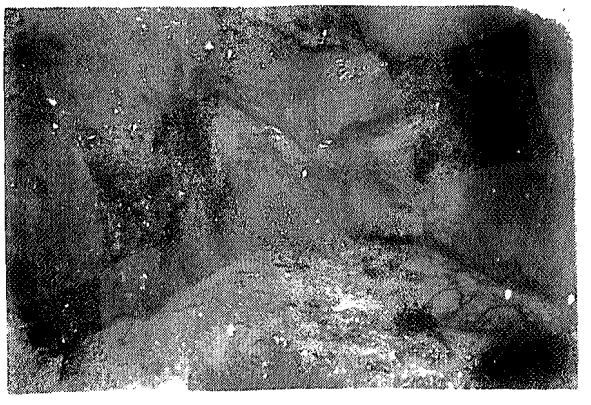
Remember, there are now 47 lots (NOT including future possible subdivision plans on Vanderlip Drive and the Bean Field) that can be individually contracted out with MANY different contractors, not a single development company. Traffic is not regulated as far as hours, days or weight. The existing heavy traffic already sends shock waves and vibrations to our home, windows, foundation and exterior pillars and walls.





The speed in which all cars and trucks enter and exit 24 hours a day, is often determined if the gates are already opened or closed. If the gates are closed, large trucks, usually diesel, etc., idle at the keypad without the code, shaking even our dishes in our cupboards. If the gate is open, the speed in which vehicles drive past our home in order to catch the open gate is definitely a safety hazard.

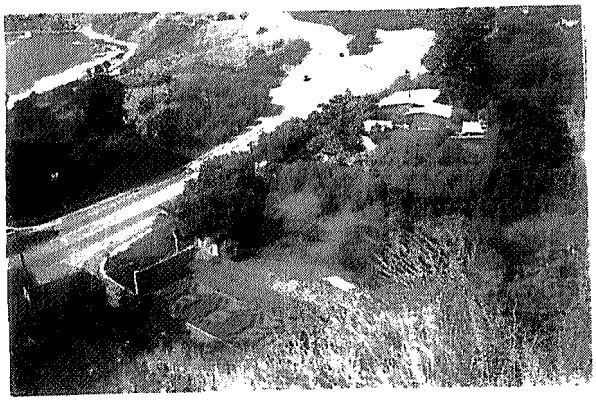
Another mandatory issue that must be dealt with is the additional water run off from new construction into Altamira Canyon. The Altamira drainage system cannot handle the runoff with the current number of homes, not to mention the proposed additional construction. We have enclosed a home video of our property in Altamira Canyon during a typical rainstorm. As is evident, the hillside is collapsing before your eyes. The rain causes a torrent of destructive force, taking a considerable amount of the hillside (our private property) with each passing storm.



This runoff ultimately ends up at the shoreline. The water and silt will aggravate shoreline erosion which ultimately washes away more of the resistive force of the Abalone Cove Landslide while also, filling the tide pools with silt. During the last several months, a RPV City engineer doing minor repair on the City's metal corrugated steel pipe on our property, observed that this canyon could certainly not handle any additional water run off. Our concern is that additional homes would only add to the water runoff on the private streets and our already overloaded canyons, resulting in a "taking" of our valuable private property.

Thirdly, Fire Department Access to the community is critical and compromised. During the 2005 large Portuguese Bend Fire, the earth moving fire equipment was UNABLE to enter the narrow Narcissa entrance to the community to fight the ragging fire. (Photos are included, showing the Fire Department's equipment unable to enter the narrow entrance)

With additional homes, we find it more important than ever, that the entrance road be moved and widened to accommodate emergency vehicles to protect the residents of this ENTIRE community. This we have an easy solution to. The Association does have property that could be used to move and widen their entrance. This action would also divert the traffic further away from our home in the fragile zone 5.



Another concern might be the factor of safety that is no longer required. If a lot owner does not have to prove this once universally recognized standard of 1.5, what if any factor of safety is required?

To sum up our comments, Narcissa Drive in Zone 5, cannot take any additional heavy equipment, or any additional water in our canyons or roads. The entrance to

this community must also be able to accept all sizes of fire fighting equipment. We have given back to Portuguese Bend and the City of RPV an original landmark. (See our home as we purchased it in 1998)

In doing so, we have elevated the character and value of beauty along our coastal community. We value our community, neighbors, home and property very much. The concerns we have listed will cause us loss of property, probable damage to our home and foundation, possible health problems, stress, and in a real way, a "taking" of our property rights.

Kit Fox

From: Kit Fox [kitf@rpv.com]
Sent: Tuesday, February 24, 2009 11:46 AM
To: 'Jeremy Davies'
Subject: RE: Comments on Zone 2

Dear Mr. Davies:

Yes, your letter and emails will be provided to the City Council for its deliberations.

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

From: Jeremy Davies [mailto:jdavies@kuboaa.com]
Sent: Tuesday, February 24, 2009 11:42 AM
To: Kit Fox
Cc: joelr@rpv.com; tkellyrpv@aol.com; Marianne Hunter
Subject: Re: Comments on Zone 2

Dear Mr Fox
Thank you for your e-mail. I had indeed seen the Zone 2 amendment Initial study. The purpose of my e-mail is to have you consider the nature of the matters I have mentioned in my letter to Mr Rojas and to request that take into account these sorts of issues as you develop your amendment and the conditions needed to approve both the moratorium exemptions and the planning permits and engineering considerations in this delicate land area. Please confirm that my comments will be considered in your deliberations.
Many thanks
Jeremy Davies

On Fri, Feb 20, 2009 at 5:15 PM, Kit Fox <kitf@rpv.com> wrote:

Dear Mr. Davies:

Joel passed your letter along to me the other day since I am the planner working on the Zone 2 code amendment. In case you have not already discovered it, the Initial Study/Mitigated Negative Declaration for this matter is posted on the City's website at http://www.palosverdes.com/rpv/planning/Zone_2_Landslide_Moratorium/index.cfm.

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

From: Jeremy Davies [mailto:jdavies@kuboaa.com]
Sent: Friday, February 20, 2009 3:22 PM
To: joelr@rpv.com; EduardoS@rpv.com
Cc: Douglas.Stern@cox.net; clark@rpv.com; stevew@rpv.com; peter.gardiner@rpv.com; tomlong@palosverdes.com; CLynch@rwglaw.com; planning@rpv.com
Subject: 38 Cinnamon Lane and Construction Permits and Landslide Moratorium Exemptions

Dear Mr Rojas

This e-mail copies the above with the letter I mailed you a few days ago as you determine what regulations you are going to require for settling the Monks case as instructed by the Court.

Best regards

Jeremy Davies

Kit Fox

From: Jeremy Davies [jdavies@kuboaa.com]

Sent: Wednesday, February 25, 2009 3:22 PM

To: kitf@rpv.com

Cc: Douglas.Stern@cox.net; tomlong@palosverdes.com; stevew@rpv.com; peter.gardiner@rpv.com; joelr@rpv.com; tkellyrpv@aol.com

Subject: Proposed Zone 2 Landslide Moratorium Ordinance Provisions

Dear Mr Fox,
In addition to the letter of February 13, 2009 signed by the homeowners of 34, 36 and 38 Cinnamon Lane, RPV I submit below additional concerns and observations regarding the proposed Moratorium revisions referred to above and the Environmental Checklist dated February 9, 2009. The signatory to this document on behalf of the City concludes that a negative declaration will be prepared based on a conclusion that there will be no significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. However, the revisions referred to in the Checklist are not adequate or all inclusive. I believe that a number of serious issues including environmental and public safety matters have not been adequately addressed in this document and that further revisions are needed. While I recognize that the City is seeking to respond to the California State Court of Appeal's decision in the Monks case it is important that the interests of the existing homeowners as well as those of the lot owners be balanced in the City's actions moving forward.

1) Throughout the Checklist referred to above the City makes mention of the future development of up to 47 single family residences. It also states that the average size for the undeveloped lots is one acre. On page 7 it is stated that Zone 2 allows up to two dwellings per acre. The city in its calculations does not appear to take this into account nor does it take into account that by lifting the moratorium that the existing homeowners will have the right to either build the same size residence as the new residences envisioned for the undeveloped lot owners or sell their properties to third parties who then may wish to build up to 4000 square foot properties.

2) The City is silent on the fact that the only access for heavy construction is through roads located in Zone 5. These roads are in a Zone of continual movement and deteriorating conditions. The roads were designed many decades ago and were never designed or sized for access for significant heavy construction equipment. By permitting heavy construction traffic on the private road system significantly modifies current land use patterns within the Community. It is not appropriate to use a City wide measure for assessing the environmental impact of transport patterns in a particularly sensitive area subject to land movement. This is not the average RPV street. Zone 5 is directly adjacent to Zone 2 and the landslide movement is moving up slope towards Zone 2 (see page 3 of the checklist as it refers to South, Southeast and East and City statements contained in Doug Stern's e-mail of May 3, 2007). Any accelerating deterioration in road conditions and land movement due to heavy construction transport puts at additional risk the possibility of triggering Zone 2 movement with the resulting potential damage to existing homes in both Zone 5 and Zone 2 as well as to Palos Verdes Drive South. To rebuild the roads to be able to take the increased traffic would incur exceptional costs which the Community cannot afford particularly in these harsh economic times. Thus the City by granting permits for new residential construction potentially creates economic hardship conditions for existing homeowners without mitigating the impact in the proposed revisions.

3) The City should be mandated by public request to carry out a detailed EIR including geologists' reports on the gross safety impact for Zone 5 and Zone 2 assuming a maximum development scenario

which includes all possible development in Zone 2 (undeveloped and developed lots and a density factor of two to the acre as appropriate). It is not adequate to assume a piecemeal safety presumption based on a lot by lot approach before a gross impact study has been carried out.

4)The City states that it cannot buy out the 16 lot owners because it does not have the funds. The City refers to a valuation provided by the plaintiffs of $32million for the 16 lots. 38 Cinnamon was sold in February 2008, before the most rapid and continuing decline in property values, for $600K. This included planning permission already approved and granted by the City. The City should obtain updated independent valuations currently for the 16 undeveloped lots as $2MM each lot is totally unrealistic. In addition, these lot owners have already received more than $200K each from State Insurance funds. Note that on November 21, 2008 Tom Long stated that the "City is in good financial condition".

5)Page 22 states that "If 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 to a City approved holding tank system until such time as the as the sanitary system can accommodate the project. The whole purpose of putting a sewer system in was to reduce water run off as a land stabilization measure. The City should carry out an EIR BEFORE granting new building permits not after and should modify the sewer system before new residences are constructed. Note the Daily Breeze article of January 17, 2009 in which it was stated "Sanitation crews make repairs in the area every few days to accommodate land movement from the slide". In addition consider this statement as it impacts to item 2, above and Zone 5. In addition water run off assessmet should be made part of an EIR on the basis that all properties are built out before permits are issued. This will avoid a piecemeal approach that may result in additional studies later when it might be too late for mitigating actions to be taken because of the damage additional runoff has caused. It is a matter of prudence on the part of the City.

6) In the event that new residences are approved for permits and recognizing that they do not currently have electricity, gas or water the City needs to assure existing homeowners that these services will not be interrupted while any construction is taking place.

7)Fire hazards will be increased based on the roads having heavy construction equipment parked at sites-this has already been observed with the 38 Cinnamon Lane construction with large equipment parked in the road. Were there to be fire towards Upper Cinnamon (historically a major fire trajectory) fire tenders would not be able to pass. In addition with increased residences, additional fire hydrants are needed and the City has not addressed this-yet another reason for a full EIR.

8) Page 10 refers to excavations no more than 5ft in depth. For your information the soil experts/geologists involved with the construction at 38 Cinnamon Lane have required 8 ft excavations and this is on relatively flat land. These requirements must have been approved by the City. Again more reason for a full EIR.

9)Page 5 regarding Environmental Factors Potentially Affected has no checks against any item. I believe this to be incomplete based on earlier observations and highlights the need for a full EIR by the City prior to new permits being issued.

Sincerely
Jeremy Davies

Kit Fox

From: Sharon Nolan [nolan4re@hotmail.com]
Sent: Wednesday, February 25, 2009 3:40 PM
To: kitf@rpv.com
Cc: 'Robert Douglas'; Jim & Lorraine Knight
Subject: Comments on Zone 2 Landslide Moratorium Ordinance Revisions
Attachments: ACLAD Comments on Proposed Revisions to.docx; ACLAD Boundary Map 1981.pdf

Hi Kit,

Please accept the attached as my comments on the Zone 2 Landslide Moratorium Ordinance Revisions. I have added a map as well to identify the boundary of the Abalone Cove Landslide Abatement District referenced in my comments and would like it to be included with my comments.

Best regards,

Sharon Nolan
Cellular 310-403-5253

To: Kit Fox
Senior Planner, City of Rancho Palos Verdes

From: Sharon Nolan (Silberberg)
6 Clove Tree Place, Rancho Palos Verdes

Date 2/25/09

Re: Zone 2 Landslide Moratorium Ordinance Revisions

Dear Mr. Fox,

Please include the following comments as my response to the Revisions document.

The basis for the following comments is California Public Resources Code Sections 26500-26654. In 1979 California adopted the Geologic Hazard Abatement District law. The purpose of the law is to allow cities and counties to form special districts that are equipped to address geologic hazards and related concerns. On January 6, 1981, the Rancho Palos Verdes City Council formed the 'first geologic hazard abatement district' in the State of California, the Abalone Cove Landslide Abatement District also known by its acronym, ACLAD.

1) Page 12. GEO-6: City's geotechnical staff to collaborate with Chairman of the Abalone Cove Landslide Abatement District, the local hazards abatement district, with respect to additional de-watering wells and their locations. Additional residences will add to the water management issues concurrently under the jurisdiction of the district. Going forward the ACLAD system of de-watering wells must be expanded to meet the expanding demand.

2) Page 12. Comments: a) "..... For example, the use of water would continue to be carefully controlled within the Landslide Moratorium Area in the interest of minimizing the infiltration of groundwater as a means to enhance soil stability." Establishing additional de-watering wells north of the existing wells will extract groundwater before it enters the community. The addition of de-watering wells will help to " minimize the infiltration of groundwater as a means to enhance soil stability."

3) Page 15. 9.e) "Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems".

Page 15. Comments: a, c-f) "...This will result in changes to the current drainage patterns of the area..." . The City departments will work with the Abalone Cove Landslide Abatement District to evaluate current drainage patterns and potential impacts to the current patterns post development. This evaluation will result in a comprehensive design that will connect to and improve, where necessary, the current drainage system conducting all groundwater eventually into Altamira Canyon and to the ocean south of Palos Verdes Drive South.

Page 16. HYD-3: "Roof runoff from all buildings and structures on the site shall be contained and directed to the streets or an approved drainage course." The city departments will consult with the Abalone Cove Landslide Abatement District to evaluate current drainage patterns and potential impacts to the current patterns post development. This evaluation will result in a comprehensive design that will connect to and improve, where necessary, the current drainage system conducting all groundwater eventually into Altamira Canyon and to the ocean south of Palos Verdes Drive South.

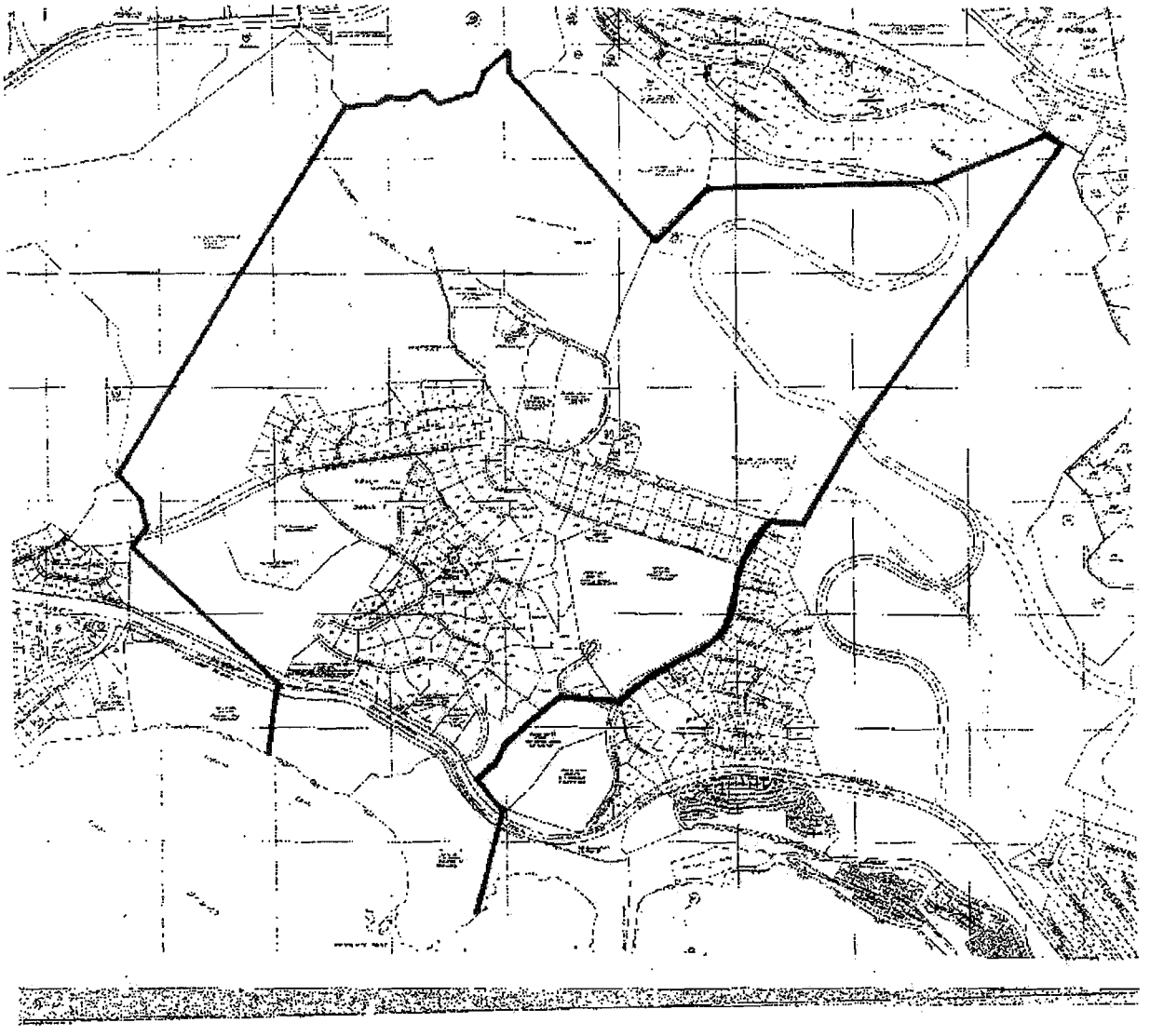
Kit, thank you for including the above comments.

Best regards,

Sharon Nolan (Silberberg)
310-377-5253

LANDSLIDE ABATEMENT DISTRICT
30940 HAWTHORNE BOULEVARD
RANCHO PALOS VERDES, CA 90274

DISTRICT BOUNDARIES:



Kit Fox

From: Marianne Hunter [2hunter@cox.net]
Sent: Friday, February 27, 2009 1:38 PM
To: City Council; joelr@rpv.com; EduardoS@rpv.com; CLynch@rwglaw.com; planning@rpv.com; Kit Fox
Cc: Marianne Hunter
Subject: Re: Mitigated Negative Declaration

Dear City Council and all;

The Mitigated Negative Declaration is not acceptable as it stands.

The City cannot subject **most** of it's citizens and those who use PV Dr. to danger both physical and financial because it has lost a battle on one point of law. There has been a failure along the way to find the right method to mollify the lot owners or fully defend us in court by including a broader picture for the court to consider.

The City must:
1. refrain from issuing building permits until it has completed A FULL and EXHAUSTIVE EIR.
2.investigate another point (s) of law that can prevent a precipitous and unalterable mistake that will leave it open to suit by the 100+ families who are being put at risk. should building permits be issued before it has a complete and reviewed EIR study.
3.recognize that it will be held responsible, as "hold harmless" agreements are seldom worth the time it took to write them. Those who most likely will be harmed were not party to this agreement and are free to sue for damages...which no one wants to happen.
4. Contact other agencies and government bodies for guidance.
State Senator Wright.,
State Assemblymember Lowenthal,
Supervisor Don Knabe .
There is an organization of communities who are affected by slide dangers. Are we members of that group? Are we consulting with them?
Office of Emergency Services; Have you contacted state, local and federal Offices of Emergency Services? I have and was told the request for assistance must come from the City. On the state level I spoke with Mr. Mike Bassett. We discussed that although these agencies are meant to come in AFTER a disaster, there is knowledge and experience there that might guide the city and our community in this situation. He said they would consider this if local offices are contacted first. Will you do that tomorrow?
Coastal Commission; We have just had one leak of raw sewage into the Marine Reserve. If this building activity causes an increase likelihood of further spills? Our drainage system is already overloaded, extra runoff caused by building will end up in that protected ecosystem.
5. Should the City begin to issue building permits here, it must have additional staff to monitor the process far more closely than in a conventional neighborhood. Mistakes happen. Here, many can be made to suffer the consequences of ill advised building design & methods or mistakes.
6. Consult with our local fire department regarding adequacy of roads for their equipment, for evacuation of additional households and if there is adequate water resources to fight fire.

The City knows
that opening this community to building numerous houses simultaneously is unwise at the very least and potentially disastrous.
That there are sinkholes waiting to happen on PV dr. through the land slide. That they are likely under Narcissa Dr and Peppertree.
That once permits start being issued, all of the homes already here become possible teardowns, so it is not 47 homes,

or 96 homes, but twice that possibly.

Tear downs equal twice the damaging processes; more truck loads in and loads out, more heavy equipment, more vibration, more water,

Building on a "stable" lot by means of an "unstable" road past "unstable" homes is like throwing someone who does not swim into the water and telling them it will be safe because there is dry land across the water. Perhaps the swimmer/builder will make it, perhaps not. In this case, however, even if the swimmer makes it, he may drown folks he passes over who have prudently managed to keep heads above water.

Marianne Hunter

Kit Fox

From: Jeremy Davies [jdavies@kuboaa.com]
Sent: Sunday, March 01, 2009 10:04 PM
To: Kit Fox
Cc: joelr@rpv.com; Douglas.Stern@cox.net; clark@rpv.com; stevew@rpv.com; peter.gardiner@rpv.com; tomlong@palosverdes.com; CLynch@rwglaw.com; planning@rpv.com
Subject: Proposed Zone 2 Landslide Moratorium Ordinance Revisions

Dear Mr Fox,
In addition to my two earlier letters on the above subject I have an additional concerns to be included in the records.

Regarding private and public nuisance I would suggest that the following events may constitute both categories:

In the event that the existing Narcissa road access located in Zone 5, an area of known continuing slide movement, is found to be inadequate for the projected volume of construction and ancillary equipment and requires substantial redesign and rebuilding to ensure public safety and welfare, the resultant financial hardship to the community would constitute significant harm to individuals in the community. Indeed it likely would be impossible to raise the money for such needs from the Community. Furthermore, repairing cracks and redecorating in existing homes as a result of construction, compaction (see my earlier letter re 38 Cinnamon Lane) etc. will result in financial outlays for individual homeowners. This is not a flippant issue nor a mere minor nuisance-it is cash out of our pockets.

Secondly should Palos Verdes Drive South suffer accelerated deterioration as a result of the construction equipment for new residences entering Narcissa and/or Peppertree and/or result in Zone 5/6 slide acceleration the costs of repair to the road as well as the sewer system requiring even more frequent damage repair due to movement may constitute a significant public nuisance and increased funds outflow for the City.

Finally please note that some 30% of the Monks and other undeveloped lots are located immediately adjacent or closely adjacent to our property on Upper Cinnamon and 10 of the lots would require to use Upper Cinnamon for construction access. This is a cul de sac which is used by young children and is the only exit in the event of fire or other emergency. Please factor this in to how you would propose to mitigate impact in your final measures and factor it into your noise and transportation impacts.

Best regards
Jeremy Davies

Kit Fox

From: Joel Rojas [joelr@rpv.com]
Sent: Monday, March 02, 2009 9:57 AM
To: 'Kit Fox'
Subject: FW: Modification of the Landslide Building Moratorium and the Negative Mitigation Declaration

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From: Gordon Leon [mailto:gordon.leon@gmail.com]
Sent: Sunday, March 01, 2009 10:19 PM
To: cc@rpv.com; Joel Rojas
Cc: Marianne Hunter; cooperconstruction44@yahoo.com; Jeremy.Davies@kuboaa.com; Tom Mattis; Griffin; Cassie Jones; Lewis Enstedt; jamshriver@yahoo.com; David MacMillan; Lowell R. Wedemeyer; Tim Kelly; Joan Kelly; stokoeg@cox.net; Dan & Vickie Pinkham; Robert Douglas
Subject: Modification of the Landslide Building Moratorium and the Negative Mitigation Declaration

To: Director of Planning and City Council March 1, 2009
From: Gordon Leon

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

The Portuguese Bend residents are very concerned about the stability of their homes, when development in Zone 2 and 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.
8. **Hold Harmless Agreements with respect to building permits in unstable land have not been upheld in the courts resulting in significant liabilities to municipalities**. A nearby example is an agreement with Palos Verdes Estates where the courts awarded millions of dollars to homeowners where a hold harmless agreement existed and was not upheld. It is likely that the City of Rancho Palos Verdes would be financially liable if issuance of building permits resulted in aggravation of the landslide. 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

Kit Fox

From: Joel Rojas [joelr@rpv.com]
Sent: Monday, March 02, 2009 9:58 AM
To: 'Kit Fox'
Subject: FW: The Negative Declaration is unacceptable!

From: Gary Stokoe [mailto:Stokoeg@cox.net]
Sent: Sunday, March 01, 2009 7:26 PM
To: Doug Stern
Cc: tomlong@palosverdes.com; peter.gardiner@rpv.com; joelr@rpv.com
Subject: The Negative Declaration is unacceptable!

February 28, 2009

Dear City Council, Mr. Rojas, Mr. Fox, City Attorney,

As a homeowner in the Portuguese Bend Community I am very concerned about the Negative Declaration that is before you on Tuesday, March 3, 2009 and the rights and costly impacts of the homeowners that live in here now. I do understand the City has to respond to a court order and move forward but the Negative Declaration is NOT acceptable. A full and exhaustive EIR has to be done.

The future building of new homes in Portuguese Bend presents a huge impact on the present deteriorating conditions of our roads in Zone 5. All of our roads are Fire Lanes and posted accordingly at each gate entrance. The impact of heavy construction equipment on our roads will eventually have an impact on Palos Verdes Drive South and the sewer lines that lay on the sides of the Drive. The sliding section of the Drive and Zone 5 are in constant land movement at this time.

Calculate the heavy construction equipment and agencies that need to use our roads on a daily basis per one new home built and multiply that by three to five new homes and I feel we have a huge potential for a future slide and or damages beyond what our Community can endure. Ancient landslide does not mean the slide has gone away. Being that we are a Private Gated Community who pays for all the road repairs? We do and our Community can not afford this oversight of costs let alone the burden of impact on our residents.

In addition, our concern among many is that the increased runoff into Alta Mira Canyon, a canyon which has had standing waves in the storms of recent years and which could negatively impact the little stability of the toe of the Abalone slide area.

Since we live in a high fire area the safety of our residents and homes, if any kind of disaster should occur while the construction of new homes takes place, should be a high priority and carefully studied. It is not acceptable if any of our local emergency agencies and vehicles can not adequately use our roads.

I am asking you to refrain from issuing any new home building permits in Portuguese Bend until a full EIR has been completed and rights for everyone that live in here have been balanced thru due process.

Sincerely,

Gary Stokoe
15 Sweetbay rd
Rancho Palos Verdes
CA 90275

Kit Fox

From: Teri Takaoka [terit@rpv.com]
Sent: Monday, March 02, 2009 1:57 PM
To: 'Kit Fox'
Subject: FW: Modification of the Landslide Building Moratorium and the Mitigated Negative Declaration
Attachments: MND.doc

HI
Sorry to bug- should this really be for item 10?
t

From: Carolynn Petru [mailto:carolynn@rpv.com]
Sent: Monday, March 02, 2009 12:50 PM
To: 'Carla Morreale'
Cc: 'Teri Takaoka'
Subject: FW: Modification of the Landslide Building Moratorium and the Mitigated Negative Declaration

Hi Carla –

Late correspondence for Item No. 9.

- Carolynn

From: cassiej@aol.com [mailto:cassiej@aol.com]
Sent: Monday, March 02, 2009 11:16 AM
To: CC@rpv.com
Subject: Modification of the Landslide Building Moratorium and the Mitigated Negative Declaration

March 1, 2009
Re: Proposed Mitigated Negative Declaration and Staff Report
Case No. **ZON2009-00007**
Dear City Council and Planning Department,
We are in favor of proper and appropriate study of the impacts this "project" will have on our environment but we are not sure the Mitigated Negative Declaration will achieve this. We are also in favor of the Staff's recommendation to form a committee of experts to guide this process.
First, however, one needs to be realistic about what the proposed "project" is. Originally, the lawsuit in question concerned 16 undeveloped but subdivided lots. In the course of the lawsuit, significant decisions were made regarding land stability using geologic data from outside these 16 lots; land nearby, but still outside the lots. Specifically, decisions were made using data from largely undeveloped and un-subdivided property located in Zone 1.
The "project proponent," the City, has now made the project larger than the original 16 lots, but leaving out the area in Zone 1- the very area whose geology has been used to determine the outcome of the lawsuit.
We can appreciate that the City is in a bind with respect to having to get something done here, but the project is being defined in terms to suit the City's needs *now* and not in terms of the big picture. For example, by not including the potential for building in Zone 1 and the potential for subdivision of larger lots in Zone 2, the project (conveniently) falls just under the number of "vehicle trips" required to trigger a more intensive look at what you are doing (450 is not that far from 500). Yet it is admitted in the Proposed MND that these other properties are or will be very shortly, on the table for development and

the **cumulative effects** of this expanded scope need to be considered sooner rather than later. The fact that a commission is being established to look at this admits as much. Which is great. Please don't rush to get one thing done at the expense of the big picture. Let common sense take precedence over expedience and greed.

Second, on the subject of roads and Zones, the City knows, without a doubt, but just for the record, that while it wishes to confine this project to Zone 2, one has to at least acknowledge that the ONLY access to these lots is not through Zone 2 at all but through Zones 5 and 6. They are intricately intertwined. These are, by the City's own admission in zoning them differently, zones of active land movement. One cannot put blinders on for this project and ignore the big picture. There are numerous safety issues with these roads. They are narrow and were built with technology decades and decades old to support vehicles not even in existence now. When these roads were built, the vehicles traversing them today could not have even been dreamt of, much less planned for. Not to mention: the roads are moving! Sometimes they move slowly, sometimes not so slowly. How can the City possibly say that development will have no impact? There could be some road mitigation but there is an incurable defect there, too. **The land under the roads to your project is moving.**

Third. There are comments in the MND that state that there will be no impact on, for example, fire safety. This appears to be a blanket statement made without consideration for the reality of the situation. All roads in Portuguese Bend are fire roads (and storm drains). They are vital links to life and safety. Consider this: If there were a fire, fire trucks would be very hard pressed to get down the streets at the same time that construction trucks are working or parked there. Indeed, they can barely get in the gates as it is; much less negotiate tight curves in a hurry and lots of large trucks parked on the road. There is no street parking for this sort of thing and plans need to be made to accommodate these trucks. This blocking of the fire roads isn't going to end for a long time, if you are correct about these lots being built out slowly. We are not of that belief. We believe they will be built out more quickly as lot owners have even this week been doing soils testing, but that is neither here nor there as our crystal ball isn't any clearer than yours.

Serious consideration must be given to this huge safety issue before broadly allowing building permits to be issued. There are mitigations that could be put in place such that all properties on these fire roads could still be accessed by the Fire Department during construction, shuttling people or parking off-road, for example, but first the City must address the fact that this is a problem.

Fourth. The MND also states that there would ultimately be no impact on utilities and to follow on our last example of a fire emergency, there are actually no fire hydrants on our street. That is because there is no water main on our street. There are sewers, funny enough, thank you, but no water. These particular lots *and the lots directly adjacent to them on the Plum Tree property, other places in Zone 1 and in the Vanderlip area* as they are developed will need water and it will not be a simple matter of connecting them with a lateral line to an existing water main, as there isn't one. Of course this is correctable, but you are talking about digging up a road in a landslide area to do this, so the mitigation is not exactly simple or inexpensive and in our opinion not to be written off. We would think, while one is putting in actual water mains, one might as well contemplate the subdivision of the larger lots in Zone 2 and consider the impact of building in Zone 1 because if these roads are going to torn up once, it is best do it once and for all. We are fairly certain the sewers as designed aren't all they should be, even that is admitted in the MND, but to knowingly ignore the potential subdivision of other lots by not dealing with the sewer issue is not good planning and fated to have impacts down the road.

Fifth and, again, back to water and the roads. Throughout the MND there is mention that the impact to someone, the City I guess, for traffic, infrastructure and services is only 0.2 % based on the added population to the City when the 47 lots are built out. Well, 47 more residences is actually a **75% increase in the number of residents in Zone 2**, if we are sticking to the Zone 2 area as the project.

One of the mitigating measures for hydrology is to have all run-off water empty into the streets, all of which empty ultimately into Altimira Canyon. The roads are at maximum capacity for water. When the place was originally subdivided, they must have planned for smaller homes or, actually, maybe they just got it wrong, I don't know. Anyway, the water running into Altimira Canyon is destroying homes. As a

private community, we are responsible for the maintenance of our storm drains, Altimira Canyon being a major one. As the bulk of the water comes from communities at the top of the hill, we have little ability to control this upstream flow. Ultimately there will be at least **75% more runoff from parcels in Zone 2 alone** onto the roads and into the storm drains as newer homes will likely be larger than the older ones. Within Altimira Canyon are fissures and water seeps into those each time it rains. That water gets into the landslide and the problem never ends. Also, and we don't know the answer to this, but isn't the water exiting Altimira Canyon, at the sea, affecting the toe of the Abalone Cove landslide? We've seen what happened when the toe of the Portuguese Bend Landslide was destroyed. PV Drive South started moving faster than ever. Anyway, no additional water can be accepted without serious thought to the consequences. The City could mitigate for this in several ways, but has chosen not to even look beyond Zone 2 to even admit there is a problem. Understandably the drainage and roads are "not the City's problem," but that doesn't mean it is not a problem.

Sixth, and with respect to Section 6, Geology, especially parts a, c and d: the various suggested mitigation measures are not adequate. The document asks if the building will "Be located on a geological unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?" Pretty much the answer to that will be "yes," given knowledge of the multiple slide planes below. A hold harmless agreement is hardly mitigation for damages resulting from building on unstable land whether it is on-site or off-site. What is a piece of paper agreement between the City and a lot owner going to do to mitigate damage to property off-site should building trigger another unfortunate acute event? Unfortunately, the underlying slide planes aren't something each homeowner can be responsible for mitigating.

Lastly, there are about 8 lots that dip into Altimira Canyon themselves and, as some of them have not been touched for, literally, decades, the amount and types of wildlife and vegetation, whether they are endangered or protected or not, is probably unknown. We know there are at least uncommon species there. We had two Western Blue-Tailed Skinks in our front yard last year (we live rather near the canyon).

This MND is irresponsible to the future. It gets the job done expediently here and now, but, seriously, this is NOT a Zone 2 issue alone. We understand why you are trying to push this part through. It is something you need to do, which can be done, but you need to get it right, too.

We appreciate all your hard work, we do. Thank you.

Cassie Jones & Lewis Enstedt

PB Development Safety Alliance

Addendum Sunday 3/1/2009 3pm: Just finished talking with a nice man hired to subcontract the cement pouring for the foundation for the new home being "reconstructed" from the ground up next door at 38 Cinnamon. He was looking for the fire hydrant on our street (there isn't one). He said they will be pouring 250-300 yards of concrete by his estimation in a week or so and was wondering where he could stage the 25-35 trucks for the pour, after he figured out how to get them there in the first place. He asked about the dirt lot at the gatehouse entrance (I don't know, ask the Pinkhams…) He had been warned about staging the trucks on the City's roads- his only instruction was that as long as they were on private property and not blocking City streets, they wouldn't be hassled and he wouldn't lose his privilege of doing business in the City. Being that there is no place to stage 30 concrete trucks on narrow fire roads in Portuguese Bend, I suggested the parking lot at Abalone Cove. Seems like a safe place to me and they can just pay for parking like everybody else. The point of relaying this discourse to you is that THERE IS NO PLAN for even ONE house being built when it comes to the access to these lots. He also did not know that we had two days a week of trash pick-up, which he did not want to interfere with.

There is no action plan and certainly no safety plan.

Quote from the Staff Report:

"Although it may be appropriate to consider the issue of subdivision within the Landslide Moratorium Area in the future, Staff does not believe that it is necessary or prudent to include this

issue as a part of the City's current response to the *Monks* decision."
The Staff is wrong here, in our opinion. There could be nothing further from the truth. It is very necessary and quite prudent to look at the big picture when dealing with the landslide area today. Don't piecemeal the plans for development. Get a comprehensive look at what is possible and get it right from the start. At the very least Zones 1, 5 and 6 need to be considered in this first round as they largely surround the otherwise landlocked Zone 2. The Staff seems to be pushing towards a resolution of an immediate problem, not planning a comprehensive strategy for the future that builds upon what is here now, what is being done today and what is expected of the future.
Thanks again, Lew and Cassie

RECORDING REQUESTED BY AND MAIL TO
City of Palos Verdes Estates
P. O. BOX 1086
PALOS VERDES ESTATES, CALIF. 90274

81-1177803

RESOLUTION NO. 990

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA, GRANTING A MODIFICATION OF IMPROVEMENT REQUIREMENTS

FREE R

WHEREAS, Section 5-85 of the Code of the City of Palos Verdes Estates, California, requires any owner constructing a building to provide for the improvement of streets, alleys, walks and drainage courses adjacent to the site of the building in conformance with the standards and specifications of the City of Palos Verdes Estates; and

WHEREAS, Section 5-86 of the Code of the City of Palos Verdes Estates, California, authorizes the City Council, after finding that such action will not affect the health, safety and welfare of the public, to modify the requirements of Section 5-85, or approve alternative arrangements assuring appropriate improvements; and

WHEREAS, FRED CHASAN and ROSLYN P. CHASAN have applied for a modification of the requirements as it concerns the street located adjacent to Parcel A of Lot A, Tract 7536, in the City of Palos Verdes Estates, California; and

WHEREAS, the City has considered the matter and has determined to approve a modification of the requirements upon certain terms and conditions.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALOS VERDES ESTATES, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That the City Council finds that the modification provided in this Resolution will not adversely affect the health, safety and welfare of the public if the conditions provided in this Resolution are complied with, and that if the conditions provided in this Resolution are not complied with, such modification will adversely affect the health, safety and welfare of the public.

RECORDED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
31 MIN. PAST. 8 A.M. NOV 30 1981

13-233

SECTION 1. That in lieu of the requirement of providing improvement of the streets, alleys, walks and drainage courses adjacent to the site of the building located upon the above described property in conformance with standards and specifications of the City of Palos Verdes Estates, Applicants shall:

A. Execute and cause to be recorded an agreement with the City in the form attached hereto marked Exhibit "A", which the Mayor and City Clerk are hereby authorized and directed to execute by and on behalf of the City.

B. Deposit with the City Treasurer the cash sum of $1,063.00, all subject to and in accordance with the terms and provisions of said agreement marked Exhibit "A". Owners shall authorize the City at such time as it may determine proper to use any part or the whole of said sum for the purpose of installing the improvements set forth in Exhibit "A". Said sum shall not be used for any other purpose, and if the same is not used in whole or in part in the manner hereinbefore described on or before January 1, 2001, the Owners may apply for a refund in the manner set forth in Exhibit "A".

SECTION 3. This Resolution shall be effective upon adoption.

SECTION 4. The City Clerk shall certify to the adoption of this Resolution and shall cause this Resolution and her certification to be entered in the Book of Resolutions of the City Council of this City.

PASSED, APPROVED AND ADOPTED this 24th day of March, 1981.

Robert A. Welbourn

ROBERT A. WELBOURN, Mayor

ATTEST:

Karen Masters

KAREN MASTERS, Deputy City Clerk

81- 1170803

13-234

C-81-10

EXHIBIT "A"

AGREEMENT

THIS AGREEMENT, made this 24th day of March, 1981, by and between FRED CHASAN and ROSLYN P. CHASAN, hereinafter called "OWNERS", and the CITY OF PALOS VERDES ESTATES, a municipal corporation, hereinafter called "CITY".

R E C I T A L S

1. OWNERS are the fee simple owners of Parcel A of Lot A, Block 1450, Tract 7536, in the City of Palos Verdes Estates, County of Los Angeles, State of California, located on Paseo del Mar, a street of said City, and are in the process of constructing a residence thereon.

2. OWNERS' predecessors in title, Fred S. Hellmann and Yovanka B. Hellmann, on or about January 26, 1976, provided the CITY with a foundation and geological investigation report prepared by Converse, Davis and Associates, dated June 5, 1976, which contained certain recommended conditions relating to the construction of a residence on said property.

3. OWNERS' predecessors in interest, Fred S. Hellmann and Yovanka B. Hellmann, made and entered into an agreement based upon the aforementioned geological report dated January 26, 1976, within the City of Palos Verdes Estates, which was recorded as Document 3985 on February 17, 1976, in the Office of the Los Angeles County Recorder.

4. On May 22, 1979, OWNERS were issued a permit by the CITY to construct on said property a single-family residence requiring OWNERS to construct a residence in accordance with the recommendation of geologists, as set forth in said recorded agreement.

5. On June 11, 1979, the Director of Public Works notified OWNERS that OWNERS would be required to install new street pavement, adequate storm drainage facilities, standard curb and gutter along the property frontage pursuant to Section 5-85 of Chapter 5 of Article 1, Division 5, of the Palos Verdes Municipal Code.

81- 1170803

13-235

6. OWNERS have disagreed with the request of the Director of Public Works, the OWNERS contending that the street fronting their property was a public improved road at the time of its purchase by OWNERS' predecessors in title, and that the same was then and is now improved within the meaning of Section 5-85. Said road is a major city street, serving all the residents and inhabitants of the CITY.

7. On January 17, 1981, the Planning Commission recommended a waiver of the requirement of the improvement of Paseo del-Mar on the condition that the OWNERS construct curb, gutter and storm drain facilities, as required by the City Engineer; and on the further condition that the aforementioned recorded agreement with the Hellmanns' not be abrogated.

8. Without in any way affecting a waiver of OWNERS' position with respect to their obligation, if any, to improve the street pursuant to Section 5-85, OWNERS represent to CITY that they have installed the drainage system on their property in accordance with the recommendations of the geological engineers, and when such drainage system is completed and approved by the CITY Building Department, the CITY will require no further action on the part of the OWNERS as a condition of occupying the property.

9. CITY and OWNERS have reached an agreement as to the limited street improvements to be installed by the OWNERS at this time.

10. CITY has requested that OWNERS indemnify it from liability to OWNERS of private property by reason of CITY'S modification of the requirements of Section 5-85, and has indicated a Certificate of Occupancy would be withheld unless the OWNERS install the required street improvements or agree to indemnify and hold the CITY harmless from any liability that might arise by reason of such modification.

NOW, THEREFORE, the OWNERS, and each of them, and the CITY promise and agree as follows:

1. That certain agreement dated January 26, 1976, and recorded as Document 3985 on February 17, 1976, in the Office of

the Los Angeles County Recorder, is hereby reaffirmed, and nothing herein contained shall abrogate the terms and provisions of said agreement.

2. OWNERS represent to CITY that they have installed the drainage system on their property in accordance with the recommendations of the geological engineer, and when such drainage system is completed no further drainage improvements on the part of the OWNERS will be required as a condition of occupying the property.

3. OWNERS agree to install at OWNERS' expense, to the satisfaction of the City Engineer, and pursuant to CITY standards, an eight-inch asphalt berm and asphalt driveway apron in lieu of concrete curb and gutter adjacent to OWNERS' frontage, which said asphalt curb shall be installed by the OWNERS along the entire frontage of OWNERS' property, as well as approximately fifteen feet of the frontage of the adjacent City storm drain, and approximately seventy-five feet of the frontage of the City parkland to the immediate north of OWNERS' property.

4. OWNERS shall make a cash deposit of $1,063.00 with the City Treasurer to reimburse the CITY for the cost of replacing said curb in whole or in part with concrete curb and gutter adjacent to the improved real property described as Parcel A of Lot A of Block 1450, Tract 7536, in the City of Palos Verdes Estates, per maps and records in the Office of the Los Angeles County Recorder. It is agreed by and between the parties hereto that the CITY is authorized and directed to withdraw up to the entire amount of said deposit, and the CITY agrees to withdraw said funds only for the purposes hereinbefore set forth. In the event the CITY does not withdraw all of said funds for the purposes hereinbefore set forth on or before January 1, 2001, OWNERS, or either of them, or their successors in interest, are hereby authorized to apply for withdrawal of the balance of said funds remaining.

81- 1170803
13-237

5. This agreement shall be recorded in the Office of the Los Angeles County Recorder, and shall constitute a covenent running with the land, and be binding upon the executors, assigns, heirs and administrators, as well as successors in interest of the OWNERS.

6. CITY shall upon compliance with all conditions other than street improvement issue OWNERS a Certificate of Occupancy, and in consideration thereof OWNERS, and each of them, agree to indemnify the CITY for damage or loss to private real property only if a court should determine that the OWNERS were required by Section 5-85 to improve said street, only if the waiver of this requirement by the CITY was the proximate cause of any damage to private real property on or after the effective date of this agreement. The CITY and the OWNERS acknowledge that OWNERS contest their liability to provide the improvements requested by the CITY pursuant to Section 5-85, and it is agreed that the OWNERS shall not be liable for any indemnification unless a court should determine that the OWNERS were in the first instance required to install street improvements, as waived by the CITY. "Indemnity" as used herein shall mean that the OWNERS, and each of them, and their executors, assigns, heirs, administrators and successors in interest, shall indemnify and hold harmless and defend the CITY, its Mayor, members of the City Council, members of its boards and commissions, officers, servants, agents and employees, from claims, suits or from loss or damage arising out of claims, suits, action or judgments by any party for private real property damage arising out of or occasioned by the CITY'S waiver or modification of the requirements of Section 5-85 herein contained.

7. This agreement shall be effective upon execution by the parties notwithstanding the installation or completion of the improvements to be installed by OWNERS, which OWNERS agree to install within ninety days of the date of this agreement.

81- 1170803
13-238

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

CITY OF PALOS VERDES ESTATES,
A Municipal Corporation

By Robert A. Welbourn
Robert A. Welbourn, Mayor

ATTEST:

Karen Masters
KAREN MASTERS, Deputy City Clerk

OWNERS:

Fred Chasan
FRED CHASAN

Roslyn P. Chasan
ROSLYN P. CHASAN

81- 1170803

13-239

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

On April 9, 1981, before me, the undersigned Notary Public in and for said State, personally appeared Robert A. Welbourn, known to me to be the Mayor of the City of Palos Verdes Estates, and Karen Masters, known to me to be the Deputy City Clerk of the City of Palos Verdes Estates, that executed the within instrument on behalf of the City of Palos Verdes Estates, a municipal corporation, and acknowledged to me that such corporation executed the same.

Merle C. Maurice
Notary Public in and for said State

Print Name_____

MERLE C. MAURICE
NOTARY PUBLIC—CALIF.
PRINCIPLE OFFICE IN
LOS ANGELES COUNTY
MY COMM. EXPIRES DEC. 14, 1982

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

On April 9, 1981, before me, the undersigned Notary Public in and for said State, personally appeared FRED CHASAN, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that they executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

Merle C. Maurice
Notary Public in and for said State

Print Name_____

MERLE C. MAURICE
NOTARY PUBLIC—CALIF.
PRINCIPLE OFFICE IN
LOS ANGELES COUNTY
MY COMM. EXPIRES DEC. 14, 1982

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

On April 9, 1981, before me, the undersigned Notary Public in and for said State, personally appeared ROSLYN P. CHASAN, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that they executed the same.

WITNESS MY HAND AND OFFICIAL SEAL.

Merle C. Maurice
Notary Public in and for said State

Print Name_____

MERLE C. MAURICE
NOTARY PUBLIC—CALIF.
PRINCIPLE OFFICE IN
LOS ANGELES COUNTY
MY COMM. EXPIRES DEC. 14, 1982

MERLE C. MAURICE
NOTARY PUBLIC—CALIF.
PRINCIPLE OFFICE IN
LOS ANGELES COUNTY
MY COMM. EXPIRES DEC. 14, 1982

81- 1170803

13-240

(9)

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss:
)
CITY OF PALOS VERDES ESTATES)

I, KAREN MASTERS, Deputy City Clerk of the City of Palos Verdes Estates, California, do hereby certify that the foregoing Resolution No. 990 was adopted by the City Council of the City of Palos Verdes Estates, California, at a regular meeting thereof, held on the 24th day of March, 1981, and that the same was adopted by the following vote:

AYES: Councilmen Florance, Ritscher, Duston, Councilwoman Culver and Mayor Welbourn

NOES: None

ABSENT: None

ABSTAIN: None

WITNESS my hand and the official seal of said City this 25th day of March, 1981.

Karen Masters
KAREN MASTERS, Deputy City Clerk

(SEAL)

81- 1170803

13-241

...y 12, 1987.
...87036985

Mark Allen Valdez, Ranchview Rd., R.H.E., CA 90274. This business is conducted by a general part...

...ublish in the Palos Verdes Peninsula News May 21, 28, June 4, 11, 1987.

Charles M. Bar... This statement wa... filed with the County Clerk of Los Angeles County on May 21, 1987.

87039244

Publish in the Palo...

...1200 and ... of the California Probate Code. TRUMAN ... ADKINS Attorney at ... Los Miradores ... Beach, CA ...

Publish in the Palos Verdes Peninsula News May 28, 30, June 4, 1987.

P.P. News No. 11740
ITIOUS BUSINESS
AME STATEMENT
e following persons
doing business as:
NRIDGE LIMITED, A
TED PARTNERSHIP,
Torrance Blvd., Tor-
e, CA 90501.
bert A. Kanal, 25220
porte Ave., Harbor
CA 90710.
ren C. Kanal, 29151
nridge Dr., Rancho
Verdes, CA 90274.
is business is con-
ed by a limited part-
ip.
e registrant com-
ced to transact busi-
under the fictitious
ness name listed
e on—N/A.
Karen C. Kanai
is statement was
with the County Clerk
s Angeles County on
21, 1987.
87039226
ish in the Palos
es Peninsula News
4, 11, 18, 25, 1987.

P.P. News No. 11794
ITIOUS BUSINESS
AME STATEMENT
e following person is
business as: ACA-
IC GUIDANCE OUT-
H SERVICES, 5523
Claire Dr., Rancho
Verdes, CA 90274.
a Bar, 5523 Eau
e Dr., Rancho Palos
es, CA 90274.
s business is con-
ed by an individual.
e registrant com-
ed to transact busi-
under the fictitious
ess name or names
above on 9-1-86.
Zita Bar
s statement was
with the County Clerk
Angeles County on
, 1987.
87036499
sh in the Palos
s Peninsula News
21, 28, June 4, 11,

P. News No. 11737
ITIOUS BUSINESS
ME STATEMENT
following persons
oing business as: LA
E HAIR DESIGN,
Miraleste Dr., Ran-
Palos Verdes, CA
.
Began, 1342 W.
St., San Pedro, CA
.
ko Gobin, 1662
Pl., San Pedro, CA
.
s business is con-
d by a general part-
ip.
registrants com-
ed to transact bus-
under the fictitious
ess name or names

P.V.P. News No. 11810

County of Los Angeles

Department of the Treasurer and Tax Collector

Notice of Divided Publication

Pursuant to Sections 3381 through 3385, Revenue and Taxation Code, the Notice of Power to Sell Tax-Defaulted Property in and for Los Angeles County, State of California, has been divided and distributed to various newspapers of general circulation published in said county, for publication of a portion thereof in each of said newspapers.

Notice of Power to Sell Tax-Defaulted Property

Public Notice is hereby given that, five or more years have elapsed since the taxes and assessments on the real property described herein was declared to be Tax-Defaulted, and that, by operation of law on July 1, 1987 at the hour of 8:00 a.m., the therein after described real property will become subject to the Tax Collector's Power of Sale for failure to pay said duly assessed and legally levied taxes against said property, and that, unless the property is sooner redeemed or an installment plan of redemption is initiated as provided by law prior to 5:00 p.m., on the last business day of June 1987, the Tax Collector's Power of Sale will arise.

The amount for which the property was originally declared to be Tax-Defaulted is shown as the amount being set forth in dollars and cents opposite the description of the property. If the property is not redeemed, the right of redemption will terminate upon any subsequent sale by the Tax Collector.

All information concerning redemption or the initiation of an installment plan of redemption will, upon request, be furnished by SANDRA R. TRACEY, Los Angeles County Treasurer and Tax Collector, 225 North Hill Street, Los Angeles, California 90012.

Dated this 27th day of May 1987.

Sandra R. Tracey,
Treasurer and Tax Collector
County of Los Angeles
State of California

The Real Property that is the subject of this Notice is situated in the County of Los Angeles, State of California, and is described as follows:

PROPERTY TAX-DEFAULTED IN THE YEAR 1982 FOR THE TAXES, ASSESSMENTS AND OTHER CHARGES FOR THE FISCAL YEAR 1981-82.

2213 $5,539.67
CHASAN,FRED AND ROSLYN P SIT US 901 PASEO DEL MAR PALOS V ERDES EST CA 7541 002 001 TR ACT # 7536 0.43 AC COM AT MO ST N COR OF LOT 5 TH S 24°29 '45" E 234.46 FT TH S 6 FT T H S 80°50' W 75.32 FT TH N 3 4°47'10" W 29.58 FT TH N 14° 33'10" W 94.15 FT TH N 16°09 '50" E 78.27 FT TH N 42°56'4 2" E 47.8 FT TO BEG PART OF LOT A

2214 $52.27
RAFFAELE,GUY F 7542 031 004 TRACT # 7144 LOT COM AT MOST N COR OF LOT 1 TRACT # 23062 TH N 83°01'25" W 21 FT TH S 51°35' W 43.13 FT TH S 1° E TO NW LINE OF SD TR TH NE AN D FOLLOWING SDRY LINE OF SD TR TO BEG PART OF LOT C

2216 $184.20
FAMAKA INVESTMENTS INC 7514 012 028 TRACT NO 25376 0.42 MORE LESS AC COM AT SW COR O F LOT 72 TH N ON W LINE OF S O LOT 42.47 FT TH N 72°44'47 "E TO N LINE OF LOT 42 TO N TH N 88°34'20" W TO SW LINE OF SD LOT TH NW ON SD SW LIN E 56.32 FT TO BEG PART OF LO T 79

2222 $15.07
SILVER SPUR BUILDING LTD 758 5 028 001 L A CO ASSESSOR MA P NO 51 0307 MORE OR LESS AC THAT PART OUTSIDE CO LTG MAI NT DIST NO 10033 OF 0.88 MOR E OR LESS AC COM AT MOST W C OR OF TRACT NO 21539 TH N 52 °23'26" W 129 FT TH N 37°36' 34" E 200.38 FT TH S 39°01'5 0" E 66.72 FT TH S 65°40'25" E 203.68 FT TH S 24°19'35" W TO N LINE OF SILVER SPUR RD TH W THEREON TO BEG PART OF LOT 36
PROPERTY TAX DEFAULTED IN YEAR 1982 FOR TAXES, ASSESSMENTS AND OTHER CHARGES FOR FISCAL YEAR 1982-1982

11155 $36.55
HARDEN,ELIZABETH J 7572 019 002 L A CO ASSESSOR MAP # 51 LOT COM AT MOST E COR OF LAN

P.V.P. News No. 11815
FICTITIOUS BUSINESS
NAME STATEMENT
The following person is doing business as: TWC ENTERPRISES, 501 Deep Valley Drive, Rolling Hills Estates, CA 90274.
Lurobarte, a California corporation, 501 Deep Valley Drive, Rolling Hills Estates, CA 90274.
This business is conducted by a corporation.
The registrant commenced to transact business under the fictitious name listed above on April 1, 1987.
Lurobarte
Terry Cole, President
This statement was filed with the County Clerk of Los Angeles County on May 11, 1987.
87036563
Publish in the Palos Verdes Peninsula News June 4, 11, 18, 25, 1987.

P.V.P. News No. 11763
FICTITIOUS BUSINESS
NAME STATEMENT
The following person is doing business as: GOLDEN WEST TRADING CO., 6540 Eddinghill Dr., R.P.V. CA 90274.
Patrick Yim-Sing Cheng, 6540 Eddinghill Dr., R.P.V., CA 90274.
This business is conducted by an individual.
The registrant commenced to transact business under the fictitious business name listed above on 5/5/87.
Patrick Yim-Sing Cheng
This statement was filed with the County Clerk of Los Angeles County on May 21, 1987.
87039242
Publish in the Palos Verdes Peninsula News June 4, 11, 18, 25, 1987.

P.V.P. News No. 11816
NOTICE OF
PUBLIC HEARING
NOTICE IS HEREBY GIVEN, that the Planning Commission of the City of Palos Verdes Estates will hold a PUBLIC HEARING at 7:30 P.M. on TUESDAY, JUNE 30, 1987, in the Council Chamber of City Hall, 340 Palos Verdes Drive West, Palos Verdes Estates, for the purpose of receiving public input regarding the following:
(1) Proposed Ordinance Relative to the Permitted Uses of the Open Space Zone.
(2) Proposed Negative Declaration with Respect

...Section 1831(D) of Rolling Hills Esta... Municipal Code, wh... limits the maximum ... mitted lot coverage ... 30%, and a Variance ... Section 1825(C) wh... limits total square foota... of accessory structures ... 500 sq. ft., to permit a 4... sq. ft. addition to an exi... ing detached garage.
IL A DETERMINATIO... OF NEIGHBORHOO... COMPATIBILITY ... ALLOW THE ABO... IMPROVEMENTS.
In accordance wi... Ordinance No. 488 of t... City of Rolling Hi... Estates Municipal Co... the Planning Director m... render decisions of nei... borhood compatibili... should the objectives ... the above section be m... This process requires t... adjacent and contiguo... property owners be n... tified ten (10) days prio... the decision of the Pl... ning Director.
At this Hearing, iss... related to the neight... hood compatibility of ... above requests will ... be considered under ... provisions of Ordina... No. 488.
Any questions reg... ing this applica... should be directed to... Rolling Hills Estates P... ning Department.
Proponents and o... nents may be heard at ... time.
If you challenge ... proposed actions in c... you may be limited ... raising only those iss... you or someone ... raised at the Public H... ing described in ... Notice, or in written ... respondence delivere... the Planning Commis... (or City Council) at ... prior to, the Public H... ing.
RAYMOND B. TAYLOR
CITY CLERK
Publish in the P... Verdes Peninsula N... and Rolling Hills He...
June 4, 1987.

R.H.H. No. 2518
PUBLIC HEARING
NOTICE
CITY OF ROLLING HI...
ESTATES
CUP-102-87
7:30 PM
JUNE 15, 1987
THE OWNERS, ... JACK KRAMER CLUB ... PROPERTY AT 11 M... TECILLO DRIVE, ... REQUESTING ... AMENDMENT TO ... EXISTING CONDITIO... USE PERMIT (CUP-... 62) TO ALLOW A 1... SQ. FT., SINGLE ST...

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release, hereinafter "Agreement", is entered into effective February 19, 1986 by and between the following parties:

The City of Palos Verdes Estates, a municipal corporation, hereinafter "City;"

California Water Service Company, a corporation, hereinafter "Water Company;"

Converse Consultants, Inc., a corporation, hereinafter "Converse Consultants;"

Fred Chasan (an individual), and Roslyn P. Chasan (an individual), hereinafter "Claimants;"

First Interstate Bank, a corporation, hereinafter "Lender;" and

Fire Insurance Exchange, a corporation, hereinafter "Homeowner's Carrier."

RECITALS

This Agreement is a compromise, settlement, and mutual release, whereby the above-stated parties hereby desire to extinguish, one against the other, the rights, claims, disputes, differences, and obligations, which each has asserted, or could assert in the future, in connection with claimed damages to and destruction of the property, residence, and improvements located at 901 Paseo Del Mar, in the City of Palos Verdes Estates, California (hereinafter

"the Chasan property") as a result of landslides occurring on and near the Chasan property and pain and suffering allegedly resulting therefrom.

On or about July 22, 1982, the Claimants commenced an action against the City, the Water Company, and Converse Consultants, in Los Angeles County Superior Court, file number SWC 62642, claiming damages in connection with the aforementioned landslide. Said action allegedly seeks compensation for damage to property and injury to person, including emotional distress causes of action for property damage and personal injuries or sickness, including emotional distress.

The parties hereto have reached agreement, upon the terms hereinafter set forth in this Agreement and in other documents being executed pursuant hereto, to settle and compromise the action bearing case number SWC 62642, and to resolve all matters at issue in dispute among the parties, as set forth in the Agreement stated below.

SETTLEMENT AGREEMENT

1. The City, through its insurance carriers, agrees to pay to the Claimants, the Lender, and the Homeowner's Carrier collectively, the following amounts:

Canadian Indemnity Company:	$1,721,969.82
Jefferson Insurance Company of New York:	$ 170,943.96
Admiral Insurance Company:	$ 195,000.00

Covenant Mutual:	$	10,000.00
Fireman's Fund:	$	9,129.00
Protective National:	$	9,129.00
Employee's Reinsurance Corporation:	$	9,129.00
Century National Insurance Company of Omaha:	$	9,129.00
Stonewall Insurance:	$	9,129.00
Puritan Insurance:	$	9,129.00
Midland Excess Insurance Company:	$	9,129.00

2. Converse Consultants agree to pay to the Claimants, the Lender, and the Homeowner's Carrier collectively, a total of $216,667.00.

3. The Water Company agrees to pay to the Claimants, the Lender, and the Homeowner's Carrier collectively, a total of $108,333.00.

4. The City additionally agrees to pay to the Claimants, the Lender, and the Homeowner's Carrier collectively, a total of $30,000.00. City further agrees to pay all demolition costs for the Chasan property.

5. The parties hereto agree that the total settlement amount as indicated in paragraphs 1 through 4 above shall be paid as follows:

(a) To the Claimants, a total of $1,662,288.78, of which $1,500,000.00 is allocated to emotional distress;

(b) To the Lender, a total of $179,528.00;

(c) To the Homeowner's Carrier, a total of $675,000.00.

6. The Claimants herein agree that they shall execute and deliver to the City a Grant Deed in the form which is attached hereto as Exhibit "A" granting title to the property as described in Exhibit "A" on or before March 21, 1986.

7. The City, the Water Company, and Converse Consultants, herein agree to make payment to the Claimants, the Lender, and the Homeowner's Carrier, on or before March 21, 1986, as set forth herein.

8. Payments as described in the preceding paragraph shall be made in the form of check jointly issued to Dr. and Mrs. Fred Chasan, Fire Insurance Exchange, and First Interstate Bank.

9. The City, the Water Company, and Converse Consultants, herein agree that, in the event payment is not received from any or all of them, or their insurers that interest shall accrue and be assessed against the delinquent party on the unpaid portion at the rate of 10% per annum.

10. Claimants herein represent and warrant that, with the exception of a potential lien for property taxes there are no liens or encumbrances on the property described in Exhibit "A" above, other than the loan agreement executed by Claimants and Lender herein in connection with this property. Claimants represent that they have made no claims

against any insurance carriers in connection with damage to the property except for the claim they filed with Fire Insurance Exchange.

11. Claimants, Lender, and Homeowner's Carrier herein agree that the sums paid as set forth in this Settlement Agreement shall be in full and complete satisfaction of all claims each has or may have in the future regarding the facts and circumstances set forth in the Complaint and this Settlement Agreement, and any landslide activity occurring at or near the property as described in Exhibit "A." Concurrently with the execution of this Agreement, therefore, Claimants, Lender, and Homeowner's Carrier shall execute a General Release of the City, the Water Company, and Converse Consultants, in a form attached as Exhibit "B." Additionally, Claimants, Lender, and Homeowner's Carrier shall execute a Release of the casualty and insurance carriers for the City in a form attached as Exhibit "C," for any claim for bad faith under any existing law or statute in this state. Claimants shall be required to cause the delivery of such executed releases to the counsel for the City.

12. Claimants agree to dismiss with prejudice the pending lawsuit, case number SWC 62642, described herein, as against all defendants to this action.

13. Claimants, Lender, and Homeowner's Carrier herein agree and stipulate that they will sign the Releases

and Claimants agree to sign the Request for Dismissal on or before March 21, 1986.

14. Except for the rights reserved by this Agreement, each of the parties to this Agreement herein agrees to dismiss all pending and future cross-complaints against each other party to this Agreement in connection with this lawsuit.

15. All parties agree to bear their own costs and attorney's fees in connection with this action.

16. Upon execution of this Agreement, except for the obligations arising out of this Agreement and the rights reserved herein, all parties herein hereby generally and specially release, discharge and acquit each other, their agents, employees, attorneys, representatives, predecessors, insurers of Converse Consultants, successors, and each of them, from any and all claims, demands, liabilities, causes of action, of every nature, character, or description whatsoever, whether known or unknown, suspected or unsuspected, anticipated or unanticipated, which each party ever had, now has, or may have, shall and can hereinafter have or acquire, arising out of or concerning or pertaining to or connected with this lawsuit whatsoever, including such rights under Section 1542 of the Civil Code of California, which provides as follows:

> "A general release does not extend to claims which the creditor does

not know or suspect to exist in his or her favor at the time of executing the release which if known by him or her must have materially affected his or her settlement with the debtor."

17. The parties hereby make express waiver of the provisions of Section 1542 of the Civil Code of California, above quoted, and acknowledge that they are aware that claims or facts, in addition to or different from those which are now known or believed to exist with respect to the matters mentioned herein, may be discovered hereinafter, and that their intention is to fully and forever settle and release any and all such matters, claims and disputes, whether known or unknown, except those that are created hereby in this Agreement.

18. The parties further agree that execution of this Agreement does not in any way constitute an admission of liability by any party to any other party. Neither this Agreement nor the contents thereof may be referred to for any purpose in any other action or proceeding.

19. The Claimants represent and warrant that they are the full and sole owners of each and all of the rights and interests to be conveyed or released by them pursuant to this Agreement, with the exception of a potential lien for property taxes, and that they have full and complete author-

ity to convey and to release each and all of such rights and interests by and pursuant to this Agreement.

20. The covenant and conditions herein contained shall apply and bind the issue, heirs, successors, executors, administrators, and assigns of all of the parties hereto.

21. This Agreement contains the entire understanding of the parties except for the rights reserved as recited in the transcript of the proceedings before The Honorable George R. Perkovich, Jr. held on February 19, 1986. There are no representations, warranties, covenants, or undertakings other than those set forth herein.

22. A modification of any of the provisions of this Agreement shall be effective only if made in writing and executed with same formality as this Agreement.

23. Each of the parties hereto has been advised by counsel of his or her own choice as to the provisions herein contained and has signed this Agreement on the advise, consent, and recommendation of said counsel.

24. This Agreement is deemed to have been prepared by the parties hereto, and any uncertainty or ambiguity consisting herein shall not be interpreted against the drafter, but rather, if such uncertainty or an ambiguity exists, shall be interpreted according to the applications of all other rules of interpretation of contracts.

25. If any provision of this Agreement is held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

26. The laws of the State of California shall govern the rights of the parties hereunder.

27. This Agreement may be executed in one or more counterparts. Each of said counterparts shall be deemed an original.

28. The parties agree to execute and deliver any additional documents which may be reasonably required or convenient to accomplish any of the purposes set forth in this Agreement.

29. The making and execution of this Agreement is not an admission by any party as to the claims or contentions of the other party or parties hereto and is made to resolve disputed claims and is entered into to buy the peace of the parties hereto.

30. If any party hereto needs to employ an attorney, or incurs attorney's fees or costs by reason of any failure by another party or parties to perform any of the duties provided in this Agreement, the party against whom such enforcement is sought, in addition to their other duties herein, shall pay reasonable attorney's fees and costs associated with enforcement of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective and duly authorized representatives on the day and year first above written.

DATE: 21 March 86

FRED CHASAN

DATE: March 21, 1986

ROSLYN P. CHASAN

FIRST INTERSTATE BANK

DATE: March 24, 1986

By:

CONVERSE CONSULTANTS, INC.

DATE: March 28, 1986

By:

FIRE INSURANCE EXCHANGE

DATE: 3-21-86

By:

CITY OF PALOS VERDES ESTATES

DATE: 3-25-86

By:

MAYOR PRO TEM

CALIFORNIA WATER SERVICE COMPANY

DATE: March 31, 1986

By:

President

EMB/AGR2908A

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

Name: MARK C. ALLEN, JR.
Street Address: 624 South Grand Avenue, 11th Floor
City & State: Los Angeles, California 90017

MAIL TAX STATEMENTS TO

Name

Street Address

City & State

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CAT. NO. NN00582
TO 1923 CA (2-83)

Individual Grant Deed

THIS FORM FURNISHED BY TICOR TITLE INSURERS

ALL | PTN.

THIS TRANSFER IS EXEMPT FROM DOCUMENTARY TRANSFER TAX UNDER THE PROVISIONS OF GOVERNMENT CODE SECTION 27383

The undersigned grantor(s) declare(s):
Documentary transfer tax is $ _____.
( ) computed on full value of property conveyed, or
( ) computed on full value less value of liens and encumbrances remaining at time of sale.
( ) Unincorporated area: (xx) City of PALOS VERDES ESTATES, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

FRED CHASAN and ROSLYN P. CHASAN

hereby GRANT(S) to

CITY OF PALOS VERDES ESTATES, a municipal corporation

the following described real property in the County of Los Angeles, State of California:

Parcel A of Lot A, Tract 7536, in the City of Palos Verdes Estates, County of Los Angeles, State of California, located at 901 Paseo Del Mar, a street of said City.

Dated: _____

STATE OF CALIFORNIA
COUNTY OF _____ } SS.

On _____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____

personally known to me or proved to me on the basis of satisfactory evidence to be the person ___ whose name _____ subscribed to the within instrument and acknowledged that _____ executed the same.
WITNESS my hand and official seal.

Signature _____

EXHIBIT "A"

(This area for official notarial seal)

Title Order No. _____ Escrow or Loan No. 13-253

GENERAL RELEASE

(Exhibit "B")

For good and valuable consideration, receipt whereof is hereby acknowledged, the undersigned, and each of them, hereby releases and discharges the City of Palos Verdes Estates, and each and all of its elected and appointed officials, agents, employees, and representatives, and the California Water Service Company, and each and all of its elected and appointed officials, agents, employees, and representatives, and Converse Consultants, Inc., and each and all of its elected and appointed officials, agents, employees, insurers, and representatives (hereinafter collectively referred to as "released parties") of and from any and all claims, losses, debts, demands, duties, obligations, and/or causes of action in which the undersigned, or any of the them, may now have or claim to have or to have acquired or may hereafter claim to have had or to have acquired against released parties, or any of them, arising out of or in any manner related to or connected with any or all of the following:

(a) Any and all taking of or injury or damage to the Chasan property or to any personal property presently or heretofore situated thereon, or any personal injury or emotional distress or other damage or cost or loss

separate from but occurring or claimed to have occurred as a result of the taking of or damage to the Chasan property, whether same may heretofore have occurred or may hereafter occur or be claimed to have occurred.

(b) Any matter of thing alleged or referred to or set forth in any or all of the pleadings on file in that certain Los Angeles Superior Court action, bearing case number SWC 62642.

The undersigned hereby waive their rights under Section 1542 of the California Civil Code, which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing this release, which if known by him or her must have materially affected his or her settlement with the debtor."

DATE: 21 March 86 _____
FRED CHASAN

DATE: March 21, 1986 _____
ROSLYN P. CHASAN

FIRST INTERSTATE BANK

DATE: March 24, 1986 By: [signature]

FIRE INSURANCE EXCHANGE

DATE: 3-21-86 By: [signature]

RELEASE

(Exhibit "C")

For good and valuable consideration as provided in the Settlement Agreement, receipt whereof is hereby acknowledged, the undersigned hereby release and discharge each and all of the casualty and liability insurance carriers, including all excess carriers, who issued policies of insurance to the City of Palos Verdes Estates prior to the date of this Release, of and from any and all liability and obligations to the undersigned. The undersigned further waive, release, and relinquish any and all claims and causes of action or rights of direct action which the undersigned may otherwise have or claim to have against any or all of such insurance carriers or their attorneys, under or by reason of the provisions of Section 790.03(h) of the California Insurance Code or any other statute, case law, or common law, with respect to the payments or non-payment, or the settlement or non-settlement or delay in settlement, or claims processing or claims handling or any claims or causes of action heretofore pleaded, alleged or asserted against the City of Palos Verdes Estates by the undersigned.

The undersigned hereby waive their rights under Section 1542 of the California Civil Code, which reads:

"A general release does not extend to claims which the creditor does not know or suspect to

exist in his or her favor at the time of executing this release, which if known by him or her must have materially affected his or her settlement with the debtor."

DATE: 21 March 86 _____
FRED CHASAN

DATE: March 21, 1986 _____
ROSLYN P. CHASAN

FIRST INTERSTATE BANK

DATE: March 24, 1986 By: _____

FIRE INSURANCE EXCHANGE

DATE: 3-21-86 By: _____

EMB/AGR2908A

Kit Fox

From: Joel Rojas [joelr@rpv.com]
Sent: Monday, March 02, 2009 1:59 PM
To: 'Kit Fox'
Subject: FW: Portuguese Bend moratorium

-----Original Message-----
From: Jean Shriver [mailto:jamshriver@yahoo.com]
Sent: Monday, March 02, 2009 1:31 PM
To: joelr@rpv.com
Subject: Portuguese Bend moratorium

Dear Mr. Rojas,
In regard to the discussion centering on the lifting of the building moratorium, we agree completely with the texts of the letters sent by Gordon Leon and Jeremy Davies. We couldn't have stated our opinions any better.
Jean and Charles Shriver, 21 W Pomegranate Rd., Rancho Palos Verdes, 90275

Kit Fox

From: Teri Takaoka [terit@rpv.com]
Sent: Monday, March 02, 2009 2:14 PM
To: 'Kit Fox'
Subject: FW: Observations and concerns of Portuguese Bend residents

Same question..
t

From: Carolynn Petru [mailto:carolynn@rpv.com]
Sent: Monday, March 02, 2009 12:49 PM
To: 'Carla Morreale'
Cc: 'Teri Takaoka'
Subject: FW: Observations and concerns of Portuguese Bend residents

Hi Carla –

Late correspondence for Item No. 9.

- Carolynn

From: Blair Van Buren [mailto:BlairVB@afn-net.com]
Sent: Monday, March 02, 2009 11:03 AM
To: cc@rpv.com
Cc: Krishna Van Buren
Subject: Observations and concerns of Portuguese Bend residents

Dear City Council Members,

We live in Zone 2 in Portuguese Bend, and would like to share a few of our concerns ahead of the City Council Meeting tomorrow evening. Our Grandparents, Dr. & Mrs. Eastman purchased this property in the early 50's and were the first, original owners of this house. Our daughters are the 4th generation to call 34 Cinnamon Lane their home. While we are not experts in geological sciences or legal matters, we are long terms residents with the following fundamental observations and concerns:

- Some areas in our immediate proximity are actively moving, others have been active in recent history, and still others may have been active long ago and may be prone to slide again. While there has been an effort to classify theses areas into zones, these areas are obviously adjacent and connected to each other. Much like the areas above the Portuguese Bend Land slide being affected by the more active slide below, we are very concerned that any reactivated movement in Zone 5 may ultimately impact Zone 2 above. This concern is exaserbated by the fact of the active slide area along side us, going through half of the neighborhood, and therefore Zone 2 is nearly surrounded by these areas of active, recent active, and actually may be itself a long-ago active landslide area.

- Just this weekend I spoke with the geologist or soils expert guy that was with the back-hoe that dug 4 test holes on the property next door to me at 32 Cinnamon Lane (Mike Noper's property) and he indicated that we have significant reason to be concerned given the amount and depth of landslide debris on the lot and in this area, as well as well as the current and potential slide areas immediately around us.

- We are also concerned given the example of the recent construction going on two doors up the street at 38 Cinnamon Lane (previously Neil Siegel and Robin Friend's home). The vibration and shaking caused by the soil compaction a couple weeks ago was so immense and unsettling. We cannot imagine how it must have felt to the immediately adjacent homeowners, because even being 2 doors down, it shook our house, rattled the windows and created a loud wallowing noise and affect in our house that was bad enough that we could not stay inside and we had to take our daughters away and go to the park for the day, just to get out and away from the unsettling noise and trembling. Wasp nests up under the eves were shaken loose and fell to the ground. We worry that any cracks in the foundation may have been made worse or new ones started. Feeling it so severely at this distance, we know there is a disturbance and impact to the general area caused by construction, and the cumulative effect if any number of multiple lots were allowed to be built is of great concern to this fragile environment.

- The ingress and egress to our neighborhood are not stable areas. In other words, even if Zone 2 has show some resilience and stability in recent history, any potential new development with construction and building equipment and potential new homeowners coming in or out of the neighborhood would have to enter and exit through the active land slide area at the Peppertree gate, or the recent landslide area of Zone 5 at the Narcissa gate. The additional strain on this environment as well as the potential problems and safety with ingress and egress to the neighborhood especially if there were additional land movement make the consideration of new building in this neighborhood unsafe and irresponsible.

- With all the passing of time, and with the technology of wells and pumping out water the Portuguese Bend landslide has never stopped! Even just last week the traffic has to be controlled on PV Drive South as the workers and heavy equipment repair the road damage caused by the constant land movement. The impact of additional houses and hardscapes blocking rainfall, spriklers for potential new gardens and lawns, and new household water use can only make this worse. Further, what will happen when the time comes when we will have 1 – 3 years of unusually heavy rainfall?

- The sewer system in Portuguese Bend is already of questionable quality and capacity. The potential for additional households tapping in to it will only increase the chances of a problem or failure.

- We are worried about the impact of the heavy equipment and additional traffic on these small neighborhood roads, and the safety of our children, and the horseback riders, and the people who walk, jog, and ride bikes in this neighborhood.

The cumulative effect over time (rather than any particular or specific issue or concern), when all things considered is what causes the greatest concern and worry, and is why the City Counsel should not allow any significant new construction or building in this fragile environment. It seems so fundamental and obvious to anyone that drives the bumpy road past Portuguese Bend (that has to have significant repair every month or two) and the fact that the current landslide going right through half of our small neighborhood HAS NEVER STOPPED!

Please recognize your responsibility in this matter and take the appropriate action.

Sincerely,

Blair & Krishna Van Buren

Kit Fox

From: jim knight [jim_knight@juno.com]
Sent: Monday, March 02, 2009 2:24 PM
To: kitf@rpv.com
Cc: cc@rpv.com
Subject: Comments on Zone 2 MND

Attachments: Comments on Zone 2 MND.doc

Comments on Zone 2 MND.doc (4...

Kit

Attached are my comments on the Zone 2 Revision project. I understand that the Zone 2 Revision MND is a result of a court decision, but my responses are solely directed as to how the MND complies with CEQA.

Thank you,

Jim Knight

To: Kit Fox, Associate Planner for the City of Rancho Palos Verdes
From: Jim Knight
Dated March 2, 2009

Comments on the MND Case No. ZON2009-00007 Feb. 9, 2009

Before I list my comments for this MND I would like to point out the first part of the project description under #9 is misleading. The Zone 2 Landslide Moratorium Ordinance Revisions are not, as stated in this MND, to "allow development of undeveloped lots in Zone 2..." A more accurately statement for the project would describe a new set of standards of which must be met in order to allow development in Zone 2, for both developed and undeveloped lots, as described in the subsequent summary of the proposed revision P to Sec. 15.20.040.

For the following reasons I believe an EIR should be prepared for this project:

An EIR must be prepared when a Lead Agency determines that it can be fairly argued, based upon substantial evidence, in light of the whole public record, that a project may have significant impacts to the environment. (Pub. Res. Code secs. 21080(d), 21082.2(d)).

If substantial evidence of significant impacts is presented, a Lead Agency must prepare an EIR, even though it may be presented with other substantial evidence that the project would not have significant impacts. (Guidelines sec. 15064). Under the "fair argument" standard, the Lead Agency is required to prepare an EIR if expert, factual, or other substantial evidence is presented even though there is conflicting evidence on record regarding the potential for significant impacts. Substantial evidence includes facts, fact-related reasonable assumptions and expert opinion. (Pub. Res. Code secs. 21080(e), 21082.2(c); Guidelines sec. 15384)

Project Description

1) The project description is vague and it is questionable whether it complies with accepted geologic practices as explained in a) and b) below.

a) City geologists have rendered an opinion that development within areas of landslide hazards is unwise unless the landslide instability can be mitigated to a level consistent with at least the minimum standards of practice as exercised within the professional geologic and geotechnical community. (*Zieser Kling report May 15, 2007*).

The city passed a resolution in June 2002 acknowledging that geologic standards similar to those put forth with this project description is unacceptable.

The MND also does not discuss whether or not the term "aggravate" would include the effects of additional runoff from new development of the project into a

deficient storm drain system. (See my comments under Sec. 9 Hydrology/Water Quality below).

b) The term "existing situation" is equally vague. Does it describe just one lot within Zone 2? Or does it describe the entire Zone 2? Or does it go beyond Zone 2 into Zone 5? Or does it describe the Abalone Cove Landslide Complex? Does it include the existing storm drain system?

An analysis is missing of how this project's geologic standard of "will not aggravate the existing situation" takes into account the administrative record of expert opinion and established practice as exercised within the professional geologic and geotechnical. A lack of clarification of the project description leaves open the potential for significant impacts that are not addressed in the MND.

2) The project description states one of the criteria to allow lot development in Zone 2 is that the project comply with the criteria set forth in Section 15.20.050. The only criteria in Sec. 15.20.050 for pools is to have a leak detection system installed. (The soils report and hold harmless agreement requirements of Sec. 15.20.040 are discussed in Geology and Soils Sec. 6)

A policy statement of guidelines regarding pools in the project area was put forth in a memorandum from the city's geotechnical panel dated March 12, 1990. Those guidelines are far more extensive than is being used for this project in Sec. 15.20.050. This discrepancy as to expert opinion and the project description is not discussed in this MND.

Sec. 4 Biological Resources

Altamira Canyon drains into the ocean at the Abalone Cove Shoreline Park where a State Ecological Reserve is located. Additional storm water runoff from the project could increase silt that could harm sensitive inter-tidal species within this Reserve. The MND does not address this potentially significant impact.

Sec. 6 Geology and Soils

1) Again, similar to my comments above about the vagueness of "aggravate the existing situation", it is unclear what "soil investigations and/or a geotechnical report" means. Is it limited to assessing expansive soils and corrosively only? Will the soil analysis only be for each individual lot? The statement acknowledges "soil conditions in and around Zone 2" and that soils in this area are known to be "occasionally unstable". Does this mean the soils analysis will address instability "in and around Zone 2"? If so, what criteria will be used?

These questions, as well as comments above on the vagueness of "aggravate the existing situation", affects GEO-1 mitigation as to how these standards and

mitigations relate to geologic and geotechnical industry standards in a known landslide area.

2) In the May 15, 2007 Report from Zieser Kling, the City geologist states "From a risk assessment standpoint, it is our professional opinion that any grading above the 20 cubic yard threshold could raise the risk above an acceptable level". Assuming the recommendation of 20 cubic yards of grading was intended on a per lot basis, 47 lots times 20 cu. yds. per lot is still only 940 cubic yards of grading; a significantly lower number than the 2,350 cubic yards of the project.

It is not clear how the quantity of grading in the proposed project relates to this professional opinion and thusly a potentially significant impact of the project is not being addressed by this MND.

3) In the *Environmental Checklist Form/Initial Study for Case No. ZON2005-00536 dated July 2006,* the Cabrillo fault was identified close to this project and it was stated that it could be considered potentially active. The project for this July 2006 Initial Study is a few miles from the project under this MND.

The Cabrillo fault is also discussed in the Geologic Hazard section of the General Plan.

This disclosure is missing in this MND.

4) The city of Palos Verdes Estates (a contiguous city to Rancho Palos Verdes) had to pay reparations to a homeowner for a landslide issue, despite the city requiring that homeowner sign a hold harmless agreement.

The MND does not disclose the scope of the hold harmless agreement and therefore does not discuss the potential for the project to adversely impact people or property outside the project. Certain methods of soil abatement can cause severe ground shaking that could affect immediately neighboring properties. Increase in storm water runoff caused by accumulative increased impervious surfaces from the project could cause flood damage and/or land instability. (See comments on HYD-2 below)

It is uncertain if a hold harmless agreement is adequate mitigation.

Sec. 9 Hydrology/Water Quality

1) A map from p. 2 of the appendix of the *Altamira Cyn. Drainage Study by the Los Angeles County Flood Control District* dated Jan. 1978 shows how Altamira Cyn. created a flood zone between Narcissa Dr. and Sweetbay Rd.

In addition to 50-100 year rains, there is the added risk of high velocity, debris laden flows into Altimira Cyn. exacerbated after a fire ("burned" flow) when there is no vegetative drainage retardant present.

This entire project will be contributing runoff water directly to Altamira Cyn. that could exacerbate an existing deficient storm water drainage system. There is documentation showing severe flooding problems and loss of property in lower Altamira Cyn. caused by storm water runoff.

These disclosures are missing in this MND.

2) HYD-1 would require a NPDES permit. It is not clear if each individual lot would require this permit or if the entire project would require a permit.

3) HYD-2 This mitigation is not clear as to whether the Director of Public Works will only identify drainage deficiencies on a per lot basis or drainage deficiencies for the project as a whole.

There is extensive administrative record on drainage deficiencies in Altamira Canyon as well as fracture zones that allow infusion of storm water runoff directly into the subsurface of the toe of the Abalone Cove Landslide leading to the possibility of land instability.

In addition, storm water in Altamira canyon can create severe beach side erosion causing the shoreline to retreat. This loss of revetment compromises land stability.

It is not clear whether mitigation HYD-2 will address drainage issues as identified by the above mentioned administrative records and expert opinion.

Sec. 10 Land Use/Planning

The General Plan includes a list of Geologic Safety Policies.

This project is also subject to Public Resources Code Sec. 2699 which directs cities to "take into account the information provided in available seismic hazard maps when it adopts or revises the safety element of any land-use planning or permitting ordinances." As stated in the MND, Zone 2 is subject to the Geologic Hazards Mapping Act. The Dept of Conservation, Division of Mines and Geology Special Publication 117 sets forth guidelines under that Act for evaluating and mitigating seismic hazards within mapped areas such as this project.

As mentioned in Sec. 6 Biology, this project may impact a State Ecological Reserve.

It is unclear how this project complies with the land use policies as set forth in the General Plan, State Ecological Reserve and Geologic Hazards Mapping Act.

Sec. 14 Public Services

This MND does not address the physical change that could adversely affect fire protection access. There are numerous lots in the project that back up to natural open space. Currently fire protection services can access this open space directly over an unobstructed vacant lot from a paved street. If homes are built on these lots there needs to be adequate fire protection access to the open space in back of the new homes in order to provide the same level of fire protection to the entire community.

This MND does not address this as a potential impact or mitigation.

Sec. 16 Transportation

There are only two emergency access roads for the entire Portuguese Bend community to exit onto P.V. Dr. South. We are surrounded by a large open space which has had fires recently. Persons, as well as a large equestrian community, need these roads for emergency access. Existing roads within the Portuguese Bend community are very old, not compacted well and could be significantly deteriorated by heavy construction equipment, especially accumulatively for the entire project.

Additionally, there are some very dangerous curves in which it has already been shown to be a safety issue with large trucks.

These potentially significant impacts have not been discussed in the MND.

Sec. 17 Utility/Services System

2) The courts have established that before approving a project, the CEQA document must first resolve the uncertainties regarding the project's potential significant environmental effects. *(Sundstrom v. Count of Mendocino (1988) 202 Cal. App. 3d 296)* Although a mitigation of requiring temporary septic holding tanks is recommended, the MND states impacts of the project cannot be fully understood until a future sewer study is done. It is uncertain whether or not the recommendations and mitigations comply with established law under CEQA.

3) UTL-5 Some lots within the project do not have direct access to the existing water distribution system. For instance, homes on Upper Cinnamon Ln. access the water distribution system from Narcissa Dr. via easements over other properties. Without newly created easements, Cal Water will have to provide additional main supply lines to some of the lots in this project. Without this disclosure, it is unknown what impact the project will have on utility/services systems.

Sec. 18 Mandatory Findings of Significance

1) The MND states that individual lots are unlikely to be developed concurrently and therefore will not have any inverse impact. But it does not address the impact of accumulative storm water runoff, as well as affects to the roadway, from the project after full build-out.

2) In addition to existing homes that drain into Altamira Canyon, a large development approved by RPV called Island View was designed to drain its storm water runoff into the Altamira Canyon watershed. Community members have noted at City public hearings that the storm water in Altamira Canyon has increased significantly since that project was built.

In is unclear whether or not this project has a significant impact incrementally and constitutes "cumulatively considerable" under CEQA without a disclosure of all sources draining into the Altamira Canyon watershed.

3) As discussed in other sections of this letter, there are several impacts to human beings that potentially could be considered substantial.

Sec. 19 Earlier Analysis

The MND only mentions A 1996 SEIR for the sewer system. It does not identify other documents in the administrative record. Some of those documents are:

1) The FEIR Abalone Cove Landslide Stabilization Project Aug. 1989 for the County of Los Angeles Department of Public works in cooperation with the City of Rancho Palos Verdes.

2) Altamira Cyn. Drainage Study report for RDA Aug. 1990 by ASL Consulting Inc.

3) In the Altamira Canyon Drainage Control Project DEIR #39-R June 1995

4) Draft Supplemental EIR for the Abalone Cove Sewer System, June 1995.

5) Draft Supplemental to the Supplemental Environmental Impact Report for the Abalone Cove Sewer System Nov. 1998

For the reasons stated above, supported by administrative record and expert opinion, a full EIR should be prepared for this project.

Thank you for the opportunity to comment on this MND.

Jim Knight

Kit Fox

From: yogesh goradia [y_goradia@hotmail.com]
Sent: Monday, March 02, 2009 3:21 PM
To: kitf@rpv.com
Subject: Proposed Negative Declaration on Portugese Band Zone 2

Dear Ms. Fox:

I have just reviewed the proposed description of Mitigated Negative Declaration relative to the 47 lots in Zone 2 of the Portugese Band area as described in the February 9, 2009 Public Notice.

I would like to take exception to the last paragraph of the proposed substantive revision to the Landslide Moratorium Ordinance, which states that "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." My reasons are as follows:

1. The court ruling pertains to the entire Zone 2, not individual lots within that zone.

2. I would assume that numerous gelogical studies must have been done to place the original moratorium. The fact that the moratorium is now being lifted demonstrates that the experts no longer consider Zone 2 a geological problem.

3. The City is already addressing the sewage disposal issue in the proposed revision (this should not be confused with the gelology, however).

4. The City may want to require soils studies rather than geological investigation on individual lots.

I would say in short that if the City is still concerned about any potential geological problems, they should conduct such studies for the entire Zone 2 once and for all before lifting the moratorium, and not impose it on each individual lot owner which seems to be a waste of time, money and resources. So, I suggest that the last paragraph be deleted from the proposed revision.

Sincerely yours,

Yogesh Goradia, B.S. (civil eng.), M.S. (structures), Ph.D. (physics)
32063 Pacifica Drive, RPV

Kit Fox

From: EduardoS [EduardoS@rpv.com]
Sent: Tuesday, March 03, 2009 9:34 AM
To: Kitf@Rpv. Com
Subject: FW: Zone 2 Issues
Attachments: 03-01-09(Zone 2).doc; 8-1-2006 Letter.pdf

fyi

EDUARDO SCHONBORN, AICP
SENIOR PLANNER
City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275
ph: 310-544-5228
fax: 310-544-5293

From: tkellyrpv@aol.com [mailto:tkellyrpv@aol.com]
Sent: Tuesday, March 03, 2009 9:18 AM
To: cc@rpv.com; joelr@rpv.com; carolynn@rpv.com; eduardos@rpv.com
Subject: Zone 2 Issues

To CC et al,
Attached are my thoughts and concerns re the future Zone 2 development.
Tim Kelly.

---

6 Fruit Tree Road,
Rancho Palos Verdes, Ca. 90275

March 1, 2009

Re: Zone 2 Moratorium Issues.

Dear City Council members,

I am a long time resident of the Portuguese Bend Community and for the last 6 years have been a Director of the Portuguese Bend Community Association. In that capacity, I represent both the interests of those that have residences and those that have undeveloped lots within the community. I am writing this letter as a private citizen and am not representing the PBCA board or its members. However, my comments and concerns are based on safety issues that I feel will affect all members of our community.

The main access to Zone 2 is Narcissa Dr. which enters the community from PV Drive South and traverses behind the Wayfarers Chapel through Zone 5. Zone 5 is unstable and continues to experience movement. After the winter of 2005/2006, that portion of Narcissa and surrounding homes in Zone 5 experienced so much movement and distress that the City dispatched its own geologist to investigate the situation. On July 26, 2006, Mr. Lancaster met with concerned community members and toured the affected areas. On August 1, 2006, he submitted a letter summarizing his observations and I have attached this letter for your review. This movement and distress occurred under relatively benign road usage and my concern is that the introduction of large earthmoving, cement and building material trucks and equipment will greatly exacerbate the problem and lead to failure of this access road to our community. In addition, we have a narrow hairpin bend outside the residence located at 22 Narcissa which necessitates large trucks to cross the center median in order to traverse the bend. Just last week, we had a documented incident where a resident met a building materials truck with a semi-trailer on the wrong side of the bend and both vehicles had to reverse in order for them to pass safely. If and when major construction is undertaken on the Zone 2 lots, this situation will be severely exacerbated and incidences like this will become the norm rather than the exception.

The city is well aware of the drainage issues associated with Altamira Canyon. The drainage capacity of the canyon has long been exceeded and it cannot handle the current water flows, let alone any additional run off. The rains of 2005/2006 have caused major deterioration within the canyon and have resulted in severe damage to properties located along the lower part of the canyon. At least 2 property owners have had to undertake major remedial repairs to their properties within the last year. The city has relinquished any responsibility for the maintenance of the Altamira Canyon drainage system and has left the PBCA to its own devices. We have attempted to mitigate some of the problems through volunteer efforts but we have neither the expertise nor the resources to accomplish this task.

Our current road and drainage infrastructure is at capacity. Any change to the current equilibrium will require major infrastructure upgrades. Any modifications to Narcissa Drive such as widening to accommodate large construction vehicles will require

an engineering study and design prior to a large scale road improvement project. Altamira canyon can take no more water, period!

It is my feeling that the city looks on the Zone 2 potential development as a simple case of constructing a house on a vacant lot and the only inconvenience will be to adjoining neighbors while the construction is being carried out. That will not be true in Portuguese Bend. There will be a potential for up to 47 homes being built in a very short period of time. This will be similar to some of the larger developments undertaken in the City of RPV. A development of this size would require major infrastructure improvements and the city would probably require an EIR to determine the effects of such a large project. In such a situation, the developer would be responsible for ensuring that the correct infrastructure was put in place. It would not be the responsibility of the adjacent neighbors to fund these efforts. The city needs to look at this development in such a way that an undue burden is not placed on those that do not stand to gain financially from development.

I appreciate the time and effort this city has expended on this issue. The city has always believed there was a reason for a moratorium and restrictions on development in this fragile area. Those underlining reasons have not gone away as a result of a judicial decision. Do not throw the baby out with the bathwater. Please understand that the current residents also enter into the equation and that we need a voice in this matter.

Very Truly Yours,
Tim Kelly.

ZEISER KLING Consultants, Inc.

August 1, 2006

PN 97082-1485

Mr. Joel Rojas
Director of Planning, Building and Code Enforcement
CITY OF RANCHO PALOS VERDES
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275-5391

Subject: Summary of Site Observations and Cursory Review of Site Conditions, Abalone Cove Landslide Area, Rancho Palos Verdes, California

Dear Mr. Rojas:

At your request and authorization, I contacted and met with Bill Griffin of 5 Ginger Root, Rancho Palos Verdes, California on Wednesday July 26, 2006. Mr. Griffin provided photo-documentation of was has been reported as recent movement of the Abalone Cove Landslide. In addition, Mr. Griffin provided a site map of the area with his approximated limit of the historic movement (Figure 1). Observations were limited to a vehicle reconnaissance of the area with stops including the Wayfarers Chapel, the Horan residence (20 Narcissa Drive), the Jester residence (28 Narcissa) and associated street areas including portions of Naricssa Drive, Palos Verdes Drive South, Figtree Road, and Cinnamon Lane.

Observations at the Wayfarers Chapel included separations between concrete slabs and concrete cracks up to approximately 1 inch in width. These were confined to the eastern perimeter of the chapel grounds associated with the breezeway and garden house (see photos 13 through 17 provided by Mr. Griffin and Zeiser Kling Consultants, Inc. (ZKCI) Figures 2 and 3). Additional photos illustrating distress within the interior of the garden house were provided by Mr. Griffin (photos 19 through 22).

Observations at the Jester residence (28 Narcissa Drive) were confined to the exterior of the residence. Distress in the form of a somewhat continues crack within the length of the driveway was observed. This crack showed both horizontal and vertical separations on the order of ½ to 1 inch (see photos 1 through 4 and ZKCI Figure 4). Additional separations and cracks were observed within the entry stairs and within flatwork and walls of the residence (see photos 5 through 12 and ZKCI photos Figure 5 and 6).

The Horan residence (28 Narcissa Drive) included both interior and exterior observations. Observations included movement and separation in the brick driveway and cracking and tearing of interior drywall (see figure 7). Addition observations included uneven flooring within much of the residence.

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Street distress observed included general cracking of asphalt pavements that appeared to be typical of aged pavements, other cracks that may to be related to minor movement (lower Narcissa Drive, Photos 23 and 24 and in front of 1 and 2 Cinnamon Lane, Photos 27 through 29 and ZKCI Figure 8), and some areas that show heaving or settlement within pavement areas (Palos Verdes Drive South photos 35 and 36). The cracks observed are generally between 1/8 to 1 inch (see photos 23 through 36 and ZKCI Figure 8).

It was noted by all those that I spoke with that the majority of the cracks and distress observed in the area have occurred in the last 6 months. It is quite possible that the distress observed has occurred within the last 6 months; however, my observations cannot determine the age of the distress. Some the cracking in the pavements appear recent; however, the majority could be older than the purported 6 months. It is not possible for me to determine the age of the distress at the residences or concrete distress at Wayfarers Chapel based on my current observations.

The horizontal movement recorded by GPS survey observations during 2005 within the area in question by Charles Abbott Assocaiates, Inc. is consistent with the movement observed during our recent site visit. It is recommended that GPS survey observations be continued at a frequency of four quarterly readings per year. In addition, it is recommended that site observations of the general distress also be completed on a quarterly basis. It should be stressed to all involved that if a change in the current distress regime occurs, the city should be notified so that additional steps can be taken if warranted.

We appreciate this opportunity to be of continued service to the City of Rancho Palos Verdes. Please call if you have any questions regarding the content of this letter.

Sincerely,

ZEISER KLING CONSULTANTS, INC.

James M. Lancaster, Jr.
Principal Engineering Geologist
CEG 1927
Expires 6/30/08

JL:MR:dm

Dist.: (3) Addressee
Attachments: Figures 1 through 8
Photographs 1 through 36
Sheet C, Horizontal Movement History

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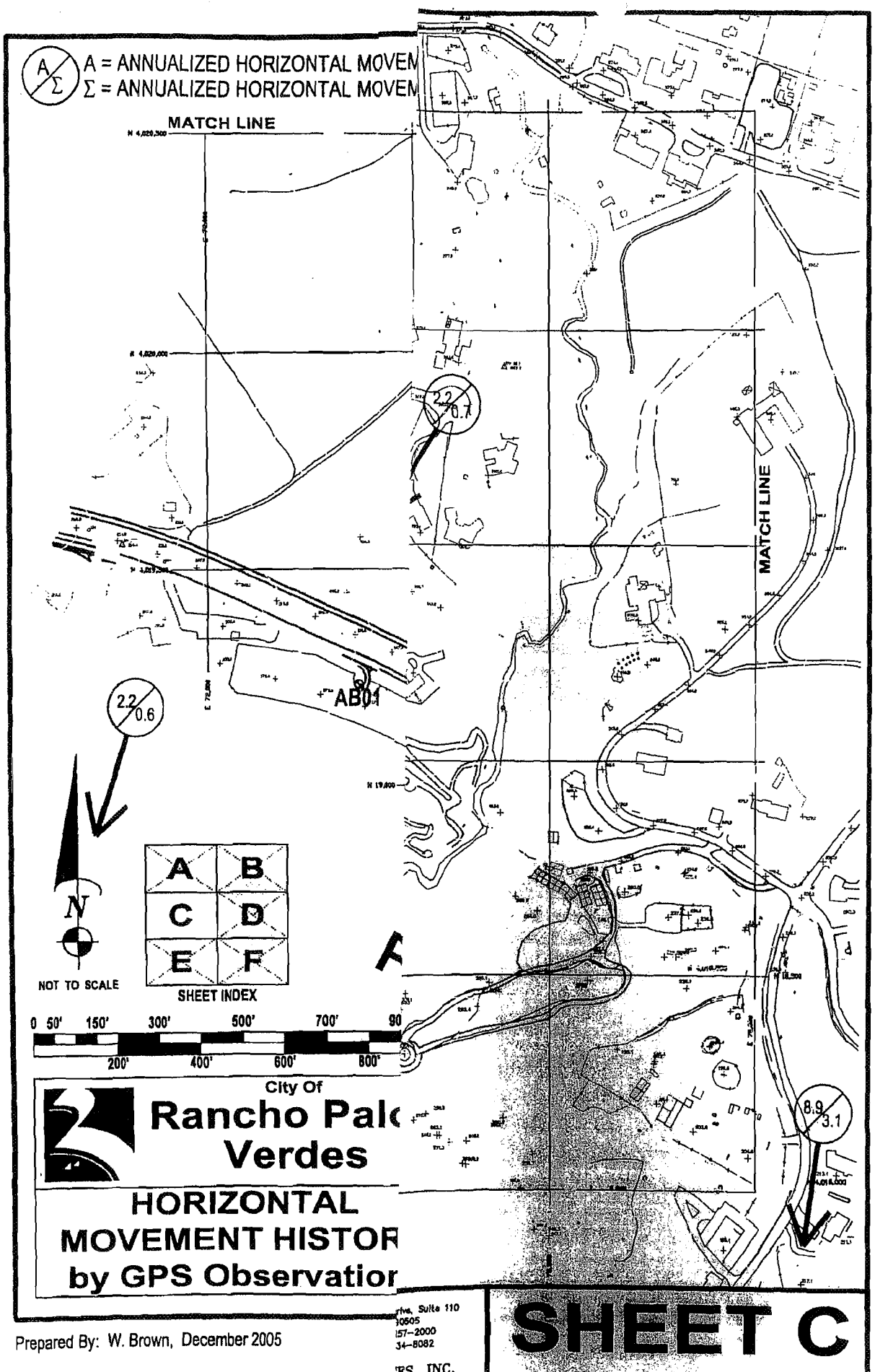
A = ANNUALIZED HORIZONTAL MOVEM
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8.9
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City Of
Rancho Palc
Verdes
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MOVEMENT HISTOR
by GPS Observatior
Prepared By: W. Brown, December 2005
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ES, INC.
SHEET C

YORK POINT VIEW PROPERTIES, LLC

March 3, 2009

VIA FAX AND U.S. MAIL

RECEIVED
MAR 03 2009
PLANNING, BUILDING AND CODE ENFORCEMENT

Mr. Joel Rojas, Director of Planning and Code Enforcement
City of Rancho Palos Verdes
30940 Hawthorne Blvd.
Rancho Palos Verdes, CA 90275-5391

RE: ***ZONE 2 LANDSLIDE MORATORIUM ORDINANCE REVISIONS (ZON2009-00007) AND DRAFT MITIGATED NEGATIVE DECLARATION***

Dear Mr. Rojas:

We recently reviewed the Staff report and Environmental Checklist prepared for the proposed Zone 2 Landslide Moratorium Ordinance Revision (ZON2009-00007), which determined that a Mitigated Negative Declaration (MND) would be prepared. As you know, we believe major revisions to the City's Moratorium Ordinance are long overdue. Although we believe the ordinance should be entirely repealed, the proposed ordinance revision is a good start and we trust that the City will act quickly to correct what we believe are serious problems. Moreover, we look forward to working with you and the technical review panel to resolve fundamental flaws that have existed for years.

Based on the narrow revisions proposed for the ordinance, we believe the MND is generally adequate and accurate in its findings and conclusions. We note, however, that the description of "surrounding land uses and setting" states that the Lower Filiorum (Point View) is the subject of a current application for a "*Moratorium Exclusion to allow for future residential development*". This statement is inaccurate and mischaracterizes our application. As you know, Moratorium Exclusion (ZON2008-0414) was filed exclusively to correct the Moratorium Boundary on the Point View property, based on detailed geology investigation that was reviewed and approved by the City Geologist. The Moratorium Exclusion does not propose a development project. The MND should be revised accordingly. The same section indicates that the Upper and Lower Filiorum are owned by York Long Point Associates. Please note, as you were previously notified, as of 1/1/09 the Lower Filiorum (Point View) property is now owned by a new owner, York Point View Properties, LLC. We also concur with other comments that the ordinance should be revised to allow for subdivision and construction on all developed and undeveloped lots.

Thanks for considering these important comments.

Respectfully,

Gary S. Weber

CC: Jim York (YPVP)
Scott Sommer (Pillsbury)

550 SILVER SPUR RD., SUITE 250, RANCHO PALOS VERDES, CA 90275 (310)544-6177 FAX (310) 544-6179

From: leejester@verizon.net
To: kitf@rpv.com;
Subject: Proposed Mitigated Negative Declaration - ZON2009-00007
Date: Tuesday, March 03, 2009 5:09:50 PM

Dear Mr. Fox,

I live at 20 Narcissa Drive, in Zone 5 of the City's Landslide Moratorium Area. Many residents, including me, are disappointed in the Court of Appeals decision in the Monk case. While I understand the City's position regarding the repeal of Resolution No. 2002-43, I do not agree with certain revisions to the Landslide Moratorium Ordinance based on parts of the draft Mitigated Negative Declaration.

Based on evidence that my property continues to move due to the Abalone Cove Landslide, I think that the potential development of 47 lots in Zone 2 may have a cumulative adverse effect on the environment. It is unknown if there will be an aggravation of the existing landslides in the area with future development. Requiring property owners to sign a hold harmless agreement prior to being granted a Moratorium Exception Permit is of no comfort if future development should lead to the increase in the present landslides or development of new slides. In addition, with the as yet undetermined factor of safety, providing information satisfactory to the City's geotechnical staff demonstrating that the proposed project will not aggravate the existing situation is also a questionable guarantee.

I urge you to review the Environmental Checklist on which you based your Mitigated Negative Declaration and determine that further environmental review is necessary.

Thank you,

Lois Jester
20 Narcissa Drive
Rancho Palos Verdes
CA 90275

From: Carolynn Petru [carolynn@rpv.com]
Sent: Monday, March 02, 2009 8:49 AM
To: 'Carla Morreale'
Cc: 'Teri Takaoka'
Subject: FW: Negative Declaration

Hi Carla -

Late correspondence on Item No. 9.

Carolynn

-----Original Message-----
From: hollysgrt@aol.com [mailto:hollysgrt@aol.com]
Sent: Sunday, March 01, 2009 6:14 PM
To: cc@rpv.com
Cc: 2hunter@cox.net
Subject: Negative Declaration

March 1, 2009

Dear City Coucil:

As a 60 year resident of Portuguese Bend, I have witnessed the slippage and destruction of many houses from the still active P.B. landslide. The infamously unstable geology of our beautiful area is also responsible for landslides in Abalone Cove, the Flying Triangle, San Ramon Canyon and the Ocean Trails Golf Course. A look at an aerial photograph shows an ancient landslide that dwarfs and includes all of the more recent slides.

The moratorium on building in the ancient landslide area was appropriate and wise. To develop will be foolhardy. The construction of houses on now vacant lots and the possible tear downs and re-builds of existing structures puts not only those residing in Portuguese Bend in jeopardy but also all residents of R.P.V. - and our city government.

If building proceeds, it will require grading equipment,dump trucks, concrete trucks and construction crews. Replacing vacant lots with rooftops and hardscape increase potential for runoff and erosion.
Sewer and water lines need to be excavated. All this without meeting a 1.5 factor of safety in an area with high landslide potential. It sounds like a recipe for disaster.

With deep concerns,

Tony Baker
16 Limetree Lane
Rancho Palos Verdes, CA
310.3772536

13-278 10.

From: momshriver@cox.net [mailto:momshriver@cox.net]
Sent: Tuesday, March 03, 2009 1:14 PM
To: cc@rpv.com
Subject: Portuguese Bend

March 1. 2009

Dear City Council, Mr. Fox, Mr. Rojas, City Attorney,

The Portuguese Bend neighborhood that I live in is very atypical and surprisingly fragile. Lifting the moratorium is a serious mistake. New building is not only itself at risk but jeopardizes what tenuously exists here already.

Though the lot our house is on is in the "stable" area, we have significant cracks in our walls and around the grounds. We have relatively frequent power, phone and cable service outages. Our sewer system needs more than the typical monitoring and care. The roads are prone to cracks and potholes that the community itself must maintain. The same clay in the soil that causes the plates of earth to slide is everywhere. During the rains, we have flooding, our yard is mired, and the fields are impassable.

It often feels like we are survivors, albeit lucky, in a neighborhood that is still trying to fall apart. When I first lived here 25 years ago, there were remnants in the fields of the many homes that had been here but crumbled. It was sobering to find porches and patios and odds and ends. For what seemed like very good reason, no one could get a mortgage causing home prices to be low. Now, it seems the risks of building here are long forgotten.

>From watching my surroundings over time, there is no doubt in my mind that this slide will inexorably continue and expand past any abatement attempts. It looks like the only progress represented has been due to corresponding periods of less rain. It's my understanding that it is just a matter of time.

The open space must be irresistible to developers. I have sympathy for the people who were sold the lots. That was a shameful scam.

Please resist the people trying to exert their will on this fragile area. Please determine the destiny of this community on lessons well learned. While a beautiful spot, this is not a place for new building. It is challenging enough to maintain what remains.

Thank you for your consideration,

Marianne Shriver
21 W. Pomegranate Rd.
RPV, CA 90275

Kit

-----Original Message-----
From: Stuart Miller [mailto:stuartmiller@earthlink.net]
Sent: Monday, June 01, 2009 2:45 PM
To: citymanager@rpv.com
Cc: Carol W. Lynch; Ed.Richards@kutakrock.com
Subject: Zone 2: June 2 city council meeting

Dear Ms. Lehr:

We represent the plaintiffs in Monks v. Rancho Palos Verdes. Attached please find a letter addressing the Zone 2 issue on the City Council's agenda for June 2, as well as several other important matters. Please forward our letter to the Council as soon as possible and include it in the administrative record. Also, please reserve time for us to speak at the meeting concerning the Zone 2 agenda item.

Thank you.

Very truly yours,

Stuart Miller
Scott Wellman

LAW OFFICES
GILCHRIST & RUTTER
PROFESSIONAL CORPORATION

WILSHIRE PALISADES BUILDING
1299 OCEAN AVENUE, SUITE 900
SANTA MONICA, CALIFORNIA 90401-1000

TELEPHONE (310) 393-4000
FACSIMILE (310) 394-4700
E-MAIL: mburton@gilchristrutter.com

March 3, 2009

Via Personal Delivery

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

Re: Proposed Mitigated Negative Declaration For Zone 2 Landslide Moratorium Ordinance Revisions – City Council Hearing: Tuesday, March 3, 2009

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

We represent Dr. Lewis A. Enstedt, a resident of the City of Rancho Palos Verdes ("City"), and the Portuguese Bend Alliance For Safety, an unincorporated association. We are writing to urge you to reject the Proposed Mitigated Negative Declaration ("Mitigated Negative Declaration" or "MND") for the Zone 2 Landslide Moratorium Ordinance revisions ("Project" or "Landslide Revisions") and instead prepare a full Environmental Impact Report ("EIR"). Failure to prepare a full-blown EIR in connection with the Landslide Revisions will constitute a violation of the California Environmental Quality Act, Cal. Pub. Res. Code §§ 21000, *et seq.* ("CEQA), and its guidelines (14 Cal. Code Regs. §§ 15000, *et seq.* ("CEQA Guidelines"), and will subject the City to costly litigation.

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 Project.

A negative declaration or mitigated negative declaration can be adopted only if there is no substantial evidence that the project may have a significant effect on the environment or 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 affect 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, there is substantial evidence that the Landslide Revisions may result in the development of new residences, which may have a significant effect on the environment that cannot be mitigated. Accordingly, the City cannot adopt the Mitigated Negative Declaration but instead must prepare an EIR.

The Mitigated Negative Declaration repeatedly, and misleadingly, relies on the fact that the Project "could lead to the future development of **up to forty-seven (47) single-family residences** on lots that have remained undeveloped since they were created in the late 1940's" to support the contention that the Project will either have less than significant impacts or that the impacts can be mitigated such that they will be less than significant. (MND, passim.) (Emphasis added.) However, this premise is fundamentally flawed and undermines the MND's analysis and determination that the Project results in less than significant environmental impacts, with mitigation.

First, characterizing the development of 47 new single-family residences as an "insignificant" impact does not accurately represent the scope of the impact on the Project site ("Zone 2" or "Portuguese Bend"). The development of 47 new single-family residences would represent at a minimum **a 73% increase in the number of homes currently situated in Portuguese Bend**. As the Mitigated Negative Declaration states, Zone 2 is a "semi-rural area" that currently only has 64 developed lots, the majority of which are improved with single-family residences. (MND at p. 2). Yet the MND alleges the impacts of these developments would be minimal. For example, the Mitigated Negative Declaration claims that the development of 47 new single-family residences would only represent a two-tenths percent (0.2%) increase in the City's population. (MND at p. 19.) This analysis completely ignores the context of the development's impact. The magnitude of this difference is 365 times the impact on Portuguese Bend than on the City as a whole.

Second, the Mitigated Negative Declaration's reliance on the new development being limited to 47 single-family residences does not take into account the likely subdivision of the 47 undeveloped lots to create even more homes. 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). The Staff Report analyzing the Landslide Revisions ("Staff Report") clearly states that if the Landslide Revisions are adopted "the filing of subdivision maps would be allowed." (Staff Report at p. 4.) Indeed, several residents have already asked the City to address the issue of subdivision in the Landslide Revisions. (Staff Report at p. 10-63, 10-65-68, 10-83.) Nevertheless, the Staff Report improperly dismisses the issue, contending that "[a]lthough it may be appropriate to consider the issue of subdivision...in the future, Staff does not believe that it is necessary or prudent to include this issue as part of the City's current response to the *Monks* decision." However, as subdivision is a reasonably foreseeable consequence of the Project, it is both necessary and prudent to include this issue as part of the environmental review process at this time. The MND not only fails to address the possible impacts such subdivision would have on the environment, it relies on the alleged fact that development would be restricted to only 47 new single-family residences to justify its findings that there will be less than significant impact. (MND, passim.)

Third, the Mitigated Negative Declaration makes the flawed assumption that "[w]hile the cumulative effects of the near-simultaneous development of up to forty-seven (47) [single-family] residences may have significant adverse effects...[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." (MND at p. 23.) CEQA does not recognize the distinction between "concurrent" or "piecemeal" developments but merely whether impacts are "reasonably foreseeable." The assumption that the lots will be developed on a "piecemeal basis over a period of many years," ignores 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. Now that the City is attempting to lift restrictions on development, it is certainly "reasonably foreseeable" that most, if not all, of these lots will undergo construction, whether concurrently or piecemeal, and certainly as soon as feasible. Accordingly, the City must analyze the cumulative impacts of simultaneous, or near-simultaneous, construction. Pub. Res. Code § 21083(b)(2); 14 Cal. Code Regs. § 15065(a)(3). The MND briefly addresses the possibility that the development may occur simultaneously, but dismisses it, alleging that "with the imposition of the recommended mitigation measures, these potential cumulative impacts will be reduced to less-than significant levels." (MND at p. 23) Yet, a review of the mitigation measures contained in the MND reveals that the MND strongly relies on the construction being done piecemeal to justify its findings that the proposed mitigation measures would reduce the environmental impacts to less than significant.

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 foreseeable subsequent developments, may have a significant effect on the environment, which are not mitigated by the measures proposed in the MND. Therefore, an EIR is mandatory. *Id.* Below, we discuss the substantial evidence supporting the finding that an EIR is required and analyze the flaws in the alleged "mitigation" measures proposed in the 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 Mitigated Negative Declaration alleges that, with mitigation, the Landslide Revisions will have less than significant impacts on air quality. However, 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." (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.

The 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) ("*Sundstrom*"). The second measure does not address the possibility of subdivision and environmental effects stemming from the construction of more than 47 new single-family residences.

II. Biological Resources

Although the Mitigated Negative Declaration acknowledges that there are patches of coastal sage scrub ("CSS") habitat identified in Altamira Canyon that traverses several undeveloped lots in Zone 2 and that several of the undeveloped lots in Zone 2 abut the City-owned Portuguese Bend Reserve and the privately owned Filliorum properties, both of which contain substantial and cohesive patches of sensitive CSS habitat (MND at p. 9), it proposes unacceptable and inadequate mitigation measures.

Instead of actually mitigating the impact of the development on the CSS habitat, the MND again essentially requires implementation of mitigation measures to be recommended in a future study. This is an unacceptable mitigation measure. *See Sundstrom*, 202 Cal. App. 3d at 308-09. Specifically, 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." (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 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, the MND 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, 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 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, the MND 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. Additional storm water runoff from the Project could increase silt that could harm the inter-tidal species within this Reserve, yet the MND does not address this potentially significant impact.

III. Geology/Soils

The 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, this was an issue in *Monks v. City of Rancho Palos Verdes*, 167 Cal. App. 4th 263 (2008) ("*Monks*"). Please note however that although the Court of Appeal ruled the City could not impose an ordinance depriving the *Monks* plaintiffs of all economically beneficial use of the sixteen (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 development of 47 or more lots.

Indeed, the evidence suggests that the likely 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. In fact, 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.

Nevertheless, the Mitigated Negative Declaration states that there will be less than significant impacts, with mitigation. However, the MND again 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 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." (MND at p. 11) This is an impermissible attempt to delay the formulation of real mitigation measures to a future date.

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 MND notes, "the entirety of Zone 2 is located within an area that is potentially subject to earthquake-induced landslides." (MND at p. 11.) Indeed, the Mitigated Negative Declaration states "the soils of the Palos Verdes Peninsula are generally known to be expansive and occasionally unstable." (*Id.*) The Mitigated Negative Declaration's proposal that applicants for development submit a "hold-harmless agreement" (*Id.*) does not mitigate the significant environmental effects of development on the geology and soil at the Project site. Rather, it only attempts to mitigate the City's responsibility for damages. This is not a proper subject for an environmental review and is certainly not a proper mitigation measure. If anything, it is evidence that development will have a significant adverse impact on the hillside.

The Mitigated Negative Declaration fails to adequately consider slope stability and possible slope failure during the construction process. The City already has substantial evidence of the possible environmental effects of construction in Zone 2 based on the history of Portuguese Bend. For example, given the history of landslides bordering the Project site, the City has already had to take steps to stabilize the land at the Project site, including, among other things, using "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; MND at p. 12.) This stability can be jeopardized by any new development. In fact, 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 the slide plane and/or be affected by the slide plan and result in significant environmental impacts on the geology and soil in Zone 2.

Furthermore, although the Mitigated Negative Declaration acknowledges 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..." (MND at p. 12), it fails to 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.

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 MND contains absolutely no discussion about the project's impact on these highly sensitive streets, the only access ways to the project. Portuguese Bend residents must repair and rebuild these access roads, which are paid for by the Portuguese Bend Community Association. The addition of 47 new single-family residences or more would increase the burden on the access roads by nearly 75%, yet the MND fails to analyze how this increased usage will affect the geology and soils underlying the access roads.

Lastly, the 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 (see Exhibit A, attached hereto) and which abuts Zone 2 to the south.

IV. Greenhouse Gas Emissions

The MND 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).

V. Hydrology/Water Quality

The Mitigated Negative Declaration states that the Project will have less than significant impacts on hydrology and water quality, with mitigation. However, in evaluating the potential environmental impacts of the Landslide Revisions on hydrology and water quality, the Mitigated

Negative Declaration does not 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." Altamira Canyon has been subject to severe flooding problems caused by storm water runoff, yet the 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 MND.

The 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.

Although the MND acknowledges that development "would alter the topography of the undeveloped lots in Zone 2 and increase the amount of impermeable surface area," it proposes inadequate and unacceptable mitigation measures. (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 "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 MND provides that "[a]ll landscaping irrigation systems shall be part of a water management system approved by the Director of Public Works" (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.

VI. Population/Housing

The 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 0.2% [of the City's population]," based on a projected 47 new single-family residences. (MND at p. 18.) However, as discussed above, this reasoning is flawed in that 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 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 73% increase in population and housing at the Project site. Therefore, the MND needs to evaluate the potential significant environmental impacts of substantial grown in Portuguese Bend.

VII. Transportation/Traffic

The Mitigated Negative Declaration states that the Project will have less than significant impacts on transportation and traffic. Again, this is largely, and mistakenly, premised on the false assumption that there will be no more than 47 new single-family residences and that new construction will be done on a "piecemeal" basis "over a period of many years." (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 MND 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. 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. Yet, the MND wholly fails to address this significant impact.

VIII. Utilities/Service Systems

The Mitigated Negative Declaration states that the Project will have less than significant impacts on utilities and service systems, with mitigation. However, the MND admits "[a]lthough the sewer system EIR indicated the Abalone Cove system could probably support 47 additional

connections, the City's Public Works Department does not have enough data to confirm this assumption at present." (MND at p. 21.) This does not even take into account the fact that the development could well exceed 47 with subdivision. Moreover, the MND again unacceptably defers 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. (MND at p. 21.)

For example, the 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 MND indicates a possible significant environmental impact may exist with regards to the sewer system, yet does nothing more to mitigate it than deferring the problem 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.

Moreover, such a holding tank will itself result in likely environmental impacts, yet the MND doesn't even discuss those impacts.

Additionally, the 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, despite acknowledging that "the City's equipment supplier...has informed the City that their manufacturer no longer recommends the same method of connecting to the system that was used previously...[therefore] system evaluations are needed in order to facilitate [the sewer's] continued safe operation." (MND at p. 22.) 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).

IX. Aesthetics

The Mitigated Negative Declaration contends that the Landslide Revisions will have less than significant impacts on aesthetics, with mitigation. However, the MND fails to consider the short-term construction impacts on Portuguese Bend. Although the Mitigated Negative Declaration admits that the Landslide Revisions could lead to future development, 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.

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 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." (MND at p. 6) This "mitigation" measure does not mitigate the significant visual impact of development at the Project site replacing previously undeveloped open space.

Furthermore, the 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." (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" (MND at p. 2), by 73% or more. The MND fails to account for the significant impact the increased residences would have on the specific Project site; as the CEQA Guidelines provide, "an activity which may not be significant in an urban area may be significant in a rural area." 14 CCR § 15064(b). Lastly, as discussed above, the Mitigated Negative Declaration does not accurately account for the possible number of new developments, which will likely exceed 47 residences after subdivision.

In sum, we urge the City Council to reject the Mitigated Negative Declaration. There is substantial evidence the Project will have significant environmental impacts which are not addressed or are inadequately addressed in the 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 in the record of proceedings on this matter.

Very truly yours,

GILCHRIST & RUTTER
Professional Corporation

Martin N. Burton
Of the Firm

MNB:az/170250_3.DOC/030309
4811.001

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

Stuart Miller
Attorney at Law
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Laguna Hills, CA 92653
(949) 580-3737
fax (949) 580-3738
stuartmiller@earthlink.net

Admitted in CA and NY

June 1, 2009

Mayor Larry Clark and Members of the City Council
City of Rancho Palos Verdes
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275

Re: Zone 2

Dear Mayor Clark and Members of the City Council:

We are the attorneys for the plaintiffs in *Monks v. City of Rancho Palos Verdes*. We are writing concerning the agenda item scheduled for the meeting scheduled for June 2, 2009, to revise the landslide moratorium ordinance and require the preparation of an environmental impact report. This letter also addresses two other critical matters concerning the litigation.

I. CEQA and Development of the *Monks* Lots

The public debate about Zone 2, and in particular the proposal to pursue an environmental impact report before allowing the *Monks* plaintiffs to build on their lots, seem to be influenced by several misconceptions on the part of City officials and the citizenry alike.

First, the decision of the Court of Appeal in October 2008 does not affect any lots other than the 16 owned by the plaintiffs. The case was not a class action, and the rights of the 31 non-plaintiff lot owners were not addressed at all. On the contrary, the Court distinguished our 16 lots from the others. For example:

> Foster stated that 16 new homes would not undermine the stability of the area . . . . [T]he city has approved so many exemptions and exception permits for existing homes that applying the moratorium to plaintiffs' undeveloped lots is equally questionable. . . . Tofani said that allowing construction on *all 47 undeveloped lots* "would have a tendency to further reduce the factor of safety." But that statement, without more, is not substantial evidence as to how or when the desired construction-on *plaintiffs' 16 lots*-might affect anyone's health, safety, or property, if at all.

(*Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 308 ["*Monks II*"] [underlining added; italics in original].) We have no interest in the fate of those lot owners who sat out the litigation in the hope of benefitting from the labor of others, and we suggest you limit whatever restrictions you are contemplating to them alone. It seems that the City does not

appreciate the fact that it has already taken the *Monks* plaintiffs' property. We have repeatedly suggested that the City distinguish our 16 lots from the others in Zone 2, and have heard no rationale for what seems to be a persistent unwillingness to do so.

Second, since the Court of Appeal's determination that the City took the plaintiffs' property, we have repeatedly heard the mistaken notion that the City has a choice of purchasing the property or issuing permits, and that the plaintiffs now have to go through the ordinary permit process, which may include CEQA. In fact, the remedy for violation of the constitutional prohibition against taking private property without just compensation is the payment of just compensation. Although the City "has the option of rescinding its action in order to avoid paying compensation for a permanent taking," this alternative is only available if "***any restrictions*** for which compensation must otherwise be paid are not lifted," thereby "free[ing] the property from the ***limits*** placed on development." (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 13-14.) The Court of Appeal so held in *Monks v. City of Rancho Palos Verdes* (Feb. 23, 2005) No. B172698 ("*Monks I*"), stating that just compensation is required if "***any restrictions*** for which compensation must otherwise be paid are not lifted." (*Id.* at 13.) Therefore, any impediment the City imposes upon the development of the *Monks* plaintiffs' lots, such as the requirement of CEQA review or a demand for permitting fees, is a municipal election to forego the "option" of allowing development in favor of the primary remedy of just compensation for the property the City has already taken.

In other words, once the upcoming valuation trial is concluded, if the City is not ready to issue permits immediately, it will be obliged to purchase the property, and we will commence execution proceedings forthwith.

Third, for multiple independent reasons, CEQA does not apply to the *Monks* plaintiffs' lots. Obviously, no statute (such as CEQA) can supersede constitutional requirements, such as those of the Takings Clause. Moreover, any proposal to build up to three single-family homes is categorically exempt from CEQA. The *Monks* case does not involve a single development of 16 homes, but rather 16 unrelated developments of one home each. The Court of Appeal could have found a taking of any combination of lots while finding no taking of the others. Beyond that, the City has the express power to exempt the *Monks* lots from any enactment that might otherwise be a taking: "California procedural requirements . . . ensure to the state its right to a prepayment judicial determination that the ordinance or regulation is excessive and will constitute a taking, thus affording the state the option of abandoning the ordinance, regulation, or challenged action, or ***exempting parcels from its scope*** if the regulation on use is excessive." (*Hensler*, *supra*, 8 Cal.4th at 19.) Finally, CEQA involves an administrative remedy. Under both *Monks I* and *Monks II*, we are not required to pursue any administrative remedies, whether proof of geologic stability (*Monks I*) or any "additional or new" ones. (*Monks II* at 309.)

Fourth, *Monks II* forbids burdening the *Monks* plaintiffs with CEQA review. In our opening brief in *Monks II*, we raised this point at length:

> After the amount of compensation is determined, the City must condemn the property and pay that sum if "any restrictions for which compensation must otherwise be paid are not lifted." (*Monks I* at 13.)
>
> The option of lifting the "restrictions" on development does not apply simply to the 2002 enactment, but to ***all*** restrictions prohibiting the ordinary use of the land, *i.e.*, the construction of single-family homes. (*See Hensler, supra*, 8 Cal.4th at 13 [the property must be "free . . . from the ***limits*** placed on development"].) It does not allow the City to suspend the 2002 restrictions while prohibiting development under other legislation with additional administrative requirements. Otherwise, this lawsuit could result in a judgment that the City has taken plaintiffs' property without compensation, and the City could lift the 2002 enactment while requiring lengthy and expensive review ***under CEQA, for example***. If the City ultimately decides that construction should not be allowed under CEQA, plaintiffs would have to sue again. If they prevail in that second suit, the City could preclude homes through its Building Code, necessitating a third lawsuit, and so on. Plaintiffs thus would accumulate one inverse condemnation judgment after another, while receiving neither compensation nor permission for construction. Such a procedure is forbidden . . . .

The Court of Appeal agreed with us:

> [P]laintiffs express concern that the city might impose additional or new restrictions on their attempt to build. We expect the city to proceed in good faith. "Government authorities, of course, may not burden property by imposition of repetitive or unfair land-use procedures...." (*Palazzolo v. Rhode Island, supra,* 533 U.S. at p. 621.) The city may not "engage in endless stalling tactics, raising one objection after another so that the regulatory process never comes to an end." (*Mola Development Corp. v. City of Seal Beach* (1997) 57 Cal.App.4th 405, 417.)

(*Monks II* at 309.) The word *additional* in the phrase "additional or new restrictions" includes restrictions that are arguably already in place, such as CEQA. We do not anticipate the Court of Appeal viewing with favor *any* pretext to avoid either the payment of just compensation or the immediate issuance of building permits.

Fifth, the staff report anticipates that "the cost of preparing the EIR will eventually be borne by the developers of vacant lots in Zone 2." (Staff Report at 3.) This expectation, insofar as it applies to the *Monks* plaintiffs, betrays a profound misunderstanding of the City's situation. The City has already taken our property. Development as an "option" of avoiding just compensation is the City's way of avoiding paying for what it has already taken. We are very happy with the prospect of receiving just compensation, and are not obliged to pay any money in pursuit of a permit that may not be granted, whether that payment takes the form of funding a CEQA study, paying an application fee, or anything else.

Sixth, a CEQA study will be redundant. The City has already sponsored two comprehensive CEQA reviews of development in Zone 2 by Impact Sciences, Inc., discussed at length in *Monks II* at pp. 274-75 and 308. We have heard two objections to those reports, but both objections are so meritless as to be silly. The first is that the City never formally "certified" the conclusions of those studies. That failure to certify was the result of the City's disappointment over the conclusion of those studies that there would be no adverse environmental impact from development. The City can certify them now. The second objection is that those studies did not address certain newly-required issues such as greenhouse gas emissions. We do not think 16 new families breathing air in Portuguese Bend will contribute to global warming, particularly since those same people will not be breathing elsewhere. If greenhouse gases really do have to be addressed, staff can prepare a short update to the Impact Sciences reports.

Seventh, we remind you that during the moratorium period the City consulted 20 pre-trial experts, including multiple "panels," that we had a four-month trial exploring all technical issues in exhaustive detail, and that the Court of Appeal issued a comprehensive opinion finding no danger. In light of all of these events, we expect that the Court of Appeal will not consider staff's proposal to establish "a technical panel of geologists and geotechnical engineers to assess the impact of the *Monks* decision" to be consistent with its warning to the City against imposing "repetitive . . . procedures so that the regulatory process never comes to an end." (*Monks II* at 309.)

Eighth, under the partial settlement agreement we reached in January 2007, we were paid $4.25 million to cover attorney's fees and damages for lost use of our property through final judgment. This aspect of the settlement agreement does not apply to attorney's fees or lost use resulting from acts of the City occurring after the settlement agreement that are consequences of the City's bad faith. As we read *Monks II*, any "additional or new restrictions on [plaintiffs'] attempt to build" will be contrary to the Court's "expect[ation] the city [will] proceed in good faith." (*Monks II* at 309.) We therefore will seek attorney's fees for any work we must do in response to the imposition of "additional or new" requirements, and will seek damages for any delay in the litigation resulting from them.

II. Fraud Claim

In 2006, the *Monks* plaintiffs and the City engaged in settlement negotiations that ultimately led nowhere. In the course of those discussions, the City asked us for a new geotechnical report, and said our application for development would be processed within 90 days

after its receipt. We provided the report, whereupon the City demanded an additional processing fee of $20,000. Although the City had not demanded that payment before, we paid it. The City then demanded an additional sum of between $100,000 and $250,000 for review CEQA before it could reach a final decision, and told us the process could take an additional 27 months "or more." We thereupon terminated the settlement negotiations, and have repeatedly demanded our money back. We still have not received the money or any response to our demands.

Our limitations period for a fraud claim arguably expires in July. Unless the City Council authorizes the return of the $20,000 in full forthwith, we will have no alternative but to seek return of the money through litigation, as well as attorney's fees and interest.

III. Costs

The Court of Appeal in *Monks II* ordered the City to pay our costs on appeal. We timely provided our bill of costs months ago, but have not been paid. Weeks ago, your attorney promised the bill wold be paid forthwith. However, it still has not been paid, and our subsequent inquiries about it have not been answered. Unless the costs are paid in full this week, we will seek a court order requiring payment, plus attorney's fees incurred in that effort. The amount of costs is $13,382.

Conclusion

We hope the City Council will realize that any impediment to the construction of the *Monks* plaintiffs' lots furthers the likelihood that the City will have to buy the property at fair market value. Although we may disagree about the precise amount involved, we both recognize it is in the tens of millions of dollars.

We expect the $20,000 and $13,382 to be paid forthwith. The checks should be made payable to Stuart Miller Attorney-Client Trust Account.

Please include this letter in the administrative record.

Very truly yours,

Stuart Miller

Scott Wellman

cc: Carol Lynch, Esq.
Edwin Richards, Esq.

13-298

Kit Fox

From: Sharon Nolan [nolan4re@hotmail.com]
Sent: Saturday, April 11, 2009 12:32 PM
To: joelr@rpv.com
Cc: 'Kit Fox'; rdouglas@usc.edu; 'Michael Barth'; mab@barthlaw.com
Subject: Portuguese Bend
Attachments: Zone Memorandum by Dr. Perry Ehlig 1993 005.pdf; Zone Memorandum by Dr. Perry Ehlig 1993 006.pdf

Greetings Joel and Kit,

Now given the Subject: line I'm impressed if you both opened this email ~ knowing how sublime the goings-on in our little hamlet can be! (sic Migraine-time)

These two pages excerpted from Perry Ehligs' Zone Memorandum speak to Zone 2.

He specifically addresses the responsibility of the additional monitoring and dewatering wells as tied to the vacant lot development issue.

I wonder if this can be incorporated into your recommendations to the Council on this issue.

Regardless of the position of the Monk's attorney that only the 16 lots are at issue, I believe the other 31 lots will not be far behind. I think we should consider the impact on hydrology in terms of 47 not 16. That's to say the expectation of development of the 47 lots and the additional hydrology impact that would occur make if necessary for the 47 lots to have amortized over them the cost of necessary monitoring and dewatering wells.

Thanks for listening and considering this thought.

Happy Easter,

Sharon Nolan

ZONE 2

Background

Zone 2 includes about 130 acres within existing Tract 14195 and Tract 14500 (except lots 1, 2, 3 and 4 which are in the Portuguese Bend landslide), and the subdivided land served by Vanderlip Drive. It is an area of subdued topography within the central part of the large ancient landslide. Slopes of 5:1 and less prevail over most of the central and downhill parts of Zone 2. Slopes generally range between 5:1 and 3:1 in the uphill part.

The flattest parts of Zone 2 overlie a gentle trough in the bedrock structure beneath the slide. The slide base followed the bedrock structure as the slide mass translated across this area. This caused a surface hollow to develop in an east-west direction across this area while the slide was active. The hollow was subsequently filled by stream and slope wash deposits. This created the gentle slopes which drain toward the channels of Altamira Canyon.

Available geologic data indicate the base of the ancient landslide is at depths ranging from 180 to 260 feet below the ground surface in most parts of Zone 2. Four to six deep core holes would be desirable to more precisely establish the location of the slide base beneath parts of this area but new findings are unlikely to have a significant impact on existing interpretations. The slide base is sufficiently flat in the area seaward of upper Narcissa Drive that the overlying slide mass resists movement providing the water table does not rise above its historic levels. Based on well data, the water table was at a depth of 50 to 60 feet beneath most of this area prior to the start of pumping in 1980. The water table is currently at an average depth of about 70 feet.

The 25 undeveloped lots in Tract 14195 and 15 in Tract 14500, and an undetermined number in parcels served by Vanderlip Drive, could be developed without adversely affecting the stability of the large ancient landslide. In fact, if development were combined with installation of additional wells, stability would be improved. Most lots can be developed with minimal grading and without a net import or export of earth. Such grading would have no impact on the stability of the deep-seated slide.

Ground water is the only variable within Zone 2 which affects its stability. Zone 2 currently contains one monitoring well and four producing wells. Eight to ten more monitoring wells are needed to provide a detailed picture of ground water conditions within Zone 2. Four to six more producing wells are needed to better control ground water conditions. If the cost of the needed wells were funded from fees paid for permission to develop vacant lots, development would improve the stability of the large ancient landslide.

Suggested Guidelines

Development of undeveloped lots shall be permitted in existing Tract 14195 and Tract 14500 (except lots 1, 2, 3 and 4 which are in the Portuguese Bend landslide), and the subdivided land served by Vanderlip Drive subject to the following stipulations:

a. The lot owner must sign a covenant agreeing to participate in ACLAD and any other district whose purpose is to maintain the land in a geologically stable condition.

b. The lot owner must pay a fee to help defray the cost of installing additional monitoring and producing wells. Said fee shall not exceed the differential between the sum of ACLAD fees previously assessed to an equivalent sized developed lot and the sum previously assessed to the undeveloped lot. (The annual tax difference between a developed lot and an undeveloped of equal size is determined by the square footage of improvements.)
c. Prior to issuance of a building permit, a geotechnical report must be submitted to and approved by the City's geotechnical reviewers indicating what, if any, local geologic hazards must be corrected prior to construction, and shall specify foundation designs based on field and laboratory studies. Grading exceeding 250 cubic yards shall require special approval by the City staff.
d. If building occurs prior to installation of a sewer system, a covenant must be signed agreeing to a sewer system and providing necessary easements for one.
e. All lot drainage deficiencies, if any, identified by the City staff must be corrected.
f. Runoff from all buildings and paved areas must be contained and directed to the street or to an approved drainage course.
g. All other relevant building code requirements must be met.

ZONE 3

Background

About 15 acres of undevelop land is present within the area bounded by the main channel of Altamira Canyon on the west, Sweetbay Road on the north, and the edge of the Portuguese Bend landslide on the east and southeast. Most of this land has gentle rolling topography and could be developed into residential lots with only minor grading.

Available data indicates the base of the large ancient landslide is nearly horizontal beneath this area and is at a depth of 200 to 250 feet below the ground surface. Three to five deep core holes are needed to confirm this.

Ground water conditions are the main variable affecting the stability of the large ancient landslide beneath this area. The area should remain stable as long as the water table rises no higher than its historic high level. The area contains two producing wells but no monitoring wells. Data from the two wells and projections from wells in the adjoining area indicates the water table is 10 to 15 feet lower than it was in 1983. At present, the water table ranges from about 60 to as much as 130 feet below the ground surface. Three to five monitoring wells and one or two additional producing wells should be installed during development of this area.

Suggested Guidelines

Additional geologic studies are needed to accurately locate the base of the large ancient landslide beneath this area. If the results of such studies are favorable, development could be permitted contingent upon meeting all City requirements pertaining to development of residential tracts and subject to the following stipulations:

a. Ground water monitoring and production wells must be installed in accordance with a plan approved by the RDA.
b. Surface drainage channels must be paved in accordance with a plan approved by the RDA.

Kit Fox

From: Joel Rojas [joelr@rpv.com]
Sent: Monday, March 30, 2009 10:28 AM
To: 'Robert Douglas'
Cc: 'Kit Fox'; 'Carol W. Lynch'
Subject: RE: community call for an EIR on the changes to the moratorium

Bob

Thank you your feedback. The City is currently looking into the CEQA issue.
I will forward your comments to the City Attorney and Kit Fox, the project planner.

Joel

-----Original Message-----
From: Robert Douglas [mailto:rdouglas@usc.edu]
Sent: Wednesday, March 25, 2009 9:23 AM
To: joelr@rpv.com
Subject: community call for an EIR on the changes to the moratorium

Hi Joel,

I hear that the PBCA is asking the City to conduct an EIR before making changes to the moratorium. If that should occur, ACLAD would like to specifically request that the EIR address the effect of storm water runoff from an additional 47 houses (worse-case scenario) on our storm-drain system (ie. the roads).

To try and answer the question I looked at the old EIRs done for Altamira and the storm drain project but the data are not sufficient. This issue is important because not all of the storm drain improvements requested in the original project were completed and there are parts of the system that are
already prone to overflow. Based on my "back-of-the-envelope" analysis, it appears we could really overtax the system in an extreme storm of the type that occurred in 2005.

Let me know if you need any additional information. Thanks.

Bob Douglas

13-302 26.

Kit Fox

From: Carolynn Petru [carolynn@rpv.com]
Sent: Thursday, March 12, 2009 8:05 AM
To: JoelR@rpv.com; KitF@rpv.com
Subject: FW: PBCA Letter

FYI

From: Kathleen Olson [mailto:k.olson@cox.net]
Sent: Wednesday, March 11, 2009 9:47 PM
To: cc@rpv.com
Subject: Re: PBCA Letter

10 March 2009

From: Portuguese Bend Community Association

Re: Zone 2 Landslide Moratorium Ordinance Revisions
Planning Case No. ZON2009-00007
(Code Amendment and Environmental Assessment)

Dear City Council,

The Portuguese Bend Community Association is aware that the City has been mandated to issue landslide moratorium exemption (LME) permits to allow for new residences under the Monk's decision. The above referenced Revision, including the Environmental Assessment fails to consider the impacts or consequences of its enactment on the structure and infrastructure of our Community Association as follows:

While the majority of the plaintiffs and other vacant lot owners in Zone 2 are members of our Association, one of the vacant lots owned by one of the plaintiffs and several others included in Zone 2 are not members of our Association. The City in its Staff Report has been made aware that this parcel owner is desirous of subdivision. The City's extension of the Revision of all of Zone 2 will encompass several other properties also known to be desirous of subdivision. The Environmental Assessment provided through a Mitigated Negative Declaration in no way addresses the physical and financial impact to the logical recipients of these parcels' storm water runoff from roofs, driveways and, when subdivided, streets. As all roads to these parcels travel through our community and the roads are the storm drains for the area, this additional burden to our members has not been considered or planned for. Should the runoff be primarily directed to Altamira Canyon, our members are the immediate downstream recipients of this burden and this has not been evaluated in the MND.

The handling of this additional water to be absorbed by our members (literally and financially) at the City's direction is impossible without detailed knowledge of the hydrology in the area, followed by careful planning with thoughtful foresight. Other concerns to our Association should these parcels be subdivided and developed would include those of traffic, fire and safety.

We request the City reflect on the potential of their actions and reject the Staff recommendation for the MND in favor of an entirely appropriate Environmental Impact Report.

These impacts potentially include those on Altamira Canyon, street storm drains, the sewer system capacity capabilities, traffic and safety in our community. On the basis that the City issues building permits for new residences for the 47 undeveloped lots in Zone 2, together with potentially existing property tear downs in Zone 2, we strongly believe that these above issues be addressed by a full Environmental Impact Report by the City prior to issuance of the building permits.

Respectfully yours,

Kathleen Olson, Secretary

Portuguese Bend Community Association Board of Directors

Casey Porter

Mike Cooper

Tim Kelly

Patrick Burt

Chuck Himelwright

Kit Fox

From: Joel Rojas [joelr@rpv.com]
Sent: Thursday, March 05, 2009 2:59 PM
To: 'Kit Fox'
Subject: FW: Modification of the Landslide Building Moratorium and the Negative Mitigation Declaration

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From: Carolynn Petru [mailto:carolynn@rpv.com]
Sent: Thursday, March 05, 2009 10:58 AM
To: 'Carol W. Lynch'; 'Joel Rojas'
Subject: FW: Modification of the Landslide Building Moratorium and the Negative Mitigation Declaration

Hi Carol/Joel –

More FYI

CP

From: Marianne Hunter [mailto:2hunter@cox.net]
Sent: Thursday, March 05, 2009 10:08 AM
To: Tom Long
Cc: David MacMillan; Orton, William; City Council; aratcliff@pvnews.com; Uri Eliahu; Gottlieb, Jeff; Mark_Bassett@oes.ca.gov; JudyM@ci.rolling-hills-estates.ca.us
Subject: Re: Modification of the Landslide Building Moratorium and the Negative Mitigation Declaration

Dear Tom,

Thank you for your note. Today, I'm very sad and very tired. I thought we might have found some state legislative help now that *Monks* has changed the rules for California, but now I think it's going to take history repeating itself here for such action. Maybe *after* we lose a road or homes are wrecked here again, gov't can do it's job to re-establish it's ability to rationally control building. The difference this time is that everyone knows the risks and the city and residents are being pushed onto a melting iceberg anyway. Ironically, the speculators and dreamers who are crowding onto this berg, will suffer also.

I believe that part of the problem that created this situation is lot owners' lack of experience with the blind, enormity of forces of nature. If you've never had to deal with it in reality, but only in the abstract, it just doesn't compute. It goes against human intelligence...that force within us to overcome obstacles...that we cannot think or reason our way out of a river rising above it's banks and washing a bridge out, rockslides so big and unstable it can takes weeks and months to deal with a road closure, fire that sweeps across landscapes and takes what it wants. Until you have lived with it, had to change your daily life because of it, you will never believe it can happen to you. It's knowledge you have to experience in the marrow of your bones; some things are stronger than you, and sometimes no one can protect you from them. Sometimes there is no 911. My husband and I have that first hand knowledge, as do many of our neighbors here. I think that lack of belief in harm is the case with many of the lot owners and of the appellate judge. The next step is to meet with the lot owners, make partners of them, and figure out how we can plan this development together so we don't all lose.

The MND as it stands, sets us all up for further contention. If the lot owners are working with designers already and will have to go back, maybe again and again, as we learn what sort of building will give them a house they love, conform to our CC&R's and be safest in process for the community of PB and RPV, more ill will, if not lawsuit, is sure to follow. We will all be at each other's throats, trying to get what we think is right piece by piece unless we work the details out now. I am holding out hope that some suggestions based on experience from GHAD may help everyone.

CEQA doesn't require an EIR, but neither does it in anyway preclude one and neither does *Monks*. I'm not the person to be discussing the finer points of them, I trust my neighbors who know so much more than I do about them. I love

my home and I don't want to lose it, any more than anyone else does, I want my neighbors to be safe. If building begins and mistakes are made, the cost in heartache cannot be measure in dollars.

I guess for me, it is the forces of legal maneuvering that I don't understand in the marrow of my bones. How it is possible for such blind stupidity to over come reason, like a flood bearing down on a delicate bridge, is not comprehensible to me. I still cannot believe in my bones there isn't a way to reason with the tide.

Sincerely, Marianne

Marianne Hunter
310-377-1871
Portuguese Bend

On 3/4/09 7:01 PM, "Tom Long" <tomlong@palosverdes.com> wrote:

Dear Marianne,

Thank you for sharing this. I think my views are somewhat misunderstood below. No one is saying issue the permits first and study safety regulations afterwards. What we are saying is that the Monks decision made it clear that we cannot put impediments in the way of issuing the permits. Requiring an EIR where CEQA does not require one would be such a move. Attaching reasonable conditions to the issuance of permits (reasonable taking into account the Monks decision) is fine. And it can happen prior to or with the issuance of the permits.

Kit Fox

From: Carla Morreale [carlam@rpv.com]
Sent: Thursday, March 05, 2009 9:54 AM
To: cc@rpv.com; 'Joel Rojas'; 'Carolyn Lehr'; 'Carol W. Lynch'; 'Kit Fox'
Subject: FW: 3/3/09 City Council Meeting - Item 10

Importance: High

Attachments: SDOC2162.pdf

SDOC2162.pdf
(211 KB)

Good Morning,

Please see the attached piece of correspondence from Ms. Yen Hope, Esq. who spoke (after Mr. Martin Burton) at the March 3, 2009 City Council Meeting.
This document has been included with Mr. Burton's late correspondence distributed at the meeting.

Carla

-----Original Message-----
From: Yen Hope [mailto:yhope@gilchristrutter.com]
Sent: Wednesday, March 04, 2009 4:45 PM
To: cityclerk@rpv.com
Cc: Martin Burton
Subject: 3/3/09 City Council Meeting - Item 10

Dear Ms. Morreale,

The attached document was inadvertently left off of the letter submitted by Mr. Martin Burton at yesterday's City Council hearing. Can you please ensure that the following document, which is Exhibit A to Mr. Burton's letter, is attached to the letter for the purposes of the record on Item 10 of the March 3, 2009 City Council agenda?

Also, can you please forward the following document to the City Council members, Mr. Joel Rojas, the Director of Planning, Building and Code Enforcement, and Ms. Carolyn Lehr, the City Manager, the original recipients of Mr. Burton's letter?

Your assistance is greatly appreciated and I apologize for any inconvenience. Please feel free to contact me if you have any questions.

Thank you,

Yen N. Hope, Esq.
Gilchrist & Rutter Professional Corp.
1299 Ocean Avenue, Suite 900
Santa Monica, CA 90401
Tel: (310) 393-4000
Fax: (310) 394-4700
(Please note my new email address: yhope@gilchristrutter.com)

employer do not consent to Internet e-mail messages of this kind, please advise us immediately.
Opinions, conclusions and other information expressed in this message are not given or endorsed by my firm or employer unless otherwise indicated by an authorized representative independent of this message.

13-308

Exhibit A

ZEISER KLING Consultants, Inc.

PN 97082-1485

August 1, 2006

Mr. Joel Rojas
Director of Planning, Building and Code Enforcement
CITY OF RANCHO PALOS VERDES
30940 Hawthorne Boulevard
Rancho Palos Verdes, CA 90275-5391

Subject: Summary of Site Observations and Cursory Review of Site Conditions, Abalone Cove Landslide Area, Rancho Palos Verdes, California

Dear Mr. Rojas:

At your request and authorization, I contacted and met with Bill Griffin of 5 Ginger Root, Rancho Palos Verdes, California on Wednesday July 26, 2006. Mr. Griffin provided photo-documentation of was has been reported as recent movement of the Abalone Cove Landslide. In addition, Mr. Griffin provided a site map of the area with his approximated limit of the historic movement (Figure 1). Observations were limited to a vehicle reconnaissance of the area with stops including the Wayfarers Chapel, the Horan residence (20 Narcissa Drive), the Jester residence (28 Narcissa) and associated street areas including portions of Naricssa Drive, Palos Verdes Drive South, Figtree Road, and Cinnamon Lane.

Observations at the Wayfarers Chapel included separations between concrete slabs and concrete cracks up to approximately 1 inch in width. These were confined to the eastern perimeter of the chapel grounds associated with the breezeway and garden house (see photos 13 through 17 provided by Mr. Griffin and Zeiser Kling Consultants, Inc. (ZKCI) Figures 2 and 3). Additional photos illustrating distress within the interior of the garden house were provided by Mr. Griffin (photos 19 through 22).

Observations at the Jester residence (28 Narcissa Drive) were confined to the exterior of the residence. Distress in the form of a somewhat continues crack within the length of the driveway was observed. This crack showed both horizontal and vertical separations on the order of ½ to 1 inch (see photos 1 through 4 and ZKCI Figure 4). Additional separations and cracks were observed within the entry stairs and within flatwork and walls of the residence (see photos 5 through 12 and ZKCI photos Figure 5 and 6).

The Horan residence (28 Narcissa Drive) included both interior and exterior observations. Observations included movement and separation in the brick driveway and cracking and tearing of interior drywall (see figure 7). Addition observations included uneven flooring within much of the residence.

E:\projects\1997\97082-1485 letter 8-06.doc

1221 E. Dyer Road • Suite 105 • Santa Ana, CA 92705 • (714) 755-1355 • Fax (714) 755-1366
Geotechnical Engineering • Engineering Geology • Materials Testing and Inspection

Street distress observed included general cracking of asphalt pavements that appeared to be typical of aged pavements, other cracks that may to be related to minor movement (lower Narcissa Drive, Photos 23 and 24 and in front of 1 and 2 Cinnamon Lane, Photos 27 through 29 and ZKCI Figure 8). and some areas that show heaving or settlement within pavement areas (Palos Verdes Drive South photos 35 and 36). The cracks observed are generally between 1/8 to 1 inch (see photos 23 through 36 and ZKCI Figure 8).

It was noted by all those that I spoke with that the majority of the cracks and distress observed in the area have occurred in the last 6 months. It is quite possible that the distress observed has occurred within the last 6 months; however, my observations cannot determine the age of the distress. Some the cracking in the pavements appear recent; however, the majority could be older than the purported 6 months. It is not possible for me to determine the age of the distress at the residences or concrete distress at Wayfarers Chapel based on my current observations.

The horizontal movement recorded by GPS survey observations during 2005 within the area in question by Charles Abbott Associates, Inc. is consistent with the movement observed during our recent site visit. It is recommended that GPS survey observations be continued at a frequency of four quarterly readings per year. In addition, it is recommended that site observations of the general distress also be completed on a quarterly basis. It should be stressed to all involved that if a change in the current distress regime occurs, the city should be notified so that additional steps can be taken if warranted.

We appreciate this opportunity to be of continued service to the City of Rancho Palos Verdes. Please call if you have any questions regarding the content of this letter.

Sincerely,

ZEISER KLING CONSULTANTS, INC.

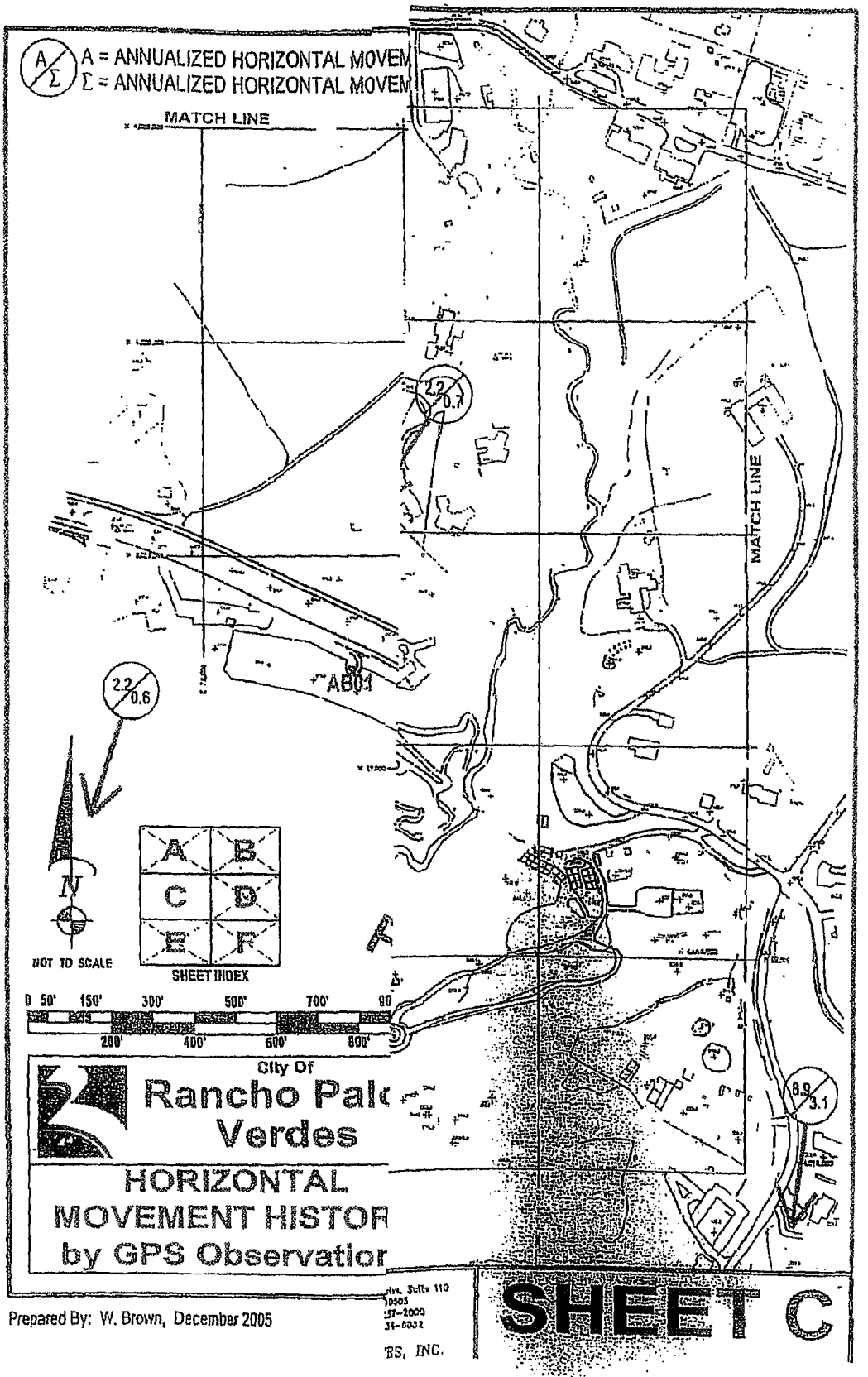
James M. Lancaster, Jr.
Principal Engineering Geologist
CEG 1927
Expires 6/30/08

PROFESSIONAL GEOLOGIST
JAMES M. LANCASTER, JR.
No 1927
CERTIFIED ENGINEERING GEOLOGIST
STATE OF CALIFORNIA

JL:MR:dm

Dist.: (3) Addressee
Attachments: Figures 1 through 8
Photographs 1 through 36
Sheet C, Horizontal Movement History

E:\projects\1997\97082-1485 letter 8-06.doc


A = ANNUALIZED HORIZONTAL MOVEM
Σ = ANNUALIZED HORIZONTAL MOVEM
MATCH LINE
MATCH LINE
2.2/0.7
2.2/0.6
AB01
8.9/3.1
A
B
C
D
E
F
N
NOT TO SCALE
SHEET INDEX
0 50' 150' 300' 500' 700' 900'
200' 400' 600' 800'
City Of
Rancho Palc
Verdes
HORIZONTAL
MOVEMENT HISTOR
by GPS Observatior
Prepared By: W. Brown, December 2005
BS, INC.
SHEET C

Kit Fox

From: Joel Rojas [joelr@rpv.com]
Sent: Wednesday, March 04, 2009 1:25 PM
To: 'Kit Fox'
Subject: FW: Proposed Mitigated Negative Declaration/ note from Dan and Vicki

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From: Carolynn Petru [mailto:carolynn@rpv.com]
Sent: Wednesday, March 04, 2009 11:42 AM
To: 'Joel Rojas'; 'Carol W. Lynch'
Subject: FW: Proposed Mitigated Negative Declaration/ note from Dan and Vicki

FYI

From: pinkhamd@aol.com [mailto:pinkhamd@aol.com]
Sent: Wednesday, March 04, 2009 10:54 AM
To: CC@rpv.com
Subject: Proposed Mitigated Negative Declaration/ note from Dan and Vicki

Hi All, Just a quick note to thank you for your time and efforts towards the Zone 2 agenda item last night. We do appreciate all the endless hours of time and effort that each of you have put into representing us over the years. Real quick,..... We DO understand the seriousness of complying with the court order in the Monks case. I hope it was clear to both staff and the council that we were not there to ask Council or Staff, NOT to comply with this case. What I did hear though, was a clear case to request an EIR. What I seemed to walk away with from the council, was..... well, if we require an EIR, the Monks people will sue us, if we don't require an EIR, we risk a certain law suit from those that live in Portuguese Bend and literally wish only protect their homes, canyons and roads. I would encourage the staff and council to carefully take into consideration all the information that has been presented to you in the effort towards requiring an EIR. Thank you once again for your time and effort in this case.

Also, we do understand that several of our concerns with the closeness of Narcissa to our home is an Association matter. (And, NO, we are not part of the Association...none of the "Vanderlip"homes are) We do know that the roads are private and that the City has no say in the matter. Perhaps, down the road, there=2 0will be funds to take this on. But until that time, we are critically impacted in many ways.

Thanks for listening, Vicki and Dan

Kit Fox

From: Jeremy Davies [jdavies@kuboaa.com]
Sent: Wednesday, March 04, 2009 8:36 AM
To: Kit Fox
Cc: clark@rpv.com; Douglas.Stern@cox.net; tomlong@palosverdes.com; peter.gardiner@rpv.com; joelr@rpv.com; Marianne Hunter; Tim Kelly; Lowell R. Wedemeyer; Lewis Enstedt; Gary Stokoe; Gordon & Claire Leon; Mike Cooper; Dan & Vickie Pinkham
Subject: Zone 2 Proposed Moratorium Ordinance Revisions
Attachments: Proposed.dat

Dear Mayor, Mayor Pro Tem, Councilmembers and Staff,

Good morning again! This is just a note to thank you for listening to our concerns late into the morning hours.

One comment that obviously concerned you was the apparent feeling that we as a group were not appreciating your support for us. This could not be further from the truth. You will recall that when you had opposition running against you in elections, several of our community and adjacent communities hosted events for you to state your positions and we also wrote to the newspapers supporting certain of your positions. I believe that some of the comments made this morning are more the reactions to a perceived lack of gravitas in some of your meetings with us since the Monks decision. This is a very serious matter and we recognize that the City finds itself in an invidious situation as a result of the Monks decision. We are also in an invidious situation and on occasions attempts at humor are not appropriate or mistimed.

For brevity's sake earlier this morning I did not present in detail what I wanted to say so I am attaching my presentation for the record. Please note that I link the Monks case which omitted consideration of many of the matters raised last evening to the lack of in-depth analysis in the City's Environmental Checklist Form. This forms part of the rationale for our request for an EIR. We all recognize that your hands are are tied regarding issuing permits in Zone 2, although some of Ms Lynch's discussion towards the end of the session seemed to be based on a belief that we are trying to stop permits. We know that we cannot. What we want to make sure of is that the mitigating measures you put in place are founded on as much knowledge as possible. Be assured that we are seeking to collaborate with you to the maximum possible but also that we wish to protect our interests (and that of the lot owners in many respects) to the maximum.

Sincerely,
Jeremy Davies

TO: Director of Planning Building and Code Enforcement Date 6/2 / 2009

Subject: Proposed Amendment to Landslide Moratorium to permit Building in Zone 2 of the Abalone Cove Landslide Area,Planning Case No. ZON 2009-00007.

I would like to add the following statements to those provided for the initial hearing on this subject considered at the March 3, 2009 City Council's public hearing..

It would be meaningful and perhaps legally required to elaborate on the distinction between a Subdivision and a Lot Split and /or a Lot Line Adjustment which are more likely processes to be proposed for my property at some undefined time in the future.

I believe it to be obligatory to acknowledge that there had been a split of the property contiguous with mine dating back to November 1989, and that that particular parcel is included as one of those to be allowed to be improved by the subject Code Amendment. At the very least, my proposal is consistent with that previous action by the City.

There is evidence in the Staff Report, page 10-47, that my particular property was made up of three parcels which are identified as lots 15and 16 and a portion of lot 17 in that document. I do not believe the City, which came into existence subsequently, can legally deny any request to treat my property at the very least as three separate parcels.

A topic not discussed, but which is evidence that the City has historically considered my property dividable, is the fact that the sewer line which serves my property was installed with several laterals over the length of the N/S property line of my property.

With respect to the City Attorney's comment that "Mr. Downhill has enjoyed his property" I would like the record to include the following facts:

1. My dwelling was permitted as a replacement of the building destroyed in the 1973 fire. It was previously owned by the famous actor Charles Lawton and his wife Elsa Lanchester.
2. The City Staff denied my request to build an equivalent structure on a flat area central to the property boundaries which Geologists at that time considered not to be in any way disruptive of the stability of the property or surroundings. No excavations other than trenching for the foundations were required.
3. I was compelled to place the 2 level structure less than 12 feet from the property line in common with the adjoining property which in 1989 was allowed to be split into 2 parcels referenced above.
4. The 2 car garage required by newly adopted RPV Code was approved only to be located where the fire destroyed garage had been, nearly 300 ft. from the residence and approximately 10 ft. from the property line. this substituted for the 2 car attached garage in the flat area I had proposed.

Jack Downhill, Owner of the property at 20 Vanderlip Dr. RPV

13-315

Teri Takaoka

From: Carolynn Petru [carolynn@rpv.com]
nt: Tuesday, June 02, 2009 5:32 PM
To: 'Carla Morreale'
Cc: 'Teri Takaoka'
Subject: FW: Zone 2 EIR

From: cassiej@aol.com [mailto:cassiej@aol.com]
Sent: Tuesday, June 02, 2009 5:11 PM
To: CC@rpv.com; citymanager@rpv.com
Subject: Zone 2 EIR

Dear Council,

I do not know if you will receive this before your meeting tonight, but I thought I would try anyway. I know the subject is later in the evening's agenda and you will be getting to it as soon as possible. Rather than restate everything we mentioned at the previous meeting with respect to reasons why further development in the landslide area should be properly studied and mitigated by an EIR, I felt it would just be best to remind the Council that we are legitimately concerned about the surrounding development. We are not trying to block development, as we know we cannot, but need to make sure any development is done safely and with full consideration of the neighbors. This is a very reasonable position and request and I do not need to stay until 1 am to remake that point. It is now in your hands and as it is a legal matter, you will likely discuss it with greater candor further in closed ion anyway.

Thank you for your thoughfult consideration,

Cassie Jones
Rancho Palos Verdes
