

# PLANNING COMMISSION

Meeting Date: 11/6/2023

## ADDITIONAL ITEM ADDED AFTER DISTRIBUTION OF PACKET (4)

### AGENDA ITEM # 3

Applicant/Project Name: Restaurant Row Specific Plan  
Project Number: SP22-0004

Brief Description: Letter from Withers Bergman

Date 11/8/2023  
Time 5:00 pm

November 3, 2023

**Via Email ([sdelsolar@san-marcos.net](mailto:sdelsolar@san-marcos.net))**

City of San Marcos  
Planning Division  
Attention: Sean del Solar  
1 Civic Center Drive  
San Marcos, California 92069

**Re: Reply to Responses to Comments to Initial Study/Mitigated Negative Declaration for the Restaurant Row Project, Project No. SP22-0004, Environmental Document No. ND23-011, dated August 2023**

Dear Mr. Solar:

As you know, this office represents Fish House Vera Cruz ("FHVC"). This letter replies to the City's responses to FHVC's comments submitted on September 20, 2023. The City's analysis remains inadequate as to parking impacts (that may create secondary environmental impacts) and VMT impacts. As to FHVC's valid parking issues raised in letters dated September 20, 2023 and October 27, 2023, the City's response directs to a new October 10, 2023 study of existing parking counts and indicates that parking usage based on that study supports a lower parking standard than the uniform standard imposed by the SMMC. However, when FHVC asserted that the City's existing driveway counts served as the basis for the exiting VMT, the City casts that data aside as not representative of existing conditions. The City is wrong to apply uneven standards and should not take opposite positions depending upon the more favorable environmental outcome. The cumulative effect of the City's material inconsistency is that the proposed Project's environmental impacts are obscured, and the public will be deprived of a good faith effort at full disclosure.

In addition, the City's stance that the multitude of parking easements is a private matter, not a CEQA issue, is incorrect insofar as the approval would have negative impacts to parking that result in secondary environmental impacts. As FHVC will present at the Planning Commission meeting on November 6, 2023, the parking easements provide FHVC with applicable remedies, and the City bears liability for inverse condemnation on the basis of interference with the dominant tenement's parking rights.

FHVC requests that the City prepare additional parking studies and a formal VMT analysis so that the impacts of the proposed Project are discussed in full detail.

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### **Reply to Comments 05-8 and 05-7**

The Project requires 477 spaces and will have a supply of 501 spaces, as summarized in Table A, below, leaving it with just **24 parking spaces** to for the adjacent property owners. Pursuant to various easements and land use approvals discussed in Table B, below, the Project is required to provide 93 parking spaces to adjacent owners. The result is a deficit of **69 parking spaces**.

The City's responds that the Project will have 100 parking spaces unreserved for the public, but again, as shown in Table A, below, those 100 parking spaces are largely used to satisfy the Project's own required parking supply, with the exception of 24 parking spaces.

*Table A: Proposed Project Parking Supply Requirements*

Land Use	Quantity	Parking Supply Rate	Required Parking Supply
Multi-Family (2 BR)	107 units	1.75 per unit	188
Multi-Family (3+ BR)	95 units	2 per unit	190
Guest Parking	202 units	0.15 per unit	31
Park Site	1.1 acres	9 per acre	10
Sit-Down Restaurant > 2,000 SF	3,232 SF	7.5 spaces per 1,000 SF	24
Take-Out Restaurant < 2,000 SF	4,063 SF	6.5 spaces per 1,000 SF	27
Retail	2,280 SF	3 spaces per 1,000 SF	7
Proposed Project Parking Supply Requirements			477
Proposed Project Parking Supply			501
Remaining Parking Supply for Adjacent Owners			24

*Table B: Applicant's Parking Obligations to Adjacent Owners*

Description	Required Parking Supply
<b>Property:</b> FHVC Property	36
<b>Document:</b> Easement Agreement dated July 21, 1989, recorded on January 30, 1990, as Document Number 1990-050972 (the "1990 Easement").	
<b>Description:</b> The Applicant is required to provide 36 parking spaces to FHVC. The 1990 Easement satisfied FHVC's site development requirements that were imposed by the City in 1989.	
<b>Property:</b> 1180 W San Marcos Blvd, APN 210-200-52-00 (the "Edwards Property")	57

<p><b>Document:</b> CUP-94-255 ("1994 CUP")</p> <p><b>Description:</b> CUP-94-255 (the "1994 CUP") requires the Edwards Property owner to have 782 parking spaces. The OCRR Parking Analysis claims that "[t]here are more than 782 parking spaces available to the theatre without reliance on the Proposed Project site, so development of the Proposed Project will not cause the theater to have access to fewer than 782 parking spaces."</p> <p>This claim does not appear to be accurate. Currently, the Edwards Property has only 725 parking spaces. The 85 parking spaces located on the former Sears property (the "Sears Property") is no longer available to the Applicant since the Sears leasehold interest has terminated, and a mixed use apartment/retail development will take its place. Thus, the Edwards Property owner will require <b><u>57 parking spaces</u></b> from the Proposed Project site.</p>	
<p><b>Property:</b> the Edwards Property; 338 Via Vera Cruz, APN 219-200-42-00 ("338 Via Vera Cruz Property"); 1000 W San Marcos, Blvd, APN 219-200-200-00 (the "Wells Fargo Property")</p> <p><b>Document:</b> Declaration of Reciprocal Easement Agreements dated September 11, 1996, recorded on November 7, 1996, as Document Number 1996-0564623 ("1999 REA")</p> <p><b>Description:</b> The Applicant is required to provide the Edwards Property, the 338 Via Vera Cruz Property, and the Wells Fargo Property shared parking rights on the Proposed Project site.</p>	Unspecified
Minimum Parking Supply for Adjacent Owners	93
Remaining Parking Supply for Adjacent Owners	24
Parking Supply Deficit	(69)

#### Reply to Comments 05-9, 05-10, 05-11, and 05-12

The City states that at its comparable Innovation Park, 30 people were observed at the four pickleball courts on a Saturday morning, on an undisclosed date. The comparison is not applicable, as Innovation Park does not have dedicated bleachers for players in waiting, and requires street parking that is subject to a two-hour limit. Even with those limitations, the pickleball uses at Innovation Park have drawn criticism from the public based upon noise, crowding (i.e., camping), and failure to follow hours of operation:

 **Samantha Lee**  
3 reviews

★★★★★ 3 weeks ago **NEW**

I live in the apartment complex directly facing innovation park. I can not stand it. Pickleball players come before designated times to line up with no regard to the people living in the area.

They also stay much later than when it is supposed to be locked. I have even heard heard a GROWN MAN say, "just 15 more minutes", like a child begging for more time on a swing.

Residents at each complex are putting together a petition to change court hours because it is so out of control. Who needs to blast music while playing pickleball?

I have no idea why their is even a park between where people live.

However, the parents who visit the park with their kids are great. Respectful, kind and pick up after themselves.

 **Jack**  
Local Guide · 227 reviews · 193 photos

★★★★★ 4 months ago

Very nice & clean park! Went for pickleball. There are 4 courts and people do camp out regardless of people waiting.

 Like

#### Reply to Comment 05-13

The City has used gross SF (as opposed to the more lenient leasable SF standard) throughout its VMT analysis and thus, for purposes of its parking analysis, the City should remain consistent and be held to the more conservative gross SF standard. The City should not be permitted to "cherry-pick" among standards that are most favorable to a finding of no impact, rather the City is required to analyze the environmental impact that reflects a good faith effort at full disclosure. CEQA's demand at good faith effort of full disclosure is true whether or not the City includes a Specific Plan.

#### Reply to Comment 05-14

The City's response to comment is inadequate. The restaurant spaces are expected to total 7,295 SF, meaning that an additional 2,553 SF would be permitted by right. Using the standard of 6.5 spaces per 1,000 SF, an additional 17 parking spaces would be required for the outdoor dining uses alone. The City does not describe how the impacts of additional outdoor dining uses will be accounted for with respect to parking. Refer to Reply to Comment 05-13 for a discussion of CEQA's demand of a good faith effort at full disclosure.

#### Reply to Comment 05-15

Refer to Reply to Comment 05-14 for a discussion regarding the inadequacy of the parking rate.

### **Reply to Comment 05-19**

With respect to the ADTs for the multi-family uses, the 1.1 acre public park is part of the Proposed Project and therefore should be included in the density calculation. The land that is proposed to be developed as the 1.1 acre public park is currently owned by the Applicant and is not separately owned by the City. In the same way that the Project's public dog park and community public community gathering areas are included in the density calculation, so too should the 1.1 acre public park should be included. When included, the trip rate should use the standard of 8 ADTs per dwelling.

With respect to "Strip Commercial" uses, the City used the strip commercial standard, which is 40 ADTs per 1,000 square feet. For restaurant uses, however, SANDAG's ADTs for a "sit-down, high turnover" restaurant is 160 ADTs per square feet, and for a "fast food (without drive-through)" restaurant is 700 ADTs per square feet. The Proposed Project's commercial uses proposes 3,232 square feet of "sit down restaurant" uses and 4,063 square feet of "take-out restaurant", and just 2,280 square feet of retail. In other words, 77% of the commercial uses are for restaurant uses. Using SANDAG's trip rates, the sit down restaurant would generate 517 ADTs, the take-out restaurant would generate 2,844 ADTs, and the retail would generate 91 ADTs, for a grand total of 3,452 ADTs. Even if the take-out restaurant were to be categorized as a "sit down, high turnover" restaurant, those uses would generate 650 ADTs, for a grand total of 1,258 ADTs for the commercial uses.

With respect to the 1.1 acre park that contains four pickleball courts, SANDAG's trip rates for tennis and racquetball, on a per court basis, is the more specific and accurate metric for calculating ADTs. The City now claims that SANDAG's trip rate of 16 ADTs per acre are "more appropriate", and reaches this conclusion by asserting that the lower trip counts better account for the size discrepancy (pickleball courts are smaller) and potentially the uses. Those claims fail—there is no evidence in the record to suggest that smaller recreational facilities will generate less trips.

The resulting ADT and VMT calculations are thus described as follows:

*Table C: Proposed Project Trip Generation*

Land Use	Units	Trip Rate	ADT	Trip Length	VMT
Multi-Family Units	202 dwelling units	8 per dwelling unit	1,616	6.39	10,326
Sit Down Restaurant	3,232 square feet	160 per 1,000 square feet	517	5.39	2,786
Take Out Restaurant	2,280 square feet	700 per 1,000 square feet	2,844	5.39	15,329
Retail	2,280 square feet	40 per 1,000 square feet	91	5.39	490
City Park	1.1 acres	50 per acre	55	7.63	420
Pickleball	4 courts	40 per court	160	7.63	1,221
Project Total			5,123		30,572

Based on the updated trip rate standards in Table C, it is clear that the City vastly underestimated the ADT and VMT that the Proposed Project would generate.

### **Reply to Comments 05-20 and 05-21**

The eastern portion of the Project site formerly contained a long narrow building that housed small restaurants and a couple of shops; these were all torn down approximately 7 years ago. Thus, there has not been 63,484 SF of

restaurant uses for the better part of a decade and thus, the 34,216 VMTs standard is illusory. This fact is brought home by the City's driveway count data, which showed 11,745 VMTs. (However, it should be noted that the City's driveway count data included one-half of the driveway counts at the primary entrance of Cocina del Charro and Buffalo Wild Wings restaurants, and likely should have been excluded entirely.) If the buildings that were demolished in 2016 were subtracted from the SF totals as used in the VMT analysis, it is likely that the proposed Project would result in a net increase in VMTs.

Under the mixed-use impact threshold, and based upon the values specified in Table C, the proposed Project would similarly result in an increase in VMTs.

**Final Comments**

We appreciate the opportunity to reply to the responses to comments and look forward to discussing FHVC's comments at the upcoming Planning Commission meeting. If you have any questions regarding these comments, please contact Yin T. Ho at (415) 872-3232 or W. Stephen Wilson at (415) 872-3212.

Very truly yours,

Withers Bergman LLP,



Yin T. Ho