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Development Permit Appeal Application

07 MAY 31 PM 3:49

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See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
- Process Three Decision - Appeal to Planning Commission
- Process Three Decision - Appeal to Board of Zoning Appeals

- Appeal of a Hearing Officer Decision to revoke a permit
- Process Four Decision - Appeal to City Council

CEQA Appeal to City Council

2. Appellant Name Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

1. Friends of San Diego, Thomas G. Mullaney 1. 619-795-7753
 2. UNIVERSITY HEIGHTS PLANNING COMMITTEE ERNESTINE BONA 2. 619-297-3166

Address 1. 3636 4th Ave, San Diego 92103 Telephone
 2. 4452 Park Blvd, #104 SAN DIEGO CA 92116

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Dr. Robert Pollack, Managing Partner, Pacific Coast Assets, LLC
 Lola Pollack, Partner, Pacific Coast Assets, LLC

4. Project Information
 Permit/Approval Being Appealed & Permit/Approval No.: Project # 54384 Date of Decision: May 17, 2007 City Project Manager: Patrick Hooper

Mitigated Negative Declaration

Decision (describe the permit/approval decision):

Approval of Mitigated Negative Declaration
 Site Development Permit (ESL) 158004

5. Reason for Appeal

- Factual Error
- Conflict with other matters
- Findings Not Supported
- New Information
- City-wide Significance (Process Four decisions only)

Description of Reasons for Appeal (Please relate your description to the allowable reasons for appeal noted above. Attach additional sheets if necessary.)

See Attached

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature 1. Dr. G. Mullaney, President, Date 1. 5/31/07
 2. Ernestine Bona Date 2. 5/31/07

Note: Faxed appeals are not accepted.

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CEQA Appeal to City Council

2. Appellant Name Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

1. Ellen Shively for Sierra Club San Diego Chapter (619) 2991743
2. Randy Berkman, River Valley Preservation Project Box 7098, SD 92167 (619) 2233928

Address Sierra Club City San Diego State CA Zip Code 92104-3272 Telephone Box 7098, San Diego, CA 92167

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Dr. Robert Kollaek, Managing Partner, Pacific Coast Assets, LLC
Lola Kollaek, Partner, Pacific Coast Assets, LLC

4. Project Information

Permit/Approval Being Appealed & Permit/Approval No.: <u>Project # 54384</u> <u>Mitigated Negative Declaration</u>	Date of Decision: <u>May 17, 2007</u>	City Project Manager: <u>Patrick Hooper</u>
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See Attached

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature 1. Ellen Shively
2. Randy Berkman

Date 1. May 29, 2007
2. May 29, 2007

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- Appeal of a Hearing Officer Decision to revoke a permit
- Process Four Decision - Appeal to City Council
- CEQA Appeal to City Council**

2. Appellant Name Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per.M.C. Sec. 113.0103)

Lynn Walkholland Mission Valley Community Council

Address: *PA 114 900234* City: *San Diego* State: *Calif* Zip Code: *92197* Telephone: *619 251-3745*

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.
Dr. Robert Pollack, Managing Partner, Pacific Coast Assets, LLC
Lola Pollack, Partner

4. Project Information Permit/Approval Being Appealed & Permit/Approval No.: <i>Mitigated Negative Declaration</i>	Project #: <i>54384</i>	Date of Decision: <i>May 17, 2007</i>	City Project Manager: <i>Patrick Hooper</i>
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Decision (describe the permit/approval decision):
Mitigated Negative Declaration, Project #54384
Site Development Permit (ESL) 158004

- 5. Reason for Appeal**
- Factual Error
 - Conflict with other matters
 - Findings Not Supported
 - New Information
 - City-wide Significance (Process Four decisions only)

Description of Reasons for Appeal (Please relate your description to the allowable reasons for appeal noted above. Attach additional sheets if essary.)
see attached

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: *Lynn Walkholland* Date: *May 24 2007*

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- Process Four Decision - Appeal to City Council

CEQA to City Council

2. Appellant Name Please check one: Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

San Diego Audubon Society, James A. Peugh

Address: 4891 Pacific Highway, San Diego, CA 92110 Telephone: (619) 224-4591

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Dr. Robert Follack, Managing Partner, Pacific Coast Assets, LLC
Lola Follack, Partner, Pacific Coast Assets, LLC

4. Project Information

Permit/Approval Being Appealed & Permit/Approval No.: Mitigated Negative Declaration Project # 54384	Date of Decision: May 17, 2007	City Project Manager: Patricia Hooper
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See Attached

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: James A. Peugh

Date: May 31, 2007

Note: ~~Faxed~~ appeals are not accepted.

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APPELLANTS

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Sierra Club, San Diego Chapter, contact: Ellen Shively, (619) 299-0743
Audubon, San Diego Chapter, contact: Jim Peugh, (619) 224-5491
River Valley Preservation Project, contact: Randy Berkman (619) 223-3928
Friends of San Diego, contact: Tom Mullaney (619) 795-1753
University Heights Planning Committee, contact: Ernestine Bonn (619) 297-3166
Mission Valley Community Council, contact: Lynn Mulholland (619) 280-3745

INTRODUCTION

“Development oriented toward the valley and accessed by roads from the Valley floor should not extend above the 150-foot elevation contour.”

Page 122, Mission Valley Community Plan (MVCP).

“The MVCP Open Space plan, which was adopted in 1985, protects hillsides from any development above the 150 foot contour line.....Therefore, despite being zoned for commercial development, development is prohibited because of the conflicts with the restrictions above the 150 foot contour line....”

--Michael McDade, attorney for landowner, Dr. Robert Pollack, in a 2004 letter requesting a MVCP amendment for an alternative that would have been 20 feet lower down slope—less of a MVCP open space encroachment than current plan! (Appeal Attachment 7)

“Development, including road construction above the 150-foot contour line shall not occur.” Mission Valley Planned District Ordinance 103.2103(A).

The 1992 City Council re-designated this specific lot (among several south hillside lots) from commercial to open space above the 150 foot line as part of a MVCP amendment. The open space designation includes all but 8800 square feet of this parcel. The 1992 City Council, with their MVCP amendment, believed they were protecting this open space area from development. The 1992 action supersedes the 1977 City Council rezone relied on by staff and applicant to justify project approval.

The proposed project is the same one found unacceptable to City Council when they granted the Appeal at the September 26, 2006 hearing. That appeal vacated all prior approvals, including the prior MND, and directed staff “to review the alternatives to reduce the impacts.” Impacts of concern to Council included the precedent setting encroachment above the 150 foot line for an entire building, visual impacts, excessive grading and excessive use of retaining walls. The building’s base would be at 160 foot elevation with roof to 200 foot elevation. The MND reviews old alternatives found unacceptable to staff and/or landowner. These were shown to City Council on overhead presentation at September hearing. An EIR would require review of Feasible, less damaging options such as reduced height of building and location at lowest, less steep part of site—136 feet. This would be in keeping with Steep Hillsides Guidelines in the Land Development Manual—which the San Diego Municipal Code requires applicants to follow.

The Draft MND neglects to state that the appeal was granted pursuant to SDMC 112.0520(f) which states:

“the lower decision-makers decision to grant the entitlements, approval or City authorization shall be deemed vacated and the lower decision maker shall reconsider its

environmental determination and its decision to grant the entitlements, approval or City authorization, in view of the action and where appropriate, any direction or instruction from the City Council.” (Attachment 28 to Randy Berkman’s Comments on MND). MND Replies to public comments that City Council direction has not been followed do not explain how “...to reduce the impacts” is accomplished when same project’s impacts are maintained.

CITY WIDE SIGNIFICANCE: HARMFUL PRECEDENTS

1. Locating an entire office building in community plan designated open space would be a precedent. (Base of building at 160 foot elevation extending to 200 foot elevation).
2. Private use of retaining walls of over 1600 feet total length would be a precedent.
3. Elimination of brush management immediately adjacent to Coastal Sage Scrub— appears to be a precedent; and a means of postponing the reinstatement of brush management when Fire Department declares “imminent fire hazard” during a drought— as local Code allows. Brush management impacts to open space easement/Coastal Sage Scrub mitigation area therefore appear “reasonably foreseeable” and so must be reviewed in an EIR. Such “segmenting of the project” (postponement of impacts) is not allowed under CEQA.

Re-proposing the same project found unacceptable to City Council may be a precedent.

Doing the above without an EIR would be a precedent.

FACTUAL ERRORS AND CONFLICTS WITH OTHER MATTERS: MISQUOTES, MIS-STATEMENTS, AND OMISSIONS TO GAIN PROJECT APPROVAL

1. PAGE ONE OF DRAFT AND FINAL MNDs SERIOUSLY MIS-STATES CITY COUNCIL DIRECTION “TO REVIEW THE ALTERNATIVES TO REDUCE THE IMPACTS.” (Appeal Attachment # 1). THIS REPEATED MIS-STATEMENT ON PAGE ONE OF THE FINAL MND SHOWS STAFF IS UNABLE TO REVIEW THIS PROJECT OBJECTIVELY.

At the Planning Commission hearing of May 17, 2007, staff quoted Council member Frye from a “transcript” of the September 26, 2006 hearing. Assuming the quotes are accurate, these comments are not what City Council voted on. Rather, the Motion City Council approved was to grant the appeal, (which vacated all prior project approvals including permits and MNDs) with direction “to review the alternatives to reduce the impacts.” (Source: City Council Minutes website; See Appeal Attachment #2).

3. STAFF REPEATEDLY MIS-STATES MVCP REGARDING "LARGE SCALE" HILL SIDE DEVELOPMENTS—OMITTING "BASE OF THE SLOPES" FROM MOST OF THE QUOTES AND OMITTING THE MVCP DEFINITION OF "LARGE SCALE" WHICH INCLUDES "(COMMERCIAL, OFFICE, OR COMMERCIAL RECREATION)." STAFF REPEATEDLY OMITTS MENTION THAT MVCP RESTRICTS ALL DEVELOPMENT ABOVE THE 150 FOOT LINE—REGARDLESS OF WHETHER IT IS "LARGE" OR "SMALL" SCALE!

Final MND again mis-states the MVCP—despite past efforts to correct this mis-quote in prior appeals and public comments on this MND. Page 2 of Final MND and MND Replies #7, #31, #38, and #53 mis-state the MVCP:

"The Mission Valley Community Plan states that no large-scale development should cut or grade, or extend above the 150' elevation contour on the southern slopes." (City Reply #53). "The MVCP states that no large-scale development should cut or grade, or extend above the 150' elevation contour on the southern slopes." (City Reply #31). See also Reply #7 and Permit Resolution language.

This quote is misleading since it refers to developments at the BASE of the slopes. The MND reviews a plan starting at the 160 foot line for the building's base pad--well above the base of the slopes. It also OMITTS the MVCP definition of "large scale" to include office buildings! The actual MVCP quote is:

"Large-scale development (commercial, office, or commercial recreation) at the base of the slopes, should not cut or grade, nor extend above the 150-foot elevation contour on the southern slopes." (p. 124) (this page is circled #16 of Randy Berkman's attachments to his comments on the Draft MND).

Also, the proposal does not comply with this "no cut or grade" MVCP language in that it proposes a "cut" of 6300 cubic yards (630 dump truck loads)!

Staff's repeated mis-statement of this MVCP restriction, despite many attempts to correct it, is evidence that DSD staff is unable to objectively review this project.

Furthermore, the MVCP prohibits all development above the 150' line as acknowledged by landowner attorney Michael McDade (Appeal Attachment 7):

"The MVCP Open Space plan, which was adopted in 1985, protects hillsides from any development above the 150 foot contour line..... Therefore, despite being zoned for commercial development, development is prohibited because of the conflicts with the restrictions above the 150 foot contour line...."

Mr. McDade also proposed specific language to amend this MVCP language in his 2004 letter requesting a MVCP amendment.

Page 107 of the MVCP states: "Development oriented toward the valley and accessed by roads from the Valley floor should not extend above the 150-foot elevation contour."

Page 107 of the MVCP states: "Designate the hillsides and canyons which have any of the following characteristics as open space in the community: (d) Located above the 150-foot elevation contour."

In 1992, a MVCP amendment re-designated this specific parcel as open space above the 150 foot line—which includes all but 8800 square feet of lot. The 1992 City Council action supersedes the 1977 City Council rezone relied on by staff/applicant to justify project approval.

4. LOCATION OF BUILDING STILL MIS-STATED IN MND INITIAL STUDY

Page 25 of the Initial Study included in the Final MND states: "The building footprint and the associated retaining walls are limited to the commercial/office portion of the site." However, page 7 of the Final MND correctly describes proposal's location: "... .8 acre total development area with approximately .14 acre below the 150 foot contour and .66 acre above the 150 foot contour. A portion of the proposed retaining walls (approximately 703 linear feet) and driveway would be located in the narrow area below the 150 foot contour, while the remaining driveway, retaining walls (approximately 817 linear feet), AND THE BUILDING WOULD BE SITUATED ABOVE THE 150 FOOT CONTOUR. This location of entire building above 150 foot line is also shown correctly on Figures 11 and 12. While this is the MNDs 5th edition, this is the first time the MND text has acknowledged the entire building would be above the 150 foot line.

5. CITY COUNCIL VACATED ALL PRIOR PROJECT APPROVAL INCLUDING THE MNDs

MND Reply #11 inaccurately states: "The applicant was directed by the City Council to modify the Environmental Document and reappear before the Planning Commission. This MND is a part of that process as directed." The only accurate part of that statement is "reappear before the Planning Commission." The City Council did not direct DSD to merely re-propose the same alternative in an MND which was "vacated" by City Council!

Reply #21 inaccurately states "The Council did not reject the MND—it remanded the document back to the Planning Commission for their reconsideration of its adequacy." Pursuant to the City Code under which the appeal was granted, all prior approvals were "vacated." The MND's approvals were rescinded.

6. INITIAL STUDY FALSE STATEMENT REGARDING GRADING BEING REDUCED WITH PROPOSED PROJECT

Page 25 of the Initial Study, which is still in the Final MND, inaccurately states: "grading would be reduced in that a large flat pad is no longer proposed."

However, page 6 of the Final MND correctly states "The grading needed for this preliminary design was estimated at approximately 2,350 cubic yards of cut and 1,250 of fill." This is less than half the grading proposed for the current plan which proposes 6300 cubic yards of cut and 2600 cubic yards of fill. See Figure 11 of Final MND.

7. MND INACURRATELY STATES THAT LAND DEVLEOPMENT MANUAL DOES NOT REQUIRE THAT RETAINING WALL USE BE "MINIMIZED"

MND Reply #41 states: "The Land Development Manual Steep Hillides Guidelines does not require the 'minimized use of retaining walls.'" However, page 52 of the Land Development Manual Steep Hillides Guidelines (See MND Public Comments of Randy Berkman, Attachment19; circled page 36) states: "The use of retaining walls in the proposed development is minimized and conforms to the design guidelines for retaining walls" under ADDITIONAL PERMIT FINDINGS FOR ENVIRONMENTALLY SENSITIVE LANDS (2) THE PROPOSED DEVELOPMENT WILL MINIMIZE THE ALTERATION OF NATURAL LANDFORMS AND WILL NOT RESULT IN UNDUE RISK FROM GEOLOGIC AND EROSIONAL FORCES AND/OR FLOOD AND FIRE HAZARDS." (CAPS ADDED) Since proposed project does not minimize use of retaining walls, it is not compliant with this part of the Land Development Manual. Such conflicts with regulatory standards is evidence of significant impacts pursuant to CEQA case law. Staff does not dispute this would be longest, private retaining wall use in city. See MND Reply #54 which replies to Public Comment #54 asking staff to name any other private use of longer total length retaining walls in San Diego. Reply #54 merely states:

"These comments regarding the history of the permit process, the citations from the previous MND,, and CEQA case law are noted."

Deviations from the SDMC ESL regulations are Process 4. While appellants have always maintained this proposal is Process 5/MVCP amendment required, this example of non-compliance with ESL Code 143.0142(b) is presented to show that Process 3 is not valid for this proposal.

8. MND STATEMENT REGARDING WIDTH OF LAND BELOW THE 150 FOOT CONTOUR LINE IS NOT CONSISTENT WITH SCALE DIAGRAM C1.1, 2004 ARCHITECT'S SCALE DIAGRAM

MND Reply #36 states: "The site constraints of the 150' contour result in a narrow portion of land that measures 20 feet in width by 285' in length leading to a triangular portion that measures approximately 160' by 60 feet." This makes it sound like the site is far more restricted than shown in scale diagram C1.1 (Appeal Attachment # 4 included as 11x 17" diagram). Scale diagram C1.1 shows that the northeast portion of lot below the 150' contour line is approximately 50 feet wide at the eastern portion; and maintains a minimum width of approximately 40 feet for approximately 120 feet to the west. This area, and some immediately to the west which is about 30 feet wide, could

be the base pad of a reduced impacts building—at the lowest, least steep part of site—and roof compliant at the 150' contour line. It is regrettable that the MND does not have such a scale diagram to show the actual widths of land below 150 foot contour. Diagram C1.1 is from staff report to the Hearing Officer, dated January 11, 2006. Similar widths below the 150 foot contour line are shown in 2004 architect's diagram with "reduced impacts option" superimposed on it. See Appeal Attachment #6.

Lack of scale diagram showing the width of area below the 150 foot line makes the MND inadequate. CEQA requires accurately described projects.

NEW INFORMATION

1. PROPOSAL CONFLICTS WITH SAN DIEGO MUNICIPAL CODE (SDMC) ENVIRONMENTALLY (ESL) SENSITIVE LANDS REGULATIONS 143.0142(b):

'ALL DEVELOPMENT OCCURRING IN STEEP HILLSIDES SHALL COMPLY WITH THE DESIGN STANDARDS IDENTIFIED IN THE STEEP HILLSIDE GUIDELINES IN THE LAND DEVELOPMENT MANUAL FOR THE TYPE OF DEVELOPMENT PROPOSED.' (143.0142(b). (Appeal Attachment #9)

LAND DEVELOPMENT MANUAL STEEP HILLSIDES GUIDELINES, STANDARD 4 STATES: "DEVELOPMENT SHOULD BE CONCENTRATED IN THE LEAST STEEP AREAS OF THE SITE IN ORDER TO PRESERVE AS MUCH OF THE NATURAL TERRAIN AS POSSIBLE." (P. 21, LAND DEVELOPMENT MANUAL for STEEP HILLSIDES); Appeal Attachment #5).

Diagram C1.1 (Appeal Attachment #4) clearly shows that the least steep areas of site (with more than .01 acre) are the northeast corner of lot which is also the lowest part (136 foot elevation) of the site (For elevation, see: Final MND, pp. 5, 6 "First Submission Design"; and Figure 5/"First Submittal Design Site Plan" showing building location at northeast corner of site). See also Figure 11 "Proposed Project Site Plan" which shows the northeast corner of lot (which is shown below 150 foot line) UNUSED. Since the building is NOT planned at the least steep areas of the site, but rather the most steep, it deviates from Land Development Manual Steep Hillside Guidelines and is therefore contrary to SDMC 143.0142(b) which requires compliance with these Land Development Manual Steep Hillside Guidelines. Deviations from the SDMC ESL regulations are Process 4. While appellants have always maintained this proposal is Process 5/MVCP amendment required, this example of non-compliance with ESL Code 143.0142(b) is presented to show that Process 3 is not valid for this proposal. Deviation from regulatory standards is also evidence of significant impacts under CEQA case law. See: Protect the Historic Amador Waterways v. Amador Water Agency, 116 Cal. App. 4th 1099 (2004).

2. "LEED" BUILDING APPROVED WITHOUT CEQA PUBLIC REVIEW

At the May 17, 2007 Planning Commission hearing, the applicant proposed a "LEED" "Green" building for the first time. The public was not allowed to review this new information in the MND. Since this LEED building was made a condition of Permit approval, it should have been reviewed by the public in the MND. For example, a Planning Commissioner asked City Fire Department staff whether the "growing" roof for this building would present a new fire hazard compared to the prior roof already approved. The Fire Department staff replied that he did not have enough information to answer that question. It was abuse of discretion to approve the plan without evidence no new fire hazard would occur from the "growing" roof. The applicant asserted that this kind of building would "reduce impacts"—in an apparent effort to show compliance with City Council direction "to review the alternatives to reduce the impacts." This Council direction was given when the Appeal was granted September 26, 2006 and must be followed pursuant to the City Code under which the Appeal was granted. However, neither staff nor the public has alleged there would be significant project impacts without a LEED building. The City Council direction "to review the alternatives to reduce the impacts" referred to the project's unprecedented, total building encroachment into MVCP designated open space, massive grading, retaining walls, and visual impacts. No feasible alternatives were proposed to lower the height of building (39 feet) or its location to the lowest part of the site—136 foot elevation (p. 5 Final MND). Also, the first "condition" of a LEED building is:

"Under the LEED® certification program green building design focuses on five main categories.

- 1) Sustainable Sites - The Sustainable Sites category encourages good stewardship of the land, taking care to minimize adverse project impacts on surrounding areas during and after construction. This category asks the building owner to consider appropriate site selection, urban redevelopment, and brownfield development." (Source: LEED website).

Since the site contains endangered Coastal Sage Scrub, and at least .64 acres of it would be removed, it is not a "sustainable site" and does not meet the first criteria of a LEED building.

FINDINGS NOT SUPPORTED

1. City Council direction "to review the alternatives to reduce the impacts" was not followed. Impacts of the prior project design are maintained and not reduced. This point was made in MND Public Comments #9, 19, 25. Staff reply does not and cannot explain how the disputed impacts of building in MVCP open space are reduced rather than maintained. The MND is therefore fatally flawed and must not be certified.

An MND is not the correct CEQA document for this alternative. This was shown conclusively in the City Council decision which granted the Appeal and vacated all prior project approvals. This point was made in the MND without adequate reply. See Public Comments/Replies #21, #22.

2. Serious public controversy exists regarding the proposal's impacts. This is substantial evidence of significant impacts under CEQA: "Serious public controversy over the environmental effects of a project shall, however, be treated as an indicator of significance." (See CEQA Chapter 3.1 "Determining Significance Under CEQA"). What could be more significant public controversy and evidence of significant impacts than when the City Council declines to approve the MND for this alternative, "vacates" all prior project approvals, and directs DSD "to review the alternatives to reduce the impacts"? To maintain that this City Council action is not substantial evidence of significant impacts—is utterly lacking in credibility. It also negates City Council authority to enforce CEQA and reduce impacts. It also incorrectly places DSD authority to interpret and enforce CEQA above that of City Council.

3. At the Planning Commission, staff stated that a building at the lowest part of the site would have impacts. We agree. Staff, through acknowledging impacts at lowest part of site, provided evidence of the EIR requirement! It makes no sense to acknowledge impacts when building at lowest part of site/minimizing impacts to MVCP open space, and asserting "no impacts" with the whole building in MVCP open space as is now proposed! The "reasons" given (pp. 5,6 MND/"First Submission Design") that building at lowest part of site is a bad idea--do not add up! For example, the "monolithic" retaining wall planned in this First Design could be stepped into lower walls as now proposed. The driveway not being perpendicular to the sidewalk could be corrected by moving the SBC utility shed to make room for a perpendicular driveway/sidewalk design. The owner objects to this because of the cost to relocate the utility shed. He mentioned at Planning Commission that this would cost \$100,000. It makes no sense to require the MVCP guideline of tuck under parking when that raises the height of building, increases the open space encroachment, and more than doubles the excavation. The lowest part of site is also less steep than the proposed location of building. Building on hillside areas of lesser steepness IS consistent with Steep Hillside Guidelines of the Land Development Manual. SDMC 142.0143(b) requires that these Guidelines be followed.

4. Public Comment #24 stated:

"5th MND invalid since it mis-states City Council direction and does not follow City Council direction "to review the alternatives to reduce the impacts." This direction must be followed pursuant to the city code under which the Appeal was granted (112.0520(f). 5th MND proposes the alternative rejected by City Council without disclosing this to public. Impacts are maintained and not reduced—contrary to City Council direction."

"...to reduce the impacts" was omitted from Draft and Final MNDs first page and a staff direction is inserted in place of the actual City Council direction! MND Reply #11 acknowledges this is same project proposed in prior MNDs. Impacts are Maintained and not reduced—contrary to City Council direction which must be followed pursuant to City Code under which the Appeal was granted. Any future CEQA document must follow City Council direction to reduce the impacts. The resulting defective MND is based on the aforementioned mis-statement of City Council

direction. Details are below:

Page 46 of the September 26, 2006 Minutes (Appeal Attachment #2) of the City Council meeting states the following regarding City Council action on the appeal of Sierra Club, San Diego, Audubon, San Diego, Mission Valley Community Council and River Valley Preservation Project:

“MOTION BY FRYE TO GRANT THE APPEAL AND SET ASIDE THE ENVIRONMENTAL DETERMINATION (MITIGATED NEGATIVE DECLARATION) NO. 54384). REMAND THE MATTER TO THE PREVIOUS DECISION MAKER WITH DIRECTION TO REVIEW THE ALTERNATIVES TO REDUCE THE IMPACTS. DIRECT THE CITY ATTORNEY TO PREPARE THE APPROPRIATE RESOLUTION PURSUANT TO SECTION 40 OF THE CITY CHARTER.” (CAPS in original). (Appeal Attachment #2; Source City Council Minutes website)

The above City Council direction “to review the alternatives to reduce the impacts” is not found in the MND. Rather, in the second sentence in the “new” MND quote below, staff inserts their own language (re-writing the City Council direction to gain project approval)! This turns the City Council direction upside down and negates City Council’s authority “...to reduce the impacts,” enforce CEQA. . Quoting the MND’s mis-statement of City Council direction (Pages 1 of Draft and Final MND):

“UPDATE:

City Council granted the appeal and set aside the environmental determination and remanded the matter to the previous decision maker (the Planning Commission). In addition, City Council (CAPS used to show mis-statement of City Council direction: directed staff to “PROVIDE ADDITIONAL INFORMATION IN THE DOCUMENT REGARDING THE VARIOUS PROJECT DESIGNS THAT HAD BEEN CONSIDERED BY THE APPLICANT TO ALLOW THE PUBLIC TO REVIEW THE PROJECT’S DESIGN PROCESS, AND TO PROVIDE FOR PUBLIC INPUT THROUGH THE DOCUMENT RE-CIRCULATION PROCESS.” (Appeal attachment # 1)

Such non-compliant re-writing of City Council direction makes the 5th MND invalid.

5. OTHER EVIDENCE OF SIGNIFICANT IMPACTS NOT ANSWERED OR INADEQUATELY ANSWERED

Public Comment #49 states:

“ENTIRE BUILDING PROPOSED IN DESIGNATED OPEN SPACE IS SIGNIFICANT LAND USE IMPACT PURSUANT TO CITY’S CEQA SIGNIFICANCE DETERMINATION THRESHOLDS. THIS UNMITIGATED IMPACT IS CLEAR TRIGGER OF EIR REQUIREMENT”

Reply #49 to this comment is “Comment noted.” This shows how the MND is entirely inadequate in replying to substantial evidence of significant impacts.

Public Comment #31 states: 1992 MVCP PLAN AMENDMENT PROTECTED THIS SPECIFIC PARCEL FROM DEVELOPMENT ABOVE THE 150 FOOT CONTOUR LINE. 1992 CITY MANAGER INFORMED CITY COUNCIL A REZONE WOULD NOT BE NECESSARY THEN SINCE SITES WERE ALREADY SEVERELY RESTRICTED FROM DEVELOPMENT. THIS COUNTERS DSD/APPLICANT ARGUMENT THAT CO ZONE "ENTITLES" DEVELOPMENT ABOVE 150 FOOT LINE. THIS INFORMATION WAS PROVIDED TO CITY STAFF IN OCTOBER, 2006, YET NOT DISCLOSED IN THE 'NEW' MND." (See Appeal Attachment 8 for 1992 City Manager Report to City Council on this MVCP amendment).

Reply #32 to this comment states: "In the 1992 City Council action, the subject parcel was not designated in its entirety as open space." However, the redesignation to open space includes all but 8800 square feet below the 150 foot elevation. Reply #32 goes on to mis-state the MVCP regarding "large scale" development. (See Appeal Section Factual Errors regarding the repeated mis-statements of this MVCP language and actual quote from MVCP). Reply #32 concludes with a re-write of the MVCP: "The community plan's objectives for hillside preservation are being met with 3.92 acres of the 4.94 acre site within a protected open space easement that is not proposed for development." In truth, the MVCP protects ALL land above the 150 foot contour as acknowledged by landowner attorney Michael McDade. Staff is mistakenly relying on the 1977 City Council decision which granted the open space easement for 3.92 acres of site. The more recent 1992 City Council MVCP amendment PROTECTED THIS SPECIFIC PARCEL from development except for the 8800 square feet below the 150 foot elevation.

1. Public Comment #44 states:

"LACK OF DISCLOSURE OF CONFLICTS WITH ENVIRONMENTAL REGULATIONS MAKES MND FUNDAMENTALLY MISLEADING AND INADEQUATE; OTHER REASONS EIR REQUIRED

1. Under CEQA, conflicts with environmental laws are evidence of significant impacts (See CEQA case: Protect the Historic Amador Waterways v. Amador Water Agency, 116 Cal. App. 4th 1099 (2004).

"Such thresholds can be drawn from existing environmental standards, such as other statutes or regulations. "[A] lead agency's use of existing environmental standards in determining the significance of a project's environmental impacts is an effective means of promoting consistency in significance determinations and integrating CEQA environmental review activities with other environmental program planning and regulation." (Communities for a Better Environment v. California Resources Agency, supra, 103 Cal.App.4th at p. 111.).

This proposal conflicts with City's Land Development Manual, P. 52 (Attachment 19 of MND comments of Randy Berkman) which requires "minimized use" of retaining walls. This conflict was not disclosed or reviewed in the MNDs—making the MND misleading and inadequate. Project proposes nine retaining walls over 1600 feet total length—probably the longest private use of such walls in city history. Conflict with this steep hillside regulatory standard is evidence of significant impacts to land use, public safety, and visual quality.

- Alternative Compliance (deletion of) brush management (as proposed May 31, 2006/4th MND revision; and the current, 5th edition of MND) is not allowed according to the Land Development Manual (MND comments of Randy Berkman, Attachment 18). Conflict with this regulatory standard is evidence that brush management impacts are “reasonably foreseeable” and must be reviewed in an EIR since a CSS mitigation area/Open Space Easement is likely to be impacted after fire staff declares “imminent fire hazard” during dry season. (Attachment 1).
3. Findings of Planning Department, unanimous Planning Commission for 1978 similar sized office building on same site are clear evidence of unmitigated impacts as an EIR was done/Notice of Determination filed with “significant effect on the environment.” This prior review was objective and recognized the precedent nature of opening the higher south slopes of Mission Valley for development. Opening the higher south slopes to development triggers a Mandatory Finding of Significance/EIR.
 4. Court recognized CEQA expert Dave Potter wrote that EIR is required (Attachment 13 to MND comments of Randy Berkman).
 5. Conflicts with MVPDO: “Development, including road construction above the 150-foot contour line shall not occur.” (Mission Valley Planned District Ordinance 103.2103(A)).
 6. MND states MVPDO Exception should be granted for invalid reasons. NONE of the 8800 square feet of land below the 150 foot contour line is proposed to be used for the building itself! The 2004 plan did plan to use land below 150 foot line.
 7. Additional Development Permit Findings for Environmentally Sensitive Lands (ESL) Conflicts:
 - A. “minimum disturbance to ESL.” Reduced Impacts Option over smaller footprint (Attachments 13, 14) shows proposal is not consistent with this required by Code Finding. This is evidence of significant impacts to land use and CSS. Issue not reviewed in MND makes MND inadequate.
 8. “The proposed development will minimize the alteration of natural landforms....” The proposal is inconsistent with this required by Code Finding—evidence of significant impacts to land use and CSS. This is evidence this is Process 4 on these issues (since deviations from ESL regulations are implicit)—and these conflicts with Codes for correct Process (3,4,5) have not been addressed in the MND.
 9. The MVPDO 103.2101 requires that the proposal be consistent with the community plan. City Code 126.0504(a)(1) requires that the applicable land use plan is not “adversely effected.” Since the whole building would be in MVCP open space, it is not consistent with the MVCP; and the open space protections of the MVCP would be adversely effected. This is evidence of significant land use, CSS and public safety impacts.
 10. City Code 126.0504(b)(4) refers to MSCP which requires projects to be consistent with the land use designation of the community Plan. This is not consistent with MSCP since it is proposed entirely in designated open space. The conflict with this code is evidence of significant land use, public safety, CSS, visual quality, and cumulative/precedent setting-impacts of opening the higher south slopes to building.
 11. City Code 126.0504(b)(1) requires “minimum disturbance” to ESL.”
126.0504(b)(2) requires proposals “minimize alteration of the natural landforms.”

Conflicts with these codes are described in these comments and are evidence of significant impacts to steep hillsides, CSS, land use, visual quality, and cumulative/precedent setting impacts."

MND replies do not adequately address the above conflicts with codes/significant impacts which result from these conflicts.

8. MND Reply #36 states: "The site constraints of the 150' contour result in a narrow portion of land the measures 20 feet in width by 285' in length..." However, scale diagram C1.1 (Appeal Attachment #4) shows a width of 40 to 50 feet for about 120 feet long section of land at northeast corner of lot. See Factual Errors for further details.

9. Public Comment #54 states:

"More evidence of significant unmitigated land use impacts triggers EIR: 630 dump truck loads of soil containing endangered coastal sage scrub is not 'grading [which] only minimally disturbs the natural terrain" as stated in the MND. Does staff maintain that this quantity of "cut" is a "minimal disturbance" of natural terrain?! This was a concern of Council member Frye at the September 26, 2006 hearing when the appeal was granted.

MND Reply # 54 merely states: "These comments regarding the history of the permit process, the citations from the previous MND, and CEQA case law are noted." Such a non-responsive reply makes the MND fundamentally inadequate.

10. Public Comments regarding cumulative hillside impacts in the Vacchi Memo (Public comment/Reply #54) and the reasonably foreseeable impacts from the eventual reinstatement of brush management during a dry season (Public Comments/Reply #54), and the extension of Scheidler Way into MVCP open space/significant visual, land use impact (Public Comment/Reply #54) are likewise not addressed!

Public Comment #54 also states:

"UNRESOLVED BRUSH MANGEMENT ISSUES: ARE BRUSH MANGEMENT IMPACTS TO THE OPEN SPACE EASEMENT IMPACTS FROM BRUSH MANAGEMENT REASONABLY FORESEEABLE UNDER CEQA? (SEE: Laurel Heights Improvement Assoc. v. Regents, 47 Cal.3d 376, 393-399). WOULD SUCH IMPACTS TO OPEN SPACE EASEMENT REQUIRE RE-DESIGN OF PROPOSAL/NEW CEQA PROCESS? UNPRECEDENTED ELIMINATION OF BRUSH MANGEMENT FOR THIS PROJECT?"

Again, the inadequate Reply #54: "These comments regarding the history of the permit process, the citations from the previous MND, and CEQA case law are noted." #54 makes the MND inadequate.

Public Comment #54 also states:

“EVIDENCE OF POTENTIAL CUMULATIVE IMPACTS IN THE VAACHI MEMO

This Memo was disclosed to the public for the first time at the April 19, 2006 hearing. Landowner attorney Robert Vacchi's April 12-14 Memo to project Manager Anne Jarque states:

“Of the remaining lots with land above the 150-contour line, all but three have large portions of developable land above the 150-contour line and are fully developed below the 150-foot contour line.” If this proposal is allowed above the 150 contour, other landowners will be financially encouraged to seek similar Exceptions to the PDO. His statement that all but three lots have “large portions of developable land above the 150-contour line” is especially foreboding for the future of the valley's steep slopes.”

The lack of response to this fundamental issue of concern to Council member Frye in Reply #54 “These comments regarding the history of the permit process, the citations from the previous MND, and CEQA case law are noted.” makes the MND inadequate.

11. Public Comment # 54 also states:

MND CONFLICTS WITH MVCP OBJECTIVE/PROPOSALS REGARDING CSS AND UNSTABLE SOILS. THIS WILL BE CONSIDERED SIGNIFICANT LAND USE IMPACT PURSUANT TO CITY'S CEQA SIGNIFICANCE THRESHOLDS (Attachment 16 is City Land Use Thresholds of Significance)

The MVCP states:

“OBJECTIVE

Preserve as open space those hillsides characterized by steep slopes or geological instability in order to control urban form, insure public safety, provide aesthetic enjoyment, and protect biological resources.

“Designate the hillsides and canyons which have any of the following characteristics as open space in the community: a. contain rare or endangered species of vegetation or animal life. B. Contain unstable soils.” (end of MVCP quote)

Coastal Sage Scrub (CSS) is the most endangered habitat in the continental United States according to the EIR for the East Mission LRT. .64 acres of CSS would be lost according to the 5th edition of MND. This does not count the “reasonably foreseeable” impacts to the open space easement from eventual brush management due to “imminent fire hazard” declaration of fire department. If the usual 100 foot buffer were required, unmitigated impacts to the open space easement would be over 1/2 acre. That this issue is not realistically addressed, makes the MND misleading and inadequate regarding reasonably foreseeable impacts which are required by the SDMC and Land Development Manual's brush management sections.

The MNDs do not describe the quality of the CSS. However, the 1978 EIR (P. 2) states: “Presently the steep, undeveloped site is covered with mature chaparral and areas of coastal sage scrub, making up part of an extended zone of natural hillside on the south

slopes of Mission Valley.” Eric Bowlby, Sierra Club Canyon Coordinator, describes the CSS as “good quality.”

CA Department of Fish and Game describes CSS:

“Diegan CSS is considered a sensitive habitat in and of itself, and supports approximately 100 species (plant and animal) considered endangered, threatened or rare by State and or Federal agencies. Information on its rarity, as one indicator of its sensitivity, range from 66% having been lost to urban development and agriculture to only 10% of the original CSS remaining in good condition (i.e., 90% of CSS in good condition lost).”(December 20, 2005 email from Elizabeth Lucas, CA Department of Fish & Game; Attachment 6). The EIR for the East Mission Valley LRT describes CSS as the most endangered habitat type in the continental United States. (Attachment 15 of MND comments of Randy Berkman).

The 1977 EIR found that the erosion potential of the soil onsite was “severe”—the highest level of impact (see Attachment 2 of MND comments of Randy Berkman). The presence of CSS and unstable soils both are listed under MVCP protections/open space preservation. The proposed building is again inconsistent with these MVCP objectives. Again, this triggers an EIR due to land use impacts since such conflicts with MVCP environmental objectives “will be considered significant” (MND Attachment 16 to comments of Randy Berkman). This issue is not addressed in the MNDs and was not addressed by the Hearing Officer or the Planning Commission.

MND Reply #54 “These comments regarding the history of the permit process, the citations from the previous MND, and CEQA case law are noted.”—again is non-responsive—making the MND inadequate.

12. MND Public Comment #54 also states:

“REDUCED IMPACTS OPTIONS

2004 ARCHITECT’S DIAGRAMS SHOW HOW REDUCED IMPACT OPTION COULD BE ACCOMPLISHED AND IMPACTS TO DESIGNATED OPEN SPACE MINIMIZED: THIS REFUTES MND ASSERTION THAT CONSTRUCTION BELOW THE 150 FOOT LINE WOULD BE A HARDSHIP ON ABILITY TO DEVELOP THE LAND. Staff takes a grain of truth (that some minor encroachments above 150 would be required) and uses this to rationalize the maximum encroachment—immediately adjacent to the open space easement at the 200 foot elevation. This is ridiculous. The proposal does not minimize impacts to designated open space as directed by Hearing officer Didion and City Attorney David Miller (November 2, 2005 Hearing; See MND Attachment 20 comments of Randy Berkman; email from City Attorney David Miller “least deviation possible.”). Rather, it proposes to extend about 125 feet laterally up-slope to the very edge of the Open Space Easement/ Coastal Sage Scrub mitigation area. And again, this alternative was rejected by City Council in 2006.

The architect’s diagram (Appeal Attachment 6) has a reduced impacts option superimposed on it. This diagram shows a 2004 version of the plan with first floor at the 140 foot elevation and “second level” at 154 foot elevation. A one story building with roof at 150 feet (compliant with PDO and MVCP) is feasible by digging down 4 feet to a

136 foot elevation base pad.. Such a one story building could have about 5000 square feet with plenty of space for the required 20 car parking lot slightly above the 150 foot elevation line shown on the City diagram. If the applicant were to dig down about 20 feet so as to have a base pad at the 120 foot elevation, a 2 story building is feasible along with 37 car parking lot to the west. In contrast, the current plan calls for a base pad at 160 foot elevation with roof to 200 feet."

13. MND Comment #54 states: "It is also troubling that Fire Department staff has not replied to email asking whether locating the project about 125 feet higher (laterally) up the slope could pose a new fire threat to Normal Heights—from on-site hazards such as a discarded cigarette....The MND states that a retaining wall with irrigated vegetation will act as a firewall. However, it would only be 103 feet long (p. 9)—not long enough to protect Normal Heights from fire started by on-site hazards such as a tossed cigarette." MND Reply #54 is again, entirely inadequate: "These comments regarding the history of the permit process, the citations from the previous MND, and CEQA case law are noted."

14. ALTERNATIVES PREVIOUSLY REJECTED BY STAFF/OWNER

The prime community (and 1992, 2006 City Council) concerns have been exceeding the 150 foot line restrictions of the MVCP and MVPDO. Another prime concern is the loss of endangered CSS. While deviations are needed (retaining wall, parking above 150 foot line) to get the building's roof compliant at 150 foot-line, these deviations could be granted to allow some use of the land. For example, tuck under parking is a design guideline of the MVCP for steep hillsides. However, on such a steep site, it is not necessary to hold the owner to this IF he builds the building with roof compliant at 150 foot line. Adjacent buildings do not have tuck under parking. Also, tucking the building into the slope would not be needed if the building itself were compliant at 150 foot elevation.

"Half the building would be below the 150 foot contour line....The lower level building would have been at approximately 136 feet." (P. 6, 5th MND, describing 1st design submission). This shows that the applicant could get the entire building compliant at 150 foot line—simply by reducing the building's height to 1 story (and some minor digging down if needed). A 5000 square foot building is far beyond the area of most doctor's offices—which generally run less than 2000 square feet. A 5000 square foot building is more than reasonable use of such environmentally sensitive land. Also, the applicant could get 2 stories (10,000 sq. ft.) by further digging down as shown in Attachments 13, 14) and described in Reduced Impacts section of these comments.

The acknowledgment that the building (1st design) would have been at 136 foot elevation is welcome as it negates past staff assertions that the lowest level of site is "144 feet."

The comments about the previously rejected alternatives were not addressed. Again, see MND Reply #54.

15. The proposed extension of Scheidler Way up-slope, is evidence of MVCP amendment required/significant land use impact pursuant to City CEQA Significance thresholds. As the MVCP clearly states: "Access roads should not extend into the designated open space areas." (p. 124 of MVCP). A plan amendment could be tailored to this site and not include other hillside lots.

SUM

The MND is fundamentally flawed because it re-proposes the same alternative already found unacceptable to City Council. City Council direction "to review the alternatives to reduce the impacts" has not been followed. Re-proposing the same alternative Maintains the impacts of the whole building's MVCP open space encroachment--starting at 160 feet, with roof to 200 foot elevation—50 feet higher than allowed by the MVCP!

No unpaid people have testified in support of the project. Other than City staff, those supporting it would gain substantial amounts of money if it is approved. Project is opposed by Sierra Club (San Diego Chapter), Audubon (San Diego Chapter), Mission Valley Community Council, Normal Heights Planning Group, University Heights Community Development Corporation and Planning Committee, and River Valley Preservation Project. At its May 3, 2007 meeting, the Mission Valley Unified Planning Group considered a Motion to reaffirm support of the project. That Motion failed since it did not get a second.

Conflicts with regulatory standards/evidence of significant impacts include conflicts with the MVCP, MVPDO, Land Development Manual, SDMC ESL Codes, SDMC Findings Codes. Such conflicts with regulatory standards are evidence of direct and cumulative significant impacts to visual quality, land use, public safety, and CSS. The MND fails to reply (other than "comments noted") to entire sections of public comments providing such evidence of significant impacts/EIR requirement. This is another reason the MND is fatally flawed. Examples include the fact that retaining wall use would not be "minimized" and 630 dump truck loads of excavation is not "minimal disturbance of natural terrain" as required by MVCP and SDMC Findings Codes.

The landowner's attorney, Michael McDade has acknowledged that the MVCP "prohibits" all development above the 150 foot contour line and correctly requested a MVCP Amendment for a proposal (Appeal Attachment 7) that would have been 20 feet lower than this proposal's 200 foot elevation. The MND Findings are based on repeated mis-statements of the MVCP—a "red herring" large versus small scale development issue—since MVCP prohibits ALL development above 150 foot line) and an outdated decision of the 1977 City Council. The applicable, 1992 MVCP Amendment protects this specific parcel from development above the 150 foot line as this area was re-designated as MVCP open space. A MVCP Plan Amendment would be required to "re-designate" parts of this site as commercial above the 150 foot line. Staff acknowledged

at May 17, 2007 Planning Commission hearing that building on lowest part of site would have impacts. These impacts would be greatly compounded by allowing the whole building's 50 foot vertical encroachment into MVCP open space—a precedent which far surpasses the EIR threshold. An EIR would require review of Feasible, less damaging alternatives—rather than unfeasible, previously rejected alternatives described in the MND. An EIR would review reduced height building options at the lowest, less steep part of site—136 foot elevation. It would also review the No Build option.

APPEAL ATTACHMENTS

1. Page 1 of Final MND showing serious mis-statement of City Council direction “to review the alternatives to reduce the impacts”—with “...to reduce the impacts” omitted.
2. City Council Minutes of September 26, 2006, hearing at which appeal was granted.
3. NONE
4. Diagram C1.1 showing northeast corner of lot is less steep than proposed part of lot; and that width of land below 150 foot line is 40 to 50 feet for about 120 feet.
5. Page 21 Land Development Manual Steep Hillides Guidelines.
6. Reduced Impacts alternative at lowest part of site--superimposed on architect's diagram.
7. Letter of Michael McDade, attorney for landowner, requesting MVCP amendment for prior design of project.
8. 1992 City Manager Report to City Council which included re-designation of this parcel as open space above 150 foot line.
9. SDMC 143.0142(b) requiring compliance with Land Development Manual Steep Hillides Guidelines.

002491

Attachment 1



Land Development
Review Division
(619) 446-5460

RECEIVED
CITY CLERK'S OFFICE

07 MAY 31 PM 3:49

SAN DIEGO, CALIF. Mitigated Negative Declaration

Project No. 54384
SCH No. 2005091022

SUBJECT: PACIFIC COAST OFFICE BUILDING: SITE DEVELOPMENT PERMIT to construct an approximately 9,845 square-foot, two-story office building on a vacant 4.94-acre parcel. The project is located just east of the terminus of Scheidler Way, in the Mission Valley Planned District within the Mission Valley Community Planning area (Lot 1 of Nagel Tract Unit No. 2 Subdivision, Map 4737).

UPDATE: March 5, 2007: On September 26, 2006, an environmental appeal on the project was before the City Council. City Council granted the appeal and set aside the environmental determination and remanded the matter to the previous decision maker (the Planning Commission). In addition, City Council directed staff to provide additional information in the document regarding the various project designs that had been considered by the applicant, to allow the public to review the project's design process, and to provide for public input through the document recirculation process. *omits "to review the alternatives to reduce the impacts"!*

Therefore, based on City Council's direction, this information has been provided and this Mitigated Negative Declaration has been recirculated for public review and input.

- I. PROJECT DESCRIPTION: See attached Initial Study.
- II. ENVIRONMENTAL SETTING: See attached Initial Study.
- III. DETERMINATION:

The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect in the following areas(s): BIOLOGICAL RESOURCES, LAND USE/MSCP, AND PALEONTOLOGICAL RESOURCES. Subsequent revisions in the project proposal create the specific mitigation identified in Section V of this

Attachment 2

Staff: Anne B. Jarque - (619) 687-5961

NOTE: This item is not subject to Mayor's veto.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:42 p.m. - 5:00 p.m.;
5:35 p.m. - 5:48 p.m.;
6:18 p.m. - 6:22 p.m.)

Testimony in favor of appeal by Randy Berkman, Jim Peugh, Ellen Shively, Gail Thompson, Lynn Mulholland, Eric Bowlby and Alan Hunter.

Testimony in opposition of appeal by Mike McDade, Dr. Robert Pollack, Robert Vacchi and Doug Childs.

Motion by Frye to grant the appeal and set aside the environmental determination (mitigated negative declaration no. 54384). Remand the matter to the previous decision maker with direction to review the alternatives to reduce the impacts.
Failed. Yeas-3,4,6. Nays -1,2,7,8. 5-not present.

MOTION TO RECONSIDER BY MADAFFER. SECOND BY COUNCIL PRESIDENT PETERS. PASSED BY THE FOLLOWING VOTE: Peters-yea, Faulconer-yea, Atkins-yea, young-yea, Maienschein-not present, Frye-yea, Madaffer-yea, Hueso-yea.

MOTION BY FRYE TO GRANT THE APPEAL AND SET ASIDE THE ENVIRONMENTAL DETERMINATION (MITIGATED NEGATIVE DECLARATION NO. 54384). REMAND THE MATTER TO THE PREVIOUS DECISION MAKER WITH DIRECTION TO REVIEW THE ALTERNATIVES TO REDUCE THE IMPACTS. DIRECT THE CITY ATTORNEY TO PREPARE THE APPROPRIATE RESOLUTION PURSUANT TO SECTION 40 OF THE CHARTER. Second by Council President Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-not present, Frye-yea, Madaffer-yea, Hueso-yea.

X
omitted from MND!

002497

[SEE DIAGRAM II-17, page 37]

- Alternative forms of retaining systems could be utilized to minimize grading.
- Gravity retaining walls could be used, regardless of the height, provided that landscaping and irrigation is installed in the face of the wall.
- The size and shape of lots could be varied in order to maximize the amount of steep hillsides to be preserved.

[SEE DIAGRAM II-18, page 38]

- The use of all areas of the site that do not contain steep hillsides should be maximized prior to encroaching into any steep hillside areas.

Standard 3 Graded areas shall be designed to blend with existing or planned adjacent topography.

This standard may be achieved by incorporating into the development design, the following guidelines, as appropriate, for the site conditions and the proposed development:

- If located adjacent to natural topography or manufactured slopes that are landform graded, newly created manufactured slopes should be landform graded with undulating slopes, irregular/varying gradients, and with the top (crest) and bottom (toe) of new manufactured slopes rounded to resemble natural landforms.

[SEE DIAGRAM II-2, page 32]

- The transition between manufactured slopes and natural topography should be blended to avoid harsh angular lines.

[SEE DIAGRAM II-19, page 38]

- Landscaping on manufactured slopes adjacent to natural topography should be similar to the vegetation on the natural slopes.
- Slopes that are adjacent to major and secondary streets and highways and slopes in areas designated as significant public view areas should always be landform graded regardless of the adjacent topography.

Standard 4: Site improvements shall minimize impacts to the steep hillside areas.

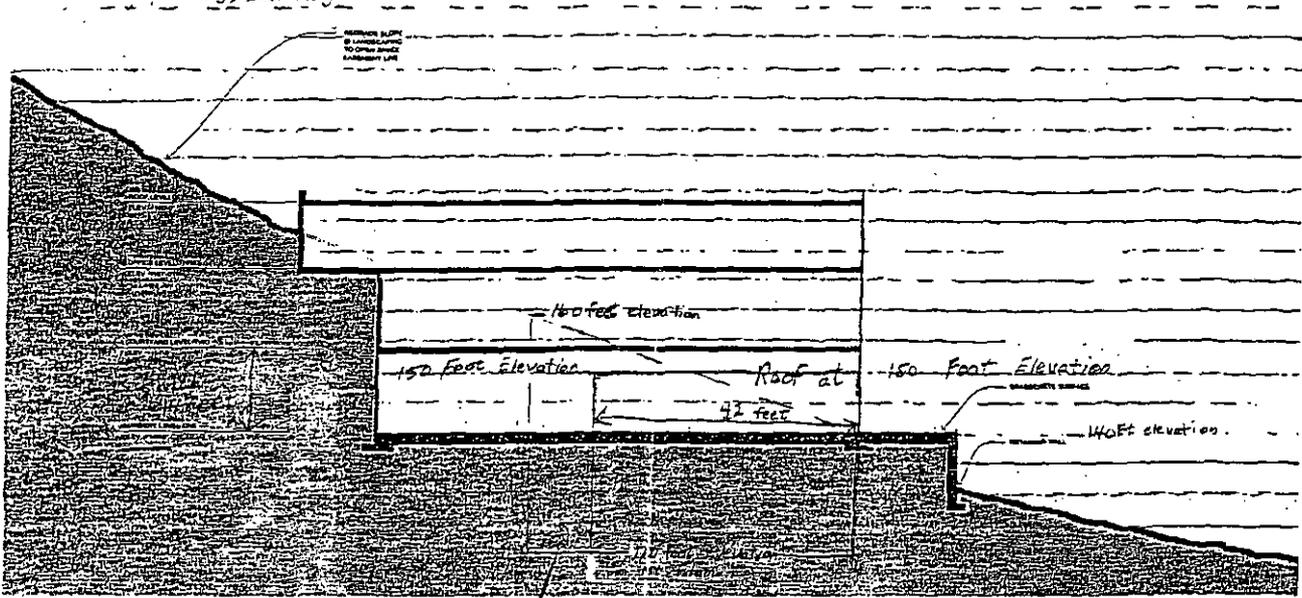
This standard may be achieved by incorporating into the development design, the following guidelines, as appropriate, for the site conditions and the proposed development:

- Development should be concentrated in the least steep areas of the site in order to preserve as much of the natural terrain as possible.

part of site. This
is lowest and least
002489

Reduced Impacts Option
Roof of Building at 150 feet
Elevation: Compliant with
Mission Valley Plan, PSD

at 1/2 of Proposed Plan
ing, building



Site Section

19 January 2004

Scale

1/4" = 14 ft.

Stepped Retaining Walls
Highest Wall top at 160 Foot Elevation

Pacific Coast Office Building
San Diego California

Sullivan Wertz McDade & Wallace
A PROFESSIONAL CORPORATION

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JERI L. O'KEEFE
ADMINISTRATOR

June 3, 2004

Mr. John Wilhoit
Planning Department
City of San Diego
202 First Street, Fifth Floor
San Diego, CA 92101

Re: Request to Initiate Mission Valley Community Plan Amendment
APN 439-480-24-00, Scheidler Way

Dear Mr. Wilhoit:

Pursuant to recent discussions with you and other members of your department, we are writing you on behalf of our client, Pacific Coast Assets, LLC, to request the initiation of an amendment to the Mission Valley Community Plan (MVCP). Our client is the owner of the above-referenced vacant parcel on Scheidler Way, south of Camino Del Rio South between Interstate 15 and Interstate 805. He intends to propose the development of a two-story, 10,400 square foot medical and commercial office building on that site.

The parcel is five acres in total size. The lowest northern area of the parcel, anticipated for development is approximately one acre in size and is zoned MV-CO. The remaining up-slope southerly portion of the parcel is zoned RS-1 and is approximately four acres. In connection with a much earlier land use permit application, which subsequently lapsed, the City obtained an open space easement over the southerly four acres. The parcel is entirely composed of 25% or greater slope. The 150-foot elevation contour line bisects the portion of the property zoned MV-CO.

The MVCP Open Space Plan, which was adopted in 1985, protects hillsides from any development above the 150-foot contour line. These areas are primarily zoned low-density residential and are within the Hillside Review Overlay Zone. What was apparently overlooked by City staff and the community is that there are a limited number of parcels that are zoned in the MVCP for commercial development that are at least partially above the 150-foot contour line. Therefore, despite being zoned for commercial development, development is prohibited because

Affect 1
(P. 2)

Mr. John Wilhoit
June 3, 2004
Page 2

of the conflict with the restrictions above the 150-foot contour line, effectively depriving those parcels of any economic use. The Environmentally Sensitive Lands Ordinance allows development of steep slopes if necessary to achieve a maximum development area of 25 percent of the premises. The Mission Valley Planned District Ordinance (MVPDO) section 103.2107(c)(2) further restricts the allowable development amount to 20 percent. The 150-foot contour line restriction does not allow our client to develop up to 20 percent of the parcel as allowed per the MVPDO. This clearly was an unintended consequence which can only be corrected by amending the Community Plan.

San Diego Municipal Code (SDMC) Section 122.0104(a) allows an amendment to a land use plan to be initiated if any of three primary criteria are met, or if supplemental criteria are met. We believe that our request for amendment satisfies two primary criteria; namely:

"(a)(1) The amendment is appropriate due to a map or text error or to an omission made when the land use plan was adopted or during subsequent amendments."

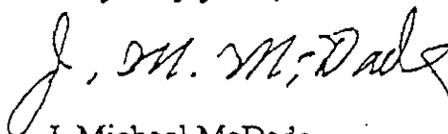
"(a)(3) The amendment is appropriate due to a material change in circumstances since the adoption of the land use plan, whereby denial of initiation would result in hardship to the applicant by denying any reasonable use of the property."

This amendment will not frustrate the intent of the MVCP or the General Plan because it will be extremely limited in application. All but a tiny portion of the protected hillsides will continue to be preserved. Denying the initiation will cause severe hardship to the applicant because it will prevent any reasonable use of the property.

For the reasons discussed above, we respectfully request support to initiate an amendment to the MVCP. A ~~strikeout~~, underline of the proposed textual changes to the MVCP is enclosed.

Please advise us at once if anything more needs to be submitted in order to allow prompt consideration of our request. Thank you for your courtesy.

Very truly yours,



J. Michael McDade

of

SULLIVAN WERTZ McDADE & WALLACE
A Professional Corporation

Enclosures

Attachment 8
P. 1

Amendment No. 3

002503

AMENDMENT
TO THE
MISSION VALLEY COMMUNITY PLAN

On April 21, 1992, the City Council adopted an amendment to the Mission Valley Community Plan by Resolution No. 279807. The amendment resulted in the following changes to the community plan:

- X Page 40, Figure 5, Land Use Plan. The redesignation of several southern hillside areas to open space. Community plan and land use designation boundary adjustments were also made and the Light Rail Transit (LRT) alignment was added to this map.
- Page 52, Figure 6, FSDRIP Specific Plan Map. Deleted.
- Page 53, Figure 7, Northside Specific Plan Map. Deleted.
- Page 54, Figure 8, Atlas Specific Plan Map. Deleted.
- Page 55, Figure 9, Levi-Cushman Specific Plan Map. Deleted.
- Page 56, Figure 10, Specific Plan/Multiple Use Areas Map. Revise to illustrate specific plan boundaries.
- Page 76, Figure 17, Proposed Light Rail Transit w/ Shuttle Service Map. Revise to illustrate the adopted LRT line and station locations.

The adopted map changes are attached. These revisions will amend the Mission Valley Community Plan. No text changes were adopted in conjunction with this amendment.

For further information regarding these amendments, contact the Mission Valley Community Planner at (619) 533-3650.

DOCUMENT NO. RL-279807
FILED APR 21 1992
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA



MANAGER'S REPORT

DATE ISSUED: April 14, 1992 REPORT NO. P-92-097

ATTENTION: Honorable Mayor and City Councilmembers, Agenda of April 21, 1992.

SUBJECT: MISSION VALLEY COMMUNITY PLAN/GENERAL PLAN AMENDMENT.

REFERENCE: City Council Hearings of July 9 and 23, 1990 regarding the Mission Valley Planned District Ordinance.

SUMMARY:

Issues: - This report addresses an amendment to the Mission Valley Community Plan and the Progress Guide and General Plan to redesignate several hillside areas south of Interstate 8 from various commercial designations to open space. In addition, other amendments to the Mission Valley Community Plan are proposed to correct boundary errors and add clarity to the Plan regarding the Mission Valley West Light Rail Transit line and specific plan areas.

Planning Commission Recommendation: - On January 23, 1992, the Planning Commission voted 5 to 0 to approve and recommend City Council adoption of the proposed Mission Valley Community Plan/General Plan Amendment.

Manager's Recommendation: - APPROVE the proposed Mission Valley Community Plan/General Plan Amendment.

Community Planning Group Recommendation: - On February 5, 1992, the Mission Valley Unified Planning Committee voted 15-0-1 to approve the Mission Valley Community Plan/General Plan Amendment.

Other Recommendations: - On January 21, 1992, the Greater North Park Planning Committee voted 8-0-3 to approve the Mission Valley Community Plan/General Plan Amendment. On February 4, 1992, Uptown Planners voted 17-0-1 to approve the project. The Normal Heights and Kensington-Talmadge community planning groups have been notified of the proposal but have not submitted recommendations to date.

R-273807

Attachment 8
P. 3

Environmental Impact: - This project is exempt from CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

Fiscal Impact: - None with this action.

Code Enforcement Impact: - None with this action.

Housing Affordability Impact: - None with this action.

BACKGROUND:

During the July, 1990 City Council hearings on the Mission Valley Planned District Ordinance (PDO), the issue of hillside protection south of Interstate 8 (I-8) was discussed. The City Council voted to retain the R1-40000 zoning on five sites south of I-8 which are illustrated as Sites A through E on Attachment 1a. The Council also directed the Planning Department to initiate a community plan amendment for keeping the slopes in open space. As described below, the City Manager is proposing that a portion of Sites A through E, and other hillside areas south of I-8, be redesignated to open space on the Mission Valley Community Plan Land Use Map.

The City Manager also identified other amendments to the Mission Valley Community Plan which would improve its accuracy, organization and clarity. These changes include correcting the community plan land use map boundaries, updating the Mission Valley West Light Rail Transit (LRT) alignment and illustrating the specific plan boundaries on the Potential Multiple Use Areas map.

On January 23, 1992, the Planning Commission unanimously approved the Mission Valley Community Plan/General Plan Amendment. Subsequent to the Planning Commission hearing, a Mission Valley property owner questioned some of the proposed revisions to Figure 17 of the Mission Valley Community Plan (see Attachment 1g). As described below under "Light Rail Transit Line", the City Manager is proposing to omit some of the previously-proposed modifications to this map.

DISCUSSION:

A discussion of the City Manager's open space proposal is provided below followed by a discussion of other proposed changes to the Mission Valley Community Plan. Community plan graphics to be modified are contained in Attachment 1. No changes to the community plan text are proposed.

Sites A through E include steep hillside areas and most also include flatter areas adjacent to Hotel Circle South or Camino del Rio South. The sites are designated Office or Commercial-Recreation, Commercial-Office and Residential/Office Mix by the Mission Valley Community Plan and are zoned R1-40000. The sites are also subject to the Hillside Review Overlay Zone in whole or part. Attachment 1a illustrates the location of Sites A through E and Attachment 3 contains a brief description of each site.

The City Manager does not believe that it is appropriate to designate Sites A through E to open space in their entirety. The flatter portions of the sites are developable similar to adjacent areas subject to the provisions of the Mission Valley Planned District Ordinance and Development Intensity District Ordinance. In evaluating what portion of Sites A through E to recommend for open space designation, the Manager relied on the Mission Valley Community Plan. Page 107 of the community plan calls for all southern slope areas above the 150-foot contour level to be designated open space and restricts locating development above this level (Attachment 4). Thus, the City Manager is recommending that only those portions of Sites A through E above the 150-foot contour level be designated open space. This proposal also involves an amendment to the Progress Guide and General Plan to redesignate the slope areas to open space. If approved, the General Plan Amendment would become effective following the next regularly-scheduled omnibus hearing.

The entire southern border of Mission Valley forms a continuous band of open space. The City Manager believes that any open space designation applied to Sites A through E should be applied in a similar manner along the entire southern hillside area of Mission Valley. Because of this, the Manager is also proposing to designate remaining southern slope areas above the 150-foot contour level to open space (Attachment 1a). These areas are currently designated Office or Commercial-Recreation, Commercial-Recreation, Commercial-Office and Residential/Office Mix by the Mission Valley Community Plan. Zoning of these areas includes MV-CO-CV, MV-CV, and MV-CO per the Mission Valley Planned District Ordinance. These areas are also located within the Hillside Review Overlay Zone with the exception of two small areas. These two remaining areas are not included in this open space proposal because they are permitted limited development under the provisions of the Mission Valley Planned District Ordinance and Development Intensity District Ordinance.

No rezones are proposed as part of the City Manager's open space recommendation. Sites A through E are currently zoned R1-40000 which permits limited residential development. Rezones to permit development on the flatter portions of Sites A through E could be

ered on a case-by-case basis if proposed by the property owner. However, any development of these areas would be subject to the trip provisions of the Mission Valley Development Intensity District and Planned District Ordinance which would trigger a special permit if over a nominal threshold. In addition, depending on what portion of the site would be impacted by development, a Hillside Review Permit may also be required. Development on the remaining areas above the 150-foot contour level is already severely restricted by the Mission Valley Community Plan, Planned District Ordinance and Development Intensity District Ordinance. Thus, no rezones are considered necessary at this time.

Boundary Adjustments

This amendment to the Mission Valley Community Plan Land Use Map would correct the community boundary line on the southern and eastern sides of Mission Valley to be consistent with adjacent communities and the official Mission Valley boundary line. In addition, the multiple use designation boundary lines would be corrected at two locations on the Mission Valley Community Plan Land Use Map (Attachment 1a).

Light Rail Transit (LRT) Line

Metropolitan Transit Development Board (MTDB) staff has requested that the adopted Mission Valley West Light Rail Transit (LRT) line be illustrated on the Mission Valley Community Plan Land Use Map as well as on Figure 17 of the Plan. MTDB staff believes that illustration of the LRT line on the Land Use Map, together with existing and proposed roads, would present a comprehensive picture of future transportation facilities in Mission Valley. The City Manager concurs with this request and the revised figure is illustrated on Attachment 1a.

MTDB staff also requested that the LRT alignment previously illustrated on Figure 17 of the community plan be updated to illustrate the adopted alignment (Attachment 1g). In addition, MTDB staff proposed revisions to the Intra-Valley Shuttle Bus Route shown on Figure 17. Planning staff originally concurred with these requests and the Planning Commission approved these changes. However, a Mission Valley property owner subsequently questioned the modifications to the Intra-Valley Shuttle Bus Route shown on Figure 17. Upon further review, it was determined that changes to the Intra-Valley Shuttle Bus Route had not been approved by the MTD Board. Rather, the bus route changes were a prediction by MTDB staff of what is likely to occur. Because of this, the City Manager is recommending that the shuttle bus route previously included on Figure 17 of the community plan be retained. The LRT line would be revised to illustrate the adopted alignment. The proposed Figure 17 is shown on

002509
Attachment 1g. Attachment 2 illustrates the previously-proposed
se 17 approved by the Planning Commission.

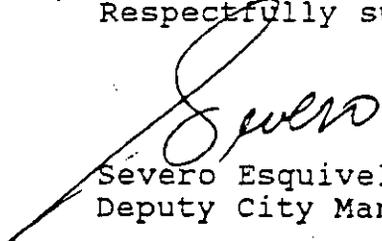
Specific Plan/Multiple Use Maps

This amendment involves eliminating the specific plan maps from the Mission Valley Community Plan and amending the Potential Multiple Use Areas Map to clearly illustrate the specific plan boundaries. Figures 6 through 9 of the Mission Valley Community Plan illustrate the First San Diego River Improvement Project (FSDRIP), Northside, Atlas and Levi-Cushman Specific Plan areas. These specific plan maps were added for information but changes to the land uses within specific plans do not necessarily require community plan amendments. Therefore, this amendment is proposed to eliminate the potential confusion on the need for a community plan amendment with land use changes in specific plans. The mixed use land use designation for the specific plans remain. The Potential Multiple Use Areas map (Figure 10) is being amended to show the location of each specific plan within Mission Valley and will refer to the individual specific plans for more information (Attachments 1b through 1f). The map will be renamed the Specific Plan/Multiple Use Areas map.

ALTERNATIVES:

1. Designate the five, R1-40000-zoned sites (A through E) to open space in their entirety. Do not redesignate other hillside areas of Mission Valley to open space. Approve other proposed amendments pertaining to boundary adjustments, the LRT line and the Specific Plan/Multiple Use maps as described above.
2. Designate the remaining southern hillside areas within the Hillside Review Overlay Zone to open space in addition to areas above the 150-foot contour level. Although these areas are not allocated development intensity by the applicable ordinances, limited encroachments into the Hillside Review Overlay Zone are currently permitted on severely constrained sites. Approve the proposed amendments pertaining to boundary adjustments, the LRT line and the Specific Plan/Multiple Use maps as described above.

Respectfully submitted,


Severo Esquivel
Deputy City Manager

ESQUIVEL:MLB:WRIGHT:533-3682:avl

002510

Attach 8
A. 7

Site A

Size: 5.14 acres (approx.)
 Location: South of Hotel Circle South just east of the Taylor Street overpass
 Parcel Nos.: 443-040-29, -30 (por.), -31, -32, -33
 Ownership: Vincent & Gladys Kobets, Animal Clinic, Pacer Coast Development Corp., John Shattuck, Jeffrey Binter
 Use: Two single-family dwellings, vacant hillsides and flatter areas
 Community Plan
 Designation: Office or Commercial-Recreation
 Zone: R1-40000, some Hillside Review Overlay Zone

Site B

Size: 0.45 acre
 Location: West of Texas Street, south of Camino del Rio South
 Parcel Nos.: 438-140-14
 Ownership: Harold & Helen Sadleir
 Use: Vacant hillside
 Community Plan
 Designation: Commercial-Office
 Zone: R1-40000/Hillside Review Overlay Zone

Site C

Size: 11.54 acres
 Location: South of Camino del Rio South, east of I-805
 Parcel Nos.: 439-080-19 and 439-040-32
 Ownership: Mission Valley 34th Street, City of San Diego
 Use: Vacant hillsides with flatter drainage area
 Community Plan
 Designation: Commercial-Office, Residential/Office Mix
 Zone: R1-40000, some Hillside Review Overlay Zone

Attach 8. P. 8

Site D

Size: 5.81 acres (approx.)
 Location: South of Camino del Rio South, west of I-15
 Parcel Nos.: 439-520-20 and 439-480-24 (por.)
 Ownership: Phoenix Mutual Life Insurance, Raymond and
 Rebecca Willenberg
 Use: Vacant hillside
 Community Plan
 Designation: Commercial-Office
 Zone: R1-40000/Hillside Review Overlay Zone

(X)
 Pacific Coast
 lot

Site E

Size: 12.72 acres
 Location: South side of Camino del Rio South, east of
 Fairmount Avenue
 Parcel Nos.: 461-350-03, -04, -06
 Ownership: City of San Diego, National University
 Use: National University parking lots and
 vacant hillsides (CUP in process for a church)
 Community Plan
 Designation: Commercial-Office
 Zone: R1-40000, some Hillside Review Overlay Zone

- (B) For the purposes of this Section 143.0142(a)(4), the development area shall include Zone 1 brush management pursuant to the Landscape Regulations in Chapter 14, Article 2, Division 4.
- (C) Up to an additional 15 percent of *encroachment* onto such *steep hillsides* is permitted for the following:
- (i) Major public roads and collector streets identified in the Circulation Element of an applicable *land use plan*;
 - (ii) Public utility systems;
 - (iii) In the North City Local Coastal Program Land Use Plan areas only: Local public streets or private roads and driveways which are necessary for access to the more developable portions of a site containing slopes of less than 25 percent grade, provided no less environmentally damaging alternative exists. The determination of whether or not a proposed road or driveway qualifies for an exemption, in whole or in part, shall be made by the City Manager based upon an analysis of the project site.
- (D) For the purposes of Section 143.0142, *encroachment* shall be defined as any area of 25 percent or greater slope in which the natural landform is altered by grading, is rendered incapable of supporting vegetation due to the displacement required for the building, accessory structures, or paving, or is cleared of vegetation (including Zone 1 brush management).
- (E) In the approval of any Coastal Development Permit for a *subdivision*, and any other division of land, including lot splits, no *encroachment* into *steep hillsides* containing *sensitive biological resources*, or mapped as Viewshed or Geologic Hazard on Map C-720 shall be permitted, and the decision maker shall require a minimum 30 foot setback for Zone 1 brush management for *coastal development* from such *steep hillsides*.
- (b) All development occurring in steep hillsides shall comply with the design standards identified in the Steep Hillside Guidelines in the Land Development Manual for the type of development proposed. Conflict
- (c) Newly created slopes shall not exceed the slope gradient permitted in Section 142.0133.
- (d) Disturbed portions of the site in 25 percent (4 horizontal feet to 1 vertical foot) or greater slopes shall be revegetated or restored in accordance with Chapter 14, Article 2, Division 4 (Landscape Regulations).

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: July 25, 2007 REPORT NO.: 07-122
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Development Services Department
SUBJECT: Pacific Coast Office Building PTS Project Number 54384
COUNCIL DISTRICT(S): Six
STAFF CONTACT: Patrick Hooper, (619) 557-7992 or: phooper@sandiego.gov

REQUESTED ACTION:

This action is the appeal of the environmental document, Mitigated Negative Declaration No. 54384, prepared for a 10,000 square-foot office building located at 3517 Camino del Rio South in the Mission Valley Community Plan area.

STAFF RECOMMENDATION:

DENY the appeal and **UPHOLD** the Environmental Determination (Mitigated Negative Declaration No. 54384).

EXECUTIVE SUMMARY:

On September 26, 2006, the City Council voted 7-0-0 with Councilmember Maienschein absent) to approve a prior appeal of Mitigated Negative Declaration No. 54384 and remanded the issue back to the Planning Commission to reconsider the project.

As a part of the motion to approve the appeal, the City Council directed staff to "review alternatives that would reduce impacts" associated with the development. This direction was a result of public testimony wherein, it was discussed that previous project design alternatives had been submitted, reviewed and subsequently rejected by Development Services during the project review phase of the entitlement process. The Council felt that the public should be made aware of those project alternatives and have had the opportunity to comment on them. The Council therefore instructed staff to include an alternatives analysis and mandated that the revised document be recirculated for public review.

The MND was revised and recirculated pursuant to the Council direction. Various project designs were summarized along with the staff determinations that precluded these designs from further consideration. Some of the designs lessen certain impacts such as visual affect, building scale, brush management and grading. However, these resulted in increased impacts on the hillside including a higher degree of non-compliance with the Mission Valley Planned District Ordinance and the Mission Valley Community Plan. On May 17, 2007, the project, and the revised Mitigated Negative Declaration were reconsidered by the Planning Commission. The Commission unanimously voted to certify the environmental document and approve the project. On May 27, 2007, the environmental document was again appealed to the City Council.

The appeal asserts that the alternative designs the Council requested should not have included previous project designs already reviewed by the staff but rather, new design alternatives that further reduce the project's environmental impacts. This was not the staff interpretation of the motion. The environmental document that is the subject of this appeal is a Mitigated Negative Declaration. This type of environmental document does not typically include an analysis of project alternatives however; the staff revised the document to include an array of project designs

that covered the basic design and siting options available for the property. Each of the previous designs offered potential reductions in certain impacts while at the same time created additional impacts that were considered to be of greater significance. Staff was able to conclude that the proposed design was preferable to the alternatives in that the overall project provided the least potential impacts to the site and all of the impacts identified could be mitigated to a level below significant. Additional appeal issues contend factual error, new information and that the findings cannot be supported. These issues are discussed in the Report to City Council.

FISCAL CONSIDERATIONS:

All costs associated with the processing of this appeal are paid by the applicant.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

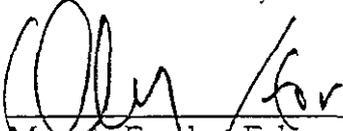
On June 15, 2006, the Planning Commission denied an appeal of a Hearing Officer decision, certified Mitigated Negative Declaration (MND) No. 54384 and approved the Pacific Coast Office Building project. On June 29, 2006, the environmental document was appealed to the City Council. On September 26, 2006, the City Council upheld the environmental appeal and remanded the issue back to the Planning Commission for reconsideration. On May 17, 2007, the Planning Commission reheard the item, certified the Mitigated Negative Declaration and approved the project.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

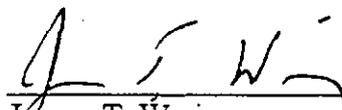
On May 17, 2007, the Planning Commission voted 5-0-0, with Commissioner Garcia absent to approve the project. On September 7, 2005, the Mission Valley Community Planning Organization voted 15-0-0 to recommend approval of the project. On January 3, 2006, the Normal Heights Planning Group voted 10-0-0 to recommend denial of the project. This appeal was filed by individuals representing: Friends of San Diego, the River Valley Preservation Project, University Heights Planning Committee and the San Diego Chapter of the Sierra Club.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Dr. Robert Pollack, Pacific Coast Office Building LLC, Applicant



Marcela Escobar-Eck
Director
Development Services Department



James T. Waring
Deputy Chief of Land Use and
Economic Development

ATTACHMENTS: Report to City Council

002515

Recorder/County Clerk
P.O. Box 1750, MS A33
1600 Pacific Hwy, Room 260
San Diego, CA 92101-2422

FROM: City of San Diego
Development Services Department
1222 First Avenue, MS 501
San Diego, CA 92101

Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

Project Number: 54384

State Clearinghouse Number: 2005091022

Permit Applicant: Dr. Robert Pollack, 9570 Grandview Drive, La Mesa CA 94941, (619) 582-9005.

Project Title: PACIFIC COAST OFFICE BUILDING

Project Location: Terminus of Scheidler Way, all within the Mission Valley Community Plan area of the City and County of San Diego.

Project Description: SITE DEVELOPMENT PERMIT to construct an approximately 9,845 square-foot, two-story office building on a vacant 4.94-acre parcel. The project is located just east of the terminus of Scheidler Way, in the Mission Valley Planned District within the Mission Valley Community Planning area (Lot 1 of Nagel Tract Unit No. 2 subdivision, Map 4737).

It is to advise that the City of San Diego, City Council on July 31, 2007 approved the above described project and made the following determinations:

The project in its approved form ___ will, X will not, have a significant effect on the environment.

___ An Environmental Impact Report was prepared for this project and certified pursuant to the provisions of CEQA.

X A Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

___ An addendum to Mitigated Negative Declaration was prepared for this project pursuant to the provisions of CEQA.

Record of project approval may be examined at the address above.

Mitigation measures X were, ___ were not, made a condition of the approval of the project.

(EIR only) Findings ___ were, ___ were not, made pursuant to CEQA Guidelines Section 15091.

(EIR only) A Statement of Overriding Considerations ___ was, ___ was not, adopted for this project.

I hereby certified that the final environmental report, including comments and responses, is available to the general public at the office of the Land Development Review Division, Fifth Floor, City Operations Building, 1222 First Avenue, San Diego, CA 92101.

Analyst: Shearer-Nguyen

Telephone: (619) 446-5369

Filed by:

Signature

Title

RECORDING REQUESTED BY
 CITY OF SAN DIEGO
 DEVELOPMENT SERVICES
 PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
 PERMIT INTAKE
 MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER: 42-3012

SITE DEVELOPMENT PERMIT (ESL) NO. 158004
MISSION VALLEY PLANNED DISTRICT
PACIFIC COAST OFFICE BUILDING - [MMRP]
PLANNING COMMISSION

This Site Development Permit No. 158004, is granted by the Hearing Officer of the City of San Diego to ROBERT B. POLLACK, MANAGING PARTNER AND LOLA POLLACK, PARTNER OF PACIFIC COAST ASSETS, LLC, Owner/Permittee, pursuant to San Diego Municipal Code [SDMC] Sections 126.0504, and 123.2101. The 4.94-acre site is located in the 5300 Block of Scheidler Way, south of Camino Del Rio South in the MV-CO Zone of the Mission Valley Planned District, and Mission Valley Community Plan. The project site is legally described as Lot 1 of Nagel Tract Unit No. 2 Subdivision, Map No. 4737.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to implement site grading and development of an approximately of a 10,000 sq. ft. office building, described and identified by size, dimension, quantity, type, and location on the approved exhibits, dated November 2, 2005, on file in the Development Services Department.

The project or facility shall include:

- a. A two-story, approximate 10,000 sq. ft. office building,
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking facilities;
- d. Associated improvements including grading and retaining walls; and
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community

plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Construction, grading or demolition must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder
3. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
4. This Permit is a covenant running with the subject property and shall be binding upon the Permittee and any successor or successors, and the interests of any successor shall be subject to each and every condition set out in this Permit and all referenced documents.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. In accordance with authorization granted to the City of San Diego from the United States Fish and Wildlife Service [USFWS] pursuant to Section 10(a) of the ESA and by the California Department of Fish and Game [CDFG] pursuant to Fish and Game Code section 2835 as part of the Multiple Species Conservation Program [MSCP], the City of San Diego through the issuance of this Permit hereby confers upon Permittee the status of Third Party Beneficiary as provided for in Section 17 of the City of San Diego Implementing Agreement [IA], executed on July 16, 1997, and on file in the Office of the City Clerk as Document No. OO-18394. Third Party Beneficiary status is conferred upon Permittee by the City: (1) to grant Permittee the legal

standing and legal right to utilize the take authorizations granted to the City pursuant to the MSCP within the context of those limitations imposed under this Permit and the IA, and (2) to assure Permittee that no existing mitigation obligation imposed by the City of San Diego pursuant to this Permit shall be altered in the future by the City of San Diego, USFWS, or CDFG, except in the limited circumstances described in Sections 9.6 and 9.7 of the IA. If mitigation lands are identified but not yet dedicated or preserved in perpetuity, maintenance and continued recognition of Third Party Beneficiary status by the City is contingent upon Permittee maintaining the biological values of any and all lands committed for mitigation pursuant to this Permit and of full satisfaction by Permittee of mitigation obligations required by this Permit, as described in accordance with Section 17.1D of the IA.

8. The Owner/Permittee shall secure all necessary building permits. The applicant is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.

9. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A," on file in the Development Services Department. No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

10. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

11. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program (MMRP). These MMRP conditions are incorporated into the permit by reference or authorization for the project.

12. As conditions of Site Development Permit No. 158004, the mitigation measures specified in the MMRP, and outlined in the MITIGATED NEGATIVE DECLARATION, PROJECT

NO. 54384, shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL MITIGATION REQUIREMENTS.

13. The Owner/Permittee shall comply with the Mitigation, Monitoring, and Reporting Program (MMRP) as specified in the MITIGATED NEGATIVE DECLARATION) PROJECT NO. 54384 satisfactory to the City Manager and City Engineer. Prior to issuance of the first grading permit, all conditions of the MMRP shall be adhered to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for the following issue areas:

Paleontological and Biological Resources, and Land Use/MSCP.

14. Prior to issuance of any construction permit, the applicant shall pay the Long Term Monitoring Fee in accordance with the Development Services Fee Schedule to cover the City's costs associated with implementation of permit compliance monitoring.

ENGINEERING REQUIREMENTS:

15. Prior to the issuance of a building permit the applicant shall obtain a bonded grading permit for the grading proposed for this project. All grading shall conform to requirements in accordance with the City of San Diego Municipal Code in a manner satisfactory to the City Engineer.

16. The drainage system proposed for this development and outside of the public right-of-way is private and subject to approval by the City Engineer.

17. Prior to the issuance of any construction permit, the Subdivider shall enter into a Maintenance Agreement for the ongoing permanent BMP maintenance.

18. Prior to the issuance of any construction permit, the Applicant shall incorporate any construction Best Management Practices necessary to comply with Chapter 14, Article 2, Division 1 (Grading Regulations) of the San Diego Municipal Code, into the construction plans or specifications.

19. Prior to the issuance of any construction permit the Applicant shall incorporate and show the type and location of all post-construction Best Management Practices (BMP's) on the final construction drawings, in accordance with the approved Water Quality Technical Report.

20. This project proposes to export 3,700 cubic yards of material from the project site. All export material shall be discharged into a legal disposal site. The approval of this project does not allow the processing and sale of the export material. All such activities require a separate Conditional Use Permit.

21. Prior to the issuance of any grading permit the applicant shall obtain letters of concurrence for the drainage to the parking lot to the northwest parking lot and adjacent parking lot.

LANDSCAPE REQUIREMENTS:

22. No change, modification, or alteration shall be made to the project unless appropriate application or amendment of this Permit shall have been granted by the City.
23. In the event that the Landscape Plan and the Site Plan conflict, the Site Plan shall be revised to be consistent with the Landscape Plan such that landscape areas are consistent with the Exhibit 'A' Landscape Development Plan.
24. Prior to issuance of any grading permits, complete landscape construction documents, including a Landscape Construction Plan, an Irrigation Construction Plan, and ~~Brush Management~~ Building Fire Protection Plan, shall be submitted to the Development Services Department for approval. The plans shall be in substantial conformance to Exhibit 'A', on file in the office of Development Services.
25. Prior to issuance of any construction permits for structures, complete landscape and irrigation construction documents consistent with the Landscape Standards (including planting and irrigation plans, details and specifications) shall be submitted to the City Manager for approval. The construction documents shall be in substantial conformance with Exhibit 'A', Landscape Development Plan, on file in the Office of Development Services.
26. If any required landscape (including existing or new plantings, hardscape, landscape features, etc.) indicated on the approved construction document plans is damaged or removed during demolition or construction, it shall be repaired and/or replaced in kind and equivalent size per the approved documents to the satisfaction of the City Manager within 30 days of damage or Certificate of Occupancy.
27. All required landscape shall be maintained in a disease, weed and litter free condition at all times. All required landscape shall be maintained on a permanent basis by the permittee or subsequent owner. Severe pruning or "topping" of trees is not permitted. The trees shall be maintained in a safe manner to allow each tree to grow to its mature height and spread.
28. Prior to issuance of any Certificate of Occupancy, it shall be the responsibility of the Permittee or subsequent Owner to install all required landscape and obtain all required landscape inspections. A No Fee Street Tree Permit, if applicable, shall be obtained for the installation, establishment and on-going maintenance of all street trees.
- ~~29. The Brush Management Program shall substantially conform to the Exhibit "A" and all requirements listed under Section 142.0412 of the City of San Diego Municipal Code. The permittee or subsequent owner must maintain a minimum Brush Management Zone One depth of 30 feet and a minimum Brush Management Zone Two depth of 40 feet at all times.~~
30. Prior to issuance of a construction permit, architectural plans must be submitted to City Staff which incorporate 1-hour Fire Rated Wall construction for all walls adjacent to areas of natural vegetation and Class "A" Roof construction, these plans must substantially conform to the approved Exhibit "A" on file with the Office of Development Services.

PLANNING/DESIGN REQUIREMENTS:

31. No fewer than 36 off-street automobile parking spaces, including 2 accessible spaces shall be permanently maintained on the property within the approximate location shown on the project's Exhibit "A". Additionally, a minimum of 2 motorcycle spaces, 2 bicycle spaces, lockers and shower facilities must be provided on the project site. Further, all on-site parking stalls and aisle widths shall be in compliance with requirements of the City's Land Development Code, and shall not be converted and/or utilized for any other purpose, unless otherwise authorized in writing by the City Manager.
32. This project shall comply with all current street lighting standards according to the City of San Diego Street Design Manual (Document No. 297376, filed November 25, 2002) and the amendment to Council Policy 200-18 approved by City Council on February 26, 2002 (Resolution R-296141) satisfactory to the City Engineer. Satisfying Council Policy 200-18 may require, but not be limited to, the removal/modification of existing and/or the installation of new/additional street light facilities (bulbs, fixtures, poles, etc.).
33. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as a condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.
34. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits (including, but not limited to, elevations and cross sections) or the maximum permitted building height of the underlying zone, whichever is lower, unless a deviation or variance to the height limit has been granted as a specific condition of this Permit.
35. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.
36. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.
37. All signs associated with this development shall be consistent with sign criteria established by Citywide sign regulations
38. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

39. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

40. All uses, except storage and loading, shall be conducted entirely within an enclosed building. Outdoor storage of merchandise, material and equipment is permitted in any required interior side or rear yard, provided the storage area is completely enclosed by walls, fences, or a combination thereof. Walls or fences shall be solid and not less than six feet in height and, provided further, that no merchandise, material or equipment stored not higher than any adjacent wall.

41. No mechanical equipment, tank, duct, elevator enclosure, cooling tower, mechanical ventilator, or air conditioner shall be erected, constructed, converted, established, altered, or enlarged on the roof of any building, unless all such equipment and appurtenances are contained within a completely enclosed, architecturally integrated structure whose top and sides may include grillwork, louvers, and latticework.

42. Prior to the issuance of building permits, construction documents shall fully illustrate compliance with the Citywide Storage Standards for Trash and Recyclable Materials (SDMC) to the satisfaction of the City Manager. All exterior storage enclosures for trash and recyclable materials shall be located in a manner that is convenient and accessible to all occupants of and service providers to the project, in substantial conformance with the conceptual site plan marked Exhibit "A," on file in the Development Services Department.

WASTEWATER REQUIREMENTS:

43. Prior to issuance of any permit, the developer, owner and/or permittee shall provide improvement drawings (D-sheets) for the new off-site public sewer facilities in Scheidler Way according to all the requirements of the City of San Diego current Sewer Design Guide and to the satisfaction of Metropolitan Wastewater Department Director. These plans require approval of the wastewater section plan-check group.

44. All on-site sewer facilities are to be private and must be labeled as such.

45. Prior to the issuance of any building permit, the developer, owner and/or permittee shall assure, by permit and bond, the construction of necessary off-site sewer facilities based on approved D-sheet drawings, in a manner satisfactory to the Metropolitan Wastewater Department Director and the City Engineer.

46. Prior to the issuance of occupancy, the developer, owner and/or shall have already constructed necessary off-site sewer facilities based on approved D-sheet drawings, in a manner satisfactory to the Metropolitan Wastewater Department Director and the City Engineer.

47. All proposed public sewer facilities are to be designed and constructed in accordance with established criteria in the most current City of San Diego Sewer Design Guide.

48. All proposed private sewer facilities located within a single lot are to be designed to meet the requirements of the California Uniform Plumbing Code and will be reviewed as part of the building permit plan check. [Add if applicable.]

WATER REQUIREMENTS:

49. Prior to the issuance of the first building permit, the Owner/Permittee shall assure, by permit and bond, the design and construction of a 12-inch public water facility within an improved Scheidler Way, from Camino del Rio South to the southerly end of Scheidler Way, in a manner satisfactory to the Water Department Director and the City Engineer.
50. Prior to the issuance of any building permits, the Owner/Permittee shall assure, by permit and bond, the design and construction of new water service(s), outside of any vehicular use area, in a manner satisfactory to the Water Department Director and the City Engineer.
51. Prior to the issuance of any building permits, the Owner/Permittee shall apply for plumbing permit(s) for the installation of appropriate private back flow prevention device(s) on all proposed water services to the development, including all domestic, fire and irrigation services, in a manner satisfactory to the Cross Connection Control Group, the Water Department Director and the City Engineer.
52. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall install fire hydrants at locations satisfactory to the Fire Department, the Water Department Director and the City Engineer. Fire hydrants shall be located a minimum of five feet from any structures above, at or below grade. All on-site fire hydrants shall be private.
53. Prior to the issuance of any certificates of occupancy, all public water facilities necessary to serve this development shall be complete and operational in a manner satisfactory to the Water Department Director and the City Engineer.
54. Prior to the issuance of any certificates of occupancy, the Owner/Permittee shall design and construct new public water facilities in acceptable alignments and rights-of-way.
55. It is the sole responsibility of the Owner/Permittee for any damage caused to or by public water facilities, adjacent to the project site, due to the construction activities associated with this development. In the event any such facility loses integrity then, prior to the issuance of any certificates of occupancy, the Owner/Permittee shall reconstruct any damaged public water facility in a manner satisfactory to the Water Department Director and the City Engineer.
56. The Owner/Permittee agrees to design and construct all proposed public water facilities in accordance with established criteria in the most current edition of the City of San Diego Water Facility Design Guidelines and City regulations, standards and practices pertaining thereto. Public water facilities and associated easements, as shown on approved Exhibit "A", will require modification based on standards at final engineering.

PLANNING COMMISSION CONDITIONS:

57. The structure shall be designed and constructed to be a Leadership in Energy and Environmental Design (LEED) Certified building and shall include a vegetated roof.

INFORMATION ONLY:

- a. Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.
- b. Development Impact Fees (DIF's) are required for this project and are due at the time of building permit issuance. This fee is based upon the determination that the project will result in an increase in square footage over what currently exists on the site (office building).
- c. Housing Trust Fund (HTF) impact fees on nonresidential development are required for this project and are due at the time of building permit issuance. These fees are based the square footage of the office use. Pursuant to Ordinance No. 0-17454, the HTF impact fees are dedicated to the provision of affordable housing and are administered by the San Diego Housing Commission.

APPROVED by the Hearing Officer of the City of San Diego on April 19, 2006, by Resolution No. HO-5332.

APPROVED, on appeal, by the Planning Commission of the City of San Diego on June 15, 2006, by Resolution No. 4063-PC.

APPROVED, on remand, by the Planning Commission of the City of San Diego on May 17, 2007, by Resolution No. (DRAFT)-PC.

ALL-PURPOSE CERTIFICATE

Type/PTS Approval Number of Document SDP / 54384
Date of Approval April 19, 2006 / June 15, 2006

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Anne B. Jarque, Development Project Manager

On _____ e me, _____, (Notary public), personally appeared **Anne B. Jarque**, Development Project Manager of the Development Services Department of the City of San Diego, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature _____
Name of Notary

ALL-PURPOSE CERTIFICATE

OWNER(S)/PERMITTEE(S) SIGNATURE/NOTARIZATION:

THE UNDERSIGNED OWNER(S)/PERMITTEE(S), BY EXECUTION THEREOF, AGREES TO EACH AND EVERY CONDITION OF THIS PERMIT AND PROMISES TO PERFORM EACH AND EVERY OBLIGATION OF OWNER(S)/PERMITTEE(S) THEREUNDER.

Signed _____ Signed _____
Typed Name Typed Name

STATE OF _____
COUNTY OF _____

On _____ before me, _____ (Name of Notary Public) personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

Item 8

PLANNING COMMISSION OF THE CITY OF SAN DIEGO
MINUTES OF REGULAR SCHEDULED MEETING OF
MAY 17, 2007
IN CITY COUNCIL CHAMBERS - 12TH FLOOR
CITY ADMINISTRATION BUILDING

CHRONOLOGY OF THE MEETING:

Chairperson Schultz called the meeting to order at 9:12 a.m. Chairperson Schultz adjourned the meeting at 2:39 p.m.

ATTENDANCE DURING THE MEETING:

Chairperson Barry Schultz-present
Vice-Chairperson Kathleen Garcia- not present
Commissioner Robert Griswold- present
Commissioner Gil Ontai-present
Commissioner Dennis Otsuji- present
Commissioner Eric Naslund- Not present
Vacancy
Cecilia Williams, Planning Department – present
Mike Westlake, Development Services-present
Andrea Dixon, City Attorney- present
Sabrina Curtin, Recorder-present

002530

June 4, 2007 the Large Retail or Big Box Ordinance will be at City Council for the second reading and Condominium Conversions was continued at the Coastal Commission hearing.

ITEM -5: **COMMISSION COMMENT:**
None

ITEM - 6: **APPROVAL OF THE MINUTES FOR MARCH 15, 2007:**

COMMISSION ACTION:

MOTION BY COMMISSIONER GRISWOLD TO APPROVE THE MINUTES FOR MARCH 29, 2007 WITH THE CORRECTIONS:

ITEM NO. 7 NEEDS TO HAVE THE WORD "WITH" INCLUDED, TO READ AS - "WORK WITH THE NEIGHBORS"

Second by Commissioner Ontai. Passed by a 4-0-3 vote with Commissioner Otsuji recusing, Vice-Chairperson Garcia not present and one vacancy.

ITEM-7: *Continued from March 26, 2007:*

GASLAMP QUARTER PLANNED DISTRICT ORDINANCE AND DESIGN GUIDELINES REVISIONS

City Council District: 2; Plan Area: Centre City

COMMISSION ACTION:

THIS ITEM WAS WITHDRAWN FROM THE DOCKET BY STAFF TO ALLOW THE CITY ATTORNEY MORE TIME TO REVIEW ALL DOCUMENTS.

ITEM-8: *City Council remanded back to Planning Commission on September 26, 2006:*

*** PACIFIC COAST OFFICE BUILDING - PROJECT NO. 54384**

City Council District: 7; Plan Area: Mission Valley

Patrick Hooper presented Report No. PC-06-194 to the Planning Commission.

Speaker slip submitted in favor by Robert Vacchci, Kathy Barnes,
Speaker slips submitted in oppose by Randy Berkman, Ellen Shivle Lynn Muhuland, and Jim Baross.

Public testimony was closed.

002531

COMMISSION ACTION:

MOTION BY COMMISSIONER NASLUND TO CERTIFY MITIGATED NEGATIVE DECLARATION NO. 54384, AND ADOPT MITIGATED, MONITORING REPORTING PROGRAM.

APPROVE THE SITE DEVELOPMENT PERMIT NO. 158004 AS PRESENTED IN REPORT NO. PC-07-092 AND THE MAY10, 2007 MEMORANDUM.

WITH ADDITIONAL CONDITION: ALL THE GREEN MEASURES PRESENTED BY THE APPLICANT BE A CONDITION OF APPROVAL AND THE APPLICANT MUST PROVIDE A GREEN VEGETATED ROOF. Second by Commissioner Ontai. Passed by 5-0-2 with Vice-Chairperson Garcia not present and one vacancy.

ITEM-9: CCDC WORKSHOP:

PROPOSED AMENDMENTS TO DOWNTOWN COMMUNITY PLAN, REDEVELOPMENT PLAN FOR THE CENTRE CITY REDEVELOPMENT PROJECT, CENTRE CITY PLANNED DISTRICT ORDINANCE, MARINA PLANNED DISTRICT ORDINANCE, AND MITIGATION, MONITORING AND REPORTING PROGRAM FOR THE 2006 FINAL ENVIRONMENTAL IMPACT REPORT
City Council District: 2; Plan Area: Centre City

Brad Ritcher from Centre City Development Corporation presented PC-07-100 to the Planning Commission.

No one present to speak.

The purpose of the workshop was to offer the Planning Commission an opportunity to receive information on the proposed amendments and to provide input to staff prior to the public hearing that will be presented to the commission on June 28 and to City Council in July.

BREAK FOR LUNCH - 12:56 PM to 1:35 PM

COMMISSION ACTION:

002533

WERTZ MCDADE WALLACE MOOT & BROWER

339
12/04

LAWYERS

A PROFESSIONAL CORPORATION

Lynn M. Beekman	John S. Moot	Of Counsel
Sandra J. Brower	Elaine A. Rogers	
John P. Fiske	John H. Stephens	Rebecca Michael
Richard T. Forsyth	Bruce R. Wallace	Evan S. Ravich
Sarah H. Lanham	John Ross Wertz	
Joseph C. Lavelle	Pamela Lawton Wilson	
Julie A. Lewin		Administrator
J. Michael McDade		Fred Mahady, Jr.

September 24, 2007

VIA HAND DELIVERY

Council President Scott Peters
and Members of the City Council
City of San Diego
202 C Street, 10th Floor
San Diego, CA 92101

Re: Pacific Coast Office Building
Hearing Date: September 25, 2007. Agenda No. 334

Dear Council President Peters and Members of the City Council:

I am writing on behalf of my client, Dr. Robert Pollack, the applicant for the proposed Pacific Coast Office Building (the "Project"), which is before your Council for the third time in one year. The purpose of this letter is to refresh your Council of the status of this Project, to respond to and rebut a memorandum prepared by the City Attorney's office at the request of Councilmember Donna Frye, and to strongly urge you to reject the appeal and certify the Mitigated Negative Declaration ("MND") which is before you. As you know, project entitlements have already been approved by the Planning Commission, and are not subject to your Council's review. If your Council decides that you will not certify any project which includes development above the 150 foot contour line on the property, we would ask you to state that clearly in the record so that the applicant may then pursue his legal rights without further delay.

Relevant History

The Project proposes the construction of an owner-occupied 9,845 square foot two-story office building on approximately five acres located on the south slope of Mission Valley at the terminus of Scheidler Way. The Project site is substantially constrained both by topography, and by prior City Council action. In 1977, the City Council approved a Planned Commercial Development ("PCD") for a similar building, and re-zoned it from "low density residential" to "commercial office." As conditions to the PCD, the developer was required by the City to dedicate approximately 78% of the total parcel area as permanent open space, and to grant a portion of the property for a street. In 1982, the City accepted the dedication of these properties,

945 Fourth Avenue, San Diego, California 92101

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Council President Scott Peters
and Members of the City Council
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leaving only the lower 1.08 acre portion for commercial development. The original project was never built because the developer was killed in an airplane accident, and that entitlement expired. Despite that, the City benefited by obtaining the open space and street easements, and continues to enjoy them today.

In 2004, the applicant purchased the property, then submitted the Project for discretionary review. It has been in process for almost three years. The remaining commercially zoned portion of the property is on a hillside, and is a challenging site to develop. The site submitted as the Project was chosen from a number of alternatives and is environmentally superior to any other considered. The site would be denied all development potential if this Project was denied.

Environmental Analysis and Hearing History

After preparing an Initial Study, City environmental staff determined that a MND was the appropriate environmental document for this project. It directed that that document address all identified potentially significant, but mitigable impacts. These were identified as land use/MSCP, biological resources, paleontological resources, geologic conditions, human health/public safety, historical resources, and water quality. The document was prepared on that basis.

The Project has an intensive hearing history. It was determined to be a Process 3 matter, to be determined by a hearing officer with appeal rights to the Planning Commission. The MND, but not the entitlements, could also be appealed to the City Council.

The matter was twice heard by the hearing officer. On April 19, 2006, the hearing officer approved the Site Development Permit and certified the MND.

The Project was appealed to the Planning Commission by opponents, and on June 15, 2006, the Planning Commission denied the appeal and upheld the hearing officer's decision to approve.

On September 26, 2006, an environmental appeal to the Project was heard by the City Council. With the applicant's agreement, the Council remanded the Project back to the Planning Commission, with instructions to modify the MND to include project alternatives that had been previously discussed, but not included within the MND, for public input. The revised MND, including the requested alternatives analysis, was then re-circulated for public comment.

On May 15, 2007, the Planning Commission unanimously approved the Project, and again certified the MND. Project opponents once again appealed the certification of the MND to your Council.

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It was clear from the comments of the Planning Commissioners that they had no questions about the appropriateness of approving this Project and certifying the MND. Commission Chairman Barry Schultz stated, "I am not persuaded by any testimony that would suggest that there can be no development on this piece of property because of the open space designation." Further, he said, "What persuades me in this case is there is no basis for denying development on the property." Commissioner Naslund stated, "Like Chairman Schultz, I am not persuaded that a no development option is viable here or even warranted." Commissioner Ontai stated, "It is clear to me that this is a scrap piece of land left over from a previous decision by the Council in 1992, that is permissible under the PDO and is permissible by the Community Plan. The language is there and the planning group approved it. I think this is a rare and unique case."

In City Council testimony on July 31, 2007, Councilmember Frye expressed dissatisfaction with the alternatives study incorporated into the current MND.

The Planning Commission had a different view: Chairman Schultz stated, "I think the job we were asked to do and staff was asked to do by Council has been accomplished. The alternatives were made public. The public has had an opportunity to analyze, then comment on them. I think the analysis that the staff put forward on the issues is sufficient and addresses the issues that had been raised by both the public as well as the Council." Commissioner Griswold added, "I think we have fully vetted this issue and feel we have looked at the alternatives. Staff has done an excellent job looking at all the alternatives and based on what has been presented I will gladly support the motion to approve the project and the MND."

The Commissioners' comments were consistent with the law in this area which provides, "An EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There was no iron clad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." CEQA Guidelines, Section 1526.6(a); Public Resources Code 21100(b)(4).

On July 31, 2007, your Council heard the matter once again. Councilmember Frye made a motion to grant the appeal and deny certification of the MND, arguing that the Project required an Environmental Impact Report ("EIR"). She was unable to articulate findings of fact as required by law to support this motion. At that time, the Council voted to continue the item until September 25, to allow her to develop findings.

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Rebuttal of City Attorney Memorandum

During the three years of environmental study of this Project, at least four separate Deputy City Attorneys have evaluated the appropriateness of an MND instead of an EIR on this Project, and in all prior hearings have endorsed an MND as the appropriate level of environmental review, and have opined that this MND is legally sustainable. Illustrative of that analysis by the City Attorney's office is the following quote from Deputy City Attorney David Miller at the City Council hearing on September 26, 2006:

"I think the fundamental issue here is the assumption that open space is not developable based on the open space designation in the Community Plan whereas the opposite is actually true. If you read through the open space section in the Community Plan they do anticipate development in open space in several areas. The purpose is to try and protect the open space, but in sections in the open space section there is specific language talking about it. It is apparent if they develop it must be in a manner comparable with hillside ecology and in the language that says development oriented toward the valley and accessed by roads from the valley should not extend above the 150' contour line. It does not say *shall not extend* [emphasis added]. It is permissive in the sense it allows it, and subsequent to that they had developed regulations that talk about developing the hillside which basically allow, as staff has said smaller scale development above the 150' contour line. So if you look at all of those items collectively you recognize the open space designation and development are not mutually exclusive in the Mission Valley Community Plan."

In the City Attorney memorandum dated September 18, 2007, without any explanation or rationale, the City Attorney's office has reversed its position 180°, and is now an advocate for the appellants. This reversal is disturbing, and seriously calls into question the validity of the current memorandum. In it, the City Attorney purports to set forth substantial evidence to support the preparation of an EIR for the Pacific Coast Office Building Project.

The memorandum is incomplete, misleading, and fails totally to achieve its purpose. The initial error in the City Attorney's memorandum is a misunderstanding of the actions of your Council on July 31, 2007. The City Attorney represents that action to be a direction from the City Council to Development Services to prepare an EIR in this project. In truth and in fact, that action was not taken. The Council was advised they had nothing in the record to sustain findings necessary to support that action. Instead, the action of the Council was to continue the matter to allow the proponent of the motion to attempt to develop sustainable findings.

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The memorandum correctly states that "An agency must determine whether the project may have significant effect based on substantial evidence 'in light of the whole record'... Under this standard, the agency must determine whether substantial evidence in the record before it supports the 'fair argument' that the project may have a significant effect on the environment." However, it incorrectly argues that there is "substantial evidence" in the record that would mandate an EIR. To the contrary, the entire three year environmental review of this Project has developed significant substantial evidence, after study of all identified potentially significant impacts, showing that all impacts are totally mitigated by conditions imposed on this Project. There is no significant evidence presented either in the record of the Project or in the City Attorney's memorandum that would call into question this determination.

The memorandum correctly quotes that "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts," as required by CEQA Guidelines Sections 15384, 15064(f)(5). However, the memorandum ignores the rest of the language that the legislature added to CEQA in 1993 to define substantial evidence for the purposes of supporting a "fair argument" triggering the need for an EIR. That missing language clearly specifies "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to or are not caused by, physical impacts from the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by the facts." Public Resources Code Section 21082.2(c); CEQA Guidelines, Section 15384.

The relevant statutes and regulations provide further, "The existence of public controversy over environmental effects of a project shall not require preparation of an Environmental Impact Report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment." Public Resources Code Section 21082.2(b); CEQA Guidelines, Section 15064(f)(4).

In Paragraph III of the memorandum, the City Attorney weakly attempts to identify significant unmitigated impacts in the areas of aesthetics, building incompatibility and loss of steep slopes. Once again, no facts are presented to support this pure opinion. Additionally, the City Attorney quotes liberally from the Mission Valley Community Plan and the Mission Valley Planned District Ordinance suggesting that the PDO prohibits development over the 150 foot contour line, but conveniently, and one would hope unintentionally, omits the provisions of the PDO that specifically incorporated and established a public process by which to review and analyze development proposals on properties with special circumstances, and allows exceptions under unusual or hardship conditions. As staff has set out repeatedly in all of its analysis over three years, this Project is exactly the type of special circumstances that the exception was developed to deal with. Because of prior actions of the City Council, the commercially zoned

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portion of this property cannot be developed without intruding above the 150 foot contour line. If that intrusion is not made, a strong argument can be made that no development is possible and therefore a governmental taking has occurred.

Likewise, in the same section, the City Attorney claims the Project is located in a highly visible area and would strongly contrast with surrounding development or natural topography through excessive height and bulk. This is an unsubstantiated opinion and is totally rebutted by numerous exhibits in the record which show that the surrounding area is primarily developed by large commercial buildings which for the most part screen this parcel from public view.

The memorandum, once again with opinion, not facts, attempts to maintain that the ADT allowance for this Project is not supported by proper calculation by virtue of the fact that the majority of the Project is located on steep hillsides. This ignores the following facts in the record. First of all, the City maintains significant determination thresholds, and in evaluating this Project found that the Project does not exceed those thresholds, therefore obviating the necessity for further study. Secondly, if the appellants' argument with regard to the calculation of ADTs were strictly applied, that alone would prohibit development on the property and would amount to a taking.

In a similar vein, it is speciously argued that the Project is improperly relying on fireproof building materials and a sprinkler system in order to address fire safety, rather than carving out two brush management zones around the perimeter of the property. This is not persuasive for several reasons. First, the Fire Chief, after study, has deemed the alternative fire management requirements to be adequate. Second, insisting on the brush management zones in this area would take away any possible developable pad and would result in a taking. Even if that were not true, it would require encroaching into dedicated open space and doing extensive clearing, which is completely opposite from what the appellants have said that they desire.

Conclusion.

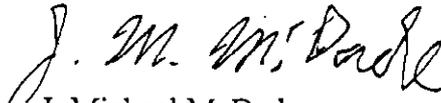
In conclusion, the memorandum of the City Attorney is legally insufficient, and will place the City in extreme jeopardy with regard to this Project should it be relied on in any way as establishing substantial evidence for requiring an EIR on this Project.

Further, it is crystal clear from a review of the record of this Project, that it is supported by full and complete environmental analysis, and that no significant impacts have been identified that are not mitigated by project conditions. It is time for your Council to deny the appeal that has kept this Project a prisoner for over a year. CEQA is designed to inform the public and decision-makers of all potential impacts which might result from approval of a project. It was never designed to be a maze with no exit.

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Thank you for your consideration.

Very truly yours,



J. Michael McDade

cc: Nina M. Fain, City Attorney's Office
Elizabeth Maland, City Clerk
Robert J. Manis, Assistant Deputy Director, Development Services
Dr. Robert Pollack

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From: Clerk, City
Sent: Tuesday, November 27, 2007 8:29 AM
To: Atkins, Councilmember; Faucett, Aimee; Faulconer, Council Member Kevin; Frye, Donna; Hueso, Councilmember Ben; Lujan, Magdalena; Madaffer, Councilmember Jim; Maienschein, Councilmember; Peters, Councilmember Scott; Pickens, Sonia; Yepiz, Lauren; Young, Anthony
Subject: FW: City Council hearing for Pacific Coast Office Building Project on Dec 4, 2007

From: Robert Pollack [mailto:rpollack@cox.net]
Sent: Monday, November 26, 2007 4:36 PM
To: Frye, Donna; Peters, Councilmember Scott; Faulconer, Council Member Kevin; Atkins, Councilmember; Young, Anthony; Maienschein, Councilmember; Madaffer, Councilmember Jim; Hueso, Councilmember Ben; J. Michael McDade; Heumann, Karen; Hooper, Patrick; bmanis@sandiego.gov; Clerk, City
Subject: City Council hearing for Pacific Coast Office Building Project on Dec 4, 2007

Dear Councilmember Frye,

As you know, there was significant confusion regarding the intent and direction of City Council motion from last years Sept 26, 2006 hearing regarding the Pacific Coast Office Building project. The result was the expenditure of many hours of staff's time, Planning Commission's effort and applicant's money only to return to City Council a year later to discover the intent of the original motion was not understood. While the current motion regarding the appeal of the Pacific Coast Office Building project includes details of why an EIR should be required, it does not provide me, the applicant, clear direction of what should be revised or what would be acceptable from an environmental and CEQA perspective.

What makes our situation even more difficult is that the City Council is sitting in a quasi-judicial capacity while reviewing this appeal. As such I am unable to meet with you individually due to the prohibition on ex-parte communication. Instead the only opportunity I have to gain City Council insight and input into our project is during the City Council meeting itself. Without the opportunity to meet separately I cannot have the beneficial give-and-take discussion that would usually accompany a controversial project like this one. In addition, even DSD staff failed to understand the intent of last years City Council motion and was not able to effectively interface with your office to guide the project on remand. Without more clarification and direction this time I anticipate another year, or more, of wasted time, effort, and money only to find that we had once again misunderstood the intent of the City Council.

With that in mind I beg for clarification of City Council's direction for this project. By answering the following questions you can provide me with a clearer understanding of the City Council's desire and intent.

1) In the absence of available mitigation for development above the 150 foot contour, is the direction from City Council to prohibit any development above the 150 foot contour on this parcel?

2) If the City Council votes to uphold the appeal and require an EIR, is it the intention of City Council to have the currently proposed project evaluated through the EIR process or to have a completely different project proposed? If a different project is intended, can City Council please provide

some guidance as to what would be acceptable project parameters from an environmental perspective?

I request the answers be included either in the motion itself or discussed during the hearing, December 4th, 2007 so that they become a part of the administrative record.

Sincerely,

Robert Pollack, MD