

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: August 4, 2004
Department: Planning and Development
Department No.: 053
Agenda Date: August 10, 2004
Placement: Departmental
Estimate Time: 1 hour
Continued Item: NO
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TO: Board of Supervisors

FROM: Valentin Alexeeff Director
Planning and Development

STAFF CONTACT: Lawrence W. Appel, Supervising Planner (x6261)
Adam Baughman, Planner (x6263)

SUBJECT: Hearing on Legacy Estates Tract Map appeal, Planning and Development
case number 02TRM-00000-00007
3rd Supervisorial District

Recommendations:

That the Board of Supervisors consider the following options and provide direction to staff as follows:

1. Retain jurisdiction over the appeal and direct staff to calendar the appeal after completion of the EIR.
2. Remand the project back to the Planning Commission (after the EIR has been prepared).
3. Direct staff to reagendaize the item after completion of the EIR and then decide to either retain jurisdiction or remand the project back to the Planning Commission.

Staff recommends Option #1.

Background:

The applicant's appeal of the Planning Commission's April 14, 2004 *de facto* denial (2-2 split decision, resulting in a denial) is scheduled to be heard by your Board on August 10, 2004. The applicant has since decided, given the issues raised at the previous Planning Commission hearings on the project, to conduct further environmental review on the proposed Tract Map request.

Staff wrote a memo to your Board dated July 27, 2004 indicating that the applicant requests the Board drop the item on August 10, 2004 to allow Planning & Development time to prepare further environmental review in the form of an Environmental Impact Report. The request indicated that the applicant did not wish to withdraw the appeal but rather drop the item from the Board agenda and that, upon completion of the EIR, the project will be reagendaized and noticed for a Board hearing sometime in the future. This request was as a result of a letter from the applicant's attorney Steve Kirby dated July 27, 2004 addressed to your Board. The options and recommendation presented reflect that it is within the Board's authority, not staff's, to decide how to proceed on this appeal.

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with actions required by law or by routine business necessity.

Executive Summary and Discussion:

At the April 14, 2004 hearing, the Planning Commission voted 2-2 (Third District Commissioner abstained) on a motion to approve the application, which resulted in a *de facto* denial of the map request. Staff had recommended approval of the project at that and the previous five hearings. Staff continues to recommend approval of the project to your Board. A detailed summary of the Planning Commission's action, and the project issues is provided below. The Planning Commission's April 14, 2004 Action Letter is included as Exhibit 2 of this Board Letter, and the April 1, 2004 staff report prepared for the hearing is included as Exhibit 3.

Requested Tract Map

The applicants, the Den Street Partners, request approval of a 59-lot tract map to subdivide land totaling 16.67 acres gross and 13.39 acres net, into 59 parcels ranging in size between 8,877 s.f. to 16,875 s.f. gross (7,001 s.f. to 14,775 s.f. net) in the 7-R-1 zone district under Article III (Inland Zoning Ordinance) and pursuant to the provisions of County Code Chapter 21 (Subdivision Regulations).

The land has historically been used for dry farming. There are currently 41 trees onsite consisting of 14 Valley Oaks, 5 Coast Live Oaks, 20 Elms, 1 Arroyo Willow, and 1 California Walnut. Of these trees, approximately six Valley Oaks (<5 inch diameter), three Live Oaks (<1.5 inch diameter), ten Elm trees, and the Arroyo Willow would be removed for the proposed tract improvements indicated below.

Access to the site is currently available via the existing two-lane streets of Den Street and Coiner Street. Tract improvements would include an extension of Den Street southward to intersect with an extension of Coiner Street westward. Additionally, Perkins Street, Shaw Street, and Coiner Street

would all be extended westward terminating in cul-de-sacs. The roads would be asphalt paved at 36-foot wide.

Curb and gutter is proposed on both sides of the proposed roads. Main Street would be crowned and drainage from the half-width adjacent to the project would be collected and diverted westward to the main pipe to San Antonio Creek. The applicant has also agreed to repave or reseal the entirety of Main Street adjacent to the project site to result in a uniform surface. Reinforced concrete pipes (RCB) would be placed at the end of each cul-de-sac and through Lot 9 to connect to the perimeter drainage channels. Each of these pipes would have overland escape routes for drainage in the event of failure. An open, trapezoidal, concrete channel along the southern property line would be constructed to divert surface flows from the project and the hills south of the project site. This channel would be approximately 2-ft deep and approximately 10-ft wide at the top. Along the western property line, a 4-ft by 4-ft RCB culvert with an overland escape channel would be constructed to convey both existing and the project storm water to the north to San Antonio Creek. The western channel would transition to a proposed 4-ft by 8-ft RCB under Bell Street (Hwy 135) and the adjoining property to the north (APN 101-101-035). The creek outfall would be constructed between October 1st and May 1st to be outside of the potential migratory period of willowflycatchers.

The drainage easement for these off-site improvements would be obtained prior to project approval and recorded by P&D prior to map recordation. Other tract improvements would include three to five fire hydrants as determined by the Fire Department and approximately seven street lights for lighting. Total tract improvements would require approximately 20,000 cubic yards of cut and approximately 40,000 cubic yards of fill with approximately 20,000 cubic yards of import.

The entire project site is within the Los Alamos Community Service District, which would provide water and sewer service for the proposed 59-lot subdivision. Fire protection services would be provided by Station 24 of the Santa Barbara County Fire Department (99 Centennial Street in Los Alamos) and Olga Reed Elementary School and Ernest Righetti High School would provide school service.

Discussion

First PC Hearing:

The Planning Commission first heard the project on July 9, 2003. Discussion focused primarily on two aspects of the design: the proposed drainage infrastructure and the removal of the large Elms. The Commission stated that extension of the existing unlined drainage swale network in Los Alamos was inadequate and that curb and gutter may be more appropriate. Of particular concern was the drainage on the existing lot behind proposed lots 27-29 on Shaw St. which appeared to be a foot lower than the proposed elevation of Coiner St. along the south side of the property. Additionally, the Commission directed the applicant to investigate redesigns of the road network to avoid the removal of the large Elms, such as a round-about.

Second PC Hearing:

At the second Planning Commission hearing on September 10, 2003, the applicant proposed a redesign of the map that included curb and gutter throughout. The drainage infrastructure was enhanced and changes were made to accommodate any potential failure of the system (i.e., overland escape channels, multiple inlets, etc.). Drainage from the half-width of Main St. would also be collected and taken westward to the main pipe to San Antonio Creek. Finally, the applicant redesigned the proposed elevation of Coiner St. so that it is lower than the lot adjacent to proposed lots 27-29.

The applicant decided to pursue the original grid network proposed at the first hearing contending that the trees are within the road right-of-way that would be maintained by County Roads Division and that it would be impossible to improve Den St. and Shaw St. to Roads Division standards without removing the trees. County Roads has stated that a round-about design is infeasible at that intersection given the extremely low traffic volumes and the large diameter that the round-about must be to avoid impacts to the critical root zone of the large Elms. The item was not voted on by the Commission and not reagendaized because the applicant was unable to secure the necessary offsite drainage easement agreement as the parcel in question was recently sold and was in escrow. The item was reagendaized and noticed for a January 14, 2004 hearing once those easements had been obtained.

Third PC Hearing:

After obtaining the necessary offsite drainage easement agreements, the applicant returned with the 59-lot proposal with cul-de-sacs, curb and gutter, and a grid design requiring the removal of the large Elm trees to the PC hearing of January 14, 2004. At the conclusion of the hearing, the Commission indicated that the applicant should consider dropping seven of the proposed 59 lots to be more consistent with the conceptual layout as indicated in Figure 9 of the Los Alamos Community Plan (LACP). This would allay concerns over the proposed density and the size of the lots by some of the Commissioners. Additionally, there was support for the alternative design that avoided the removal of the mature Elm trees at the intersection of Den and Shaw St.

A neighbor of the project had found what was determined to be a sub-adult, California Red-Legged Frog (CRLF) a month prior to this hearing. Staff, with the support of United States Fish & Wildlife Service (USFWS), directed the applicant to conduct a USFWS protocol-level survey for the presence of CRLF, which the applicant's biologist conducted in December 2003. This study, dated January 2004, focused on the project site and the surrounding environs, especially the drainage ditches in Los Alamos. The study also focused on San Antonio Creek. (0.3 mi. north of the site) and the Drum Canyon Road and Purissima Hills drainage south of the site. The study concluded that there was no suitable habitat to support a population of CRLF on or near the project site, including the drainage ditches in the vicinity, as well as San Antonio Creek. There were no CRLF's or other amphibians observed during the surveys. The study concluded that the CRLF that was reportedly found on a parcel adjacent to the project site was an "anomaly" and does not represent a breeding population of CRLF. The study was unable to

determine where the CRLF came from since there is no suitable habitat identified near the project site. The study also stated that disturbance of the agricultural field for development of the Legacy Estates project is not expected to impact CRLF or suitable habitat for CRLF and that it appears highly unlikely that CRLF would be encountered during construction on the site. However, given the find of a sub-adult CRLF, the study a few precautionary mitigation measures, which staff has drafted into conditions of approval of the Legacy Estates Tract Map.

Despite the study and testimony from the applicant's biologist, there were some members of the Commission who felt that the Negative Declaration (03-ND-09) was not adequate in its current form in light of the recent Red-Legged Frog (RLF) finding and that more work was necessary on the document.

Fourth PC Hearing:

The applicant returned to the Commission on February 11, 2004 with the support of staff for a 59-lot, cul-de-sac, curb and gutter, grid-design map. A review of LACP Figure 9 had revealed that, despite showing 52 conceptual lots for the project site, there were several lots that were spitable again, which could ultimately result in 60-lots. Staff supported the 59-lot proposal based on its consistency with the 7-R-1 zoning, the density of the Land Use Designation, and the existing adjacent lot sizes in Los Alamos, most of which are 5,000 s.f. in size. While Figure 9 depicted roads that extended to the Urban Boundary Line on the western and southern sides, staff felt the cul-de-sac design was more appropriate and would do more to limit future urbanization beyond the boundary line. Likewise, Figure 9 depicted an extension of the existing grid network of roads, which would require the removal of the large Elm trees. Staff based support for the grid design based on its consistency with the existing streets and Figure 9, based on the fact that the LACP Environmental Impact Report (LACP EIR) did not indicate that the trees were historic or significant, and the trees are not native to the area. Finally, staff had revised the Negative Declaration (ND) to include the additional CRLF study and the additional precautionary measures. However, a majority of the Commission felt that not enough investigation had been conducted on the potential impacts to the CRLF and referred the project back to the applicant to do so. The item was continued to March 10, 2004 and later to April 14, 2004 to allow the applicant's biologist more time to gather information.

Fifth PC Hearing:

Staff revised both the ND and the Staff Report for the last PC hearing on April 14, 2004 to include all of the information from the previous hearings and all of the new CRLF investigations. The main issue preventing the Commission from making a decision concerning the map was the project's potential impact on the CRLF. The applicant's biologist submitted a "Supplemental Ecological Data for California Red-Legged Frogs," dated March 29, 2004, which included the first two studies conducted by the biologist (the December 2002 general Ecological Analysis and the January 2004 USFWS Protocol-Level Study), as well as a letter report summarizing the results of the February and March follow-up surveys of eight private residences adjacent to the

project site. In addition, the packet included copies of other biological studies conducted for other development projects within the Los Alamos vicinity. Although a second sub-adult CRLF was reported by neighbors in February, the February and March follow-up surveys, like the January survey, found no CRLF or evidence of the presence of CRLF at the site or in the vicinity. Despite this, the biologist assumed that CRLF are present near the site, and do disperse through the site, but they conclude (1) that the project as proposed “will not result in a substantial reduction in the number or restriction of the range of CRLF” and (2) there is a “low probability that CRLF utilize the Legacy Estates project site for upland refugia.” The County’s staff biologist concurred with these conclusions and staff supported these conclusions as satisfying CEQA, which requires the Lead Agency to determine with the project will result in a “restriction in the number” or a “reduction in the range” of an endangered species. Staff based this determination on the fact that the site does not contain suitable CRLF breeding or upland habitat nor is the project site within the nearby vicinity of suitable breeding or upland habitat for CRLF. Finally, the USFWS redesignated the “Critical Habitat” of CRLF in California on April 13, 2004 (the day prior to the hearing). The entirety of the Los Alamos Valley was left out of this designation, as had been the case in the previous USFWS habitat designation.

Despite this additional investigation for the presence of suitable habitat for CRLF, the Commission failed to approve the map by a vote of 2-2 (Third District Commissioner abstained). The motion’s failure to pass is deemed a denial of the project pursuant to Planning Commission Procedures Manual, Section V., Procedural Standards, Item A.12, Page 11.

For a more detailed discussion of these issue areas, please refer to the Planning Commission staff report included as Exhibit 2.

Mandates and Service Levels:

Pursuant to County Code Chapter 21, Subdivision Regulation Section 21-71.4a, the Planning Commission *de facto* denial of the map is being appealed by the applicant to the Board of Supervisors. No change in programs or service levels are anticipated.

Fiscal and Facilities Impacts:

No fiscal impact associated with this request is expected. All costs of permit processing of 02TRM-00000-00007 are the responsibility of the project applicant. There are no facilities impacts.

Special Instructions:

Clerk of the Board will forward a copy of the Minute Order, together with any pertinent documents (i.e., signed ordinance) to Planning and Development Hearing Support Section, Attn: Cintia Mendoza.

Planning and Development will prepare all final action letters and otherwise notify concerned parties of the Board of Supervisors' final action.

Concurrence:

County Counsel

ATTACHMENTS:

- A. Board of Supervisors Findings**
- B. Board of Supervisors Conditions of Approval**
- Exhibit 1: Planning Commission Action Letter dated April 16, 2004.**
- Exhibit 2: Planning Commission Staff Report for hearing of April 14, 2004**
- Exhibit 3: Comment Letters**
- Exhibit 4: Proposed Tract Map**



MEMORANDUM

DATE: July 27, 2004

TO: Board of Supervisors

FROM: Valentin Alexeeff Director
Planning and Development

STAFF CONTACT: Lawrence W. Appel, Supervising Planner (x6261)
Adam Baughman, Planner (x6263)

SUBJECT: **Request to Withdraw**
Legacy Estates Tract Map appeal
P&D Case Nos. 02TRM-00000-00007 (TM 14,608)
04APL-00000-00018
Third Supervisorial District

The applicant's appeal of the Planning Commission's April 14, 2004 *de facto* denial (2-2 split decision, resulting in a denial) is scheduled to be heard by your Board on August 10, 2004. The applicant has since decided, given the issues raised at the previous Planning Commission hearings on the project, to conduct further environmental review on the proposed Tract Map request. Staff concurs with this decision and therefore requests that the item be withdrawn from the Board agenda to allow Planning and Development to commence preparation of further environmental review in the form of a Supplemental Environmental Impact Report (SEIR). The project will be reagendaized and noticed once the document has been completed.