

April 7, 1988

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
RE: RECENT LITIGATION

Friends of Mission Bay v. City of San Diego, et al.

Petitioner, composed of residents of San Diego living around the Sail Bay area of Mission Bay, sued the City seeking to prevent the completion of the Sail Bay Project. The Superior Court denied relief and the Court of Appeal dismissed petitioner's appeal as being moot.

BACKGROUND

The Sail Bay Project was originally conceived in the early 1970s. At that time, however, many privately owned improvements were located on the public property in the project area. The encroachments were authorized under leases between the neighboring landowners and, at first, the State and, later, the City, when the State granted the tidelands to it. Some of the leases went back to 1926, but they all expired on June 30, 1976.

The improvements consisted mainly of private boat docks. The leases specifically provided that the improvements were to be removed upon expiration of the leases and many lessees complied. It was necessary, however, to institute court proceedings to force some lessees to remove their improvements.

Phase I of the Sail Bay Project consisted of the removal of most of the encroachments. It was accomplished around 1978. However, some encroachments were allowed to remain under negotiated agreements with the City. Those agreements expired on June 30, 1985.

The Sail Bay Master Plan was prepared in the late 1970s and a negative declaration was adopted for it on May 27, 1980 pursuant to Resolution No. R-251914. Around 1983, the City began to seek the appropriate permits for Phase II of the Sail Bay Project. It

consisted primarily of increasing the beach around Sail Bay and extending the storm drains. The portion of the work in question had not changed since the negative declaration was filed in 1980. As part of the permit process for Phase II, however, the Army Corps of Engineers imposed its own condition upon the project: The City was to compensate for the loss of bay surface area, resulting from enlargement of the beach, by creating a launch basin in the South Shore area of Mission Bay next to Sea World.

The South Shore Master Plan, already being conceived at that

time, provided for the creation of a launch basin in the South Shore area. To comply with the Corps permit, the City decided to accelerate development of only the launch basin portion of the South Shore Master Plan. An EIR and an addendum were adopted for the South Shore Master Plan on October 14, 1985. Those documents identified specific mitigation efforts required to build the launch basin but indicated that they were to be implemented at the development stage.

A contract for construction of Phase II of Sail Bay only was executed, pursuant to Resolution No. R-265429, in August of 1986. The contractor performed preparatory work and began dredging on September 22, 1986. The Sail Bay Project was completed in December, 1987. The South Shore Project is currently out for bid.

LITIGATION

Petitioner filed a petition for writ of mandate on September 3, 1986, seeking to prevent Phase II of the Sail Bay Project on the ground that the City had not complied with the California Environmental Quality Act (CEQA). The City answered and a hearing was held before the Honorable Patricia Benke on September 30, 1986. The Court denied petitioner's requested relief.

Petitioner filed a notice of appeal and sought a writ of supersedeas and stay from the Court of Appeal to enjoin work on Sail Bay pending its appeal. The Court of Appeal denied the writ and stay.

On the merits of the appeal, the Court of Appeal, in a decision filed February 11, 1988, held that, in light of the passage of time since the filing of the petition in the lower court, and the fact that Phase II of Sail Bay was to have been completed by September 1987, the case had become moot.

The effect of this ruling was to dismiss the appeal. The decision has become final and the Sail Bay and South Shores

Project are, therefore, currently free to proceed until completion.

Deputy City Attorney Leslie J. Girard represented the City before the Superior Court and Court of Appeal.

Respectfully submitted,

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JWW:LJG:vtc:Lit.(x043.1)

RC-88-16