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May 17, 2021

Charles S. Krolikowski
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VIA E-MAIL

Camille Leung
Project Planner
County of San Mateo Planning & Building
Dept.
400 County Center
Redwood City, CA 94063
cleung@smcgov.org

Re: *Objections to the Proposed Minor Modification and Addendum to the FEIR for Highlands Estates Subdivision Project*

Dear Ms. Leung:

This office represents Save Our Highlands, an association of concerned residents in the Highlands area (collectively, "Claimants"). Claimants have received, or been made aware of, notice from the County of San Mateo ("County") via an e-mail from you on May 3, 2021, that the County is considering a proposed "minor modification" to the Chamberlain Highlands residential development project (the "Project"). Specifically, your notice e-mail stated that the County was considering a proposed modification ("Modification") to the resource management permit (PLN2006-00357) for the development of Lots 5, 6, 7 and 8 of the Project. Your notice e-mail also stated that the County had prepared an addendum ("Addendum") to the Project's Final Environmental Impact Report ("FEIR") to address the Modification. The e-mail noted that Claimants could submit comments to you regarding the requested changes no later than May 17. Please accept this correspondence as comments and objections from Claimants regarding the Modification and Addendum and include it in the record relating to the Project, the Modification and the Addendum.

1. **Legal Standard.**

The basic purposes of CEQA are fourfold:

(a) To inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities;

(b) To identify ways that environmental damage can be avoided or significantly reduced;

(c) To prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible; and

(d) To disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

(Cal. Code Regs., tit. 14, § 15002 ("CEQA Guidelines").) At its heart, therefore, CEQA is a public disclosure statute.

Where a lead agency certifies an initial EIR, subsequent environmental review is required on the proposed project if:

> (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; see also *Martis Camp Community Association v. County of Placer* (2020) 53 Cal.App.5th 569, 604 ("*Martis Camp*").)

Section 15162 of the CEQA Guidelines further explains each of these conditions.

> (a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
>
> (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant

environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(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.

. . .

(d) A subsequent EIR or subsequent negative declaration shall be given the same notice and public review as required under Section 15087 or Section 15072. A subsequent EIR or negative declaration shall state where the previous document is available and can be reviewed.

(CEQA Guidelines, § 15162.)

Section 15163 of the CEQA Guidelines explains that the lead or responsible agency "may choose to prepare a supplement to an EIR rather than a subsequent EIR if: (1) [a]ny of the conditions described in Section 15162 would require the preparation of a subsequent EIR, and (2) [o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation." (CEQA Guidelines, § 15163, subd. (a).)

Section 15164 of the CEQA Guidelines also explains that the lead or responsible agency "shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of as subsequent EIR have occurred." (CEQA Guidelines, § 15164, subd. (a).)

Taken together, these provisions of the CEQA Guidelines logically require that the lead or responsible agency prepare a supplement to the EIR rather than an addendum to the EIR where the changed situation of the project, fitting into any of the general categories set forth in Section 15162, requires only minor rather than major revisions to the EIR.

2. **The Modification and Addendum Are Improper.**

(a) **The Approval of a "Minor Modification" Is Improper.**

Condition of Approval No. 1 for the Project states:

> This approval applies only to the proposal, documents and plans described in this report and submitted to and approved by the Board of Supervisors on April 27, 2010. ***Minor revisions or modifications*** to these projects in compliance with Condition No. 5 may be made subject to the review and approval of the Community Development Director. ***Revisions or modifications not in compliance with Condition No. 5 shall be deemed a major modification and shall be subject to review and approval by the Planning Commission at a public hearing***.

Condition of Approval No. 5 for the Project states:

> This project will be implemented as proposed, mitigated, conditioned, and approved by the Board of Supervisors, ***regarding parcel size and configuration, home sizes, home locations, architectural design, style and color, materials, height and foundation design***. Prior to the issuance of a Certificate of Occupancy for any residence, the applicant shall provide photographs to the Current Planning

> Section staff to demonstrate utilization of the approved colors and materials. Materials and colors shall not be highly reflective.

The Addendum establishes a 65 percent increase in cut-and-fill volumes and almost four times the number of one-way construction truck trips from what was anticipated at the Project approval.[1] It seems fairly obvious that a Project modification for which the County felt the need to prepare a 289 page CEQA Addendum and impose new mitigation requirements does not meet the usual definition of a ***minor*** modification. There is nothing that suggests all changes that do not fall into the categories specified under Condition of Approval No. 5 are automatically minor modifications and subject only to the approval of the Planning Director. Common sense dictates that this proposed modification should be treated instead as a major modification and, accordingly, be subject to review and approval by the Planning Commission at a public hearing pursuant to Condition of Approval No. 1.

(b) **At a Minimum, a Supplement to the EIR Is Required rather than an Addendum.**

The Addendum violates CEQA because, based on language in the Addendum itself, the County must prepare a supplement to the EIR rather than an addendum.

The Addendum states that "the circumstances and assumptions under which the project's earthwork program and construction schedule were previously developed have changed since certification of the Final EIR." (Addendum, at p. 1-2.) Yet, the County asserts that an addendum to the Final EIR is appropriate here because "these changed circumstances and associated proposed changes do not require ***major revisions*** to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects." (*Ibid.*, emphasis added.) The County ignores that the lack of the need for "major revisions" to the EIR does not mean an addendum is the appropriate form of CEQA review. At a minimum, Section 15163 of the CEQA Guidelines requires the County to prepare a supplement to the EIR -- rather than an addendum -- because the record demonstrates substantial changes in circumstances, as well as significant new information, which require a major re-write of the temporary impacts analysis of the FEIR, among other sections.

To the extent the County is describing the changes as insubstantial, the scope of the Modification belies that characterization. The Addendum notes:

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[1] The air quality chapter for the Project EIR estimated and analyzed 167 construction truck trips (334 one-way trips) for the transport of imported fill (2,000 cy). In the September 2009 Recirculated Draft EIR, 183 construction truck trips (366 one-way trips). (See Project Draft Environmental Impact Report, Revised, at p. 4.4-31.)

> The proposed earthwork for Lots 5 through 8 would result in more construction truck traffic than previously analyzed due to the landslide mitigation repairs and the limited opportunities for balancing (7,790 cy). Approximately 650 construction truck trips (1,300 one-way trips) would be involved in the transport of exported material/imported fill associated with completion of the project as presently proposed, compared to 75 construction truck trips (900 cy of imported fill) assessed for the approved project (150 one-way trips). ***These additional construction truck trips represent a three- to four-fold increase over the number of construction truck trips assumed for the air quality modeling and an eight-fold increase over the number of construction truck trips for the approved project.***

(Addendum, at p. 4-11, emphasis added.) Labeling a four-fold increase in the number of construction truck trips as anything other than a substantial change is disingenuous, at best. Under Section 15163 of the CEQA Guidelines, such a change requires the County to prepare a supplement to the EIR rather than an addendum, even if only focused revisions to the EIR are required.

(c) **The Analysis in the Addendum Is Insufficient.**

The Addendum fails to identify and analyze all the potentially new or more severe significant environmental impacts that the Modification might cause.

For example, the Addendum states: "Based on the information provided in that design-level geotechnical investigation, residences on Lots 1 through 4 were completed in 2016–2017." (Addendum, at p. 3-1.) However, the Addendum fails to characterize these new homes as new sensitive receptors and analyze the impacts on them accordingly. This is likely because, as noted in the Addendum, "[t]he EIR assumed that all 11 lots would be built concurrently over 1 year (starting in June 2009 with completion in June 2010, as evaluated in the air quality modeling), whereas actual buildout of the project has occurred in phases . . . ." (Addendum, at p. 3-2.) CEQA requires that impacts to these new sensitive receptors resulting from the Modification must be meaningfully studied. Yet, there is no analysis in the Addendum of how the increase of 7,790 cubic yards of cut soils, the resulting addition of nearly 1,000 one-way construction trips and the extended construction timeframe (10 weeks, as opposed to 3 to 5 weeks) will impact these fully-completed -- and presumably now occupied -- residential dwelling units. (See *id.*, at p. 4-7.)

The Addendum also repeatedly bases its conclusions on the unsupported premise that, aside from the increases in cut and fil, construction trips and construction time, the Project is essentially the same as what was studied in the EIR. In particular, the Addendum emphasizes that nothing about the design, footprint, location or

elevations of Lots 5 through 8 has changed from what was studied in the EIR. (See Addendum, at pp. 4-1 & 4-2.) This is, however, inaccurate.

For example, the FEIR describes the Project as including 11 single-family homes ranging in size from approximately 2,800 square feet to approximately 3,600 square feet. Yet, the actual square footage of the homes is actually over 600 square feet larger because the EIR did not include the garages that are part of each of the homes. In 2016, the County recognized in correspondence to the public that there was a discrepancy in proposed floor area in the builder's application and the floor area approved by the Board of Supervisors in 2010, and it indicated that the Planning Director had approved the addition of the area of the garages to the total house sizes as a minor modification to the Project approval. The County then later disputed that there was any minor modification and claimed the Board of Supervisors had actually approved the larger home sizes because they were in the architectural drawings the developer had submitted. Regardless, there is no doubt that the designs and sizes of the homes, as currently contemplated for construction, are markedly different from what was studied in the FEIR.

This false assumption regarding Lots 5 through 8 undermines the analysis in the Addendum related to, without limitation, aesthetic impacts, impacts from noise/vibrations (***including land stability issues and an increased risk in landslides***), and impacts from hazards, as the analysis of those impacts relies on the premise that Lots 5 through 8 have not changed from what was studied in the EIR.

Other areas in which the Addendum's environmental analysis is insufficient include, without limitation, impacts on protected wildlife (according to community feedback in the Project record, several protected species have been observed numerous times, and are now presumed present, in and around the Project despite the original EIR stating that they were assumed not to be present), noise (e.g., evaluating noise increases from additional trips by hauling trucks by asking whether it causes daily traffic volumes on the roadways to double ignores the fact that hauling trucks make more noise than normal vehicles), land stability issues and an increased risk in landslides, hazards (e.g., how does a substantial increase in cut and fill volumes present the same risk of naturally occurring asbestos if its presence "could not be ruled out"), air quality and transportation.

3. **Claimants Have the Right to Appeal any Decision Regarding the Modification and Addendum to the Planning Commission and the Board of Supervisors.**

In prior correspondence with our office regarding the Project, the County has asserted that "in cases in which the Planning Director determines that a minor modification of a project is warranted, neither the County Zoning Regulations nor any other controlling authority provides for an administrative appeal of such a determination and an administrative appeal is not a proper route for challenging the Planning

Director's determination that a project modification is minor, as opposed to major." The County's need to invoke CEQA through the addendum process establishes that the "minor modification" process is fully discretionary. (Pub. Resources Code, § 21080, subd. (b)(1); see also CEQA Guidelines, § 15268, subd. (a) ["Ministerial projects are exempt from the requirements of CEQA."].) To the extent that the Planning Director approves the Modification and Addendum, please note that Claimants must be given the opportunity to appeal that decision to the Planning Commission and the Board of Supervisors. Section 6104 of the County of San Mateo Zoning Code requires such an opportunity for appeal when the Planning Director takes on the role of "Zoning Administrator," as he is here.

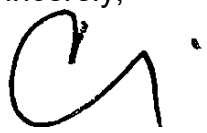
4. **Request for Notice.**

Please note that Claimants expressly request that the County provide this office with notice via e-mail of any decision the County makes regarding the Modification or the Addendum. This includes, without limitation, notice of the filing and/or recording of any CEQA-related notice of determination regarding the Project. Notices should be sent to charles.krolikowski@ndlf.com and jack.rubin@ndlf.com.

Claimants reserve the right to supplement these comments at any later hearings and proceedings related to this Project. (Gov. Code, § 65009, subd. (b); Pub. Resources Code, § 21177, subd. (a); *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1199–1203.)

If you have any questions or comments concerning the above, do not hesitate to contact me.

Sincerely,



Charles S. Krolikowski

cc: Steve Monowitz - Community Development Director - San Mateo County Planning and Building Department
Clients

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