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THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: July 25, 2007 REPORT NO. 07-122
ATTENTION: Honorable Council President and City Council,
Agenda of July 31, 2007
SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION for
Pacific Coast Office Building - Project No. 54384, Council District No. 6
OWNER: Dr. Robert Pollack
APPELLANTS: Ellen M. Shively, Lynn Mullholland, Randy Berkman, James A. Peugh and
others (Attachment 1)

SUMMARY

Issues - Should the City Council uphold the Planning Commission's certification of Mitigated Negative Declaration No. 54384?

Staff Recommendations

1. DENY the appeal and UPHOLD the Environmental Determination (Mitigated Negative Declaration No. 54384).
2. Make an express finding that the information provided by the appellants is not substantial evidence of significant unmitigated impacts, because it is "...argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous...." (Reference: State CEQA Guidelines Section 15384(a)).

Environmental Review - The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) prepared an Initial Study and completed a Mitigated Negative Declaration (No. 54384).

Fiscal Impact Statement - None with this action. All costs associated with the processing of this appeal are paid by the applicant.

Code Enforcement Impact - None with this action.

Housing Impact Statement - None with this action.

Water Quality Impact Statement – The proposed project design incorporates site design and source control best management practices (BMPs) to reduce the amount of potential pollutants that could be generated from the development. Runoff from the existing vegetated slope, located south of the project site, would continue to sheet flow into a new concrete brow ditch. Two new catch basins with filtration inserts would be added to the project to collect runoff from parking and sidewalk areas and reduce or eliminate the anticipated pollutants prior to discharging into the public drainage system. Various source control BMPs have also been incorporated into the project design to further reduce negative effects to water quality. During construction, the developer must comply with best management practices to reduce or eliminate potential pollutants in runoff from the construction site. The project features described above have been designed in accordance with the City's Storm Water Standards. Compliance with the standards through the above project elements would preclude direct and cumulatively considerable hydrology/water quality impacts.

BACKGROUND

The issue before the City Council is the second appeal of the environmental document, Mitigated Negative Declaration No. 54384, prepared by Development Services staff for the Pacific Coast Office Building project. The first environmental appeal was before the Council on September 26, 2006, at which time the Council remanded the matter back to the Planning Commission for further consideration. On May 17, 2007, the Planning Commission unanimously certified the Mitigated Negative Declaration and approved the Site Development Permit. Due to the familiarity of the previous project issues by the decision makers and the background information available in the previous reports to the Council and Planning Commission, this report shall limit the focus of the discussion to the issues raised at the May 17, 2007, Planning Commission hearing and the subsequent appeal application of the environmental document.

Project Description

The approved Site Development Permit allows the development of a 9,845-square-foot commercial and medical office building on the northern 1.05-acre portion of an undeveloped 4.94-acre parcel. The southern portion of the site is within an open space easement, which would remain as open space. The building would have a maximum height of 38.7 feet. The site is accessed from Scheidler Way. Thirty six parking spaces would be provided on-site, with 20 parking stalls located at grade in a tuck-under area located along the northern side of the building. The remaining 16 parking stalls would be located on a second-level parking area on the eastern side of the building. The building would be located on a slope, and the project includes alternative design features to reduce grading, including tucking the rear of the building into the hillside and terracing the second story, creating a roof garden and/or deck. Because of this design, nine shotcrete, crib, and retaining walls varying in length from 99 to 393 feet and from two to ten feet in height are required. The walls would be terraced and landscaped, and would be

minimally visible from public viewing areas. A new condition of the permit suggested by the applicant and subsequently imposed by the Planning Commission would include LEED Certification of the building. LEED stands for Leadership in Energy and Environmental Design and is the nationally accepted benchmark for the design, construction, and operation of high performance green buildings.

DISCUSSION

Appeal Issues

The appeal of the environmental document asserts that the project was approved by the Planning Commission with factual errors, conflicts with other matters, that the findings are not supported, that there was new information and that the decision has city-wide significance. Generally, the appeal seeks an Environmental Impact Report (EIR) for the project rather than the Mitigated Negative Declaration. An EIR would be required by the California Environmental Quality Act (CEQA) if the project may have a significant effect on the environment. Staff disagrees with the contention that there are potential impacts associated with the proposed development that cannot be mitigated below a level of significance and therefore concludes that the MND is the appropriate environmental document for this action. The appeal cites a wide variety of issues that have been previously discussed and responded to in the MND. The overarching issues throughout the appeal application is the contention that the City staff did not follow the City Council direction to analyze alternative project designs when the matter was remanded back to the Planning Commission on September 26, 2006, and that staff misrepresents the San Diego Municipal Code and the Mission Valley Community Plan in the MND.

City Council Direction

As a part of the motion to approve the September 26, 2006, appeal the City Council directed staff to "review alternatives that would reduce impacts" associated with the development. This direction was a result of public testimony wherein, it was discussed that previous project design alternatives had been submitted, reviewed and subsequently rejected by Development Services during the project review phase of the entitlement process. The Council felt that the public should be made aware of those project alternatives and have had the opportunity to comment on them. The Council therefore instructed staff to include an alternatives analysis with a mandate that the revised document be recirculated for public review.

The MND was revised and recirculated pursuant to the Council direction. Various project designs were summarized along with the staff determinations that precluded these designs from further consideration. Some of the designs lessen certain impacts such as visual affect, building scale, brush management and grading. However, these resulted in increased impacts on the hillside including a higher degree of non-compliance with the Mission Valley Planned District Ordinance and the Mission Valley Community Plan.

The appeal asserts that the alternative designs the Council requested should not have included previous project designs already reviewed by the staff but rather, new design alternatives that

further reduce the project's environmental impacts. This was not the staff interpretation of the motion because previous design alternatives reviewed during the entitlement process covered the narrow scope of design and site options available to the property due to the limited nature of the site. Staff revised the document to include an array of project designs that covered the basic options for the property. These options included a building at the lower east side of the project with surface parking and access; a single story project in the middle of the site; and a two-story structure with subterranean parking. Each of the previous designs offered potential reductions in certain impacts while at the same time created additional impacts that were considered to be of greater significance. Staff was able to conclude that the proposed design was preferable to the alternatives in that the overall project provided the least potential impacts to the site and all of the impacts identified could be mitigated to a level below significant. Staff contends that there are no new or unexplored variations of site design alternatives that could be considered reasonable use of the property, therefore staff believes the purpose and intent of the City Council direction was met.

Findings Not Supported

The appeal application also contends that the City staff misrepresented or misinterpreted the Mission Valley Community Plan and the applicable Land Development Code sections that regulate development on the property. Staff has explained their reasoning, determinations and conclusions throughout the review and hearing processes and adequately addressed the appeal issues in the Mitigated Negative declaration. Staff has reviewed the applicable policy and code sections and determined that the Mission Valley Community Plan does not limit all development on this particular parcel to below the 150 foot contour line. Further, the Land Development Code and the Mission Valley Planned District Ordinance anticipated and established a public process by which to review and analyze development proposals on properties with special circumstances as in the case of this project. Staff conclusions are based on what is considered the most appropriate, least impactful scenario that includes reasonable use of the land.

Factual Errors

The appeal application makes several statements concluding that the Mitigated Negative Declaration is flawed and that due to "serious public controversy" that there is substantial evidence of significant impacts under CEQA to warrant an Environmental Impact Report. However, this is not factual in that the information provided by the appellants is not substantial evidence of significant unmitigated impacts, because it is "speculation, unsubstantiated opinion or narrative" (Reference: State CEQA Guidelines Section 15384(a)). In the appeal, the issues identified are clearly speculative and unsupported by fact. Further, CEQA Section 21082.2(b) states: The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment. Staff contends that the MND is the appropriate environmental document, that the Council direction to review alternatives was followed and that the mitigation measures identified and applied to the development are adequate to ensure the project would not result in any significant impacts to the area.

New Information

The applicant contends that the Planning Commission's inclusion of a new a permit condition for a LEED Certified building requires additional public review under CEQA. However, staff disagrees with this contention in that the condition would ensure a sustainable, energy efficient building through the building permit and certification process. This condition is within the discretion of the Planning Commission and would not in any manner increase potential impacts associated with the project.

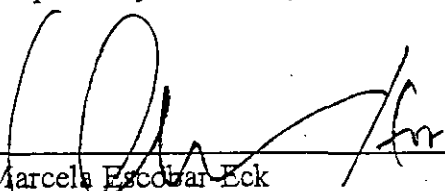
CONCLUSION

Staff has reviewed the appeal of the environmental document and disagrees with the stated conclusions. Staff believes that MND No. 54384 adequately addresses the project's potential impacts, and that implementation of the MMRP would avoid or reduce such impacts to below a level of significance. Staff further believes that the proposed building design and placement on the site represents the most acceptable design solution. The Planning Commission agrees with the staff recommendation and concluded that the issues have been adequately vetted and appropriately addressed both in the review process and the subsequent hearings.

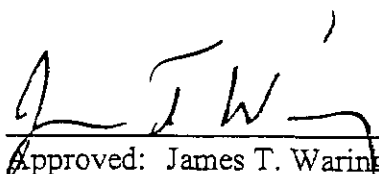
ALTERNATIVES

1. GRANT the appeal, set aside the environmental determination, and REMAND the matter to the Development Services Director for reconsideration, with direction or instruction the City Council deems appropriate.
2. GRANT the appeal and make a superceding environmental determination or CEQA findings. If Council chooses this alternative, staff respectfully requests direction from Council regarding the existence of substantial evidence, as required by Section 21082.2 of the California Public Resources Code, supporting a fair argument that the project would result in significant environmental effects.

Respectfully submitted,



 Marcela Escobar Eck
 Director
 Development Services Department



 Approved: James T. Waring
 Deputy Chief of Land Use and
 Economic Development

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Attachment:

1. Appeal Application (Dated May 27, 2007 and received by the City Clerk)
2. Planning Commission Report No. PC-06-194
3. Revised Site Development Permit. (to include LEED requirement per the Planning Commission hearing of May 17, 2007)