

10/20/2020

Edcgov.us Mail - Major Update of the Traffic Impact Fee Program - Public Comment

Public Comment #31



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Major Update of the Traffic Impact Fee Program - Public Comment

1 message

Sean MacDiarmid <Sean.MacDiarmid@lennar.com>

Mon, Oct 19, 2020 at 5:56 PM

To: "edc.cob@edcgov.us" <edc.cob@edcgov.us>

Cc: Larry Gualco <Larry.Gualco@lennar.com>

The attached letter is being submitted as public comment on Item 31 on the Board Agenda for tomorrow, item number 20-1254.

Thank you.

Sean

Sean MacDiarmid
Director of Forward Planning

Lennar

1025 Creekside Ridge Drive, Suite 240

Roseville, CA 95678

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LENNAR



TIMFeeLetter(10-19-20).pdf

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LENNAR

October 19, 2020

VIA EMAIL ONLY

Chair Brian K. Veerkamp and
Members of the Board of Supervisors
El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667
E-Mail: edc.cob@edcgov.us

Re: October 20, 2020 Meeting Agenda Item 31; Department of Transportation recommending the Board consider the following information pertaining to the Major Update of the Traffic Impact Fee (TIF) Program and the Capital Improvement Program (CIP) and provide direction on the initial project list for the Major Update to the TIF Program - Carson Crossing Drive/Latrobe Connection CIP 66116

Dear Chair Veerkamp and Honorable Members of the Board of Supervisors:

Lennar Homes of California, Inc. ("Lennar"), successor-in-interest and representative of the owners and developers of the Carson Creek Unit 1 ("Carson Creek") residential development within the Carson Creek Specific Plan area of the unincorporated County, located within County's TIM Fee Program Zone 8.¹

A. The County's Updated TIF Program And Related CIP Must Adhere To Legal Mandates That Require Reimbursement To Developers That Pay More Than Their Fair Share Of Transportation Improvements.

We understand the Board of Supervisors ("Board") is considering the above-referenced agenda item. The County's TIF Program and related CIP Program are critical to ensuring the funding and construction of much-needed transportation infrastructure and improvements that benefit the El Dorado community and the broader region.

These programs are fundamentally premised on the notion that "development pays its own way" such that developers are required to pay impact fees and/or construct specified improvements. *However, a corollary premise is that while developers must pay their fair share of costs associated with new infrastructure that is triggered by their respective developments, constitutional and statutory protections are in*

¹ We understand that the County's current TIM Fee Program will now be identified as the County's TIF Program.

place to ensure that local land use agencies – such as the County – do not impose unlawful mandates on developers to pay more than their proportionate fair share.

As the Board and County staff are well aware, the only practical way that many of the County's significant transportation improvements will be constructed is through the actions of developers, such as Lennar and the other Carson Creek developers, who advance substantial amounts of funding to construct them. This is done so in reliance on the County adhering to its constitutional and statutory obligations to provide fee credit and/or reimbursement to those developers to ensure they are properly reimbursed for costs beyond their proportionate fair share.

Unfortunately, as explained more fully below, it appears that County staff is taking a position that openly disregards the County's legal obligations and instead seeks to deny Lennar and other Carson Creek developers their reimbursement right through purported procedural irregularities; inaccurate proclamations of "discretion" that simply do not exist under applicable law; and/or claims of inadequate funding. None of these excuses passes legal muster.

We appreciate the opportunity to bring this concern to the Board's attention as part of its consideration of the above-referenced agenda item to ensure that in taking action on the proposed update to the TIF Program and related CIP Program, the Board ensures that legal mandates for fee credit/reimbursement for developers who advance funding and construct critical transportation improvements that benefit the broader community – along with basic notions of fair play – are satisfied.

B. The Carson Creek Developers Advanced Substantial Amounts Of Funding To Construct Carson Crossing Drive As Requested By County DOT, Which Constitutes A "Developer-Constructed" Facility That Triggers The County's Reimbursement Obligations.

Lennar sent a letter, attached hereto as Exhibit A, to the County's Department of Transportation ("DOT") on September 4, 2020 which explains that Carson Crossing Drive, constructed as requested by DOT in connection with the Carson Creek Phase 2 Unit 1 Final Map, follows the route of DOT's Latrobe Road Connector Study's Alternative 1, and was designed and graded at DOT's direction for a future 4-lane roadway. Lennar's letter further stated that Carson Crossing Drive is a Developer-Constructed Facility that is a Public Facility consistent with the Public Facilities Finance Plan that is a part of the Original Development Agreement ("DA") adopted by the Board on February 24, 1998.

As constructed, Carson Crossing Drive will accommodate the Alternative 1 alignment that is identified as the Latrobe Connection on the County General Plan's Circulation map dated December 2016 (updated Figure TC-1).

C. County Staff's Refusal To Facilitate Reimbursement To The Carson Creek Developers Is Prohibited Under Applicable Constitutional And Statutory Provisions, And The Board Should Remedy This Failure As Part Of Its Action Taken On The Update To The TIF Program And Related CIP Program.

We understand that the matter currently before the Board involves consideration of the Updated TIF Program and related CIP Program, and thus we will be sending a separate letter from our counsel to the County detailing the legal basis for our specific reimbursement demand. However, the Carson Creek developers' reimbursement right is related to the matter at hand to the extent County staff is refusing to honor the County's reimbursement obligation by improperly relying on procedural hurdles or assertions of "discretion" by pointing to language in the County's Code and the TIF Guidelines, and claiming there is inadequate funding. The Board has the authority to remedy the foregoing by: (1) modifying the County Code and related TIF Administrative Manual to eliminate unlawful provisions; and (2) ensuring that Carson Crossing Drive is listed as a priority improvement in the CIP for the next 5-year period and allocating sufficient funding.

The purpose of the September 4, 2020 was to request that the County honor its reimbursement obligations for the costs to construct Carson Crossing Drive, by providing a reimbursement or credit against future TIM/TIF Fee obligations. The DOT responded to that request on October 2, 2020. A copy of the response letter is attached hereto as Exhibit B. The DOT's response is wholly inadequate and fails to mention that the Carson Creek Drive/Latrobe Connection was on the CIP project list and TIM Fee Program at the time the improvements were constructed, but subsequently and inexplicably removed by the County. The DOT's response further fails to acknowledge that the improvements were built pursuant to the County's request and for the public benefit. The DOT's reliance on the Director's discretion of whether to enter into a reimbursement agreement -- regardless of constitutional and statutory nexus requirements -- is at best disingenuous.

As noted above, the insufficiency of the DOT's response and the Carson Creek developers' constitutional and statutory right to reimbursement and/or credit will be fully presented in a separate detailed response to the DOT's October 2, 2020 letter. However, the Board has the ability to rectify this failure by identifying the Carson Crossing Drive improvements as a priority project for the Updated CIP, and then allocating funds accordingly (see, e.g., County Code §§ 12.28.040, 12.28.080). This major update to the TIF Program and the related CIP provide the County with a fair, lawful and efficient process by which the Carson Creek developers can be reimbursed pursuant to their legal rights. Otherwise, the Carson Creek developers will be forced to consider pursuing all legal remedies to protect their reimbursement rights.

In addition to the foregoing, we strongly recommend the Board consider revisions to the Manual and/or its Code, as needed, to eliminate the inaccurate notion that the

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County has "discretion" to decide whether or not to grant fee credits and/or reimburse developers for funding Developer-Constructed Facilities. While it is appropriate to set forth a process by which reimbursement will occur, the County has no right to ignore constitutional and statutory mandates. The fact that the County administrative manual may state otherwise does not change the law.

* * * *

We appreciate the opportunity to bring to the Board's attention this vital reimbursement issue, and respectfully request that the Board remedy the County's failure to adhere to the law by (1) directing County staff to include Carson Crossing Drive as a priority improvement and allocating funding accordingly; and (2) ensure that the County Code and the related TIF Administrative Manual is revised to accurately reflect the County's reimbursement obligations under relevant statutory and constitutional provisions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Larry Gualco". The signature is fluid and cursive, with a large initial "L" and "G".

Larry Gualco
Vice President
Lennar Homes of California, Inc.



September 4, 2020

Rafael Martinez
Director of Department of Transportation

Sent Via Email

Re: Lennar Homes of California, Inc.'s Request for Credit and Reimbursement Agreement with County with Respect to Reimbursable Developer-Constructed Improvements (Carson Crossing Drive/Latrobe Connector – CIP 66116)

Dear Director:

Lennar Homes of California, Inc. ("Lennar") hereby requests the County of El Dorado ("County") to enter into a Credit and Reimbursement Agreement ("CRA") with it as authorized by County's Adopted Traffic Impact Mitigation Fee Program Administration Manual ("TIM Manual"). The purpose of the CRA will be to reimburse Lennar and its development partners for eligible costs expended in planning and building Developer-Constructed Facilities, as that term is defined in the TIM Manual. More specifically, the eligible costs to be reimbursed or credited are those incurred for the planning and construction of Carson Crossing Drive to accommodate a 4-lane roadway that will serve as the County's Latrobe Connector (CIP 66116).

As relevant background, Lennar is successor-in-interest and representative of the owners and developers of the Carson Creek Unit 1 residential development within the Carson Creek Specific Plan area of the unincorporated County, located within County's TIM Fee Program Zone 8. Carson Crossing Drive was originally planned and designed as a 40-foot, two-lane road to access and serve the Carson Creek Phase 2 Unit 1 development, and it was adequate and met all County standards for that purpose. In 2004, in connection with conceptually approving a consistency finding for Unit 1's tentative subdivision map approval, the County's Planning Department deferred final road improvement details to County's Department of Transportation ("DOT") and EDH Fire. In 2005, DOT recognized an opportunity to make Carson Crossing Drive a 4-lane roadway to serve County's broader regional transportation infrastructure goals, and directed the developers to design such a 4-lane roadway if feasible; they and their engineers did so, developing a plan that accommodated a 4-lane roadway with 11' turn pockets and Class II bike lanes with a 72' right of way ("ROW"). DOT approved the design, and County's Board accordingly approved the project's Final Map, which extended Carson Crossing Drive from its terminus at Euer Ranch (aka Carson Creek Phase 1) to a new intersection at Golden Foothill Parkway South ("GFPS"), which continues east to its signalized intersection with Latrobe Road opposite Club View Drive (the main access to the Blackstone residential subdivision).

DOT formally initiated the Latrobe Connection Project (CIP Project No. 66116) in early 2007, and it has remained in County's Capital Improvements Program ("CIP") to date. The Latrobe Connection Project and related studies proposed and analyzed study designs for a new road that would connect Latrobe Road south of White Rock Road with US 50 west of El Dorado Hills Blvd. (see June 22, 2012, Latrobe Road Connector Study.) The budget for this project as listed in County's 2014 CIP was \$22.65 million.

Carson Crossing Drive, constructed as requested by DOT in connection with the Carson Creek Phase 2 Unit 1 Final Map, follows the route of DOT's Latrobe Road Connector Study's Alternative 1, and was designed and graded at DOT's direction for a future 4-lane roadway, with the inside lanes being constructed immediately. Objective evidence from the Latrobe Road Connector Study also confirms Alternative 1 to be the superior and preferred alternative to studied Alternative 2 in terms of: (1) direct access for Blackstone subdivision residents to the Connector; (2) greater reduction of traffic volumes at

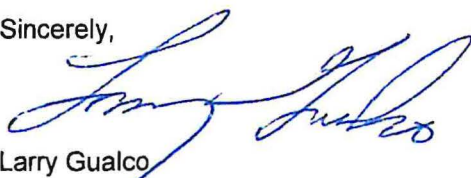
the critical Latrobe Road/White Rock intersection; (3) fewer total lane miles; and (4) almost \$1 million in cost savings.

It is clear that the Alternative 1 alignment, when widened to 4 lanes and extended into Sacramento County, will complete and constitute the Latrobe Connection (CIP Project 66116). Alternative 1 is consistent with the Carson Creek Specific Plan, and the El Dorado and Sacramento County General Plans. The portion of the Alternative 1 alignment designed and constructed by the Carson Creek developers to date was advertised, bid, and constructed in conformance with the Public Contract Code, with bids let on October 29, 2014, and that work was completed in 2017. It is a Developer-Constructed Facility that is a Public Facility consistent with the Public Facilities Finance Plan that is a part of the Original Development Agreement ("DA") adopted by County's Board on February 24, 1998. As constructed, Carson Crossing Drive will accommodate the Alternative 1 alignment that is identified as the Latrobe Connection on the County General Plan's Circulation map dated December 2016 (updated Figure TC-1).

Section 3.3 of the DA expressly provides that if the landowner as part of the project provides improvements within the list of improvements on which County-wide fees are based, the County agrees to enter into a reimbursement agreement with the landowners or provide the landowners a credit against future mitigation fees in the amount of the cost of the improvement.

In light of the above, and the supporting technical evidence submitted with this request, Lennar requests a CRA so that the cost of developing and constructing the Developer-Constructed Facilities – Carson Crossing Drive – can be appropriately reimbursed, or credited to offset Lennar's and its development partners' future TIM Fee obligations. Pursuant to the TIM Manual guidance, the Director should prepare a CRA describing the Developer-Constructed Facilities and eligible reimbursable costs, based on information and data provided by Lennar, as well as the timing of credits and reimbursements. (TIM Manual, § V C., pp. 9-11.) Because the Director has not yet done so, Lennar makes this formal request. Lennar looks forward to working with the County to enter into a CRA that provides fair and equitable reimbursement for the Developer-Constructed Facilities. Please contact the undersigned should you require further information or documentation, and to discuss further. We look forward to hearing from you.

Sincerely,



Larry Gualco
Vice President
Lennar Homes of California, Inc.

cc: Adam Bane, El Dorado County
Andrew Gaber, El Dorado County
Angelo Tsakopoulos, AKT
Angelo Christy, AKT
Dave Crosariol, CTA



DEPARTMENT OF TRANSPORTATION

<http://www.edcgov.us/DOT/>

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MAINTENANCE:
1121 Shakori Drive, South Lake Tahoe, CA 96150
(530) 573-3180 / (530) 577-8402 Fax

October 2, 2020

Larry Gualco, Vice President
Lennar Homes of California
1025 Creekside Ridge Drive, Suite 240
Roseville, CA 95678

Sent Via Email

Re: Request for Credit and Reimbursement Agreement - Carson Crossing Drive

Mr. Gualco,

I am in receipt of your letter dated September 4, 2020 requesting a Credit and Reimbursement Agreement for improvements to Carson Crossing Drive. Unfortunately, the Department of Transportation (Transportation) cannot accommodate your request to prepare a Credit and Reimbursement Agreement for the Carson Crossing Drive project as it would be inconsistent with El Dorado County TIM Fee Reimbursement Guidelines and Section 12.28.110 of the County Code of Ordinances.

As a threshold matter, in order for the improvements to Carson Crossing Drive to receive reimbursement, you would have had to first enter into a Credit and Reimbursement Agreement, and Section V, page 12, of the TIM Fee Administration Manual states that the decision whether to enter into an Agreement is within the sole discretion of the Director of Transportation. These agreements are typically executed before the construction of facilities because Section 12.28.110 of the County Code of Ordinances is clear that reimbursement agreements are only available for new development projects. You can see this reflected in sections 2.0 & 2.1 of the TIM Fee Reimbursement Guidelines that require a developer who desires to enter into a Credit and Reimbursement Agreement to submit a proposed Project Description and Engineers Cost Estimate to Transportation for an eligibility determination as a Pre-Construction Procedure. Transportation staff have been unable to locate any request for a Credit and Reimbursement Agreement or an eligibility determination submitted prior to the start of construction.

Furthermore, section 7.2 Eligibility – states reimbursement shall be made only for projects included in the annually adopted 5-year County Capital Improvement Program (CIP) project list. While project 66116 is a project in the CIP, funding for construction has not been programmed within a five-year period in the current or any other prior CIP, and thus this

work is not eligible for reimbursement. Additionally, section 7.3 Reimbursement Limitations: state that reimbursement shall be reimbursed only from available funds of the RIF or TIM, and is dependent upon the amount of uncommitted funds available in the RIF/TIM fee funds. As the project scope and budget requested is not in the current CIP, or TIM Fee program, there are no uncommitted funds available for reimbursement of this work.

Thank you for your time and attention.

Sincerely,

A handwritten signature in blue ink that reads "Rafael Martinez". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Rafael Martinez
Director

cc: Angelo Tsakopoulos, AKT
Angelo Christy, AKT
Dave Crosariol, CTA

10/20/2020

Edcgov.us Mail - 10-20-2020 BOS Agenda Item #31-List of West End Road Improvement Projects

Public Comment #31



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10-20-2020 BOS Agenda Item #31-List of West End Road Improvement Projects

1 message

Joe Harn <joe.harn@edcgov.us>

Tue, Oct 20, 2020 at 11:35 AM

To: The BOSFOUR <bosfour@edcgov.us>, The BOSFIVE <bosfive@edcgov.us>, The BOSTWO <bostwo@edcgov.us>, The BOSONE <bosone@edcgov.us>, The BOSTHREE <bosthree@edcgov.us>

Cc: Donald Ashton <don.ashton@edcgov.us>, EDC COB <edc.cob@edcgov.us>, Kim Dawson <kim.dawson@edcgov.us>, Sue Hennike <sue.hennike@edcgov.us>, Brian Veerkamp <brian.veerkamp@edcgov.us>, Sue Novasel <sue.novasel@edcgov.us>, Rafael Martinez <rafael.martinez@edcgov.us>, David Livingston <david.livingston@edcgov.us>

Dear Board Members,

In December of 2016 your Board removed a number of road improvement projects from the TIM Fee program. Road improvement projects that had been planned for decades were removed from the TIM Fee program.

A razor thin margin of the public will tolerate well planned growth when funding is available to improve the roads so that the additional traffic can be handled. If the County continues to issue building permits without identifying any revenue streams to make improvements (left turn pockets, acceleration lanes, and deceleration lanes) to roads like Bass Lake and Green Valley, we will erode the public's confidence in our ability to oversee well planned, quality growth.

I believe that your Board should take a serious look at adding back in a number of projects that were removed from the TIM Fee program in December of 2016.

Joe Harn
Auditor-Controller
El Dorado County

