

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
SANDER SITE REZONING

The application for rezoning and related land use decisions regarding the proposed Sander project site are on your agenda for Monday, June 29 as Supplemental Docket Item S414.

You may recall that when the Item was before you on June 3, one Gabriel Vivas, an attorney on the staff of the California Energy Commission ("CEC"), suggested to you that a decision at this time with respect to the rezoning and related land use matters was not necessary because, in his unofficial view, the CEC could condition any permit or certification of the project upon a subsequent rezoning by you to a compatible land use category.

You were advised by the City Attorney and the attorneys for Signal Environmental Systems (the proposed vendor and operator) that, in our collective view, Mr. Vivas' suggestion was not well taken or supported by any legal authority. Based upon our reading of applicable state law, we continue to believe that this is the case.

In an attempt to obtain a clarification of Mr. Vivas' views, the City Attorney directed a communication to the CEC regarding this matter. A copy of that letter is attached as Enclosure (1).

On Monday, June 22, the City Attorney received a reply from Mr. Stephen E. Rhoads, Executive Director of the CEC. A copy of that reply is attached as Enclosure (2). With respect to the precise issue before you we would call to your specific attention Mr. Rhoads' comments commencing in the last paragraph on page 3 and the first full paragraph on page 4 where Mr. Rhoads states: "The theoretical alternative recognized (but apparently neither endorsed nor advocated) by Mr. Vivas is not one I would recommend for this proceeding."

However, additional significant comments by Mr. Rhoads concerning this issue are also made in the penultimate paragraph of the letter, commencing on page 4 where Mr. Rhoads writes:

If the City was the permitting authority, it would make its decision only after completing and considering an environmental report and

other studies it found appropriate. But since the Commission is the lead environmental agency, the Council does not have the benefit of completed studies at this time. For that

reason, it may be appropriate for the City to explore with the Presiding Committee an appropriate schedule that accommodates both the Committee's need to know the City's position within the framework of the application schedule and the Council's need to consider relevant reports concerning the project's merits prior to taking a final position on the project's conformance with local land use plans and ordinances. For example, the City could defer the question of rezoning until after the Presiding Member's Report. If the Report and the evidentiary record at that time convince the Council that it should amend its land use plans and ordinances, it could then act to remove the non-conformity that is alleged to exist now. This action could be taken independently by the Council or in conjunction with the "meet and confer" process initiated by the Committee. If it pursues this option, the City should be aware that a "meet and confer" process (and an override proceeding, if necessary) could require additional time, although this is not certain, and the delays may have consequences for other aspects of the project. The City may wish to decide how relevant the potential for delay is to its choice of options.

We continue to believe the matter is, as a legal issue, ripe for your decision. However, there does appear to be an alternative, as suggested by Mr. Rhoads, "to explore with the CEC's Presiding Committee an appropriate schedule that accommodates both the Committee's need to know the City's position ... and the Council's need to consider relevant reports concerning the project's merits"

As intervenor in the proceedings before the CEC, we may properly raise this issue with the Presiding Committee if the City Council so desires. It is not our recommendation to do so, however, at this time. We believe the rezoning application, etc. conditioned as it presently is, is sufficient protection to the City to allow the land use decisions to be made at this time.

The Manager continues to recommend that the application be granted and the site appropriately rezoned.

Respectfully submitted,

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By By

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Enclosures (1)&(2)
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