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Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 236-6220

DATE: July 27, 2007
TO: Honorable Council President Peters and Members of the City Council
FROM: City Attorney
SUBJECT: Appeal of Mitigated Negative Declaration, Project No. 5434--Pacific Coast Office Building, July 31, 2007

INTRODUCTION

This item is an appeal of a Mitigated Negative Declaration, prepared for a Site Development Permit (for development on Environmentally Sensitive Lands). The project is an approximately 10,000 square foot office building located against the southern slopes of Mission Valley. The Mission Valley Community Plan designates the 4.88-acre parcel as open space.

PROCEDURAL HISTORY

This project originated as a Process Three matter, and proceeded as follows:

- April 19, 2006 Hearing Officer approved Site Development Permit No. 158004 and certified Mitigated Negative Declaration No. 54384.
- June 15, 2006 Appeal of Hearing Officer's decision heard by Planning Commission. Planning Commission denied appeal, approved Site Development Permit No. 158004 and certified Mitigated Negative Declaration No. 54384.
- September 26, 2006 City Council granted appeal of the Mitigated Negative Declaration and remanded project to Planning Commission.
- May 17, 2007 On remand, Planning Commission approved Site Development Permit No. 158004 and certified Mitigated Negative Declaration No. 54384.
- May 31, 2007 Appeal of the Environmental Determination filed.

PROCEDURE ON APPEAL

An appeal of the CEQA document was filed on May 31, 2007, by the Sierra Club, San Diego Chapter; Audubon Society, San Diego Chapter; River Valley Preservation Project; Friends of San Diego; University Heights Planning Committee; and Mission Valley Community Council.

On September 26, 2006, the City Council remanded the project to Planning Commission in accordance with San Diego Municipal Code [SDMC] section 112.0520 (d)(3). As a result, the Planning Commission's earlier decision to grant the Site Development Permit was vacated and that body considered both the entitlements and the environmental document anew. SDMC § 112.0520(f). The Planning Commission again granted the permit and certified the Mitigated Negative Declaration.

San Diego Municipal Code section 112.0520(g) provides that "[i]f the decision on remand, in accordance with section 112.0520(d)(3), results in the same type of environmental document, such decision shall be deemed the final action." Therefore, under the City's Municipal Code, the decision of the Planning Commission on May 17, 2007, would be final.

Careful examination has revealed, however, that this section of the Municipal Code conflicts with a provision of the California Environmental Quality Act. That is, Cal. Pub. Res. Code section 21151(b) requires that:

[i]f a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any.

Therefore, an interested party still has the right to appeal the Planning Commission's decision to this elected body.

In accordance with SDMC section 112.0520(d), the Council can proceed in the following manner:

- (1) Deny the appeal, uphold the environmental determination of the Planning Commission, and adopt the findings therein; or
- (2) Grant the appeal and make a superceding environmental determination or CEQA findings; or
- (3) Grant the appeal, set aside the environmental determination, and remand the matter to the Planning Commission.

In the event the Council grants the appeal, this office recommends Council retain jurisdiction and direct staff to return to Council upon accomplishing whatever action Council sees fit. In the


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alternative, this office recommends (again, only in the event the Council grants the appeal) the matter be remanded to Planning Commission with very specific instructions to staff as to how to proceed.

As always, our office is available for questions. Thank you for your attention to this matter.

MICHAEL J. AGUIRRE, City Attorney

By 

Karen A. Heumann
Assistant City Attorney

KAH:acd