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October 13, 2014

Mayor, Deputy Mayor, and City Council Members
City of Escondido
201 North Broadway
Escondido, CA 92025

**Re: APPLICATION TO APPEAL A DECISION TO THE CITY COUNCIL
Project Case Number PHG 14-0017**

Dear Mayor, Deputy Mayor, and Council Members:

This letter and its accompanying evidence are submitted in support of the appeal by Southwest Key Programs of the Planning Commission’s denial of a conditional use permit to operate immigrant youth housing at 1817 Avenida del Diablo. Together with the evidence and analysis previously submitted, they demonstrate why the City Council should grant Southwest Key’s application.

Introduction

Southwest Key’s proposal is straightforward. It would bring over 100 new jobs and \$8 million in new money to the community by taking over a currently vacant property. The proposal conforms to sound principles of land use. It would not intensify use of the property beyond its previous use as a skilled nursing facility. Southwest Key’s proposed use is therefore a perfect fit for the community.

By law, the federal Department of Health and Human Services (“HHS”) provides unaccompanied children arriving in the United States with shelter and basic services until they can be returned to their home countries or placed with family members or other individuals while immigration proceedings are pending. It does so entirely at federal expense through the Office of Refugee Resettlement (“ORR”).

ORR contracts with private organizations to provide the required shelter and services through “more than 58 ORR-funded care provider facilities in 13 different states.” Tab 88 (Office of Refugee Resettlement, Division of Unaccompanied Children’s Services Factsheet at 1,

10/13/14).¹ The “facilities are state licensed and must meet ORR requirements to ensure a high level of quality of care.” *Id.*

Southwest Key, a nonprofit organization, is the largest provider of licensed shelter services for unaccompanied children in the United States. It has been providing those services for over 17 years, and its contract to do so has been repeatedly renewed. Tab 2 (Southwest Key Letter at 1, 10/13/14). Southwest Key now operates 24 centers for unaccompanied children in Texas, Arizona, and California, including 2 in San Diego County. *Id.* at 1, 7. Southwest Key is a good neighbor and valued partner to local communities, as shown by enthusiastic recommendations from the Mayor of Youngtown, Arizona and others, Tabs 90-98, as well as its own willingness to engage with City staff and residents to respond to their concerns.

In particular, as the Mayor of Youngtown wrote, before approving Southwest Key’s proposal to open a facility similar to the one proposed for Escondido:

[W]e thoroughly vetted the organization and principals involved.... All feedback and investigation results were positive. There were no complaints from neighbors of existing facilities in other cities.... Southwest Key’s Youngtown facility ... opened in May of last year and has quickly become a good neighbor and a valued addition to the community.... I would heartily recommend the organization to any municipality being considered for a facility location.

Tab 90 (Michael LeVault, Mayor of Youngtown, 2/24/14).

The issue before the Council is a straightforward land use question—whether to approve a conditional use permit for the proposed facility. As the City has recognized, “Governmental Services are customarily permitted in residential zones with a Conditional Use Permit when conditioned to meet the underlying zone and related restrictions and when compatible with surrounding properties.” Tab 13 (PHG 14-0017, Staff Report to Planning Commission at 8, 6/24/14 [“6/24/14 Report”]). That is exactly the case here. The proposed use is entirely compatible with surrounding properties, and Southwest Key is prepared to accept any reasonable conditions suggested by the Council. Indeed, it has already accepted all conditions City staff proposed to the Planning Commission. The evidence refutes unfounded objections and demonstrates that denial of the conditional use permit would be arbitrary and capricious. Accordingly, the Council is respectfully requested to grant Southwest Key’s application.

¹ Tab numbers refer to supporting documents tabbed in a binder submitted to the City Clerk. Electronic copies have also been provided for Council Members and City staff.

Legal Standards

A conditional use permit “should be granted upon sound principles of land use and in response to services required by the community.” Escondido Municipal Code (“EMC”) § 33-1203(a). It “should not be granted if it will cause deterioration of bordering land uses or create special problems for the area in which it is located.” EMC § 33-1203(b). A conditional use permit “must be considered in relationship to its effect on the community or neighborhood plan for the area in which it is to be located” and “shall be subject to such conditions necessary and desirable to preserve the public health, safety and general welfare.” EMC § 33-1203(c).

In an appeal from a decision of the Planning Commission, the “City Council may approve, modify or disapprove the decision of the planning commission.” EMC § 33-1303. The Council is not bound by the Commission’s decision or limited to the evidence that was before the Commission; instead, it decides the issue without any deference to the Commission, based on all the evidence submitted before or after the Commission’s decision. *Breakzone Billiards v. City of Torrance*, 81 Cal.App.4th 1205, 1221 (2000); *Cohan v. City of Thousand Oaks*, 30 Cal.App.4th 547, 557 (1994).

Discussion

The Council should grant Southwest Key’s application for several reasons. First, the proposed use would provide services required by the community by bringing over 100 new jobs and \$8 million in new money to the local economy, resulting in significant benefit to Escondido. Second, sound principles of land use favor granting the permit, because the proposed use is consistent with the surrounding neighborhood and would create no adverse impact. Third, the undisputed facts refute speculative objections to the proposed use and show that Southwest Key would be a good neighbor and valued partner to the community.

1. The Proposed Use Would Serve the Community by Creating Over 100 New Jobs and Infusing Millions of Dollars of New Money into the Local Economy Without any Adverse Economic Impact on Property Values or Otherwise.

Southwest Key proposes to take over the site of the former Palomar Continuing Care Center (“PCCC”), which closed on October 1, 2013. Tab 4 (Palomar Health District, 9/23/14). The City has a strong interest in preventing blight by ensuring the site does not remain vacant. In addition, Southwest Key would serve Escondido and nearby communities by:

- Creating over 100 new jobs and infusing almost \$8,400,000 annually into the local economy, most of which would be spent locally;
- Investing in startup costs of almost \$1,000,000, including construction and improvements of \$308,000 and equipment, furnishings, and supplies of \$967,170; and
- Generating sales and property tax revenue to the City of Escondido.

Tab 6 (Xpera Group, Market Research Report at 3-7, 10/3/14).

In contrast to other potential uses of the property, all funds spent by Southwest Key would bring entirely new money to the community, because all expenses of the program are federally funded. As HHS has explained, “ORR pays for and provides all services for the children while they are in care at a shelter. This includes providing food, clothing, education, medical screening, and any needed medical care to the children.... The cost of medical care for the children while they are in ORR custody is fully paid by the federal government.” Tab 89 (ORR, Unaccompanied Children, Frequently Asked Questions at 2, 10/13/14 [“ORR FAQ”]). In other words, the proposed use would inject millions of new dollars annually into the local economy, and the City would not incur any significant cost associated with Southwest Key’s operation of the facility. Therefore, the proposed use would generate significant economic benefit for Escondido.

Any purported “public policy” or “federal level issues” have nothing to do with the land use issue before the Council. 9/10/14 Memorandum of Barbara Redlitz (“Redlitz Memo”) at 7. The evidence before the Council is that the proposed use would unquestionably benefit the City by infusing new jobs, salaries, and expenditures into the local economy.

In addition, “a detailed study of several facilities in California and Arizona that house youths,” including four similar facilities operated by Southwest Key, demonstrates that “there is no correlation between the placement of any of these youth facilities and either home sales or housing prices in the immediate areas of these facilities.” Tab 6 (Xpera Group Report at 8, 11). In short, the evidence refutes any unfounded fears that Southwest Key’s proposed use would impact property values. As a result, Southwest Key’s arrival in Escondido would promote the local economy at no cost to the City or property owners.

2. Sound Principles of Land Use Favor Granting a Conditional Use Permit, Because the Proposed Use Would Be Entirely Consistent with the Surrounding Area and Create No Adverse Impact on the Neighborhood.

As the facts demonstrate, sound principles of land use favor granting Southwest Key’s application, because the proposed project would be entirely consistent with the surrounding neighborhood and have no greater impact than the site’s previous use.

The City’s own analysis supports that conclusion. In a Notice of Exemption attached to the 6/24/14 Report, the City found that Southwest Key’s proposal is categorically exempt from the California Environmental Quality Act, citing “Section 15301, ‘Existing Facilities.’” Tab 13 at 25. By doing so, the City admitted the proposed use would involve “negligible or no expansion of use.” 14 C.C.R. § 15301. Therefore, the City cannot plausibly claim that Southwest Key’s proposal would result in any intensification of the property’s use.

Visually, Southwest Key would maintain the property's existing exterior appearance, with "white stucco walls" and a "red concrete tile roof," together with the addition of decorative "tubular steel fencing." Tab 13 (6/24/14 Report at 9, 11). As a result, there would be little change to the property's exterior, and if anything, the building's attractiveness would increase because it would no longer be vacant.

Physically, the proposed use would not result in any "land-use intensification" compared to the site's previous use as a skilled nursing facility. Redlitz Memo at 7. Indeed, as the City has acknowledged, "there are certain similar operational characteristics" between the previous and proposed uses in that Southwest Key's facility "would have the same number of residents ... for a total of 96 residents." Tab 13 (6/24/14 Report at 8). While the Southwest Key residents would be younger and in better condition than those of a skilled nursing facility, they would still be "residents of the facility which provides daily living services to them, similar to the previous use." *Id.* Activities onsite "will primarily occur indoors," and "outside areas will be limited to eating, studying or other quiet activities." *Id.* No "active recreation" or "loudspeakers would be permitted." *Id.*

Given these similarities, Southwest Key would not intensify the property's use or create any adverse impact on the community. Indeed, it would quite likely have less impact than the previous use. Nothing suggested by the Redlitz Memorandum or public comment shows otherwise. As with similar facilities elsewhere, the "impact on the local community is minimal." Tab 89 (ORR FAQ at 1).

a. The property has ample parking capacity onsite, especially since the proposed use would bring fewer staff and visitors to the property at any given time than its previous use as a skilled nursing facility.

The property has ample parking onsite. As shown in a recent parking assessment, "[t]here are currently 53 parking spaces provided on the proposed project site including 12 accessible spaces." Tab 5 (Chen Ryan Parking Assessment at 1, 10/7/14). Southwest Key would keep up to 12 vans onsite to provide "transportation for off-site activities, which would result in a total of 41 parking spaces for staff and other personnel visiting the facility." *Id.* at 2. The maximum number of staff onsite during any shift will be 30 from 7:00 a.m. to 3:00 p.m., leaving "11 parking spaces for deliveries, service visits, intake visits, and volunteers. Given the low numbers of anticipated activities, the 11 parking spaces are adequate to accommodate parking needs" of persons other than staff. *Id.* To the extent there might be concerns about parking during shift changes, Southwest Key will implement a "staggered arrival/departure staffing plan to avoid any potential for parking overflow during shift changes – for example, the project applicant could have 10 employees arrive at 7am, another 10 employees at 7:15am, and the last group at 7:30am." *Id.* Southwest Key will also promote carpooling and use of mass transit by employees. *Id.*

Finally, though Southwest Key is not depending on street parking to accommodate its staff or visitors, a recent on-street parking inventory shows "at least 26 on-street parking spaces are available on the project's immediate frontage." *Id.* at 3. The City previously acknowledged

that any limited overflow parking for the property “can easily be accommodated due to the availability of 27 on-street parking spaces on this site’s own frontage on Del Dios Road and Avenida Del Diablo, without impacting adjacent properties” Tab 74 (No. 86-123-CUP, Staff Report to Planning Commission at 4, 11/13/86). In approving an expansion of PCCC, the Planning Commission likewise noted the “availability of 27 on street parking spaces on the site’s frontage.” Tab 76 (Planning Commission Resolution No. 4238, Findings of Fact ¶ 2, 11/18/86). The same remains true now. The highly unlikely event of limited overflow parking can easily be accommodated on the site’s own frontage without impacting other properties.

In fact, a comparison with the site’s previous use demonstrates that Southwest Key’s project would create no more parking demand than PCCC and almost certainly less. According to information provided by the Palomar Health District, the maximum number of staff members on-site at PCCC from 2010 to 2013 ranged from 52 to 59, significantly more than the 30 anticipated by Southwest Key. Tab 4 (Palomar Health District, 9/23/14). Moreover, the proposed use will generate fewer family visitors than did the previous use. While a skilled nursing facility can typically expect to receive regular visits from family members, Southwest Key’s immigrant youth housing centers receive few if any family visitors. For example, its existing facilities in San Diego County did not receive *any* familial visits in fiscal year 2014. Tab 2 (Southwest Key Letter at 7, 10/13/14). As a result, the property contains ample parking for the proposed use.

- b. As the City has admitted, the proposed use would not generate any traffic concerns because it would not substantially increase vehicle trips or impact vehicular circulation around the property.**

As the City admitted in the Notice of Exemption, “The proposed project would not substantially increase the number of daily vehicle trips to the site nor impact vehicular circulation on or around the site.” Tab 13 at 25. That admission is unsurprising, given that Southwest Key’s facility would have the same number of residents as PCCC but fewer visitors and staff members onsite at any given time. Nonetheless, Southwest Key has commissioned a traffic impact assessment from Chen Ryan, which Chen Ryan has been unable to complete due to delays in receiving necessary data from City staff. Southwest Key reserves the right to submit the traffic impact assessment when it becomes available, but in any event, as the City’s own findings show, the proposed use would not generate any adverse impact due to vehicle traffic.

- c. Southwest Key can easily provide for recreation indoors and outdoors without adversely impacting the Escondido community.**

As legally required, Southwest Key provides its residents with one hour of large muscle activity each weekday and three hours each weekend. Tab 2 (Southwest Key Letter at 8, 10/13/14). The property itself need not contain “outdoor recreation space” to meet that requirement. Redlitz Memo at 7. Southwest Key would provide large muscle activity both indoors and outdoors. Indoors, it would provide exercise such as yoga and crossfit classes in a multipurpose room. Outdoors, it would provide for offsite recreation by making arrangements to use parks, playgrounds, and/or gyms at off-peak times, as it has done successfully in other

locations. Tab 2 (Southwest Key Letter at 8, 10/13/14). Accordingly, the evidence shows there would be no adverse impact on “facilities such as parks, schools, athletic fields, and other locations where children and teenagers frequent.” Redlitz Memo at 8. In any event, common sense indicates that the recreational activities of 96 children would have no significant impact on Escondido, which already has almost 40,000 children. Tab 10 (Escondido census data).

d. The proposed use would comply with the Escondido Noise Ordinance and would not substantially change ambient noise levels in the vicinity.

The proposed use would create no “adverse noise ... impacts on the surrounding neighborhood.” Redlitz Memo at 7. As the City has noted, “outside activities would be limited to reading, eating and quiet activities.” *Id.* at 4. Therefore, the surrounding neighborhood would not “be adversely affected by noise if the facility were to be approved.” *Id.* at 8. In addition, at Southwest Key’s request, RECON Environmental confirmed that “noise levels from operation of the proposed facility would not exceed the Escondido Noise Ordinance or conflict with the policies of the Escondido General Plan Noise Element. Additionally, the project would not result in a substantial change in ambient noise levels in the vicinity of the site.” Tab 7 (Noise Impact Evaluation at 1, 10/9/14).

e. The evidence demonstrates the proposed facility would be safe and secure.

The proposed use does not raise any security concerns. Southwest Key has a track record of safety and security. For example, in the last fiscal year, the unauthorized departure rate from Southwest Key facilities was only 0.06 percent of over 18,000 residents. Tab 2 (Southwest Key Letter at 6, 10/13/14.) As the City has acknowledged, “minors are constantly supervised, whether inside or outside of the facility.” Tab 13 (6/24/14 Report at 8). Southwest Key provides extensive training for staff on maintaining a safe, secure, and appropriate environment. For example, staff must make bed checks no more than 15 minutes apart at night. Tab 2 (Southwest Key Letter at 5, 10/13/14). This constant supervision and rigorous training is responsible for Southwest Key’s success in running safe and secure facilities. To take only one example, the Chief of Police for Brownsville, Texas, wrote that Southwest Key has “continually demonstrated positive, compassionate and professional service” in operating housing for unaccompanied children, and his department “has not had to answer to any disturbances within this program.” Tab 97 (Orlando Rodriguez, Chief of Police, 9/8/14).

Unsurprisingly, therefore, the Escondido Police Department “expressed no concern regarding the proposed development and [its] ability to continue to provide service to the site.” Tab 13 (6/24/14 Report at 7). In the highly unlikely event of “unauthorized departure” or other “issues,” the department’s only request was to “provide a 24/7 direct contact to the Police Department,” *id.* at 9, which Southwest Key gladly agreed to do.

In addition, “[n]ot all unaccompanied children are eligible for placement in a Southwest Key facility.” Tab 2 (Southwest Key Letter at 3, 10/13/14). The legal standards under which Southwest Key cares for unaccompanied children ensure that the proposed use would pose no

significant risk to the community, because any child presenting such a risk must be housed elsewhere than Southwest Key's proposed Escondido facility.

The framework for care of unaccompanied children arises from a 1997 settlement in the federal case of *Flores v. Reno*, No. CV 85-4544-RJK(Px) (C.D. Cal.) ("*Flores Agreement*"). The agreement, which remains in effect, established national standards for care of unaccompanied children and contains several provisions that combine with federal law to ensure safety and security for both the children and communities such as Escondido.²

First, if "a reasonable person would conclude that an alien ... is an adult despite his claims to be a minor, the [government] shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance." Tab 11 (*Flores Agreement* at 9). The government is required to use "procedures to make a prompt determination of the age of an alien," taking into account "multiple forms of evidence." 8 U.S.C. § 1232(b)(4).

Second, in placing unaccompanied children, HHS must consider "danger to self, danger to the community, and risk of flight." 8 U.S.C. § 1232(c)(2)(A). In particular, ORR must place children "in a setting in which they are not likely to pose a danger to themselves or others." 6 U.S.C. § 279(b)(2)(A)(iii).

Third, under *Flores*, a "minor may be held in or transferred to a ... juvenile detention facility or a secure INS detention facility³ ... whenever [the government] determines that the minor" (1) "has been charged with, is chargeable, or has been convicted of a crime ... [or] a delinquent act," with limited exceptions not relevant here;⁴ (2) "has committed, or has made credible threats to commit, a violent or malicious act" while in government custody or in the presence of an immigration officer; (3) "has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program ... and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program"; (4) "there is a serious risk that the minor will attempt to escape from custody"; or (5) the minor "must be held in a secure facility for his or her own safety." Tab 11 (*Flores Agreement* at 12-14). Taken together, all of these provisions ensure safety and security for the community, confirming the Police Department's judgment that the proposed use presents no public safety concerns.

² A stipulation extending the *Flores* agreement provides that it shall remain in effect until 45 days after the publication of final regulations implementing the settlement. Tab 11 (*Flores Agreement* at 47-50). As the final regulations have never been published, the agreement remains in effect.

³ When the agreement was executed, the Immigration and Naturalization Service ("INS") cared for unaccompanied children. When the INS was abolished in 2002, Congress transferred responsibility for unaccompanied children to ORR. 6 U.S.C. §§ 279(a), 291.

⁴ The term "chargeable" means "probable cause to believe that the individual has committed a specified offense." Tab 11 (*Flores Agreement* at 13).

Given these requirements and Southwest Key's track record, there is no significant risk of police costs associated with this project. Nothing in AB 388, signed by the Governor on September 29, 2014, changes that fact. AB 388 is intended "to reduce the frequency of law enforcement involvement ... arising from incidents at group homes and other facilities licensed to provide residential care to dependent children."⁵ AB 388, § 1. As an initial matter, Southwest Key's proposal does not involve caring for children adjudicated "dependent" by a juvenile court. In any event, nothing in AB 388 creates any costs for the Escondido Police Department associated with the proposed use. Indeed, if AB 388 covers Southwest Key at all, it will obligate Southwest Key to comply with "performance standards and outcome measures that require group homes to implement programs and services to minimize law enforcement contacts." AB 388, § 9, (adding Welf. & Inst. Code § 11469(f)). AB 388 therefore diminishes the already insignificant likelihood of police costs associated with Southwest Key's proposal.

Finally, any contentions about "special problems" are speculative and baseless. Redlitz Memo at 8. All "public input" on this project has been exercised through the lawful democratic process. *Id.* The purpose of that process is to encourage debate, which is common for land use issues. But the free and open exchange of views, even if vigorous or "polarizing," is to be encouraged, not discouraged. *Id.* Such open dialogue is the lifeblood of democracy. It cannot form a legal basis for denying a conditional use permit.

Likewise, a conditional use permit may not be denied because of speculation that third parties may lawfully exercise their First Amendment rights or unlawfully commit criminal acts. Southwest Key cannot be held responsible for hypothetical future acts by third parties. The proper response to criminal acts, in the unlikely event any occur, is to punish the wrongdoers, not deny permission to engage in lawful and beneficial activity. The Council cannot bow to the threat of hypothetical vigilantism. To do so would license mob rule.

3. The Speculations of Certain Elected Officials Cannot Justify Denying Southwest Key's Application.

Finally, to the extent the Council is inclined to consider the views of Representative Duncan Hunter or Assembly Member Marie Waldron, nothing asserted by either official provides any basis to deny Southwest Key's application.⁶

Representative Hunter's assertions regarding "the potential adverse impact" of caring for unaccompanied children are directly contradicted by the evidence discussed above. 6/20/14 Hunter Letter. In addition, the evidence dispels his concerns regarding "medical conditions," *id.*, and "health care screening." *Id.* As HHS has explained, "[c]ountries in Central America, where

⁵ See http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB388.

⁶ The City also received a copy of a letter from San Diego County Supervisor Diane Jacob to President Obama that did not address Southwest Key's project and is therefore irrelevant. In any event, its asserted concerns about impacts to local services and costs to local government are unfounded, given that the federal government pays for care of unaccompanied children.

most of the unaccompanied children are from (Guatemala, El Salvador, and Honduras), have childhood vaccination programs, and most children have received some or all of their recommended childhood vaccines.” Tab 89 (ORR FAQ at 2). In any event, ORR is taking the precaution of “providing vaccinations to all children who do not have documentation of previous valid doses of vaccine.” *Id.* Children are screened “for visible and obvious health issues ... when they first arrive at CBP facilities,” for which treatment is provided before they are placed with Southwest Key. *Id.*

Therefore, according to the Centers for Disease Control and Prevention, “the unaccompanied children arriving from Central America pose little risk of spreading infectious diseases to the general public.” Tab 87 (CDC, Unaccompanied Children: Health Information for Public Health Partners at 1, 8/1/14). As a local expert confirms, “any public health concerns that might be associated with a housing facility for unaccompanied children arriving in the United States ... are insignificant.” Tab 86 (Dr. Thomas Novotny at 1, 9/8/14).⁷ Any “infectious diseases that may be present in children” from Guatemala, Honduras & El Salvador are easily screened, treated, and managed. *Id.* If necessary, the children “would be monitored routinely by our excellent local health department and managed as we do for our non-migrant populations.” *Id.* Accordingly, the evidence shows there is no significant risk to public health.⁸

Similarly, there is no valid basis for Representative Hunter’s speculation about “possible criminal affiliations.”⁹ 6/24/14 Hunter Letter. As ORR has explained, many unaccompanied children “are fleeing violent situations in their home country and choose to leave rather than join a gang.” Tab 89 (ORR FAQ at 2). Far from having criminal affiliations, they are often fleeing persecution by criminals and “are, as a rule, relieved to be in a safe and caring environment.” *Id.* In any event, as discussed above, the *Flores* Agreement and federal law contain detailed safeguards to protect public safety. Also, “[c]hildren served by the Office of Refugee Resettlement program ... are not permitted to visit the local town or area attractions unless supervised by approved staff. Each staff member is required to maintain visibility on children at all times and know the exact location of each child.” Tab 89 (ORR FAQ at 2).

⁷ Dr. Novotny is a Professor in the Graduate School of Public Health at San Diego State University, Associate Director for Border and Global Health, and Co-Director of the Joint Doctoral Program in Global Health between San Diego State University and University of California, San Diego. He is a former Assistant Surgeon General and Deputy Assistant Secretary for International and Refugee Health. Tab 86 (Novotny Curriculum Vitae at 2-4).

⁸ Indeed, given that ORR ensures all unaccompanied children have been or are vaccinated, the proposed use presents less public health hazard than “the increasing incidence of vaccine refusal among San Diego resident families who falsely believe that vaccines present risks rather than benefits to their children.” Tab 86 (Novotny Letter, 9/8/14).

⁹ The June 20 letter also referred to uncertainty about the “final destination” of unaccompanied children, which is both vague and irrelevant. In any event, unaccompanied children either receive the right to remain lawfully in the United States, agree to return voluntarily to their home countries, or face orders removing them from the United States—none of which is relevant to the land use issue before the Council.

The evidence rebuts Representative Hunter's suggestion that the proposed use would impose significant costs "not paid by the federal government." 6/24/14 Hunter Letter. As noted above, the federal government pays all direct costs associated with caring for unaccompanied minors, including shelter, food, clothing, education, and medical care. Nor are there significant indirect costs to local communities. Unaccompanied children are not enrolled in local schools. Tab 89 (ORR FAQ at 3) ("While students are in HHS custody at HHS shelters, they will not be enrolled in the local school systems."). Southwest Key provides educational services onsite, typically through a contract with an entity such as the San Diego County Office of Education. Redlitz Memo at 4; Tab 91 (José Villareal, San Diego County Office of Education, 6/15/14).¹⁰ And as already discussed, the likelihood of police costs associated with the proposed facility is insignificant at best.

The concerns of Assembly Member Waldron are also unsupported. Her assertions about "negative impacts" and incompatibility with the neighborhood have already been rebutted. 6/23/14 Waldron Letter. She is mistaken that "[l]ocal control over this facility will be non-existent." *Id.* As a private entity contracting with the federal government to provide certain services, Southwest Key is subject to valid and generally applicable regulations that apply to any entity operating in Escondido. *Smith v. County of Santa Barbara*, 203 Cal.App.3d 1415, 1425 (1988) (noting "those who independently contract to furnish supplies or render services to the Federal Government are not entitled to share" in federal immunity from local regulation, and holding local regulations applied to private developer's construction of building intended for lease to federal agency). Indeed, if Southwest Key were exempt from local control, it need never have applied for a conditional use permit in the first place. By engaging in dialogue with City staff and residents, responding to their concerns, and agreeing to reasonable conditions, it has demonstrated its commitment to being a good neighbor and positive presence in Escondido.

Conclusion

For the foregoing reasons, in addition to those previously stated, the City Council is respectfully requested to grant a conditional use permit to Southwest Key Programs for use of 1817 Avenida del Diablo as an immigrant youth housing center, subject to the conditions already presented to the Planning Commission and any other reasonable conditions that might be proposed.

Sincerely,



David Loy
Legal Director

¹⁰ For similar reasons, any concerns of "residents or businesses" about "the burden on local services," Redlitz Memo at 5, are unfounded.