

RESOLUTION NUMBER R- 305581

DATE OF FINAL PASSAGE JAN 26 2010

A RESOLUTION CERTIFYING MITIGATED NEGATIVE DECLARATION NO.165908 AND ADOPTING THE MITIGATION, MONITORING, AND REPORTING PROGRAM FOR THE AZTEC COURT APARTMENTS PROJECT.

WHEREAS, on February 5, 2009, Aztec Court, LLC, a California limited liability company, submitted an application to the Development Services Department for a Rezone, Community Plan Amendment, and Site Development Permit for the Aztec Court Apartments Project No. 165908 [Project];

WHEREAS, the requested actions were set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, the issue was heard by the City Council on JAN 26, 2010; 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, a public hearing is required by law implicating due process rights of individuals affected by the decision, and the Council is required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the Council of the City of San Diego considered the issues discussed in Mitigated Negative Declaration [MND] No. 165908 with respect to the Project; NOW

THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that MND No. 165908 has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the state Guidelines thereto (California Code of Regulations section 15000 et seq.), that the MND reflects

the independent judgment of the City of San Diego as Lead Agency, and that the information contained in the MND, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the Project.


BE IT FURTHER RESOLVED, that the City Council finds that project revisions now avoid or mitigate potentially significant effects on the environment previously identified in the initial study to a point where clearly no significant effects on the environment would occur, and there is no evidence in light of the whole record that the project as revised may have a significant effect on the environment; therefore, MND No. 165908, on file in the office of the City Clerk and incorporated by reference herein, is adopted.

BE IT FURTHER RESOLVED, that pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation, Monitoring, and Reporting Program, or alterations to implement the changes to the Project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto as Exhibit A and incorporated by reference herein.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the Aztec Court Apartments Project No. 165908.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Nina M. Fain
Deputy City Attorney

NMF:js
12/23/2009
Or.Dept:DSD
R-2010-460
MMS #11233

EXHIBIT A

MITIGATION MONITORING AND REPORTING PROGRAM

PROJECT NO. 165908

This Mitigation Monitoring and Reporting Program is designed to ensure compliance with Public Resources Code Section 21081.6 during implementation of mitigation measures. This program identifies at a minimum: the department responsible for the monitoring, what is to be monitored, how the monitoring shall be accomplished, the monitoring and reporting schedule, and completion requirements. A record of the Mitigation Monitoring and Reporting Program will be maintained at the offices of the Entitlements Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101. All mitigation measures contained in the Mitigated Negative Declaration (Project No. 165908) shall be made conditions of the Site Development Permit, Community Plan Amendment and Rezone as may be further described below.

V. MITIGATION, MONITORING AND REPORTING PROGRAM:

A. GENERAL

1. Prior to issuance of any construction permit, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plan/Permits, the Assistant Deputy Director (ADD) Environmental Designee of the Entitlements Division shall verify that the appropriate Mitigation Measures regarding **Paleontological Resources, Noise, Public Utilities (Solid Waste Generation/Disposal) and Transportation** have been included verbatim on the submitted construction documents and contract specifications, and included under the heading, "Environmental Mitigation Requirements." In addition, the requirements for a Preconstruction Meeting shall be noted on all construction documents.
2. Prior to the commencement of work, a Preconstruction Meeting (Pre-con) shall be conducted and include the City of San Diego's Mitigation Monitoring Coordination (MMC) Section, Resident Engineer, Building Inspector, Applicant, Project Paleontologist, and other parties of interest.
3. Evidence of compliance with other permitting authorities is required, if applicable. Evidence shall include either copies of permits issued, letters of resolution issued by the Responsible Agency documenting compliance, or other evidence documenting compliance and deemed acceptable by the ADD Environmental Designee.

B. PALEONTOLOGICAL RESOURCES

I. **Prior to Permit Issuance**

A. Entitlements Plan Check

1. Prior to the issuance of any construction permits, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plans/Permits, but prior to the first Pre-con meeting, whichever is applicable, the Assistant Deputy Director (ADD) Environmental designee shall verify that the requirements for Paleontological Monitoring have been noted on the appropriate construction documents.

B. Letters of Qualification have been submitted to ADD

1. The applicant shall submit a letter of verification to Mitigation Monitoring Coordination (MMC) identifying the Principal Investigator (PI) for the project and the names of all persons involved in the paleontological

monitoring program, as defined in the City of San Diego Paleontology Guidelines.

2. MMC will provide a letter to the applicant confirming the qualifications of the PI and all persons involved in the paleontological monitoring of the project.
3. Prior to the start of work, the applicant shall obtain approval from MMC for any personnel changes associated with the monitoring program.

II. Prior to Start of Construction

A. Verification of Records Search

1. The PI shall provide verification to MMC that a site specific records search has been completed. Verification includes, but is not limited to a copy of a confirmation letter from San Diego Natural History Museum, other institution or, if the search was in-house, a letter of verification from the PI stating that the search was completed.
2. The letter shall introduce any pertinent information concerning expectations and probabilities of discovery during trenching and/or grading activities.

B. PI Shall Attend Pre-con Meetings

1. Prior to beginning any work that requires monitoring, the Applicant shall arrange a Pre-con Meeting that shall include the PI, Construction Manager (CM) and/or Grading Contractor, Resident Engineer (RE), Building Inspector (BI), if appropriate, and MMC. The qualified paleontologist shall attend any grading/excavation related Pre-con Meetings to make comments and/or suggestions concerning the Paleontological Monitoring program with the Construction Manager and/or Grading Contractor.
 - a. If the PI is unable to attend the Pre-con Meeting, the Applicant shall schedule a focused Pre-con Meeting with MMC, the PI, RE, CM or BI, if appropriate, prior to the start of any work that requires monitoring.
2. Identify Areas to be Monitored
 - a. Prior to the start of any work that requires monitoring, the PI shall submit a Paleontological Monitoring Exhibit (PME) based on the appropriate construction documents (reduced to 11x17) to MMC identifying the areas to be monitored including the delineation of grading/excavation limits. The PME shall be based on the results of a site specific records search as well as information regarding existing known soil conditions (native or formation).
3. When Monitoring Will Occur
 - a. Prior to the start of any work, the PI shall also submit a construction schedule to MMC through the RE indicating when and where monitoring will occur.
 - b. The PI may submit a detailed letter to MMC prior to the start of work or during construction requesting a modification to the monitoring program. This request shall be based on relevant information such as review of final construction documents which indicate conditions such as depth of excavation and/or site graded to bedrock, presence or absence of fossil resources, etc., which may reduce or increase the potential for resources to be present.

III. During Construction

A. Monitor Shall be Present During Grading/Excavation/Trenching

1. The monitor shall be present full-time during grading/excavation/trenching activities as identified on the PME that could result in impacts to formations with high and moderate resource sensitivity. **The Construction Manager is responsible for notifying the RE, PI, and MMC of changes to any construction activities such as in the case of a potential safety**

concern within the area being monitored. In certain circumstances OSHA safety requirements may necessitate modification of the PME.

2. The monitor shall document field activity via the Consultant Site Visit Record (CSV). The CSV's shall be faxed by the CM to the RE the first day of monitoring, the last day of monitoring, monthly (**Notification of Monitoring Completion**), and in the case of ANY discoveries. The RE shall forward copies to MMC.
 3. The PI may submit a detailed letter to MMC during construction requesting a modification to the monitoring program when a field condition such as trenching activities that do not encounter formational soils as previously assumed, and/or when unique/unusual fossils are encountered, which may reduce or increase the potential for resources to be present.
- B. Discovery Notification Process
1. In the event of a discovery, the Paleontological Monitor shall direct the contractor to temporarily divert trenching activities in the area of discovery and immediately notify the RE or BI, as appropriate.
 2. The Monitor shall immediately notify the PI (unless Monitor is the PI) of the discovery.
 3. The PI shall immediately notify MMC by phone of the discovery, and shall also submit written documentation to MMC within 24 hours by fax or email with photos of the resource in context, if possible.
- C. Determination of Significance
1. The PI shall evaluate the significance of the resource.
 - a. The PI shall immediately notify MMC by phone to discuss significance determination and shall also submit a letter to MMC indicating whether additional mitigation is required. The determination of significance for fossil discoveries shall be at the discretion of the PI.
 - b. If the resource is significant, the PI shall submit a Paleontological Recovery Program (PRP) and obtain written approval from MMC. Impacts to significant resources must be mitigated before ground disturbing activities in the area of discovery will be allowed to resume.
 - c. If resource is not significant (e.g., small pieces of broken common shell fragments or other scattered common fossils) the PI shall notify the RE, or BI as appropriate, that a non-significant discovery has been made. The Paleontologist shall continue to monitor the area without notification to MMC unless a significant resource is encountered.
 - d. The PI shall submit a letter to MMC indicating that fossil resources will be collected, curated, and documented in the Final Monitoring Report. The letter shall also indicate that no further work is required.

IV. Night and/or Weekend Work

- A. If night and/or weekend work is included in the contract
1. When night and/or weekend work is included in the contract package, the extent and timing shall be presented and discussed at the Pre-con meeting.
 2. The following procedures shall be followed.
 - a. No Discoveries
In the event that no discoveries were encountered during night and/or weekend work, the PI shall record the information on the CSV and submit to MMC via fax by 8AM on the next business day.
 - b. Discoveries
All discoveries shall be processed and documented using the existing procedures detailed in Sections III - During Construction.
 - c. Potentially Significant Discoveries
If the PI determines that a potentially significant discovery has been made, the procedures detailed under Section III - During Construction shall be followed.

- d. The PI shall immediately contact MMC, or by 8AM on the next business day to report and discuss the findings as indicated in Section III-B, unless other specific arrangements have been made.
- B. If night work becomes necessary during the course of construction
 - 1. The Construction Manager shall notify the RE, or BI, as appropriate, a minimum of 24 hours before the work is to begin.
 - 2. The RE, or BI, as appropriate, shall notify MMC immediately.
- C. All other procedures described above shall apply, as appropriate.

V. Post Construction

- A. Preparation and Submittal of Draft Monitoring Report
 - 1. The PI shall submit two copies of the Draft Monitoring Report (even if negative), prepared in accordance with the Paleontological Guidelines which describes the results, analysis, and conclusions of all phases of the Paleontological Monitoring Program (with appropriate graphics) to MMC for review and approval within 90 days following the completion of monitoring.
 - a. For significant paleontological resources encountered during monitoring, the Paleontological Recovery Program shall be included in the Draft Monitoring Report.
 - b. Recording Sites with the San Diego Natural History Museum
The PI shall be responsible for recording (on the appropriate forms) any significant or potentially significant fossil resources encountered during the Paleontological Monitoring Program in accordance with the City's Paleontological Guidelines, and submittal of such forms to the San Diego Natural History Museum with the Final Monitoring Report.
 - 2. MMC shall return the Draft Monitoring Report to the PI for revision or, for preparation of the Final Report.
 - 3. The PI shall submit revised Draft Monitoring Report to MMC for approval.
 - 4. MMC shall provide written verification to the PI of the approved report.
 - 5. MMC shall notify the RE or BI, as appropriate, of receipt of all Draft Monitoring Report submittals and approvals.
- B. Handling of Fossil Remains
 - 1. The PI shall be responsible for ensuring that all fossil remains collected are cleaned and catalogued.
 - 2. The PI shall be responsible for ensuring that all fossil remains are analyzed to identify function and chronology as they relate to the geologic history of the area; that faunal material is identified as to species; and that specialty studies are completed, as appropriate
- C. Curation of fossil remains: Deed of Gift and Acceptance Verification
 - 1. The PI shall be responsible for ensuring that all fossil remains associated with the monitoring for this project are permanently curated with an appropriate institution.
 - 2. The PI shall include the Acceptance Verification from the curation institution in the Final Monitoring Report submitted to the RE or BI and MMC.
- D. Final Monitoring Report(s)
 - 1. The PI shall submit two copies of the Final Monitoring Report to MMC (even if negative), within 90 days after notification from MMC that the draft report has been approved.
 - 2. The RE shall, in no case, issue the Notice of Completion until receiving a copy of the approved Final Monitoring Report from MMC which includes the Acceptance Verification from the curation institution.

C. TEMPORARY CONSTRUCTION-RELATED NOISE IMPACTS

I. Prior to Permit Issuance

- A. Prior to issuance of any construction permit, including but not limited to, the first Grading Permit, Demolition Plans/Permits and Building Plan/Permits, the ADD Environmental Designee shall verify that all "Temporary Construction Noise" mitigation measures provided in *Acoustical Analysis Report, Aztec Court Apartments* (August 11, 2009) prepared by Eilar Associates, Inc. are shown on the appropriate plans.
1. The project shall require a minimum six-foot high temporary sound attenuation wall to be constructed along the entire distance of the southern and eastern property lines. The residential lot to the immediate west of the project site is currently vacant, but has been approved for development of a multi-unit residential development. If residences have been built and are occupied on the lot adjacent to the west property line at the time of demolition and/or construction, the six-foot high temporary sound attenuation wall shall also be constructed along the entire length of the western property line as well.
 2. The sound attenuation wall shall be solid and constructed of wood, steel, or a combination of those materials. If wood is to be used, it can be tongue and groove and shall be at least 7/8-inch thick or have a density of at least 3 ½ pounds per square foot. Sheet metal of 18-gauge (minimum requirement) may be used if it meets all other criteria and is properly supported and stiffened to prevent rattling or create noise itself from vibration or wind. Sound attenuation blankets may be used in place of a sound attenuation wall provided they have an STC rating of at least 18, but must be maintained to ensure material remains in satisfactory condition.
 3. The sound attenuation wall shall be free of cracks, holes and gaps through or below the wall. Any seems or cracks must be filled or caulked.
 4. Equipment used in construction shall be maintained in proper operating condition, and engines shall be equipped with appropriate mufflers.

II. Prior to Demolition/Construction

- A. Prior to the commencement of any demolition/grading/earthwork, the project acoustician shall provide a Letter of Verification to MMC verifying that the temporary sound attenuation wall has been constructed in accordance with the recommendations provided in *Acoustical Analysis Report, Aztec Court Apartments* (August 11, 2009) prepared by Eilar Associates, Inc.

D. EXTERIOR/INTERIOR NOISE IMPACTS

I. Prior to Permit Issuance

- A. Prior to issuance of the building permit, all recommendations provided in *Acoustical Analysis Report, Aztec Court Apartments* (August 11, 2009) prepared by Eilar Associates, Inc. shall be shown on the building plans to the satisfaction of the ADD Environmental Designee of Entitlements and the City Engineer.
1. The project shall require a minimum seven-foot high sound attenuation wall to be constructed around the entire balcony of Units 101, 105, 201, 205, 301, 305, 401 and 405, as shown on the approved Exhibit "A".

2. The sound attenuation walls shall be free of cracks, holes and gaps through and below the wall.
3. An interior noise analysis shall be required to be conducted by a qualified acoustician to ensure that the interior Community Noise Equivalent Level (CNEL) for each multi-residential unit does not exceed 45 CNEL and the project complies with Title 24 of the California Code of Regulations (CCR). Examples of appropriate mitigation measures may include mechanical air-conditioning units and/or sound-rated windows. The applicant shall incorporate all interior noise mitigation identified within the interior noise analysis and demonstrate compliance with CCR Title 24. The interior noise analysis shall be reviewed and approved by City staff during the Building Development Review noise plan check prior to building permit issuance.

II. Prior to Final Building Permit Inspection

- A. The project acoustician shall provide MMC staff with a Letter of Verification that the exterior/interior noise mitigation measures, as provided in the *Acoustical Analysis Report, Aztec Court Apartments* (August 11, 2009) prepared by Eilar Associates, Inc., have been constructed in accordance with the approved exterior/interior noise analysis.

D. PUBLIC UTILITIES (SOLID WASTE GENERATION/DISPOSAL)

I. Entitlements Plan check

1. Prior to the issuance of any construction permits, including but not limited to, demolition, grading, building or any other construction permit, the ADD Environmental Designee shall verify that all the requirements of the Refuse & Recyclable Materials Storage Regulations and all of the requirements of the project's Waste Management Plan (WMP) are shown and noted on the appropriate construction documents. All requirements, notes and graphics shall be in substantial conformance with the conditions and exhibits of the associated discretionary approval.
2. The construction documents shall include a WMP that addresses the following information and elements for demolition, construction, and occupancy phases of the project as applicable:
 - (1) tons of waste anticipated to be generated,
 - (2) material type of waste to be generated,
 - (3) source separation techniques for waste generated,
 - (4) how materials will be reused on site,
 - (5) name and location of recycling, reuse, or landfill facilities where waste will be taken if not reused on site,
 - (6) a "buy recycled" program,
 - (7) how the project will aim to reduce the generation of construction/ demolition debris,
 - (8) a plan of how waste reduction and recycling goals will be communicated to subcontractors,
 - (9) a time line for each of the three main phases of the project as stated above,
 - (10) a list of required progress and final inspections by City staff.
- C. The WMP shall strive for a goal of 50% waste reduction.
- D. The WMP shall include specific performance measures to be assessed upon the completion of the project to measure success in achieving waste minimization goals.

- E. The WMP shall include notes requiring the Permittee to notify MMC and the Environmental Services Department (ESD) when:
- (1) A demolition permit is issued
 - (2) Demolition begins on site
 - (3) Inspections are needed
- The Permittee shall arrange for progress inspections, and a final inspection, as specified in the plan and shall contact both MMC and ESD to perform these periodic site visits during demolition and construction to inspect the progress of the project's waste diversion efforts.

When Demolition ends, notification shall be sent to:

Mitigation Monitoring Coordination (MMC) Environmental Review Specialist
9601 Ridgehaven Court , Ste. 320, MS 1102 B
San Diego, CA 92123 1636
(619) 980 7122

Development Service Department, Environmental Services Department (ESD)
9601 Ridgehaven Court, Ste. 320, MS 1103 B
San Diego, CA 92123 1636
(858) 627-3303

- F. Prior to the issuance of any grading or building permit, the applicant shall receive approval, in writing, from the ADD environmental designee of the Entitlements Division that the WMP has been prepared, approved, and implemented. Also prior to the issuance of any grading or building permit, the applicant shall submit written evidence to the ADD that the final Demolition/Construction report has been approved by MMC and ESD. This report shall summarize the results of implementing the above WMP elements, including: the actual waste generated and diverted from the project, the waste reduction percentage achieved, and how that goal was achieved, etc.

II. Pre-Construction Meeting

- A. Demolition Permit - Prior to issuance of any demolition permit, the Permittee shall be responsible to obtain written verification from MMC indicating that the Permittee has arranged a preconstruction meeting to coordinate the implementation of the MMRP. The Precon Meeting shall include the Construction Manager, Demolition/Building /Grading Contractor, MMC, ESD, and the Building Inspector and/or the Resident Engineer (RE) (whichever is applicable) to verify that implementation of the WMP shall be performed in compliance with the plan approved by Entitlements and ESD, to ensure that impacts to solid waste facilities are mitigated to below a level of significance.
- B. At the Precon Meeting, the Permittee shall submit Three (3) reduced copies (11"x 17") of the approved WMP, to MMC (2) and ESD (1).
- C. Prior to the start of demolition, the Permittee/Construction Manager shall submit a construction/demolition schedule to MMC and ESD.
- a. Grading and Building Permit - Prior to issuance of any grading or building permit, the Permittee shall be responsible to arrange a preconstruction meeting to coordinate the implementation of the MMRP. The Precon Meeting shall include the Construction Manager, Building/Grading Contractor, MMC, ESD and the Building Inspector and/or the Resident Engineer (RE) (whichever is applicable) to verify that implementation of the waste management plan shall be performed in compliance with the plan approved by Entitlements and ESD, to ensure

that impacts to solid waste facilities are mitigated to below a level of significance.

- D. At the Precon Meeting, the Permittee shall submit reduced copies (11"x 17") of the approved WMP to the RE, BI, MMC and ESD.
- E. Prior to the start of construction, the Permittee/Construction Manager shall submit a construction schedule to the RE, BI, MMC and ESD.

The Permittee/Construction Manager shall call for inspections by the RE/BI and both MMC and ESD, who will periodically visit the demolition/construction site to verify implementation of the WMP. The Consultant Site Visit Record (CSVSR) shall be used to document the Daily Waste Management Activity/progress. Within 30 days after the completion of the implementation of the MMRP, for any demolition or construction permit, a final results report shall be submitted to both MMC and ESD for review and approval to the satisfaction of the City. MMC will coordinate the approval with ESD and issue the approval notification.

Prior to final clearance of any demolition permit, issuance of any grading or building permit, release of the grading bond and/or issuance of any Certificate of Occupancy, the Permittee shall provide documentation to the ADD environmental designee of the Entitlements Division that the WMP has been effectively implemented.

E. TRANSPORTATION

- A. Prior to issuance of the first occupancy permit, the owner/Permittee shall provide a fair-share contribution of \$117,000 payable to the City Treasurer towards transportation improvements for the intersection of College Avenue and Montezuma Road and other improvements identified, satisfactory to the City Engineer.

The above mitigation monitoring and reporting program will require additional fees and/or deposits to be collected prior to the issuance of building permits, certificates of occupancy and/or final maps to ensure the successful completion of the monitoring program.