

A-22

Brianda Negrete *Public Comment-Law Office of K.M. Neiswender*

From: Frances Romero <fromero@twlandplan.com>
Sent: Monday, February 6, 2023 8:53 AM
To: sbcob; Brianda Negrete
Cc: Nelson, Bob; Hartmann, Joan; Lavagnino, Steve; Supervisor Das Williams; Laura Capps
Subject: Re: 2/7/23 Agenda Item A-22: Support for Agreement for Construction & 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-00005 LTR-Comment-Neiswender-Legacy-2023-02-06.pdf

Attachments:

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Dear Supervisors & Clerk of the Board,

Attached is a letter from the Law Office of K.M. Neiswender for the above-captioned agenda item.

Warm regards,

Frances Romero

SENIOR PLANNER

TW LAND PLANNING & DEVELOPMENT, LLC

SANTA BARBARA · SANTA MARIA/ ORCUTT · VENTURA

195 S. Broadway Street, Suite #209

Orcutt, CA 93455

805.720.1120

fromero@twlandplan.com

www.twlandplan.com

LAW OFFICE OF K.M. NEISWENDER

Land Use • Business • Environmental

Phone: 909.744.9723
Cel: 805.320.2520

Email: KateLawVentura@gmail.com

Mailing Address:
Post Office Box 1225
Blue Jay, California 92317

February 6, 2023

Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street, 4th Floor
Santa Barbara CA 93101

Re: Legacy Estates – Approval of Flood Control contract
Reply to Opposition Letter Submitted February 3, 2023

To the Honorable Board:

A letter was submitted to this Board on February 3, 2023 which is both inaccurate and incomplete, and we feel compelled to respond. We will try to keep this brief, as we know you have already received a significant amount of correspondence on this item.

The matter on calendar for your Board at the February 7th meeting is for approval of a contract for County Flood Control to monitor the completion of the drainage and flood mitigation for the project site, mitigation that was a condition of the original approvals (see Section 4.6 of the Legacy EIR). There are both on-site and off-site storm drain improvements, the plans for which have already been approved by Flood Control. The approval you will be voting on is not a “discretionary approval” for the project, as defined by CEQA, but merely a contract implementing an existing condition. This is stated in the Board letter in your packet.

The CEQA Guidelines make it very clear that once a project has been approved, the County cannot simply open up subsequent environmental review unless further discretionary approval on that project is required (14 CCR 15162(c)). This important fact is omitted from the letter from the Chatten-Brown lawfirm, submitted by “Save Los Alamos,” yet this fact – that the Board cannot re-open environmental review at this point – is central to the Board’s action on February 7th. The courts have made clear that once a project has been subject to environmental review and received approval, section 21166 and CEQA Guidelines section 15162 limit the circumstances under which a subsequent or supplemental EIR must be prepared. These limitations are designed to balance CEQA’s central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and efficiency. In this context, the interests of finality are favored over the policy of encouraging public comment (see *Willow Glen Trestle Conservancy v. City of San Jose* (2020) 49 Cal. App. 5th 127, 132-133).

Supplemental environmental review is not possible even if there is new information appearing after all discretionary approvals are complete. As stated in section 15162(c), if after the project is approved, it is shown there is new information or changed circumstances (as

The Honorable Board of Supervisors
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alleged in the “Save Los Alamos” letter), this Board can only order preparation of supplemental review if a new discretionary approval is on calendar. The appellate courts have issued multiple decisions confirming this interpretation of Public Resources Code §21166 and 14 CFR 15162 (I list some of those cases in the footnote on the last page of this letter).

As noted, this critical information was omitted from the “Save Los Alamos” letter, and your Board may be under the impression that the environmental review process can be re-opened, which is not accurate.

Nevertheless, in hopes of calming any concerns over the sufficiency of the existing environmental documents, we address each of the items raised in the “Save Los Alamos” letter.

Flooding and mudslides: Flooding and storm drain improvements were discussed in the 2005 Legacy EIR, resulting in multiple conditions of approval. Nothing has changed in that regard. If you approve the contract before you on February 7th, it will allow Flood Control to accept the off-site drainage improvements into the County’s regional storm drain system. The on-site improvements will be maintained by the HOA for the project.

The “Save Los Alamos” letter contends the flooding/mudslide issue is worse now due to climate change, but the original EIR included multiple conditions to mitigate the risks of flooding; that is why your Board is seeing this Flood Control contract now. Flooding is not “new information.”

Further, in the Los Alamos Community Plan EIR (2011, hereafter “LACP EIR”) increased potential for flooding impacts was specifically noted as an issue (page ES 4). The Legacy Estates project is obviously part of the Los Alamos Community Plan area (see page 2-5). The LACP envisioned a total of 1,321 residential units in Los Alamos (page 2-15); the Legacy project is only 59 units, four percent of the total build-out.

As for mudslides, the “Save Los Alamos” letter claims the project is “at the foot of a very steep hill.” In fact, the closest hill is 320 feet from the project boundary – we measured it. The hill was clearly there at the time of the original EIR, so this is not new information. The “Save Los Alamos” letter quotes from a 1990 County study saying that potential flood hazards should be analyzed for the Los Alamos area in general: that was done for this project in 2005, and that is why conditions of approval were imposed.

The “Save Los Alamos” letter emphasizes that 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 at page 4-10.25. As noted, the Legacy project was part of the LACP EIR plan area.

Water Supply: The original EIR stated that water supply for the project was sufficient (see 2005 EIR at 4.10.6) and no mitigation was required. The 2011 EIR for the Los Alamos Community Plan predicted that Los Alamos would expand to approximately 1,300 homes, and

that water from the Los Alamos Community Services District would be sufficient to handle the demand of the projected Community Plan build-out. It should be noted that the Los Alamos CSD only draws one percent (1%) of the water in the San Antonio Basin¹. Just last month, the Los Alamos CSD confirmed that water supply was sufficient for the project and available (see attached “service availability” letter).

Therefore, the water supply issue was addressed in 2005 and 2011, and the conclusions of those two documents were recently confirmed by the Los Alamos CSD. There is no “new information” or “changed circumstances” that would require additional review.

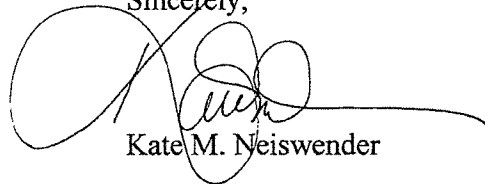
Transportation: Transportation was analyzed in the original EIR and in the Los Alamos Community Plan EIR. The streets in Los Alamos are all rated “LOS A,” so concerns over traffic are not well-founded. Further, in the LACP EIR, the document found that at build-out of the Plan at 1,321 homes and increased commercial properties, additional vehicle trips would be generated, but would not exceed circulation element capacities for roadways (page 4-19). Therefore, despite the contentions in the “Save Los Alamos” letter, no supplemental environmental analysis is necessary.

The Ag Buffer Ordinance Was Not Retroactive: Again, the “Save Los Alamos” letter provides only partial information. As stated, the Agricultural Buffer ordinance was enacted in April of 2013 and does require setbacks. However, the letter fails to note that Section 35.30.025 (Agricultural Buffers), subdivision C, specifically states that the new Buffer Ordinance does not apply to projects approved prior to 2013 and also states “single family dwelling, accessory dwelling units, junior accessory dwelling units, and residential accessory structures” are not subject to the ordinance. For this reason, supplemental environmental review would not be needed, as the ordinance states on its face that it does not apply to this project.

Abandonment of the Easements: This is a non-issue. It was raised by some of the commentors, and raised again in the “Save Los Alamos” letter. Streets can be abandoned in different ways. As explained in an email dated January 27, 2023, Santa Barbara County Surveyor Aleksandar Jevremovic stated that the abandonment of the right of way action taken by the Board of Supervisors was in accordance with the Government Code Sections 66434(g) and 66499.20.2, as stated in the Abandonment Note on the title sheet of Tract 14,608.

¹ 2018-2021- Average AFY Extractions of 22,255 AFY. LACSD Municipal extraction: 260-290 AFY - Average of 275, 275 divided by 22,255 = .01 - 1%. VSFB extraction 150-710 AFY - Average of 430. Agricultural extraction: 21,200-21,900 AFY - 21,550

Conclusion: We would point out that the project in question is less than 17 acres, and contains only 59 homes, four percent of the build-out of Los Alamos as stated in the Community Plan (see LACP EIR at 2-15). Los Alamos is growing in accordance with the approved planning documents, and this project was certainly included in the community plans for the past few decades. Also this is a historic subdivision, originally divided before passage of the Subdivision Map Act. It has been farmed for decades and is bordered on three sides by existing homes. The concerns over this small subdivision are not based in practical planning considerations or CEQA.

Sincerely,

Kate M. Neiswender

List of cases holding that an agency has no jurisdiction to order supplemental or subsequent environmental review unless it considering a discretionary approval for a project:

San Diego Navy Broadway Complex Coalition v. City of San Diego (2010) 185 Cal. App. 4th 924, 935 [“An agency is required to prepare a subsequent or supplemental EIR only where the agency grants a ‘discretionary’ approval.”]

Martis Camp Community Assoc. v. County of Placer (2020) 53 Cal. App. 5th 569, 604 [“CEQA review is triggered only when a public agency makes a discretionary decision to approve or carry out a project. ... Once a project has been approved, the lead agency's role in project approval is completed, unless further discretionary approval on that project is required.”]

Cucamongans United for Reasonable Expansion v. City of Rancho Cucamonga (2000) 82 Cal. App. 4th 473, 479 [the Court held that a public agency may require a subsequent EIR only when the agency grants a discretionary approval; once all discretionary approvals have been obtained, no agency has jurisdiction to require a further EIR; *see also Health First v. March Joint Powers Auth.* (2009) 174 Cal App. 4th 1135, which comes to the same conclusion.]

Willow Glen Trestle Conservancy c. City of San Jose (2020) 49 Cal. App. 5th 127, 132-133 [“The Conservancy claims that the City's act of seeking and accepting the SAA was a ‘discretionary approval on [the] project’ under CEQA Guidelines section 15162(c) that justified supplemental environmental review. This claim cannot withstand scrutiny because it attempts to equate any action in connection with a project with an ‘approval on’ or an ‘approval for’ the project. *If every action had to be considered an ‘approval,’ each and every step that the City took toward implementing an approved project would necessarily constitute another ‘approval on’ the project, thereby endlessly reopening the City's long-final consideration of the project's environmental impacts.* Yet CEQA Guidelines section 15162 explicitly provides that ‘[i]nformation appearing after an approval does not require reopening of that approval.’”]

California Oak Foundation v. City of Santa Clarita (2005) 133 Cal. App. 4th 1219, 1243 [“ It is well-established that once a project is approved, new information does not require reopening the approval.”]

LOS ALAMOS COMMUNITY SERVICES DISTRICT

82 North Saint Joseph St • (805) 344-4195 • Fax (805) 344-2908
Post Office Box 875
LOS ALAMOS, CALIFORNIA 93440

January 25, 2023

TW Land Planning and Development
ATT: Frances Romero
195 S. Broadway St., Ste. 209
Orcutt, CA 93455

Re: Water and Sewer Service Availability-Village Square Project
APN 101-201-01,101-202-01,101-231-01,101-233-01,101-234-01 and 101-242-01
Tentative Tract Map TM 14,608

Dear Ms. Romero:

This letter is in response to the original inquiry dated January 25, 2023, relative to the availability of water and sewer service for the above-referenced property. The subject property is currently located within the Los Alamos Community Services District service area (sphere of influence) and has been annexed to the District. The property can feasibly be served by the District with the construction by the developer of an extension to the District's existing water distribution and with the construction by the developer of an extension to the District's existing sewage collection systems. Based on the District's preliminary understanding from the information you provided, the proposed project is to remain the same as the Legacy Estates Project, Tentative Tract Map 14,608, for 59 single family residential lots for single family homes. Please see the attached letter from Bethel Engineering, dated January 4, 2021, of which shall be incorporated as part of this Service Availability Letter for reference of the required utilities associated with TM 14, 608 and the requirements by the District for the supply of water and sewer services. Multiple items are outstanding prior to issuance of the Can and Will Serve Letter for map recordation, including the submittal of construction plans and cost estimates, bonds, Main Line Extension Agreement, connection fees, etc.

Please be advised that adequate water capacity and adequate sewage collection, treatment and disposal capacity is currently available to serve the proposed project and that the District does not currently have a moratorium or similar restriction on new water or sewer connections. Subject to the terms contained in this letter and upon satisfaction of the conditions set forth in Exhibit "A" attached hereto, the District will issue water and sewer connection permits and authorize the connection of the project to the District's water distribution and sewage collection systems.

Although adequate capacity is currently available to serve the project, issuing this letter does not guaranty service by the District or reserve capacity for the project. The District provides all new service on a first-come, first-serve basis, as determined from the date on which the connection permit is issued. The District cannot predict the pace of future development in the community and cannot anticipate the demand for new service. The District also cannot predict what new regulatory requirements might be imposed in the future by federal, state and/or local agencies, or exactly what effects said requirements might have on the District's ability to accept new connections.

This letter does not constitute a water or sewer connection permit for the proposed project, but only sets forth the terms on which connection permits may be issued. Please note that the District's current assessment with respect to capacity availability, along with the terms and conditions stipulated in this letter and in Exhibit "A", are subject to periodic reevaluation by the District and shall in no event be valid after one year from the date of this letter.

If you have any questions regarding this matter, please contact the undersigned.

LOS ALAMOS COMMUNITY SERVICES DISTRICT

By: Candyce Clark
Candyce Clark, Board Secretary

(Appendix w/ fee schedule omitted)