

## RESOLUTION NUMBER R-308122

DATE OF FINAL PASSAGE APRIL 23, 2013

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DENYING THE APPEAL OF THE PLANNING COMMISSION'S ENVIRONMENTAL DETERMINATION, CERTIFYING MITIGATED NEGATIVE DECLARATION NUMBER 237107, AND ADOPTING THE MITIGATION, MONITORING AND REPORTING PROGRAM PREPARED FOR THE ENCORE TRUST RESIDENCE, PROJECT NO. 237107.

WHEREAS, on May 5, 2011, Encore Trust submitted an application to the City of San Diego for a Coastal Development Permit and Site Development Permit to construct an approximately 18,000 square-foot single-family residence on a vacant 66,256 square-foot property located at 9872 La Jolla Farms Road in the La Jolla Community Plan Area (Project); and

WHEREAS, on November 12, 2012, the Hearing Officer certified Mitigated Negative Declaration No. 237107 (MND), adopted the Mitigation, Monitoring and Reporting Program (MMRP) for the Project, and approved Coastal Development Permit No. 852026, an amendment to Coastal Development Permit No. 690317, and Site Development Permit No. 852027, an amendment to Site Development Permit No. 690318; and

WHEREAS, the Hearing Officer's decision was appealed to the Planning Commission of the City of San Diego (Planning Commission); and

WHEREAS, on January 17, 2013, the Planning Commission considered Coastal Development Permit No. 852026, Site Development Permit No. 852027, MND No. 237107, and MMRP, and pursuant to Resolution No. 4867-1-PC, voted to deny the appeal and uphold the Hearing Officer's decision; and

WHEREAS, in accordance with Public Resources Code section 21151 and San Diego Municipal Code section 112.0520, on January 30, 2013, Joshua Bruser (Appellant) filed an Environmental Determination Appeal (Appeal); and

WHEREAS, the Appeal was set for a public hearing to be conducted by the City Council of the City of San Diego (City Council); and

WHEREAS, the Project does not cause any view blockage of the designated public view in a Scenic Overlook as described in the La Jolla Community Plan and Local Coastal Program (LJCP); and

WHEREAS, the view impact analysis presented by Appellant is incorrect as Appellant relied upon an incorrect interpretation of how to calculate potentially significant view impacts for a designated public view in a Scenic Overlook and the methodology used by his expert in calculating potentially significant impacts to the designated public view is incorrect; and

WHEREAS, a fair argument has not been made on the basis of substantial evidence that the Project may have a significant environmental impact; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter required 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 and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on April 23, 2013, testimony having been heard, evidence having being submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, that the appeal of Joshua Bruser is denied, and the decision by the Planning Commission certifying MND No. 237107 and adopting the MMRP for this Project is upheld based on findings that the evidence submitted by the Appellant that the Project may have a significant environmental impact is inaccurate because the appellant relied on an incorrect interpretation of how to calculate view impacts for protected public views over private property in designated Scenic Overlooks of the LJCP. Therefore, the environmental assessment documented in MND No. 237107 and the MMRP for this Project is adequate.

BE IT RESOLVED, by the City Council of the City of San Diego, that it is hereby certified that MND No. 237107, on file in the office of the City Clerk, has been completed in compliance with California Environmental Quality Act of 1970 (California Public Resource Code Section 21000 *et seq.*) as amended, and the California Environmental Quality Act Guidelines (California Administrative Code Section 15000 *et seq.*), that MND No. 237107 reflects the independent judgment of the City of San Diego as Lead Agency, and that the information contained in said MND No. 237107, together with any comments received during the public review process, has been reviewed and considered by the City Council of the City of San Diego; and


BE IT FURTHER RESOLVED, that the City Council finds that project revisions and the Mitigation, Monitoring and Reporting Program mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that there is no substantial evidence that the Project will have a significant effect on the environment, and therefore, that said MND No. 237107 is hereby adopted; and

BE IT FURTHER RESOLVED, pursuant to California Public Resource Code Section 21081.6, the City of San Diego City Council hereby adopts the Mitigation, Monitoring and

Reporting Program, a copy of which is attached hereto as Exhibit A and incorporated herein by reference, or alterations to implement the changes to the Project as required by the City Council in order to mitigate or avoid significant effects on the environment; and

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination with the Clerk of the Board of Supervisors for the County of San Diego regarding the above Project.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
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Corrine L. Neuffer  
Deputy City Attorney

CLN:jls  
4/29/2013  
Or.Dept:DSD

Passed by the Council of The City of San Diego on APR 23 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
District 4 (Vacant)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 23 2013.

AUTHENTICATED BY:

BOB FILNER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By \_\_\_\_\_, Deputy

Office of the City Clerk, San Diego, California

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