



Ragghianti|Freitas LLP

Attorneys at Law

Riley F. Hurd III
rhurd@rflawllp.com

1101 5th Avenue, Suite 100
San Rafael, CA 94901
telephone 415.453.9433
facsimile 415.453.8269
www.rflawllp.com

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Via Hand Delivery

Planning Commission
County of Marin
3501 Civic Center Drive, Suite #308
San Rafael, CA 94903

**Re: North Coast Land Holdings Community Plan Amendment / Master Plan
Amendment / Precise Development Plan / Use Permit Amendment /
Tentative Map (P1490)**

**APPEAL OF DECISION TO COMMENCE ENVIRONMENTAL
REVIEW**

Dear Members of the Planning Commission:

Our office represents the Seminary Neighborhood Association in connection with North Coast Land Holdings' proposal to redevelop the old Seminary site with 411 housing units, a 1,000 student graduate school of unknown type, a 1,200 seat auditorium, a 17,000 square foot health center, and more. This letter sets forth the bases for the Association's appeal of the County's decision to commence environmental review of this project instead of proceeding straight to a denial hearing. The scope, intensity, and impact of this application, on its face, demonstrates that this project is unapprovable. Further studies or hearings are not needed to confirm this position.

This appeal is made with the support of the Strawberry Design Review Board ("SDRB"), whose members have now unanimously recommended that the County:

"Deny the proposed amendments to the Strawberry Community Plan, Master Plan Amendment, Precise Development Plan, Use Permit, Vesting Tentative Map, and Tree Removal Permit **without** further EIR (Environmental Impact Report) per CEQA Guideline 15270." (*Minutes from October 2, 2017 SDRB meeting, emphasis in original.*)



I. BACKGROUND

This project, and property, have a long background of controversy, community compromise, and County review. The current proposal is the most extreme and intensive ever made for the site, which galvanized Strawberry residents to take action in the form of unprecedented participation in the public process over the past years.

On December 19, 2011, the previous owner of the Seminary property brought an application before your Commission for a significant amount of housing at the site. The minutes summarizing the outcome of that meeting are incredibly instructive here, while also showing just how little progress there has been in regards to crafting a compliant application. Specifically, the minutes from that meeting state:

“The Commission expressed concerns about the proposed project, **including non-compliance with the SCP and the lack of community-based involvement in the process; the proposed change of use by exchanging unbuilt student housing for market rate homes; and development proposed on lands designated for open space.** The Commissioners agreed that the proposal does not comply with the County’s inclusionary housing ordinance, and that the ordinance should not be amended. The Commission also indicated a willingness to consider a Master Plan Amendment that is within what the SCP allows.

At the request of the Seminary President, the Commission decided to not address the issue and indicated that the project **should not go forward to the environmental review process until the SCP has been updated.** The Commission encouraged the applicant to work with the community to assess what changes should be made.”

Little has changed. Six years later there has still been no community-driven update of the Strawberry Community Plan (“SCP”), which still only allows a Seminary at the site. Instead, a new owner is again making a out-of-order, more intensive, application, without first updating the SCP via the proscribed process.

This application has now been heard four times by the SDRB. At each meeting, hundreds of residents showed up, nearly all with the same opinion as before: the Project is too big, too intense, and will cause too much traffic. For these reasons, the community has, time and again, strongly recommended that the County avail itself of the option afforded by CEQA to skip an EIR and go right to a denial hearing.



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The version of this project that contained the Branson school was ultimately heard by the DRB on October 17, 2016. The adopted minutes from that meeting state the following:

“After extensive community input on multiple hearings, with hundreds of Strawberry residents, the proposed development does not conform to the original Use Permit or the Strawberry Community Plan and its proposed amendments are not acceptable. Therefore the Strawberry Design Review Board recommends:

1. Deny the proposed amendments to the Strawberry Community Plan, Master Plan, amendment, Precise Development Plan, Use Permit, Vesting Tentative Map, and Tree Removal Permit.
2. Encourage the applicant to submit an alternative development proposal that is more in keeping with the existing Strawberry Community Plan.
3. If the applicant desires to amend the Strawberry Community Plan the first step is to engage the community in a series of meetings.”

The two key reasons for the SDRB’s ruling were: 1) the project was exponentially too intensive for the site, and 2) the project was so far out of compliance with the SCP that a more high-level public process was needed to amend the SCP before any specific project could be meaningfully analyzed.

After the SDRB issued its ruling, the Seminary Neighborhood Association and the Strawberry Community Association, two organizations that combined represent nearly all of the Strawberry community, wrote a December 6, 2016, letter to the County. The two groups were specific in their request and reasoning when they stated the following:

“We are writing to you at what is a critical juncture in the processing of the North Coast Land Holdings/Branson application. Specifically, we are requesting that the overwhelming will of the community be acknowledged, and the specific direction of the Strawberry Design Review Board be followed, by scheduling a denial hearing for this project without commencing environmental review.

It would be incredibly inefficient to embark upon the costly and time-consuming process of an EIR for a project that can't be approved.”



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The response to this letter from the County was the same response given to the initial SDRB ruling, complete and total disregard. With no acknowledgment of the lengthy public process, a January 3, 2017, letter was sent stating that the County was commencing environmental review. However, that decision to proceed with an EIR was ultimately withdrawn by the County on February 15, 2017, after Branson was removed from the project proposal.

With Branson off the table, a new series of community meetings took place in an effort to find common ground between the applicant and the community in regards to project scope and intensity. These attempts were not fruitful. The single open house held by the applicant seemed to be nothing more than a “check the box” affair, and did not even present the project currently being applied for. The Seminary Neighborhood Association and Strawberry Community Association then conducted a detailed survey of Strawberry residents and obtained an impressive response rate. The results of the survey were crystal clear on one main point: the community does not want a school at this site. The response from the applicant was to continue to seek a massive school at the site, along with over 400 units of rental housing, while compounding the effects with other uses such as an auditorium and fitness center.

Assuming the generous SANDAG trip rate of 8 daily trips per housing unit, as well as the ITE trip rate of 3.38 trips per student, the proposed housing and school alone would generate 6,580 trips per day in Strawberry. Once the public auditorium, sports fields, and fitness center are factored in, this number climbs significantly higher, all in an area well beyond its traffic carrying capacity.

After the failed attempts at working with the applicant on a meaningful redesign, an oddly timed series of events occurred. In mid-September of 2017, notice was sent out for another SDRB hearing to take place on October 2nd. However, **just days prior to the SDRB meeting**, and before any of the multiple governmental agencies had a chance to review and comment, a Notice of Preparation of EIR was again sent out by the County. The decision to proceed with environmental review *before* hearing the recommendation from the SDRB on the updated project entirely discounts the community’s input via its local Design Review Board. The premature decision to proceed with an EIR is even more problematic when the outcome of the most recent SDRB is considered. The recommendation from the SDRB after the October 2nd hearing was the following:

“After extensive community input on multiple hearings, with hundreds of Strawberry residents, the proposed development does not conform to the original Use Permit or the Strawberry Community Plan and its proposed amendments are not acceptable. Therefore the Strawberry Design Review Board recommends:



1. Deny the proposed amendments to the Strawberry Community Plan, Master Plan Amendment, Precise Development Plan, Use Permit, Vesting Tentative Map, and Tree Removal Permit **without** further EIR (Environmental Impact Report) per CEQA Guideline 15270.
2. Recommend the Board of Supervisors start the process of revising the Strawberry Community Plan with the participation of the Strawberry community.
3. Recommend the County proceed with enforcing the current interim uses, as the applicant is apparently using the property in violation of existing entitlements."

The SDRB members were somewhat confused as to why they were even hearing this project for a fourth time. Their previous direction was abundantly clear about what needed to occur in regards to applicant outreach, how to amend the SCP, and that the current project was a nonstarter. The updated project certainly had done nothing to address the previous concerns, and therefore the outcome was the same, except for the fact that the SDRB now specifically recommends not performing an EIR, but instead moving right to a denial hearing. This appeal requests that the Planning Commission follow that recommendation of the SDRB.

II. LEGAL BASES FOR APPEAL

This appeal is brought pursuant to two primary sections of the County's regulations. The first is Section X of the County's 1994 Environmental Impact Review Guidelines ("EIR Guidelines"). This section states that:

"Any person aggrieved or affected by **any** determination made pursuant to this procedure may appeal such determination..." (Emphasis added.)

Here, the decision to commence environmental review instead of scheduling a hearing for project denial pursuant to CEQA Guideline 15270 is the decision being appealed. Guideline 15270 states that CEQA does not apply to projects which a public agency rejects or disapproves. Subsection (b) of this Guideline explains its rationale by noting that it, "is intended to allow an initial screening of projects on the merits for quick disapprovals prior to the initiation of the CEQA process where the agency can determine that the project cannot be approved." This makes sense. The EIR process is incredibly costly and time-consuming for all sides. There is no point in incurring this expense and delay for a



project that cannot be approved, and the subject project, as confirmed multiple times by the SDRB, is just that: **unapprovable**.

The second legal basis for this appeal is Section 22.114.020(B)(3) of the County Code, which permits appeals of project approvals, project denials, “**or determinations regarding compliance with environmental review requirements**, pursuant to the California Environmental Quality Act and the County Environmental Impact Review Guidelines.” The decision being appealed here also fits within this category of appealable determinations.

III. MERITS OF THE APPEAL

This appeal is based on two major contentions:

1. The description of the project is missing critical information required to conduct a meaningful environmental review, and,
2. The project is so out of conformance with the County’s policies and regulations, particularly the Strawberry Community Plan, that it cannot be approved.

A. The Application is Woefully Incomplete

Numerous cases have repeated the general principle that an accurate, stable, and finite project description is the indispensable prerequisite to an informative and legally sufficient EIR. (*County of Inyo v City of Los Angeles* (1977) 71 CA3d 185; 14 Cal Code Regs, Section 15124.) Creating such a description for an EIR is not possible with the information contained in the current application. The most glaring omission is what type of 1,000 student school is proposed for the site? The application merely states: “The proposed Academic Campus use would continue the operation of an educational institution which may or may not include a religious component.” There is no way to accurately identify and quantify the environmental effects of a mystery “educational institution.” Examples abound of dramatically different levels of impact resulting from different types of educational institutions (i.e. a seminary v. a commuter high school).

Furthermore, the project description is certainly not finite. As recently as October 2nd, the applicant suggested in a public presentation that the housing mix would be 20% student, 60% market rate, and 20% affordable. These data points are nowhere in the application. The current application also contains glaring internal inconsistencies. A statement is made that, “the Proposed Project will substantially conform with the underlying entitlements and historical operational pattern of the property as a graduate level



institution.” Besides not even committing to running an actual graduate institution, the accompanying “Operational Characteristics” contain the following components:

- Student drop-off day
- College Placement Parent Meetings
- Student pick-up day
- P.E. and practices on the sports fields
- Athletic events
- 1,000 person “international festivals”
- 1,200 person “community celebrations”

These components are totally incongruous with a graduate institution of any type. Without significantly more information, there is no way a legally sufficient EIR project description could be developed. It is surprising a NOP was issued with the application as incomplete as it is, as this is the precise type of obfuscation prohibited by the CEQA Guidelines and case law. The application deficiencies alone are grounds for granting this appeal, as there is no way to prepare an EIR with what is currently before the County.

B. The Project Cannot Be Approved

More importantly, the current proposal is so inconsistent with County policies, particularly the SCP, that it cannot be approved. The framework for considering this portion of the appeal is best summed up by Section IV(D)(6)(e) of the EIR Guidelines, which reads as follows:

“If a project does not appear to substantially conform to established County Planning policies and/or ordinances, and it appears such policies and/or ordinances would require denial of the application, the project should be referred to the relevant decision making body for appropriate action on the project...”

As decided by the SDRB, and as noted repeatedly in letters from this office, the Project violates many of the County’s policies and regulations. The most egregious of these violations is that of the SCP, which is the constitution of development for the area. As summarized below, a number of other violations also render the Project unapprovable such that denial now is more appropriate than embarking upon environmental review.



1. The Project violates the Strawberry Community Plan

The SCP is the specific, controlling document for the project site, and the SCP has always contemplated that the site be used only as a Seminary, with associated student and faculty housing. (See numerous discussion in 1974 SCP regarding Seminary at pages 32, 47, and 58, for example.) While the SCP was amended in 1982 to permit a finite amount of market-rate housing in a very specific area, this amendment did not change the fact that only a seminary and its associated student and faculty housing would remain on the areas of the property not being sold off for housing. More importantly, this amendment contained some very clear language about the capacity for the site when it stated that the additional development approved via the amendment, **“was determined to be the maximum desirable based on the projected traffic and the context of the property within the community.”** The current application’s proposed treatment of this prescient and critical Community Plan language is to simply delete it. This is unacceptable, and unapprovable when the SCP is taken in context.

A series of further self-serving SCP edits are proposed to delete the requirement that the housing on site be for students and faculty only, and to totally change the for-sale requirement of the market-rate homes to now allow 100% rental. These major SCP components now sought to be stricken were the result of years of negotiations and hard work by the Strawberry Community, and should not be permitted to occur in such a haphazard and singularly focused manner.

As important as the deletions, however, is what isn’t proposed to be changed in the SCP. The remainder of the document, including the amendment regarding the Seminary site, is untouched, thereby resulting in a wholly inconsistent document. For example, the following SCP language would remain, which is not only inconsistent, but also shows why the project cannot be approved:

- “Of particular concern was the increasing number of attached multiple residential developments and the increasing impacts of traffic generated by these new developments.”
- “If new development is to occur, it can strengthen this character by providing the traditional setting of detached single family units within any new development proposed for the area.”

Instead of brushing the constitution of Strawberry development aside with strikethrough edits, the SCP should be respected, and a comprehensive community-driven update process undertaken **before** consideration of a nonconforming project. The entire context



of the SCP should be respected, and only uses that take into account the current traffic situation and residential nature of the surrounding community should be considered. This was the procedure followed the only other time the SCP was amended, and it is certainly the appropriate approach for a change anywhere near the magnitude of what is proposed this time around.

2. The Project violates the Master Plan for the site

In the over three decades that have passed since the approval of the property's 1984 Master Plan ("Master Plan"), the area surrounding the seminary site has been heavily built out with significant multifamily housing and other development, while traffic patterns have changed for the worse. Despite this evolution of the area, the current application seeks to heavily intensify the use of the property by such a magnitude as to be a nonstarter.

A mantra of the applicant has been that the proposal complies with the Master Plan, yet the requested SCP and Master Plan amendments demonstrate exactly the opposite. Changes from student housing to market housing, and from a Seminary to a 1,000 student school of unknown type with regional sporting facilities are hardly "compliant." What this proposal does is take a single self-contained graduate school campus, and split it into two new sectors, with each new part being more traffic-intensive on its own than the previous whole. **The Master Plan in this case is about much more than building locations, it is about use, and by extension, impact.** The impact of what's proposed was never anticipated by the Master Plan, and is so far beyond what the site can accommodate, that the applicants actually need to start over.

The Master Plan states the following:

"The Master Plan has been designed to be compatible with the Strawberry Community Plan Amendments. The Seminary participated in the public hearings held for the Community Plan, and the Master Plan has been modified before and after Community Plan adoption, in order to improve the consistency of the two Plans." (Master Plan, Page 35.)

The applicants now wish to amend this Master Plan in ways not permitted or contemplated by the very SCP the Master Plan was designed to be consistent with. The entire character of the Property would be radically changed by the elimination of a lightly-used Seminary campus with on-site housing for students and faculty and no organized sporting teams in exchange for over 400 rental units, a 1000-student school with 200 employees, a regional sports complex, and a new venue for large events and



weddings. Assertions that the application somehow complies with the current Master Plan not only strain credulity, but ignore the fact that the applicants themselves seek an amendment. The requested amendment isn't minor, and it isn't really an amendment: **this is actually an application for a new master plan, and any decision thereon would be premature until the future of this property is determined within the context of a community-driven SCP update.** To commence an EIR without first updating the guiding legal document for the property would upend the process, and result in the tail wagging the dog. The fact is, the applicants bought a Seminary, nothing more. The only way to change that reality is to get support for, and approval of, a comprehensive SCP update.

3. The Project violates the CUP for the site

The 1953 CUP for the Property is for one use, and one use only:

"...to permit the construction of a Theological Seminary and dormitories and other buildings incidental to such use..."

The record for the 1953 CUP indicates that two factors were central reasons a seminary was ever even considered as acceptable at this site:

1. That 100% of the students would be housed on the property, and
2. That the college was post-graduate, thereby making it an asset to the area.

A school without the characteristics cited above would in no way meet these criteria. A school that does not house its students on site generates significantly more vehicle trips, noise, and other impacts, at a level far greater than the self-contained post-graduate institution contemplated in 1953. On top of this, the applicant then also requests over 400 new rental housing units based on the theory that the student and faculty housing units are somehow equivalent to much larger homes that will be inhabited by people that primarily work off-site. This apples to oranges comparison is not supported by logic or the law, and flies in the face of the original concepts underlying the CUP approval.

Also, given the missing information in the application, it is unclear what the new CUP would even be for? A graduate school? A "use that conforms to the operational characteristics of a graduate school?" The exact use must be nailed down with specificity before granting a use permit that runs with the land, but certainly before beginning an EIR.



IV. CONCLUSION

At this point, there is more than enough information to conclude that the project does not, “appear to substantially conform to established County Planning policies and/or ordinances,” and that it does appear that, “such policies and/or ordinances would require denial of the application.” The self-serving project-specific edits proposed to the SCP provide no community benefit whatsoever, while also completely ignoring the direct guidance from your Commission about the appropriate way to amend a community plan.

No amount of technical studies or impact analyses will change the fact that the SCP does not, and would not, support a project of this type or scope. Further studies or review will also not somehow bring the exponentially high trip generation numbers for a project of this size into a realm the community can accommodate. For these reasons, commencing an EIR at this point would be incredibly inefficient, would be very difficult given the missing information, and would send the wrong message to the applicant that perhaps a project even close to this level of intensity might be approved.

We would request that you grant this appeal and schedule a denial hearing for this project. Thank you.

Very Truly Yours,

A handwritten signature in blue ink that reads "Riley F. Hurd III". The signature is written in a cursive style.

Riley F. Hurd III

CC: Seminary Neighborhood Association
Strawberry Community Association
Supervisor Kathrin Sears
Brian Crawford
Tom Lai
Dan Sicular