

Encinitas Residents for Responsible Development

June 8, 2022

Via E-mail

Encinitas City Council
c/o City Clerk

Re: Item 10c, June 8, 2022 Council Meeting

Dear City Leaders,

According to the Staff Report, Staff has made a finding (Design Review #3) that “No evidence has been provided indicating that the proposed project would adversely affect health, safety or general welfare of the surrounding neighborhood or community.” This is simply untrue. Substantial evidence was presented at the Planning Commission, before the City Council on appeal, and at subsequent City Council meetings and written correspondence. The evidence overwhelmingly demonstrates that:

- Wildfire is an existing threat to the surrounding neighborhoods and communities
- Emergency response times are substandard in the surrounding community of Olivenhain
- The proposed project will adversely impact wildfire evacuation and emergency response times

Encinitas RRD specified the lack of public safety findings at Planning Commission as a specific basis for appeal. Staff response ignored the safety impact, and rather narrowly focusses on the City’s legal authority. At the first hearing of the appeal, Council directed staff to address these public safety issues, and as the Staff Report for this action acknowledges “The Fire Department provided a detailed response to concerns about the adequacy of evacuation routes in the agenda report prepared for the City Council’s November 10, 2021 meeting and in oral comments made at that meeting.”¹ Thus on the one hand, staff denies that any evidence has been provided, and on the other hand appears to argue that the City provided compelling evidence to deny such a finding.

As our City Council you have a moral duty to the Citizens you are entrusted to protect to seriously consider and weigh the evidence for and against these threats to public safety and make the appropriate findings, independent of the City’s legal authority to deny the project. To pretend that no evidence has been provided and to reinforce the staff finding as presented in the draft resolution would be a gross dereliction of your duty.

Evidence before Planning Commission:

On July 9th, Encinitas Residents for Responsible Development (ERRD) provided a “Summary of the external analysis of the Olivenhain-Encinitas Fire Evacuation Plan²,” conducted by Certified Fire Protection Specialist Chuck Weber, and the full original Weber report³ as a separate attachment. Both documents cite the then current Encinitas Fire evacuation plan⁴, which estimated it would take 3 hours and 55 minutes to evacuate Olivenhain in the event of a wildfire, and that there were several reasons to believe that underestimated the

¹ https://encinitas.granicus.com/MetaViewer.php?view_id=7&event_id=3531&meta_id=140481, page 14

² https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2480&meta_id=126318 pages 47-48

³ Ibid, pages 68-247

⁴ Ibid, pages 194-209

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true evacuation time requirement. The ERRD summary went on to state **“The location of the Goodson/Malk project on one of the most vulnerable evacuation routes can only exacerbate an already dire fire situation.”** (emphasis original). On July 13th, I submitted⁵ a second report from Chuck Weber detailing the Negative Impacts of Goodson Apartment Project on Olivenhain Evacuation Route Effectiveness⁶, dated 9July2021. This second Weber report, explains:

The existing evacuation routes serving the Olivenhain sub-community, and portions of the unincorporated Rancho Santa Fe area east and north of the Project, Site along Rancho Santa Fe Road and Encinitas Blvd are currently overtaxed and cannot provide reasonably adequate, performance-based design egress out of the area in the event of major emergencies.

Allowing an additional 640 vehicles on the existing evacuation route with established constraints detrimentally increases evacuation time by 29% to 67%... Residents using established evacuation route(s) will be unnecessarily and adversely exposed to a significant risk of entrapment, injury or 2 Negative Impact of Goodson-Encinitas Blvd. Apartments on Olivenhain Evacuation Route Effectiveness death when overrun by the flame fronts. No mitigations have been brought forward to resolve the substantial risks imposed on community members using evacuation routes identified as subject to being overrun by flame fronts caused by wildfire events.

Similar points were made by numerous organizations, experts, and members of the public, including:

- Olivenhain Fire Safe Council President and retired Deputy Captain of the RSF Fire Department Denny Neville and coauthors, principles in Community Wildfire Preparedness Planning, who disclosed their meeting with City hired Fitch & Assoc. consulting firm⁷
- Olivenhain Town Council⁸
- Rancho Santa Fe Association⁹
- Craig Sherman on behalf of Encinitas RRD¹⁰
- A petition urging the City “Do not allow projects that put public safety at risk” with 1229 signatures¹¹
- Correspondence from Chief Stein and cover letter calling for serious consideration of public safety risk¹²
- Scores of letters from the public
- Dozens of public testimonies, including from experts including Denny Neville and Chuck Weber

Staff Analysis and Balance of Evidence

⁵ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2480&meta_id=126319, page 4.

⁶ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2480&meta_id=126323, pages 1-23

⁷ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2480&meta_id=126319, pages 65-66

⁸ Ibid., pages 95-96 for a draft version published to the website, and

https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2480&meta_id=126320 page 53 for the cover letter for the final letter submission, which was never published to the web site

⁹ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2507&meta_id=127341, pages 44-45

¹⁰ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2480&meta_id=126322, pages 1-208

¹¹ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2507&meta_id=127343, pages 26-101

¹² https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2507&meta_id=127344, pages 11-15

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There was no evidence submitted to refute the above evidence. Staff report was silent on any adverse impact to the surrounding community(ies). The analysis of “Fire” looked only at on-site impacts¹³.

The project meets all fire department requirements as it relates to the required 150-foot hose pull (with standpipe requirements) and emergency access roads with required turnarounds. The project is not located within a high fire hazard severity zone and in the event of wildfire in the surrounding area, the residents in the project would utilize the Encinitas Blvd access point for evacuation purposes if needed. (Staff Report¹⁰)

Chief Stein and Fire Marshal Schmidt provided verbal testimony. Most of the testimony attested to the onsite safety of the project itself with regard to fire standards on site, evacuation capacity for project residents, and that the project borders but is not in the high fire hazard severity zone. In response to a question about the sequencing of project evacuation relative to other Olivenhain evacuations, Chief Stein described zoned evacuation as the smart strategy. There was no testimony to address or refute the proposed projects adverse impact on public safety to the surrounding community.

As Craig Sherman pointed out at the time¹⁴,

Failure to consider and resolve the fire evacuation problem is an abuse of discretion. ... It is generally after a disaster that officials promise to take actions and steps so that “something like this never happens again.” It would be an unacceptable sentiment to fail to take action when the issue of fire safety and the contribution of the Project to an extremely dangerous situation is known now, prior to the disaster. Here, “[n]o identifiable mitigations have been brought forward to resolve the substantial risks imposed on community members using evacuation routes that are subject to being overrun by flame fronts caused by foreseeable wildfire events.” Encinitas RRD urges the Commission to direct staff to evaluate potential mitigations, including (a) suitability of the project for sheltering-in-place, and (b) alternatives to the new signal such as right turn only access to and from both Rancho Santa Fe Road and Encinitas Blvd.

Planning Commission Decision and Findings

Planning Commission denied the project based on denial of the design review permit¹⁵. The resolution (2021-27) was silent on public safety and wildfire evacuation risk.

Appeal to City Council:

Encinitas RRD appealed¹⁶ the Planning Commission decision, asserting they “failed to make findings supporting a basis of denial that were raised and presented by Encinitas RRD. To the extent that contrary recommendations in the Staff Report were implicitly adopted by Planning Commission, those findings are factually and legally unsupported and are hereby appealed.” “The proposed Project would have a specific

¹³ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2480&meta_id=126310, page 9

¹⁴ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2480&meta_id=126322, pages 10-11

¹⁵ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2563&meta_id=130100

¹⁶ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2563&meta_id=130099

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adverse impact on public safety for the evacuation of the Olivenhain community in the event of a Santa Ana driven wildfire¹⁷.”

Staff’s response failed to address the substance of the public safety risk,¹⁸ and rather focused narrowly on legal questions surrounding the City’s authority to deny the project. The complete response was:

The Government Code sections referenced in the ERRD appeal state that there must be a specific, adverse impact that is “significant, quantifiable, direct, and unavoidable, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” Gov. Code § 65589.5(j)(1)(A). “Objective” means “involving no personal or subjective judgment by a public official and be uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official”. Gov. Code § 65589.5(h)(8). The City has adopted no objective written standards or criteria related to fire safety and evacuation, which the project as proposed violates.

Additional Evidence Before City Council

- Hector Paredes, Lake County Commander CHP (retired)¹⁹
- Douglas Dill, San Dieguito Planning Group²⁰
- RSF Association²¹
- Fred Cox, RSF Fire Chief²²
- OTC²³
- Sherman²⁴
- ERRD Position²⁵
- Scores of letters from the public
- Dozens of public testimonies, including from experts including Denny Neville and Hector Paredes

Opposing correspondence

- Hutter²⁶ which did not refute any of the above evidence, but rather merely asserted that “ERRD’s wildfire safety speculation lacks any credible supporting evidence.”

City Council continued the hearing and directed staff to evaluate public safety. Despite OTC’s request to Chief Stein to conduct a robust multidisciplinary review²⁷, staff took the very narrow perspective to review

¹⁷ Ibid., page 5

¹⁸ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2563&meta_id=130095, page 15

¹⁹ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2563&meta_id=130119, page 33

²⁰ Ibid., pages 53-54

²¹ Ibid., pages 69-70

²² https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2563&meta_id=130123, pages 1-2

²³ Ibid., pages 18-19

²⁴ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2563&meta_id=130121, page 38-39

²⁵ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2563&meta_id=130121 page 510-511

²⁶ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2563&meta_id=130121 page 12

²⁷ Copy attached

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the two Weber reports. Staff report for the November continuation reported two substantive differences between the Weber reports and Fire Staff's analysis.

The first was a disagreement about what fire assumptions should be modeled and the resulting time available for evacuation. The Weber report was based on worst case humidity and wind conditions, as observed during the devastating 1997 and 2007 fires and an ignition event at the Escondido City limit along the riverbed. Staff report complains that these conditions "would overwhelm any community in Southern California where this hypothetical conflagration was placed." Instead, they embraced alternate modelling that fire would impact the community in approximately 4 hours and 47 minutes. The dispute doesn't really impact the conclusion, that in a range of potential Santa Ana driven wildfire events, evacuation of the community of Olivenhain will be challenging.

The second point of disagreement was on the roadway capacity. The Staff report cites hearsay evidence of "consultation with a licensed traffic engineer" to support "capacity of at least 1,000 vehicles per hour." Please see the email thread I forwarded earlier today, where the City Traffic Engineer retracted those estimates based on the observed maximum volume observed in a City sponsored Jan 2020 study. Capacity is 700 vehicles/hour.

City Council ultimately decided to deny both appeals (applicant and ERRD). With regard to Public Safety, Resolution 2021-93 cited a lack of authority to deny the project based on fire safety and wildfire evacuation but was silent on the critical issue of the existing dangerous conditions and on the project's adverse impacts to public safety.

Additional Evidence Since Council's Final Decision

On January 19, 2022, City Council received the Fitch report²⁸. The full report and testimony at the public hearing is cited as supporting evidence here as if it was included in full. This report generally corroborates the original Weber report and provides independent substantiating evidence of the wildfire risk to the Olivenhain community and challenges in safely evacuating Olivenhain and surrounding communities.

On February 16, 2022, City Council received a second Fitch report²⁹. The full report and testimony at the public hearing is cited as supporting evidence here as if it was included in full. This report documents that Olivenhain has substandard emergency response times. These response times are particularly challenging with regard to depth of coverage to provide an adequate fire fighting force³⁰. In general, the first responding unit will be from Station 6, and subsequent Encinitas Fire responding resources will respond via the Project intersection at Encinitas Blvd and Rancho Santa Fe Road, including through the proposed novel signal at McCain Lane. City Council adopted response standards for rural Olivenhain that are slower and smaller than for the other areas of the City.

²⁸ https://encinitas.granicus.com/GeneratedAgendaViewer.php?view_id=7&clip_id=2632

²⁹ https://encinitas.granicus.com/GeneratedAgendaViewer.php?view_id=7&clip_id=2667, item 10A

³⁰ https://encinitas.granicus.com/MetaViewer.php?view_id=7&clip_id=2667&meta_id=135446, Figures 78-82, pages 164-168.

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OTC correspondence with the Attorney General's office (attached). The AG's office interprets the November action as a City decision that there is not a public safety risk, and cites the debunked 1000 vehicle/hour capacity as substantiating evidence.

Yours in Community,

Dan Vaughn
Cofounder and Board Chair