

Cane & Harkins LLP

David E. Cane
James C. Harkins, IV

17821 East Seventeenth Street
Suite 140
Tustin, CA 92780
Telephone (714) 573-8990
Facsimile (714) 573-8999

dcane@linkline.com
jharkins@linkline.com

January 29, 2021

File 30293-001

VIA ELECTRONIC MAIL & 1ST CLASS MAIL
Legacyat Coto@ocpw.ocgov.com

Orange County Public Works
Development Services/Planning
Attention: Kevin Canning, Contract Planner
301 North Ross Street
Santa Ana, CA 92701

Re: CZ Master Association / Legacy at Coto California Grand Villages
Subject: Notice of Preparation of Draft Environment Report for Legacy at Coto California Grand Villages
Planning Application No. PA-20-022

Dear Mr. Canning:

Cane & Harkins LLP serves as legal counsel for the CZ Master Association (“CZ Master”). In that capacity, the Association requested our office to submit comments on the Notice of Preparation (“NOP”) of Draft Environment Report for Legacy at Coto California Grand Villages (“Project”). CZ Master is a nonprofit mutual benefit corporation organized for, among other purposes, managing the Coto de Caza planned development of 3,474 residential properties (the “Development”) located within the Coto de Caza Specific Plan in the County of Orange (“County”), and to promote the common good and welfare of the residential property owner members of CZ Master. CZ Master’s members own homes within the vicinity of the Project site.

The Project is currently represented as development of 95 multi-family unit active senior living residential project with subterranean parking garage and amenities. CZ Master and its members are deeply concerned about the Project’s numerous potential environmental impacts.

The recently released NOP is required to provide adequate and reliable information regarding the nature of the proposed Project and its probable environmental impacts, in order to “solicit guidance from public agencies as to the scope and content of the environmental information to be included in the EIR.” California Environmental Quality Act (CEQA) Guidelines § 15375; *see also* CEQA Guidelines § 15082(a)(1). Unfortunately, the NOP provides little information about some critical aspects of the proposed Project, including Project objectives, alternatives, and cumulative impacts. This makes it difficult to provide a comprehensive response to the NOP or the scope of the EIR. Set forth below are CZ

Master's initial comments relating to the information that has been provided. In addition to ensuring that the EIR for the Project provides extensive, thorough analysis of the environmental factors identified in the NOP, CZ Master requests the County to consider the topics described below.

I. Cumulative Impacts

An EIR must discuss the cumulative impacts of a project when the incremental effects of a project are considerable when viewed in connection with the effects of other past, current, and probable future projects. CEQA Guidelines §§ 15130(a), (b)(1), 15065(c). Projects currently under environmental review qualify as reasonably probable future projects to be considered in a cumulative impacts analysis. *See San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal. App. 3d 61, 74 fn.13. In addition, projects anticipated beyond the near future should be analyzed for their cumulative effect if they are reasonably foreseeable. *See Bozung v. Local Agency Formation Comm'n of Ventura County* (1975) 13 Cal. 3d 263, 284.

Cumulative impacts are important in this instance, because of the anticipated redevelopment of the nearby General Store parcel (Tract 14211) and Oak Grove, LLC Project (Tract 12387). These anticipated developments are located immediately to the west of the Project. Accordingly, this may involve multiple large construction projects, which will create many of the same types of impacts, e.g., grading, air quality, noise, traffic, visual resources, and biological resources. The EIR for this Project must analyze the cumulative effects of all other cumulative development projects.

II. Noise

CEQA defines significant noise impacts as including both "noise levels in excess of standards established in the local general plan or noise ordinance" and any "substantial temporary or periodic increase in ambient noise levels in the project above levels existing without the project." CEQA Guidelines, Appendix G § XIII(a).

We note several important considerations that should inform the analysis of noise impacts. First, compliance with zoning and plan designations is a minimum and does not mean that a project has no significant impact or requires no mitigation. *Communities for a Better Env't. v. California Res. Agency* (2002) 103 Cal. App. 4th 98, 113 (disapproved on other grounds in *Berkley Hillside Preservation v. City of Berkley* (2015) 60 Cal.4th 1086, 1109, fn.3). This is especially true when the local noise ordinance exempts noise restrictions on all construction activities conducted between 7:00 a.m. and 8:00 p.m., Monday through Saturday. *See County of Orange Municipal Code, Division 6, § 4-6-7.*

In addition, courts recognize that for a project that will increase noise, the reviewing agency must use a metric that provides a true and complete picture of the noise created by the project as compared to baseline conditions. *Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioner* (2001) 91 Cal.App.4th 1344, 1377 (rejecting an EIR that used an average sound metric to evaluate the significance of noise impacts as "fail[ing] to provide . . . the most fundamental information about the project's noise impacts, specifically the number of additional nighttime flights that will occur . . . , the frequency of those

flights, and their effect on sleep”). Thus, the EIR for this Project must consider the full range of sound levels that will cause impacts, both from short-term peaks during construction work on this and other nearby sites and from long term occupancy of the Project. Daily and even hourly averages may not be sufficient to analyze the impacts on neighboring communities.

Further, these noise impacts translate into additional health impacts. Exposure to increased noise levels has been associated with increased stress, cardiovascular impacts, and mental health impacts. If the EIR identifies substantial increases in noise associated with the Project, then it must also discuss the health effects of those noise impacts on affected members of the public.

To the extent that the EIR identifies significant noise impacts that are unavoidable, CEQA requires that the County adopt all feasible measures that will reduce the Project’s impacts, even if they do not completely avoid the significant effect. Pub. Res. Code § 21002; *see also City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341; 1 Stephen Kostka & Michael Zischke, *Practice Under the California Environmental Quality Act* § 14.6 (2d ed. 2011) (“A mitigation measure may reduce or minimize a significant impact without avoiding the impact entirely.”). The statute also requires that mitigation measures must be fully enforceable through permit conditions, agreements, or other measures. Pub. Res. Code § 21081.6(b); Guidelines § 15126.4(a)(2). Uncertain, vague, and speculative mitigation measures are inadequate because they lack a commitment to enforcement. *See, e.g., Anderson First Coalition v. City of Anderson* (2005) 130 Cal. App. 4th 1173, 1188-89 (holding traffic mitigation fee measure inadequate under CEQA due to vagueness in program for implementing required improvements).

Accordingly, the EIR must address all aspects of noise impacts created by the Project, including those that occur during the daytime and thus fall outside of the scope of existing municipal limits.

III. Visual/Aesthetic Resources

The EIR must analyze the impacts of the proposed Project on aesthetics including scenic vistas, scenic resources, and the juxtaposition of the proposed development with the existing community. This analysis must include clear graphics showing pre-Project and post-Project visual conditions. Given the Project’s stark shift from a tennis facility made up of largely unobstructed open space to large monolithic building inconsistent with the architectural and aesthetics of the surrounding area, it will be particularly important to use appropriate techniques to disclose the Project’s aesthetic impacts. *See Friends of College of San Mateo Gardens v. San Mateo County Community College District* (2017) 11 Cal.App.5th 596; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1606. The EIR also must consider how to mitigate such impacts.

As part of this analysis, the EIR must analyze the impact of new lighting on the Project’s surroundings. Courts have recognized that “the opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument.” *The Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 937. As a result, the EIR must include a detailed light study to quantify how much light will spill outside of the Project’s footprint. Like noise, light has additional effects on human health by disrupting sleep, internal clocks, and

hormone levels. See Kristen M. Ploetz, *Light Pollution in the United States: An Overview of the Inadequacies of the Common Law and State and Local Regulation* (2002) 36 NEW ENG. L. REV. 985, 1000. CEQA requires that a public agency make a finding of significance if the “environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.” Pub. Res. Code § 21083(b)(3); Guidelines § 15065(a)(4). Accordingly, especially given the direct sightlines to numerous neighboring homes, the EIR must analyze whether the installation of street lights, structure-mounted lights, or other Project-related lighting next door to existing homes will have a substantial adverse effect on human beings, including human health.

The EIR must not only evaluate, but also identify mitigation for these effects. In particular, the County should evaluate the effectiveness of shields and other mandatory measures to focus light in the target area while minimizing spill. The County also should determine whether it is appropriate to require a “light” audit after construction of the Project in order to determine the actual magnitude of spill light and to focus the lights as closely as possible on Project site. The EIR must, at a minimum, evaluate such mitigation measures before approving the Project.

IV. Traffic and Transportation

The EIR must provide a comprehensive analysis of the Project’s traffic impacts including, without limitation, the following:

- A. Increase of traffic congestion at, and burden upon, the CZ Master vehicle entry gate system, and increased burden on contracted gate staffing.
- B. Increased burden on the resident and visitor internet controlled gate access system (e.g., registering of residents, guests, and invitees in the system for gate entry, vehicle transponders for resident vehicles for automated vehicle access, etc.).
- C. Increase in vehicle traffic and congestion on the CZ Master streets and intersections.
- D. Increased wear and tear on, and accelerated deterioration of, CZ Master streets due to the increase in construction traffic in connection with constructing the Project and increase in vehicle traffic and congestion in connection with Project workers and residents, and their guests and invitees, all of which will increase CZ Master’s expenses for maintenance and repair of the streets and vehicle entry gate system.
- E. Increase burden on CZ Master maintained amenities such as the dog park, decomposed granite trails, and CZ Master parks.

It will be important for the EIR to accurately identify trip generation data. For the Project’s residential uses, which should include trip generation data by unit and by bedroom.

The EIR must not limit its analysis to intersection capacity utilization and intersection delay, which describe only whether an intersection has enough physical capacity to accommodate vehicles. Rather, the

EIR must also assess the change in quality of life that residents will experience with the increase in traffic from the addition of the 95 units and related staff and workers. An accurate analysis of neighborhood traffic, one which takes into account the unique characteristics of the existing residential neighborhoods, is essential to determine whether neighborhood streets will be seriously impacted as a result of this proposed Project. This analysis must also document cumulative conditions.

The EIR (i) must also clearly identify the amount of parking that will be provided for residents, visitors, and users of the Project, and (ii) identify and describe the Project's connection to public transit. An effective transit network serving the Project has the potential to reduce many of the Project's significant environmental impacts including traffic, air quality, greenhouse gas emissions, and noise. If the Project does not include a robust transit program, one should be developed as partial mitigation for the Project's many obvious significant environmental impacts.

V. Air Quality

Coto de Caza is in the South Coast Air Basin, which is designated as a nonattainment area for the state and federal ambient air quality ozone standards, PM_{2.5} and PM₁₀ standards. South Coast Air Quality Management Plan, Final 2016 Air Quality Management Plan. For this reason, it will be important that the EIR contain a thorough analysis of Project-related and cumulative impacts to air quality. Particular attention must be paid to identifying each source of emissions that would be generated by the Project, including motor vehicle traffic, street sweeping, garbage trucks, and other regular use of maintenance equipment. The EIR must also carefully identify and analyze construction-related increases in toxic air contaminants and criteria air pollutant emissions associated with heavy off-road equipment. The EIR must consider both alternatives and mitigation measures that will protect construction workers and nearby residents.

VI. Geologic Impacts

CEQA requires that an agency consider whether a project will be located in a geologically unstable area, such as concerns relating to liquefaction, soil erosion or loss of topsoil, expansive soils, etc. CEQA Guidelines, Appendix G § VII. The EIR should further analyze whether any soils conditions at the constructed Project site could pose any hazards to residents or to other neighboring properties.

VII. Land Use Issues

Development in the Coto de Caza community is governed by that certain Coto de Caza Specific Plan, as amended, dated June 6, 1995 ("Specific Plan"), for development of a "residential community with an abundance of recreational uses." (Specific Plan at 1-2.) While the Project apparently may be exempt from the Specific Plan dwelling unit cap applicable to the subject Planning Area, the Project must comply with all other aspects of the Specific Plan including, without limitation, the following:

- Rural architectural themes using natural appearing building materials and tones should be utilized whenever feasible. Monotonous architectural elements should be discouraged.

- Exposure of unsightly under-stories should be discouraged.
- Development should blend and be integrated with open space and community facilities.
- Residential projects with a garage face five (5) or less from the property line should be designed so as to minimize what would otherwise be considered to be an over-linear street scene.
- Architectural accents such as cupolas, windvanes, windmills, and towers which relate to the existing architectural and environmental character of Coto de Caza are encouraged in these areas.

VIII. Alternatives

The County's evaluation of alternatives to the Project will be an important element of the analysis. An EIR must describe a range of alternatives to the proposed project, and to its location, that would feasibly attain the project's basic objectives while avoiding or substantially lessening the project's significant impacts. Pub. Res. Code § 21100(b)(4); CEQA Guidelines § 15126.6(a). A proper analysis of alternatives is essential for the County to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126.6(a); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal. App. 3d 433, 443–45. As the California Supreme Court explained in *Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* 47 Cal.3d 376, 404 (1988), “[w]ithout meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials.”

Without a thorough understanding of the proposed Project's purpose and objectives, the County is not able to identify and evaluate reasonable and feasible Project alternatives, and members of the public or public agencies likewise are not able to identify or provide meaningful input on alternatives or the scope of the EIR. The County must clearly articulate the Project objectives, in order to systematically identify and analyze the significant effects of the proposed Project and the feasible mitigation measures or alternatives that will avoid or substantially lessen such significant effects.

The County's NOP does not identify any alternatives to the proposed Project. The County must ensure that the EIR includes a discussion of additional alternatives that would lessen the significant impacts of the Project. In developing Project alternatives, the County should not restrict its identification and evaluation of alternative sites to the same locality; the County must assess alternative locations throughout the region. This analysis of alternatives must also evaluate considerably less intensive levels of development on the Project site and other options for meeting the purposes of the Project.

IX. Conclusion

CZ Master appreciates the opportunity to provide the foregoing comments and respectfully requests that the County thoroughly consider all of the information in these initial comments in the EIR for this Project under the Coto de Caza Specific Plan, so as to provide the basis for a comprehensive analysis of environmental impacts and the identification of feasible mitigation measures and Project alternatives.

Please keep the undersigned informed of all notices, hearings, staff reports, briefings, meetings, and other events related to the proposed Project, and please also notify the undersigned of the release of the draft EIR for the proposed Project.

Very truly yours,

CANE & HARKINS LLP

A handwritten signature in black ink, appearing to read "James C. Harkins, IV". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

James C. Harkins, IV

JCH