

**AGENDA FOR THE
REGULAR COUNCIL MEETING OF
TUESDAY, AUGUST 10, 2004 AT 10:00 A.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

NOTE: The public portion of the meeting will begin at 10:00 a.m. The City Council will meet in Closed Session this morning from 9:00 a.m. – 10:00 a.m. Copies of the Closed Session agenda are available in the Office of the City Clerk.

ITEM-300: ROLL CALL.

NON-AGENDA PUBLIC COMMENT

This portion of the agenda provides an opportunity for members of the public to address the Council on items of interest within the jurisdiction of the Council. (Comments relating to items on today's docket are to be taken at the time the item is heard.)

Time allotted to each speaker is determined by the Chair, however, comments are limited to no more than three (3) minutes **total per subject** regardless of the number of those wishing to speak. Submit requests to speak to the City Clerk **prior** to the start of the meeting. Pursuant to the Brown Act, no discussion or action, other than a referral, shall be taken by Council on any issue brought forth under “Non-Agenda Public Comment.”

COUNCIL, CITY ATTORNEY, CITY MANAGER COMMENT

REQUEST FOR CONTINUANCE

The Council will now consider requests to continue specific items.

=== **LEGISLATIVE SCHEDULE** ===

Adoption Agenda, Discussion, Committee Item

- ITEM-330: La Jolla Children's Pool Joint Use. La Jolla Community Area. (Dist. 1)
NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION: On 6/23/2004, NR&C voted 5 to 0 to forward to the full City Council with no recommendation.

Noticed Hearings

- ITEM-331: Two actions related to Amendment to the Undergrounding of Utilities 2003 Calendar Year Annual Allocation for Tennyson Street from Chatsworth Boulevard to Willow Street. Midway Community Plan Area. (Dist. 2)
CITY MANAGER'S RECOMMENDATION: Adopt the resolutions.

- ITEM-332: Schmitter Condominiums. Mission Beach Community Plan Area. (Dist. 2)
- Matter of approving, conditionally approving, modifying or denying an application for a Coastal Development Permit, Tentative Parcel Map, including a Waiver to the requirement to underground existing overhead utilities, and a Easement Abandonment to demolish two existing residential buildings and construct a 5,107 square-foot, three-story triplex condominium with 1200 square feet of garage area and 1261 square feet of deck area on a 4,648 square-foot site, located at 3902 Bayside Walk in the Mission Beach Community Planning Area.
CITY MANAGER'S RECOMMENDATION: Adopt the resolution in subitem A to grant the permit; adopt the resolution in subitem B to grant the map; and adopt the resolution in subitem C.

- ITEM-333: Appeal of Environmental Determination for the Mi Arbolito Project. (Cont. from 7/13/2004, Item 335.) Uptown Community Plan Area. (Dist. 3)
- Matter of the appeal by Bankers Hill, Hillcrest Park West Community Preservation Group in care of Johnson and Hanson, L.L.P., of the decision by City staff that the subject project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the State CEQA Guidelines.
CITY MANAGER'S RECOMMENDATION: Adopt the following resolution to deny the appeal, and uphold the Staff determination that the Mi Arbolito Project is exempt from the California Environmental Quality Act per section 15332 of the State CEQA Guidelines.

Non-Docket Items

Adjournment in Honor of Appropriate Parties

Adjournment

=== EXPANDED CITY COUNCIL AGENDA ===

ADOPTION AGENDA, DISCUSSION, COMMITTEE ITEM

COMMITTEE ON NATURAL RESOURCES, AND CULTURE,
RESOLUTION:

ITEM-330: La Jolla Children's Pool Joint Use.

(See City Manager Report CMR-04-135; Meeting Guide submitted by James Hudnall and Gabriel Solmer; and Report from Martha Patricia Argomede Weisz dated 6/17/2004. La Jolla Community Area. District-1.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2005-112)

Authorizing the City Manager to:

- a) perform preliminary studies, initiate design and permit applications, and actions incidental to these functions, in order to comply with the accepted City Council recommendation, noting that this action does not constitute a decision to proceed with construction of the project as recommended, and does not foreclose the analysis of alternatives or mitigation measures that would ordinarily be a part of environmental or permit review for the Project;
- b) return to City Council with the appropriate environmental document for review and certification for approval in order to comply with the accepted recommendation for the Project; and
- c) take all necessary actions to seek, apply for, accept, and secure donations in order to comply with the accepted recommendation for the Project.

Authorizing the City Auditor and Comptroller to:

- a) establish a special interest-bearing fund for the La Jolla Children's Pool donations in reference to the Project;
- b) add CIP-29-872.0, La Jolla Children's Pool – Joint Use, to the Fiscal Year 2005 Capital Improvements Program for the Project;

ADOPTION AGENDA, DISCUSSION, COMMITTEE ITEM (Continued)

COMMITTEE ON NATURAL RESOURCES, AND CULTURE,
RESOLUTION: (Continued)

ITEM-330: (Continued)

- c) increase the Fiscal Year 2005 Capital Improvement Program budget in CIP-29-872.0, La Jolla Children's Pool – Joint Use, up to the amount received for the Project; and
- d) appropriate and expend donations, if secured, up to the amounts secured for purposes of design initiation, environmental documents, permit applications, and actions incidental to these functions in order to comply with the accepted recommendation from CIP-29-872.0, La Jolla Children's Pool – Joint Use, provided that the City Auditor and Comptroller first furnishes a certificate certifying that the funds are, or will be, on deposit with the City Treasurer.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 6/23/2004, NR&C voted 5 to 0 to forward to the full City Council with no recommendation. (Councilmembers Zucchet, Lewis, Frye, Madaffer, and Inzunza voted yea.)

SUPPORTING INFORMATION:

On April 1, 2003, the Mayor and City Council directed the City Manager to return to the Natural Resource and Cultural Committee (NR&C) this year with a strategy to do the following: "In compliance with Federal Law, to reduce pollution levels in the sand and to return the Children's Pool to recreational use for children, including accessible uses, thus restoring this area to the joint use of seals, divers, fishermen, children and their families." A report was given before the NR&C on June 23, 2004. The NR&C voted unanimously to refer the matter to the full City Council.

The Manager's Report #04-135 was presented to the NR&C. A strike out/underlined version is provided with the only changes being correcting a typographical error for the Technical Advisory Committee members; a clarification of the proximity of the Children's Pool to the La Jolla Underwater Park; and, a clarification that Ellen Browning Scripps contracted with the builder of the breakwater as opposed to the City of San Diego. Otherwise, the content, information and recommendations remain unchanged.

ADOPTION AGENDA, DISCUSSION, COMMITTEE ITEM (Continued)

COMMITTEE ON NATURAL RESOURCES, AND CULTURE,
RESOLUTION: (Continued)

ITEM-330: (Continued)

SUPPORTING INFORMATION: (Continued)

The City Council is being requested to approve initiation of the design of a seasonal joint use recommendation provided by the City Manager. Since funds, permits and environmental review are required, this action does not constitute a decision to proceed with construction of the project, nor does it foreclose analysis of alternatives or mitigation measures that would ordinarily be part of environmental or permit review. In addition, upon full review of: a) any permit conditions (if any), b) a completed environmental document, and c) the construction documents, City Council action will be required to authorize the construction project.

FISCAL IMPACT:

1. The estimated cost to dredge the Children's Pool ranges between \$250,000 and \$500,000. This cost includes construction documents, permits, environmental, administration, and construction.
2. The cost to provide testing per year is \$3,000. This cost may potentially be borne by the County Environmental Health Department.
3. The cost to rework the soil on a yearly basis per the County Environmental Health Department's non-advisory status is \$5,000 per year.
4. The cost to provide dredging every three to five years, budgeted on a yearly basis is \$50,000.
5. The cost for a limited full time ranger position with associated non personnel expense to provide education interpretation of the area and manage the mixed use of the site is \$75,000 per year.

Herring/Oppenheim/AP

ADOPTION AGENDA, DISCUSSION, HEARINGS

NOTICED HEARINGS:

ITEM-331: Two actions related to Amendment to the Undergrounding of Utilities 2003 Calendar Year Annual Allocation for Tennyson Street from Chatsworth Boulevard to Willow Street.

(Midway Community Plan Area. District-2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2005-27)

A Resolution establishing an Underground Utility Districts financed through the City of San Diego Undergrounding Surcharge Fund.

Subitem-B: (R-2005-28)

Certifying that the Addendum to Environmental Impact Report LDR No. 23247(a), on file in the office of the City Clerk 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 report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, 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 Tennyson Street from Chatsworth Boulevard to Willow Street and Sterne Street from Tennyson Street to Willow Street Underground Utility District;

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 this project.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-331: (Continued)

CITY MANAGER SUPPORTING INFORMATION:

The proposed action to amend the 2003 annual allocation is made at the request of Council District 2 and is in accordance with Council Policy 600-08.

The Tennyson Street underground project is being coordinated with a City CIP project to replace concrete streets to prevent the future trenching of the new concrete streets. The formation of Tennyson Street and Chatsworth Boulevard to Willow Street and Sterne Street from Tennyson Street to Willow Street Underground Utility District will require the removal and/or underground conversion of certain overhead power and communications wires with poles within the established boundary. The expense of the underground installation and removal of overhead facilities within the right-of-way (street and sidewalk area) will be the responsibility of the utility companies in accordance with California Public Utilities Commission Rules.

It is the responsibility of the individual property owner(s) for the trenching and other related work to convert their property to receive electrical, telecommunication and cable television from an underground service. However, San Diego Gas and Electric will offer to property owner(s) within the Underground Utility Districts, to perform all the work necessary to convert private property, including necessary conduits for telephone and cable facilities at no cost to the property owner(s). In order to take advantage of San Diego Gas and Electric's offer to perform this work, property owners are required to sign a Permit to Enter Form.

FISCAL IMPACT:

SDG&E Cost: The amount of \$925,000 was previously authorized for the project known as Garrison Street from Clove Street to Rosecrans Street as part of the FY03 Annual Allocation (Case 8209). This action would replace the Garrison Street Project with a project known as the Tennyson Street from Chatsworth Boulevard to Willow Street and Sterne Street from Tennyson Street to Willow Street. The construction cost of \$1,113,078 will be financed through the use of SDG&E Annual Allocation Funds as directed by the Public Utilities Commission (Case 8209). The fiscal impact of \$18,000 to the City is the indirect cost of such street light replacement, and other related work. These funds will be available in Fund No. 30100, Undergrounding Surcharge Fund, contingent upon receipt of funds from San Diego Gas & Electric. The expenditure has been previously approved by R-295894. No additional expenditure authorization is required as part of this action.

Mendes/Belock/AO

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-332: Schmitter Condominiums.

Matter of approving, conditionally approving, modifying or denying an application for a Coastal Development Permit, Tentative Parcel Map, including a Waiver to the requirement to underground existing overhead utilities, and a Easement Abandonment to demolish two existing residential buildings and construct a 5,107 square-foot, three-story triplex condominium with 1200 square feet of garage area and 1261 square feet of deck area on a 4,648 square-foot site, located at 3902 Bayside Walk in the Mission Beach Community Planning Area.

(CDP No. 47233/TPM No. 119271/Easement Abandonment No. 88216/Project No. 19831. Mission Beach Community Plan Area. District-2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the resolution in subitem A to grant the permit; adopt the resolution in subitem B to grant the map; and adopt the resolution in subitem C:

Subitem-A: (R-2005-)

Adoption of a Resolution granting or denying Coastal Development Permit No. 47233, with appropriate findings to support Council action.

Subitem-B: (R-2005-)

Adoption of a Resolution granting or denying Tentative Parcel Map No. 119271, with appropriate findings to support Council action.

Subitem-C: (R-2005-113)

Adoption of a Resolution adopting findings for Easement Abandonment No. 88216;

That the general utility and access easement located within the Mission Beach Planning area in connection with coastal development permit, as more particularly described in the legal description marked as Exhibit "A," and shown on Drawing No. 20228-B, marked as Exhibit "B," is ordered vacated;

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM332: (Continued)

Subitem-C: (Continued)

That the City Clerk shall then cause a certified copy of this resolution, with exhibits, attested by him under seal, to be recorded in the office of the County Recorder.

OTHER RECOMMENDATIONS:

Planning Commission on July 22, 2004, voted 6-0 to approve; no opposition.

Ayes: Steele, Ontai, Lettieri, Schultz, Chase, Otsuji
Not present: Garcia

The Mission Beach Precise Planning Board, on April 20, 2004, voted 13-0-0 to recommend approval of this project with no conditions.

SUPPORTING INFORMATION:

The project proposes to demolish 2 existing one-story single-family homes, and to construct a new three-story, 3-unit condominium project on a 4,648 square-foot site at 3902 Bayside Walk, within the Mission Beach Planning area. The applicant has requested a waiver to the requirement to underground existing overhead utilities and qualifies for the waiver in accordance with Council Policy 600-25. A Coastal Development Permit is required for this project because both the proposed demolition and new construction constitute coastal development and all new development within the Coastal Zone requires a Coastal Development Permit. A Tentative map is required in order to create three separate ownerships for each of the three new condominium units. An Easement Abandonment is required to abandon an existing 8-foot wide general utility easement running east-west along the northern property line. The general utility easement contains both water and sewer lines, which would be relocated into Bayside Lane as a part of this project.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-332: (Continued)

SUPPORTING INFORMATION: (Continued)

Water Quality Impact Statement:

During construction, this project will comply with Best Management Practices (BMPs) through preparation of a Storm Water Pollution Prevention Plan (SWPPP) in conjunction with the building plans. The SWPPP will identify all BMPs to be implemented during the construction phase to reduce /eliminate discharges of pollutants into the adjacent natural areas. The post development Best Management Practices (BMPs) incorporated into the project consists of site design, source control and treatment. The project's post development runoff will be collected and conveyed by public and private drainage systems. The post-construction BMPs detailed in the Water Quality Technical Report have been evaluated and accepted by the City Engineer. The property owner(s) will be responsible for the long term maintenance of all private drainage facilities.

FISCAL IMPACT:

All costs associated with the project are recovered from a deposit provided by the applicant.

Loveland/Halbert/DES

LEGAL DESCRIPTION:

The project site is located in the City of San Diego on a 4,648 square-foot site at 3902 Bayside Walk in the R-N Zone of Mission Beach Planned District, within the Mission Beach Community Plan, Coastal Overlay (appealable), Coastal Height Limit, and Beach Parking Impact. Council District 2. APN 423-556-05 and -06.

NOTE: This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15332 (in-fill development of 5 acres or less).

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-333: Appeal of Environmental Determination for the Mi Arbolito Project.

Matter of the appeal by Bankers Hill, Hillcrest Park West Community Preservation Group in care of Johnson and Hanson, L.L.P., of the decision by City staff that the subject project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the State CEQA Guidelines. (See City Manager Report CMR-04-139. Uptown Community Plan Area. District-3.)

(Continued from the meeting of July 13, 2004, Item 335, at Councilmember Inzunza's request, for further review.)

NOTE: Hearing open. No testimony taken on 7/13/2004.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution to deny the appeal, and uphold the Staff determination that the Mi Arbolito Project is exempt from the California Environmental Quality Act per section 15332 of the State CEQA Guidelines.

(R-2005-)

Adoption of a resolution granting or denying the appeal, and upholding or overturning the Environmental Determination, with appropriate findings to support Council action.

CITY MANAGER SUPPORTING INFORMATION:

The proposed project is a 14-story, 14-unit multi-family residential building over underground parking. The 10,247-square-foot site is zoned MR-400 and is located on the northeast corner of the intersection of Sixth Avenue and Upas Street.

This appeal is before the City Council because of an amendment to CEQA. Effective January 1, 2003, Section 21151(c) of CEQA has been amended as follows: *If a non-elected decision making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision making body, if any.*

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-333: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

Pursuant to this amended legislation, Banker's Hill, Hillcrest, Park West Community Preservation Group c/o Johnson & Hanson, LLP filed an appeal of the staff environmental determination to exempt the project on April 12, 2004. However, this new appeal process applies only to the environmental determination.

The appeal is partly based on the allegation that an Environmental Impact Report (EIR) should have been prepared for the project. CEQA and case law require the preparation of an EIR when there is a fair argument that there is substantial evidence, in light of the whole record, that a project may have a significant impact on the environment. Section 21080(e) of CEQA states that ". . . substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative..."

The exemption prepared for this project is a categorical exemption found in Section 15332 of the State CEQA guidelines (Infill Development Projects). The appeal is also partly based on the following standard for using categorical exemptions:

Section 15300.2 (c) - Significant effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to **unusual circumstances** [emphasis added].

Finally, the appeal is also based on the applicability of the following conditions. A finding that these conditions have been met is a necessary precedent to using the Section 15332 exemption:

Section 15332 (a) - The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

Section 15332 (d) - Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

The staff response to each of these challenges has been provided below within the list of the appellants' specific concerns.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-333: (Continued)

CITY MANAGER SUPPORTING INFORMATION: (Continued)

Pursuant to the issued permits noted below, construction of the underground parking garage is currently underway on the site.

<u>Date Submitted</u>	<u>Permit Type</u>	<u>Application #</u>	<u>Status</u>
March 27, 2003	Map Waiver and SDP	6686	Not Completed; Withdrawn
June 23, 2003	Grading/Temp Shoring	10278	(Approved, W-51473) Closed.
July 16, 2003	Building Permit: Footings	11489	(Approved, # 21521)
October 2, 2003	Building Permit: Building	15900	Approval Pending
January 7, 2004	Tentative Map	19032	Withdrawn

Because the Map Waiver and Tentative Map applications placed the City on notice that the project may require an approval by the Planning Commission (which would be deemed a "discretionary" decision for purposes of CEQA), the Environmental Analysis Section (EAS) of the Development Services Department reviewed this project assuming that the applications may be resubmitted. Since this project did not include an application for a Tentative Map or Map Waiver at the time it was reviewed by EAS, EAS could not deem this project to be a "discretionary" project for CEQA purposes. However, since Mi Arbolito, LLC had twice placed the City on notice that the project may require a discretionary decision; EAS considered the CEQA review requirements for this project assuming it may include a discretionary decision in the future.

FISCAL IMPACT:

All costs associated with processing approvals of this project are paid from an existing fee paid by the applicant and, possibly, a future deposit account that would be maintained by the applicant if the applicant re-submits an application for a discretionary approval. Staff costs associated with processing this appeal have been borne by the Development Services Department because there is currently no deposit on account with Development Services.

Loveland/Christiansen/CZ

NON-DOCKET ITEMS

ADJOURNMENT IN HONOR OF APPROPRIATE PARTIES

ADJOURNMENT