

A-22



Brianda Negrete *Public Comment - CBCM*

From: Cynthia Kellman <cpk@cbcearthlaw.com>
Sent: Thursday, February 2, 2023 5:24 PM
To: sbcob; Brianda Negrete; Bob Nelson; Supervisor Das Williams; Hartmann, Joan; Laura Capps; Lavagnino, Steve
Cc: Doug Carstens; Michelle Black
Subject: February 7, 2023 Agenda Item A-22: 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-0000
Attachments: Los Alamos SEIR fnl.pdf
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Dear Supervisors,

Attached please find a letter from Douglas Carstens regarding the above-captioned subject.

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

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February 2, 2023

*By e-mail sbcob@countyofsb.org
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Board of Supervisors
County of Santa Barbara
105 E Anapamu Street, Suite 407
Santa Barbara, CA 93101

Re: February 7, 2023 Agenda Item A-22: 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”). Although described by the project proponent as a 59-lot residential subdivision project with no significant impacts, the environmental impacts of this subdivision are likely to be significant. Yet, the full impacts of the Project, which have been rendered far more severe by changed circumstances since the Project was approved in 2005, have yet to be disclosed to the public, considered by the County’s planners and decisionmakers, or mitigated. Under these circumstances, the California Environmental Quality Act (CEQA) requires supplemental environmental review before the County may approve any more discretionary approvals for the Project such as the requested Flood Control Improvements Agreement. Save Los Alamos respectfully requests that the Board require thorough environmental review of the Project’s likely impacts the Los Alamos community and the greater Santa Ynez Valley environment.

I. The County Must Prepare a Subsequent Environmental Impact Report before Considering the Flood Control Agreement for the Project.

There is no question 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.

CEQA requires preparation of a subsequent EIR to support subsequent discretionary approvals required for a project if any of the following conditions are met:

- a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

(Pub. Resources Code, § 21166.) The CEQA Guidelines explain what constitutes a substantial change to the project or the circumstances, requiring a subsequent EIR when major revisions of a previous EIR or negative declaration are required “due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” (CEQA Guidelines §15162, subd. (a)(1).)

New information requiring preparation of a subsequent EIR includes:

- A. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more

significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(CEQA Guidelines §15162, subd. (a)(3).) When the project that is actually constructed has greater impacts than the project studied in the EIR, a subsequent EIR, not an addendum, is required. (*Ventura Foothill Neighbors, supra*, 222 Cal.App.4th at 435-36.)

The Project would have impacts that have been rendered significant and far more severe than were acknowledged in the 2005 EIR because the circumstances surrounding it, especially with regard to flooding and mudflow risks, transportation impacts, water supply, and land use regulations have exacerbated the Project's likely impacts. Accordingly, substantial changes have occurred with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report and new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, has become available. Subsequent environmental review is required before the Project may be lawfully considered and approved by the County.

II. The County's Findings Under CEQA Guidelines Section 15162 Lack Substantial Evidence.

In order to rely on the 2005 EIR, the County must be able to support, with evidence, findings that the actions requested under the Project do not exceed the scope of the 2005 EIR, that no substantial changes are proposed in the Project, that no substantial changes have occurred with respect to the Project's circumstances, and that no new information of substantial importance has come to light regarding the Project's environmental impacts or mitigation measures. Yet the entirety of the County's analysis of these issues can be found on page 2 of the January 24, 2023 Agenda Letter and in the following paragraph of the December 13, 2022 Board Letter:

Under California Environmental Quality Act (CEQA) Guidelines Section 15162, since the recommended actions do not exceed the scope of previously conducted environmental review documents, no subsequent environmental document is required. Here, no substantial changes are proposed in the project and no substantial changes will occur with respect to the circumstances under which the project is undertaken. Furthermore, no new information of substantial importance has come to light regarding environmental effects of the project or of the sufficiency or feasibility of mitigation measures. Consequently, the recommended actions are within the scope of the project covered by the environmental review

documents certified and adopted by the County Board of Supervisors. Therefore, no subsequent environmental document is required.

The paragraph restates the CEQA Guidelines, but contains no evidentiary support for its findings.

III. Substantial Changes to Circumstances and New Information Preclude Reliance on the 2005 EIR for the Flood Control Agreement.

A. Flooding and Mudflow Risks are Much Higher Now Than 17 Years Ago When the EIR Was Approved.

The original Project EIR fails to consider the impacts of climate change and its consequent risk of atmospheric rivers causing excessive rainfall, flooding, and mudflow. (August 22, 2022 Report at <https://scripps.ucsd.edu/news/climate-change-projected-increase-atmospheric-river-flood-damages-united-states>; <https://research.noaa.gov/article/ArtMID/587/ArticleID/2926/Atmospheric-Rivers-What-are-they-and-how-does-NOAA-study-them>; https://riskfactor.com/city/los-alamos-california/643252_fsid/flood.)¹ The Project is at the foot of a very steep hill, yet the potential impacts of mudflows induced by intense rainfall has not been adequately addressed. A subsequent EIR is required to address these newly recognized risks that were not analyzed in the 17 year old 2005 EIR. This is particularly important in light of the devastating mudflows that inundated Montecito in 2018 (<http://www.santamariasun.com/news/17950/what-went-wrong-santa-barbara-county-analyzes-action-during-thomas-fire-and-19-debris-flow/>) and recent flooding in 2023. The EIR must be revised to account for such potential flows and to provide mitigation to ensure the safety of existing and future residents and property. Montecito also demonstrates the benefits of analysis and the implementation of safety and flood control measures. Although the area received intense rainfall yet again in January 2023, no lives were lost because the County successfully developed and implemented strategies to mitigate the risks of atmospheric rivers to life and property during the intervening 5 years. A subsequent EIR is required to address these newly recognized risks for Los Alamos that were not analyzed in the 17-year-old 2005 EIR.

¹ All reports, articles, and studies cited by specific URL in this letter are incorporated by reference in this letter for inclusion in the record. (*Golden Door Properties, LLC v. Superior Court of San Diego County* (2020) 52 Cal.App.5th 837, 762.)

The Project's discretionary decisions extend beyond the map itself. In the January 24, 2023 recommendation report to the Board of Directors, the Flood Control and Water Conservation District action (a) asks that the Board approve and authorize the Chair to execute the Agreement for Construction and Dedication of Flood Control Improvements with Los Alamos 59, LP and MHP Builder Inc. associated with off-site storm drain improvements for Tract Map 14,608 in the Los Alamos Community. The decision to approve an Agreement for Construction and Dedication of Flood Control Improvements is a discretionary decision that requires adequate environmental review in a Subsequent EIR before it may be approved.

The Legacy Estates Final 2005 EIR determined that

"project development would not result in a exceedance of the following threshold criterion, and therefore not discussed further:

*Would the project be inundated by seiche (i.e. a stationary wave caused by strong winds and/or changes in atmospheric pressure) tsunami, or *mudflow*?

- The project site is not located near the Pacific Ocean, any enclosed bodies of water such as a lake, or *steep slopes subject to mudflows*, therefore these geological phenomena would not occur."

(Legacy Estates Final 2005 EIR, 4.6 Drainage/Flooding and Water Quality, 4.6.2 Impacts and Mitigation, emphasis added.)

However, this determination stands contrary to the findings of Santa Barbara County's own Flood Control & Water Conservation District and Water Agency. A copy of their report Los Alamos Drainage Study, May 1990 explicitly states "Both the Solomon and Purisima Hills soil profile consists of relatively shallow, heavy texture soils, with generally low permeability. The *low soil permeability and steep (45-50%) slopes combine to promote very rapid flash flood type flooding conditions within the canyons and at the mouths of canyons where they discharge into the Los Alamos Valley.*" (Appendix to EIR, p. 1, Drainage Setting, par. 6, emphasis added.)

The County flood control report further states that it is important to note, "that the potential flood hazard is such that it must be addressed *from a public safety perspective* within the urban area of Los Alamos." (Emphasis added.) This has not occurred.

The final 2005 EIR completely omits analysis of impacts and mitigation regarding mudflow hazards to the Los Alamos Valley. If the County were to approve the Project prior to preparing an adequate Subsequent EIR to address the now-recognized increased severity of flooding and mudflow hazards, the County could be held liable to property owners and others who suffer damage from mudflows exacerbated by the approval of the Project. (*Yue v. City of Auburn* (1992) 3 Cal.App.4th 751, 763.) In *Yue v. City of Auburn*, the plaintiff alleged a defendant public agency-- the City of Auburn-- had “approved the development of a subdivision, which increased the flow of surface waters, then built a culvert to divert these surface waters even though defendant knew, or should have known, the new culvert would empty into an existing drainage system with a significantly smaller capacity, inevitably causing plaintiffs' land to be flooded. In other words, plaintiffs are alleging defendant had a duty to prevent harm to plaintiffs' land caused by conditions defendant approved or created.” (*Id.* at 763.) This allegation was sufficient to withstand demurrer because the public agency had a duty of care that could be violated by its negligent approval of the subdivision.

The claim that the Project is not located near a steep slope subject to mudflows is completely erroneous, factually incorrect and mis-characterizes the County’s own study findings. Reasonable due diligence was *not* exercised at the time the 2005 EIR was certified as complete, substantial evidence was omitted and was not examined, and significant effects of flooding and mudflow hazards are substantially more severe than shown in the 2005 Final EIR. A subsequent EIR is required.

The Board must determine that pursuant to the California Environmental Quality Act Guidelines Section 15162, the recommended actions fall within the scope of the environmental review documents previously certified for this project on September 7, 2005. As stated above, this determination is not the full extent of what the Board must determine. The Board must also determine that substantial changes have not occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report and that new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, has not become available.

As we have identified in item a), reasonable due diligence was *not* exercised at the time the final 2005 EIR was completed, substantial evidence was not examined and omitted in the Drainage/Flooding and Water Quality impacts and mitigations, and significant effects of mudflow hazard are substantially more severe than shown in the 2005 Final EIR. All these conditions, under the CEQA Guidelines Section 15162 subdivision (a), require the County to prepare and certify a subsequent EIR. Therefore, the Project cannot be approved prior to the completion of a subsequent EIR.

The Los Alamos community recently witnessed successive storms that flooded Los Alamos streets, overflowed drainage ditches, and formed mudflows at Purisima Hills over a period of three weeks in early 2023. (See <https://www.noozhawk.com/widespread-roadway-flooding-vehicle-collisions-reported-during-storm/>.) “Highway 135 was closed *between Los Alamos and Harris Grade Road*, and Highway 1 was closed between Black Road and Solomon in Santa Maria due to flooding.” (*Ibid.*, emphasis added.) Climate extremes are no longer unusual occurrences and they will continue to wreak havoc and strain infrastructure. From the discovered significant effects of mudflow hazards, to cumulative material revisions of various agencies’ guidelines cited over the past 17 years, requiring a subsequent EIR to be completed is the only responsible action the Board of Supervisors can take for the residents of Los Alamos.

In summary, the Board of Supervisors should not approve the Project. Additionally, pursuant to CEQA Guidelines 15162 subdivision (a), the Board of Supervisors must require a subsequent EIR (Environmental Impact Report) for the Project so that newly available information of substantial importance may be reviewed.

B. Agricultural Buffer Requirements Are Not Sufficiently Addressed by the Prior 2005 EIR.

On April 9, 2013, eight years after the certification of the 2005 EIR, the County of Santa Barbara adopted an agricultural buffer ordinance intended to protect the County’s vibrant agricultural industry from encroaching development. (See, <https://www.independent.com/2013/04/17/agricultural-buffer-zone-ordinance-approved-santa-barbara-county/>.) The Executive Director of the Santa Barbara County Farm Bureau applauded the Supervisors’ vote, telling the *Santa Barbara Independent*, “The passing of this ordinance is a win for agriculture and the community at large...It provides local farmers and ranchers a tool to help maintain agricultural viability.” (*Ibid.*)

Specifically, section 21-32A(A), finds “The intent of agricultural buffers is to minimize potential conflicts between agricultural and adjacent land uses that result from dust, light, noise and odor incidental to normal agricultural operations as well as potential conflicts originating from residential and other non-agricultural uses (e.g., domestic pets, insect pests and invasive weeds).” The ordinance requires that sensitive uses such as housing be located at least *300 feet* from agricultural uses.

The Project’s setbacks – at only 40 to 70 feet- fail to comply with County Code. Accordingly, the Project must be redesigned to be consistent with County Code before it

may be approved. From a CEQA perspective, the Project's inconsistency with applicable ordinances has introduced a significant land use impact that did not previously exist. CEQA requires an EIR to disclose and analyze a Project's consistency with applicable land use plans and ordinances. (Guidelines § 15125.) Supplemental environmental review in a Subsequent EIR is required to address this important concern.

C. Vehicle Miles Traveled (VMT) and Schools Must Be Analyzed Prior to Approving an Agreement Required for the Project.

Local schools would be impacted by the Project. The two local schools co-located on the same campus will experience the addition of 120 students. That impact was not accounted for in the 2005 EIR because school configurations have changed since the EIR was prepared. The transportation of students to the schools will also increase in transit through the valley and daily vehicle miles traveled.

The Project also implicates new VMT requirements and analysis implemented by the Office of Planning and Research (OPR) starting in 2020, which was 15 years after EIR certification. As OPR stated:

Starting on July 1, 2020, agencies analyzing the transportation impacts of new projects must now look at a metric known as vehicle miles traveled (VMT) instead of LOS. VMT measures how much actual auto travel (additional miles driven) a proposed project would create on California roads. If the project adds excessive car travel onto our roads, the project may cause a significant transportation impact.

(<https://opr.ca.gov/ceqa/sb-743/faq.html>.)

VMT analysis of the transportation impacts of the Project were not analyzed in the 2005, as has been required since July 1, 2020. Therefore, subsequent EIR review of the Project's VMT, and mitigation for any significant impacts, is required.

D. Water Supply Impacts Have Not Been Sufficiently Analyzed.

CEQA requires that the water supply impacts of a proposed project be thoroughly analyzed to ensure sufficient supplies will be available for *the whole project* at the time of approval. As emphasized by the Supreme Court:

[] CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to

“evaluate the pros and cons of supplying the amount of water that the [project] will need.” (*Santiago County Water Dist. v. County of Orange, supra*, 118 Cal.App.3d at p. 829, 173 Cal.Rptr. 602.)

(*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 430–431.) Circumstances with regard to water supply have changed drastically since the Project’s EIR certification 2005. California has experienced several of its driest years since 2005. In 2014, Governor Brown declared a drought State of Emergency throughout California. (<https://www.ca.gov/archive/gov39/2014/01/17/news18368/index.html>.) Again, in 2021, Governor Newsom extended the drought emergency. (<https://www.gov.ca.gov/2021/10/19/governor-newsom-expands-drought-emergency-statewide-urges-californians-to-redouble-water-conservation-efforts/>.) These continuing drought emergencies were not considered by the EIR when it was approved in 2005 so the current circumstances of ongoing drought must be addressed in a Subsequent EIR.

In public meetings, the Project proponent has claimed the local water board will serve the homes one by one as they are proposed for construction. However, there is no guarantee that the water board can serve all 59 homes authorized by the Project’s entitlements. CEQA requires that the water supply impacts of a proposed project be thoroughly analyzed to ensure sufficient supplies will be available for *the whole project* at the time of approval.

It is not sufficient to claim that permits would be denied at a future point if water is unavailable. “[A]n EIR may not substitute a provision precluding further development for identification and analysis of the project's intended and likely water sources. ‘While it might be argued that not building a portion of the project is the ultimate mitigation, it must be borne in mind that the EIR must address the project and assumes the project will be built.’ (*Stanislaus Natural Heritage, supra*, 48 Cal.App.4th at p. 206, 55 Cal.Rptr.2d 625.)” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 444.)

A subsequent EIR is required to address the current conditions in which water availability is uncertain and likely insufficient in view of changes in circumstances since 2005.

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

As part of its Project approval, the County 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.” This abandonment of various public road easements is a discretionary decision that requires specific findings, and adequate environmental review to support that decision. Since neither of these occurred, the purported abandonment is void.

The County must explicitly approve abandonment of paper streets under the Streets and Highways Code prior to abandonment. (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. Therefore, the County cannot abandon these public easements. Prior to valid abandonment, the County must prepare a Subsequent EIR that supports the discretionary decision to abandon the easements.

V. Conclusion

On behalf of Save Los Alamos, we thank you for your consideration of these comments and urge the County 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; VMT/transportation impacts will be exceed those previously disclosed and VMT impacts have never been analyzed as required. Finally, the Project land use is inconsistent with County Code because the Project cannot satisfy subsequently enacted buffer requirements. Accordingly, the County's findings that the Project's impacts were adequately disclosed, analyzed, and mitigated in the 2005 EIR lack substantial evidence.

Board of Supervisors
County of Santa Barbara
February 2, 2023
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The County must prepare, circulate, and certify a subsequent EIR before considering this impactful Project further.

Sincerely,



Michelle N. Black
Douglas Carstens

cc:

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