

RESOLUTION NUMBER R- 306794

DATE OF FINAL PASSAGE MAY 03 2011

A RESOLUTION GRANTING THE APPEAL, DENYING
CERTIFICATION OF MITIGATED NEGATIVE
DECLARATION NO. 182513 AND MAKING CERTAIN
FINDINGS FOR THE WHITNEY MIXED USE PROJECT.

WHEREAS, on July 28, 2010, Playa Grande, LLC, Limited Liability Company, Owners and Permittees, submitted an application to the City of San Diego (City) for a coastal development permit, site development permit, and tentative map waiver (Entitlements) to demolish an existing single-story residence and ground floor retail store, and to construct a new mixed use development of approximately 8,950 square feet; and

WHEREAS, on September 9, 2010, the Planning Commission voted 5-1-1 to deny the appeals of the Hearing Officer's decision to approve the project, and approved the project as recommended by staff with no new conditions added; and

WHEREAS, on September 22, 2010 La Jolla Shores Tomorrow, c/o Julie Hamilton, Esq., and on September 23, 2010, Bernard Segal (collectively, Appellants) filed separate appeals of the Planning Commission's decision to certify Mitigated Negative Declaration No. 182513; and

WHEREAS, on November 16, 2010, the City Council conducted a public hearing and granted the appeals filed by La Jolla Shores Tomorrow and Bernard Segal and remanded the matter to the Planning Commission in accordance with San Diego Municipal Code section 112.0520(f), to reconsider the environmental determination; and

WHEREAS, on January 20, 2011, the Planning Commission conducted a public hearing and certified Mitigated Negative Declaration No. 182513 and approved the Entitlements for the project; and

WHEREAS, on January 20, 2011, the La Jolla Community Planning Association appealed the Planning Commission's environmental determination; and

WHEREAS, on May 3, 2011, the City Council conducted a public hearing and considered the issues presented by the La Jolla Community Planning Association; 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; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Appeal by the La Jolla Community Planning Association is hereby granted; and

BE IT FURTHER RESOLVED, that the Council finds that a Mitigated Negative Declaration cannot be certified for this project because the record contains substantial evidence to support a fair argument that the Whitney mixed use project may have a significant effect on the environment and requires an Environmental Impact Report; and

BE IT FURTHER RESOLVED, that the Council finds that substantial evidence of the project's impact on aesthetics and neighborhood character has been provided by the La Jolla Community Planning Association and local architects and residents, and all have testified that the project is not compatible with the bulk and scale of the surrounding neighborhood and is so different in form and relationship that it is not compatible with surrounding development; and

BE IT FURTHER RESOLVED, that the Council finds that substantial evidence of the project's impact on geology and soils has been provided by a registered professional engineer, Dr. Peter Geissler, who said the project could cause permanent soil subsidence due to dewatering

for drilled foundation piers, and the Council further finds the MND fails to consider or analyze these potential impacts; the applicant's soils engineer suggested mitigation measures, but they lack the specificity necessary to assure any potential impacts will be mitigated; the mitigation measures suggested by the applicant's soils engineer have not been incorporated into the Mitigation Monitoring and Reporting Program and are not binding on the applicant; and

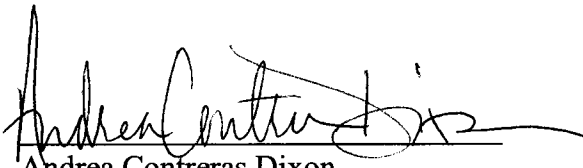
BE IT FURTHER RESOLVED, that the Council finds that nothing in the material discusses the impact on groundwater hydrology of placing a solid 3,000 square foot barrier to groundwater flows below the water table; and

BE IT FURTHER RESOLVED, that the MND failed to consider impacts to archaeological and paleontological resources caused by drilling the foundation piers, where the appellants provided evidence from Dr. Geissler reporting that drilling foundation piers will crush any human remains, archaeological artifacts and fossils; and where the MND relies on a Mitigation Monitoring and Reporting Plan to mitigate impacts on archaeological and paleontological resources and relies on a monitor to protect artifacts discovered during excavation, the plan fails to mitigate impacts caused by drilling the foundation piers because the drilling itself will destroy any archaeological and/or paleontological resources that may be encountered; and

BE IT FURTHER RESOLVED, that the Council find that the La Jolla Community Planning Association provided substantial evidence that the project may have a significant land use impact in that the project conflicts with community character policies of the La Jolla Community Plan, the La Jolla Shores Planned District Ordinance and the La Jolla Shores Design Manual; and

BE IT FURTHER RESOLVED, that the Council finds that the report prepared by Federhart and Associates provides substantial evidence the project may have significant impact on the safety of vehicles, pedestrians and bicycles in the area due to poor sight distance because the project fails to provide the visibility triangles required by SDMC Section 113.0273.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Andrea Contreras Dixon
Deputy City Attorney

ACD:hm:cw
5/5/2011
5/18/2011 COR.COPY
Or.Dept:DSD

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 03 2011.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk