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January 17, 2017

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Agenda No. 7
07/26/16

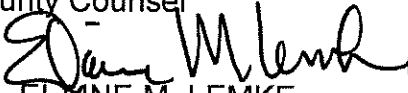
Re: **PROJECT NUMBER TR066952-(5)
VESTING TENTATIVE TRACT MAP NUMBER 066952-(5)
CONDITIONAL USE PERMIT NUMBER 2007-00038-(5)
FIFTH SUPERVISORIAL DISTRICT/THREE-VOTE MATTER**

Dear Supervisors:

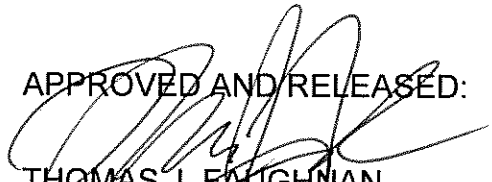
Your Board previously conducted a hearing on the appeal of the above-referenced project which sought to authorize the development of 83 single-family residences, two multi-family lots with 34 units, six open-space lots, and one recreation area lot on 292 gross acres located west of Bouquet Canyon Road, one mile south of Elizabeth Lake Road in the Leona Valley Community Standards District within the Leona Valley Zoned District, applied for by Leona Valley Estates Limited. At the completion of the hearing, you indicated an intent to support the appeal, setting aside the Regional Planning Commission's approval and reinstated and affirmed the Regional Planning Hearing Officer's denial, and instructed our office to prepare denial findings for your consideration. Enclosed are findings for your consideration.

Very truly yours,

MARY C. WICKHAM
County Counsel

By 
ELAINE M. LEMKE
Assistant County Counsel

APPROVED AND RELEASED:


THOMAS J. FAUGHNAN
Senior Assistant County Counsel

EML:vn
Enclosures

c: Sachi A. Hamai, Chief Executive Officer
Lori A. Glasgow, Executive Officer, Board of Supervisors
Richard J. Bruckner, Director, Department of Regional Planning

**FINDINGS OF THE BOARD OF SUPERVISORS
PROJECT NO. TR066952-(5)
VESTING TENTATIVE TRACT MAP NO. 066952-(5)
CONDITIONAL USE PERMIT NO. 2007-00038-(5)**

1. The Los Angeles County ("County") Board of Supervisors ("Board") conducted a public hearing in the matter of Project No. TR066952-(5) consisting of Vesting Tentative Tract Map No. 066952-(5) ("Vesting Map") and Conditional Use Permit No. 2007-00038-(5) ("CUP") (collectively the "Project") on July 26, 2016, to consider the decisions by the County Regional Planning Commission ("Commission") and County Hearing Officer on whether the Project should be denied due to inactivity. The Commission completed its consideration on the inactivity issue regarding the Project on May 4, 2016, having continued it from December 2, 2015, and reversed the August 4, 2015, Hearing Officer's decision to deny the Project.
2. The applicant, Leona Valley Estates Limited ("applicant"), requested the Vesting Map to authorize the development of 83 single-family lots, two multi-family lots with 34 units, six open-space lots, and one recreation area lot on 292 gross acres within the A-2-2 (Heavy Agricultural – Two Acres Minimum Required Lot Area) Zone. The Project site is located at the intersection of Bouquet Canyon Road and 87th Street West in the Leona Valley Zoned District ("Project Site"). The requested CUP is required because the Project is subject to regulations regarding non-urban hillside management and density-controlled development, and because onsite project grading would exceed 100,000 cubic yards of combined cut/fill material.
3. The Project has a long history. As set forth in more detail in the findings below, that history includes repeated continuances either at the request of the applicant or due to the applicant's tardiness in providing information to the County or in responding to County requests, and due to the applicant's resistance to County recommendations and advice.
4. The Project application was filed with the County Department of Regional Planning ("Regional Planning") on February 13, 2007. The Commission was to first consider the Project on its merits at a public hearing on March 2, 2011, but a month before that scheduled hearing, the applicant submitted revisions to its proposed tentative map. The applicant's late submittal led Regional Planning, which initially had concerns about the Project, to request a continuance of the Commission hearing to allow Regional Planning to consider and analyze the revisions. Accordingly, at the March 2, 2011 Commission hearing, after a presentation by Regional Planning and testimony from the public, the Commission approved a motion to remove the case from its hearing calendar, but instructed Regional Planning to return the Project to the Commission for its consideration on or before June 29, 2011. At that initial March 2, 2011 Commission hearing, the Commission stated that additional time was needed not only for Regional Planning to review the additional applicant materials, but for the

applicant to work with Regional Planning, the Leona Valley Town Council ("Town Council"), and the local community related to Project redesign, and to allow Regional Planning to complete the environmental review and assess the Project against both the existing Antelope Valley Area Plan ("Area Plan") and the then-proposed new Area Plan.

5. As a result of the Commission's direction, a new Commission hearing was noticed for, and held on, June 29, 2011. In its written report submitted to the Commission for that hearing, Regional Planning advised the Commission that it had met with the applicant, but no changes had been made to the Project. As a result, Regional Planning advised that it continued to have concerns about the Project. Regional Planning's stated concerns related to the amount of grading, the manner in which the applicant proposed to preserve open space with respect to clustering and the type of use (vineyards) proposed in open-space areas, hillside impacts, lot sizes, and the proposed wastewater system for the Project. Regional Planning concluded that the Project did not comply with the Area Plan nor the Zoning Code (Title 22 of the Los Angeles County Code) and Subdivision Ordinance (Title 21 of the Los Angeles County Code), did not meet the burden of proof for a CUP as required by Section 22.56.040 of the Zoning Code, and recommended that the Commission deny the Project.
6. Prior to, and at, the June 29, 2011 Commission hearing, the applicant requested a continuance, noting, among other things, that the applicant itself had not timely posted the notice of hearing at the Project Site as required by the Zoning Code. Given that various other legal methods of notice were provided and because the lack of Project Site posting was quickly remedied, the June 29, 2011 Commission hearing was held as scheduled. At that hearing, Regional Planning presented an oral and visual report, the applicant gave a presentation, and testimony was received from Town Council members and others in the community.
7. In its presentation at the June 29, 2011 Commission hearing, Regional Planning staff reiterated its objections to, and concerns about, the Project, and recommended its denial. Staff also reported that it had made repeated requests to the applicant to modify its Project regarding the issues referenced in Finding No. 5 above and that those requests were not heeded. As a result of its recommendation of denial, Regional Planning did not present an environmental review document for the Commission's consideration pursuant to the California Environmental Quality Act ("CEQA"). CEQA does not require approval of an environmental review document when a project is denied. The Director of Regional Planning ("Director") also reported that the applicant, over the years, had simply been unwilling to compromise on the quantity of grading, commercial operations (vineyards) located next to residential uses, and how clustering was to be done. In its Commission testimony, the applicant outlined its Project, testified that it believed the Project did comply with the Zoning Code and relevant County plans, but asked for more time to address staff concerns. After closing the public hearing, and considerable discussion, the Commission denied the Project on its merits based, in large part, on the reasons articulated by, and on the

recommendation of, Regional Planning, including that the applicant had failed to satisfy the burden of proof required as set forth in Section 22.56.040 of the Zoning Code.

8. The applicant appealed the Commission's denial of the Project on the merits to the Board on July 11, 2011. On October 23, 2012, the Board held a public hearing on the Project and referred the matter back to the Commission, instructing the applicant to work with Regional Planning staff on an appropriate redesign of the Project prior to the Commission's reconsideration of the Project.
9. Subsequent to the Board's 2012 hearing, Regional Planning staff reported that no such work with staff had ensued. Therefore, nearly 17 months after the initial 2012 Board hearing on the Project, Regional Planning mailed a letter to the applicant dated March 10, 2014, informing the applicant that the Project would be scheduled for a meeting before a County Hearing Officer on April 15, 2014, to consider denial of the Project due to inactivity. Zoning Code Section 22.56.060 allows a hearing officer to deny a project if the applicant fails to provide information required by Zoning Code Section 22.56.040, the section that requires substantiation by the applicant that the burden of proof for a project has been met. Similar provisions are included in the Subdivision Ordinance in Sections 21.16.060, 21.40.110, and 21.40.160. The County relies on these County Code provisions to consider long-delayed projects for denial due to inactivity.
10. At the request of the applicant, the Hearing Officer meeting regarding Project inactivity was continued twice, first to July 15, 2014 and then to November 4, 2014. Just one week before that last scheduled meeting date, the applicant submitted map revisions to the Regional Planning Land Divisions Section on October 28, 2014. As a result of that submittal of map revisions, at the November 4, 2014 Hearing Officer meeting, the item was removed from the Hearing Officer calendar.
11. The County Subdivision Committee ("Subdivision Committee") met on December 4, 2014, to discuss the applicant's October 28, 2014 submittal regarding the Project. The Subdivision Committee consists of five County Departments, including Regional Planning. The Subdivision Committee Report, dated November 25, 2014, that was prepared for the Subdivision Committee meeting, stated that the Project had not been redesigned to meet any of the recommendations (e.g., reduce density, reduce grading, reduce disturbance to hillsides and steep slopes). After the Subdivision Committee review, each of the five Subdivision Committee member departments placed holds on the Project. A "hold" precludes further review of the Project by the Commission until specified concerns are addressed and the County department placing the hold indicates that the Project is ready for further consideration by the Commission. At the December 4, 2014, Subdivision Committee meeting, the Subdivision Committee granted the applicant a three-month time extension to March 5, 2015, to clear the Subdivision Committee holds.

12. Regional Planning met with the applicant and property owner on February 24, 2015, to further discuss the Project holds. At that time, the applicant requested another three-month extension to work on clearing the holds and/or to submit materials. The Subdivision Committee granted the extension request, this time to June 4, 2015.
13. Despite the previous Hearing Officer extensions and that more than two-and-one-half years had passed since the Board's referral back to the Commission, the applicant failed to provide the requested information and/or materials by the June 4, 2015, Subdivision Committee deadline. As a result, the Subdivision Committee concluded that there was insufficient information to determine the feasibility of the Project design, general plan consistency, or whether approval of the Project would be in the public interest, pursuant to Section 21.40.160 of the Subdivision Ordinance. Further, the Subdivision Committee was unable to recommend a final action to the Commission because of the applicant's inactivity. Moreover, the still essentially unchanged Project could not meet the burden of proof required by Zoning Code Section 22.56.040 in light of the previous conclusion of the Commission in 2011 that the Project did not meet that burden of proof.
14. As a result of the continuing incomplete responses, or lack of responses, to the Subdivision Committee holds, Regional Planning mailed a letter to the applicant, dated June 9, 2015, informing the applicant that pursuant to Subdivision Ordinance Sections 21.16.060 and 21.40.110, the case would be scheduled for a Hearing Officer meeting on August 4, 2015, to consider denying the Project due to inactivity, the fourth time a Hearing Officer session was scheduled for the Project on the inactivity issue. Said June 9, 2015, letter also directed the applicant to appear before the Hearing Officer, and that if the applicant wished to continue to proceed with the Project and sought another time extension, that it should request such an extension at the meeting.
15. Regional Planning staff received an email on July 21, 2015, from the applicant's attorney requesting "an extension of time of ninety (90) days [for the Hearing Officer meeting] to Monday, November 2, 2015."
16. During the August 4, 2015 Hearing Officer meeting, Regional Planning made a brief presentation summarizing the process for denial of a Project due to inactivity. The applicant's attorney and another applicant representative attended that August 4, 2015, Hearing Officer session, providing testimony and requesting a 90-day time extension to allow the Project to continue to be processed without filing a new application. The applicant also requested a specific "road map" and assurances from Regional Planning that complying with such a road map would lead to a recommendation for approval. Regional Planning staff explained that County staff had provided guidance and feedback to the applicant through six Subdivision Committee Reports and in many discussions and meetings that Regional Planning staff had with the applicant in the eight years since the Project

application had been filed. A representative of the Town Council testified in support of staff's recommendation to deny the Project due to inactivity.

17. After hearing public testimony and discussion at the August 4, 2015, Hearing Officer meeting, the Hearing Officer denied the applicant's request for yet another extension because of the numerous previous extensions with no progress made and denied the Project due to inactivity.
18. Pursuant to Zoning Code Sections 22.60.200 and 22.60.230.A, decisions of the Hearing Officer may be appealed to the Commission and decisions of the Commission to the Board; the lower level decision is vacated and reinstated only if done so by the appellate body. In considering the appeal, pursuant to Zoning Code Section 22.60.240.C, the appellate body is limited to considering "only the same application, plans, and materials that were the subject of the original decision." Zoning Code Section 22.60.240.D provides that, on appeal, the appellate body reviews the record of the decision, and hears testimony of the appellant, applicant, and any other interested party.
19. The applicant timely appealed the August 4, 2015, Hearing Officer decision to the Commission, which opened its consideration of the appeal on December 2, 2015. By November 19, 2015, the date on which Regional Planning submitted its report to the Commission for the upcoming meeting, Regional Planning reported that the applicant had "not shown any progress [towards] clearing the Subdivision Committee project comments/holds." Accordingly, Regional Planning recommended in its report that the Commission uphold the Hearing Officer's denial of the Project due to inactivity.
20. At the Commission's December 2, 2015 meeting, following Regional Planning's presentation and testimony by the applicant's representatives and a representative of the Town Council, the Commission continued its consideration of the matter to May 4, 2016, to allow the applicant to work with Regional Planning and the other members of the Subdivision Committee to address the Project holds. Subsequent to the December 2, 2015, Commission meeting, the applicant finally proposed changes to its Project to decrease density by proposing to eliminate the condominium units and address other changes. At the time of the continued May 4, 2016, Commission meeting, however, several County departmental holds remained on the Project. At that May 4, 2016, Commission meeting, after testimony and Commission discussion, the Commission, despite the continued holds, reversed the Hearing Officer's decision to deny the Project for inactivity.
21. On May 13, 2016, the Town Council timely appealed the Commission's latest decision to the Board and a hearing at the Board was scheduled for July 26, 2016.

22. In its written appeal to the Board, the Town Council presented a time line showing the Project's eight-year history from the time of the application through the August 4, 2015, Hearing Officer meeting, when the Project was denied due to inactivity. The Town Council pointed to that history, which included repeated requests for continuances by the applicant, and argued that the applicant "has been dragging [its] feet" and that there was substantial evidence to support the Hearing Officer denial decision. They also pointed out that no Subdivision Committee holds had been cleared by the time of the December 2, 2015, Commission meeting.
23. At the Board's July 26, 2016, hearing on the appeal, following a presentation by Regional Planning that briefly outlined the history of the Project, the Board heard testimony from 17 individuals. Three speakers representing the applicant spoke in favor of the Project. Nine people, including representatives of the Town Council, opposed allowing the Project to continue without filing a new application and, thus, supported reinstatement of the Hearing Officer decision to deny the Project due to inactivity. Five people who testified were either unclear on their position, were neutral, or spoke on a different topic. The testimony of the applicant's representatives focused on the hiring of an engineer after the December 2015 Commission meeting and steps taken by the applicant between that meeting and the Commission's subsequent May 4, 2016, meeting. The applicant's representatives argued that it had thus complied with the Commission's directions and, therefore, the Commission decision to overrule the Hearing Officer should be upheld. The applicant's representatives also asserted that they had continued to make progress up through the Board hearing and that the Town Council had ignored those six months of activity on the Project.
24. During testimony at the Board's July 26, 2016 hearing, one member of the Town Council acknowledged the Town Council's lack of focus on the last six months of alleged Project activity, asserting that said activity was: "not relevant. What we're looking at today is whether or not the Hearing Officer was correct when she denied the Project. That was about a year ago. And, at that time, the facts were that no activity or little activity had been occurring . . . despite repeated continuances and opportunities for the [applicant] to show some type of activity." Other Project opponents objected to the repeated continuances for the Project and that the process had "been allowed to drag on and on" and posited that the length of the process was due, in large part, to the applicant's refusal to make changes to comply with County requirements for more than eight years or to even make "good faith efforts" to address County concerns.
25. Another Town Council member testifying at the Board hearing expressed concerns "about the length of time this project has been on the books" and that after nine-and-one-half years, the Project was "still not in compliance with all the mandates issued by [Regional] Planning," adding that "there had been continuance after continuance after continuance during the whole nine-and-one-half years with little to no activity" and complained that the Project had been "allowed to go on for a seemingly indefinite period of time." Further, Project

opponents expressed frustration over how many opportunities the applicant was allowed more time to continue to process its Project without addressing the concerns of the community, the Commission, or Regional Planning.

26. The Board finds that it is limited by Zoning Code Section 22.56.060 to consider the matter as it existed at the time of the Hearing Officer's decision on August 4, 2015, and concurs with appellant Town Council that any activity occurring since that Hearing Officer decision is not relevant. The Board finds that based on the evidence before the Hearing Officer on August 4, 2015, there was substantial evidence for the Hearing Officer to deny the Project due to inactivity based on Zoning Code Sections 22.56.040 and 22.56.060 and Subdivision Ordinance Sections 21.16.060 and 21.40.160. The Board further finds that, at that time, the applicant had not addressed any of the outstanding issues after this Board previously referred the matter back to the Commission to allow the applicant to do so.
27. The Board finds that, when considering the appeal of the Hearing Officer decision, the Commission was limited to considering the matter as it was considered by the Hearing Officer and that, in reaching its decision, the Commission went beyond the materials that were the subject of the original Hearing Officer decision and, therefore, the Commission exceeded its review authority.
28. The Board, therefore, finds and concludes that the Hearing Officer's decision to deny the Project due to inactivity should be reinstated and the Commission's decision reversed.

THEREFORE, THE BOARD OF SUPERVISORS:

1. Reinstates the decision of the Hearing Officer made on August 4, 2015, regarding the Project and, thus;
2. Denies, due to inactivity, Project No. TR066952-(5), consisting of Vesting Tentative Tract Map No. 066952-(5) and Conditional Use Permit No. 2007-00038-(5).