

Mt. SAC Solar Tentative Court Ruling—President's Perspective

The ruling is not good news in that we did not prevail on our interpretation of our compliance with CEQA. Our program level ("master plan" with project impact) analysis was not accepted which was a very surprising outcome. That said, Mt. SAC has a defined path to be compliant, that is, complete a new Supplemental Environmental Impact Report at the project level for all projects. This will take four to six months for the Solar Project but still allows the project to proceed.

Going forward, this establishes the "rules of the game" for our future CEQA EIR work. If the tentative ruling stands, United Walnut Taxpayers will have won the point that Mt. SAC uses programmatic tiered EIRs and must prepare and circulate initial project level studies to responsible agencies (at an appropriate time) as projects come up for actual decisions for design and construction. Not what we had hoped, but not an onerous task. EIR work is EIR work. Doing so each time we prepare for a new project is redundant but not challenging technically or time wise.

Mt. SAC did prevail in that the Solar Project is exempt from all City land use, zoning and building controls. As expected, Mt. SAC must seek the approval of grading and hauling plans. In addition the judge ruled forcefully that the City of Walnut's review authority over grading plans is limited onsite design and construction issues and that the Solar Project is exempt from Conditional Use Permits and other entitlement, zoning and land use controls. We have already submitted applications for grading and hauling and expect this judicial order to be accepted by the City.

The judge did not define the role of the City in this grading and hauling plan approval as being "ministerial" (just compliance, no ability to question or reject elements of the project) or "discretionary" (no ability to reject the project but ability to challenge elements of the grading and hauling plans on the basis of design and construction elements only). The basis of this lack of direction from the judge is that the City has yet to take action on Mt. SAC's submitted grading and hauling plans. We can ultimately seek redress from Judge Chalfant for abuses, however, the strong wording of the ruling is notice to the City that strict compliance is expected.

It is my recommendation that we accept the ruling, rather than seek to appeal, and take the following action. An appeal here would be timely and problematic in that other courts have rule in favor a project rather than programmatic CEQA compliance. The recommended actions: First, immediately begin the process of a project based EIR on the Solar Project. Second, monitor the City's compliance with the review of Mt. SAC's grading and hauling plans and return to court if necessary. Third, review the program and project level SEIR which was done for the Physical Education Project for compliance with this ruling.

The Physical Education Project legal challenge will be heard in the Los Angeles Superior Court in Norwalk but a date has not yet been set. Judge Chalfant's CEQA ruling creates some uncertainty with this case. Our attorneys will be reviewing the impact.

Again, we have a path forward with our facilities work. Mt. SAC remains in control of our projects. No stop work or oversight authority has been ceded to the City or anyone else. Yes, these are changes in our current practices. However, as we move ahead, we will be able to prepare for future projects without appreciable additional work or delay.

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