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Public Record
10-28-15

October 28, 2015

Board of Trustees
President Scroggins
Mount San Antonio College
1100 North Grand Avenue
Walnut, CA 91789

Re: Mt. SAC Photovoltaic System – West Parcel Solar Project

Dear Members of the Board of Trustees and President Scroggins:

We are writing on behalf of the City of Walnut to notify you of specific concerns related to Mount San Antonio College's (Mt. SAC) proposed Photovoltaic System West Parcel Solar Project ("Solar Project"). The City Council has led the City's efforts to encourage a cooperative relationship with Mt. SAC that recognizes the mutual interests of both entities and strives to mitigate conflict. The expectation has been that the two agencies would consult on projects with significant impacts on the City, its residents and businesses and that Mt. SAC would comply with the City's land use regulations in addition to applicable requirements of the California Environmental Quality Act. Unfortunately, the City's efforts have been met with a disingenuous response evidenced by Mt. SAC's recent actions in connection with the proposed Solar Project.

Early discussions between Mt. SAC and the City were predicated on a mutual understanding that Mt. SAC obtain a Conditional Use Permit for the proposed Solar Project. Email correspondence between Mt. SAC and City officials regarding this understanding were confirmed by a July 8, 2015 letter from the City Attorney. As recently as September, Vice President Gregoryk requested CUP application materials which the City's Community Developer Director provided to him on September 17, 2015 with the following narrative:

Per your request, I have attached documents related to the proposed solar farm project, generally located southwest of the Amar Rd. and Grand Ave intersection within the City of Walnut Land Use jurisdiction. Walnut Municipal Code (WMC) Section 25-39(f) (attached) requires approval of a Conditional Use Permit (CUP) for a utility project, such as a solar farm, within the residential zone. I have provided the attached documents to assist you in the preparation of a submittal package for CUP review. Attached is the CUP handout, which provides a thorough overview of the CUP process, including minimum submittal requirements (development plans, development

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application, supplemental documents, filing fee of \$1,965.00, etc.) that need to be completed and submitted for review.

The project will be analyzed and all impacts identified and mitigated through conditions and/or revisions to the project, including, but not limited to, traffic and noise. Also provided is Article XIX, Section 25-194 (Conditional Use Permits), which discusses the CUP process as well as the required four (4) findings that the Planning Commission must find to be fact by Resolution.

Please note that additional materials or processes (i.e. CEQA review) may be required.

We understand that Mt. SAC has now taken the position that the proposed Solar Project is exempt from City land use regulations and that a Conditional Use Permit is not required. We disagree and are mystified by this abrupt turn-around and failure by Mt. SAC to engage or invite any discussion with City officials. Equally troubling is the timing of Mt. SAC's request for the City's CUP application materials and the September 16, 2015 public hearing to consider a Design Build Agreement for the proposed Solar Project. With the expectation that a CUP application was forthcoming and would be evaluated by the City on its merits in accordance with the Walnut Zoning Ordinance and applicable laws, City representatives attending the public hearing observed the proceedings. Had the City been advised that Mt. SAC's position would change so significantly to claim exemption from City zoning regulations and assert that CEQA has been satisfied by the 2013 Subsequent EIR on the 2012 Facility Master Plan, the City would have addressed the Board of Trustees to confirm the City's position.

Not only did Mt. SAC mislead the City by its representations that a CUP application was forthcoming, its affirmative representations to Superior Court Judge Chalfant in the matter of *United Walnut Taxpayers v. Mt. San Antonio College District* on August 27, 2015 that no actions were pending in connection with the proposed Solar Project is suspect in light of Mt. SAC's September 16, 2015 public hearing. We cannot conceive how Mt. SAC reconciles the award of the Design Build Agreement and current position that no conditional use permit and no additional CEQA compliance are necessary with the contradictory representation to the Court that no actions with respect to the Solar Project were pending.

We understand that Mt. SAC asserts the Project's exemption status based upon the Government Code Section 53091(e). We direct you to the last sentence of that provision which affirmatively requires compliance with city zoning requirements when the City's zoning ordinance "make[s] provision for those facilities." As recited in the Community Development Director's September 17, 2015 email to Vice President Gregoryk, the Walnut Zoning Ordinance does exactly that. Failure by Mt. SAC to obtain a Conditional Use Permit is a violation of the City's Zoning Ordinance. Any construction or pre-construction activity for the Solar Project without applicable permits and entitlements will be addressed by City code enforcement.

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The City also objects to Mt. SAC's finding that the Solar Project was approved as part of its 2012 Facility Master Plan and that all potential environmental impacts were properly evaluated and/or mitigated as part of the December 11, 2013 Subsequent EIR and Mitigation Monitoring Program. But for a conceptual depiction of "Campus Zoning" on page 13 of the 2012 Facility Master Plan designating a polygon shaped area as "Solar & Retail," the Facility Master Plan is wholly void of any reference to the proposed Solar Project let alone a detailed project description or discussion that would allow for proper analysis and evaluation under CEQA. Not surprisingly, the EIR and MMP do not address the potentially significant environmental impacts of the proposed Solar Project, appropriate mitigation measures or alternative site analysis. Mt. SAC's unsupported reliance on the 2013 EIR and finding that no further environmental impact report or CEQA clearance is required denies the City of its duties as a responsible agency to evaluate the proposed Solar Project under CEQA.

Absent new environmental analysis of the Solar Project by Mt. SAC, the City will assume the lead agency role pursuant to CEQA Guidelines Section 15096(e). Pending the City's approval of such CEQA documentation and CUP, Mt. SAC must not commence any construction activity related the proposed Solar Project.

On behalf of the City of Walnut, we encourage Mt. SAC to re-evaluate its position and confirm that it will apply to the City for the requisite CUP and prepare the necessary CEQA documentation to accompany the application.

Very truly yours,

LEIBOLD McCLENDON & MANN



By: Barbara Leibold

cc: Walnut City Council
Robert M. Wishner, City Manager
Tom Weiner, Community Development Director
Vice President Mike Gregoryk

