

Attachment D

From: meg k <megkaehler@icloud.com>
To: <michael.mcdowell@stocktongov.com>
Date: 12/12/2013 3:09 PM
Subject: Proposed Bear Creek East Development

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>
>> December 12, 2013
>>
>> Dear Stockton Planning Commission,
>>
>> Please vote NO on allowing MCD North Stockton to move forward on the Bear Creek East
development. There are already other large approved developments that have yet to be built. Let's
protect farmland.
>>
>> Thank you.
>>
>> Sincerely yours,
>> Margaret A. Kaehler
>> 1001 E. Armstrong Rd.
>> Lodi, CA 95242
>>
>



Delta-Sierra Group
Mother Lode Chapter
P.O. Box 9258, Stockton CA 95208



December 12, 2013

Chairman Steve Lopez and members
Stockton Planning Commission
Stockton, CA

Re: Bear Creek East Specific Plan

Chairman Lopez and Commission members:

The following are comments from the Delta –Sierra Group of the Sierra Club and Campaign for Common Ground. Both of our groups are community based organizations that promote smart growth and agricultural preservation in San Joaquin County. We have been intimately involved in the Stockton General Plan, the Climate Action Plan, and related land use issues for more than ten years.

As we noted in our previous letter of July 10, 2013, we strongly oppose the plans for the Bear Creek East Specific Plan as premature and unwarranted at this time, given the City's real estate market and the fact that so much housing has already been approved by the City but not yet built.

We ask that the Commission seriously consider our remarks in this and our previous letter, ask for further clarification from staff as to why this premature application is before you, and then vote to ask the applicant to withdraw, or deny the application without prejudice, so that the applicant can reapply when the real estate market is ready for this project.

We asked for responses to five questions in our previous letter. The responses to our questions from staff and the applicant were largely evasive and dismissive of the issues we raised. Too bad. This lack of honest debate bodes very badly for the future.

In addition to the original questions, which have not been answered with full disclosure, we have the following additional comments and questions.

Question #1: Is it consistent with State statutes for the City to adopt a Specific Plan that defers all major detailed financing arrangements with the developer to a later Development Agreement and subdivision map?

The Specific Plan proposed for adoption fails to identify detailed “financing programs” that commit the applicant to actually paying for infrastructure and other needed improvements and services. The Specific Plan defers these detailed financing mechanisms to a later date. According to the Planner’s Guide to Specific Plans (Office of Planning and Research, 1998), the California Specific Plan statutes require the following:

Whether regulatory or policy oriented, all specific plans must contain a ***“program of implementation measures including regulations, programs, public works projects, and financing measures*** necessary to carry out paragraphs (1), (2), and (3)” pursuant to [Government Code Section] 65451(a)(4). Common strategies are to include a form of an overlay-zone or other zoning-like regulations as part of the implementation program. Implementation of public infrastructure and facilities policy is also commonly accomplished through the inclusion of a capital improvements program.

The specific plan ***must also include or identify a financing program***. Various financing mechanisms are available to fund the programs of a specific plan including special assessment districts, the Mello-Roos Community Facilities Act, and general obligation bonds. Tax-increment financing, city and county general fund money, exactions, and other means... [emphasis added]

The Public Facilities Implementation Program (Section 12.3 of the SP) provides only “a conceptual summary of costs and ***possible funding sources and mechanisms***” (page 12-17).

Furthermore, the Specific Plan appears to illegally defer land use details required to be adopted as part of the Specific Plan to the Development Agreement. The text of the SP states: “The Development Agreement would establish ***allowable land uses [sic] types and development intensity and density, as well as other City/applicant agreements*** related to the BCESP” (page 12-23).

Question #2: Why should the City approve a Specific Plan for a large development project that cannot be financially structured to pay for the infrastructure and other needed improvements and services that it will require?

The Feasibility Analysis (Attachment 5, EPS, August, 2012) indicates that the project, in the current economic and real estate market is not feasible. In fact, the Feasibility Analysis is quite blunt and unequivocal in its assessment of the lack of financial viability for the project as currently proposed. We include the following excerpt from the Analysis conclusions (page 3) so that all Commissioners will be advised of the financial infeasibility of the Specific Plan:

“Even with normalized 2003 pricing, the Project’s residential infrastructure burden during Phase 1 and at buildout is infeasible. However, the Project’s buildout nonresidential infrastructure burden may be feasible depending on price increases and potential fee revisions. The total infrastructure cost burden consists of two components:

- All backbone infrastructure and public facility costs (e.g., developer funding plus any nonoverlapping bond debt related to special taxes and assessments for infrastructure).
- All applicable development fees (e.g., development impact fees or school mitigation fees).

BCESP's infrastructure cost burden is measured as a percentage of the final sales price of a property (e.g., residential unit or nonresidential building square feet). Typically, infrastructure burdens comprise up to a maximum of 15 to 20 percent of a home's final total sales price.(footnote 1)

In aggregate, Phase 1 infrastructure costs equate to 32 percent of the market value of the proposed Project. Residential infrastructure cost burdens are 30 percent and 33 percent, respectively, for Low Medium Density Residential (LMDR) and High Medium Density Residential (HMDR) (see **Table 10**). These are the only product types proposed for development during Phase 1.

In aggregate, the buildout infrastructure costs equate to 25 percent of the market value of the proposed Project. Residential infrastructure cost burdens range from 24 percent to 32 percent. Nonresidential infrastructure cost burdens are lower, ranging from 13 percent to 17 percent (see **Table 10**). It may be possible to shift some of the residential infrastructure burden to nonresidential development. The extent of this shift would be limited, though, as ***the Project's nonresidential uses are marginally feasible, and increasing their burden could delay or compromise development*** of the Project's planned retail, office, and industrial uses.

Footnote 1: Based on pro forma analyses of dozens of Specific Plans in California over the past two decades, the infrastructure cost burden feasibility performance test yields the following general conclusions:

- Burdens below 15 percent are generally considered financially feasible.
- Burdens between 15 and 20 percent may be feasible, depending on the specific circumstances of the project.
- ***Burdens above 20 percent suggest a project may not be financially feasible unless measures can be taken to reduce the cost burden.***

The Feasibility Analysis assumes that the market value of the proposed single family homes in the project would be in the range of \$225,000 to \$310,000 in terms of 2003 "Normalized Market Values." This is the anticipated sales price of the new homes, according to the economic consulting firm. However, the analysis indicates that the asking sales prices of homes in the proposed project would have to be raised significantly (22% to 41%) over projected 2003 "Normalized Market Values," to cover the costs of a reasonable level debt burden for infrastructure and services (see table from Appendix B to the Feasibility Analysis, below).

	<u>Low Density</u>	<u>Medium</u>	<u>Medium High</u>	<u>Entire Project</u>
Normalized Market Values [1]	\$310,000	\$260,000	\$225,000	\$ 236,667
Cost Burden as % of Market Value	24%	26%	29%	28%
Required Increase in Housing Prices	22.2%	30.9%	45.2%	41.4%
Minimum Required Housing Price [3]	\$378,925	\$340,338	\$326,636	\$334,530
Target Cost Burden Ratio	20%	20%	20%	20%

Bottom line: Approving this grossly premature Specific Plan in the face of such a damning financial feasibility analysis is bad planning. The application should be denied or withdrawn until the local real estate market has recovered enough so that the cost burden for new houses and businesses is guaranteed to be reasonable (20 percent or less).

Question #3. How can the City claim this Specific Plan is consistent with the Settlement Agreement when the required General Plan Amendments have not even been issued for public review five years after the Agreement was signed, and when this Specific Plan contains no mention of transit improvements, also required by the Agreement?

First, the City has done absolutely nothing in the last five years to advance the General Plan Amendments required by the Settlement Agreement. The relevant text of the Agreement is attached to this letter as Attachment A. In sum, the Agreement requires that the Amendments include ***measures limiting the granting of entitlements for development projects outside the existing City limits and which are (1) subject to an SP [Specific Plan] or MDP [Master Development Plan].***

Campaign for Common Ground has drafted a series of General Plan Amendments that we believe will bring the City into compliance with the Settlement Agreement. These were attached to our original July, 2012 letter and have been submitted to this Commission on several occasions. We submitted these GPAs to the Planning Commission and City Council ***last year and asked to have them to be agendized and considered at future meetings and we have heard nothing back from City staff or the Commission chair.***

These General Plan Amendments have been delayed repeatedly by the City staff, because they address a very complicated and political issue. We are tired of waiting.

Second, the Specific Plan also fails entirely to discuss funding for bus transit improvements, in direct violation of the Agreement. The Agreement is very clear on this point:

Section 5. c. ***Any housing or other development projects that are (1) subject to an SP [Specific Plan] or MDP, or (2) projects of significance, shall provide financial and/or other support for transit use...***

The relevant text of the Agreement to this requirement is attached to this letter as Attachment B.

The City, this project and the EIR have done nothing to prove compliance with this requirement. The applicant has not agreed to contribute any fair share contributions to transit improvements. The applicant has not even agreed to provide bus stops, which are not significant contributions.

For this EIR or any upcoming EIR to claim that major development projects are consistent with or comply with the terms of the Settlement Agreement is an absolute lie and we will challenge any such claim in public hearings and, if necessary, in court.

We will not allow this or any other major development project to move forward unless the applicant agrees to comply with terms of the Settlement Agreement now, not later.

Recirculation of EIR Required

We also continue to demand that the City re-circulate the Environmental Impact Report (EIR) as required under Section 15088.5(a) of the California Environmental Quality Act (CEQA) Guidelines. The Draft EIR was originally circulated two years ago and then went dormant. The CEQA Guidelines and statutes require a lead agency to re-circulate an EIR when “significant new information” is added to an EIR after public notice is given for its review, which in this case was November, 2011.

An updated Specific Plan for the project (Bear Creek East Specific Plan, May, 2013) was prepared and contains new information, especially infrastructure and financing information. This new Specific Plan constitutes "new information" to the project description and to the EIR, and triggers the requirement for recirculation under Section 15088.5(a)..

In summary, approving this grossly premature Specific Plan will once again, make our city the laughing stock of the Valley. Approving this Specific Plan will turn back the clock to the bad old days of ten years ago when a corrupt city manager and a compliant city council and planning commission were willing to believe every developer's rosiest guarantees that their projects would not require subsidies of city funds to provide services for new growth on the fringe of the city. We hope none of us are so stupid as to make the same mistakes again.

Thank you for considering our comments on this issue.

Very truly yours,

Eric Parfrey, Co-Chair
Campaign for Common Ground
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(530) 666-8043

Nancy Ballot, Executive Committee
Delta-Sierra Group, Sierra Club
vote4ballot@yahoo.com

cc: Stockton City Council
Rachel Hooper, Amy Bricher, Shute, Mihaly, and Weinberger
Lisa Trankley, Dept. of Justice, State Attorney Generals Office

ATTACHMENT A

GENERAL PLAN AMENDMENTS REQUIRED BY THE SETTLEMENT AGREEMENT

Section 6. To ensure that the City's development does not undermine the policies that support infill and downtown development, within 12 months of the Effective Date, the City staff shall submit for City Council adoption policies or programs in its General Plan that:

- a. Require at least 4400 units of Stockton's new housing growth to be located in Greater Downtown Stockton (defined as land generally bordered by Harding Way, Charter Way (MLK), Pershing Avenue, and Wilson Way), with the goal of approving 3,000 of these Units by 2020.
- b. Require at least an additional 14,000 of Stockton's new housing units to be located within the City limits as they exist on the Effective Date ("existing City limits").
- c. Provide incentives to promote infill development in Greater Downtown Stockton, Including but not limited to the following for proposed infill developments: reduced impact fees, including any fees referenced in paragraph 7 below; lower permit fees; less restrictive height limits; less restrictive setback requirements; less restrictive parking requirements; subsidies; and a streamlined permitting process.
- d. Provide incentives for infill development within the existing City limits but outside Greater Downtown Stockton and excluding projects of significance. These incentives may be less aggressive than those referenced in paragraph 6.c., above.

Section 7. Within 12 months of the Effective Date, the City staff shall submit for City Council adoption amendments to the General Plan to ensure that development at the City's outskirts does not grow in a manner that is out of balance with development of infill. These proposed amendments shall include, but not be limited to, ***measures limiting the granting of entitlements for development projects outside the existing City limits and which are (1) subject to an SP or MDP, or (2) projects of significance, until certain criteria are met. These criteria shall include, at a minimum:***

- a. minimum levels of transportation efficiency, transit availability (including BRT) and Level of Service, as defined by the San Joaquin Council of Government regulations, City service capacity, water availability, and other urban services performance measures;
- b. firm, effective milestones that will assure that specified levels of infill development, jobs-housing balance goals, and GHG and VMT reduction goals, once established, are met before new entitlements can be granted;
- c. impact fees on new development, or alternative financing mechanisms identified in a project's Fiscal Impact Analysis and/or Public Facilities Financing Plan..."

ATTACHMENT B

TRANSIT FUNDING REQUIRED BY THE SETTLEMENT AGREEMENT

Section 5. c. ***Any housing or other development projects that are (1) subject to an SP [Specific Plan] or MDP, or (2) projects of significance, shall provide financial and/or other support for transit use.*** The imposition of fees shall be sufficient to cover the development's fair share of the transit system and to fairly contribute to the achievement of the overall VMT goals of the Climate Action Plan, in accordance with the transit gap study and the Mitigation Fee Act (Government Code section 66000, *et seq.*), and taking into account the location and type of development.

Additional measures to support transit use may include dedication of land for transit corridors, dedication of land for transit stops, or fees to support commute service to distant employment centers the development is expected to serve, such as the East Bay. Nothing in this Agreement precludes the City and a landowner/applicant from entering in an agreement for additional funding for BRT.

UNION PACIFIC RAILROAD
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Omaha, Nebraska 68179

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July 11, 2013

VIA EMAIL ONLY

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City of Stockton
Attn. Michael McDowell
Adam Brucker
Planning Commission
425 North El Dorado Street
Stockton, CA 95202

Re: Comments to Requests of MCD South Parcel, LLC and MCD North Parcel, LLC
for the Bear Creek East Specific Plan Project
File No.: P10-225 ("Project")

To Whom It May Concern:

Thank you for allowing Union Pacific Railroad Company ("UP") the opportunity to submit the following comments in response to the City's Notice of Public Hearing for the Bear Creek East Specific Plan Project. The Project property borders UP's main line tracks along the eastern boundary of the property. Additionally, there is an at-grade road crossing over 8 Mile Road which will be closed once the new overpass at 8 Mile Road is complete. UP anticipates that the train volume in the Project area may increase in the near future and requests that the City and the Project developers keep in mind that this is a vital and growing rail corridor and nearby land uses should be compatible with this continuing rail use.

Increased Traffic Impact

Rail crossing safety is critical to the public and to UP. Any increase in traffic from

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the Project may render inadequate the current safety devices in place on nearby at-grade crossings. Additionally, an increase of pedestrian and vehicular traffic may conflict with train operations causing trains to proceed more slowly through the City, and/or make more frequent emergency stops, which would make rail service less effective and efficient. UP recommends that the mitigation measures as determined by the Project's traffic studies be implemented as part of the Project.

Noise and Vibration Impact

UP's 24-hour rail operations generate the noise and vibration one would expect from an active railway. UP requests that, in addition to the mitigation measures set forth in the Specific Plan, the City should require the developer to disclose to the general public the daytime and nighttime noise levels naturally occurring with UP's long-standing freight rail service, as well as the pre-existing and predictably-occurring vibration. These disclosures should also note UP's anticipation that train volume may increase in the future. Lastly, UP requests that the 14' masonry wall be installed and maintained by the developer, at its sole cost and expense.

UP appreciates the City giving due consideration to the above concerns. Please give notice to UP of all future hearings and other matters with respect to the Project as follows:

Austin Fearnow
Assistant Manager, Real Estate
Union Pacific Railroad Company
1400 Douglas Street - STOP 1690
Omaha, NE 68179

Please do not hesitate to contact Austin Fearnow if you have any questions or concerns.

Sincerely,



Patrick R. McGill
Senior Counsel – Real Estate
Union Pacific Railroad Company

cc: Austin Fearnow