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February 11, 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 Agenda Item: Action #1 / Resolution No. 14-05 (Feb. 11, 2015)  
Exempting the Parking Structure, a Facilities Master Plan Project, from the  
City of Walnut's Zoning Ordinances

I make these comments on behalf of my client United Walnut Taxpayers, which is a group of residents, citizens, and college district taxpayers opposed to the above-referenced "Parking Structure."

Approval of the above proposed action item of Mt. Sac would be in violation of this state's planning, zoning, and environmental review laws. The proposed project does not qualify for an exemption because (1) the facility is not a classroom facility and (2) there has not been any CEQA review related to potential significant environmental impacts that could arise due to the planning, zoning, and land use laws and rules that Mt. SAC intends to exempt.

Storage facilities, mechanical yards, and other learning support services and college-serving infrastructure have expressly been legislated to be non-classrooms facilities. There is no legally available exemption of local planning, land use and zoning laws available for the proposed Parking Structure, and Mt. SAC's argued attempt to turn the parking garage into a classroom (or a fringe "educational facility" supportive of students) is indicative of the weakness and legal defect of Mt. SAC's proposed action. Full compliance with the City of Walnut's planning, zoning and land use development is required. In any event, at a minimum, any action or request of Mt. SAC to vary from Walnut's planning, zoning and land use development laws require analysis, disclosure and a decision as required under the California Environmental Quality Act ("CEQA").

CEQA requires that an action approving a project such as the Parking Structure Exemption Action must comply with CEQA. There is no applicable exemption available to Mt. SAC regarding the intended February 11, 2015 action, and Mt. SAC is not planning to make any CEQA determination whatsoever. Any comment or reliance by Mt. SAC that it intends to rely on prior CEQA environmental review for the Parking Structure is both factually and legally unavailing, and thus in violation of California law.

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First, as indicated in the prior program environmental studies for master plan updates, Mt. SAC has failed to analyze planning, zoning, and land use development rules as it pertains to the developing and more specific Parking Structure. Second, even if it had, Mt. SAC is under an obligation to make a determination of whether a subsequent activity under its programmatic planning documents is within the scope of a program EIR. As explained in the recently decided *May v. City of Milpitas*:

If a local agency approves or determines to carry out a project that is subject to [CEQA], it must “file notice of the approval or the determination,” otherwise known as a notice of determination (NOD), indicating “whether the project will, or will not, have a significant effect on the environment” and “whether an environmental impact report has been prepared pursuant to [CEQA]. An NOD “announces the agency's ultimate conclusion about the project's expected environmental consequences.

(*May v. City of Milpitas*, (2013) 217 Cal. App. 4th 1307, 1322, citing Public Res. Code § 21152, subd. (a); see CEQA Guidelines, §§ 15075, 15094, 15373; *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 46, fn. 10.)

Here, Mt. SAC has not filed a Notice of Determination (“NOD”) and Mt. SAC is bound by the rule that it must make a CEQA determination for the specific Parking Structure project if and when it decides to proceed with construction and/or selection of a contractor for actual construction.

As previously testified by this office, should Mt. SAC decide to approve and proceed with construction of the Parking Structure project by spending of Measure RR bond funds – such spending and use of Measure RR funds would be a violation of Prop 39’s disclosure and spending accountability requirements. The Parking Structure is not identified or listed as a facility or project on the Measure RR ballot measure. The only bond language directly addressing parking is: “intersections and parking capacity to improve traffic flow and prevent traffic congestion,” as contained under the heading “COMPLETE ESSENTIAL REPAIR AND UPGRADE PROJECTS.” There is no mention of parking besides this oblique reference and there is no mention whatsoever of any type of multi-level parking structure in Measure RR. It is notable that other projects actually listed on Measure RR are specifically described under appropriate headings.

A plain reading of Measure RR shows that the Project was not sufficiently described or listed. The court in *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* found that defendant school district’s field lighting project was not properly described in the project list for the bond, finding that the words “field lighting” did not stand alone as an independently listed project. (*Taxpayers*, (2013) 215 Cal.App.4th 1013, 1028-1029.) Here, the line “intersections and parking capacity to improve traffic flow and prevent traffic congestion” is unlikely to be expansively read and interpreted by a court to include one or more multi-level parking garage structures that the Board now wants to construct, especially in light of the *Taxpayers* ruling.

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If and when a final decision is made to construct the Parking Structure with Measure RR funds, my office and client will be within their rights in filing an action in the Superior Court under Code of Civil Procedure § 526a based on illegal spending and waste, or take any other legal action consistent with my client's position.

**Concluding Remarks**

My client and office thank you for considering the contents of the above opposition and objections. It is expressly requested (and legally mandated) that no action be taken to *exempt the Parking Structure* as planned by the above-referenced agenda item.

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