



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

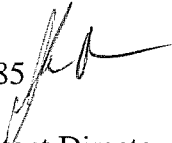
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COUNTY OF SANTA BARBARA
CLERK OF THE
BOARD OF SUPERVISORS

Department Name: Planning & Development
Department No.: 053
For Agenda Of: February 6, 2007
Placement: Departmental
Estimated Tme: 2.5 hours
Continued Item: No
If Yes, date from:
Vote Required: Majority

07-00138

TO: Board of Supervisors

FROM: Department John Baker, 568-2085
Director(s) 
Contact Info: Dianne Black, Assistant Director 568-2086

SUBJECT: **CCOWE Appeal of the MPC Approval of the Westmont College Revised CUP and Master Plan Update**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: N/A

As to form: N/A

Recommended Actions:

Consider an appeal filed by Citizens Concerned Over Westmont Expansion (Case No. 06APL-00000-00043) of the Montecito Planning Commission's November 20, 2006 approval of a revised Conditional Use Permit including an updated Campus Master Plan (Case No. 90-CP-096 RV01) for Westmont College in the Montecito area of the First Supervisorial District, as follows:

1. Deny the appeal, thereby upholding the Montecito Planning Commission's decision;
2. Adopt the required findings for approval of 90-CP-096 RV01, including the Campus Master Plan for Westmont College, specified in Attachment A of the Montecito Planning Commission action letter (Attachment C to the Set Hearing Board letter), dated November 30, 2006, including CEQA findings;
3. Certify the Final Subsequent Environmental Impact Report, 05SEIR-00000-00010 to Negative Declaration 90-ND-60, Negative Declaration 74-ND-140, and Environmental Impact Report 76-EIR-1, including the FSEIR Revision Letter (RV1), dated September 29, 2006, as revised by staff memorandum dated October 30, 2006, which describes the environmental effects and policy consistency of the final revised project and includes errata, and adopt the mitigation monitoring program contained in the conditions of approval;

4. Grant *de novo* approval of 90-CP-096 RV01, including the Campus Master Plan, for Westmont College marked as Planning Commission Exhibit No. 1 and dated October 16, 2006, and build out of Phase I, subject to the conditions of approval included as Attachment B of the Montecito Community Plan action letter dated November 30, 2006 (Attachment C to the Set Hearing Board letter); and
5. Grant *de novo* approval of the requested height modification of 49 feet in height for the Chapel/Auditorium.

Background:

Westmont College has been operating at its current location in Montecito since 1945. The campus is set on approximately 111 acres surrounded by residential development in the Montecito foothills. The college is currently operating under a CUP that was last amended in 1996 and a Master Plan that was reaffirmed in 1993 as part of the change to enrollment averaging, and has not undergone any significant changes since 1976. Existing structural development on the campus totals approximately 380,000 square feet, with over 80% of the campus undeveloped. Student enrollment is set at an average of 1,200 with a maximum of 1,235. Westmont College submitted its application for revisions to its CUP and an update to its Master Plan in 2000. Since that time and through the environmental review and public hearing process, the proposed revisions to the CUP and Master Plan update have gone through several iterations with the end result being a refined project that meets the goals of the college while respecting the residential character of the surrounding neighborhoods. Under the project approved by the MPC, buildout of the Master Plan would add approximately 345,000 square feet of new development. However, student enrollment would remain the same. The EIR prepared for the project identified no significant unavoidable impacts from buildout of the Master Plan that could not be mitigated. Key issues associated with the project include the size and scale of campus buildout under the proposed update to the Master Plan, construction impacts associated with buildout of the campus, traffic generated by the college during construction and long-term operation of the college, and overall compatibility of the expanded college with the surrounding community.

Summary:

After 10 hearings, on November 20, 2006 the Montecito Planning Commission unanimously approved Westmont College's revised Conditional Use Permit (Case No. 90-CP-096 RV01), including the update to its Campus Master Plan. The Campus Master Plan involves the addition of approximately 345,000 square feet of new development consisting primarily of new academic buildings, a new residence hall, a chapel/auditorium, and additions to its student center. The project would be built in a series of phases over the next two to three decades with prescribed minimum quiet periods in between each phase. Included with the approval of the revised CUP are 116 conditions of approval applied to the operation of the college and buildout of the Campus Master Plan.

Citizens Concerned Over Westmont Expansion, a private community group, has appealed the Montecito Planning Commission's decision for several reasons, as enumerated in their grounds for appeal (Attachment A of Set Hearing Board letter). These include a claim of incompatibility of the Campus Master Plan with the Montecito Community Plan, excessive traffic impacts associated with the project, inadequate environmental analysis, and the college's non-compliance with its current CUP.

Citizens Concerned Over Westmont Expansion Appeal

Citizens Concerned Over Westmont Expansion (CCOWE) has enumerated several grounds for its appeal. Each issue is discussed separately below.

Issue 1

The first issue raised by CCOWE is that the size, bulk and scale of the project are incompatible with the Montecito Community Plan.

The project would add approximately 345,000 square feet of new development for an overall campus of 726,602 square feet of facilities. The college campus is approximately 111 acres in size, so the floor area ratio for the college at buildout of the Campus Master Plan would be approximately .15, which is well within the range of other educational and institutional facilities in the Montecito area¹. However, this is for comparison purposes only and there is no established floor area ratio limitation or standard for institutional facilities operating under a Conditional Use Permit.

The Campus Master Plan has been designed to respect the residential character of the surrounding neighborhoods. With the exception of the proposed Chapel/Auditorium, no new structure would exceed 35 feet in height, consistent with the height limits applied to residential structures in the Montecito area. New development on the campus would incorporate a village theme, with one and two story buildings built into the sloping campus topography connected by pedestrian walkways and integrated with existing gardens and landscaping, and featuring outdoor gathering places and rooftop gardens. Shallow rooflines, sandstone bases, oxidized copper and green roofs, and east-west orientation of buildings all function to ensure the project's compatibility with surrounding neighborhoods. In addition, there is extensive vegetation screening existing around the campus perimeter and this would be maintained and enhanced during buildout of the Campus Master Plan with a 100% performance measure, and canopy replacement measures, riparian corridor restoration and enhancement, and oak woodland restoration components as well. Therefore, new structures would be effectively shielded from surrounding roads and neighborhoods. Lighting restrictions would ensure that new buildings preserve the nighttime character of the community. The Montecito Board of Architectural Review reviewed the project and found its architectural design and campus layout to be compatible with the surrounding semi-rural residential neighborhoods. Thus, the project is compatible with the Montecito Community Plan and there is no justification for this element of the appeal.

Issue 2

The second issue raised by CCOWE is that the traffic impacts resulting from the project, even with the proposed traffic cap and restrictions on the times of construction traffic to avoid peak traffic periods, are incompatible with the Montecito Community Plan.

The Montecito Community Plan identifies Cold Spring Road as an unclassified road and calls for it to remain unclassified. As described in the Montecito Community Plan, a threshold of 5,530 ADTs is identified for unclassified roads (the minimum acceptable capacity for classified roads); exceedence of

¹ Floor area ratios for educational and institutional facilities in Montecito range from approximately .01 for Lotusland to approximately 1.0 for El Montecito. Montecito Covenant Church, to the south of Westmont College has a floor area ratio of approximately .17, while Cold Spring School has a floor area ratio of approximately .09.

that threshold would result in the Board of Supervisors reconsidering its classification. As discussed above, traffic on Cold Spring Road would remain below this threshold under buildout of the project with implementation of the proposed traffic cap (both the cap originally offered by Westmont College and the cap that was approved by the MPC), even with the allowance for 300 additional ADTs during construction activities. All other roadways in the vicinity of the Westmont College would continue to operate within acceptable capacities under full buildout of the project. Therefore the project is consistent with the Montecito Community Plan with respect to roadways. Conditions placed on the project to ensure that construction-related traffic and traffic generated by new employees does not overload area intersections during peak traffic periods ensures that the project is consistent with the Montecito Community with respect to intersections. All area intersections affected by the project would continue to operate within existing or acceptable levels of service. Thus, the project's traffic generation is consistent with the Montecito Community Plan and staff finds no basis for this element of the appeal.

Issue 3

The third issue raised by CCOWE is that Westmont College is currently in violation of its existing CUP and therefore the project cannot be approved.

There are a number of conditions of approval that Westmont must currently adhere to, and Westmont submits periodic reports to Planning and Development pursuant to its Permit Compliance Program that was developed in 1990 and approved by the Board of Supervisors as recently as 1994. Westmont has continuously been found in compliance with its CUP since the Compliance Program was adopted. This determination was made formally at public hearings by the Planning Commission in 1992 and the Board of Supervisors in 1994 and circumstances have not changed since that time. Among other violations claimed by CCOWE is that Westmont issues more parking permits than allowed under its CUP. Under its CUP, Westmont is restricted to 600 vehicles with parking permits on campus. The Compliance Program developed in 1990 clarified that this condition meant that Westmont was restricted to 600 permitted vehicles on campus *at any one time*. This interpretation was specifically discussed at a permit compliance hearing in front of the Planning Commission in 1992. In the staff report for that hearing, it was noted that since all students and faculty are not present on campus at the same time, Westmont can and does issue more parking permits (between 800 and 900) than 600, but monitors activity on campus to make sure no more than 600 permitted vehicles are on campus at any given time. Both the Planning Commission and the Board of Supervisors have found Westmont College in compliance with its CUP under this interpretation. Therefore, Westmont College is not in violation of its current CUP and the findings for approval of the revised CUP can be made.

Issue 4

The fourth issue raised by CCOWE is that there is no justification to approve the "annexation of additional non-taxpaying land to the land currently owned by Westmont."

The County has no authority to approve or deny the purchase of additional land by Westmont College. The County does have authority over whether or not additional land can be incorporated into Westmont's Conditional Use Permit provided there is substantial evidence to support its decision. However, inclusion of the property into the CUP has no bearing on the tax-exempt status of Westmont or its properties. In other words, Westmont College would not be paying property taxes on a property regardless of whether or not it was included in the CUP, as long as the use of the property was consistent with a tax-exempt use.

As part of its revised CUP and updated Campus Master Plan, Westmont College requested that a 3.48 acre parcel contiguous with the college be incorporated into the CUP for the purpose of providing space to build a proposed residence hall complex, which was previously proposed for another location on campus on the Approved Master Plan. Since its purchase by Westmont, this property has been used for student housing and so has been exempt from property taxes. Findings can be made to include this parcel in the college's CUP and taking such action would have no effect on its tax exempt status. Regardless, the amount of tax dollars this parcel removes from Cold Spring School's property tax base is minimal (approximately \$310 per year). There is no justification for denying the inclusion of this parcel into the CUP on this basis. Furthermore, County policies and zoning regulations do not provide for the consideration of economics. Churches, museums, educational facilities and other such non profit institutions are conditional uses allowed in all zone districts; denying any of these institutions on the basis of their non profit status would be legally problematic.

Issue 5

The fifth issue raised by CCOWE is that the MPC received legally incorrect advice with respect to what Westmont College could buildout under its existing Approved Master Plan.

Westmont College has an Approved Master Plan (graphic map) that identifies several buildings that were approved but have yet to be built on the campus. Westmont's existing CUP references the Approved Master Plan and includes two conditions requiring review by Planning and Development, the MBAR, and the Planning Commission as buildings are developed under the Master Plan. Condition 6 states: "The size, shape, arrangement, and location of buildings, walkways, parking areas, and landscaped areas shall be developed in substantial conformity with the updated master plan marked Planning Commission Exhibit 1, dated January 16, 1991, as amended by 90-CP-096 AM02, approved February 5, 1996. Substantial conformity shall be determined by the Planning Director. In the event of disagreement, such determination shall be made by the Planning Commission." Since no square footage was identified on the Approved Master Plan associated with these approved but unbuilt buildings, staff made an assumption, for the purposes of environmental review in comparing the proposed project to the Approved Master Plan, that 200,000 square feet could be built under the Approved Master Plan. Several methods were examined in developing this baseline estimate and the Board of Supervisors, as the final decision maker, may choose the most appropriate methodology (see Appendix H of the Proposed Final SEIR). Both staff and County Counsel made it explicitly clear on numerous occasions that in no way did this mean that Westmont was "entitled" to build 200,000 square feet under the Approved Master Plan, but rather that this number was used for environmental analysis purposes only and actual buildout of the Approved Master Plan could be more or less, at the discretion of the MPC. This clarifying statement was made repeatedly throughout the EIR and the hearing process. Therefore, CCOWE's assertion that staff advised the MPC that Westmont would be entitled to build 200,000 square feet under its Approved Master Plan is simply inaccurate and there is no evidence to support that assertion.

Issue 6

The sixth issue raised by CCOWE is that the decision of the MPC regarding annexation of additional land was influenced by legally incorrect advice as to the MPC's discretion to approve or deny such annexation. County Counsel advice on this matter was consistent with the discussion raised in issue number four above.

Issue 7

The seventh issue raised by CCOWE is that the environmental analysis prepared for the project is legally deficient. They claim that the Draft Subsequent EIR incorrectly concluded that Westmont had a “right to build” an additional 200,000 square feet under its Approved Master Plan.

As stated above, the EIR did not conclude Westmont had a right to build 200,000 square feet, but rather this was the number used for environmental analysis purposes only. The Public Resources Code Section 21166, CEQA Guidelines Section 15162, and case law on the preparation of environmental impact reports under the California Environmental Quality Act are very clear that for projects which are revising or updating an already approved project for which environmental analysis was previously prepared, as is the case for Westmont College, the appropriate scope of environmental review is to compare the proposed project with the approved project, even if the approved project has not been built. There is substantial evidence in the record that shows that the Approved Master Plan was intended to provide for buildout of the campus: the 1976 EIR, prepared for the enrollment change to 1,200 students, specifically analyzes impacts from buildout and states that construction of new buildings identified on the Master Plan would cause temporary traffic congestion and increased noise. The existing CUP incorporates the Approved Master Plan and the approved but unbuilt buildings and uses. In order to provide a quantitative comparison between the proposed project and the approved but unbuilt project consistent with CEQA, for purposes of baseline the DSEIR assumed that 200,000 square feet could potentially be built under the Approved Master Plan. In formulating this assumption, the DSEIR evaluated four reasonable potential methodologies in which to estimate the amount of buildout that could potentially occur under the Approved Master Plan (please see Appendix H of the Proposed Final SEIR), and determined that 200,000 square feet represented the most reasonably conservative number. The DSEIR never concludes that Westmont has a “right to build” 200,000 square feet under its Approved Master Plan. As discussed above, it specifically states that the square footage is used for environmental analysis purposes only and the decision maker would have the discretion to choose a different level of buildout under the Approved Master Plan if it were faced with that decision.

CCOWE also claims that the DSEIR failed to consider reasonable worst-case impacts related to traffic and other issue areas and did not evaluate reasonable worst-case projections for future increases in faculty, staff, contract workers, and students. The traffic impact analysis included in the DSEIR was prepared in accordance with the *County Environmental Thresholds and Guidelines Manual* by an experienced independent traffic engineering and consulting firm and peer reviewed by Public Works Transportation staff. As part of its proposed project, Westmont College specifically stated that student enrollment would not change (see Appendix I of the Proposed Final SEIR, letter of enrollment cap commitment from Westmont). In fact, with the exception of changing from a maximum enrollment of 1,200 students to an average enrollment of 1,200 students with a maximum of 1,235 students, permitted enrollment has remained at 1,200 since it was originally approved in 1976, 30 years ago. Given this, there was no justifiable reason for the environmental analysis to consider and analyze an increase in student enrollment. Students drive many of the employment needs for an institution. Since the number of students was not changing, it was reasonable to conclude that there would be no increase in contract workers, which are limited to food service workers, faculty, and administration, all of which are directly related to the size of the student body. The DSEIR did assume that the additional buildings on campus would result in up to 39 new staff, mostly in maintenance and custodial staff to manage the new buildings. This number was generated by directly examining the staffing needs for new buildings. In comparing the number of staff projected to manage the new buildings relative to existing staff levels for existing buildings, the estimate of 39 new employees is a conservative estimate. Under the projection,

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new employees would be responsible for less square footage per employee than under the existing setting. An example of how additional structural development would not result in additional staffing needs is the fact that a significant amount of workers are currently required to dismantle the gymnasium and prepare it for chapel services which occur three times each week. Development of the Chapel/Auditorium would free up this staffing need and allow those workers to attend to other duties. For these reasons, the projections used in the DSEIR for future faculty, staff, contract workers and students was reasonable and appropriate.

Traffic impacts were derived from increased traffic generated by new employees as discussed above, as well as traffic generated during construction activities. The traffic generated by these elements of the project was analyzed against existing and future levels of service and acceptable capacities of area intersections and roadways to determine impact levels. The traffic analysis represented a reasonable worst-case based on the projections associated with staff increases and construction activities under buildout of the campus. Since the number of permitted special events and summer activities were not changing under the proposed project, traffic generated by these activities was considered part of baseline and so not included in the analysis. Since student enrollment was not changing as part of the project, there was no associated increase in traffic levels considered in the impact analysis. For these reasons, the traffic impact analysis in the DSEIR was reasonable given the nature of the proposed project. Therefore, there is no support for CCOWE's claim that the DSEIR was legally deficient and inadequate and staff finds no basis for this element of the appeal.

Issue 8

The eighth issue raised by CCOWE in their appeal is that the "decision of the MPC purports to give Westmont a right to build out a new Master Plan over an indefinite period of time, without further substantial discretionary review by the County, which 'right to build' is contrary to California law."

The County frequently approves projects that are built out over a phased or long period of time without requiring subsequent substantial discretionary review unless substantial changes are made to the project over time that warrant such review. This project is not dissimilar to Development Plans and Conditional Use Permits for other educational and institutional projects that are built out in phases over a long period of time without subsequent discretionary review, including Crane School, Cate School, St. Athanasius Church, and many other institutions in the community. In these instances, the follow up Land Use Permits and other permits effectuating the discretionary approvals are reviewed and approved by County staff under the authority of the Planning and Development Director. In the case of Westmont College, as conditioned, the follow up Land Use Permits for buildout of the Campus Master Plan will be reviewed and approved by the Montecito Planning Commission (MPC) at a noticed public hearing. The MPC is responsible for finding that all future plans conform to the Campus Master Plan and that the college is operating in compliance with its CUP. Additionally, the MPC is given an opportunity to review the adequacy of conditions of approval for mitigating construction impacts and to make changes where appropriate. As such, the MPC has limited discretion in reviewing and approving future buildout of the Campus Master Plan. This level of subsequent review is above and beyond that which is required for most other projects in the County. There is nothing in State law that suggests an alternative approach for processing such projects involving subsequent discretionary review is required. Therefore, staff and County Counsel find no evidence or justification to support this claim by the appellant.

Issue 9

The last issue raised by CCOWE is a specific appeal of Condition 9, which regulates traffic generation through the traffic cap described above. They claim that the traffic cap is inadequate to prevent dramatic increases in traffic that would be incompatible with the Montecito Community Plan.

For reasons that were discussed above, the proposed traffic cap (both the 3,500 ADT cap originally proposed by Westmont and the 3,355 ADT cap approved by the MPC) would limit traffic generated by Westmont College to a level that ensures Cold Spring Road operates within the ADTs appropriate for an unclassified road, consistent with the Montecito Community Plan, and is a less than significant impact operating within the acceptable levels of service. The proposed traffic cap was volunteered by Westmont College as a better way to control traffic in and out of the campus; there is no nexus for the County to require it. If Westmont chooses, it could withdraw the proposed cap and return to the original method of controlling traffic through a campus parking permit program, which most parties agree has not been successful in controlling traffic. The very nature of the traffic cap would obviate the possibility of unforeseen dramatic increases in traffic since the cap would be maintained for the life of the college. Therefore, there is no basis for CCOWE's assertion and staff believes the condition, both as approved by the MCP and as originally proposed by Westmont College, more than adequately addresses traffic impacts associated with buildout of the college and ensures consistency with the Montecito Community Plan.

Summary

In the discussions above, staff has presented how the grounds for the appeal filed by Citizens Concerned Over Westmont Expansion have no merit and should be dismissed.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

The fee for processing an appeal is \$443 per the current Planning and Development Department fee schedule adopted by the Board of Supervisors, effective January 9, 2006. Fees were collected for both the appeal filed by Westmont College and the appeal filed by the Citizens Concerned over Westmont Expansion for a total of \$886 to process the appeals. The remaining cost of processing these appeals is budgeted in the Permitting and Compliance program of the Development Review South Division on page D-290 of the Fiscal Year 2006/07 adopted budget. Estimated staff time to prepare the board letters, and prepare for and attend the hearings is approximately 40 hours for both appeals.

Staffing Impacts:

Legal Positions:

N/A

FTEs:

N/A

Special Instructions:

A minute order of the hearing shall be returned to Planning and Development, attention Alex Tuttle.

Attachments:

Authored by: Alex Tuttle, Planner 884-6844

cc: