



City Council

Don Tatzin, Mayor
Cameron Burks, Vice Mayor
Mike Anderson, Council Member
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November 13, 2018

Mr. Dave Trotter
Mayor
Town of Moraga
329 Rheem Boulevard
Moraga, CA 94556

Dear Honorable Mayor Trotter and members of the Moraga Town Council:

As the Bollinger Valley Project adjoins the City of Lafayette, the City and its residents remain very concerned about the potential impacts the project will have on our community. As such, both the Lafayette Circulation Commission and City Council recently held public meetings to discuss the Final Environmental Impact Report (FEIR), dated September 14, 2018, and have submitted to you our November 5, 2018 letter, including the Table of Consolidated Comments on the FEIR, which provides comments on the FEIR.

It has come to Lafayette's attention that, on October 18, 2018, the Moraga Planning Commission has voted to 1) recommend to the City Council that it deny the proposed project and 2) consider a revised project description similar to Alternative 3, rather than the proposed project, an alternative which calls for the development of 37, rather than 126, lots.

Further, on October 22, 2018, the applicant's attorney filed an appeal of the Planning Commission's recommendations to the Town Council. The appeal materials include a November 1, 2018 email from the applicant's planner, Richard Loewke, requesting that the Town Council provide the applicant with information necessary regarding Alternative 6 that would "enable you to make findings of consistency with the General Plan...." Alternative 6 calls for the development of 85 lots.

Given this, Lafayette wishes to provide you with further comments on the FEIR.

The proposed Emergency Evacuation Access (EVA) route for the proposed project, Alternative 3, and Alternative 6, includes portions within Lafayette, to which the City has not agreed.

FEIR project maps, including those for Alternatives 3 and 6, though conceptual, continue to presume an EVA route with portions encroaching in Lafayette jurisdiction. The City of Lafayette has not been approached about this EVA connection, and as such, has not assessed its potential impacts on local streets. Further, as noted in Lafayette's comment letter on the DEIR, it has not been Lafayette's practice to permit emergency access via its residential streets for projects constructed in adjoining jurisdictions." Given that the EIR identifies that Lafayette's approval is required for the EVA route (see DEIR, p. 1-8), the FEIR should have also disclosed there is

no way for Moraga to enforce any requirement concerning construction of the EVA route – for the proposed project or for Alternatives 3 or 6.

As such, the City cannot ensure that either the proposed project nor Alternatives 3 or 6 has the required emergency vehicle access route. This information should have been disclosed in the FEIR and identified as a significant and unavoidable impact. Further, this means that the proposed project and Alternatives 3 and 6 are inconsistent with Moraga’s General Plan policies concerning public services, including – as noted by Moraga Staff in its Staff Report to the Town Council regarding the appeal hearing, Policies 3.1 and 3.3. Further, Policy C1.11, *Emergency Vehicle Access* provides that Moraga must “maintain and improve critical transportation facilities for emergency vehicle access and emergency evacuation needs.” (See DEIR, p. 4.J-9.) The EIR states that, with the proposed EVA, the proposed project “would meet access standards,” but, as detailed above, Moraga cannot enforce any requirements concerning construction of the EVA route for the proposed project or for Alternatives 3 or 6, leaving all inconsistent with General Plan Policy C1.11. (Id.)

Accordingly, there is an undisclosed significant and unavoidable impact, which pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15088.5 requires that the EIR be recirculated. As well, no version of the project that relies on the currently proposed EVA route can be approved, as Lafayette has not approved an EVA on such a route and, as such, the project is inconsistent with Policy C1.11 of Moraga’s General Plan. (See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 [“the propriety of virtually any local decision affect land use and development depends on consistency with the applicable general plan and its elements”].)

Unless, and until, an agreement is reached between the two jurisdictions, the proposed EVA route should be expressly realigned to traverse entirely within Town of Moraga boundaries or the proposed project (and any version that includes the currently proposed EVA route) cannot be approved.

In summary, as also reflected in the City’s prior comments on the DEIR and FEIR, the proposed project will have significant and unavoidable traffic, visual, emergency vehicle access, drainage, and cumulative impacts on Lafayette. Further, even Alternatives 3 and 6 will result in significant and unavoidable emergency vehicle access impacts as it relies on encroachment into Lafayette to avoid significant impacts, something Moraga cannot ensure.

The City agrees with Moraga’s Staff, who recommend in their Staff Report to the Council on the appeal, that Moraga deny the Project. To remain in compliance with CEQA and State Planning and Zoning Law, Moraga cannot approve the proposed project *or any alternative* without first modifying mitigation measures such that the traffic impacts are reduced to a less than significant level without relying on modifications to intersections within Lafayette, as well as avoiding and/or mitigating any significant aesthetic impacts to Lafayette, developing an EVA route for the Project that does not go through Lafayette, and mitigating all significant downstream storm water impacts to Lafayette.

Should Moraga proceed with approval of any version of the proposed project without first complying with CEQA and State Planning and Zoning, Lafayette would be compelled to consider all of its available legal remedies.

Sincerely,



Don Tatzin

Mayor

CC: Cynthia Battenberg, Moraga Town Manager
Derek Farmer, Moraga Planning Director
Lafayette City Council
Steven Falk, Lafayette City Manager
Niroop Srivatsa, Lafayette Planning and Building Director
James Hinkamp, Lafayette Transportation Planner