

RESOLUTION NUMBER R-303267

DATE OF FINAL PASSAGE DECEMBER 4, 2007

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DENYING THE APPEALS BY THE SAN DIEGO NAVY BROADWAY COMPLEX COALITION, AND BY KATHERYN RHODES AND CONRAD HARTSELL, AND AFFIRMATIVELY UPHOLDING AND APPROVING (1) THE CALIFORNIA PUBLIC RESOURCES CODE SECTION 21166 ANALYSIS BY THE DEVELOPMENT SERVICES DEPARTMENT AND THE INITIAL STUDY PREPARED BY THE CENTRE CITY DEVELOPMENT CORPORATION AND (2) THE ACTIONS OF THE CENTRE CITY DEVELOPMENT CORPORATION IN CONCLUDING THAT NO FURTHER SUBSEQUENT OR SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT IS REQUIRED FOR THE NAVY BROADWAY COMPLEX PROJECT BY ADOPTION OF CCDC RESOLUTION 2007-01.

WHEREAS, an Agreement between the City of San Diego and the United States of America adopting a development plan and urban design guidelines for the redevelopment of the Navy Broadway Complex ["Agreement"] was entered into in 1992; and

WHEREAS, said Agreement was amended in 2001 to extend its expiration date to January 1, 2003 and was amended a second time to extend its expiration date to January 1, 2007; and

WHEREAS, in March, 2006, the United States Navy ["Navy"] selected Manchester Financial Group ["Manchester"] to be the Developer of the Navy Broadway Complex Project ["NBC Project"]; and

WHEREAS, an informational hearing was conducted by the Council of the City of San Diego in September, 2006, in order to receive public input and comments on said NBC Project; and

WHEREAS, regarding the NBC Project, the Development Services Department ["DSD"] prepared an Analysis pursuant to California Public Resources Code Section 21166 on October

19, 2006, concluding that “DSD does not find a need to conduct additional environmental review for the proposed NBC Project. The proposed NBC Project is adequately addressed in the prior environmental documents that were certified for the 1990 NBC Project and for other projects in the vicinity. Project impacts are adequately addressed and appropriate mitigation has been identified;” and

WHEREAS, the Centre City Development Corporation [“CCDC”] adopted a resolution at its October 25, 2006 Board meeting regarding the CEQA Analysis prepared by DSD for the NBC project, whereby the CCDC Board adopted said Analysis and determination by DSD that no further environmental review was warranted and incorporated said Analysis by reference as though fully set forth in its resolution; and

WHEREAS, pursuant to California Public Resources Code Section 21151(c), a timely written appeal was filed by Katheryn Rhodes and Conrad Hartsell challenging both the action of DSD in its preparation and its conclusion of said Analysis and of CCDC in its adoption of said resolution; and

WHEREAS, on January 9, 2007, the Council of the City of San Diego [“City Council”] held a noticed public hearing to consider said appeal, with testimony having been heard, written materials having been submitted and reviewed including, but not limited to, the Report to the City Council dated January 3, 2007, consisting of 25 pages plus numerous attachments [“Report”], the Final Environmental Impact Report for the Navy Broadway Complex Project, dated October, 1990, the November 22, 2006 Lease between the Navy and Manchester [Lease No. N6247307RP07P24], and the Navy Broadway Complex Environmental Assessment [“EA”] of June, 2006, prepared by or for the Navy under the requirements of the National Environmental Policy Act [“NEPA”]; and

WHEREAS, the City Council denied said appeal for the reasons that there was not substantial evidence to support the position of the Appellants that the criteria set forth in Section 21166 of the California Public Resources Code had been met and that there was substantial evidence to support the position that the 1990 EIR/EIS prepared for the NBC Project and the subsequent environmental documents prepared for the other projects in the vicinity, which were identified in the Section 21166 Analysis by the Development Services Department, adequately addressed the potential environmental issues associated with the NBC Project; and

WHEREAS, on July 2, 2007, the private developer for the NBC Project submitted a new master plan ["Superseding Master Plan"] and also Phase I Buildings Basic/Schematic Drawings [of Blocks 2 and 3] for the Navy Broadway Complex [Phase I Buildings]; and

WHEREAS, the Superseding Master Plan and Phase I Buildings replace and supersede the First Master Plan; and

WHEREAS, on July 25, 2007 the CCDC Board of Directors, by adoption of CCDC Resolution 2007-1, adopted findings, based on all the information in the record before it, including the DSD CEQA Analysis of October 2006 and information provided by CCDC staff, including an "Initial Study," that the DSD CEQA Analysis continues to be adequate with respect to the Superseding Master Plan and that, pursuant to Public Resources Code Section 21166, no further subsequent or supplemental Environmental Impact Report is required because no substantial changes have been proposed to the NBC Project which will require major revisions to previous EIRs, no substantial changes have occurred with respect to the circumstances under which the NBC Project is now being undertaken, and that no new information, which was not known and could not have been known at the time the Environmental Documents [as defined in CCDC Resolution 2007-1] were certified as complete has become available; and

WHEREAS, timely written appeals were filed by the San Diego Navy Broadway Complex Coalition, and by Katheryn Rhodes and Conrad Hartsell, challenging the environmental actions of CCDC of July 25, 2007 in its adoption of said CCDC Resolution 2007-1; and

WHEREAS, under Charter Section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, on December 4, 2007, the City Council held a noticed public hearing to consider said afore-mentioned two written appeals, with testimony having been heard, written materials having been submitted and reviewed including, but not limited to, the Report to Council President and City Council dated October 10, 2007, consisting of 27 pages plus four attachments ["Report"] and CCDC Resolution 2007-1, and the City Council having fully considered the matter and being fully advised concerning the same.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings and conclusions with respect to said afore-mentioned two written appeals, all said findings and conclusions applying with equal force and effect to each written appeal, [San Diego Navy Broadway Complex Coalition and Katheryn Rhodes and Conrad Hartsell are collectively referred to herein as "Appellants"] relating to the Navy Broadway Complex ["NBC"] Project:

1. The test for determining whether subsequent or supplemental environmental documents, including an environmental impact report, would be required for the NBC Project as described in the Superseding Master Plan [hereinafter referred to as "NBC Project"] is

determined by the three-part test set forth in California Public Resources Code Section 21166 in which one or more of the following events must occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

2. Based upon all of the relevant information, evidence and testimony considered by the City Council at this appeal hearing, the City Council concludes, upholds and finds that there is not substantial evidence to support the position of the Appellants that the criteria set forth in the afore-mentioned Section 21166 have been met. Specifically, the information, evidence and testimony submitted by the Appellants do not constitute substantial evidence of substantial changes in the NBC Project or the circumstances under which the NBC Project is undertaken, or new information of substantial importance concerning the NBC Project, that would suggest the NBC Project will result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

3. Based upon all of the relevant information, evidence and testimony considered by the City Council at this appeal hearing, the City Council concludes, upholds and finds that there is substantial evidence to support the position that the 1990 EIR/EIS prepared for the Project and the subsequent environmental documents prepared for other projects in the vicinity, which were identified in the Section 21166 Analysis by the Development Services Department, and the information provided by CCDC staff, including an "Initial Study," all as more fully set forth in CCDC Resolution 2007-1 which is incorporated herein in its entirety by reference, adequately address the potential environmental issues associated with the NBC Project. Accordingly, no

additional environmental review is required.

4. The appeal by the San Diego Navy Broadway Complex Coalition is hereby DENIED, and the City Council hereby AFFIRMATIVELY UPHOLDS and APPROVES (1) the California Public Resources Code Section 21166 Analysis by the Development Services Department and the Initial Study prepared by CCDC and (2) the actions of the Centre City Development Corporation in concluding that no further subsequent or supplemental Environmental Impact Report is required for the NBC Project by adoption of CCDC Resolution 2007-1.

5. The appeal by Katheryn Rhodes and Conrad Hartsell is hereby DENIED, and the City Council hereby AFFIRMATIVELY UPHOLDS and APPROVES (1) the California Public Resources Code Section 21166 Analysis by the Development Services Department and the Initial Study prepared by CCDC and (2) the actions of the Centre City Development Corporation in concluding that no further subsequent or supplemental Environmental Impact Report is required for the NBC Project by adoption of CCDC Resolution 2007-1.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Huston Carlyle
Chief Deputy City Attorney

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