



COMMITTEE FOR  
GREEN FOOTHILLS



Santa Clara Valley Audubon Society  
*Founded 1926*

April 8, 2004

Ryan Martin  
Code Enforcement Officer  
City of Morgan Hill  
17555 Peak Ave  
Morgan Hill CA 95037  
(408) 779-7241  
(408) 779-7236 fax

RE: Code enforcement complaint for the unpermitted private golf course associated with Fry's Electronics ("The Institute" golf course) at 14830 Foothill Ave

Dear Mr. Martin:

The Santa Clara Valley Audubon Society ("SCVAS") and the Committee for Green Foothills ("CGF") request immediate reactivation of enforcement of City code requirements against the operators of the Institute Golf Course ("the Institute"). The City began enforcement proceedings in the summer of 2003 to halt unpermitted operations of the illegally-constructed Institute course, but suspended them for the duration of a Temporary Use Permit, which expired on March 31, 2004. We have been informed by City staff that course operators were told weeks before the TUP expired that they could not operate or maintain the course without a TUP. On April 2, 2004, Brian Schmidt from CGF observed groundskeepers maintaining the course despite the lack of a permit. The course also appeared to be freshly-mowed in order to maintain the course. We are confident that simple observation from nearby roads will continue to show that the course is being maintained by the Institute without a permit.

We request that the City stop all aspects of the ongoing operation of the golf course. In particular we request that golfing on the course, if any, be stopped; that pesticide and fertilizer application to the course be stopped; that additional landscaping on the course be stopped; and that water use on the course be stopped, except for that water use necessary to protect riparian habitats and ponds. Water use solely for the protection of riparian habitat and ponds is for environmental protection, and for reducing the environmental damage that the course operators have caused through building their illegal course. Such restricted water use does not constitute operating or maintaining a golf course without a permit.

The City is well aware of the history of violating federal and state environmental laws and local ordinances at the golf course associated with Fry's, and has spelled out those violations in the January 2003 Draft Environmental Impact Report, The Institute Golf Course ("DEIR"). Those legal violations are causing ongoing environmental impacts. The DEIR describes significant impacts on erosion, siltation, and/or flooding; on endangered species and other wildlife due to ongoing use and maintenance; on groundwater and surface water due to pesticide and nitrogen contamination, and on groundwater levels due to irrigation for the project. A Revised Draft EIR published in December 2003 continues to describe significant impacts from the golf course.

Despite these known impacts and the ongoing illegal behavior at the course in the summer of 2003, the City suspended its enforcement proceedings against the Institute, assessed no penalty against the Institute, and granted the Institute a TUP. For its pains and leniency, and despite the direct warning given to the Institute by the City staff, the City has been rewarded with renewed illegal behavior at the course. We request the City immediately renew the suspended enforcement proceedings and assess appropriate sanctions for both the 2003 and ongoing 2004 violations.

We note that the Institute applied on March 30, 2004 for a new Temporary Use Permit, but that application should make no difference to City enforcement proceedings. City staff informed us that the Institute had been warned far in advance not to walk in the day before their permit expired and expect it to be instantly renewed. The Institute therefore had advance warning that it would not be able to operate the course after March 31, and the Institute has instead, once again, flaunted obligations that it and every other landowner in Morgan Hill must obey. Furthermore, the City may choose to deny a TUP to the Institute. Indeed, the City legally cannot approve the TUP requested by the Institute as to do otherwise would violate the California Environmental Quality Act. There is no guarantee that present illegal behavior by the Institute will cease, so enforcement proceedings should continue.

Finally, we note that the Institute refused to cease its illegal operation last summer, despite the written warning by the City. The Institute was also warned prior to the expiration of the last TUP not to reinitiate illegal activities. The City does not deserve further mockery of its legal requirements, and further warnings to the Institute would serve no purpose.

As we wrote last summer in our previous attempt to get the City to complete enforcement proceedings against the Institute, a small-scale violator of city ordinances facing enforcement actions would be likely to believe that the wealth and power of the Institute backers explains the lenient treatment it has received. To reverse this impression, SCVAS and CGF request immediate enforcement of City ordinances as described above.

We ask that we be kept informed of developments regarding this issue, and we request the right to participate in any hearings over this matter. We would very much appreciate your written response advising us whether, and in what forum, the City intends to take action to enforce its code with respect to the violations at the Institute Golf Course.<sup>1</sup>

Sincerely,

<signed>

Brian A. Schmidt  
Legislative Advocate  
Committee for Green Foothills

<signed>

Craig Breon  
Executive Director  
Santa Clara Valley Audubon Society

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<sup>1</sup> In the alternative to reinitiating suspended enforcement proceedings, we request that the City initiate new enforcement proceedings. City staff had informed that us that the 2003 enforcement proceedings had been suspended, not dismissed, so we do not consider this alternative to be necessary. If the City views this as new enforcement proceedings, we note that the City had already sent a warning letter to the Institute prior to the expiration of the last TUP, so no additional "warning" letter is needed.

**COMMITTEE FOR  
GREEN FOOTHILLS**

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