

000677

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 105
11/20
3. DATE: October 26, 2007

TO: SAN DIEGO CITY COUNCIL

2. FROM (ORIGINATING DEPARTMENT):
SAN DIEGO CITY ATTORNEY

4. SUBJECT:

Set aside and vacate September 12, 2006 approvals related to the 301 University Project.

5. PRIMARY CONTACT (NAME, PHONE, & MAIL STA.)
GLENN SPITZER

6. SECONDARY CONTACT (NAME, PHONE, & MAIL STA.)
(619) 533-6294

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED
X

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					N/A
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIG. DEPT	<i>Kathryn Burton</i>	10/26/07	8	DEPUTY CHIEF	<i>[Signature]</i>	11/1/07
2	IBA			9	COO	<i>[Signature]</i>	10.31.07
3	EAS	<i>[Signature]</i>	10/29/07	10	CITY ATTORNEY	<i>Kathryn Burton</i>	10/26/07
4	DSD	<i>Robert [Signature]</i>	10/29/07	11	ORIG. DEPT		
5					DOCKET COORD: _____ COUNCIL LIAISON _____		
6				✓	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input checked="" type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION		
7					<input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 11/20/07		

11. PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

The California Superior Court ordered the City to set aside and vacate the following Resolutions adopted on September 12, 2006 related to the 301 University project: No. R-301900 certifying Mitigated Negative Declaration No. 11896; No. R-301902 approving Tentative Map No. 323359 and vacation of Public Right-of-Way No. 323355; No. R-301903 approving Site Development Permit No. 23948. This Resolution complies with the court order.

11a. STAFF RECOMMENDATION: Adopt the Resolution to set aside and vacate the approvals related to 301 University Project.

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 3
COMMUNITY AREA(S): HILLCREST
ENVIRONMENTAL IMPACT: NONE
HOUSING IMPACT: NONE
OTHER ISSUES: NONE

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO
TO SET ASIDE APPROVALS RELATED TO 301 UNIVERSITY PROJECT

WHEREAS, the City Council by Resolution No. R-301900, adopted on September 12, 2006, certified Mitigated Negative Declaration No. 11896, a copy of which is on file in the Development Services Department; and

WHEREAS, the City Council by Resolution No. R-301902, adopted on September 12, 2006, approved Tentative Map No. 323359 and vacation of Public Right-of-Way No. 323355; and

WHEREAS, the City Council by Resolution No. R-301903, adopted on September 12, 2006, approved Site Development Permit No. 23948; and

WHEREAS, the above referenced Resolutions relate to Project No. 11896, also known as the 301 University Project, a proposed 0.81 acre site mixed-use project with 10,304 square-feet of commercial area and 96 condominium units within a 12-story building with two levels of subterranean parking, located at 301 through 333 University Avenue, and legally described as Lots 1 through 6 and 30, 31, and 32, Block 2 of Map No. 628 within the Uptown Community Plan area, in the CN-1A and MR-800B zones; and

WHEREAS, Friends of San Diego, Inc. challenged the above-referenced approvals in an action styled *Friends of San Diego, Inc. v. City of San Diego, et al.*, filed in Superior Court of the State of California, County of San Diego, Case No. GIC 874140, filed on October 17, 2006 [Action]; and

WHEREAS, as a result of the Action, the Court issued an Amended Peremptory Writ of Mandamus directing the City as to do the following:

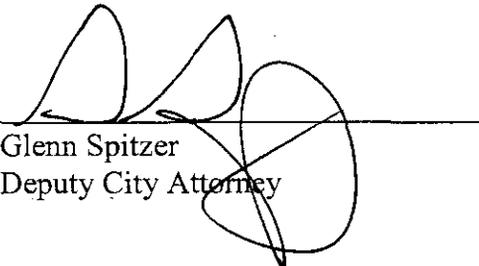
Set aside and vacate its September 12, 2006 adoption of its Project No. 11896 including the approval and issuance of a Final Mitigated Negative Declaration, Tentative Map No. 323359, abandonment of the public right-of-way via Public Right-of-Way No. 323355, Site Development permit, and Mid-City Communities Planned District Ordinance permit, as referenced and set forth in City Council Resolution Nos. R-301900, R-301902, and R-301903 (collectively, "Project Approvals"), as set forth in the Ruling and Decision and Judgment rendered by this Court.

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this is a matter where the Council has acted as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council authorizes that the following past Council actions be set aside and vacated: the September 12, 2006 adoption of its Project No. 11896 including the approval and issuance of a Final Mitigated Negative Declaration, Tentative Map No. 323359, abandonment of the public right-of-way via

Public Right-of-Way No. 323355, Site Development permit, and Mid-City Communities Planned District Ordinance permit, as referenced and set forth in City Council Resolution Nos. R-301900, R-301902, and R-301903.

APPROVED: MICHAEL J. AGUIRRE, *City Attorney*

By 
Glenn Spitzer
Deputy City Attorney

GS:mc
10/26/07
Or Dept: Risk Management
R-2008-302

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DISTRICT

FRIENDS OF SAN DIEGO, INC., a
California non-profit corporation,

Petitioner,

v.

CITY OF SAN DIEGO, a public entity;
and DOES ONE through FIVE, inclusive,

Respondent,

LA JOLLA PACIFIC DEVELOPMENT
GROUP, INC., a registered California
Corporation; 301 UNIVERSITY, LLC, a
registered California Limited Liability
Company; and DOES SIX through
TWENTY, inclusive,

Real Parties in Interest.

Case No.: GIC 874140

[action filed: October 17, 2006]

~~PROPOSED~~

Amended
PEREMPTORY WRIT OF
MANDAMUS

Trial Date: August 23, 2007

Dept.: 74

I/C Judge: Hon. Linda B. Quinn

Judgment having been entered in this proceeding ordering that a peremptory writ of
mandamus be issued from this Court as follows.

IT IS ORDERED THAT, immediately following and within the time frame set forth in
this writ, respondent City of San Diego (Respondent) shall:

Set aside and vacate its September 12, 2006 adoption of its Project No.

11896 including the approval and issuance of a Final Mitigated Negative

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Declaration, Tentative Map No. 323359, abandonment of the public right-of-way via Public Right-of-Way No. 323355, Site Development permit, and Mid-City Communities Planned District Ordinance permit, as referenced and set forth in City Council Resolution Nos. R-301900, R-301902, and R-301903 (collectively, "Project Approvals"), as set forth in the Ruling and Decision and Judgment rendered by this Court.

Having found in petitioner Friends of San Diego, Inc.'s (Petitioner) favor, the Court finds the following action is necessary under Public Resources Code § 21168.9(b) to comply with the provisions of CEQA and take those actions necessary to bring the analyses of the previously made Project Approvals into compliance with CEQA pursuant to this Court's Ruling and Decision. Under Public Resources Code § 21168.9(c), this Court does not direct Respondent to exercise its lawful discretion in any particular way.

This Court will retain jurisdiction over Respondent's proceeding by way of requiring a return to this peremptory writ of mandamus until this court has determined that Respondent has complied with the provisions of this writ.

IT IS FURTHER COMMANDED that Respondent City of San Diego must make and file a return to this writ of mandamus on or before [November 1, 2007] or [_____, 2007], setting forth what Respondent has done to comply.

Michael Roddy, Clerk

[seal]

By MJ Barham, Deputy Clerk

M. J. BARHAM

LET THE FOREGOING WRIT ISSUE.

Dated: 9-13-07

By Linda B. Quinn
JUDGE OF THE SUPERIOR COURT
JUDGE LINDA B. QUINN