



**City of Santa Maria
Appeal to City Council**

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FEB 26 2014

CITY OF SANTA MARIA
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Amount Paid

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Appeal #1

Receipt #

N/A

Name of Appellant		Telephone No.
Scott Fina		
Address of Appellant		
4100 Santa Maria Avenue		
Mailing Address (if different from above)		
Application(s)/Request being appealed		
Planned Development Permit NO.: PD-2013-0008, C-4, McCoy ICE Facility		
Applicant if other than appellant		
Commission/Dept. Director Action	Date of Action	
Planning Commission Approval of Planned Development Permit	February 5, 2014	
Project Location		
740 West Century Street		
Project Description		
A 12,700-square-foot, one story building on a separate parcel to be occupied by		
U.S. Immigrations and Customs Enforcement (Enforcement and Removal Operations)		
Reason for Appeal		
See the attached 8 pages with reasons (1) and (2) A., B., C. and authorities,		
factual findings, analysis, conclusion, and Exhibits A and B		
Signature of Appellant		Date
Scott Fina		2/26/2014

Scott Fina, Ph.D.
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February 26, 2014

City Council of Santa Maria
110 E. Cook Street
Santa Maria, CA 93455

Appeal to the City Council of Santa Maria on Planned Development Permit NO.: PD-2013-0008, C-4 McCoy ICE Facility, 740 West Century Street, E-2013-022

Dear Council Members:

I am appealing the February 5, 2014 approval of Planned Development Permit NO.: PD-2013-0008, the planned facility for Enforcement and Removal Operations of Immigrations and Customs Enforcement (ICE-ERO) by the Planning Commission of the City of Santa Maria.

Appeal Reasons and Summary

- (1) The attributes of planned ICE-ERO facility do not meet the Commercial/Professional Office (CPO) land use classification. The Planning Commission assessed the land usage of the planned ICE-ERO facility on the basis of the facility's space apportionment, comparing the amount of its office space with the amount of its detention space. Additional findings on the function of the planned ICE-ERO facility and the nature of ICE-ERO operations (provided below), indicate that the Commission mischaracterized the facility's land usage, and erred in finding it to be consistent with the CPO classification.
- (2) The planned ICE-ERO facility will have an adverse impact on the safety and welfare of persons residing or working in its neighborhood, and on the overall public welfare of the residents of Santa Maria, for the following reasons:
 - A. ICE-ERO officials have stated that the new ICE-ERO facility will not result in an increase of ICE arrests of criminals in Santa Maria. At the same time, ICE-ERO officials have disclosed that they will be bringing convicted criminals into the City of Santa Maria for processing and temporary detention, from jails and prisons located outside of the city, including from San Luis Obispo County, up to the Monterey County line. Thus, the net effect of the siting of the ICE-ERO facility in the city will be an increase in the presence of criminals in Santa Maria.
 - B. ICE-ERO officials have stated that their field arrests are coordinated with the local police. The siting of the ICE-ERO facility inside Santa Maria will likely

create the perception, among the city's recent immigrant and Latino residents, of a closer coordination and stronger ties between ICE law enforcement officers and Santa Maria police officers. Regardless of whether this perception is accurate, it will hinder the efforts of the Police Department of the City of Santa Maria to improve and maintain collaborative and positive relations with these residents. Collaborative relations and trust between the Police Department and city residents are essential for effective law enforcement and crime prevention.

- C. Numerous local interests have voiced their disapproval of the planned ICE-ERO facility, and presented its likely detrimental effects on Santa Maria, to the city's Planning Commission. However, no net and/or long term gain for the City of Santa Maria to be achieved by the siting of the ICE-ERO facility at its planned location--or anywhere within the city--has been identified. The benefits of siting the ICE-ERO facility in Santa Maria do not outweigh the costs from the perspective of the public welfare of the city.

Authorities

I am providing information concerning the planned ICE-ERO facility and the nature of ICE-ERO activities that are pertinent to:

- A. the Land Use Element of the Santa Maria General Plan, specifically:

Section E. Land Use Classifications, **COMMERCIAL/PROFESSIONAL OFFICE (CPO)**

Purpose. To provide areas for offices, which may be compatible with a range of other uses.

Types of Uses. Office development for the following services: medical, legal, travel agencies, insurance, and real estate services, as well as a certain complementary commercial uses. Senior citizen housing may also be permitted to a maximum density of 30 dwelling units per acre with special review by the planning commission and subject to the following standards:

And

- B. the findings of the Planning Commission in accordance with section 12-35.207 of the Municipal Code, specifically:

4. That the establishment, maintenance and/or conducting of the use for which the planned development review is sought will not, under the circumstances of the particular case, be detrimental to the health, safety, morals, or welfare of persons residing or working in the neighborhood of such use and will not, under the circumstances of the particular case, be detrimental to the public welfare, injurious to property or improvements in said neighborhood or contrary to its orderly development.

Factual Findings

During the February 5, 2014 hearing of the Planning Commission, Commissioners Brown and Dickerson questioned David Marin, Deputy Field Office Director for ICE-ERO in Southern California, on why ICE cannot construct its new facility on the grounds of the Lompoc Federal Correctional Complex (FCC) where the ERO offices are currently located. Mr. Marin responded that the property on the Lompoc FCC is owned by the Federal Bureau of Prisons which will not allow ICE to construct its facility on its grounds. (See the notes of Kathleen Wilson forwarded in an email by Lawrence Appel of the Santa Maria Community Development Department, in Exhibit A below, and the Planning Committee Minutes for February 5, 2014, at <http://www.cityofsantamaria.org/minutes/PlanningCommission-20140205.pdf>).

I contacted Steven Finn, Director of ICE-ERO in Lompoc, by phone and email, to obtain clarification on why the Federal Bureau of Prisons will not allow ICE to construct its new facility on the property of the Lompoc FCC. I specifically inquired whether it was true that the Federal Bureau of Prisons will not allow ICE to bring its detainees onto the grounds of the Lompoc FCC, and that this fact was the reason prohibiting ICE from constructing its new ERO facility at its existing site in Lompoc. Mr. Finn confirmed both points in an email. Mr. Finn also indicated that he had previously made these facts known to the Planning Commission at its study session that preceded its February 5 hearing. (See Exhibit B below with the email correspondence from Mr. Finn.)

The questioning of Mr. Marin by Commissioners Brown and Dickerson during the February 5th hearing, suggests that that the Planning Commission may not have fully comprehended or appreciated the situation of the current ICE facility at the Lompoc FCC, or the full nature of ICE-ERO activities, despite the information relayed by Mr. Finn at the study session. (See the notes on the questioning of Mr. Marin by the commissioners in Exhibit A below, and the Planning Committee Minutes for February 5, 2014, at <http://www.cityofsantamaria.org/minutes/PlanningCommission-20140205.pdf>.)

At a public meeting held by ICE-ERO on February 12, 2014, I also directly questioned Mr. Marin on why the Federal Bureau of Prisons will not allow ICE-ERO to bring its detainees onto the grounds of the Lompoc FCC. (Mayor Alice Patino attended the meeting and witnessed my questioning and the response by Mr. Marin and other ICE officials.) Mr. Marin responded that while he and other ICE officials had not directly received an explanation from the Federal Bureau of Prisons, he believed that the Bureau will not allow ICE to bring its detainees onto its grounds because of security and liability concerns.

Analysis

The Federal Bureau of Prisons, a federal criminal justice agency that houses prisoners, prohibits ICE-ERO, also a federal criminal justice agency, from bringing its detainees who are undocumented aliens convicted of crimes, onto the grounds of the federal correctional complex in Lompoc. ICE officials have indicated that this prohibition is a matter of security and liability for the Federal Bureau of Prisons. This situation prevents ICE from constructing its new facility, which will include holding cells for detainees, in Lompoc where its offices are currently located.

Several conclusions relevant for the permitting of the new ICE facility in Santa Maria follow from these facts:

1. The fact that the Federal Bureau of Prisons allows ICE-ERO to have and operate its offices on its property at the Lompoc FCC, but will not allow ICE-ERO to bring its detainees onto the same property, implies that the three holding cells that are planned as part of the new ICE facility in Santa Maria fundamentally differentiate the function of the planned new ICE facility from the function of the current ICE facility in Lompoc. Consequently, the Planning Commission has mischaracterized the function and land use of the planned new ICE facility as “professional offices.” The fact that the greater portion of the space of the planned new ICE facility is offices rather than detention cells, misses the point from a functional perspective. Moreover, the activities to be undertaken in these offices are mostly in support of the arrest and detention of undocumented aliens with criminal backgrounds, which are the core activities of ICE-ERO. These core activities are clearly inconsistent with the characteristics of the “Commercial/Professional Office” land use classification articulated in the General Plan of Santa Maria.
2. The Federal Bureau of Prisons will not allow ICE-ERO to bring its detainees onto the grounds of the federal correctional center in Lompoc (which already houses federal prisoners), because of security and liability concerns. Given this fact, how can such concerns not be even more relevant and heightened for the planned location of the new facility in the mixed-use neighborhood of Santa Maria? These concerns bring into question the validity of the Planning Commission’s finding that the new ICE facility will not **“be detrimental to the health, safety, morals, or welfare of persons residing or working in the neighborhood of such use and will not, under the circumstances of the particular case, be detrimental to the public welfare....”**

Moreover, Mr. Marin and Mr. Finn have both stated before the Planning Commission that the placement of the new ICE-ERO facility in Santa Maria will **not** result in increased ICE arrests of individuals in Santa Maria. (See pages 8-9 of the Planning Committee Minutes for February 5, 2014, at <http://www.cityofsantamaria.org/minutes/PlanningCommission-20140205.pdf>) In other words, after the new ICE facility is constructed, ICE-ERO will continue its current level of arrest activities that it has been conducting in the city for the last several years.

However, Mr. Marin and Mr. Finn have also stated before the Planning Commission, that ICE-ERO will be bringing detainees with criminal backgrounds from **outside** Santa Maria (including from prisons and jails and off streets in San Luis Obispo County, up to the Monterey County line), **into** Santa Maria for processing and temporary detention at its new facility. In this manner, ICE-ERO will not be reducing the presence of criminals in Santa Maria, but **increasing** their presence. This situation will constitute an additional challenge for the city in maintaining the safety of persons residing or working in the neighborhood where the new ICE facility will be constructed, as well as for the city’s broader public welfare.

ICE-ERO officials have stated that their field arrests in Santa Maria are coordinated with the local police and target undocumented aliens who have completed prison time for crimes and/or are known gang members. (See page 8 of the Planning Committee Minutes for February 5, 2014, at <http://www.cityofsantamaria.org/minutes/PlanningCommission-20140205.pdf>). The placement of the ICE-ERO facility inside Santa Maria will likely create the perception, among the city's recent immigrant and Latino residents, of increased cooperation and stronger ties between ICE law enforcement officers and police officers of Santa Maria.

Regardless of whether this perception is accurate, it will hinder the efforts on part of the Police Department of City of Santa Maria, to improve and maintain collaborative relations with these residents who mostly populate the city's relatively higher crime rate neighborhoods. Collaborative relations and trust between the Police Department and these city residents are essential for effective law enforcement and crime prevention.

Conclusion

I understand that the City of Santa Maria wants to protect its community from crime, and I agree that protecting the community is crucial. However, siting of the ICE-ERO facility within city limits does not send a clear message to the community that the city is tough on crime; in fact, studies repeatedly have shown that immigrants are less likely to commit crimes than native-born Americans¹ and that ICE's presence in a community does not decrease crime rates.² Moreover, the siting of the ICE-ERO facility within city limits will not result in removing additional criminals off the streets, but if it does anything, it will actually bring more criminals into the city, even if for temporary detention. Finally, the criminal justice operations of ICE-ERO and its limited staffing planned for its new facility, do not offer the economic multiplier effects that typically accompany authentic commercial land uses.

The facts surrounding the permitting of the ICE-ERO in Santa Maria beg the question: what does the city gain by acceding to this federal imposition of additional security concerns for its residents? Many residents, the local Growers and Shippers Association, and several local community organizations have voiced their disapproval of the planned ICE-ERO facility, and presented its likely detrimental effects on the city to the Planning Commission. (See the Planning Committee Minutes for February 5, 2014, at

¹See, e.g., Stuart Anderson, *Immigrants and Crime: Perception vs. Reality*, Immigration Reform Bulletin, Cato Institute (June 2010), available at http://www.cato.org/pubs/irb/irb_june2010.pdf (discussing recent studies showing that immigrants are less likely to commit crimes than the native-born).

² See Immigration Policy Center, *Locked Up Without End* (Oct. 2011), available at http://www.immigrationpolicy.org/sites/default/files/docs/Tan_-_Locked_Up_Without_End_100611.pdf (explaining that more than half of people in immigration detention have never been convicted of a crime, and asserting that ICE has engaged in unnecessary, arbitrary, and constitutionally questionable detention practices, and that declines in crime rates actually follow when bipartisan policies are passed that reduce detention/prison populations).

<http://www.cityofsantamaria.org/minutes/PlanningCommission-20140205.pdf>). However, no net and/or long term public gain for the City of Santa Maria to be achieved by the siting of the ICE-ERO facility at its planned location--or anywhere within the city--has been identified.

So while federal and private developer interests may be well served by the new ICE-ERO facility, from the general welfare perspective of the City of Santa Maria, the benefits of permitting the ICE-ERO facility do not outweigh the costs.

Relevant Credentials

I obtained a Ph.D. in Political Science from Temple University in Philadelphia, Pennsylvania, with concentrations in public policy, public administration, and urban politics.

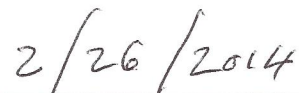
For approximately four years, I served on the Troop B T.E.A.M.S. Unit of the New Jersey State Police as a State Trooper, participating in Special Weapons and Tactics (SWAT) and high security operations. These included arrest raids on organized criminal elements involved in narcotics and gambling activities; collaborating with the U.S. Secret Service in providing security for President Ronald Reagan and Vice President George H. Bush on their visits to northern New Jersey; assisting with the transport of imprisoned members of the United Freedom Front—a domestic terrorist group in the United States; and assisting in the capture of an escaped inmate from Trenton State Prison, among other law enforcement activities.

Disclosure

My residence, which is at the applicant address I provided on the City of Santa Maria Appeal to City Council form, is located outside the boundary of the City of Santa Maria, in the Foxenwoods Estates development in Orcutt.



Signed



Date

Exhibit A: Email Correspondence (in relevant part) on February 11, 2014 with Lawrence Appel, Director of Community Development for Santa Maria

From: Larry Appel [mailto:lappel@ci.santa-maria.ca.us]

Sent: Tuesday, February 11, 2014 1:00 PM

To: 'Scott Fina'

Cc: 'steven.finn@dhs.gov'

Subject: FW: ICE comments

Mr. Fina,

Based on our phone conversation earlier today, I had my secretary take a quick look at her notes from the February 5th hearing. She came up with two questions (one each from the two Commissioners) that were answered by the ICE manager.

I hope this answers your question.

-Larry

Lawrence W. Appel, Director
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From: Kathleen Wilson

Sent: Tuesday, February 11, 2014 12:40 PM

To: Larry Appel

Subject: ICE comments

...lifted these comments out of my notes from the PC hearing:

Commissioner Brown: are you prohibited to build this at the prison?

ICE officer: yes, cannot build on the facility. They need a new facility.

Chair Dickerson: why can't build or remodel in Lompoc?

ICE officer: temporary trailers in Lompoc—their second life has been exceeded. Building on those is not an option. That property belongs to the bureau of prisons, just allowing us to operate out of there, but can't build a new facility on that property.

Chair Dickerson: could you buy new trailers and put them there?

ICE officer: don't know...

Exhibit B: Email Correspondence (in relevant part) on February 11, 2014 with Steven Finn, SDDO, ICE-ERO, CAP, Lompoc, CA

From: Finn, Steven C [mailto:Steven.C.Finn@ice.dhs.gov]

Sent: Tuesday, February 11, 2014 1:58 PM

To: Scott Fina

Subject: RE: One more clarification

Good Afternoon Scott,

It was pleasure speaking with you. Although, we disagree it was a pleasure having a civil conversation about the issue.

As for your statement, you are correct. ICE is unable to bring criminal aliens that have been arrested on the street or picked up at other institutions into FCC Lompoc. I did mention that fact at the first City Council Meeting and at the City Planning Commission Study Session.

Steve

From: Scott Fina [mailto:scottfina@gmail.com]

Sent: Tuesday, February 11, 2014 12:53 PM

To: Finn, Steven C

Subject: One more clarification

Dear Steve:

Thanks for the phone call and clarification on the ICE facility. Could you please provide one more clarification, which may also be part of the public misperception?

Is ICE prohibited by the Federal Bureau of Prisons from bringing undocumented individuals that are coming from state and local jails—and who have been convicted of state crimes—onto federal property that is part of the Lompoc Federal Correctional Complex? And because of this, ICE must process these prisoners offsite from its facility in Lompoc, and is forced to do so in vehicles? In other words, the Federal Bureau of Prisons only allows ICE to process persons coming out of a federal prison on the grounds at the Lompoc Federal Correctional Complex?

I ask, because you did not bring this fact up (if it is accurate) among the reasons from the perspective of ICE why the Santa Maria location is preferable during our phone conversation. Yet if this is true, than if ICE did construct its facility on the campus of the Lompoc Federal Correctional Complex, it would not be able to process or detain many of its detainees (perhaps most) at its new facility—which would defeat the very purpose of having a new center. I am also surprised that David Marin did not state this fact when questioned by the Planning Commission on why ICE cannot construct its facility where it is currently located.

Thanks,

Scott Fina