



1901 FIRST AVENUE, SUITE 219
SAN DIEGO, CA 92101
Shermanlaw@aol.com

TELEPHONE
(619) 702-7892

FACSIMILE
(619) 702-9291

September 9, 2015

Board of Trustees
MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT
c/o William T. Scroggins, Clerk/Secretary
c/o Denise Lindholm, Executive Assistant

Re: *Comments and Opposition to Action Item No. 3 (September, 2015) /
Re-Adoption of Resolution No. 15-01 with Findings and CEQA Determination*

Assessment, Design, Installation, Operation, and Maintenance of
Photovoltaic Solar System – RFQ/RFP No. 3005

United Walnut Taxpayers (UWT) incorporates and attaches a copy of its earlier made and presented comments on July 8, 2015 with regards to selection of an installer and operator of the proposed Solar Generation Plant (Project).

Although a public hearing is now being conducted, UWT and my office see this instant Sept. 9, 2015 action as a duplication and repeat of what was done earlier on July 8, 2015, albeit findings are being made that Mt. Sac is now intending to enter the world of energy production and transmission,¹ and an express findings is being made (again) regarding CEQA compliance. Although UWT has already included a CEQA action on the Project in its currently filed lawsuit before the Superior Court (Case No. BC 576787), these subsequent actions by Mt. Sac require some supplemental or amended pleadings to update the facts that will ultimately be adjudicated at trial on the matter. While Mt. Sac claims that its “final” decision on the Project will not become ripe until a general contractor is selected for constructing and building-out the Project site (statement by Mt. Sac counsel in open court to Judge Chalfant on Aug. 27), UWT is doing what it can to appraise Mt. Sac of the potential adverse environmental and land use impacts that may arise from the Project now that project-level details are available – with such details and specifics that could not have been known at the time the 2012 facilities master plan SEIR was updated in 2013 (FMP SEIR).

¹ In a field that otherwise is whole controlled and regulated by the California Public Utilities Commission.

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The primary issues and concerns of UWT are that (1) the facilities master plan that first identified possible use of the west parcel as a solar project site did NOT have sufficient project-level environmental review, and (2) the use of Measure RR funds for the Project² is an improper expenditure for the Project – that was not identified in the bond measure as one of the projects submitted to and approved by the voters.

As originally alleged by UWT in its currently filed lawsuit, and becoming all the more readily apparent, now is the time that subsequent CEQA study, review, and approval is necessary for the Project.

Environmental review should be prepared because the FMP SEIR's discussion of possible land use of West Parcel for the Project was just a "proposal." While it addressed some preliminary grading issues, there was no project-level detail about what would be built there and how it would be configured, and therefore the full gamut of potential adverse impacts could not have been reviewed, considered or determined as required by CEQA. Additionally, there was significant noticing legal defects that occurred with the FMP SEIR³ such that Mt. Sac's the reliance on that CEQA document as a *fait accompli* is further factually and legally flawed.

As argued throughout the litigation between Mt. Sac and UWT, and which stands to be litigated at trial, Mt. Sac's facility planning level documents do not supplant and eliminate Mt. Sac's legal requirement to undertake project level CEQA review. The "project" is the activity approved by the public agency not the individual steps the agency takes to approve the project. Tellingly, the projects in the FMP are constantly changing, lack detailed information about what will be built there, are being eliminated and moved, and Mt. Sac avoids and defies to undertake project-level CEQA environmental review for ANY of its major public works projects.

As Mt. Sac publicly notices and presents project-level documents, moves forward to select a contractor for operation or construction, and give proper CEQA notices, now is the time that is *late enough* to provide meaningful information for environmental assessment. (14 Cal. Code Regs. § 15004.)

UWT welcomes this opportunity to comment and will do so, however, Mt. Sac's decision to forgo further CEQA review by wholly relying on the FMP SEIR is factually and legally flawed and cannot (and will not) be supported on the administrative record for the Project.

² And its related, necessary, and mandatory compensatory environmental mitigation (or LUMA project).

³ Mailed notice was not given to affected surrounding landowners, nor was Publication made in a correctly and legally authorized adjudicated newspaper for the Walnut community.

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Concluding Remarks

For the above reasons, and those reasons incorporated from UWT's prior comments and objections it is expressly requested (and legally mandated) that no action be taken to approve the current action before the Board of Trustees. Mt Sac. needs to concurrently adopt a clear and express statement and decision to NOT use Measure RR funds for any aspect of the Project (including earth movement and environmental mitigation work), and that further CEQA review, study, and disclosures will be conducted for the Project, and impermissible land use conflicts with the City of Walnut zoning shall be resolved with proper application, study and possible permitting with said local agency.

Should you have any questions or would like to discuss any of the above contents or comments, please do not hesitate to contact my office at the above-given contact information.

Sincerely,



Craig A. Sherman

cc: Michael B. Montgomery, City Attorney, City of Walnut



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July 8, 2015

Board of Trustees
MT. SAN ANTONIO COMMUNITY COLLEGE DISTRICT
c/o William T. Scroggins, Clerk/Secretary
c/o Denise Lindholm, Executive Assistant

Re: Comments and Opposition to Consent Item No. 3 (July 8, 2015) / Resolution No. 15-01 Assessment, Design, Installation, Operation, and Maintenance of Photovoltaic Solar System – RFQ/RFP No. 3005

The Law Office of Craig A. Sherman makes this comment on behalf of its client United Walnut Taxpayers (“United Walnut”), which is a group of residents, citizens, and college district taxpayers opposed to the above-referenced “Solar Plant” (or “Project”).

Approval of the above proposed agenda item would be in violation of CEQA, City of Walnut planning and zoning ordinances, as well as Proposition 39/Measure RR misuse of district taxpayer funds.

The Solar Plant was not Identified in the 2008 Facilities Master Plan, the 2008 Subsequent Program EIR, or on the Measure RR Ballot

The Measure RR Ballot (does not) list or indicate a Solar Plant or other energy producing facility. Any argument of Mt. SAC that the Solar Plant in measure RR, was listed as “infrastructure” or “increase energy efficiency” defies common sense, the legal requirements controlling Measure RR, and denies existing facts as to what this Project is – a solar plant.

Supporting and proving this point, in opposition to what Mt. SAC has argued and presented in the Superior Court – that the 2008 Facilities Master Plan and its related 2008 Program SEIR contained all the measure RR projects – the 2008 plans and studies clearly show the Solar Plant was to remain undeveloped. Page 15 of the 2008 Program SEIR states, “[t]here are no plans for the deveoplment of the twenty-seven –acre parcel owned by the college located west of the Wildlife Sanctuary, and west of Grand Avernue.” The 2012 Program SEIR, Table 2.2.2, labeled Future 2012 Facility Master Plan Projects, stated that no part of the Solar Plant was included in the certified 2008 Program SEIR. Additionally proving this point, an article in the San Gabriel Valley Tribune dated January 18, 2015 discusses the consideration (quoting Mt. Sac President, Bill Scroggins) Mt. Sac was having over whether to allow a housing development on the West Parcel site that is only now planned for a Solar Plant.¹

¹ <http://www.sgvtribune.com/social-affairs/20150118/mt-sac-faculty-fights-on-campus-student-housing-proposal> (accessed 07/08/2015).

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The Solar Plant Requires Project Level Environmental Review

The Solar Plant's planned location is on the southwest edge of campus. Significant offsite impacts of the Project (including to biological resources and local communities) have not been evaluated for the Project as required by CEQA and the *current* iteration of the Project is not within the scope of the 2012 Program SEIR. The program SEIR addressed the project at the level characteristic of a conceptual master plan. The 2012 Program SEIR did not include site plans, configurations, and other site specific aesthetics and habitat destruction and revegetation plans such that the public could know what and how the substantially increased grading and vast array of solar panels (and construction impacts) would potentially impact them and the environment. The fact that Solar Project is only now (admittedly) being contracted for "Assessment and Design" is indicative that prior master plan level environmental review did not sufficiently disclose and cover the now developing project-specific impacts which the public is entitled to know and review as part of a meaningful CEQA disclosure and input process.

Tellingly, the discussion in the 2012 Program SEIR was for the purposes of the 2012 Facilities Master Plan ("2012 FMP") which, as the name suggests, is a *planning* document. In fact, the 2012 FMP's only reference to "solar" is found on page 13, which is a diagram "[i]dentifying zones of primary use[s] [as] recommended to establish a **guideline** for location of programs." As stated above, debate over what projects may or may not go into the West Parcel has gone on well after the certification of the 2012 Program SEIR. The current Project now requires project-level environmental review and determination.

Based on personal reviews of the proposed site by United Walnut, the impacts of the proposed Solar Plant are apparent to adjacent residents, hillside residents southwest of the complex, and from a variety of perspectives throughout Walnut in the Snow Creek and Timberline communities. The current open space of the parcel has formed a buffer between the college activities and the community. That buffer is being lost with the development of the Solar Plant without proper review. (See discussion below regarding state and local City of Walnut permitting requirements to ensure adequate siting and land use in a residential neighborhood.)

Improper "Outsourcing" of Environmental Review

At the January 8, 2014 Board Meeting, this board approved the minutes of the December 11, 2013 Board Meeting in which the Draft 2012 SEIR was certified. The minutes reflect that:

Dr. Scroggins said that the 2012 Facility Master Plan is the same version that has been presented to the Board three times in the last two years, and there haven't been any changes except for the solar item, on which the Board has reserved the

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right to approve in the future. The Board has the right to revise any part of the Facility Master Plan. Each project in the Master Plan will be presented to the Board individually and, if another Environmental Impact Report is required, one will be done.

The Board and the public relied on Mt. SAC's chief executive officer's statements that (1) approval of the solar project (and siting) has been "reserved" and noting that (2) future environmental review may very well be required. Staff and the proposed resolution now claims that no review is required because the 2012 Program SEIR was completed and sufficient. However, but at the same time staff analysis admits all the now known on and offsite impacts are being made through the U.S. Army Corps of Engineers, Los Angeles Regional Water Quality Control Board, and the California Department of Fish and Wildlife, indicating Mt. SAC's desire to avoid public review through its own approval process, instead suggesting the public should go chase the approval document and disclosures through those *other* agencies.

This Board cannot avoid and deflect its environmental review responsibilities in this manner, and it certainly cannot pass a resolution that "no further environmental impact report or CEQA clearance is required" (Resolution No. 15-01, Section 3) when staff analysis admits that there is now a clearly identified scope of a Project and Project approval that has been submitted to other reviewing agencies.

The Solar Plant Lacks Required City of Walnut Permitting

The Solar Plant is planned for the area of the Mt. Sac campus known as the "West Parcel." This parcel is zoned by the City of Walnut as Residential Planned Development (RPD), which renders the Project inconsistent with City zoning without review and approval of a conditional use permit. It is well known that Mt. SAC is not exempt from local zoning and planning. Therefore, any approval and development of the Project and its site as a solar plant requires property city review and permitting. The failure creates, without approvals and its full commitment to proceed, is a violation of law.

Measure RR Funds Cannot be Spent on the Solar Plant

Mt. SAC's decision to approve and proceed with construction of the Solar Plant Project, with the inclusion and planned expenditure of \$1.9M in Measure RR bond funds is a violation of Proposition 39's disclosure and spending accountability requirements. As stated above, the Solar Plant (or anything like it) is not identified or listed as a facility or project on the Measure RR ballot measure.

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A plain reading of Measure RR proves that the Project was not sufficiently described or listed. The court in *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District*, (2013) 215 Cal.App.4th 1013, 1028-1029, found that defendant school district's field lighting project was not properly described in the project list for the bond, because the words "field lighting" did not stand alone as an independently listed project. Similarly here, there is no possible language that justifies Measure RR expenditures on a new and previously unidentified Solar Plant.

Concluding Remarks

My client and office thank you for considering the contents of the above opposition and objections. For the reasons above, and for those additional reasons that may be represented by others, it is expressly requested (and legally mandated) that no action be taken to approve Resolution No. 15-01 as currently presented and proposed by staff.

Should you have any questions or would like to discuss any of the above contents or comments, please do not hesitate to contact my office at the above-given contact information.

Sincerely,



Craig A. Sherman

cc: Michael B. Montgomery, City Attorney, City of Walnut