

# The Village at Laguna Hills

Attachment c  
Applicant Comment Letter  
June 28, 2021



June 28, 2021

Matthew S. Gray  
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By Electronic Mail

The Honorable Erica Pezold, Mayor  
The Honorable Don Sedgwick, Mayor Pro Tem  
The Honorable Janine Heft, Councilmember  
The Honorable Bill Hunt, Councilmember  
The Honorable Dave Wheeler, Councilmember

**Re: Village at Laguna Hills - Considerations of Project Consistency with Objective Criteria in the Urban Village Specific Plan**

Dear Mayor Pezold, Mayor Pro Tem Sedgwick, and Members of the Laguna Hills City Council:

The purpose of this letter is to summarize MGP Fund X Laguna Hills, LLC's ("MGP") position with respect to the Council's evaluation of the Village at Laguna Hills ("VLH") for consistency with the City of Laguna Hills General Plan and the Urban Village Specific Plan ("UVSP"). In particular, the Mayor and other members of the Council suggested during the joint Planning Agency / City Council hearing of June 24, 2021, that the UVSP establishes a limitation of 200 residential units within the specific plan area, and on that basis, VLH is inconsistent with the UVSP. As further described below, such an interpretation would be inconsistent with all of the City's prior interpretations of the UVSP and violate MGP's rights to substantive due process and equal protection, and it would further violate State law as a basis upon which to deny the VLH applications.

MGP rejects any contention that the General Plan, the UVSP, or any other applicable regulatory control establishes a maximum residential unit cap within the specific plan area. As described in detail in the Fifth Addendum to the General Plan Program Environmental Impact Report, in the two staff reports submitted in advance of the April 27, 2021 and June 24, 2021, hearings and in the April 2021 Kelly Associates Management Group Memorandum, residential development is limited in the UVSP only by maximum density and by the availability of UVSP trip budgets. The City's professional staff, numerous expert planning and zoning consultants, and the City Attorney have all reached this same conclusion. There is no evidence whatsoever in the record before the Council, including the testimony from the June 24, 2021 hearing, to undermine that interpretation.

The City has repeatedly affirmed that the 200 residential units described in the UVSP's conceptual land use plan are not a limitation on residential development. Indeed, the City addressed this specific question as part of the 2009 General Plan Program Environmental Impact Report, which evaluated the environmental impacts of the City Council's updates to the General Plan, including additional development within the UVSP based on the establishment of

a minimum residential density of 30 units per acre. In that document, the City responded to a comment from the City of Laguna Woods, in which Laguna Woods noted that the 30-units-per-acre density minimum could lead to as many as 985 units on the Oakbrook Village Site. The City's response -- which was formally certified by the City Council -- was as follows:

The Oakbrook Village site is part of the Urban Village Specific Plan (UVSP) area and future expansion opportunities for Oakbrook Village are subject to the same limitations as are all future development projects in the UVSP. ***Future development in the UVSP area is limited by peak hour trips generated within the UVSP area and is allocated on a first-come, first-served basis. For planning purposes, the peak hour trips authorized by the EIR are based on the following breakdown of land uses: 300,000 square feet (SF) of retail uses, a 250-room hotel, 200 residential units, and either 138,000 SF of medical office uses or 380,000 SF of general office uses. The UVSP allows any of the land use categories to exceed the square footage numbers assumed for planning purposes, as long as there is a corresponding decrease in another land use category that has the impact of ensuring that the maximum peak hour trips are not exceeded.*** It should be noted that ***any increase in residential development within the UVSP area will result in a corresponding peak hour trip reduction in other allowed land uses (i.e., office, retail, hotel) within the UVSP area.*** Increasing residential development in the UVSP area will only potentially reduce commuting trips, not increase them, and thereby should reduce traffic, air quality, and noise impacts within the area and region . . . .

(Response to Comment 5-2, attached hereto as Attachment 1 (Emphasis added).)

The City's own response to Comment 5-2 directly rebuts any interpretation that the 200 unit references in the UVSP represent a cap on development, or that while other uses within the UVSP may be interchangeable (e.g., increasing office while decreasing retail) subject to UVSP trip budgets, residential use is capped at 200 units within the plan area.

The City has never interpreted the UVSP to limit residential development to 200 units. Former Mayor and Councilmember Allan Songstad noted in his June 10, 2021, letter that he was a member of the Council when the UVSP was adopted in 2002, when the General Plan was updated in 2009 and when the Council adopted modifications to the UVSP in 2011, and that "the specific uses in the original and modified UVSP were never meant to be a cap on any type of use."<sup>1</sup> In 2012, the City approved the Oakbrook Village Project within the UVSP for development of 489 residential units. In 2016, the City approved the Five Lagunas Project within the UVSP for 988 residential units. As required by the UVSP, the Council evaluated these projects to determine that minimum residential density was met, that maximum density was not exceeded, and that there were sufficient UVSP trip budgets available to accommodate that

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<sup>1</sup> Letter from L. Allan Songstad to Hon. E. Pezold and City Council Members (June 10, 2021), attached here as Attachment 2.)

development. The Council adopted findings confirming that these projects were consistent with the UVSP. To determine now, after sixteen years of findings to the contrary, that the UVSP caps residential use at 200 units, would be arbitrary and capricious and deny MGP its rights to substantive due process and equal protection under state and federal law.

We also urge the Council to take notice of the Housing Accountability Act (Gov. Code § 65589.5; “HAA”). The California Legislature adopted the HAA as a means of addressing the State’s critical housing shortage. In recent years, the Legislature has further strengthened the HAA to limit the ability of cities and counties to deny approval of residential projects that comply with “objective” land use criteria, including by denying development applications, enforcing new design standards, “downzoning” properties to limit density, or by establishing moratoria on residential development. A detailed summary of the HAA, including an explanation of its applicability to VLH, is included as Attachment “i” to the staff report for the April 27th hearing.

Application of a purported residential unit cap in the UVSP as a basis for rejecting VLH would be prohibited under State law. Per the HAA, an “objective” standard is one that involves “no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official.”<sup>2</sup> It is beyond any reasonable debate that, to the extent the Council asserts there is a 200-unit limit on residential development, such density limitation would constitute an “objective” standard under this definition. Under the HAA, in order to reject an application for a qualifying project on the basis that it is inconsistent with an objective standard, the city or county must have provided written notice to the applicant “within 60 days of the date that the application for the housing development project is determined to be complete” for a project with 150 or more residential units.<sup>3</sup> Here, the VLH project applications were determined to be complete on January 22, 2021.<sup>4</sup> The City was required to provide MGP with written notice describing any claimed inconsistency with objective standards by March 23, 2021. The City did not provide the required notice; therefore, any claimed unit cap is irrelevant for purposes of evaluating the VLH applications as it could not legally be invoked as a basis for denying the applications or conditioning the residential component.

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<sup>2</sup> Cal. Govt. Code, § 65589.5(h)(8).

<sup>3</sup> Cal. Govt. Code, § 65589.5(j)(B)(2)(A)(ii).

<sup>4</sup> The formal completeness determination letter is attached hereto as Attachment 3.

Mayor Pezold and Members of the City Council  
June 28, 2021  
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MGP looks forward to the third hearing on VLH and hopes that the information provided here will help to focus the discussion on items that are germane to matters within the lawful purview of the Council.

Sincerely,



Matthew S. Gray

MSG:gjc

cc: Gregory Simonian, City Attorney  
David Chantarangsu, Community Development Director  
Kenneth Rosenfield, Interim City Manager

Attachment 1

(2009 General Plan EIR Response to Comment 5-2)



CITY of LAGUNA WOODS

RECEIVED

APR 10 2009

CITY OF LAGUNA HILLS

Robert B. Ring  
Mayor

Milt Robbins  
Mayor Pro Tem

Cynthia Connors  
Councilmember

Bert Hack  
Councilmember

Marty Rhodes  
Councilmember

Leslie A. Keane  
City Manager

April 10, 2009

Ms. Julie Molloy  
Senior Planner  
City of Laguna Hills  
24035 El Toro Road  
Laguna Hills, CA 92653

**SUBJECT: Comments on the City of Laguna Hills Draft General Plan  
Update and Draft Program Environmental Impact Report**

Dear Ms. Molloy:

Thank you for the opportunity to review and comment on the Laguna Hills Draft General Plan Update (DGPU) and related draft Program Environmental Impact Report (PEIR). The City of Laguna Woods (City) offers the following comments on these reports:

**Increased Housing**

**Urban Village Specific Plan (UVSP)**

The current Urban Village Specific Plan (UVSP) has 756 existing residential units which include the Prado apartment complex (360 units) and the Villa Valencia senior residential development (396 units). The DGPU would allow the UVSP to have a minimum of 30 dwelling units per acre and a maximum of 50 dwelling units per acre. Within the UVSP the Oakbrook Village 19.7 acre site includes 400 units. Under the proposed minimum 30 dwelling unit per acre standard, this could potentially increase to a minimum of 591 units or a maximum of 985 units.

The amount of residential development within the UVSP site raises concerns about traffic, noise, and air quality impacts that could affect residents and businesses in the City of Laguna Woods. Of particular concern are the effects on Laguna Woods' residents who live along Paseo de Valencia.

We recommend that a General Plan Amendment, Specific Plan Amendment, Site Specific Development Plan and Environmental Document be developed concurrently to more adequately analyze the potential impacts from this increase in intensification and the proposed mitigation measures that may be required.

**Letter 5 – City of Laguna Woods**

- 5-1 This comment provides opening remarks and indicates that the City of Laguna Woods has provided comments. No formal response is required.
- 5-2 Comment noted. The statement that the Oakbrook Village site includes 400 residential units is erroneous. The Oakbrook Village site is part of the Urban Village Specific Plan (UVSP) area and future expansion opportunities for Oakbrook Village are subject to the same limitations as are all potential future development projects in the UVSP. Future development in the UVSP area is limited by peak hour trips generated within the UVSP area and is allocated on a first-come, first-served basis. For planning purposes, the peak hour trips authorized by the EIR are based upon the following breakdown of land uses: 300,000 square feet (SF) of retail uses, a 250-room hotel, 200 residential units, and either 138,000 SF of medical office uses or 380,000 SF of general office uses. The UVSP allows any of the land use categories to exceed the square footage numbers assumed for planning purposes, as long as there is a corresponding decrease in another land use category that has the impact of ensuring that the maximum peak hour trips are not exceeded. It should be noted that any increase in residential development within the UVSP area will result in a corresponding peak hour trip reduction in the other allowed land uses (i.e., office, retail, hotel) within the UVSP area. Increasing residential development in the UVSP area will only potentially reduce commuting trips, not increase them, and thereby should reduce traffic, air quality, and noise impacts within the areas and region (than would otherwise be generated by nonresidential development). The EIR fully considers the increase in the level of development allowed in the UVSP area, as anticipated in the proposed General Plan. No application for a specific development expansion plan has currently been filed for the UVSP area. When specific development projects are proposed, additional project-specific environmental analysis will be conducted. Additional environmental documentation could be required, including noise, air quality, and traffic studies. Additionally, the City will consider the appropriate planning documents that may be required, such as but not limited to Specific Plan and General Plan amendments, and site-specific development plans, as development projects are proposed.

### **Increased Commercial**

#### **Urban Village Specific Plan (UVSP)**

The current UVSP includes a mix of retail, office, financial, medical, residential, and transportation uses. The area currently consists of approximately 527,000 sq. ft. medical center use, approximately 633,000 sq. ft. of office space, and 1,124,000 sq. ft. of retail space. The DGPU would allow an additional 117,000 square foot of retail space beyond that currently provided in the UVSP.

The City is concerned that without a project-specific plan proposed, potential impacts from traffic, noise, and air quality cannot be adequately analyzed. We have the same concern here as with the proposed residential intensification over impacts on Laguna Woods' residents who reside along Paseo de Valencia.

We recommend that a General Plan Amendment, Specific Plan Amendment, and a Site Specific Development Plan be developed concurrently so that the proposed 117,000 square foot increase in retail space can be more adequately analyzed along with appropriate mitigation measures that may be required.

### **Increased Traffic**

Additional analysis of full implementation of the DGPU should be conducted on potential impacts on intersections in Laguna Woods. In particular, the City is concerned with additional trips on El Toro Road and Moulton Parkway from the proposed intensifications of the Urban Village, Via Lomis, and Moulton & LaPaz project areas.

According to Figure 5.14-5, 2030 Average Daily Traffic (ADT) volumes are projected to increase by 65% on Moulton Parkway north of the Laguna Woods city boundary and by 48% to the south of the City's boundary from what currently exists. There are no data provided in the DGPU or PEIR regarding potential impacts that this increased traffic would have on Moulton Parkway or intersections within the City of Laguna Woods. The latest Orange County Congestion Management Program (OC CMP) reports that the Moulton Parkway/El Toro Road intersection already operates at LOS D during both a.m. and p.m. peak hours. With the build-out of the approved Laguna Woods' General Plan, this intersection may reach LOS E.

Average daily trips for the main intersections serving the Urban Village area are projected to rise by 23,742 trips, but no analysis has been conducted of nearby intersections in or adjacent to Laguna Woods. For example, traffic along Paseo De Valencia is anticipated to increase 27% to 35% which would cause the level of service to rise from A's and B's to C's and D's. Actual traffic numbers may be greater than what is provided in the PEIR; a site specific project has not been proposed and a project specific traffic analysis has not been completed.

5-3

5-3

Please refer to response 5-2.

5-4

5-4

Please refer to topical response #1. In addition, please consider the following. The purpose of the traffic study conducted for this project is to update the City of Laguna Hills General Plan and analyze the impacts of implementing the proposed General Plan. As future development projects are proposed in Laguna Hills (e.g., specific development proposals in the Urban Village area) project-level environmental analysis, including a traffic analysis, will be conducted. This analysis would include analyzing the project's effect on traffic outside of the City of Laguna Hills (i.e., Laguna Woods intersections).

Changes in traffic volumes on arterial highways are due to growth in the entire region not just the City of Laguna Hills or Laguna Woods. Please refer to topical response #1 for further discussion on this subject. The Laguna Hills Traffic Analysis Model (LHTAM) is consistent with the Orange County Transportation Analysis Model (OCTAM) and the volumes described are anticipated in OCTAM regardless of the Laguna Hills General Plan Update.

The deletion of Santa Maria Avenue and portions of Ridge Route Drive is a proposal being pursued by other agencies and its impact must be independently evaluated. Any concerns regarding these deletions should be evaluated by the proponents of the deletions. The Laguna Hills Traffic Study is consistent with the MPAH that is currently approved, and analysis of the proposed arterial highway deletions is beyond the scope of this EIR.



Attachment 2

(June 10, 2021 A. Songstad Letter)



SONGSTAD RANDALL  
COFFEE HUMPHREY LLP

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Costa Mesa, CA 92626  
T: 949-757-1600  
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L. Allan Songstad, Jr. Esq.  
asongstad@sr-firm.com

June 10, 2021

The Honorable Mayor Erica Pezold and City Councilmembers  
City of Laguna Hills  
24035 El Toro Rd  
Laguna Hills 92653

**Re:** Support of the Village at Laguna Hills Project

Dear Mayor Pezold and Councilmembers:

I write in support of the Village at Laguna Hills project. As a former 18-year member of the city council (5 of those years as mayor), I am writing to provide my perspective on the project, the staff report and recommendations and the Development Agreement (DA). I understand that a number of concerns have been raised by the public.

**Consistency with the Urban Village Specific Plan as Modified ( UVSP ):**

I was on the council in 2002 when the UVSP was adopted. I was also on the council in 2009 when the General Plan was updated and in 2011 when the UVSP was modified. The UVSP was essentially an invitation to redevelop the mall and surrounding property including Oakbrook Village. It was a concern of the council that the mall and surrounding areas were declining. As major assets to the city, it was thought that some incentive was needed to prompt action by the owners. Other than the trip count, the uses in the UVSP were not fixed intentionally to give the owners flexibility. Oakbrook took advantage of the council's vision and has redeveloped its site. I personally had meetings, along with the city manager, with the owner of the mall (Simon Companies) to encourage it to submit a plan. Unfortunately, Simon did not take advantage of the opportunity and the council's concerns regarding the viability of the mall have come to fruition. The specific uses in the original and the modified UVSP were never meant to be a cap on any type of use. Such a cap would have been counter to the goals of the council. Staff's analysis of this issue is absolutely accurate.

**CEQA**

I have also heard that concerns have been raised about the use of addendums to the PEIR for compliance with CEQA. This concern is unfounded. This process has been successfully used four times without challenge. The consultants and the city attorney are on solid ground in the use of this procedure. I speak not only as a former councilmember but as a practicing attorney for fifty years. I have attached my resume for your review.

To: The Honorable Mayor Erica Pezold and City Councilmembers

June 10, 2021

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### **Development Agreement**

There should be no concerns about the DA. It is a well written document which provides benefits and obligations to both parties as do all negotiated agreements. In order to provide certainty to the owner it vests entitlement rights in exchange for concessions in favor of the city. Those benefits include \$26 million dollars to the city. Over 2.2 million in community benefit payments for loss of sales tax and 18 million in nonrefundable and guaranteed park fees. The agreement provides for the timing of development, a hotel, affordable housing and substantial additional public benefits as described on pages 79- 84 of the April 27, 2021 staff report and sections 7 through 10 of the DA. Although the city has lost sales tax revenue, the owner has also had little to no return on its substantial investment in the property. Yet the owner in exchange for entitlements has agreed to considerable financial concessions to the city.

### **Disapproval**

What happens if the project and DA are not approved? In that, hopefully, unlikely event, the city will most likely be subject to costly litigation from a variety of sources including the state of California. Since there would be no development agreement, the benefits as described in the staff report and Development Agreement would be lost. Loss of the Development Agreement would have severe financial consequences for the City. Disapproval would result in either a blighted area or a use (such as entirely residential) inconsistent with the mixed-use concept developed long ago. I am confident the council will not take this disastrous route.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Allan Songstad, Jr.", written in a cursive style.

L. Allan Songstad, Jr., Esq.

of SONGSTAD RANDALL COFFEE & HUMPHREY LLP



## SONGSTAD RANDALL COFFEE HUMPHREY LLP

Allan Songstad Jr

**Allan Songstad, Jr.**  
**Costa Mesa,**  
**California**  
**Founding Partner**

Allan Songstad, Jr. is a founding partner of Songstad Randall Coffee & Humphrey LLP. He was formerly a partner and managing partner of Meserve, Mumper & Hughes LLP. Mr. Songstad's practice involves all forms of real estate disputes, including enforcement and defense of contract actions, title and escrow claims, land use and real estate related partnership matters. Mr. Songstad has handled corporate disputes, including actions by and among shareholders, directors and officers, and the defense and prosecution of derivative and class actions. He has prosecuted and defended actions involving financial institutions, as well as professional liability actions, general commercial litigation, some forms of creditor bankruptcy matters and insurance coverage disputes, transportation law, employment, securities, corporations, partnerships, and oil and gas. Mr. Songstad has participated as lead counsel in both bench and jury trials in federal and state courts and has substantial appellate experience. Mr. Songstad was honored as a "Super Lawyer" by Law & Politics Magazine and the publishers of Los Angeles Magazine which recognizes the best lawyers in Southern California.



Arbitrator, Los Angeles County Bar Association Attorney Fee  
Dispute Resolution Program  
Member, Orange County Bar Association  
Member, Los Angeles County Bar Association  
Member, American Bar Association  
Member, Association of Business Trial Lawyers  
Licensed Real Estate Broker

## **Areas of Practice**

Real Estate  
Title and Escrow  
Land Use  
Transportation Law  
Oil and Gas  
Trade Secret  
Unfair Competition

## **Educational History**

J.D., Hastings College of Law (1970)  
B.A. (Political Science), University of Southern California (1967)  
Member, Hastings Law Journal

## **Bar Admissions**

State of California  
U.S. District Court, Central District of California  
U.S. District Court, Eastern District of California  
U.S. District Court, Western District of California  
U.S. District Court, Southern District of California  
U.S. District Court, Northern District of California  
U.S. Court of Appeals for the Ninth Circuit  
U.S. Court of Appeals for the Tenth Circuit

## **Legal History**

Partner, Songstad Randall Coffee & Humphrey LLP (1996 to present)  
Managing Partner, Meserve, Mumper & Hughes (1979-1996)  
Partner, Meserve, Mumper & Hughes (1977-1996)

## **Legal, Business and Civic Activities**

Council Member, City of Laguna Hills  
Mayor, City of Laguna Hills (five terms)  
Member, Board of Directors of the El Toro Reuse Planning  
Chairman of the Board of Directors of the El Toro Reuse Planning Authority  
President, Orange County Division of the League of California Cities  
Member, Board of Directors of the League of California Cities  
Member, Board of Directors for the Orangewood Children's Foundation  
Lecturer, California Continuing Education of the Bar  
Panelist, Los Angeles County Bar Association Law and Motion  
Judge Pro Tem, Los Angeles Municipal Court

Attachment 3

(January 22, 2021 Application Completeness Determination Letter)



# CITY OF LAGUNA HILLS

January 22, 2021

Mr. Dave Geiser  
MGP Fund X Laguna Hills, LLC  
4365 Executive Drive  
San Diego, CA 92121

**SUBJECT:       USE-0010-2019 (THE VILLAGE AT LAGUNA HILLS)  
                  COMPLETENESS REVIEW (January 14, 2021 RESUBMITTAL)**

Dear Mr. Geiser,

On January 14, 2021 the Community Development Department received a resubmittal of application materials for the Village at Laguna Hills. Pursuant to the City's development application review process, City staff conducted an in-depth review of the project materials to determine the completeness and accuracy of the resubmittal. Based on our review, in accordance with Section 9-92.050 (Requirements for Complete Applications) of the Laguna Hills Development Code (Title 9 [Zoning and Subdivisions] of the Laguna Hills Municipal Code) and Section 65943(a) of the California Government Code, the City has determined that the development application is complete.

If you have any questions, please feel free to contact me at (949) 707-2675.

Sincerely,

David Chantarangsu, AICP  
Community Development Director

Cc:     Ken Rosenfield, Acting City Manager  
        Greg Simonian, City Attorney  
        Jay Wu, Senior Planner  
        Jorge Estrada, Placeworks  
        Karen Gulley, Placeworks  
        Bill Kelly, KAMG