

October 19, 1995
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

NEIGHBORHOOD 8A - MESA TOP AND TORREY PINES PROPOSALS

As part of the Neighborhood 8A ("8A") decision-making process, the City Council has been requested to approve certain discretionary permits and take certain discretionary actions to allow for development as proposed by Mesa Top Properties ("Mesa Top") in the areas generally shown on Attachment 1.

At the Council meetings in January, April and June, 1995, the City Council considered the Mesa Top proposals, along with other 8A proposals, and continued the matters. The proposals are now scheduled for hearing on October 31, 1995.

Subsequent to the June Council meeting, Mesa Top along with Torrey Pines Investment Group ("Torrey Pines") filed a lawsuit against the City alleging that the City, by discussing and continuing the matter of the proposed discretionary approvals, had somehow violated their rights as property owners. The purpose of this report is to clarify the record as to the options available to the City Council with regard to Mesa Top's proposals, as well as other proposals for the undeveloped areas in the north city which are generally zoned A-1-10, and which are also docketed for October 31, 1995.

Except when development is of right as consistent with the underlying zoning restrictions, in order for an owner of property to proceed with development it is necessary for the owner to obtain any discretionary permits required by law. Torrey Pines has not applied for any particular development of its property, but is seeking designation of its property as residential and commercial in the draft Carmel Valley Neighborhood 8A Precise Plan, dated August 26, 1993, and commonly known as the "Original Precise Plan." On the other hand, Mesa Top is seeking the following discretionary permits and discretionary actions under the Original Precise Plan:

1. Adoption of a Precise Plan - as called for by the existing community plan for the area;
2. A rezoning from an agricultural zone to residential;
3. A Vesting Tentative Map;
4. A Resource Protection Ordinance permit;
5. A Carmel Valley Planned District Development Permit;
6. A Coastal Development Permit;

7. A Coastal Hillside Review Permit; and
8. A certification of adequacy of an environmental document.

There are numerous findings which must be made for some of the discretionary approvals. The findings must be made based upon substantial evidence provided at a public hearing, and made part of the record, including oral and documentary evidence. The City Council has substantial latitude in making findings, so long as they are supported by substantial evidence.

Attached for your reference is a list of findings required for each of the above discretionary approvals and permits (Attachment 2). If there is not substantial evidence presented at the public hearing to support making all of the required findings necessary to grant the permits, the City Council cannot legally approve a permit. Likewise, if there is substantial evidence presented at the public hearings to indicate that the facts are contrary to the necessary findings, the permit or discretionary action relating to that finding may be refused by the Council even though there may also be some evidence presented which could support the Council making the finding.

It must be noted that persons and corporations which buy undeveloped tracts of property in hopes of having the property rezoned to allow for a greater intensity or density of development, and in hopes of obtaining all of the discretionary approvals required prior to being able to develop the property at increased densities, are not legally "entitled" to obtain such discretionary permits and approvals. However, if the existing land use regulations do not permit an economically viable use of an owner's property the owner may establish the property has been "taken" or inversely condemned if reasonable relief from the restrictions is refused. In any event, evidence must be presented to justify the City Council's discretionary actions, and it is neither unusual nor illegal for the City Council to refuse to grant any particular discretionary action or approval when a majority of the Council determines that some of the findings required for approval cannot presently be made.

Legal problems may arise if the City Council does not make the findings necessary to approve a project, but then does not specifically deny the proposed discretionary actions based upon an inability to make required findings. For example, the lawsuit filed by Mesa Top against the City is largely based upon the alternative discussed at the April 1995 Council meeting involving "whiteholing" the Mesa Top property for a period of three years. While such action may be legally justified under certain circumstances, it is our recommendation that the Council should either approve the Mesa Top proposal based upon evidence presented or turn down the Mesa Top proposal based upon such evidence or lack of evidence to support all of the required findings.

In summary, the City Council, sitting both as a quasi-judicial and a legislative body, and listening to testimony, is the authorized agency

to either approve or disapprove any discretionary applications or zone changes. The decisions of the Council in making or not making any proposed findings should be based upon evidence and testimony presented that will support the Council's decision on each discretionary action.

Respectfully submitted,

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Attachments

RC-95-30