



DANNIS WOLIVER KELLEY

Attorneys at Law

JESSIKA K. JOHNSON

Attorney at Law

jjohnson@DWKesq.com

San Francisco

March 30, 2022

VIA EMAIL AND U.S. MAIL

Christine G. Kemp, Esq.
Noland Hamerly Etienne & Hoss

[Redacted]
[Redacted]
[Redacted]

Re: Carmel Unified School District – CEQA Compliance at Carmel High School
Our file 1885.210001

Dear Ms. Kemp:

On behalf of our client, Carmel Unified School District ("District"), this letter acknowledges the District's receipt of recent correspondence sent by you to the District on behalf of your client, Robert Kahn, concerning compliance under the California Environmental Quality Act ("CEQA"), and requesting related information, in connection with certain completed projects and proposed future projects at Carmel High School. The District appreciates your and Mr. Kahn's interest in these school facility projects.

As you may know, the District recently responded to a request for records from your client under the California Public Records Act ("CPRA"), and provided him with public records containing much of the information that your letter seeks on his behalf. For your convenience, these records are enclosed herewith. Mr. Kahn has subsequently submitted additional CPRA requests to the District, which are being reviewed and processed by the District at this time in accordance with the requirements of the CPRA.

The District strives to maintain transparency and keep the public informed to ensure maximum disclosure of the conduct of District operations. Accordingly, this letter seeks to address misunderstandings raised in your letter and provide information about the status of the District's past and current environmental review processes so that you and your client continue to be well-informed.

Proposed Future Projects

With respect to the comments submitted on your clients behalf concerning the proposed stadium lights project and associated improvements at Carmel High School, please be advised that this proposed project is currently undergoing environmental

SAN FRANCISCO
200 California Street
Suite 400
San Francisco, CA 94111
TEL 415.543.4111
FAX 415.543.4384

LONG BEACH
444 W. Ocean Blvd.
Suite 1070
Long Beach, CA 90802
TEL 562.366.8500
FAX 562.366.8505

SAN DIEGO
750 B Street
Suite 2600
San Diego, CA 92101
TEL 619.595.0202
FAX 619.702.6202

CHICO
2485 Notre Dame Blvd.
Suite 370-A
Chico, CA 95928
TEL 530.343.3334
FAX 530.924.4784

SACRAMENTO
555 Capitol Mall
Suite 645
Sacramento, CA 95814
TEL 916.978.4040
FAX 916.978.4039

BERKELEY
2087 Addison Street
2nd Floor
Berkeley, CA 94704
TEL 510.345.6000
FAX 510.345.6100

FRESNO
7170 N. Financial Drive
Suite 135
Fresno, CA 93720
TEL 559.388.5802
FAX 559.388.5803

www.DWKesq.com

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review in accordance with CEQA.¹ Because informed decision making and public participation are fundamental purposes of the CEQA process, CEQA sets forth specific and exhaustive public review and comment procedures that must be followed by both the lead agency and members of the public wishing to provide input. The District is committed to adhering to these processes.

Accordingly, although the time for public comment on the proposed project and draft environmental impact report ("draft EIR") ended on September 27, 2021, the District is currently revising the draft EIR based on timely comments previously received, and will recirculate the revised draft EIR for a second round of public review and comment once the revisions are complete. This is expected to occur in late spring/early summer 2022.

At the appropriate time, the District will provide public notice of the availability of the revised EIR, including the beginning and end dates of the second round of public review and comment period, in accordance with the notice requirements of CEQA. While written comments on the draft EIR that were received during the first public comment period will remain part of the administrative record, comments received outside of the first or second public comment periods are considered untimely. In accordance with CEQA's stringent public review and comment process, only those comments received within the second public comment period are ensured a response. **The District encourages you and your client to submit any comments on the revised draft EIR and/or project once the second round of public review commences** to ensure meaningful participation in the environmental review process.

Please refer to the District's [Update to the Public Regarding Status of Environmental Review Process for Proposed Carmel High School Stadium Lights Project](#), issued January 26, 2022 (attached hereto), for more information.

Completed Projects

With respect to the environmental review process for the District's completed Pool Project and Theater Building Project, the District's Board of Trustees ("Board") adopted Resolution No. 08-08 exempting the projects from CEQA pursuant to Categorical Exemption Class 1 (§15301), Class 2 (§15302), Class 11 (§15311), and Class 14 (§15314) on February 11, 2008, and directed the filing of the Notice of Exemption attached to the Resolution with the Monterey County Clerk. The construction contract for the completed Pool Project was awarded on May 22, 2006, and the construction contract for the completed Theater Building Project was awarded on August 4, 2009.

Please note that an action challenging an agency's determination that a project is exempt from CEQA must be filed within 35 days after the filing of the Notice of Exemption. (Pub. Res. Code §21167(d); 14 Cal. Code Regs. §15112(c)(2).) Here, the 35-day deadline to file an action challenging the Notice of Exemption for the Pool and Theater Building Projects under CEQA was March 17, 2008. Even in instances where the 35-day statute of limitations does not apply, a challenge must be filed within 180 days after the agency's decision to carry out or approve the

¹ Contrary to your assertion, Resolution No. 20-22 does not improperly fund, nor constitute Board approval of, any of the proposed capital improvement projects listed in the Resolution prior to completion of the CEQA process. Rather, Resolution No. 20-22 earmarks funds to "be transferred at the time design services and project budgets are approved by the board for each project." (Resolution No. 20-22.) Contracting for design services and related work in advance of completion of the CEQA process is necessary to "provide meaningful information for environmental assessment"; it does not constitute an approval of a project within the meaning of CEQA. (See 14 Cal. Code Regs, §15004; see also §15352(a).)

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project, or within 180 days after the project commences, depending on the circumstances. (Pub. Res. Code §21167(a) & (d); 14 Cal. Code Regs. §15112(c)(5).) Although the 35-day statute of limitations clearly applies with respect to the District's filing of the NOE for the Pool and Theater Building Projects, had the 180-day challenge period been applicable, it has likewise long since expired.

Request for Information

Although the District has previously provided the documents that you seek to your client in response to a previous CPRA request that he submitted to the District, to the extent the questions you pose in your correspondence constitute requests for public records under the CPRA, please be advised that, in general, the following records, among others, are exempt from disclosure: (1) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business (Gov. Code, §6254(a)); (2) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to the official information privilege, as well as trade secrets or other confidential or proprietary information (Gov. Code, §6254(k); Evid. Code, §§1040 & 1060); (3) Records exempt from disclosure under the deliberative process privilege, work product or attorney-client privilege, or the public interest exemption (Gov. Code, §§6254.25 & 6255; Evid. Code, §950, *et seq.*; *Citizens for Open Gov. v. City of Lodi* (2012) 205 Cal.App.4th 296, 305; *City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1019); (4) Records pertaining to pending litigation or claims (Gov. Code, §§6254(b) & 6254.25); (5) The contents of real estate appraisals or engineering or feasibility estimates and evaluations relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained; and (6) Any other public records exempt from disclosure under Government Code section 6254, *et seq.*, or other applicable law. Furthermore, the CPRA only requires production of records which exist at the time of the request, and the District is not required to create records in order to respond to requests. (Govt. Code, §§6252 & 6253; *Haynie v. Sup. Ct.* (2001) 26 Cal.4th 1061). To the extent your request seeks any of the foregoing, such records are exempt from disclosure, and the District is unable to produce such exempt and non-disclosable records, except as otherwise set forth above.

The following public records previously provided you your client are enclosed herewith:

- Resolution #08-08 – Resolution Rendering Local Zoning Ordinance Inapplicable to Projects at Carmel High School and Determining Projects are Exempt from the California Environmental Quality Act, dated February 11, 2008.
- Notice of Exemption for Modernization and New Construction at Carmel High School Project, filed with the Monterey County Clerk in or around February 2008.
- February 11, 2008 Board of Education Meeting Minutes.
- Title Deed, recorded August 4, 1939.

In addition, please find attached the following documents setting forth additional information that you seek:

- Resolution #22-02 – Resolution to Authorize the Transfer of Funds, dated March 9,

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2022.

- Notes, Facilities Committee Meeting, dated December 13, 2021.
- Update to the Public Regarding Status of Environmental Review Process for Proposed Carmel High School Stadium Lights Project, dated January 26, 2022.

To the extent the enclosed documents do not provide the answers that you seek, this letter serves as the District's good faith attempt pursuant to Government Code section 6253.1 to elicit additional clarifying information from you that will help identify responsive records and assist you in making a focused and effective request that reasonably describes an identifiable record or records. (See Gov. Code, §6253.1(a) & (b).) A request for disclosure of public records under the CPRA must be specific and reasonably focused. (*Rogers v. Superior Court* (1993) 19 Cal.App.4th 469, 480-481.) The reasoning behind this requirement is so that a public agency "will have the opportunity to promptly identify and locate such records and to determine whether any exemption to disclosure applies." (*Galbiso v. Orosi Pub. Utility Dist.* (2008) 167 Cal.App.4th 1063, 1088.) Without this information, it is impossible for the District to address the full scope of objections that may apply to your request or identify disclosable responsive records.


Request for Notices Under CEQA

The District acknowledges your request to receive notices under CEQA with respect to the proposed stadium lights project, and presumes this request is submitted pursuant to Public Resources Code section 21092. To the extent the District correctly understands your request, please be advised that, in accordance with Public Resources Code section 21092.2, your request must be renewed on an annual basis, and the District may charge a fee that is reasonably related to the costs of providing this service.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

DANNIS WOLIVER KELLEY



Jessika K. Johnson, Esq.

Enclosures

cc: Ted Knight, Superintendent
Jessica Hull, Director of Communications and Community Relations
Sara Hinds, Board President
Tess Arthur, Board Clerk
Seaberry Nachbar, Board Member
Karl Pallastrini, Board Member
Anne Marie Rosen, Board Member