



Public Comment:
Brianda Negrete

From: Frances Romero <fromero@twlandplan.com>
Sent: Friday, February 3, 2023 4:21 PM
To: sbcob; Brianda Negrete
Cc: Nelson, Bob; Hartmann, Joan; Lavagnino, Steve; Supervisor Das Williams; Laura Capps
Subject: 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-BOS-VillageSquare-TWlandPlan-2023-02-03-Final.pdf

Attachments:

Follow Up Flag: Follow up
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Dear Supervisors,

Attached is my letter for the above-captioned agenda item.

Please let me know if you have any questions or concerns.

Best regards,

Frances Romero

SENIOR PLANNER

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February 2, 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 7, 2023, Agenda Item A-22; Support for 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)

Dear Chair Williams & Board of Directors of the Santa Barbara County Flood Control and Water Conservation District:

Due to time limitations during the hearing, I thought it was important to submit a letter to you that is factually accurate because there continues to be many incorrect statements and mischaracterizations about the Village Square project in Los Alamos.

Item A-25 on the previous Board of Supervisors agenda, now Item A-22 on the 2/7/23 agenda, is not a request for approval of the offsite drainage infrastructure as stated by those who oppose the approved project. The plan for the offsite drainage was already approved by County Flood Control in 2015. Item A-22 states the following:

- a) 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. and associated with off-site storm drain improvement for Tract Map 14,608 in Los Alamos Community; and
- b) Determine that pursuant to the California Environmental Quality Act Guidelines Section 15162, the recommended actions are within the scope of the environmental review documents for this project [Environmental Impact Report (05EIR-00000-00005) previously certified September 7, 2005].

The construction of the Flood Control Improvements is a Condition of Approval (COA) of this project. We are working with staff to complete the procedural tasks which will allow us to comply with this condition, including this execution of the cooperative agreement described in Item A-22. You continue to receive communication requesting a Subsequent or Supplemental Environmental Impact Report due to the following: age of 05EIR-00000-00005, three historic droughts and historic rains, recent flooding, climate change, the 34% increase of population from the 2000 to 2020 census, the addition of “marijuana farms”, and an alleged omission of a proper analysis of mudflow hazards. Please refer to the attached letter dated 1/31/2023 from the Law Office of K.M. Neiswender to her client Chris Jones, VP of Operations, Los Alamos 59, LP outlining an analysis regarding further environmental of the Legacy Estates project as well as other issues raised by those who oppose the project.

While some of you may remember the Village Square project (formerly Legacy Estates), I'd like to recap the timeline as a refresher for your review:

- 08/09/2002: **Application for TM 14,608 filed with County Planning & Development Department (Case No. 02TRM-00000-00007).** Application deemed complete for processing on 12/31/2002.
- 09/07/2005: **TM 14,608 Approved by County Planning Commission. Expiration date is 09/07/2008.** Several public meetings were held at the Los Alamos Senior Center. Six (6) separate, noticed County Planning Commission (PC) Hearings were held on 1/9/2003, 9/10/2003, 1/14/2004, 2/11/2004, 4/14/2004. The project was subsequently appealed and taken to the Board of Supervisors (BOS) hearing on 08/10/04. The Board of Supervisors directed staff to return the project to the PC. The PC held the final hearing for the project on 09/07/2005 where it was approved with a 3:2 vote.
- 01/01/2009: **CA Gov. Code Section 66452.21 becomes effective. TM 14,608 is statutorily extended to 09/07/2009.**
- 01/01/2010: **CA Gov. Code Section 66452.22 becomes effective. TM 14,608 is statutorily extended to 09/07/2011.**
- 07/15/2011: **CA Gov. Code Section 66452.23 becomes effective. TM 14,608 is statutorily extended to 09/07/2013.**
- 07/13/2013: **CA Gov. Code Section 66452.24 becomes effective. TM 14,608 is statutorily extended to 09/07/2015.**
- 06/10/2015: **Application is filed with the County Planning & Development Department for a (6) year time extension for TM 14,608 (Case No. 15TEX-00000-00012).** Application deemed complete for processing on 07/01/2015.

- 12/11/2015: **Six (6) year time extension approved by County Planning Commission (Case No. 15TEX-00000-00012). TM 14,608 is extended to 09/07/2021.**
- 09/28/2020: **CA Gov. Code Section 65914.5 becomes effective. TM 14,608 is statutorily extended to 03/07/2023.**
- 12/11/2020: **Map Clearance Application filed with County Planning & Development Department.**
- 12/13/2022: **Board of Supervisors accepts Final Map 14,608 in accordance with Government Code Sections 66434(g) and 66499.20.2 as stated in the Abandonment Note on the title sheet of Tract 14,608 per Aleksander Jevremovic, County Surveyor, email dated 1/27/23.**
- 12/19/2022: **Final Map 14,608 is recorded at the County Recorder's office.**
- 12/19/2022: **Letter written to neighbors within 600' of project to notify of tree maintenance/cutting. This was a courtesy notification from the developer, there is no COA that required this action.**
- 12/20/2022: **Letter mailed.**
- 12/22/2022: **Frances Romero went door to door & talked to 5 neighbors, left 17 letters.**
- 12/23/2022: **Frances Romero & Brittney Morettini went door to door & talked to 5 neighbors, left 6 letters.**
- 12/26/22: **Trees maintained/cut/pruned outside the nesting season with no ground disturbance. One to two biologists & a certified arborist were on site (none of which are required by the COA but were provided out of an abundance of caution).**

This project has gone through the County's planning process that included seven (7) public hearings. The plans were designed by licensed professionals, the plans were reviewed by the County's licensed professionals, their work was then peer reviewed by those professionals who prepared the 2005 EIR and more recently peer reviewed throughout the current map recordation and permitting phases. The County's process to approve projects is not perpetual, there is a beginning and end; it is not possible for new residents to have input on past decisions.

Please note that the Sections of Government Code cited above from 2009 through 2013 were created to address and overcome financial impediments created by the recession of the mid-2000s which affected the financial feasibility of developing housing throughout the State. Similarly, section of Government Code cited above from 2020 is reflective of the need to address economic uncertainty caused by COVID/the recession which would have otherwise been

disastrous for many residential developers. These extensions were key in allowing the project to continue onward through difficult times.

We have been working with various County, State, and Federal agencies in receiving subsequent clearances and permits since September 2020 to fulfill the Conditions of Approval for this project. The developer will build the infrastructure required to serve the existing (59) residential lots. In addition, development fees of approximately \$2.4M are required from the project that will go toward community wide infrastructure upgrades. The construction and dedication of Flood Control Improvements that are the topic of the cooperative agreement being considered as Item A-22 are for a drainage facility that serves the project as well as Den Street, and the Bell Street Corridor, it is a regional improvement that will be funded by the 59 future homeowners. Funds have already been paid for California Red Legged Frog Mitigation of nearly \$300K. Simply put, all these costs listed above put an approximately \$90K/lot burden on the project.

Below you will find a breakdown of these fees based on the construction of an average sized unit of 2,200 SF on each of the 59 lots.

ORCUTT UNIFIED SCHOOL DISTRICT:	\$443,916 (\$3.42/SQ FT)
SANTA MARIA JOINT UNION HIGH SCHOOL DISTRICT:	\$621,742 (\$4.79/SQ FT)
LOS ALAMOS COMMUNITY SERVICES DISTRICT:	\$1,151,562 (\$19,518/unit)
SBC PARKS-Quimby	\$81,538 (\$1,382/unit)
SBC FIRE:	\$76,582 (\$0.59/SF)
SBC PW TRANSPORTATION:	\$41,477 (\$703/unit)
CRLF MITIGATION:	\$296,300
OFFSITE REGIONAL DRAINAGE INFRASTRUCTURE:	\$2,416,500

I've estimated the annual property taxes for the County using an average of \$1M/lot. ***Please be aware that the sales prices have not been determined & will not be determined until closer to the end of the year & will be market driven.*** The property tax estimate that I have used is an **estimate** based on homes currently listed for sale in the Los Alamos area.

PROPERTY TAXES: on \$59M @ .750 = \$442,500 annually

I am requesting that you approve Agenda Item A-22 which will allow us to work with staff to ensure the responsible construction of the approved infrastructure improvement. This \$2.4M storm drainage infrastructure will be a regional benefit to Den Street & the Bell Street corridor, this can be confirmed by your own Flood Control Staff and has been stated by Tom Fayram in the 2011 Los Alamos Community Plan.

Thank you for your consideration.

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Sincere regards,

A handwritten signature in black ink that reads "Frances Romero". The signature is written in a cursive, flowing style.

Frances Romero, Senior Planner/Agent for Village Square
TW Land Planning & Development

Attachments

Law Office of K.M. Neiswender dated January 31, 2023

LAW OFFICE OF K.M. NEISWENDER

Land Use • Business • Environmental

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Blue Jay, California 92317

January 31, 2023

Chris Jones, VP of Operations
Los Alamos 59, LP
1885 California Street
Corona CA 92881

Re: Legacy Estates – Los Alamos (District 4)
Questions Re: Environmental Review and other issues

Dear Mr. Jones:

You asked this office to provide an analysis of whether there is any reason to perform further environmental review of the Legacy Estates project in Los Alamos, based either on the age of the 2005 EIR or on approval of the Flood Control contract pending before the Board of Supervisors. My conclusion is that it does not, for the reasons stated below.

An EIR does not have an expiration date. The only way to re-open the CEQA process is if there is new information that is so significant that major revisions are needed to the environmental review. Public Resources Code §21166 is the section that defines when subsequent environmental review is appropriate:

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (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.

Thus, there are three scenarios in which subsequent environmental review must be undertaken: (1) substantial changes to the project; (2) substantial changes in the project require “major revisions” to the EIR; and (3) new information becomes available.

None of these three apply to the circumstances of Legacy Homes today. Subsequent or supplemental environmental review is only necessary if the new information is of **substantial importance** to the project (14 CCR §15162(a)(3)). Important to our discussion is that any information relevant to the analysis must have become available only after the EIR was certified (Public Resources Code §21166(c)).

Recently, some Los Alamos residents argued that new information exists under Public Resources Code §21166 requiring further environmental review for the Legacy project. We address each of the neighbors' comments in turn, which are drought, climate change, water availability, and turkey buzzards.

California's Recurring Drought and Climate Change: California has been in a recurring drought cycle for thousands of years. This is not new information and was addressed in the previous environmental documents. The same is true of climate change: it was known to exist and was addressed in the Los Alamos Community Plan EIR.

The first environmental review for the project was the EIR prepared in 2005. A few years later, the Los Alamos Community Plan was prepared, completed in 2010 and the environmental documentation certified in 2011. In the Community Plan, the Legacy project was noted, and the environmental review addressed potential environmental effects on a community-wide scale. Then, in 2015, the project proponent requested a Map extension, and again the environmental impacts were addressed. In the County's Staff Report for the Map extension, staff specifically found the original EIR was adequate. Thus, claiming the recurring drought cycle was not addressed is not accurate. While climate change may be more in the public awareness today, climate change has been part of the political discussion for decades; for example, Al Gore's presidential campaign was based, in part, on climate change awareness.

Therefore, there is no reason to complete additional environmental review on drought and climate change, both of which were well-known at the time of the EIR approval and addressed in part in the environmental analysis from 2005 through 2015. Neither drought nor climate change is "new information" requiring subsequent environmental review, and neither requires "major revisions" to the EIR.

Water Supply: The Los Alamos Community Services District re-issued its availability letter this month. There is no question about water availability, despite the comments; the Board is allowed to rely on the expertise of local agencies.

Turkey Buzzards: One of the commentors mentioned that trees in which Turkey Buzzards had been roosting were trimmed to discourage the birds. The biological permits that allowed trimming those trees have already been issued. The trimming was in accordance with those permits, and the Turkey Buzzard is not listed as threatened or endangered by any agency. For these reasons, there is no basis upon which to conduct additional environmental review regarding the Buzzards.

Therefore, there is no legal basis for further environmental review of Legacy Homes. If a court challenge is made to the Board's decision, the decision is reviewed under the deferential substantial evidence standard, which gives great weight to the agency decision

It should also be noted that the approval of the Flood Control contract currently before the Board is not a "discretionary approval" for the project, the type of approval which would open the door to possible environmental update.

The legal "hook" for environmental review of a project is the need for a discretionary approval by the public agency (Public Resources Code §21002). An agency has the jurisdiction to prepare a subsequent or supplemental EIR only when considering a discretionary approval for a project, and once all those approvals have been obtained, an agency has no jurisdiction to require a further EIR (14 CCR §15162(c)). Similarly, agency action that implements a previously approved project does not trigger a need for further environmental review (*see, e.g., Willow Glen Trestle Conservancy v. City of San Jose* (2020) 49 Cal. App. 5th 127 [city's notification to Department of Fish & Wildlife to obtain streambed alteration agreement for previously approved project was not a new "discretionary approval"]; *County of Santa Clara v. Redevelopment Agency* (1993) 18 Cal. App. 4th 1008 [issuance of redevelopment bonds not a "discretionary approval" re-opening CEQA process]).

Even if new information appears after project approvals does not require re-opening the approvals; see 14 CCR §15162(c), which states:

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. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (a) occurs, a subsequent EIR or negative declaration shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or subsequent negative declaration adopted.

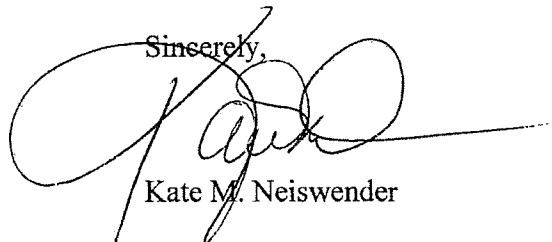
Therefore, by law, the mere approval of a Flood Control contract, the purpose of which is to implement an already-approved project, does not open the door for subsequent or supplemental environmental review.

The Abandonment of Certain Easements: While not related to the CEQA analysis, one of the commentors claimed the easements were not properly abandoned as required under the Streets & Highways Code. The County Surveyor has already addressed that, explaining in an email dated January 27, 2023 that the abandonment occurred under Government Code §§66434(g) and 66499.20.2. This was stated in the Abandonment Note on the title sheet of Tract 14,608. This is a non-issue.

Chris Jones, VP Operations
January 31, 2023
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Please let me know if you have any questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kate M. Neiswender', with a long horizontal flourish extending to the right.

Kate M. Neiswender