



County of San Diego

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VINCE NICOLETTI
ACTING ASSISTANT DIRECTOR

April 16, 2021

TO: Planning Commission

FROM: Kathleen Flannery, Acting Director
Planning & Development Services

SUBJECT: Follow-up regarding February 18, 2021 letter sent by the Applicant for Peppertree Park Unit's 9 and 10; PDS2003-3800-03-XX; PDS2020-ER-18-02-001A; PDS2020-REZ-20-003; PDS2020-SPA-20-001; PDS2020-TM-5638; PDS2020-MUP-87-069W1; PDS2020-STP-20-013 to Planning Commissioners

INFORMATIONAL ITEM G2

PURPOSE

At the February 19, 2021 Planning Commission Hearing, the applicant for the Peppertree Park Unit 9 and 10 project (Project) spoke about review time for this project and referenced a letter that was sent to Planning Commissioners on February 18, 2021. In response, Planning & Development Services (PDS) is providing an informational update on the Project, and no action can be taken. It will be docketed as a decision item in the future. Below is a summary of the project description, project issues and timeline.

The Project site is located at Mission Road, in the Fallbrook Community Plan Area, within the unincorporated San Diego County. The Project site is part of the Peppertree Park Specific Plan SP 87-007 that was adopted in August 1991. The Project was originally submitted in 2003. It proposed a general plan amendment to change the area known as Unit 9 from commercial use to residential use while leaving Unit 10 as commercial consistent with the Specific Plan. Over the years the Project has been revised through multiple iterations, and the Project application was placed into idle status in 2011. The Project was substantially redesigned in 2018 which included changing both Units 9 and 10 from commercial use to residential use. The 2018 application was withdrawn by the applicant in October 2019. Since then, four meetings have occurred with the applicant, at times with Counsel, to explain the options for proceeding.

The current version of the Project is a request for a General Plan Amendment, a Specific Plan Amendment, a Zone Reclassification, Tentative Map, Major Use Permit Modification and Site Plan for a proposed single-family and commercial development. The proposed development includes 57 single-family condominium units on Unit 9 on the southern portion and the applicant wants to proceed with two alternatives on Unit 10 with either commercial uses or 60 multifamily condominium units on the northern portion of an approximately 19.76-acre site. Access to the site would be provided by the extension of Pepper Tree Lane and two secondary emergency

accesses are proposed to connect to Woodlark Lane to the West and to the North to the existing Grand Traditions, Grand Traditions Drive, and Palomino Road. In addition to the change in residential use, the General Plan Amendment would remove a proposed Mobility Element road crossing the creek that was planned to provide a community connection across the larger Peppertree Park development area. The Specific Plan Amendment would implement the General Plan Amendment changes to change the site from commercial uses to residential uses. A Rezone would be required to allow density at 7.3 dwelling units per acre. The Tentative Map would subdivide the site into condominiums. A Major Use Permit Modification is required to change the established Planned Development and to revise the total number of units and a Site Plan is required for community design review.

It is uncertain at this stage if the Project could rely on the previously certified Environmental Impact Report (EIR) with an addendum, require a Supplemental or Subsequent EIR, or if a new EIR would be required. Staff will make this determination after the applicant submits the additional information requested. Staff has reviewed the applicant's submittal of Plans and technical studies and provided comments back to the applicant. Staff have also scheduled a meeting with the applicant to address comments within the Scoping Letter that was issued.

One of the Project issues that has caused delays for the Project moving forward is that the Project is located within the Airport Influence Area (AIA) of the Fallbrook Airport. Specifically, the Project is located within (Safety Zones 2 and 3) of the Fallbrook Airport's Airport Land Use Compatibility Plan (ALUCP) which does not allow for residential development because a portion of the Project is within the Safety Zone 2, which prohibits residential uses. Since the Project includes general and specific plan amendments and a zone change within an area covered by the ALUCP and the Project has been modified since the last determination, the County is required by Public Utilities Code Section 21676(b) to submit the current Project proposal to the San Diego County Regional Airport Authority for an ALUCP consistency determination. County staff has filed an Airport Land Use Commission (ALUC) application with the Airport Authority to determine if the Project is consistent or not consistent with the ALUCP. The Airport Authority will review the application and provide a recommendation to the ALUC Board who will make the final consistency determination. This determination will then be shared with county staff as they continue to process the application. The determination may only be overruled by the County by a two-thirds vote of the Board of Supervisors if the Board finds the Project is consistent with the airport noise and safety policies set forth in Section 21670 of the Public Utilities Code.

Staff has provided the applicant options on how to proceed with the Project, and the applicant has chosen to proceed with the proposal even though it appears to be inconsistent with the ALUCP and that staff has indicated they will not support the Project if it is inconsistent.

ATTACHMENTS:

Attachment A – February 19, 2021 Planning Commission Letter and Attachments from Mr. Duane Urquhart

**Attachment A – February 19, 2021 Planning
Commission Letter and Attachments from Mr. Duane
Urquhart**

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Peppertree Park Project

5256 S. Mission Road, Ste 905
Bonsall, CA 92003

February 18, 2021

Chairman Michael Edwards
County of San Diego Planning Commission
5510 Overland Avenue
San Diego, CA 92123

Chairman Edwards-

I am the master developer for the Peppertree Park masterplan community in Fallbrook. I have been processing entitlements through DPLU/PDS for over 40 years. While I had past processing challenges, I have never experienced anything remotely comparable to the extraordinary PDS problems where the magnitude was such that it needed to be brought to Planning Commission attention. A brief summary follows:

Background: When the original Peppertree Park Specific Plan was approved in 1991, Units 9 & 10 were designated for Office Professional Uses. As time went by and the Fallbrook community evolved, the need and demand for more affordable infill housing amongst other alternative uses increased.

In 2003, a GPA/Rezone application was submitted, completed initial public review, and received a DPLU Plan Amendment Authorization (PAA) approval for a range of residential and/or retail commercial or mixed uses. In June 2003, DPLU determined the 2003 GPA/Rezone application was **complete**. The 2003 GPA/Rezone was being processed concurrently with a Revised TM which had to be approved first. Because of delays to the Revised TM approval, the 2003 GPA/Rezone was placed by DPLU in an Idle Status account to preserve the existing entitlements. The 2003 GPA/Rezone remained in good standing until it was removed from Idle Status to complete final processing in 2017.

The 2003 GPA/ Rezone proposes to modify the last two phases of a fully entitled **infill project** which is already covered by an approved Final EIR, Supplemental EIR, and two Addendums. To be clear, this Rezone not only provides for more affordable infill housing, but the new rezoned land uses will have lower impacts than the original approved uses. For all these reasons amongst others, the Fallbrook Planning Group voted unanimously to approve.

PDS Processing Timeline:

Based on the attached PDS Processing Timeline received from the PDS Planning Director, this GPA/Rezone should have been before the Planning Commission on or about **August/September 2018** and to the Board of Supervisors by **November/December 2018**. Refer to 1st Attachment

Here is what actually happened. **September/October 2017**, PDS identified an Airport Land Use Compatibility Plan (ALUCP) as a major project issue. In **December 2017**, PDS made a **written determination** that the project qualifies for a **Long-Term Project Exemption**. With this issue resolved, an updated Project Checklist submittal along with the related technical studies was provided to PDS **December 13, 2017**. Staff review was supposed to be completed within 30 days or before the end of **January 2018**. See 2nd Attachment.

Instead of receiving the PDS Staff review by January 2018, the next Staff Scoping Letter was sent out in August 2018 which was **210 days** after it was due according to the PDS Processing Timeline.

Based on the PDS timeline, the **final Staff review** should have been completed by August 2018 at which time PDS should have been finalizing project conditions, preparing the Staff report, and initiating the final 45-day public review.

By April 2019 PDS had not completed the resubmittal review. Instead, PDS arbitrarily decided to rescind the prior **Long-Term Project Exemption waiver**. So, I requested a public hearing before the ALUC commission.

Prior to the ALUC public hearing, the **ALUC staff** located a **2003 Regional Airport Letter** which had been *sent to PDS* but had not been disclosed to us. This letter clearly states that the Peppertree Park Units 9&10 are not in the *Airport Area of Influence*. In October 2019, PDS and ALUC Staff met and determined the 2003 GPA/ Rezone could proceed without further ALUC review. With the issue resolved, the item was pulled from the ALUC hearing. See 3rd Attachment.

Next, I attended the November 2019 Planning Commission hearing with the intent to speak on PDS processing problems. I met up with Director Wardlaw who asked me to defer my critical comments and meet after the hearing in an informal *Issue Resolution Meeting* with senior PDS Staff Kathleen Flannery, Mark Slovick, and Darin Nuefeld. At that meeting, PDS staff acknowledged the extraordinary delays and promised to have the project before the PC by June 2020.

Note: According to recently received PDS billing records between **October 2019 and May 2020**, PDS Staff had conducted no work on an active application in preparation for a Planning Commission hearing.

When I inquired as to the project status there was an August 2020 teleconference with Mark Wardlaw, Mark Slovick, and our planner. I was told that the technical reports needed to be updated and then after receipt, the 45-day public notice would be filed for a PC hearing. Again, no public notice and no PC hearing.

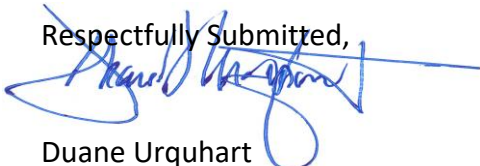
It is now February 2021 and PDS, despite multiple promises, has still not published the 45-Day Public Notice for Planning Commission hearing. As a result, I have completely lost confidence in PDS's ability or even willingness to perform and honor their commitments.

The bottom line: This project should have been approved **two (2) years ago**. Instead, over \$120,000 has been spent in County deposits, *hundreds of thousands of dollars* have been incurred in holding costs due to **four (4) years** of unwarranted delay, and still there is no Planning Commission or Board of Supervisors hearing date.

Since the Planning Commission does not have an ombudsman or similar to address these absolutely bizarre circumstances, I must respectfully request the commissioners place this item on your next hearing agenda for review. With your consent, I can reasonably summarize in Five(5) minute PowerPoint presentation.

Thank you for your consideration.

Respectfully Submitted,



Duane Urquhart

From: "Sibbet, David" <David.Sibbet@sdcounty.ca.gov>
Date: December 21, 2017 at 2:41:01 PM PST
To: "duane@ncinvests.com" <duane@ncinvests.com>
Cc: "Kevin P. Sullivan" <KSullivan@gdandb.com>, "Smith, Marisa" <Marisa.Smith@sdcounty.ca.gov>
Subject: Peppertree GPA airport review

Duane,

12/21/17

Good news, we agree that your proposed project can meet the 7 below findings, but the ultimate determination will be made by the ALUC and the California Division of Aeronautics pursuant to the plan (Section 2.3.3) and then the project by the Board of Supervisors.

Staff has reviewed your submitted emails regarding why – in your opinion - Peppertree Park GPA 03-xx (for Units 9 & 10) should not be subject to the current Fallbrook Airport Land Use Compatibility Plan (ALUCP).

As you are aware, the current Fallbrook ALUCP shows Safety Zone 2 over the northwest corner of your project site. Section 3.1.1 (a)(2) of the Fallbrook ALUCP states, "Residential infill development shall not be permitted within Safety Zone 2." However, there are exceptions, as you noted with your proposal of using Section 1.2.2 (f) of the Fallbrook ALUCP (Long Term Projects), which states, "Except as otherwise provided in Paragraphs (a) through (e), above, a long term project...and any subsequent discretionary or ministerial implementing permit or action for that project, shall be governed by the compatibility plan in effect at the time the first such permit or action for the project was issued by the local jurisdiction, provided all of the following exist:

- (1) The project applicant has obtained from a local jurisdiction final approval of the original approval(s) prior to the effective date of this Compatibility Plan;
YES - The County agrees with your assessment that SP87-007 and TM-4713 were approved by the Board of Supervisors on August 14, 1991, which is prior to the ALUCP effective date (December 4, 2006).
- (2) The local jurisdiction has obtained a consistency determination for the original approval(s) (for those jurisdictions where the General Plan is not consistent with compatibility plan);
N/A - The County of San Diego's General Plan is consistent with the Fallbrook ALUCP.
- (3) The original approval(s) remain(s) in effect;
YES - The County agrees with your assessment that SP 87-007 remains in effect.
- (4) Final approval of the original approval(s) was (were) obtained not more than fifteen (15) years prior to the effective date of this Compatibility Plan.
YES – TM-4713R (Revised Map) and MUP-87-069W1 (Major Use Permit Modification) were approved by the Planning Commission on November 16, 2007.
- (5) The project applicant has used reasonable good faith efforts in proceeding with the original approval(s) including without limitation, processing any other governmental permits and approvals necessary to implement the original approval(s)...
YES – The County agrees with your records (the recording of Units 1-6 of TM-4713 and the approval of TM-4713R/MUP87-069W1) that the applicant has proceeded with the original approval(s).
- (6) The local jurisdiction has approved a related implementing permit or action for the original approval(s) within five (5) years prior to the effective date of this Compatibility Plan or the project applicant has an application on file that has been deemed complete by the local jurisdiction for any related implementing permit or action as of the effective date of this Compatibility Plan; and
YES – The County determined that the application for GPA 03-xx was complete pursuant to Section 65943 of the Government Code, as noted in the June 27, 2003 Scoping Letter to the applicant.

PDS Processing Procedure and Standard Timeline

Processing Checkpoints		County Projected	
		Days	Completion Dates
Applicant Resubmits Revised Project and Updated Technical Studies		--	12/13/2017
PDS Reviews Revised Project and Updated Technical Studies		30	1/12/2018
PDS Meets With Applicant to Discuss Comments		10	1/22/2018
Applicant Resubmits to Address Remaining PDS Comments		30	2/21/2018
PDS Reviews Resubmittal		21	3/14/2018
PDS Prepares Project CEQA Documentation, PDS Finalizes Project Conditions and Sends Application Amendment Form		21	4/4/2018
Applicant Submits Signed Application Amendment Form		14	4/18/2018
Public Review of GPA/SPA/Addendum		45	6/2/2018
PDS Makes Staff Recommendation on the Project, Finalizes Project Documentation and Prepared for Planning Commission		60	8/1/2018
Planning Commission Hearing			August/September 2018
PDS Prepares for Board of Supervisors Hearing		90	10/30/2018
Board of Supervisors Hearing			October/November 2018
		321	Estimated Days