

Public Comment

A-36

Late
Dist

From: [Cynthia Kellman](#)
To: [sbcob](#); [Brianda Negrete](#); [Bob Nelson](#); [Supervisor Das Williams](#); [Hartmann, Joan](#); [Laura Capps](#); [Lavagnino, Steve](#)
Cc: [Doug Carstens](#); [Michelle Black](#)
Subject: February 28, 2023 Agenda Item A-36: Opposition to Agreement for Construction and Dedication of Flood Control Improvements for Village Square Subdivision
Date: Friday, February 24, 2023 2:02:46 PM

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Dear Supervisors,

The below Dropbox link contains a letter from Douglas Carstens regarding the above-captioned subject.

<https://www.dropbox.com/s/77lg1o40d432go5/Letter%20to%20Board%20Final.pdf?dl=0>

We are sending a paper copy via FedEx to Board of Supervisors, County of Santa Barbara at 105 E Anapamu Street, Suite 407, Santa Barbara, CA 93101.

Please feel free to contact us with any questions or concerns.

Very truly yours,

Cynthia Kellman

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February 24, 2023

*By e-mail sbcob@countyofsb.org
and bnegrete@countyofsb.org*

Board of Supervisors
County of Santa Barbara
105 E Anapamu Street, Suite 407
Santa Barbara, CA 93101

Re: February 28, 2023 Agenda Item A-36: Opposition to Agreement for Construction and Dedication of Flood Control Improvements for Village Square Subdivision; File Reference No. 22-01130 (Final Map of Tract No. 14,608, Legacy Estates/Village Square, 02TRM-00000-00007)

Honorable Supervisors:

These comments are submitted on behalf of Save Los Alamos concerning the Legacy Estates/Village Square Subdivision Project (“Project”). These comments supplemental our prior letter to you dated February 2, 2023 to provide additional support for requiring a subsequent environmental impact report. In addition to our prior comments, we note that the Flood Control Improvement project you are voting on routes through land that is officially designated an “agricultural preserve.” This land is protected by the Williamson Act.

Save Los Alamos respectfully requests that the Board require thorough environmental review of the Project’s likely impacts the Los Alamos community and the entire Los Alamos Valley environment.

I. The County Must Prepare a Subsequent Environmental Impact Report and Adopt Findings before Approving the Flood Control Agreement for the Project.

A. Significant, Adverse Impacts Will Occur in Ways More Severe Than Identified in 2005, Requiring the Flood Control District to Adopt Findings and a Statement of Overriding Considerations Prior to Approval of the Agreement.

There can be no serious question that the Project will have significant impacts on Los Alamos. The County certified an EIR for the Project nearly 18 years ago, in 2005. However, CEQA requires additional environmental analysis to account for the changes to the Project, its circumstances, and changes in the availability of mitigation and alternatives that have occurred in the nearly 18 years that have passed since 2005 that create new impacts and render already-identified impacts more severe than previously recognized.

In 2005, the EIR identified several impacts as significant and unavoidable, thus requiring the Flood Control District to adopt a statement of overriding considerations before it may approve any discretionary portion of the Project. (Pub. Resources Code section 21081.) The EIR stated the following impacts would be significant and unavoidable:

Aesthetics/Visual (AES-1 project development would substantially obstruct views of important visual resources including the Purisima Hills and agricultural lands as experienced from Main Street, Coiner Street, and Den Street.

Biological Resources- Bio 4.1: Site development would potentially result in the disturbance and mortality of individual California red-legged frogs and the potential 'take' of a federal threatened species....

Public Facilities (Police Protection) -PF-4 Residential buildout of the Legacy Estates tract map would result in a substantial increase of urban development that would further exacerbate existing inadequate Sheriff's Department staffing levels.....

Water Resources – WR-2- The proposed project would result in a net water demand drawn from the San Antonio Groundwater Basin exceeding 22 AFY.

(EIR, p. ES-5.) In light of these impacts, which would now be worse, the EIR must be recirculated with additional information and the District must evaluate whether it may adopt a Statement of Overriding considerations at all. It may not do so because there are environmental superior alternatives available, and not all mitigation measures to lessen these and other impacts have been adopted. Therefore the findings required by Public Resources Code section 21081 cannot be supported by substantial evidence.

The Flood Control District is a Responsible Agency for purposes of the Village Square Subdivision project. (See CEQA Guidelines section 15381 [defining “Responsible Agency” to include “all public agencies other than the lead agency which have discretionary approval power over the project.”]) A responsible agency such as the Flood Control District is required to make findings and, if need be, to adopt its own statement of overriding considerations if it intends to approve a discretionary action for a project having significant impacts. (Public Resources Code section 21081; CEQA Guidelines section 15096 subd. (h); *Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 896.) As courts have explained:

[A responsible agency] must, before “approv[ing] or carry[ing] out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out,” “make[] one or more of the following findings with respect to each significant effect:

[¶] (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

[¶] (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

[¶] (3) Specific economic, legal, social, technological, or other considerations ... make infeasible the mitigation measures or alternatives identified in the environmental impact report.” (Pub. Resources Code, § 21081, subd. (a).) Each agency's findings, moreover,

must be “accompanied by a brief explanation of the rationale for each finding.” (CEQA Guidelines, § 15091, subd. (a); see also *Resource Defense Fund v. Local Agency Formation Com.* (1987) 191 Cal.App.3d 886, 896, 236 Cal.Rptr. 794 [*“the responsible agency must independently make its own findings and conclusions” and these “findings [must] be written and accompanied by a supporting statement of facts”*], disapproved of on another ground by *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499, 529, 128 Cal.Rptr.3d 658, 257 P.3d 81.)

(*We Advocate Through Environmental Review v. City of Mount Shasta* (2022) 78 Cal.App.5th 629, 638–640, emphasis added.)

Therefore, since there is no statement of overriding considerations, and no necessary findings currently in front of you, any attempt to approve the Flood Control Agreement would be a violation of law.

B. The Approval of the Flood Control Improvement Project is a Discretionary Action.

Counsel for Legacy Estates, Ms. K.M. Neiswender has incorrectly asserted that the Agreement for Construction and Dedication of Flood Control Improvements for Village Square Subdivision that you would be voting on “is not a ‘discretionary approval’ for the project, as defined by CEQA, but merely a contract implementing an existing condition.” (Neiswender Feb. 6, 2023 Letter, p. 1.) This assertion is incorrect. The relevant guidelines implementing CEQA provide the following definition:

"Discretionary project" means a project which *requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity*, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, regulations, or other fixed standards. The key question is *whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.*

Cal. Code Regs. Tit. 14, § 15357; Section 21083, Public Resources Code; *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal. App. 3d 259.) Plainly, in deciding how and if the Flood Control and Water Conservation District will enter into the detailed agreement for construction and dedication of flood control improvements, you must exercise serious “judgment or deliberation” and use your “subjective judgment to decide whether and how to carry out or approve” the project.

There can be no serious dispute that with the Flood Control Agreement, you are presented with a discretionary choice. That being the case, adequate review pursuant to the California Environmental Quality Act (CEQA) must support the considered exercise of your judgment whether and how to approve the Agreement.

II. Approval of the Agreement Would Violate the Williamson Act.

The storm drain portion of the residential development under consideration is currently set to be partially built on farmland in a land conservation contract (08AP044) with the County of Santa Barbara Agricultural preserve. (See 2012-0062875 Land Conservation Contract recorded 9/20/2012; 2012-0062584 Land Conservation Contract recorded 9/19/2012; and 2012-0061823 Land Conservation Contract, 9/17/2012). Approval of the proposed Flood Control Agreement would be incompatible with these Williamson Act Contracts. The Village Square off-site flood control plan routes the storm drainage through the east side of the Carrari Trust Farm. Notably, the Williamson Act contracts for the Carrari farmland were recorded in 2012 so they did not exist when the EIR was certified by the County of Santa Barbara in August 2005.¹ Therefore, subsequent environmental review is required prior to approval of a project that is incompatible with these contracts.

As set forth by the Williamson Act of 1965, the conversion of usage such as proposed by the Flood Control Agreement is not permissible. The

¹ This fact alone refutes the contention of the Neiswender letter that “nothing has changed” with regard to flooding and storm drain improvements. (Neiswender Feb. 6 2023 Letter, p. 2.)

Williamson Act Compatibility guidelines identify when a proposed use would be compatible with Williamson Act protection:

B. The use does not require and will not encourage the extension of urban services such as sewer or the upgrade of public roads to urban standards that could encourage premature conversion of agricultural land to non-agricultural uses.

(Williamson Act Compatibility guidelines 2-1, section 2-1.2 Other Compatibility Criteria, emphasis added.) The use of the Carrari farmland *is* to provide the extension of urban services, in this case flood control. Thus, it is not compatible with the Williamson Act contract protections of this land. Due to the relocation of the ranch road noted in the EIR map, the amount of useable farmland will also be reduced.

The proposed flood control system will extend across Highway 135 and through the Portico Hills Vineyard not currently in a land conservancy trust. This will encourage premature conversion of this land to non-agricultural uses. The construction of the underground culvert will require the removal of established grapevines.

III. New Climate Change Facts Require Subsequent Environmental Review.

A central point in the debate over whether to require Legacy Estates to conduct a subsequent Environmental Impact Report (EIR) is whether there is “new information” that could not be known at the time of the initial study that requires review.

The Santa Barbara Counties’ own “Santa Barbara County Climate Change Vulnerability Assessment” (“Report”) dated November 2021 used Los Alamos as a case study. We incorporate this entire report by reference, and have included a summary and excerpts of the portions of it which are relevant specifically to Los Alamos. (Enclosure 2.) This Report shows that climate stressors are predicted to steadily increase. (Report, p. 41, Tables 9 and 10.) Base flows in rivers and creeks are projected to decline significantly. (Report, p. 66.) Inland flooding will increase because of the increase in frequency and intensity of heavy rainstorms. (Report, p. 71.) Infrastructure

including road, bridges, and presumably flood control infrastructure, will be highly or severely vulnerable to various hazard types including inland flooding and landslide and debris flow. (Report, p. 111 and Tables 21 and 23, pages 119, 120, 122, and 129).

In Legacy Estate's recent February 6, 2023 correspondence, they claim "the original EIR did not address climate change. That was not required in 2005, but the issue was addressed in the 2011 LACP EIR, beginning on page 4-10.25. As noted, the Legacy project was part of the LACP EIR plan area." (Neiswender Feb. 6, 2023 Letter, p. 2.)

While the 2011 Los Alamos Community Plan EIR did discuss climate change, it was only in connection with then-current understanding of "greenhouse gases" and *not* in reference to the increased risk of flooding and mudslides caused by climate change. Additionally, and most importantly, the EIR made *no mention* of the risk of "atmospheric rivers" and increasingly more severe rainstorms causing increased dangers of inland flooding and mudflows.

Furthermore, with respect to water supply, the Report stated base flows in rivers and creeks are projected to decline significantly. (Report, p. 66.) This will exacerbate the significant water supply impacts the project would have. Correspondence from the applicant states the original EIR states water supply was sufficient (Neiswender Feb. 6 2023 Letter, p. 2, citing EIR section 4.10.6) as if there were no impacts, but this is misleading because the EIR also states that cumulative water demand impacts would be significant and unavoidable. (EIR, section 4.12.3, p. 4.12-4.) The EIR states "As the proposed project's water demand would exceed the 22 AFY [acre-feet/year] Threshold and would further contribute to existing overdraft conditions, the project's contribution to this cumulative impact would be *significant and unavoidable* (Class I)." (EIR, p. 4.12-4.) The present project and changes in its circumstances will make this impact more severe than were identified in the EIR.

As climate expert Katerina Gonzales points out in Scientific American, "Atmospheric rivers are becoming more intense with climate change because they're holding more moisture. We have to make huge investments in green infrastructure, which uses nature to absorb runoff—such as floodplains,

parks, and rain gardens. Our infrastructure was built for a 20th-century climate that no longer exists. More intense days are coming, and these storms are just a preview.” (<https://www.scientificamerican.com/article/why-california-is-being-deluged-by-atmospheric-rivers/>; Robin Meadows on January 11, 2023, Scientific American.)² This could not have been known in either 2005 or 2011.

Additional evidence that new flooding and mudflow threats are presented today, which could not have been known at the time of earlier decisions, are described by Kelly Hubbard in a recent article and video presentation. (See <https://www.independent.com/multimedia/county-releases-debris-flow-five-year-anniversary-video/>.) This presentation cites recent scientific studies, which must also be considered. (See <https://www.science.org/doi/10.1126/sciadv.abq0995> [“Climate change is increasing the risk of a California megaflood”, August 12, 2022, Science Advances.]

Therefore, this is a clear issue for the Flood Control District and the Board of Supervisors. Both the Flood Control District and the County must require Legacy Estates to conduct a subsequent EIR to study the increased impacts and severity of impacts associated with climate change induced flooding, drought, and wildfires. Then, the Flood Control District and County must come up with ways to mitigate these impacts.

IV. The County’s Street Vacation Process Has Not Complied with the Streets and Highways Code.

We previously objected when the County of Santa Barbara in December 2022 purported to agree “to vacate and abandon those portions of Public Road Easements and Rights of Way of Main Street, Perkins Street, Shaw Street, Coiner Street, Den Street, and St. Joseph Street obtained by the County of Santa Barbara per Book B Page 406 of Miscellaneous Records lying within the subdivision boundary of Final Map of Tract No. 14,608, Legacy Estate/Village Square that are not shown, as stated on the Abandonment Note on said Tract Map.”

² This and other cited articles are incorporated in this letter by reference.

Under the definition of “Discretionary Project” quoted above, this abandonment of various public road easements is clearly a discretionary decision that required specific findings, and adequate environmental review to support that decision. Since neither of these occurred, the purported abandonment is void. (See *City of Rancho Palos Verdes v. City Council* (1976) 59 Cal.App.3d 869, 889 [City Council approval of street vacation set aside where unsupported by findings required in the Streets and Highways Code].)

Streets and Highways Code Section 8324 requires findings must be made; Section 8323 requires notice must be given to the public prior to abandonment of a public street. The County has not made these findings or provided the requisite notice.

Prior to valid abandonment, the County should have prepared a Subsequent EIR that supports the discretionary decision to abandon the easements. We request that you advise the County that subsequent environmental review is required prior to your further review of the Flood Control Agreement.

All comments to the County and evidence in the County public road abandonment file are incorporated herein by reference. The County’s approval of the road abandonments will have cumulative impacts with the Flood Control District’s potential approval of the Flood Control Agreement and both are part of the same project. Therefore, both must be considered together.

V. **Conclusion**


On behalf of Save Los Alamos, we thank you for your consideration of these comments and urge the Flood Control District to reject the agreement for dedication and construction of Flood Control Improvements for the Project until proper environmental review is done.

There are impacts that were not considered in 2005 and changed circumstances have both new environmental impacts and an increase in severity for others. Flooding and mudflows will be more severe than was analyzed. Climate change-related drought conditions will exacerbate the significant impacts of the proposed project’s increased demand on

groundwater supplies. Accordingly, the Flood Control District does not have substantial evidence that the Project's impacts were adequately disclosed, analyzed, and mitigated in the 2005 EIR. Nor does the Flood Control District have evidence to support a statement of overriding considerations pursuant to Public Resources Code section 21081 since not all impacts have been identified, mitigation measures adopted, and superior alternatives shown to be infeasible.

The Flood Control District must prepare, circulate, and certify a subsequent EIR before considering this impactful Project further.

Sincerely,


Michelle N. Black
Douglas Carstens

Enclosures:

1. Williamson Act Contracts for Carrari Farm (COB File numbers 12-00722, 12-00723, and 12-00729)
2. Summary of North County Impacts and excerpts from Santa Barbara County Climate Change Vulnerability Assessment, November 2021 (the full Assessment is incorporated herein by reference).

cc:

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