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Via Electronic Mail

July 31, 2020

Mr. Kevin Canning
County of Orange
OC Development Services
601 N. Ross Street
Santa Ana, CA 92701

Re: Comments Regarding the Legacy at Coto Initial Study/Mitigated Negative Declaration

Dear Mr. Canning:

This letter is submitted on behalf of Los Ranchos Estates Home Owners Association ("LRE HOA") in response to the Initial Study/Mitigated Negative Declaration ("IS/MND") issued by Legacy at Coto, a 101-unit active senior living development ("Project") located within the Coto de Caza Specific Plan in the County of Orange ("County").

1. LOS RANCHOS ESTATES HOME OWNERS ASSOCIATION

The LRE HOA represents Los Ranchos Estates, an approximately 350-acre, rural community consisting of 75 homes and custom lots in unincorporated Orange County and within the larger Coto de Caza Specific Plan area. The LRE HOA is not a part of the larger CZ Master home owners association. Los Ranchos Estates is located immediately north of the Project on Via Pajaro, one of the primary roads that will serve the Project. The LRE HOA is responsible for maintaining Via Pajaro within Los Ranchos Estates, which constitutes the majority of the street's length. This portion of Via Pajaro and the underlying land is owned in fee by Los Ranchos Estates, not The Village or CZ Master home owner associations.

The LRE HOA is very concerned about the size and intensity of the Project, which is completely out of character with the surrounding community and is not consistent with the Coto de Caza Specific Plan. The nonconforming Project's environmental impacts will be dramatic. These impacts will impose acute burdens on the Project's immediate neighbors such as Los Ranchos Estates. This letter documents a number of issues with the Project's IS/MND, demonstrating that, at a minimum, an Environmental Impact Report ("EIR") is necessary to study the Project's full impact.

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2. LEGAL STANDARD FOR PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

The California Environmental Quality Act ("CEQA") requires the preparation of an EIR whenever substantial evidence in the record supports a "fair argument" that a project may have significant environmental impacts. (Pub. Res. Code, § 21080(d); *No Oil, Inc. v. City of Los Angeles* (1975) 13 Cal.3d 68, 75.) Under CEQA, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (Pub. Res. Code, § 21080(e)(l).) Additionally, substantial evidence "means 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 C.C.R. § 15384(a).) If there is "substantial evidence that the project might have [a significant impact on the environment], but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed in a 'manner required by law.'" (*Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.)

Here, the County must prepare an EIR before proceeding because the Project is likely to lead to several significant impacts, discussed below.

3. THE PROJECT'S SIGNIFICANT ENVIRONMENTAL IMPACTS

The LRE HOA has a number of concerns regarding the Project. Listed below are only a few of the IS/MND's most glaring failures. The inadequacies of the IS/MND and its associated studies documented in this letter represent more than a fair argument that the Project will have significant environmental impacts, and they clearly demonstrate that an EIR is required to gain a full picture of the Project's consequences and potential opportunities for mitigation.

A. Aesthetic Impacts

Friends of College of San Mateo Gardens v. San Mateo County Community College District (2017) 11 Cal.App.5th 596 (*San Mateo Gardens II*) firmly establishes that CEQA recognizes and protects against *aesthetic* impacts even though "an aesthetic impact by its very nature is subjective." (*San Mateo Gardens II* at p. 609.) Specifically, the court stated that a project's negative environmental effects can concern "*aesthetic, natural, scenic, or historical* environmental qualities in [the project's] vicinity." (*Ibid.*, emphasis added.) Further, substantial evidence of such aesthetic impacts can include "the opinions of area residents" if those opinions are "based on direct observation," regardless of any "special expertise" the area residents may or may not have. (*Ibid.*)

The Project would have a profoundly negative aesthetic impact. Los Ranchos Estates and the area surrounding the Project were designed to be a rural community. Much of the area intentionally consists of undeveloped land, and trails abound for walking, hiking, and riding. Horses are allowed to walk through the community. The tennis college that currently exists on the

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Project site harkens back to Coto de Caza's historic use as a shooting, equestrian, and country club. The area is not characterized by large scale, urban-style development. A 101-unit, dense development such as the Project would be completely out of place, and would present a great eyesore to all neighbors.

Los Ranchos Estates homeowners feel that the Project is unattractive. The Project is bulky and monolithic, two visual characteristics that are not found in the surrounding area. The Project's location on a major road means that Los Ranchos Estates homeowners, and all of the Project's neighbors, would frequently be burdened by the Project's visual impact. The Project's aesthetic impacts are thus significant, and a full EIR is necessary to analyze potential mitigation measures.

B. Traffic Impacts

The traffic study by Stantec dated April 13, 2020, and included in IS/MND Appendix I ("Traffic Study") fails to address a number of the Project's congestion and safety impacts.

Perhaps most importantly, the Traffic Study fails to study the intersection at Via Conejo and Via Pajaro. The proximity of this three-way stop to another three-way stop at Vista del Verde and Via Pajaro, which Stantec did analyze, will cause significant congestion and safety impacts. This failure to analyze the intersection at Via Conejo and Via Pajaro invalidates Santec's assumption that traffic will flow unimpeded at the Vista del Verde and Via Pajaro intersection. In fact, all traffic entering towards the Project from Vista del Verde will be stopped twice in rapid succession.

In addition to its failure to study an impacted intersection or to adequately study the Vista del Verde and Via Pajaro intersection, the Traffic Study also analyzed the Project's impacts using an incorrect performance criteria. On page 1.3, the Traffic Study states that it evaluated impacts against level of service values deemed acceptable by "various governing jurisdictions." This unclear standard prevents the LRE HOA from adequately understanding the Project's traffic impacts. The appropriate performance criteria is found in the Coto de Caza Specific Plan, which provides that nearly any increase in traffic constitutes a traffic impact.

The IS/MND's traffic safety analysis is also inadequate. The Traffic Study failed to analyze the Project's safety impacts on the unstudied intersection at Via Conejo and Via Pajaro. Furthermore, the Traffic Study considered the traffic impact resulting from the anticipated General Store redevelopment on the Vista del Verde and Via Pajaro intersection, but it did not account for the General Store's safety impacts. The General Store will generate significant foot traffic. The safety impacts of the two three-way intersections will be significant once the General Store is finished.

The Traffic Study's projected trip distribution is also incorrect. The Traffic Study fails to account for the fact that the additional traffic generated by the Project will effectively cause existing residents to divert north to avoid the congestion at Vista del Verde and Via Pajaro. These travelers

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will proceed up Via Pajaro and directly through Los Ranchos Estates, placing increased strain on Via Pajaro, which is the responsibility of the LRE HOA to maintain.

The IS/MND also used an erroneous peak time trip calculation. The IS/MND assumed that at most 7% of the Project's total 382 daily trips would occur during peak times. This assumption does not follow based on the Project's anticipated users: *active* seniors. It does not make sense that the Project's active residents and employees would make trips at such radically different times than the general population. If it analyzed the Project's trips at appropriate times, the Traffic Study would show increased traffic impacts.

The Traffic Study completely failed to analyze the Project's interaction with equestrian traffic. Horses cross various streets surrounding the Project, including Via Pajaro, which runs through Los Ranchos Estates. These horses are frequently ridden by young riders. Failure to discuss this issue amounts to a large omission for the Project's safety analysis. In addition, a large community dog park is proximate to the Project, off Via Pajaro. Residents and their dogs frequently walk Via Pajaro to and from this park. Via Pajaro has no sidewalk due to the rural nature of the community, so residents walk in the street itself. The Project's increased traffic would pose a safety risk to these pedestrians, and this risk was not adequately studied by the IS/MND.

Finally, the fire analysis is insufficient given most residents' great concern that the Project will hinder emergency evacuations. An EIR is necessary to fully study this issue.

C. Land Use and Planning Issues

Coto de Caza is a specific plan community. The entire community was envisioned and developed with forethought, and all of its parts are intended to work together. The Project proposes to remove an important recreation amenity and to replace that recreation amenity with more residences. The LRE HOA recognizes that the Coto de Caza Specific Plan contemplates potential additional residential development, but it does not agree that the Specific Plan's intent was that the additional development would be accomplished by deleting community amenity spaces. This change would alter the Coto de Caza Specific Plan's delicate balance. Furthermore, the IS/MND failed to study the Project's impact on the surrounding community under the appropriate Coto de Caza Specific Plan standards.

The IS/MND acknowledges that the Coto de Caza Specific Plan is a governing document. (See, e.g., IS/MND, p. 1-1, 2-2, 3-1.) However, the Project cites County of Orange Zoning Code Section 7-9-142, governing Senior Living Facilities, to justify its exemption from various Coto de Caza Specific Plan regulations. (See, e.g., IS/MND, p. 4.11-3.) The full text of relevant the Section is below:

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(a) A senior living facility may include one (1) or more of the types of facilities listed as items (a) through (e) in section 7-9-40, Definitions (S) "Senior Living Facilities."

(b) A senior living facility may be permitted in any district, planned community, or in any specific plan area zoned for multi-family residential or commercial uses subject to the approval of a use permit by the planning commission per section 7-9-150, unless otherwise authorized by an administrative site development permit in accordance with the base district regulations. Development standards shall be per the base district, unless the approving authority makes the appropriate findings to approve a modified development standard. Each senior living facility use permit or site development permit application shall be reviewed on a case-by-case basis and shall:

(1) Demonstrate compatibility with adjacent development;

(2) Provide a parking study that will be used to determine if a modification to the base district parking standards will be necessary to accommodate the anticipated traffic generation and on-site parking demand of the residents, staff, employees and guests of the type and size of facility proposed; and

(3) Provide the location of all services (including the dining hall, commercial kitchen, gift shop, salon, fitness center, meeting rooms, etc.) and how they are to be accessed by residents and non-residents, including deliveries, and including universal design features in compliance with the Americans with Disabilities Act (ADA).

(c) Units contained in any senior living facility shall not be considered "dwelling units" and shall not be subtracted from the total number of allowed dwelling units for a planned community or specific plan area."

(Orange County Zoning Code, Section 7-9-142 (emphasis added).) As can be seen, the full text of the Code shows that Section 7-9-142 is intended both to allow development of senior living facilities, and to require that those facilities be consistent with surrounding development. Section 7-9-142(c)'s exception of senior living facilities from qualifying as "dwelling units" is only intended to exempt the Project from the Coto de Caza Specific Plan dwelling unit cap. It does not exempt the project from all Coto de Caza Specific Plan regulations. The Project must be evaluated against the Coto de Caza Specific Plan to determine its "compatibility with adjacent development." The

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Project clearly does not comply with the intention of Section 7-9-142 when evaluated against the Coto de Caza Specific Plan.

The IS/MND attempts to demonstrate the compatibility of the Project by comparing it to commercial sites. This approach is completely misguided; the Project should be compared to other residential projects in the Coto de Caza Specific Plan. Section 7-9-142(c), which provides that senior living facility units should not be considered dwelling units, does not change the fact that the Project's proposed use effectively consists of 101 dwelling units. Indeed, an email sent by the Project's developers on July 30, 2020, advertised it as "A New *Home* For Active Seniors" and invites interested parties to "*Live at Legacy*" and "*Call Legacy Your New Home.*" (Emphasis added.) The Project's environmental impacts should be evaluated against other residential peer projects, and the Project should be held to the residential standard of compatibility.

The IS/MND correctly states in Table 4.11-2 that the surrounding uses are all medium density. However, the IS/MND incorrectly uses the County of Orange General Plan designation for the surrounding properties, Suburban Residential (1B), when evaluating the Project's compatibility. (See IS/MND, p. 4.11-3.) As noted above, the Project is not exempt from all Coto de Caza Specific Plan regulations, and the surrounding uses are all clearly subject to the Coto de Caza Specific Plan. The IS/MND should evaluate the Project's compatibility with surrounding development against the Coto de Caza Specific Plan "medium density" standard.

Pursuant to the Coto Specific Plan, the area surrounding the Project is designated PA 3 Medium Density residential. (Coto de Caza Specific Plan, p. 30-31.) This designation allows up to 6 dwelling units per acre. Under the Coto de Caza Specific Plan standard alone, the Project would be limited to a maximum of 25 units. The 101-unit Project is significantly too large for an area that is intended for a maximum development of 25 units. The Coto de Caza Specific Plan would further restrict the number of units allowed on the site based on the Project's per-unit lot size of 3,500 square feet. The IS/MND clearly failed to evaluate the Project's compatibility with the Coto de Caza Specific Plan, and additional analysis in an EIR is necessary to fully describe the Project's impacts.

4. CONCLUSION

The issues identified above are only a partial list of the Project's deficiencies. LRE HOA reserves the right to identify additional inconsistencies as the Project's environmental review progresses.

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As documented above, a fair argument, supported by substantial evidence in the record, exists that the Project, which is completely out of character for the surrounding community, will have a significant environmental impact under CEQA. Thus, an EIR must be prepared to fully study the Project's negative impacts.

Very truly yours,

A handwritten signature in blue ink, appearing to read "K. Erik Friess", with a stylized flourish at the end.

K. Erik Friess

KEF:ebp