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(R-2008-732)
HEBT 2/26/08

RESOLUTION NUMBER R-303435

DATE OF FINAL PASSAGE FEBRUARY 26, 2008

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 [“SUPERSEDING MASTER PLAN CEQA 21166 EVALUATION”] BY THE DEVELOPMENT SERVICES DEPARTMENT 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 2007-06.

WHEREAS. On October 20, 1992, the Council of the City of San Diego certified an Environmental Impact Report/Environmental Impact Statement for the redevelopment of the Navy Broadway Complex and adopted a Mitigation and Monitoring Program [“MMRP”] requiring implementation of the mitigation measures contained therein; and

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 November 22, 2006, the U.S. Navy ["Lessor"] and Manchester Pacific Gateway LLC ["Lessee"] entered into a Real Estate Ground Lease for the Broadway Complex, Lease No. N6247307RP07P24, that requires the Lessee, among other obligations, to implement all seismic safety development requirements as recommended in the relevant federal, state, and local building codes; 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, on November 5, 2007, the San Diego City Attorney submitted a memorandum to the San Diego Mayor and City Council advising that DSD must perform a Public Resources Code, Section 21166 analysis for the Superseding Master Plan and Phase I Buildings before CCDC may make its consistency determination pursuant to Section 5.2 of the Navy Broadway Complex Agreement and on that basis advised the City Council to grant the appeals; and

WHEREAS, pursuant to the City Attorney's advice, on November 27, 2007, DSD issued a new "Superseding Master Plan CEQA 21166 Evaluation" for the NBC Project, which concluded that no Subsequent or Supplemental EIR is required for said Project as modified by the Superseding Master Plan; and

WHEREAS, on November 28, 2007, the CCDC Board adopted the analysis and conclusions of DSD's November 27, 2007 Superseding Master Plan CEQA 21166 Evaluation

and re-approved its previous consistency determination for the Superseding Master Plan and Phase I Buildings [Blocks 2 and 3] pursuant to the NBC Development Agreement [CCDC Resolutions 2007-06 and 2007-07, respectively, both executed on November 28, 2007]; 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

WHEREAS, the City Council denied said appeals 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 this Project, including the afore-mentioned Initial Study, as well as subsequent environmental documents prepared for other projects in the vicinity, which were identified in the Section 21166 Analysis by DSD, adequately addressed the potential environmental issues associated with the NBC Project; and

WHEREAS, on December 7, 2007, the Briggs Law Corporation filed timely appeals on behalf of the San Diego Navy Broadway Complex Coalition, and Katheryn Rhodes and Conrad Hartsell, M.D., to the City Council challenging the CCDC Board's November 28, 2007 decision to adopt the November 27, 2007 DSD Superseding Master Plan CEQA 21166 Evaluation, and thus the underlining authority of said Board to subsequently re-approve its consistency determination for the Superseding Master Plan and Basic Concept/Schematic Drawings for Buildings 2A, 2B, 3A, and 3B of the NBC Project; 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 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 to make legal findings based on the evidence presented; and

WHEREAS, on February 26, 2008, the City Council held a noticed public hearing to consider said afore-mentioned appeals previously filed on December 7, 2007, with testimony having been heard, written materials having been submitted and reviewed including, but limited to the Reports to the Council President and City Council No. CCDC-08-03 and Supplement to Report No. CCDC-08-03, dated February 25, 2008, including attachments thereto ["Reports"], CCDC Resolution 2007-06, and the DSD November 27, 2007 Superseding Master Plan CEQA 21166 Evaluation, 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.

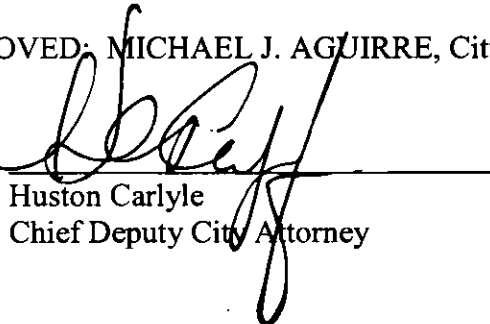
3. Based upon all of the relevant information, evidence and testimony considered by the City Council at this appeal hearing, the City Council concludes, upholds and finds that there is substantial evidence to support the position that the 1990 EIR/EIS prepared for the NBC Project and the subsequent environmental documents prepared for this Project, including the afore-mentioned Initial Study as well as the November 27, 2007 Superseding Master Plan CEQA 21166 Evaluation, as well as the other environmental documents prepared for other projects in the vicinity, all as more fully set forth in CCDC Resolution 2007-06 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 dated November 27, 2007 entitled "Superseding Master Plan CEQA 21166 Evaluation" 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 2007-06.

5. The appeal by Kathryn 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 dated November 27, 2007 entitled "Superseding Master Plan CEQA 21166 Evaluation" 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 2007-06.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By


Huston Carlyle
Chief Deputy City Attorney

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Or.Dept: Council
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