

PLANNING COMMISSION

ADDITIONAL ITEM ADDED AFTER DISTRIBUTION OF PACKET

Agenda # 2
SMUSD

- 1). Email / Letters from
David Carr; Dated 11/4/13 (Carr)
10/14/13 (DeLano +
9/21/13 (Carr) DeLano)

Date 11/4/13
Time 11:45 AM

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NOV 04 2013

Kiss, Lisa

From: Scollick, Phil
Sent: Monday, November 04, 2013 11:28 AM
To: Backoff, Jerry
Cc: Kiss, Lisa
Subject: FW: Palnning Commission Meeting 11/04/2013
Attachments: K8CITY09212013.doc; K8CCF10142013_0001.pdf; K8Planning11042013.doc

Importance: High

Please see below.

From: SunOrganic Farm [<mailto:sales@sunorganic.com>]
Sent: Monday, November 04, 2013 11:21 AM
To: Scollick, Phil
Subject: Palnning Commission Meeting 11/04/2013

Dear Mr. Scollick;

Regarding the Planning Commission meeting tonight, please see the attached 3 items and distribute to the members for consideration.

Thank you - and please acknowledge,
David Carr

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CITY OF SAN MARCOS
PLANNING DIVISION

David Carr
3322 Venado Street
Carlsbad, CA 92009
sales@SunOrganic.com
769-510-8077 days

San Marcos Planning Commission
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069 – via email

November 4, 2013

Re: K8 School Consideration November 4, 2013

Dear Members of the Planning Commission;

I own vacant property (APN 222-121-18-00) directly West of the proposed K8 school site. We share a boundary of almost ¼ mile.

I have attached a letter dated September 21, 2013 sent to Mr. Backoff outlining concerns of several property owners in the area. We believe this is the newest and most intense intrusion (of many) into the Attebury Hills area making the current A-1 zoning no longer reasonable. The school is described in the EIR as a 'landmark' and will dramatically alter the character of the neighborhood. Given efforts last year by several property owners to keep Estate zoning we feel that a review of this should happen concurrent with any changes by the City condoning the school. A long and expensive process by the few remaining A-1 property owners should not be necessary.

Specific to my property – extending the impact of the school to my 10+ acres would allow 131 condos – not the 2, 4 acre lots I am now allowed.

The area is already dotted with SPA intrusions into the A-1 area allowing higher density than those of us left in the A-1 zone enjoy. It would be inconsistent for the City to condone this high intensity use when just a year ago resident requests were denied based on a desire to keep this area 'rural'.

It is confusing to me that according to the Agenda Report the Recommendation is to find that the "application..... is consistent with the General Plan." While the resolution clearly states that it currently is not. I would also ask that Section C of the resolution be changed from "...once the General Plan..." to "...if the General Plan...". As currently written this assumes an action that requires careful review by this Commission and may or may not happen.

Finally, the resolution notes the EIR passed by the San Marcos Unified School District. Also attached is a letter from my attorney outlining problems with the EIR that have not been addressed to this date.

Sincerely,

David Carr



DELANO & DELANO

October 14, 2013

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CITY OF SAN MARCOS
PLANNING DIVISION

VIA E-MAIL & U.S. MAIL

Khary Knowles
Facilities Planning and Development
San Marcos Unified School District
255 Pico Avenue
San Marcos, CA 92069

Re: October 15, 2013 SMUSD Board Meeting; Agenda Item #9.4: Proposed K-8 School Project and EIR

Dear San Marcos Unified School District:

This letter is submitted on behalf of David Carr in connection with the proposed K-8 school project ("Project") and related Environmental Impact Report ("EIR").

The California Environmental Quality Act ("CEQA"), Pub. Res. Code §§ 21000 – 21177, must be interpreted "so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v. Board of Supervisors*, 8 Cal. App. 3d 247, 259 (1972). If an EIR fails to provide agency decision-makers and the public with all relevant information regarding a project that is necessary for informed decision-making and informed public participation, the EIR is legally deficient and the agency's decision must be set aside. *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 712 (1990). An EIR is "aptly described as the 'heart of CEQA'"; its purpose is to inform the public and its responsible officials of the environmental consequences before they are made. *Laurel Heights Improvement Assoc. v. University of California*, 47 Cal.3d 376, 392 (1988). Here, the EIR is inadequate.

The District has failed to provide adequate opportunities for public participation. CEQA is premised in part on "a belief that citizens can make important contributions to environmental protection and ... notions of democratic decision-making ..." *Concerned Citizens of Costa Mesa, Inc. v. 32nd Agricultural Assoc.* (1986) 42 Cal.3d 929, 936. "Environmental review derives its vitality from public participation." *Ocean View Estates Homeowners Assn. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 400. Yet the District has rushed the process, not allowing adequate time for public review of the draft EIR, then rushing the final EIR to hearing without adequate opportunities for consideration of the significant changes to the draft EIR.

EVERETT L. DELANO III
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The EIR's discussion of aesthetics, community character, agricultural resources and land use impacts is insufficient. There is no acknowledgment that the large school would change the area and neighborhoods. EIR at 4.1-5 to 4.1-7. Furthermore, just because construction impacts are not permanent, does not mean they are insignificant.

Additionally, the Project is inconsistent with existing General Plan and zoning restrictions. EIR at 4.2-6. Yet the EIR fails to analyze impacts if the District decides to avoid these restrictions, as it claims it may do by invoking Government Code Section 53094. *See also* EIR 4.10-5.

The EIR's discussion of traffic and greenhouse gas emissions impacts is insufficient. The assumption of 20% bike/walk to school is unrealistic, particularly since the Project site is on a winding road with steep hills and cars traveling at fast speeds.

The Project is likely to lead to water supply impacts. There is an inadequate showing of water supply for the Project. The California Supreme Court recently identified three "principles for analytical adequacy under CEQA":

- (1) "CEQA's informational purposes are not satisfied by an EIR that simply ignores or assumes a solution to a problem of supplying water to a proposed land use project";
- (2) "an adequate environmental impact analysis for a large project, to be built and occupied over a number of years, cannot be limited to the water supply for the first stage or the first few years"; and
- (3) "the future water supplies identified and analyzed must bear a likelihood of actually proving available An EIR for a land use project must address the impacts of likely future water sources, and the EIR's discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water's availability."

Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 430 – 32 (emphasis in original) (citations omitted). The EIR fails to comply with these mandates. The EIR mentions the availability of water infrastructure, but there is inadequate discussion of drought or possible shortages of future water supplies for the Project and the area.

CEQA requires that an EIR "produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned." *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750 – 51. "[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." CEQA Guidelines § 15126.6(b). "Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process." *Laurel Heights Improvement Assoc. v. University of California* (1988) 47 Cal.3d 376, 404.

CEQA contains a "substantive mandate" that agencies refrain from approving a project with significant environmental effects if "there are feasible alternatives or mitigation measures" that can substantially lessen or avoid those effects. *Mountain Lion Foundation v. Fish and Game Comm.* (1997) 16 Cal.4th 105, 134; Pub. Res. Code § 21002. It "requires public agencies to deny approval of a project with significant adverse effects when feasible alternatives or feasible mitigation measures can substantially lessen such effects." *Sierra Club v. Gilroy* (1990) 222 Cal.App.3d 30, 41. The FEIR was required to consider and the District is required to adopt feasible mitigation and alternatives that can lessen or avoid the significant Project impacts. *City of Marina v. Board of Trustees of the California State Univ.* (2006) 2006 39 Cal.4th 341, 360; *see also* CEQA Guidelines § 15126.6(b). The EIR acknowledges significant impacts to agricultural resources but fails to consider mitigation. The California Department of Conservation administers the California Farmland Conservancy Program, which allows for the conservation of agricultural lands (see attached information from the Department's website). There is no consideration given in the EIR or elsewhere to mitigation for agricultural resource impacts that would set aside agricultural land, such as the purchase of an agricultural conservation easement, associated with Project impacts.

Furthermore, the Project and its objectives are defined too narrowly, thereby resulting in a narrowing of the consideration of alternatives to the Project. *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1455.

The EIR is sufficiently lacking that the only way to fix these issues is to revise it and recirculate an adequate report. Furthermore, the significant changes made between the draft and final EIR require the report to be recirculated.

The District's discretion to adopt a Statement of Overriding Considerations is limited; it must justify its overrides by written findings based on substantial evidence in the record. Pub. Res. Code § 21081; CEQA Guidelines §§ 15021, 15091, 15093(b). Here, the evidence is insufficient.

Thank you for your consideration of the above comments. If you have a question or need additional information, please contact me.

Sincerely,



Everett DeLano

Enc.



Department of Conservation

[DLRP \(/DLRP/Pages/Index.aspx\)](#) > [CFCP \(/dlrp/cfcp/Pages/Index.aspx\)](#)

California Farmland Conservancy Program

The California Farmland Conservancy Program (CFCP) seeks to encourage the long-term, private stewardship of agricultural lands through the voluntary use of agricultural conservation easements. The CFCP provides grant funding for projects which use and support agricultural conservation easements for protection of agricultural lands. As of August 2013, just over 56,000 acres of the state's best farmland have been permanently conserved with CFCP-funded easements.

Latest News

- [CFCP's Newest Project - an orchard hosting five varieties of peaches in Butte County \(/dlrp/cfcp/Documents/Pamma-](#)



Pamma-Larkin peach orchard, Gridley, Butte County

[Larkin%20conservation%20easement%202013.pdf\)](#)

This project is among the 22 [Agricultural Conservation Easements completed using CFCP funds since 2010 \(/dlrp/cfcp/Pages/FocusonFarmland.aspx\)](#).

Orchards, vineyards, vegetable crop lands, alfalfa, and irrigated pastures were represented among the recent completed easements.

- [Request for Grant Applications \(/dlrp/cfcp/funding/Pages/request_grant_app.aspx\)](#)
The updated Request for Grant Applications (RFGA), which provides detailed guidelines for application eligibility and instructions for the application process, is available in PDF format.
- [CFCP 2012 Model Easement \(/dlrp/cfcp/overview/Pages/cfcp_model_easement.aspx\)](#) In 2012, CFCP updated its model easement document. Grant recipients are encouraged to adopt it to the extent possible, in order to expedite the easement review process.

Completed Projects

- Easements and Planning Grants Funded by CFCP ([//dlrp/cfcp/stories/Pages/Index.aspx](http://dlrp/cfcp/stories/Pages/Index.aspx))
CFCP projects, from 1996 to the present, are summarized on the Project Success Stories page. The information is current to May 2013; updates will be made as additional projects are completed, so please check back!
- Focus on Farmland ([//dlrp/cfcp/Pages/FocusonFarmland.aspx](http://dlrp/cfcp/Pages/FocusonFarmland.aspx))
Learn about recent agricultural conservation easements funded by CFCP around California.

About CFCP and Agricultural Easements

- Overview of CFCP and Agricultural Conservation Easements ([//dlrp/cfcp/overview/Pages/Index.aspx](http://dlrp/cfcp/overview/Pages/Index.aspx))
- Applying for Funding ([//dlrp/cfcp/funding/Pages/Index.aspx](http://dlrp/cfcp/funding/Pages/Index.aspx))
- Managing your CFCP Grant ([//dlrp/cfcp/grant/Pages/Index.aspx](http://dlrp/cfcp/grant/Pages/Index.aspx))
- Fast Facts - Easements and Planning Grants Funded by CFCP ([//dlrp/cfcp/stories/Pages/Index.aspx](http://dlrp/cfcp/stories/Pages/Index.aspx))

For more information about the CFCP, contact:

California Department of Conservation
Division of Land Resource Protection
801 K Street, MS 18-01
Sacramento, California 95814

Phone: (916) 324-0850

Fax: (916) 327-3430

Email: cfcp@consrv.ca.gov (<mailto:cfcp@consrv.ca.gov>)

To locate a California land trust [click here](http://www.calandtrusts.org/trusts.cfm) (<http://www.calandtrusts.org/trusts.cfm>).

[American Farmland Trust](http://www.farmland.org/) (<http://www.farmland.org/>) | [Land Trust Alliance](http://www.lta.org/) (<http://www.lta.org/>) | [CA Farm Bureau](http://www.cfbf.com/) (<http://www.cfbf.com/>) | [CA Council of Land Trusts](http://www.calandtrusts.org/) (<http://www.calandtrusts.org/>) | [CA Coastal Conservancy](http://scc.ca.gov/) (<http://scc.ca.gov/>) | [Wildlife Conservation Board](http://www.wcb.ca.gov/) (<http://www.wcb.ca.gov/>) | [Great Valley Center](http://www.greatvalley.org/) (<http://www.greatvalley.org/>) | [Farm & Ranch Lands Protection Program](http://www.nrcs.usda.gov/programs/frpp/) (<http://www.nrcs.usda.gov/programs/frpp/>)



([//dlrp/Pages/Index.aspx](http://dlrp/Pages/Index.aspx))

Division of Land Resource Protection

California Farmland Conservancy Program Links

[Overview \(/dlrp/cfcp/overview/Pages/Index.aspx\)](/dlrp/cfcp/overview/Pages/Index.aspx)

[Applying for Funding \(/dlrp/cfcp/funding/Pages/Index.aspx\)](/dlrp/cfcp/funding/Pages/Index.aspx)

[Managing Your CFCP Grant \(/dlrp/cfcp/grant/Pages/Index.aspx\)](/dlrp/cfcp/grant/Pages/Index.aspx)

[Project Success Stories \(/dlrp/cfcp/stories/Pages/Index.aspx\)](/dlrp/cfcp/stories/Pages/Index.aspx)

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Frequently Asked Questions about Agricultural Conservation Easements

[What is an agricultural conservation easement \(#what is an agricultural conservation easement\)?](#)

[How are agricultural conservation easements different from other types of conservation easements? \(#how are agricultural conservation easements different from other types of conservation easements\)](#)

[What are the tax implications for a landowner placing an agricultural conservation easement on his or her property? \(#what are the tax implications for a landowner placing an agricultural conservation easement on his or her property\)](#)

[Must an applicant have a formal appraisal prepared as a component of a proposal for purchase of an agricultural conservation easement \(#must an applicant have a formal appraisal prepared as a component of a proposal for purchase of an agricultural conservation easement\)?](#)

[How would a landowner place an agricultural conservation easement on his or her property \(#how could a landowner place an ace on his or her property\)?](#)

Also, please see the [Agricultural Conservation Easement Overview \(/dlrp/cfcp/overview/Pages/ag_consrv_easements.aspx\)](#) page for more information.

What is an agricultural conservation easement?

An agricultural conservation easement is a voluntary, legally recorded deed restriction that is placed on a specific property used for agricultural production. The goal of an agricultural conservation easement is to maintain agricultural land in active production by removing the development pressures from the land. Such an easement prohibits practices which would damage or interfere with the agricultural use of the land. Because the easement is a restriction on the deed of the property, the easement remains in effect even when the land changes ownership.

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How are agricultural conservation easements different from other types of conservation easements?

Agricultural conservation easements are created specifically to support agriculture and prevent development on the subject parcels. While other benefits may accrue because the land is not developed (scenic and habitat values, for example), the primary use of the land is agricultural. Easements funded by the CFCEP must be of a size and nature suitable for viable commercial agriculture.

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What are the tax implications for a landowner placing an agricultural conservation easement on his or her property?

Depending upon each situation, the placement of an agricultural conservation easement on land may provide income, property, and estate tax benefits. In most cases the degree of benefit is influenced by a landowner's willingness and ability to make charitable donations on all or a portion of an easement's value. Rules related to these donations have changed over time, starting with the Federal Taxpayers Relief Act of 1997. Tax benefits were enhanced temporarily in 2006, and may possibly be made permanent under the the Rural Heritage Conservation Extension Act of 2011. For more information, consult a tax advisor.

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Must an applicant have a formal appraisal prepared as a component of a proposal for purchase of an agricultural conservation easement?

Applicants are strongly encouraged to include a formal appraisal as part of their application. Applicants may choose to submit an application without a complete formal appraisal if agricultural conservation easement values in the project area have been well established by other, similar easement purchases. However, the appraisal must be completed and submitted to the Department before an approved grant may have funds released. Funding decisions may be delayed until such an appraisal has been completed. If the proposal is accepted for funding, the CFCP may fund up to the appraised value of the easement, or the accepted estimate provided in the grant application (providing that minimum match requirements are attained).

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How would a landowner place an agricultural conservation easement on his or her property?

Agricultural conservation easements are held by land trusts or local governments, which are responsible for ensuring that the terms of the easement are upheld. A landowner would seek an appropriate easement holder, which could be a land trust or a local government. The property proposed for easement must have characteristics (e.g., location, soil quality) that make it a priority for the easement holder organization. If the potential easement holder wishes to pursue an easement on the proposed property, it would negotiate terms with the landowner, including price (unless the easement is to be donated) and restrictions. If the easement is to be purchased, the potential easement holder may seek grant funding which requires that the easement be appraised. For assistance in locating a local easement holder, contact the [CFCP](#) ([//dlrp/cfcp/Pages/Index.aspx](#)).

- [California Farmland Conservancy Program \(/dlrp/cfcp/Pages/Index.aspx\)](#)
- [CFCP Enabling Statutes \(/dlrp/cfcp/overview/Pages/cfcp_statutes.aspx\)](#)
- [CFCP Model Easement \(/dlrp/cfcp/overview/Pages/cfcp_model_easement.aspx\)](#)
- [CFCP Staff \(/dlrp/cfcp/overview/Pages/cfcp_staff.aspx\)](#)
- [Agricultural Conservation Easements \(/dlrp/cfcp/overview/Pages/ag_consrv_easements_faq.aspx\)](#)

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CITY OF SAN MARCOS
PLANNING DIVISION

David Carr
3322 Venado Street
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sales@SunOrganic.com
days – 760-510-8077

September 21, 2013

Jerry Backoff – Planning Division Director
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

Re: Questhaven Hills Zoning

Dear Mr. Backoff;

I own vacant property (APN 222-121-18-00) adjacent to the proposed K-8 school site.

During the recent General Plan update my property as well as many others surrounding the school site were down-zoned from Estate Residential to Agricultural 1. During the General Plan update process several property owners in the area requested that their parcels be zoned Estate Residential. This was denied because the City determined that this area should remain rural.

The proposed school is an intense use that is the final straw leaving this area far from rural. When combined with SPA areas and the San Elijo Hills development, agricultural zoning is simply not appropriate for the remaining parcels which have stood by while the surrounding area becomes highly developed.

Please consider the following;

1. The Questhaven Hills area is bordered on the West by residential neighborhoods of San Elijo Hills. To the East is a Specific Plan Area (White Attebury) that allows more density than the A-1 zone. To the North is a 4 lane road along with two intruding cul-de-sac neighborhoods of San Elijo Hills.
2. In the middle of the Questhaven Hills area is another SPA zone (Torres) also allowing more density than the A-1 parcels it borders.
3. Based on traffic count and population, the proposed school is equivalent to 400 single-family homes or 450 condo / apartment units.
4. The only parcel in the area ever used for agricultural purposes will be a 24 hour lighted parking lot and 7 day play fields.

5. It is my understanding that the School District can build the school without the City approving a Zone and General Plan change. If the City concurs with the requested Zone and General Plan change it will be inconsistent with the decision to reject previous property owner requests for minor density increases.

I think if the decision makers were aware of the proposed school, the factors considered when looking at this area during the General Plan update process would have been different and the outcome may have changed.

In order to be consistent and fair to property owners in the Questhaven Hills area, I ask that as part of the consideration of the proposed General Plan change and Zoning re-classification for the school, the entire Questhaven Hills area be reconsidered and re-zoned as Estate Residential.

Thank you for your consideration.

Sincerely,

David Carr