February 14, 2020

Via Electronic Mail and FedEx

Dave Borcky, Jr.
Chairperson, McFarland Planning Commission
Veteran's Memorial Hall
103 W. Sherwood Ave.
McFarland, CA 93250

Re: SB 29 Compliance; Conditional Use Permits No. 01-96; No. 02-96

Dear Chairperson Borcky:

These comments are submitted on behalf of the Immigrant Legal Resource Center ("ILRC") and Freedom for Immigrants ("FFI") regarding the Conditional Use Permits No. 01-96; No. 02-96 to allow GEO Group to repurpose the Golden State Modified Correctional Facility located at 611 Frontage Road as well as the Central Valley Modified Community Correctional Facility located at 254 Taylor Ave into prisons for federal inmates and immigrant detainees (the "Project"). As organizational co-sponsors of SB 29, codified at Cal. Civil Code § 1670.9(d), we are concerned that the Commission intends to violate SB 29 by taking action on these permits on February 18, 2020. If the Commission moves to issue these conditional use permits in violation of Cal. Civil Code § 1670.9(d), our organizations are prepared to pursue all appropriate legal action, including challenging this unlawful agency action by a petition for a writ of administrative mandamus under Cal. Civ. Proc. Code § 1094.5 or § 1085. *Bixby v. Pierno*, 4 Cal. 3d 130 (1971); *Citizens for Amending Proposition L v. City of Pomona*, 239 Cal. Rptr. 3d 750 (2018) (The city violated its duty to comply with the ballot initiative by entering into a contract that directly violated its terms).

I. Background on the Immigrant Rights Groups

The ILRC and FFI have both a public and beneficial interest in this matter. Both organizations support or work directly with people in immigration detention across the state of California, including at the Mesa Verde Detention Facility. If this permit were granted, we would have to divert considerable organization resources to working with anyone detained at these new facilities. In addition, as we helped draft and we co-sponsored SB 29, we are uniquely committed to ensuring that agencies comply with the law.

The Immigrant Legal Resource Center (ILRC) works in partnership with the immigrant community to advocate for policies that create a path toward abolishing the U.S. immigration detention system. Our team works at the forefront of California's statewide campaigns to dismantle immigrant detention, as well as engaging in federal advocacy in Washington, DC. The ILRC has been a lead organization on these issues for several years -- co-sponsoring California's historic Dignity Not Detention Act (SB 29) along with FFI, as well as advocating for AB 103 and supporting the passage of AB 32. At the local level, the ILRC provides resources and support to communities and organizations working on immigration enforcement issues of which immigration detention is a tremendous component.

FFI is California-based national nonprofit organization working to abolish the U.S. immigration detention system through a two-pronged approach. First, we have built a network of 4,500 volunteers that is the only consistent watchdog inside this system. We started by building the first visitation program in California. Now our volunteers visit people in 69 immigrant prisons in nearly 30 states on a weekly basis offering a lifeline to the outside world and exposing abuse. Second, we have launched a community-based alternative to free over 250 people and to welcome immigrants into the social fabric of the United States. Through these windows into the system, we gather data and stories to combat injustice at the individual level and push systemic change.

II. Issuing a Permit at This Time Would Violate California Law

As you know, Cal. Civil Code § 1670.9(d) states that a city, county, or public agency may not "approve or sign a deed, instrument, or other document related to a conveyance of land or issue a permit for the building or reuse of existing buildings by any private corporation…" unless the entity has satisfied two conditions.

The first condition requires public notice of the action at least 180 days before the execution of the conveyance or permit. The second condition, which must also be fulfilled, requires that public comment be solicited and heard on the proposed conveyance or permit action in at least two separate meetings which are open to the public. Cal. Civil Code § 1670.9(d)(1),(2).

There have now been several posted "notices"[1] related to the Planning Commission's consideration of modification of Conditional Use Permits No. 01-96 and 02-96. These notices regard the Planning Commission's consideration of modification of Conditional Use Permit No. 01-96 to allow the Golden State Modified Correctional Facility to be repurposed to house federal inmates and detainees, and modification of Conditional Use Permit No. 02-96 to allow the Central Valley Modified Community Correctional Facility to be repurposed for the same. Two initial notices which were undated but which we believe were posted no earlier than some day in January 2020, indicated that an initial hearing on these permits would occur on Tuesday, January 21, 2020 at 6:00PM in the McFarland Council Chambers. The notices also state they were "intended to comply with the provisions of California Civil Code Section 1670.9(d)."

[1] We use the term notice as that is how the documents are titled by the City. However, we do not believe that sufficient notice has been provided under California Civil Code Section 1670.9(d).

More recently, two additional notices were posted to the McFarland City Website regarding these same permits (No. 01-96, 02-96) indicating that a "second public hearing" will take place on Tuesday, February 18, and that this second public hearing is "intended to comply with the provisions of California Civil Code Section 1670.9(d)." Furthermore, these notices indicate that the Planning Commission will consider taking "public testimony, *consider and take action* on the Application of the GEO Group, Inc., to modify Conditional Use Permit No. 01-96 [and 01-96] to allow the Golden State Modified Community Correctional Facility [and Central Valley Facility]." (emphasis added). The recently posted planning commission agenda[2] further states that with regards to these permits, the staff recommendation is to "approve conditional use permit in accordance with the recommended conditions of approval (Attachment A) and adopt suggested findings as set forth in the draft resolution."

However, no permit may be issued (even if its issuance, execution, or effectiveness is delayed) and therefore no such action may be taken, until both conditions of Cal. Civil Code Section 1670.9(d) are satisfied. We do not believe that the Commission has met these requirements. We understand that members of the public were not provided access to the permit application and related reports prior to the first January 21st hearing, in order to provide fully-informed comment. Nor were all community members in attendance allowed to provide testimony at the hearing or provided sufficient language access. Until the City provides adequate notice to the public including the substance of GEO's permit applications, it cannot begin to complete the two hearings, or the 180 day notice period required under Cal. Civil Code Section 1670.9(d). Furthermore, even if adequate notice had been given, 180 days has not passed since the initial notice. These deficiencies are not resolved by the Resolutions or Commissions' Conditions of Approval documents found as attachments to the February 18th Agenda, which allege that the public has been duly noticed and that the execution or issuance of the permits shall not be effective until July 15, 2020, despite the city's clear intent to approve or take action on these permits on February 18th. Furthermore, under Cal. Civil Code Section 1670.9(a), the City may never enter into a contract for civil immigration custody, even if these notice conditions have been satisfied. If action is taken on the permits on February 18th as appears to be indicated on the notices and relevant agenda, this will result in a violation of Cal. Civil Code Section 1670.9(d) and therefore a violation of California state law.

III. The Project is Not Exempt from the California Environmental Quality Act ("CEQA")

California law provides that the object of a contract or permit must be lawful and not contrary to public policy. (*Russell v. Soldinger* (1976) 59 Cal.App.3d 633, 641-642, citing Civ. Code, §§ 1607, 1608, 1667, 1596.) Courts will void any contract or permit that is contrary to public policy or otherwise illegal. (*Id*. at 642.) In enacting the California Environmental Quality Act ("CEQA"), the legislature set forth a policy that public agencies shall regulate activities "so that major consideration is given to preventing environmental damage…" (Cal. Pub. Res. Code § 21000.) Towards this end, CEQA sets forth a policy of ensuring public participation in the environmental planning process. (*See Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal. 3d 929, 949 ("CEQA compels an interactive process of

[2] Available here, http://ca-mcfarland.civicplus.com/AgendaCenter/ViewFile/Agenda/_02182020-214

assessment of environmental impacts and responsive project modification which must be genuine. It must be open to the public, premised upon a full and meaningful disclosure of the scope, purposes, and effect of a consistently described project, with flexibility to respond to unforeseen insights that emerge from the process.").) Furthermore, CEQA (Pub. Res. Code §21000 *et seq*.) and the State Planning and Zoning Law (Government Code § 65300 *et seq*.) both provide for judicial review of agency actions through Code of Civil Procedure sections 1094.5 and/or 1085.

This Project is not exempt from CEQA because it has the potential to cause environmental impacts. The City must prepare an Environmental Impact Report (EIR) or at minimum a mitigated negative declaration. CEQA requires that a project be analyzed based on existing physical conditions on the ground, not speculative or hypothetical conditions. Therefore, it is irrelevant whether the space is currently permitted for some other use. Immigration detention facilities, as opposed to other state or federal prison uses, are more temporary. As immigration detention is a federal, civil process, federal agencies such as U.S. Immigration & Customs Enforcement ("ICE") transfer people to other immigration detention facilities regularly. For example, according to the American Immigration Council, 60 percent of detained immigrants are transferred at least once.[3] At the Adelanto Detention Facility in San Bernardino, another GEO Group-run immigration detention facility, there were nearly 5,000 transfers in the most recent year for which data is available, according to TRAC.[4] In addition, people in immigration detention are often transferred to their court hearings on a daily basis or released on parole, bond, or when they win their cases. In addition, asylum seekers and other immigrants recently detained are brought into the facility often daily. This reality, combined with the increase in visits from family and the community to the facilities as well as any construction or improvements needed to make the facilities comply with federal standards for housing ICE detainees will result in increased traffic, traffic noise, and air pollution. By issuing these permits without complying with CEQA, the City is risking the public's health. The Central Valley suffers from one of the highest air pollution burdens in the country. This project will only exacerbate it.

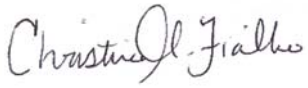
Given the possibility that the Immigrant Rights Groups will be required to pursue appropriate legal remedies in order to ensure enforcement of Cal. Civil Code Section 1670.9(d) should the City take action on the permits before complying with all conditions of the law, we would like to remind the City of its duty to maintain and preserve all documents and communications that may constitute part of the "administrative record." As you may know, the administrative record encompasses any and all documents and communications which relate to any and all actions taken by the City with respect to the Project. The administrative record further contains all correspondence, emails, and text messages sent to or received by the City's representatives or employees, which relate to the Project, including any correspondence, emails, and text messages sent between the City's representatives or employees and GEO Group's representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*,

[3] https://www.americanimmigrationcouncil.org/research/landscape-immigration-detention-united-states
[4] https://trac.syr.edu/immigration/detention/tran.shtml

the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file is made.

Thank you for the opportunity to submit comments on the Project. We look forward to working to assure that the City upholds its duty to the public under California law. In light of the fact that the City has not satisfied either condition of Cal. Civil Code § 1670.9(d)(1),(2), we request that the City postpone the hearing set for February 18th, or in the alternative that the Project not be voted on. Please do not hesitate to contact the ILRC and FFI with any questions at the emails listed below.

Best,



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