



CITY OF AGOURA HILLS

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MEMORANDUM

TO: Honorable Chair and Members of the Planning Commission

CC: Greg Ramirez, City Manager
Nathan Hamburger, Assistant City Manager
Doug Hooper, Planning Director
Allison Cook, Assistant Planning Director

FROM: Candice K. Lee, City Attorney
Craig A. Steele, Senior Counsel

DATE: August 14, 2015

SUBJECT: Planning Commission Review of the EIR for the Agoura Equestrian Estates Project on August 20, 2015

As the Planning Commission reviews the environmental impact report (“EIR”) for the Agoura Equestrian Estates Project (“Project”), we thought it would be helpful if we provided a step-by-step overview of the legal implications of the decisions relating to the Project that are before the Planning Commission on August 20, 2015. The applications for the Project are the result of a settlement agreement between the City and the applicant, previously approved by the City Council. It is important to clarify that this meeting is not a hearing on the merits of the Project itself, or the wisdom of the City Council’s decision to enter in an agreement to settle litigation. Specifically, at this point the Planning Commission will consider only whether to recommend that the City Council do the following:

- (1) Certify the Final EIR and approve the Mitigation Monitoring and Reporting Program;
- (2) Adopt a Resolution of Application to the Local Agency Formation Commission for the County of Los Angeles (“LAFCO”) to annex the Project site and adjacent areas and to amend the Sphere of Influence; and
- (3) Adopt a Pre-Zoning Ordinance to designate the zoning district for each area to be annexed to the City.

All three of these items are required as part of an application to LAFCO for annexation and a Sphere of Influence amendment. The City Council will be considering these items at its September 9, 2015 hearing.

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Before we discuss the above mentioned three items for Planning Commission Review, first we will provide a larger overview of the entire Project.

I. Project Description

The Project proposes the annexation of an approximately 71-acre site into the City of Agoura Hills (“City”) and subdivision of that site into 17 lots, including two permanent open space lots and 15 residential single-family lots. Annexation of areas adjacent to the project site, consisting of APN 2055-010-901 and a portion of the Caltrans right-of-way along U.S. Highway 101 are also proposed, but these areas would remain in their current state with no development proposed.

Phase 1 of the Project development, which is not the subject of the August 20th public hearing, will include the following land use entitlements: Conditional Use Permit, Development Agreement, Zone Change, Zoning Ordinance Amendment, Annexation, General Plan Amendment, Oak Tree Permit and Vesting Tentative Tract Map. Specifically, Phase 1 consists of construction of a private access road through the site; trails, fencing and drainage improvements within the private road right-of-way; relocation/construction of an existing multi-use informal trail located partially within and partially outside of the site boundaries to the east; earthen and rock drainage swale improvements, debris detention basins and underground pipes for runoff; an equestrian trail and fence along the western border; extension of utilities under the proposed road from existing water and sewer lines under Chesebro Road; and grading of one residential lot in order to ensure that the grading in Phase 1 can be balanced onsite.

Phase 2 development of each of the 15 residential lots with single family homes is expected to occur at a later date as part of an individual permit process, including separate application review and entitlement.

The EIR considers both Phase 1 and 2 improvements. The City received 36 public comment letters on the Draft EIR. The Final EIR includes these comment letters and responses to the comments in Section 8.0. All impacts are shown to be less than significant with mitigation incorporated. None of the comments on the Draft EIR raised any issue that would have warranted the re-circulation of the Draft EIR.

II. EIR

As you know, the California Environmental Quality Act (“CEQA”) requires that the Planning Commission review and provide a recommendation to the City Council regarding the adequacy of the EIR.

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There are three elements to the decisions the Planning Commission is being asked to advise the City Council on with regard to this Project. First, you are asked to review the EIR which has been prepared for the Project and make a recommendation as to whether it meets the basic legal requirements of CEQA - whether it is legally adequate. As decision makers, the Planning Commissioners must determine whether they think the EIR provides the information decision makers need to intelligently take account of the environmental consequences of this Project. Recommending that an EIR be certified as adequate is not the same thing as approving the Project. The two are, and will remain, separate decisions.

Please note that CEQA does not require an absolutely perfect document; it requires a document that is reasonably complete and fully discloses the environmental impacts of a project. CEQA does not require that everyone agree with every element of the EIR; it requires that the EIR be objective, that it identify areas where experts disagree, and that it explain the reasons for choosing one set of conclusions over others. CEQA does not require that the analysis be exhaustive, but it does require that the EIR be a good faith effort at full disclosure of environmental impacts. The Planning Commission is charged with analyzing the EIR and deciding whether the EIR enables the Planning Commission as decision makers to understand and take account of the environmental impacts of this Project as the Planning Commission makes its decision. If the EIR provides that necessary information, it is legally adequate. If not, the EIR requires additional analysis.

Let us briefly examine the consequences of the various decisions that could be made regarding the adequacy of this EIR. First, what happens if the City Council ultimately determines that this EIR is inadequate? A decision that the EIR is inadequate is not the same thing as denying the Project. The City has a responsibility to prepare a legally adequate EIR before it considers the merits of the Project. Therefore, if the Planning Commission recommends that the City Council find the EIR to inadequate, or if the City Council ultimately determines that this EIR is inadequate, the Planning Commission Resolution on that decision must include a set of findings which identify the specific inadequacies in the EIR.

If the City Council determined that the EIR was inadequate, the City would then have two options. The first option is that City staff and the consultant team would take those findings back and perform further work on the EIR. The findings would serve as instructions to the consultant as to where further work is necessary. Once those areas of concern are addressed, then the EIR would ultimately return to the Planning Commission for consideration. The second option is that the inadequacy decision and the findings could be challenged in court. A court would look at the EIR and the findings and make a judgment. The court might uphold the decision on inadequacy, or the court might reverse the City's decision and find that the EIR is legally adequate. In that

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case, the court would send the EIR back to the City Council and order the City to proceed to consider the merits of the Project.

The other scenario might be that the City Council ultimately finds that the EIR is legally adequate and certifies it. In that situation, there also are a couple of possible consequences. Just as a decision that the EIR is inadequate does not mean that the Project has been denied, a decision that the EIR is adequate does not in any way mean necessarily that the Project is or will be approved. The adequacy of the EIR and the merits of the Project are two separate issues.

If the EIR is certified as adequate, one possible consequence is that someone who opposes that decision could challenge it in court, and argue that the EIR is legally inadequate. Courts generally will not substitute their judgment for the judgment of the City Council regarding policy matters. In addition, courts typically give great deference to the City Council's determination when the Council receives testimony from competing experts about the significance of an environmental impact.

Please also note that the mere fact that experts disagree on the significance of a particular environmental impact does not invalidate an EIR. A reviewing court will not decide whether the City Council's determinations are correct, but only whether the City Council's findings and determinations on questions of fact are supported by substantial evidence in the record. Under the substantial evidence test, a reviewing court must uphold an EIR's analysis of an issue if there is any substantial evidence in the record to support it. Substantial evidence is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." 14 Cal. Code Regs. § 15384.

Please note that CEQA challenges rarely, if ever, result in a project not being built. Courts typically either: (a) rule that the public agency has fully complied with CEQA; or (b) require the agency to perform additional environmental analysis. The court may, however, grant additional relief if it deems such additional relief to be necessary.

If the City Council's decision to certify the EIR is not challenged, the City Council would proceed to consider the merits of the Project, taking into account the environmental impacts identified in the EIR. It bears repeating that the Planning Commission's decision here is advisory in nature; at this point you are being asked for a recommendation to inform the City Council's deliberation. If the Planning Commission decides to recommend that the City Council certify the EIR, the Planning Commission may adopt the resolution making that recommendation, as provided in the staff report.

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If the Planning Commission decides not to recommend that the City Council certify the EIR, the Planning Commission should simply state on the record its reasons for recommending against certification of the EIR, and the Planning Commission's recommendation will be forwarded to the City Council. A resolution recommending that the City Council not certify the EIR will not return to the Planning Commission at a subsequent Planning Commission meeting, as the Planning Commission's role is simply to advise the Council on this matter.

III. Annexation and Sphere of Influence Amendment

As detailed in the staff report, the Project proposes to expand the City's Sphere of Influence and ultimately annex the Project site into the City's boundaries to provide for orderly development of the proposed 15 single-family homes. We are informed that this is an action many people in the City favored during the original incorporation of the City. Unfortunately, the area in question was not included in the City's limits at that time. The Sphere of Influence expansion and associated annexation of the Project into the City would shift land use jurisdiction and services from the County of Los Angeles to the City. Upon annexation, municipal services for the Project area will be provided by the City. Ultimate approval of the annexation will be made by LAFCO. If LAFCO approves the City's request to amend the City's Sphere of Influence and annex the Project area, the City would assume the role of land use regulator and would effectively monitor the quality of the development in the Project area. In addition to the City's objectives related to the preservation of open space, the incorporation of the Project area would enable the City to enforce its proposed General Plan and zoning regulations to implement the City's goals for the Project area.

Again, at the August 20th meeting, the Planning Commission is being asked whether to recommend that the City Council request that LAFCO amend the City's Sphere of Influence and annex the Project and immediately adjacent areas.

IV. Pre-Zoning Ordinance

In anticipation of LAFCO's approval of the City's Sphere of Influence and Annexation application, the City has prepared a Pre-Zoning Ordinance to pre-zone the proposed annexation area as Low Density Residential (RV) - Old Agoura Design Overlay (OA) - Equestrian Overlay (EQ) and Open Space – Deed Restricted (OS-DR)-OA-EQ.

LAFCO is required to base its decision to annex property based on the City's General Plan and pre-zoning:

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“The decision of the commission with regard to a proposal to annex territory to a city shall be based upon the general plan and rezoning of the city.... A commission shall require, as a condition to annexation, that a city prezone the territory to be annexed or present evidence satisfactory to the commission that the existing development entitlements on the territory are vested or are already at build-out, and are consistent with the city’s general plan. However, the commission shall not specify how, or in what manner, the territory shall be prezoned.”

Cal. Gov’t Code § 56375(a)(7).

At the August 20th meeting, the Planning Commission is being asked whether to recommend that the City Council approve the Pre-Zoning Ordinance.

If you have any questions or concerns, please do not hesitate to contact either one of us.