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THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, JANUARY 27, 2009
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Hueso at 10:08 a.m. The meeting was recessed by Council President Hueso at 11:30 a.m. to convene into Closed Session; thereafter for the noon recess and thereafter reconvene the regular Council Meeting at 2:00 p.m.

The meeting was reconvened by Council President Hueso at 2:03 p.m. with Council Member Young and Council Member Emerald not present. The meeting was adjourned by Council President Hueso at 3:20 p.m. into Closed Session in the 12th Floor Conference Room at 4:00 p.m. to discuss pending and potential litigation.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Lightner-present
- (2) Council Member Faulconer-present
- (3) Council Member Gloria-present
- (4) Council Member Young-present
- (5) Council Member DeMaio-present
- (6) Council Member Frye-present
- (7) Council Member Emerald-not present
- (8) Council Member Hueso-present

Clerk-Maland (dlc/mz)

FILE LOCATION: MINUTES

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ITEM-300: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Lightner-present
- (2) Council Member Faulconer-present
- (3) Council Member Gloria-present
- (4) Council Member Young-present
- (5) Council Member DeMaio-present
- (6) Council Member Frye-present
- (7) Council Member Emerald-not present
- (8) Council Member Hueso-present

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Don Stillwell commented on prayer and the flag salute.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:42 a.m. – 10:44 a.m.)

PUBLIC COMMENT-2:

Hud Collins commented on the City finances.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:44 a.m. - 10:46 a.m.)

PUBLIC COMMENT-3:

Joy Sunyata commented on various topics.

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FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:46 a.m. - 10:48 a.m.)

PUBLIC COMMENT-4:

.Crickett Bradburn commented on human nature.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:48 a.m. - 10:51 a.m.)

PUBLIC COMMENT-5:

Izean Rim Jr. commented on public safety.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:51 a.m. - 10:54 a.m.)

PUBLIC COMMENT-6:

Jarvis Ross commented on the application system.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:54 a.m. - 10:57 a.m.)

PUBLIC COMMENT-7:

Phil Hart commented on commissions.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:57 a.m. - 11:00 a.m.)

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PUBLIC COMMENT-8:

Cynthia Conger commented on cellular installation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:00 a.m. - 11:03 a.m.)

PUBLIC COMMENT-9:

David Ross commented on the displaced in San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:04 a.m. - 11:07 a.m.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council President Hueso welcomed students from Saint Augustine High School.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 11:11 a.m. – 11:11 a.m.)

INDEPENDENT BUDGET ANALYST COMMENT:

None.

CITY ATTORNEY COMMENT:

None.

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ITEM-30: Approval of Council Minutes.

TODAY'S ACTION IS:

APPROVED; MINUTES OF 12/08/08 AND 12/09/08 RETURNED TO CITY CLERK

Approval of Council Minutes for the meetings of:

12/05/2008-Special
12/15/2008-Adjourned
12/16/2008-Special

12/08/2008
12/09/2008

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:09 a.m. – 10:10 a.m.)

MOTION BY DEMAIO TO APPROVE THE MINUTES OF 12/05/08, 12/15/08 AND 12/16/08 AND RETURN THE MINUTES OF 12/08/08 AND 12/09/08 TO THE CITY CLERK. Second by Young. Passed by the following vote: Lightner-not present, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-not present, Emerald-not present, Hueso-yea.

ITEM-31: Betsy McCullough Day.

COUNCIL PRESIDENT HUESO'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-779) ADOPTED AS RESOLUTION R-304606

Affording Ms. Betsy McCullough absolute freedom with all privileges to pursue other endeavors and to engage herself in the pursuit of happiness and other sundry pleasures of life and proclaiming January 27, 2009, to be "Betsy McCullough Day" in recognition of her tremendous contributions to the City of San Diego, Planning Department for the last 34 years.

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FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

MOTION BY FAULCONER TO ADOPT. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

- * ITEM-50: Second Amendment to Cooperative Agreement with CalTrans for Auxiliary Lanes on Interstate 15. (Rancho Peñasquitos, Rancho Bernardo, and Carmel Mountain Ranch Community Areas. Districts 1 and 5.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced on 1/13/2009, Item 50. (Council voted 7-0. Councilmember Young not present):

(O-2009-88) ADOPTED AS ORDINANCE O-19830 (New Series)

Authorizing the Mayor, or his designee, to execute an Amendment to a Cooperative Agreement with CalTrans for the completion of the construction of auxiliary lanes on Interstate 15, extending the termination date of the Agreement to December 31, 2012, under the terms and conditions filed in the Office of the City Clerk;

Declaring that this activity is covered under the I-15 Managed Lanes Final IS/EA and MND, SCH No. 2002101112. The activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved project, the activity is not a separate project for purposes of California Environmental Quality Act (CEQA) review, pursuant to State CEQA Guidelines Section 15060(c)(3).

NOTE: 6 votes required pursuant to Section 99 of the City Charter.

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FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

CONSENT MOTION BY FAULCONER TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

- * ITEM-51: Casa Mira View Rezone of a Property Located on the East Side of Westview Parkway, North of Mira Mesa Boulevard. (Mira Mesa Community Plan Area. District 5.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced on 1/6/2009, Item 331, Subitem B. (Council voted 8-0):

(O-2009-52 Cor. Copy) ADOPTED AS ORDINANCE O-19831
(New Series)

Rezoning 56.30 acres located on the east side of Westview Parkway, north of Mira Mesa Boulevard, and legally described as Parcels 1 through 6, inclusive, of Parcel Map No. 16194, filed August 21, 1990, in the Office of the County Recorder in the Mira Mesa Community Plan area, in the City of San Diego, California, as shown on Zone Map Drawing No. B-4269, filed in the Office of the City Clerk, from the Residential Base zones into the Residential Base zones, as the RM-3-8 zone is described and defined by San Diego Municipal Code Chapter 13 Article 1 Division 4. This action amends the Official Zoning Map adopted by Resolution R-301263 on February 28, 2006;

Repealing Ordinance No. O-18451 (New Series), adopted December 9, 1997, of the ordinances of the City of San Diego, insofar as the same conflicts with the rezoned uses of the land.

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

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FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

CONSENT MOTION BY FAULCONER TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

* ITEM-100: Inviting Bids for the Construction of Sewer Group 829 Project. (Mid-City Heights Community Area. District 7.)

(See Engineering and Capital Projects Department's November 26, 2008, Executive Summary Sheet.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2009-639) ADOPTED AS RESOLUTION R-304607

Approving the plans and specifications for the construction of Sewer Group 829 (Project), as advertised by the Purchasing and Contracting Department, on Work Order Nos. 140401/189421;

Authorizing the Mayor, or his designee, after advertising for bids in accordance with law, to execute a construction contract with the lowest responsible and reliable bidder, provided that the City Comptroller first furnishes one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed \$1,691,092.05, from Sewer Fund 41506, CIP-44-001.0, Annual Allocation - Sewer Main Replacement, solely for the purpose of construction, contingency and related costs of the Project, provided that the City Comptroller first furnishes one or more certificates certifying that the necessary funds for expenditure are, or will be, on deposit with the City Treasurer;

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Authorizing the expenditure of an amount not to exceed \$684,000 from Water Fund 41500, CIP-73-083.0, Annual Allocation - Water Main Replacement, solely for the purpose of construction, contingency and related costs of the Project, provided that the City Comptroller first furnishes one or more certificates certifying that the necessary funds for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the City Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves;

Declaring that this activity is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15282(k) as the repair and replacement of an existing pipeline less than one mile in length. (BID-K094519C)

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 12/3/2008, NR&C voted 3 to 0 to approve. (Councilmembers Peters, Faulconer, and Frye voted yea. Councilmember Atkins not present.)

SUPPORTING INFORMATION:

Sewer and Water Group 829 is part of the City of San Diego's continuing Annual Capital Improvements Sewer and Water Main Replacement Program. This project is located in the Mid-City Heights Community and includes the replacement of approximately 1,330 linear feet of existing 8-inch sewer mains, laterals and manholes originally installed in 1928, and the replacement of approximately 556 linear feet of existing 8-inch water mains, water services and fire hydrants originally installed in 1952. The project also includes installing curb ramps and street slurry seal. The streets affected by construction operations are El Cajon Boulevard, 51st Street, Altadena Avenue, 50th Street, Alley between 51st Street and 52nd Street, Alley between 51st Street and Altadena Avenue, and Alley between 50th Street and Altadena Avenue as shown on the location map. Traffic control plans for El Cajon Boulevard have been prepared by the City's design consultant. The Contractor will prepare traffic control plans for other streets and will implement them during construction, after review and approval by the City.

EQUAL OPPORTUNITY CONTRACTING:

Funding Agency: City of San Diego
Goals: 16.5% Mandatory Subcontractor Participation Goal, 1.5% Advisory Participation Goal Disadvantaged Business Enterprise (DBE), 1.2% Advisory Participation Goal Disabled Veteran Business Enterprise

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(DVBE), 1.5% Advisory Participation Goal Small Minority Business Enterprise (SMBE), 0.3% Advisory Participation Goal Minority Women Business Enterprise (MWBE) and 12% Advisory Participation Goal Other Business Enterprise (OBE).

Other: Prior to award, a Work Force Report, and if necessary, an Equal Opportunity Plan shall be submitted. Staff will monitor the Plan and adherence to the Nondiscrimination Ordinance. EOC staff will evaluate the bidder's compliance with SCOPE. Failure to comply with SCOPE will lead to the bid being declared non-responsive. This contract will be advertised for bids in the San Diego Daily Transcript, the Orange County Register, the City of San Diego's website, and the E-bid Board. In addition, once implemented, the Bidder Registration Program will notify registered participants of bid opportunities. Prior to implementation of the Bidder Registration Program, the City will notify trade associations and eligible firms via fax and/or e-mail.

FISCAL CONSIDERATIONS:

The total estimated cost of this project is \$2,442,500 (\$1,758,500 for the sewer portion and \$684,000 for the water portion). Funding of \$67,407.95 for the sewer portion was previously authorized by Mayor Action (PA-700). Additional funding of \$1,691,092.05 is available from Enterprise Fund in CIP-44-001.0 Annual Allocation - Sewer Main Replacement, Fund 41506, Sewer, and funding of \$684,000 is available from Enterprise Fund in CIP-73-083.0 Annual Allocation - Water Main Replacements, Fund 41500, Water, for this purpose.

The project cost for the sewer portion of \$1,758,500 and the water portion of \$684,000 may be reimbursed approximately 80% by current or future debt financing. This project will be funded in FY09. No future funding is anticipated. An Auditor Certificate will be issued prior to contract award.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTIONS:

The Committee on Natural Resources and Culture on December 3, 2008, consent motion by Councilmember Faulconer, second by Council President Peters. Vote to approve 3-0.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

During the design phase, Sewer and Water Group 829 was presented to the Mid-City Heights Community Group on March 3, 2008. A letter was sent to the community group on August 7, 2008 updating the community on the status of the project. Residents and businesses will also be notified at least one (1) month before construction begins, and again ten (10) days before construction begins by the Contractor through hand distribution of notices.

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KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are identified as the public and municipality. Residents in the area will encounter inconveniences during construction. A community outreach program will be implemented during construction. No new fees or regulations are proposed.

After completion, residents will experience improved reliability of the sewer system and water distribution system.

Boekamp/Jarrell

FILE LOCATION: WO-140401/189421

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

* ITEM-101: Memorial Park Swimming Pool Improvements. (Southeastern San Diego Community Area. Districts 4 and 8.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-727) ADOPTED AS RESOLUTION R-304608

Amending the Fiscal Year 2009 Capital Improvements Program Budget in CIP-29-893.0, Miscellaneous Pool Improvements, Fund No. 79511, Southeastern San Diego Development Impact Fees (DIF), by increasing the budget amount by \$750,000;

Authorizing the City Comptroller to appropriate and expend an amount not to exceed \$750,000 from CIP-29-893.0, Miscellaneous Pool Improvements, Fund No. 79511, Southeastern San Diego DIF, for improvements to the Memorial Park Swimming Pool;

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Declaring that the transfer of funding would not be considered a "project" and is therefore not subject to California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15060(c)(3).

STAFF SUPPORTING INFORMATION:

The pool at Memorial Park was built in 1969, and is showing the results of deferred maintenance. The decking is cracked and needs to be replaced, the pool equipment is old and inefficient, and the pool itself is leaking. In addition, the facility does not meet current accessibility standards. The community has also expressed interest in increasing the number of swim lanes from six to eight, and providing water recreation opportunities for smaller children.

This CIP was created to provide upgrades to the pool facility at Memorial Park. This action will provide initial funding for project management, and a Professional Consultant to prepare design and construction documents for the pool area.

EQUAL OPPORTUNITY CONTRACTING:

This action does not authorize entering into any contract or agreement. Future contracts or agreements associated with this CIP will conform to City's Equal Opportunity Contracting policies. EOC staff will evaluate consultant's or bidder's compliance with contract goals and good faith effort.

FISCAL CONSIDERATIONS:

Total project funding for these improvements is estimated to be \$2,500,000. It is anticipated that any additional non-personnel operating expenses will be offset by greater efficiency of the new equipment.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On September 12, 2005, Council approved the application for and expenditure of State of California grant funds for \$250,000 under the Park Bond Per Capita RZH Block Grant Program for Miscellaneous Pool improvements at Memorial Park Pool (Resolution Number R-300807).

The Park and Recreation Department is in the process of requesting transfer of those funds for other uses.

In addition, on December 10, 2001, and again on March 12, 2007, Council entered into a Lease Agreement with the San Diego Unified School District for the use and rental of City-owned swimming pools including Memorial Park Pool. (Resolutions Number R-302409 and R-295860).

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COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Memorial Recreation Council has identified and supports the improvements. The program and scope of the improvements will be determined with input from the community and Recreation Council in compliance with Council Policy 600-33, COMMUNITY NOTIFICATION AND INPUT FOR CITY-WIDE PARK DEVELOPMENT PROJECTS.

San Diego Unified School District representatives will be included in the design development of the pool improvements.

STAKEHOLDERS AND PROJECTED IMPACTS:

Memorial Recreation Council
Memorial Park Pool Visitors
San Diego City Schools
Memorial Park Visitors

Boekamp/Jarrell

Aud. Cert. 2900436.

Staff: Samir Mahmalji - (619) 533-5301
Shannon Thomas - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT. *Second by Hueso.* Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

* ITEM-102: Settlement of Property Damage Claim of Margaret Hahn.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-763) ADOPTED AS RESOLUTION R-304609

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Authorizing the sum of \$300,000 to be paid from the Public Liability Fund in settlement of each and every claim against the City, its agents and employees, in the matter entitled *Margaret Hahn v. City of San Diego*, San Diego Superior Court Case No. GIC861704, alleging damages to the property caused by a failed City storm drain in 2005 property (the Litigation);

Authorizing the City Auditor and Comptroller to issue a check in the amount of \$300,000 to Margaret Hahn and her counsel of record, Brian Gonzales, Esq.

SUPPORTING INFORMATION:

The proposed settlement would resolve all claims arising from a storm drain failure on February 23, 2005.

FISCAL CONSIDERATIONS:

Settlement will be paid from the Public Liability Fund 81140.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

This item was considered in Closed Session on October 7, 2008, the City Council approved the settlement amount of \$300,000. City Council voted 7 to 1. The motion was made by Councilmember Atkins with a second by Council President Peters. Councilmember Young was absent.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A

Brock/Lewis

Aud. Cert. 2900460.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

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* ITEM-103: Settlement of Bodily Injury Claims of Luz Soto and Kelsey N. Soto (A Minor).

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-313) ADOPTED AS RESOLUTION R-304610

Authorizing the City Auditor and Comptroller to issue a check in the sum of \$110,000, made payable to Luz Angelica Soto and Kelsey N. Soto, a minor child, by and through her guardian ad litem, Yesenia Bernal, Law Offices of Aubrey D. Boyd, in full settlement of the lawsuit and of all claims;

Authorizing the City Council to pay the sum of \$110,000 from the Public Liability Fund 81140.

SUPPORTING INFORMATION:

The proposed settlement would resolve all claims arising from a vehicle accident that occurred on March 21, 2006.

FISCAL CONSIDERATIONS:

Settlement will be paid from the Public Liability Fund 81140.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

This item was considered in Closed Session on September 16, 2008, the City Council approved the settlement amount of \$110,000. City Council voted 8 to 0 with no members absent. The motion was made by Councilmember Hueso with a second by Councilmember Faulconer.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A

Phillips/Lewis

Aud. Cert. 2900433.

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FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

* ITEM-104: Property Rights Acquisition and Related Costs for the Sewer and Water Group Job 689. (University Heights Community Area. District 3.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-767) ADOPTED AS RESOLUTION R-304611

Authorizing the Mayor, or his designee, to accept an easement deed for a permanent easement and several temporary construction easements proposed by Sewer and Water Group Job 689 (collectively, the Easements) to construct, reconstruct, maintain, operate, and repair a public sewer pipeline near the end of the cul-de-sac at Hayes Avenue north of Washington Street, sloping down to Highway 163;

Authorizing the Comptroller to expend up to Forty-Five Thousand Dollars (\$45,000) from Capital Improvement Project No. 44-001.0 Annual Allocation-Sewer Main Replacements, Fund 41506, Sewer, for the acquisition of the Easements and payment of related City-staff labor and miscellaneous costs.

STAFF SUPPORTING INFORMATION:

Sewer and Water Group 689, located in the Uptown Community, consists of installation of approximately 9,866 LF of sewer main and 3,003 LF of water main. The project proposes to replace, rehabilitate and/or relocate concrete, vitrified clay or cast iron pipe. The objectives of the sewer portion of the project are to replace deteriorating sewer mains and to relocate as much of the inaccessible sewer mains to more accessible locations within the street.

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The plan proposes to abandon approximately 2,800 LF of existing, inaccessible sewer main. Approximately 1,800 LF of sewer main will be abandoned from Buchanan Canyon.

FISCAL CONSIDERATIONS:

\$10,000 for acquisition of property rights; \$35,000 for Real Estate Assets labor charges, title and miscellaneous costs associated with the acquisition of property rights. Total: \$45,000.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Improved sewer service to community by replacement of deteriorating and inaccessible sewer mains.

Barwick/Anderson

Aud. Cert. 2900466.

Staff: Steve Geitz - (619) 236-6311
Brock Ladewig - Deputy City Attorney

FILE LOCATION: DEED F-10326

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT. Second by Hueso. Passed by the following vote: Lightmer-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

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* ITEM-105: Appointment and Reappointments to the San Diego County Water Authority Board of Directors.

(See memorandum from Mayor Sanders dated 1/9/2009, with resume attached.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2009-774) ADOPTED AS RESOLUTION R-304612

Council confirmation of the following appointment and reappointments by the Mayor of the City of San Diego, to serve as members of the San Diego County Water Authority Board of Directors, for terms ending as indicated:

<u>NAME</u>	<u>TERM ENDING</u>
Barbara Wight (Clairemont, District 6) (Replacing Fred Thompson)	October 27, 2012
Fern Steiner (Bankers Hill, District 2) (Reappointment)	March 5, 2015
Javier Saunders (Point Loma, District 2) (Reappointment)	March 5, 2015
Yen Tu (Scripps Ranch, District 5) (Reappointment)	January 30, 2015

Declaring that the reappointments of Fern Steiner and Javier Saunders are effective as of March 6, 2009, and the reappointment of Yen Tu is effective as of January 31, 2009.

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FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

* ITEM-106: Appointment and Reappointment to the Planning Commission.

(See memorandum from Mayor Sanders dated 1/6/2008, with resume attached.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2009-772) ADOPTED AS RESOLUTION R-304613

Council confirmation of the following appointment and reappointment by the Mayor of the City of San Diego, to serve as members of the Planning Commission, for terms ending as indicated:

<u>NAME</u>	<u>TERM ENDING</u>
Mary Lydon (South Park, District 3) (Replacing Barry Schultz, who is termed out)	January 28, 2013
Robert Griswold (Santaluz, District 1) (Reappointment)	January 28, 2013

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FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

* ITEM-107: Appointments and Reappointment to the Balboa Park Committee.

(See memorandum from Mayor Sanders dated 1/8/2009, with resumes attached.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2009-773) ADOPTED AS RESOLUTION R-304614

Council confirmation of the following appointments and reappointment by the Mayor of the City of San Diego, to serve as members of the Balboa Park Committee, for terms ending as indicated:

<u>NAME</u>	<u>CATEGORY</u>	<u>TERM ENDING</u>
Vicki Granowitz (South Park, District 3)	Park & Recreation Board Member	March 1, 2009
Don Liddell (Bankers Hill, District 2) (Replacing Michael Singleton)	Planning Group - Uptown Neighborhood Representative	March 1, 2010
Michael Singleton (Mission Hills, District 2) (Replacing Patti Roscoe, who has resigned)	Council District 3 Representative	March 1, 2009

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Robert Steppke
(North Park, District 3)
(Replacing Dan Mazella)

Planning Group - March 1, 2010
North Park Neighborhood
Representative

Mike McDowell
(San Marcos)
(Reappointment)

Vice Chair March 1, 2010

Declaring that pursuant to Council Policy 000-13, for purposes of deliberation and consideration of appointment, it is determined that Mike McDowell is a resident of San Diego County, but not the City of San Diego, and has unique qualifications to serve as a member of the Commission. Therefore, a conscious exception to Council Policy 000-13 is hereby declared.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

ITEM-108: Amending the 2009 Legislative Calendar Related to Budget and Finance Committee Meetings.

BUDGET AND FINANCE COMMITTEE'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-776) ADOPTED WITH DIRECTION AS RESOLUTION
R-304615

Amending the schedule of meetings for the City Council and Standing Committees, and Council Budget Hearings of the City Council for the period January 1, 2009, through December 31, 2009, a copy of which is on file in the Office of the City Clerk as Document No. RR-304501, to add the following meetings of the Committee on Budget and Finance: (1) Friday, January 30, 2009,

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from 2:00 p.m. to 5:00 p.m.; (2) Saturday, February 14, 2009, from 9:00 a.m. to 12:00 p.m.; (3) Saturday, February 21, 2009, from 9:00 a.m. to 12:00 p.m.; and (4) Thursday, February 26, 2009, from 6:00 p.m. to 8:00 p.m.;

Amending the afore-mentioned schedule of meetings for the City Council and Standing Committees, and Council Budget Hearings of the City Council for the period January 1, 2009, through December 31, 2009, to change the time of the regularly scheduled meeting for February 4, 2009, from the morning (9:00 a.m. to 12:00 p.m.) to the evening (6:00 p.m. to 8:00 p.m.);

Directing the City Clerk to post and publish, as necessary, the notice of the meeting with the date, time, and location and make necessary preparations and arrangements for the meeting.

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:08 a.m. – 11:13 a.m.)

MOTION BY YOUNG TO ADOPT THE RESOLUTION WITH DIRECTION TO NOTICE THE MEETINGS AS "COMMITTEES AS A WHOLE." Second by Frye. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

000023

ITEM-330: Accepting Donation to Restore Park and Recreation Department Fire Pit Program; Revising the Beverage Vending Machine Program to Discontinue Revenues Received by Certain Employee Groups; and Amending the Fiscal Year 2009 Appropriations Ordinance to Reinstate the Fire Pit Program, including Two Employee Positions, and Three Employee Painter Positions.

STAFF'S RECOMMENDATION:

Adopt the following resolutions in Subitems A and B; hold the first public hearing of the ordinance in Subitem C:

Subitem-A: (R-2009-799) ADOPTED AS RESOLUTION R-304618

Accepting the donation of \$259,500 from an Anonymous Fund at The San Diego Foundation, donated to the City of San Diego to fund the fire pit program and to reinstate the two full-time employee positions eliminated by O-19822 for a period of 18 months;

Authorizing the City Comptroller to create a special interest-bearing Fire Pit Donation Fund (Fund 10329) to be used to maintain the City's Fire Pit Program including necessary employee positions, and to deposit the \$259,500 donation and any future interest earned on that donation into that fund;

Authorizing the Mayor, or the Mayor's designee, to accept any future donations to maintain the City's Fire Pit Program and necessary employee positions, and to deposit such moneys and earned interest into Fund 10329 to be used for such purpose.

Subitem-B: (R-2009-798) ADOPTED AS RESOLUTION R-304619

Declaring that any requirements of Resolution No. R-292403 that may require expenditure of the moneys deposited in Fund 63094 to support employee morale and recognition are hereby discontinued.

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Subitem-C: (O-2009-94) FIRST HEARING HELD

Authorizing the City Comptroller to appropriate, transfer, and expend \$86,525 in the Park and Recreation Department (Department 443), General Fund (Fund 100) from revenues transferred from Fund 10329, to reinstate and fund the fire pit program including two FTE employee positions from January through June in Fiscal Year 2009;

Authorizing the City Comptroller to appropriate, transfer, and expend \$120,600 in the General Services Department, Facilities Division (Department 532), from General Fund (Fund 100) revenues, which includes \$25,000 transferred from Fund 63094, to reinstate and fund three FTE painter positions (JC 1635) in Fiscal Year 2009;

Authorizing the City Comptroller to appropriate, transfer and expend \$95,600 of unused TOT distributions in the Library System Improvement Fund (Fund 102216) to return to the TOT Fund (Fund 10220); and to appropriate and expend \$95,600 in the TOT Fund (Fund 10220) to support General Fund promotional activities; and to budget \$95,600 as revenue in the General Fund (Fund 100);

Authorizing the City Comptroller to make all reimbursements, transfers, and adjustments necessary to reinstate the three FTE painter positions in the General Services Department, Facilities Division, and the two FTE positions in the Park and Recreation Department to maintain the City fire pit program.

NOTE: Today's action on Subitem-C is the first public hearing. See the docket of Tuesday, February 3, 2009, for the second public hearing and the introduction and adoption of the ordinance.

STAFF SUPPORTING INFORMATION:

On December 9, 2008, the City Council adopted an ordinance to amend the Fiscal Year 2009 Annual Budget Appropriation Ordinance. Ordinance O-01922 provided the necessary adjustments for City Council to close the \$43 million Fiscal Year 2009 budget gap. Among the budget reductions were the elimination of 3.00 FTE Painters (JC 1635) from General Services Department/Facilities Division and the elimination of support for fire rings from the Park and Recreation Department.

000025

On December 15, 2008, a donor had pledged \$259,500 to fund the City's 186 fire pits for an 18-month period, from January 2009 to June 2010. The donation was administered by the San Diego Foundation to support every child knowing the joys of bonfire on the beach. The fire pit program was eliminated as part of the Mayor's proposal, as approved by City Council, to close a \$43 million budget gap in December 2008. The annual cost to the City's Park and Recreation Department to support the fire pits - which are located in Mission Bay and on the other beaches of La Jolla, Mission Beach, Pacific Beach and Ocean Beach - is \$173,000.

The City began removing the fire pits on Wednesday, December 10, 2008; however, this was stopped soon after the donor pledge was secured. This action requests Council's authority to accept the donor funds and reinstate support for the fire pits.

In addition, this action requests to reinstate the 3.00 FTE Painters in the General Services Department for the remainder of Fiscal Year 2009 based on identified funding from the Library Systems Improvement Fund and Pepsi Citywide Beverage Vending Machine Program Funds. Through the Beverage Agreement with Pepsi Bottling Group, the City receives an annual marketing rights fee in the amount of \$250,000. Currently, \$125,000 is deposited into the General Fund and \$125,000 is distributed among departments associated with employee groups and recreation councils. It is requested that City Council amend Resolution R-292403 to eliminate the program that provides Beverage Vending Machine Program funding to employee groups as set forth in Sections 3 and 5 of said resolution. The \$25,000 previously received by employee groups would be deposited into General Fund. In addition, \$95,600 is available in the Library System Improvement Fund to offset the remaining cost of the painters.

FISCAL CONSIDERATIONS:

Fiscal impact for 18-month Fire Pit Program of \$259,500 was provided by a private donation and is currently on deposit with City Treasurer per DCRs 2009-0010959 and 2009-011097.

Fiscal impact for the 3.00 FTE Painters (JC1635) of \$120,600 is available within existing City funds of 102216 (Library Systems Improvement Fund) and 63094 (Beverage Vending Machine Program).

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Beverage Vending Machine Program and Agreement (R-292403 adopted on 11-02-1999)
Amendment to original Ordinance adopting the Annual Budget for the Fiscal Year 2009 (O-19822 final passage on 12-09-2008).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

000026

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable): None.

Tirandazi/Lewis

Aud. Cert. 2900511.

Staff: Angela Colton - (619) 236-5988

FILE LOCATION: SUBITEM A & B: MEET
SUBITEM C: NONE

COUNCIL ACTION: (Time duration: 2:07 p.m. – 2:42 p.m.)

Testimony in opposition by Joy Sunyata.

Testimony in favor by Nancy Croisant.

MOTION BY FAULCONER TO ADOPT THE RESOLUTIONS IN SUBITEMS A AND B; AND TO HOLD THE FIRST PUBLIC HEARING IN SUBITEM C. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea (nay on Subitem B), Frye-yea, Emerald-not present, Hueso-yea.

ITEM-331: Approving Lease Termination Agreement with YMCA of San Diego County for the Torrey Hills YMCA. (Torrey Hills Community Area. District 1.)

(See memorandum from Beryl Bailey Rayford dated 10/1/2008.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-627) ADOPTED AS RESOLUTION R-304620

Authorizing the Mayor, or his designee, to deliver the CITY OF SAN DIEGO LEASE TERMINATION AGREEMENT with the YMCA of San Diego County at Torrey Hills Neighborhood Park;

000027

Authorizing the Mayor, or his designee, to waive amounts owing under the Lease in the total amount of Five Thousand Nine Hundred Sixty-Five Dollars and Seventy-Two Cents (\$5,965.72).

STAFF SUPPORTING INFORMATION:

The YMCA of San Diego County has a lease with the City to construct, operate and maintain a community and recreational center on approximately four acres adjacent to the Torrey Hills Neighborhood Park in the City of San Diego. The lease is dated April 15, 2002 and is filed in the Office of the City Clerk as Document Number RR-296349. The lease is for a term of 30 years with two 10-year options at an annual rent of \$1 per year plus and annual non-profit administrative fee subject to CPI adjustments. The Lease was based on YMCA's representation that they would be obtaining substantial donations which would support development of a large recreational facility on the property. Circumstances changed and the YMCA was unsuccessful in its fundraising efforts to develop a new facility.

The Park and Recreation Department believes that interest of the Torrey Hills community will be best served by terminating the Lease and giving the community an opportunity to consider a variety of recreational alternatives for the site. The City requested the termination of the Lease and the YMCA agreed.

FISCAL CONSIDERATIONS:

The YMCA currently owes the City \$5,965.72 in past due non-profit administrative fees. The non-profit annual administrative fee was implemented to help offset City staff time and costs to administer the lease agreement. The Park and Recreation Department and the Real Estate Assets Department believe it is in the City's interest to regain control of the property and recommend waiving the \$5,965.72 administrative fee.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The proposed Termination Agreement will allow the community to provide input for proposed recreational uses at the Torrey Hills Neighborhood Park.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The City of San Diego will benefit from the proposed Termination Agreement since it will allow the community to consider a variety of recreational alternatives for the site.

Barwick/Anderson

000028

Staff: James Barwick - (619) 236-6145
Brock Ladewig – Chief Deputy City Attorney

FILE LOCATION: LEAS – YMCA of San Diego County
for Torrey Hills YMCA

COUNCIL ACTION: (Time duration: 2:03 p.m. – 2:07 p.m.)

MOTION BY LIGHTNER TO ADOPT. Second by Young. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

ITEM-332: Settlement of Personal Injury Claim of Bun Bun Tran.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-770) ADOPTED AS RESOLUTION R-304621

Authorizing the City Comptroller to issue a check in the amount of, but not exceeding, \$1,000,000 made payable to Bun Bun Tran, by and through his Guardian ad Litem, Le Thi Nguyen and his attorney of record, Angelo and DiMonda, in full and final settlement of all claims arising from the personal injury claim of Bun Bun Tran, San Diego Superior Court Case No. 37-2007-00065432-CU-PA-CTL;

Authorizing the City Council to pay the sum of \$1,000,000 from the Public Liability Fund 81140.

SUPPORTING INFORMATION:

The proposed settlement would resolve all claims brought by Bun Bun Tran.

FISCAL CONSIDERATIONS:

Settlement will be paid from the Public Liability Fund 81140.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

000029

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

The item was considered in Closed Session on October 7, 2008. The Council approved the settlement amount of \$1,000,000. The motion passed 6 to 1 with Council President Pro Tem Madaffer voting no and Councilmember Young absent. The motion was made by Councilmember Maienschein and the second by Council President Peters.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A

Bellows

Aud. Cert. 2900502.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:07 p.m. – 2:07 p.m.)

MOTION BY YOUNG TO ADOPT. Second by Faulconer. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

ITEM-333: Chabad Educational Campus Substantial Conformance Review, Project No. 123607. An application for Substantial Conformance Review of Conditional Use Permit No. 133-PC as amended and a waiver from the requirements of the Inclusionary Affordable Housing Regulations Ordinance related to the Chabad Educational Campus, Project No. 123607. (Scripps Miramar Ranch Community Plan Area. District 5.)

Matter of approving, conditionally approving, modifying or denying an application to determine if the proposed Chabad Educational Campus is in substantial conformance with Conditional Use Permit Number 133-PC Amendment and request a waiver from the General Inclusionary Affordable Housing Requirements.

000030

Specifically Conditional Use Permit Number 133-PC Amendment requires "Prior to issuance of any building permit on any phase of development as shown by number on approved Exhibit 'A', a plot plan for the entire phase shall be submitted to the Planning Commission for approval." The 26.98 acre property is located at 10785 Pomerado Road in the RS-1-8 Zone within the Scripps Miramar Ranch Community Plan.

STAFF'S RECOMMENDATION:

Adopt the following resolutions in subitems A and B:

Subitem-A: (R-2009-450) ADOPTED AS RESOLUTION R-304622

Adoption of a Resolution certifying that the proposed Chabad Educational Campus is in substantial conformance with Conditional Use Permit No. 133-PC as amended.

Subitem-B: (R-2009-451) ADOPTED AS RESOLUTION R-304623

Adoption of a Resolution certifying agreement with the conclusions with respect to the Waiver from the requirements of the Inclusionary Affordable Housing Regulations Ordinance and finds that there is no reasonable relationship between the impact of the Chabad development and the inclusionary requirement of the Ordinance;

Granting the Waiver from the requirements of the Inclusionary Affordable Housing Regulations Ordinance for the Chabad Educational Campus, Project No. 123607 to Friends of Chabad Lubavich San Diego, Inc., Owner/Permittee, under the terms and conditions set forth in the Waiver incorporated herein by reference.

OTHER RECOMMENDATIONS:

Planning Commission on September 18, 2008, voted 4-0-3 to recommend the City Council find that the proposed Chabad Educational Campus is in substantial conformance with Conditional Use Permit No. 133-PC as amended; and to incorporate the 26 point private agreement between Chabad and Scripps Community Planning Group as part of the map and as part of their project plan documentation; and prior to arriving at the City Council that the Facilities Benefit Assessment (FBA) be available both for the applicant and the community to assess whether they are in support or not.

000031

The Planning Commission's second motion is to recommend that the City Council deny the Waiver from the General Inclusionary Affordable Housing Requirements because the findings cannot be made.

Ayes: Naslund, Golba, Schultz, Otsuji

Nays: None

Not present: Griswold, Ontai, Smiley

The Scripps Ranch Planning Group has recommended approval of this project with two conditions. Please refer to the Planning Commission Report No. PC-08-076.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

Determine if the proposed Chabad Educational Campus, located at 10785 Pomerado Road, is in substantial conformance with Conditional Use Permit Number 133-PC Amendment; and a waiver request from the General Inclusionary Affordable Housing Requirements.

STAFF RECOMMENDATION:

1. Recommend that the City Council determine whether the Chabad Educational Campus is or is not in substantial conformance with Conditional Use Permit Number 133-PC as amended; and
2. Recommend that the City Council approve the waiver from the provisions of the General Inclusionary Affordable Housing Requirements if the applicant's findings can be substantiated.

EXECUTIVE SUMMARY:

The Chabad Educational Campus proposes to expand their existing campus for a high school, college, and campus housing.

The development would include two institutional use buildings, a two-story university building, a sports complex building, relocated sports field, tennis court, swimming pool/spa, and 280 housing units with below grade parking structures for students and faculty of Chabad. The project also requests a waiver from the Inclusionary Affordable Housing requirements pursuant to San Diego Municipal Code Section 142.1305.

The property is subject to Conditional Use Permit (CUP) Number 133-PC, as amended, granted to United States International University (USIU). The original CUP No. 133-PC was granted in 1967 and amended in 1972. Pursuant to the existing approved CUP, "Prior to issuance of any building permit on any phase of development as shown by number on approved Exhibit 'A', a plot plan for the entire phase shall be submitted to the Planning Commission for approval."

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This condition translates to a substantial conformance review process to be decided by Planning Commission. Pursuant to the San Diego Municipal Code §113.0102, "substantial conformance means that a revision to a development that was approved through a permit or tentative map complies with the objectives, standards, guidelines, and conditions for that permit or tentative map."

The applicant is also requesting a Waiver from the Inclusionary Affordable Housing Regulations. The Inclusionary Housing Ordinance allows applicants to request a Variance or Waiver from the affordable housing requirements. The Inclusionary Affordable Housing Regulations do not exempt on-campus student/faculty housing. A waiver would relieve the applicant of the requirement to provide affordable housing units and/or pay an In-Lieu Fee. The applicant has provided findings for the Waiver request (Attachment 3).

Because there is no on-campus housing Facilities Benefit Assessment (FBA) rate, the project will pay a discounted residential FBA rate (Attachment 4).

The applicant has agreed to pay the FBA fees as a condition of approval. In addition, the City will record a deed restriction on the property restricting the use of the units for the sole use of full-time, enrolled students, married students and faculty of Chabad.

FISCAL CONSIDERATIONS:

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

PREVIOUS COUNCIL ACTION:

On August 8, 1994, the City Council determined by Council Resolution Number R-284501 that Chabad's "proposed facilities, i.e., a kindergarten through twelfth grade private school plus 'Yeshiva' (rabbinical seminary) accommodating a maximum of 800 full time equivalent students ... is in fact substantively the same as the university use approved by the City [under USIU conditional use permit] and that therefore no new conditional use permit or amended conditional use permit will be required for such proposed development and use."

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On September 18, 2008, the Planning Commission's first motion was to recommend that the City Council determine that the Chabad Educational Campus is in substantial conformance with Conditional Use Permit No. 133-PC as amended; and with the voluntary agreement from the applicant to incorporate the 26 points (Attachment 5) from the private agreement between Chabad and Scripps Community Planning Group as part of the approved project documents; and prior to City Council, that the FBA fees be available both for the applicant and the community to assess whether they are in support or not.

000033

The motion made by Commissioner Naslund, second by Commissioner Golba, and passed by a vote of 4-0-3 with Commissioners Griswold, Ontai and Smiley not present. The Planning Commission's second motion was to recommend that the City Council deny the Waiver from the General Inclusionary Affordable Housing Requirements because the findings cannot be made. The motion made by Commissioner Golba, second by Commissioner Naslund, and passed by a vote of 4-0-3 with Commissioners Griswold, Ontai, and Smiley not present.

On June 5, 2008, the Scripps Ranch Planning Group voted 10-3-0 to approve the project with two conditions. Please refer to the Planning Commission Report.

KEY STAKEHOLDERS:

Owner: Friends of Chabad Lubavich San Diego

Applicants: MW Steele Group, Inc. and Ron Buckley Consulting
Scripps Miramar Ranch Planning Group

Broughton/Anderson/CC

Staff: Cherlyn Cac – (619) 446-5226
Shirley Edwards – Deputy City Attorney

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:45 p.m. – 3:18 p.m.)

Testimony in favor by Jim Milch and Bob Ilko.

MOTION BY DEMAIO TO ADOPT THE RESOLUTIONS IN SUBITEMS A AND B CERTIFYING THE PROPOSED CAMPUS IS IN SUBSTANTIAL CONFORMANCE WITH CONDITIONAL USE PERMIT NO. 133-PC AS AMENDED; GRANT THE WAIVER FROM THE REQUIREMENTS OF THE INCLUSIONARY AFFORDABLE HOUSING REGULATIONS ORDINANCE; INCORPORATE THE 26 POINTS FROM THE AGREEMENT BETWEEN CHABAD AND THE SCRIPPS RANCH PLANNING GROUP, WHICH WOULD INCLUDE \$3.9 MILLION IN FACILITIES BENEFIT ASSESSMENT FEES; AND A DEED RESTRICTION WITH A PENALTY OF \$2 MILLION IF THE UNITS ARE TRANSFERRED FROM STUDENT TO RESIDENTIAL HOUSING. Second by Faulconer. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

000034

ITEM-S500: Identify City's Designated Management Representatives for Labor Negotiations with the City's Employee Organizations.

(See memorandum from Joan F. Dawson dated 1/20/2009.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-792) ADOPTED AS RESOLUTION R-304616

Declaring that pursuant to Government Code Section 54957.6(a) and other applicable statutory law and the City Charter, the City Council identifies its designated representatives for purposes of negotiating with represented employee organizations as follows:

William Kay, Burke, Williams & Sorensen
Timothy Davis, Burke, Williams & Sorensen
City Staff:
Scott Chadwick, Labor Relations Director
Judy von Kalinowski, Deputy Labor Relations Director
Thom Harpole, Senior Labor Relations Officer
Kim Nguyen, Labor Relations Officer
Woo-Jin Shim, Labor Relations Officer
Lourdes Silva, Labor Relations Officer
Valerie VanDeweghe, Deputy Director, Risk Management
Javier Mainar, Assistant Fire Chief
Brian Fennessy, Deputy Fire Chief
David Ramirez, Executive Assistant Police Chief
Robert Kanaski, Assistant Police Chief
Paul Cooper, Assistant/Advisor to the Police Chief
Jan Goldsmith, City Attorney
Tanya Tomlinson, Deputy Director, City Attorney's Office
Joan Dawson, Deputy City Attorney
William Gersten, Deputy City Attorney
Lori Thacker, Deputy City Attorney

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STAFF SUPPORTING INFORMATION:

The City Council and City of San Diego wish to identify its designated representatives for purposes of negotiating with the recognized employee organizations. The representatives designated to execute the agreements are:

William Kay, Timothy Davis, Scott Chadwick, Judy von Kalinowski, Thom Harpole, Kim Nguyen, Woo-Jin Shim, Lourdes Silva, Valerie VanDeweghe, Javier Mainar, Brian Fennessy, David Ramirez, Robert Kanaski, Paul Cooper, Jan Goldsmith, Tanya Tomlinson, Joan Dawson, William Gersten and Lori Thacker.

FISCAL CONSIDERATIONS: None.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A

Chadwick/Goldstone

Staff: Scott Chadwick - (619) 236-6313
Joan F. Dawson - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:11 a.m. – 11:13 a.m.)

MOTION BY FAULCONER TO ADOPT. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

000036

ITEM-S501: Cooperative Agreement with San Diego Coastkeeper and Surfrider Foundation for the Study of Feasibility of Diverting Wastewater from Point Loma Wastewater Treatment Plant through Increased Wastewater Recycling.

(See memorandum from San Diego Coastkeeper dated 12/1/2008.)

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-795) ADOPTED AS RESOLUTION R-304617

Authorizing the Mayor, or his designee, to negotiate and execute a Cooperative Agreement with San Diego Coastkeeper, the San Diego Chapter of Surfrider Foundation, and any other interested environmental groups, for the study of the feasibility of diverting wastewater from the Point Loma Wastewater Treatment Plant through increased wastewater recycling, in exchange for their support of the EPA's tentative decision regarding the National Pollutant Discharge Elimination System permit for the Point Loma plant;

Authorizing the Mayor, or his designee, to negotiate and execute one or more agreements with consultants and experts as needed to meet the City's obligations under the Cooperative Agreement, in a cumulative amount not to exceed \$2,000,000, provided the City Comptroller first certifies that the funds necessary for expenditure are, or will be, on deposit in the City Treasury;

Authorizing the City Comptroller to appropriate and expend an amount not to exceed \$2,000,000 from Sewer Fund 41509, solely and exclusively to hire consultants and experts needed to meet the City's obligations under the Cooperative Agreement;

Authorizing the City Comptroller to return excess budgeted funds, if any, to the *appropriate reserves on advice of the administering department*;

Declaring that the above activity is statutorily exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15262 as feasibility and planning studies.

000037

SUPPORTING INFORMATION:

The City operates the Point Loma Wastewater Treatment Plant under a National Pollutant Discharge Elimination System ("NPDES") Permit issued jointly by the United States Environmental Protection Agency ("EPA") and the local Regional Water Quality Control Board ("RWQCB"). The City's permit allows the plant to operate at "advanced primary" level, rather than the secondary level treatment requirement applicable to nearly all other sewage treatment plants. This is often referred to as the "Waiver" from secondary treatment requirements. The City's permit must be renewed every five years.

In December 2007, the City filed its application to renew the NPDES permit for the Point Loma plant, requesting to continue operating the plant at advanced primary level. On December 2, 2008, the EPA issued a tentative decision approving the application and granting the Waiver. On January 21, the EPA and the RWQCB held a joint hearing to take public testimony on the proposed decision. Written comments from the public are due by January 28. A second hearing for discussion of the comments and deliberation of the tentative decision and draft permit will be held in March, with a final permit expected by May or June.

The Waiver has been the subject of litigation for the last twenty years. Environmental groups are concerned that not treating sewage to secondary levels could be harming the environment. Some are threatening litigation challenging the Waiver. By letter dated December 1, 2008, San Diego Coastkeeper and the San Diego Chapter of Surfrider Foundation have offered not to oppose the Waiver in return for the City conducting a study of the feasibility of offloading the Point Loma plant through increased wastewater recycling. The cost of upgrading the Point Loma plant to secondary treatment is estimated to be between \$1 billion and \$1.5 billion.

This action requests authority for the Mayor or his designee to negotiate and execute a Cooperative Agreement with San Diego Coastkeeper, Surfrider Foundation, and any other interested environmental groups to coordinate in a study of the feasibility of reducing wastewater flow to the Point Loma plant through increased wastewater recycling. This action also requests authority to negotiate and execute any consultant agreements necessary to complete the study. The City's total cost associated with the study is not to exceed \$2 million. In return, Coastkeeper and Surfrider will not oppose the tentative decision and draft permit issued by the EPA granting the Waiver.

FISCAL CONSIDERATIONS:

Total cost not to exceed \$2 million is available in Sewer Revenue Fund 41509.

000038

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

NR&C Committee on December 3, 2008, voted 3-0 to forward to full City Council as informational item and for review by Mayor's and City Attorney's Offices. Only the December 1, 2008, letter from the Coastkeeper was available for consideration at that time. The matter is now being presented to the full City Council for action, rather than just as an informational item, due to the January 28 deadline to submit written objections to the EPA's tentative decision.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable): N/A

Zeleny/Goldstone

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:11 a.m. – 11:13 a.m.)

MOTION BY FRYE TO ADOPT THE RESOLUTION WITH THE CONDITION THAT ANY SUSPENSION OR TERMINATION OF THE AGREEMENT BE SUBJECT TO THE APPROVAL OF THE MAYOR AND CITY COUNCIL. Second by Faulconer. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

REPORT OUT OF CLOSED SESSION:

To view the list of all available City Council Closed Session Meetings Reports refer to the link below:

<http://www.sandiego.gov/city-clerk/closedsess.shtml>

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 3:18 p.m. – 3:20 p.m.)

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NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Hueso at 3:20 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 3:20 p.m. – 3:20 p.m.)

Elizabeth S. Maland, City Clerk
City of San Diego

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UNAPPROVED

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, JANUARY 26, 2009
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Hueso at 2:00 p.m. Council President Hueso recessed the meeting at 4:52 p.m. for the purpose of a break. Council President Hueso reconvened the meeting at 5:00 p.m. with Council Member Emerald not present. Council President Hueso recessed the meeting at 6:21 p.m. for the purpose of a break. Council President Hueso reconvened the meeting at 6:28 p.m. with Council President Pro Tem Faulconer and Council Member Emerald not present. Council President Hueso recessed the meeting at 7:27 p.m. to convene the Redevelopment Agency. Council President Hueso reconvened the regular meeting at 7:28 p.m. with Council President Pro Tem Faulconer and Council Member Emerald not present. The meeting was adjourned by Council President Hueso at 7:28 p.m.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Lightner-present
 - (2) Council Member Faulconer-present
 - (3) Council Member Gloria-present
 - (4) Council Member Young-present
 - (5) Council Member DeMaio-present
 - (6) Council Member Frye-present
 - (7) Council Member Emerald-not present
 - (8) Council Member Hueso-present
- Clerk-Maland (sr)

FILE LOCATION: MINUTES

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ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Lightner-present
- (2) Council Member Faulconer-present
- (3) Council Member Gloria-present
- (4) Council Member Young-not present
- (5) Council Member DeMaio-present
- (6) Council Member Frye-present
- (7) Council Member Emerald-not present
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES

ITEM-10: INVOCATION

Invocation was given by Father Jennings, Christ the King Catholic Church.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Frye.

FILE LOCATION: MINUTES

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CLOSED SESSION ITEMS:

Conference with Legal Counsel - existing litigation, pursuant to California Government Code Section 54956.9(a):

**CS-1 *Michael T. Uberuaga v. City of San Diego*
United States District Court Case No. 08cv1960 MMA (BLM)**

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: D. Karlin

This matter involves a lawsuit filed by a former City employee requesting the City provide him a legal defense including payment of all attorney fees, costs and expenses with regard to the civil action brought by the United States Securities and Exchange Commission and investigations by the San Diego City Attorney's Office, the United States Attorney's Office for the Southern District of California and the San Diego County District Attorney's Office.

Closed Session Comment 1:

Hud Collins commented on the City providing a defense for Mr. Uberuaga.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 6:29 p.m. - 6:32 p.m.)

Council President Hueso closed the hearing.

**CS-2 *Valerie O'Sullivan v. City of San Diego*
San Diego Superior Court Case No. GIC 826918;
California Court of Appeal Case Nos. D053230 and D054378**

***La Jolla Friends of the Seals, et al. v. National Oceanic and Atmospheric Administration National Marine Fisheries Service, et al.*
U.S. District Court Case No. 08cv1847 WQH POR**

Animal Protection Rescue League v. State of California, et al.
United States District Court No. 07-cv-2320-JM-AJB; Ninth Cir. Case No. 08-55319;
United States Supreme Court Case No. 08-561

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: G. Schaefer

In the first case, a Superior Court Judge rendered a judgment against the City and ordered the City to dredge Children's Pool Beach. In the second case, a non-profit organization and a citizen sued the City and the Federal Government over whether a federal permit is necessary to remove the seals at Children's Pool and whether a rope barrier must be installed during the seal pupping season. In the third case, a similar lawsuit was brought against the City and the Plaintiffs appealed the dismissal of that lawsuit to the United States Supreme Court. The City Attorney needs to discuss in closed session with the Mayor and City Council the status of all three of these cases and the related appeals. The City Attorney also intends to present to the Mayor and City Council for its consideration a settlement offer that was made by the Plaintiffs in the *La Jolla Friends of the Seals* case.

Closed Session Comment 1:

Hud Collins commented on the description of Closed Session items.

Closed Session Comment 2:

Bryan Pease and Eric Townsend commented on the State Legislature.

Closed Session Comment 3:

Katheryn Rhodes commented on dredging.

Closed Session Comment 4:

Verne Gammon commented on private beaches.

Closed Session Comment 5:

Jim Fitzgerald commented on seal diversity.

Closed Session Comment 6:

Crickett Bradburn commented on lessons for children.

Closed Session Comment 7:

Daisy Fitzgerald commented on the seal attraction.

Closed Session Comment 8:

Steve Haynes commented on the litigation.

Closed Session Comment 9:

Alex Gehring commented on the benefits of the beach.

Closed Session Comment 10:

Richard Guarasco commented on shared use.

Closed Session Comment 11:

Paul Kennerson commented on what the issue is before Council.

Closed Session Comment 12:

Larry Asakawa commented on access to diving.

Closed Session Comment 13:

Joseph Nguyen commented on protecting the ecosystem.

Closed Session Comment 14:

Christopher Davis commented on areas of seal population.

Closed Session Comment 15:

Andrea Hahn and Marjane Aalam commented on the uniqueness of the ecosystem.

Closed Session Comment 16:

Volker Hoehne commented on beach access.

Closed Session Comment 17:

David Ploessel commented on the uniqueness of Children's Pool.

Closed Session Comment 18:

David Russell commented on beach access.

Closed Session Comment 19:

John Leek commented on money.

Closed Session Comment 20:

Neda R. Orban commented on benefits of the rookery.

Closed Session Comment 21:

Gordon Parham commented on the history of the area.

Closed Session Comment 22:

Linda Kelson commented on the tourist attraction.

Closed Session Comment 23:

Carol Archibald commented on harassment.

Closed Session Comment 24:

Heidi Cohen-Wolff commented on how the seals came to be at the beach.

Closed Session Comment 25:

Cindy Benner commented on businesses closing in La Jolla.

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FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 6:29 p.m. - 7:23 p.m.)

Council President Hueso closed the hearing.

CS-3 *Crable, et al. v. City of San Diego*
San Diego County Superior Court Case No. 37-2008-00077405-CU-EI-CTL

Al-Quraini, et al. v. City of San Diego
San Diego Superior Court Case No. 37-2008-00080246-CU-EI-CTL

McCormick, et al. v. City of San Diego
San Diego Superior Court Case No. 37-2008-00082194-CU-EI-CTL

Dyer v. City of San Diego
San Diego Superior Court Case No. 37-2008-00092648-CU-EI-CTL

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: G. Spitzer

This item concerns litigation which has already been formally initiated against the City. Retained counsel, the City Attorney, and City Council will confer regarding the status, strategy, and management of the litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 7:24 p.m. - 7:24 p.m.)

Council President Hueso closed the hearing.

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**Conference with Legal Counsel - Anticipated litigation – significant exposure to litigation,
pursuant to California Government Code Section 54956.9(b):**

CS-4 Number of Potential Cases: 5 known potential plaintiffs

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: T. Zeleny

In closed session, the City Attorney will discuss litigation threatened by environmental groups over the United States Environmental Protection Agency's tentative approval of the City's application for a modified National Pollutant Discharge Elimination System permit for the Point Loma Wastewater Treatment Plant. The City Attorney will also discuss an offer by San Diego Coastkeeper and the San Diego Chapter of Surfrider Foundation to avoid litigation by cooperating on a study of the feasibility of diverting wastewater from the Point Loma Plant through increased wastewater recycling.

Closed Session Comment 1:

Joy Sunyata asked about protocol.

Closed Session Comment 2:

Crickett Bradburn commented on assurances.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 7:24 p.m. - 7:26 p.m.)

Council President Hueso closed the hearing.

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Conference with Legal Counsel - anticipated litigation - initiation of litigation, pursuant to California Government Code section 54956.9(c):

CS-5 Number of Potential Cases: One

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: J. Dawson

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 7:27 p.m. - 7:27 p.m.)

Council President Hueso closed the hearing.

Conference with Labor Negotiator, pursuant to Government Code Section 54957.6:

CS-6 Agency Negotiators: Bill Kay, Tim Davis, Scott Chadwick, Kim Nguyen, Woo-Jin Shim, Thom Harpole, Lourdes Silva, Judy von Kalinowski, Valerie VanDeweghe, Javier Mainar, Brian Fennessy, David Ramirez, Bob Kanaski, Paul Cooper, Jan Goldsmith, Tanya Tomlinson, Joan Dawson, William Gersten, and Lori Thacker

Employee Organizations: Local 145 International Association of Firefighters AFL-CIO, San Diego Police Officers Association, Municipal Employees Association, AFSCME Local 127 AFL-CIO, and Deputy City Attorney Association

REFERRED TO CLOSED SESSION OF TUESDAY, JANUARY 26, 2009

DCA Assigned: J. Dawson

Discussion with the Mayor and City Council pending contract negotiations with employee unions (Police Officers Association, International Association of Firefighters Local 145, Municipal Employees Association, AFSCME Local 127, and the Deputy City Attorney's Association).

Closed Session Comment 1:

Hud Collins commented on the status of negotiations with the bargaining units.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 6:29 p.m. - 6:32 p.m.)

Council President Hueso closed the hearing.

ITEM-200: Academy of Our Lady of Peace. Project No. 130619. Two appeals of the Planning Commission's decision approving an application for a Planned Development Permit, Site Development Permit, Conditional Use Permit and Neighborhood Development Permit to expand and modify the existing Academy of Our Lady of Peace high school by permitting: Enrollment of no more than 750 students; Demolition of three single-family structures (2544 Collier Ave., 2746 Copley Ave., and 4910 Uvada Pl.); Construction of a two-story classroom building; Construction of a two-level parking structure; Landscape renovations; Associated deviations to implement the proposed development; Tandem parking; And other improvements, on a 23.28-acre site located at 4860 Oregon Street (Greater North Park Community Plan Area. District 3.)

Matter of the appeals by *Between Heights Neighborhood and North Park* Planning Committee from the decision of the Planning Commission approving an application for a Planned Development Permit, Site Development Permit, Conditional Use Permit and Neighborhood Development Permit to expand and modify the existing Academy of Our Lady of Peace high school by permitting: enrollment of no more than 750 students; demolition of three single-family structures (2544 Collier Ave., 2746 Copley Ave., and 4910 Uvada Pl.);

construction of a two-story classroom building; construction of a two-level parking structure; landscape renovations; associated deviations to implement the proposed development; tandem parking; and other improvements, on a 23.28-acre site located at 4860 Oregon Street in the RS-1-7 and RS-1-1 Zones, the Transit Area Overlay Zone, and the FAA Part 77 Noticing Area, within the Greater North Park Community Plan Area.

(EIR No. 130619/MMRP/Findings and Statement of Overriding Considerations/PDP No. 450668/SDP No. 450706/CUP No. 450705/NUP No. 590185-Amendment to Conditional Use Permit/Resource Protection Permit No. 92-0769.)

STAFF'S RECOMMENDATION:

Take the following actions:

Subitem A: (R-2009-) CONTINUED TO TUESDAY, MARCH 3, 2009

Granting or denying the appeals and upholding or overturning the Planning Commission's decision certifying Environmental Impact Report (EIR) No. 130619; adoption of the Mitigation, Monitoring and Reporting Program; and adoption of the applicant's *Findings and Statement of Overriding Considerations*.

Directing the City Attorney to prepare the appropriate resolution(s) according to Section 40 of the City Charter.

Subitem B: (R-2009-) CONTINUED TO TUESDAY, MARCH 3, 2009

Granting or denying the appeals and upholding or overturning the Planning Commission's decision approving Planned Development Permit No. 450668, Site Development Permit No. 450706, Conditional Use Permit No. 450705, and Neighborhood Development Permit No. 590185 (Amendment to Conditional Use Permit/Resource Protection Permit No. 92-0769) with appropriate findings to support Council action.

Directing the City Attorney to prepare the appropriate resolution(s) according to Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission on October 9, 2008, voted 5-0-2 to recommend approval of the project, with additional conditions read into the record (Attachment 2).

Ayes: Schultz, Golba, Otsuji, Naslund, Ontai
Recusing: Griswold
Not Present: Smiley

The North Park Planning Committee, on September 16, 2008, voted 10-1-1 to *recommend denial of the proposed project.*

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

The proposed expansion and modification of the existing Academy of Our Lady of Peace high school, located at 4860 Oregon Street in the Greater North Park Community Plan Area.

STAFF RECOMMENDATION:

1. Deny the appeals.
2. Affirm the Planning Commission's certification of Environmental Impact Report (EIR) No. 130619, Adoption of the Mitigation Monitoring and Reporting Program, and Adoption of the applicant's Findings and Statement of Overriding Considerations;
3. Affirm the Planning Commission's approval of Planned Development Permit No. 450668, Site Development Permit No. 450706, Conditional Use Permit No. 450705, and Neighborhood Development Permit No. 590185 (An Amendment to RPO/CUP 92-0769).

EXECUTIVE SUMMARY:

The project site is located at 4860 Oregon Street, in the RS-1-7 and RS-1-1 Zones, the Transit Area Overlay Zone, within the Greater North Park Community Plan area. The 23.28-acre site lies on the southern rim above Mission Valley, at the north edge of North Park. The site is nestled within a single-family residential area, and accessed via residential streets. The project area is comprised of several parcels, and while addressed at 4560 Oregon Street, actually has frontage on several streets: Collier Street, Oregon Street, Copley Avenue and Uvada Place all border the property the property. Adams Avenue is a few blocks to the south, and I-805 is to the east.

The proposed project is a request for a Planned Development Permit, Site Development Permit, Conditional Use Permit and Neighborhood Development Permit to allow: a maximum annual enrollment of 750 students; demolition of three existing residential structures; construction of an approximately 21,059-square-foot, two-story classroom building; and construction of a new, two-level parking structure on the site. Renovation of the existing landscaping is also proposed, as well as the closing of Circle Drive.

The applicant has stated that their primary objective in proceeding with this “master plan” project is to modernize the Academy of Our Lady of Peace school and to allow the school to remain competitive in the current educational environment in San Diego.

Discretionary Actions Summarized:

Planned Development Permit: A Planned Development Permit is required for the proposed deviations for height, setback and assignment of tandem parking spaces.

STAFF SUPPORTING INFORMATION:

Site Development Permit: A Site Development Permit is required due to the presence of environmentally-sensitive lands in the form of steep slopes. The actual property ownership area has a large quantity of sensitive steep slopes 25% or greater (808,473 square feet). The new structures are proposed to encroach less than 1,000 square feet into these areas, which is minimal and permitted by the San Diego Municipal Code.

Conditional Use Permit: A Conditional Use Permit is required to increase the maximum student enrollment on this site from 640 students to 750 students. The current maximum student enrollment permitted is 640 students (per RPO/CUP 92-0769). The applicant is currently in violation of this permit, and is subject to a Civil Penalties Administrative Enforcement Order, as further discussed within the Report to the Planning Commission No. 08-098.

Neighborhood Development Permit: A Neighborhood Development Permit is required for the provision of tandem parking on the site.

FISCAL CONSIDERATIONS: All costs associated with the processing of this project are paid by the applicant.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Planning Commission Hearings: The Planning Commission originally heard this project on September 18, 2008. After public testimony, the Planning Commission posed several questions to the applicant regarding enrollment, adaptive reuse, relocation of existing structures, and traffic issues. The Commission requested the applicant and the "Between Heights" neighborhood group work together and return to the Planning Commission on October 9, 2008, to respond to these questions. On October 9, 2008, the Planning Commission heard further testimony responding to the prior questions.

Planning Commission Decision: On October 9, 2008, the Planning Commission voted 5-0-1 (Griswold abstaining and Smiley not present) to recommend approval of the project, with additional conditions read into the record (Attachment 2).

STAFF SUPPORTING INFORMATION:

Appeal of Planning Commission's Decision: On October 23, 2008, both the North Park Planning Committee and Between Heights (community group) appealed the Planning Commission's decision to approve the project. Both appeals are similar; they both cite "Findings Not Supported" as the reason for the appeals, and they both list the same general basis for this conclusion.

1. Inconsistency and adversely affecting the General Plan and Land Use Plan by permitting the removal of "historic" homes, school use is inconsistent with low-density use, and failure to adequately explore adaptive reuse.
2. Detrimental to the public health, safety and welfare due to traffic issues.
3. Not beneficial to the community because students are not from the neighborhood, adaptive reuse was not adequately explored, and the school is in violation of its current Conditional Use Permit.

All these above issues were addressed within the Environmental Impact Report, and through testimony at both Planning Commission hearings. At the October 9, 2008, hearing, lengthy testimony regarding the exploration of adaptive reuse was presented and discussed. At the conclusion, the Planning Commission accepted the Environmental Impact Report, which included the additional testimony, and made the overriding considerations required to certify the EIR and approve the project.

Community Planning Group: The North Park Planning Committee voted 10-1-1 to recommend denial of the proposed project on September 16, 2008.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key Stakeholders: The Academy of Our Lady of Peace, owner (reference Attachment 10 of Report to the Planning Commission No. PC-08-098); families of current and potential students of The Academy of Our Lady of Peace; neighbors within the North Park community surrounding the school.

Projected impacts are discussed within the Environmental Impact Report, however, the major issues discussed at the public hearings are related to traffic, removal of "historic" homes, current violation of existing CUP (enrollment), and the need for a modernized school facility adequate to meet current needs.

STAFF SUPPORTING INFORMATION:

Broughton

LEGAL DESCRIPTION:

The 23.28-acre site is located at 4860 Oregon Street in the RS-1-7 and RS-1-1 Zones, the Transit Area Overlay Zone, and the FAA Part 77 Noticing Area, within the Greater North Park Community Plan Area. The project site is legally described as: portions of Villa Lots 31, 32, 33 and 50, and all of Villa Lots 35 thru 49, Map No. 937; portions of Lots 3, 4, 5 and 6, Block R, University Heights, Map No. 1064; and all of Lots 1 and 2, Block R, University Heights, according to a Map made by G.A.D'Hemecourt in Block 8, Page 36 et seq of his pendens.

Staff: Michelle Sokolowski – (619) 446-5278
Nina Fain – Deputy City Attorney

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

Testimony in favor of the appeal by Joy Dougherty, Bruce Coons, Susan Brandt-Hawley, Rob Steppke, Judy O'Boyle, Christy Scannell, Roxanne Govari, Sidney Sullivan, Sue Fogle-Strickland, Tom MacDonald, Martin Chevalier, Barbara Dodd, Kenneth Contreras, Janet O'Dea, Jeff Combs, Hugh Williams, Mark Ballam, Russ Lopez, Susan Brandt-Hawley, Clyde Turner, Nancy Moors, Bob Dean, Ernestine Bonn, Vicki Granowitz, Ronald V. May, Dan Soderberg, Sid Voorakkara, Dan Sullivan, Dionne Carlson, and Jim Bartell.

Testimony in opposition of the appeal by Kirsten Hadzicki, Lori Favela, Gilberto Moreno, Trish Butler, Edward McArdle, Alexandra Kelly, Paul Robinson, Jenn Won, Grant Lichtman, Eve Withersby, Kathleen Herb, Molly Diamond, Marie Burke Lia, Dr. Kelly Keefe, Margaret Wiedower, Vivian Toscano, Jim Carlin, Rita Bonnell, Deanna Buhr, Tammy Caballero, Jim Infantine, Audrey Pierik, Nora Faine-Sykes, Edwin Hearn, Marie Burke Lia, and John Hoy.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:08 p.m. - 6:20 p.m.)

Motion by Gloria to uphold the appeal and deny the project based on the inability to make the appropriate findings or adopt the Statement of Overriding Considerations; approve the Conditional Use Permit language that increases enrollment at Our Lady of Peace to 750 students. Direct that Our Lady of Peace shall provide adequate off-site parking and traffic management as called for in the Administrative Enforcement Order. The school shall form a working group that includes members of the community for their modernization needs that does not involve the removal of the historic homes. Second by Lightner. No vote taken.

MOTION BY DEMAIO TO CONTINUE TO TUESDAY, MARCH 3, 2009, FOR FURTHER REVIEW. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-not present, Hueso-yea.

REPORT OUT OF CLOSED SESSION:

None.

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NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Hueso at 7:28 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 7:28 p.m. - 7:28 p.m.)

Elizabeth S. Maland, City Clerk
City of San Diego

UNAPPROVED

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THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, JANUARY 20, 2009
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Hueso at 10:02 a.m. The meeting was recessed by Council President Peters at 11:00 a.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Council President Hueso at 2:03 p.m. with Council Member Young and Council Member Frye not present. Council President Hueso recessed the regular meeting at 2:31 p.m. to convene the Housing Authority. Council President Hueso reconvened the regular meeting at 3:45 p.m. with Council Member Young and Council Member Frye not present. The meeting was adjourned by Council President Hueso at 3:48 p.m.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Peters-present
 - (2) Council Member Faulconer-present
 - (3) Council Member Atkins-present
 - (4) Council Member Young-not present
 - (5) Council Member Maienschein-present
 - (6) Council Member Frye-not present
 - (7) Council Member Madaffer-present
 - (8) Council Member Hueso-present
- Clerk-Maland (dlc/mz)

FILE LOCATION: MINUTES

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ITEM-300: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Peters-present
- (2) Council Member Faulconer-present
- (3) Council Member Atkins-present
- (4) Council Member Young-not present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-not present
- (7) Council Member Madaffer-present
- (8) Council Member Hueso-present

ITEM-10: INVOCATION

Invocation was given by City Clerk Elizabeth Maland.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member DeMaio.

FILE LOCATION: MINUTES

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NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Don Stillwell commented on public transportation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:21 a.m. – 10:22 a.m.)

PUBLIC COMMENT-2:

Hud Collins commented on the City and the war.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:22 a.m. - 10:25 a.m.)

PUBLIC COMMENT-3:

Al Strohlein commented on fiscal responsibility.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:26 a.m. - 10:29 a.m.)

PUBLIC COMMENT-4:

Jarvis Ross commented on water.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:29 a.m. - 10:32 a.m.)

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PUBLIC COMMENT-5:

Reginald Jerome Carroll commented on the San Diego HIV Planning Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:32 a.m. - 10:34 a.m.)

PUBLIC COMMENT-6:

Phil Hart commented on the Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:34 a.m. - 10:35 a.m.)

PUBLIC COMMENT-7:

Joy Sunyata commented on her vision.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:35 a.m. - 10:38 a.m.)

PUBLIC COMMENT-8:

Marvin Allen commented on a smoking ban.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:38 a.m. - 10:41 a.m.)

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PUBLIC COMMENT-9:

Crickett Bradburn commented on her concerns.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:41 a.m. - 10:43 a.m.)

PUBLIC COMMENT-10:

David Ross commented on the displaced in San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:43 a.m. - 10:46 a.m.)

PUBLIC COMMENT-11:

Gary Hill commented on a party.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:46 a.m. - 10:49 a.m.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member Gloria thanked all for the Neighborhood Community Clean-up event this past weekend.

COUNCIL COMMENT-2:

Council Member Emerald plans to docket the issues raised by David Ross during the *Non-Agenda Public Comment*.

INDEPENDENT BUDGET ANALYST COMMENT:

None.

CITY ATTORNEY COMMENT:

None.

ITEM-30: One Book, One San Diego Month.

MAYOR SANDERS' AND COUNCILMEMBER YOUNG'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-766) ADOPTED AS RESOLUTION R-304598

Recognizing the San Diego Public Library and KPBS for their efforts to promote literacy, a love of reading, and deeper understanding about the issues that affect our community;

Proclaiming the month of January 2009, to be "One Book, One San Diego Month" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:10 a.m. – 10:22 a.m.)

MOTION BY DEMAIO TO ADOPT. Second by Emerald. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

- * ITEM-50: Second Amendment to the Agreement with Cornerstone Engineering Corporation for La Jolla Village Drive-Torrey Pines Road to Villa La Jolla. (University City Community Area. District 1.)

CITY COUNCIL’S RECOMMENDATION:

Adopt the following ordinance which was introduced on 1/6/2009, Item 50. (Council voted 8-0):

(O-2009-44) ADOPTED AS ORDINANCE O-19828 (New Series)

Authorizing the Mayor to execute, for and on behalf of the City, an Agreement with Cornerstone Engineering Corporation, for professional engineering services, under the terms and conditions set forth in the Agreement, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement;

Authorizing the expenditure of an amount not to exceed \$1,500 from Fund 79001, North University City Facilities Benefit Assessment (FBA), CIP-52-452.0, La Jolla Village Drive - Torrey Pines Road to Villa La Jolla, for the purpose of providing funds for the above referenced Project;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves;

Declaring that this activity was covered under a previously certified Mitigated Negative Declaration, LDR No. 42-0823, PTS No. 5264 by Resolution No. R-298807 dated January 26, 2004.

NOTE: 6 votes required pursuant to Section 99 of the City Charter.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:20 a.m.)

CONSENT MOTION BY FAULCONER TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

* ITEM-51: Continued Retention of Hawkins Delafield & Wood LLP as City General Disclosure Counsel.

(See Independent Budget Analyst Report No. 08-125.)

CITY COUNCIL’S RECOMMENDATION:

Adopt the following ordinance which was introduced as amended on 1/6/2009, Item 330. (Council voted 8-0):

(O-2009-80 Rev. Cor. Copy) ADOPTED AS ORDINANCE O-19829
(New Series)

Authorizing the Mayor, or his designee, to execute, for and on behalf of the City of San Diego, an Agreement with Hawkins Delafield and Wood LLP for continued retention as City General Disclosure Counsel;

Authorizing the City Comptroller to expend up to an additional \$180,000 for General Disclosure Counsel Services allocated on an FTE basis only to the extent that work may not be appropriately allocated specifically to the General Fund, one of the Enterprise Funds or to a particular bond finance project;

Authorizing and directing the City Comptroller to reallocate the funding sources among appropriate bond finance projects, as may be required based upon actual billings.

NOTE: 6 votes required pursuant to Section 99 of the City Charter.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:20 a.m.)

CONSENT MOTION BY FAULCONER TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

* ITEM-100: Settlement of the Property Damage Claim of John Trunkey and Greg Bishop.

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-703) ADOPTED AS RESOLUTION R-304599

Authorizing the Mayor, or his designee, to pay the total sum of \$835,000 in full and final settlement of each and every claim against the City of San Diego, its agents and employees, resulting from Claim No. LP07-0705-1147 by John Trunkey and Greg Bishop, for property damage along with related damages and expenses which occurred on or about December 17, 2006, and thereafter;

Authorizing the City Auditor and Comptroller to issue one check in the amount of \$550,000 in the current Fiscal Year following City Council and Mayoral approval of this action, and one check in the amount of \$285,000 in Fiscal Year 2010 by August 31, 2009, both made payable to BRYAN M. GARRIE, APC CLIENT TRUST ACCOUNT FBO JOHN TRUNKEY AND GREG BISHOP, in settlement of said claims, with said funds to be payable from the Water Utility Fund 41500;

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Declaring that this activity is not a project and is therefore exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15060(c)(3).

STAFF SUPPORTING INFORMATION:

The proposed settlement would resolve all claims brought by John Trunkey and Greg Bishop for flood damage to their house, including allegations of structural instability, expenses for temporary substitute residence during repairs and contents damage.

FISCAL CONSIDERATIONS:

Settlement will be paid from the Water Utility fund.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On November 18, 2008, the City Council voted in Closed Session on Item CS-4, John Trunkey, et al. v. City of San Diego, Claim No. LP07-0705-1147, to approve a settlement agreement. The agreement requires the City to pay \$835,000 to resolve the claim for a total settlement of \$977,475.83. The motion was made by Council President Peters and seconded by Councilmember Atkins. The motion passed unanimously 8-0.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A

Bych/Lewis

Aud. Cert. 2900494.

Staff: James Coldren - (619) 236-5598
Raymond C. Palmucci - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:20 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT THE RESOLUTION. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

* ITEM-101: Appointment to the Community Forest Advisory Board.

(See memorandum from Mayor Sanders dated 12/17/2008, with resume attached.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2009-746) ADOPTED AS RESOLUTION R-304600

Council confirmation of the following appointment by the Mayor of the City of San Diego, to serve as a member of the Community Forest Advisory Board, for a term ending as indicated:

<u>NAME</u>	<u>CATEGORY</u>	<u>TERM ENDING</u>
Fausto Palafox (Downtown San Diego, District 2) (Replacing William Tall, who is not seeking reappointment)	Horticulture/Nursery Industry Representative	December 31, 2011

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FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:20 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT THE RESOLUTION. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

* ITEM-102: Declaring a Continued State of Emergency Regarding the Wildfires.

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2009-431) ADOPTED AS RESOLUTION R-304601

Declaring a continued state of emergency to exist in the City of San Diego due to the wildfires which began on October 21, 2007, pursuant to California Government Code Section 8630;

Declaring that the measures previously taken by the City Council in Resolution No. R-303098 shall continue to have full force and effect.

FILE LOCATION: GEN'L -- State of Emergency Regarding the Wildfires

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:20 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT THE RESOLUTION. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

* ITEM-103: State of Local Emergency Declaration Regarding the Landslide on Mount Soledad.

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2009-607) ADOPTED AS RESOLUTION R-304602

Declaring a continued state of emergency to persist relative to the landslide on Mount Soledad, pursuant to California Government Code Section 8630;

Declaring that the measures previously authorized by the City Council in Resolution No. R-303041 shall continue to have full force and effect.

FILE LOCATION: GEN'L – State of Emergency Regarding the Landslide on Mount Soledad

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:20 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT THE RESOLUTION. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

* ITEM-104: Declaring a Continued State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico. (District 8.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2009-583) ADOPTED AS RESOLUTION R-304603

Declaring a Continued State of Emergency regarding the discharge of raw sewage from Tijuana, Mexico.

FILE LOCATION: GEN'L – State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:20 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT THE RESOLUTION. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

ITEM-105: Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City.

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2009-615) ADOPTED AS RESOLUTION R-304604

Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego.

FILE LOCATION: GEN'L – State of Emergency Due to Severe Shortage of Affordable Housing in the City

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:20 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT THE RESOLUTION. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

ITEM-330: Playa del Sol, Project No. 4925. An application for a Planned Development Permit to construct 16 multi-story condominium structures consisting of 1,578 multi-family units and for deviations to the height and setback requirements; a Vesting Tentative Map and Easement Vacations to subdivide the 45.97 acre site into three (3) lots for a residential condominium development and one Homeowners Association lot. (Otay Mesa Community Plan Area. District 8.)

Matter of approving, conditionally approving, modifying or denying an application for a Planned Development Permit to construct 16 multi-story condominium structures consisting of 1,578 multi-family units and for deviations to the height and setback requirements of the RM-3-7 Zone; a Vesting Tentative Map and Easement Vacations to subdivide the 45.97 acre site into three (3) lots for a residential condominium development and one Homeowners Association lot. The project site is located south of Ocean View Hills Parkway, north of State Route 905, and west of A Street in the RM-3-7 zone in California Terraces Precise Plan (Planning Area 6) and within the Otay Mesa Community Plan Area.

STAFF'S RECOMMENDATIONS:

Adopt the following resolutions:

Subitem-A: (R-2009-641) CONTINUED TO TUESDAY,
FEBRUARY 17, 2009,
2:00 P.M. TIME CERTAIN

Adoption of a resolution certifying that Addendum No. 4925 to Environmental Impact Report No. 86-1032, on file in the Office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended and the State Guidelines thereto (California Code of Regulations Sections 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of a vesting tentative map, an easement abandonment, and a planned development permit for the Playa Del Sol Project;

Declaring project revisions now mitigate potentially significant effects on the environment previously identified in the *Initial Study and therefore*, approve the Addendum to Environmental Impact Report, a copy of which is on file in the Office of the City Clerk;

Adopting the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, pursuant to California Public Resources Code Section 21081.6, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference;

Directing the City Clerk to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

Subitem-B: (R-2009-642 Cor. Copy) CONTINUED TO TUESDAY,
FEBRUARY 17, 2009,
2:00 P.M. TIME CERTAIN

Adoption of a resolution certifying findings with respect to Planned Development Permit No. 8075, which are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference;

Granting Planned Development Permit No. 8075 to Pardee Homes, Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

Subitem-C: (R-2009-643 Cor. Copy) CONTINUED TO TUESDAY,
FEBRUARY 17, 2009,
2:00 P.M. TIME CERTAIN

Adoption of a resolution certifying findings with respect to Vesting Tentative Map No. 551809, which are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference;

Declaring that pursuant to California Government Code Section 66434(g), retention basin easement granted per document No. 1999-0400948, recorded June 9, 1999, page 2517, City Drawing 27980-4, 22-D and temporary construction area easement granted per document No. 1999-0400948, page 2518, recorded June 9, 1999, City Drawing 27980-4, 22-D, located within the project boundaries as shown in Vesting Tentative Map No. 551809T, shall be vacated, contingent upon the recordation of the approved map for the project;

Granting Vesting Tentative Map No. 551809 and Easement Vacation No. 580203 to Pardee Homes, Applicant/Subdivider and Project Design Consultants, Engineer, subject to the attached conditions which are made a part of this resolution by this reference.

OTHER RECOMMENDATIONS:

On November 13, 2008, the Planning Commission voted 4-2-0 to approve the project with two suggestions: 1) use solar photovoltaic for the common areas, and 2) switch Buildings 8 and 9 (4-stories) with Buildings 12 and 13 (3-stories) to place the shorter buildings adjacent to the single-family homes to the north of the site. The applicant is investigating the use of photovoltaic for the common areas and has agreed to a permit condition that requires Buildings 8 and 9 to be 3-stories and Buildings 12 and 13 to be 4-stories.

Ayes: Golba, Otsuji, Naslund, Ontai
Nays: Schultz, Griswold
Abstaining: None
Not present: Smiley

The Otay Mesa Community Planning Group has recommended approval of this project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTIONS:

Vesting Tentative Map; Easement Vacations; and a Planned Development Permit to construct 16 multi-story condominium structures consisting of 1,578 multi-family units on a previously graded 45.97 acre site in Planning Area 6 of the California Terraces Precise Plan (CTPP) within the Otay Mesa Community Plan area.

STAFF RECOMMENDATIONS:

1. **Certify** Addendum No. 4925 to Final Environmental Impact Report No. 86-1032; and **adopt** the Mitigation, Monitoring and Reporting Program.
2. **Approve** Vesting Tentative Map No. 551809; Easement Vacation No. 580203; and Planned Development Permit No. 8075.

EXECUTIVE SUMMARY:

The 45.97 acre project site is located south of Ocean View Hills Parkway, north of State Route 905 and west of A Street within the CTPP, Planning Area 6 area and the Otay Mesa Community Plan area. The land use designation is medium-high residential and the zoning is RS-1-14 and RM-3-7, which allows for multi-family residential development.

In 1994, the City of San Diego certified the Final Environmental Impact Report (FEIR) for the California Terraces Precise Plan. Currently, the majority of the CTPP area has been either mass graded or is developed, including the subject site. The site is not adjacent to the Multiple Habitat Planning Area (MHPA).

The proposed project consists of 1,578 multi-family units within 16 multi-story condominium structures. The 16 residential buildings would consist of 10 four-story buildings and 6 three-story building. The units would range in size from one to four bedrooms (1,050 square feet to 1,400 square feet). Two levels of underground parking would be provided within each of the residential buildings. The project would also include three 9,600 square-foot recreational buildings and associated common open space. Access to the site would be provided from two locations along the future Old Otay Mesa Road/proposed public Street A and Del Sol Boulevard.

A Vesting Tentative Map is requested to subdivide the site into three lots for residential condominium development and one for a Home Owner's Association lot. There is also a request to vacate a retention basin and a temporary construction easement. The easements were necessary for the widening of Otay Mesa Road, however now that the road widening has been completed the easements are no longer necessary.

A Planned Development Permit is required to grant deviations from the RM-3-7 height limit of 40 feet to a maximum of 58 feet. The increase in height is necessary to accommodate the density envisioned by the California Terraces Precise Plan. The height deviation will allow more units to be built on the site than if the 40-foot height limit were strictly applied.

Deviations from the RM-3-7 zone setback requirements are requested for street side yards and side yard setbacks. The setback deviations are supported. The density envisioned in the California Terraces Precise Plan would not be achieved if the setback was strictly applied and the proposed setbacks are consistent with the surrounding development pattern.

FISCAL CONSIDERATIONS:

None with this action. All costs associated with the processing of this project are paid for by the applicant.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

In 1994, the City of San Diego certified Final Environmental Impact Report No. 86-1032 for the California Terraces Precise Plan.

PLANNING COMMISSION ACTION:

On November 13, 2008, the Planning Commission voted 4:2:0 to approve the project with two suggestions: 1) use solar photovoltaic for the common areas, and 2) switch Buildings 8 and 9 (4-stories) with Buildings 12 and 13 (3-stories) to place the shorter buildings adjacent to the single-family homes to the north of the site. The applicant is investigating the use of photovoltaic for the common areas and has agreed to a permit condition that requires Buildings 8 and 9 to be 3-stories and Buildings 12 and 13 to be 4-stories.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On August 16, 2006, the Otay Mesa Planning Group voted 14-2-0 to support the project with the following conditions: 1) consider noise attenuation for the residents; 2) analyze traffic calming measures on Ocean View Hills Parkway; and 3) examine the inclusion of bus transit in the community. These issues were analyzed, but were not implemented. For a discussion see attached report (PC-08-151), Community Planning Group Recommendation Section.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Pardee Homes

Broughton/PG

LEGAL DESCRIPTION:

The site is located within the Otay Mesa Community Planning Area in the RM-3-7 Zone and California Terraces Precise Plan (Planning Area 6). (Northwest quarter of section 25, township 18 south, range 2 west, San Bernardino meridian).

Staff: Patricia Grabski – (619) 446-5277
Keith Bauerle – Deputy City Attorney

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

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:03 p.m. – 2:07 p.m.)

MOTION BY EMERALD TO CONTINUE TO TUESDAY, FEBRUARY 17, 2009, 2:00 P.M. TIME CERTAIN, AT THE REQUEST OF STAFF FOR FURTHER REVIEW OF ENVIRONMENTAL DOCUMENTS. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

ITEM-331: Approving Centre City Conditional Use/Planned Development Permit 2008-25 for the 14th and Commercial Temporary Transitional Housing Project within the Downtown Community Plan Area. (District 2.)

(See Centre City Development Corporation Report No. CCDC-09-02.)

CENTRE CITY DEVELOPMENT CORPORATION’S RECOMMENDATION:

Adopt the following resolution:

(R-2009-652) ADOPTED AS RESOLUTION R-304605

Adopting the following findings with respect to Centre City Conditional Use/Planned Development Permit No. 2008-25:

A. CONDITIONAL USE PERMIT

1. **The proposed use or development will not adversely affect the applicable land use plan.** The existing transitional housing facility has operated in downtown San Diego for thirty years, providing valuable services critical to the needy members of our community, including the homeless and those at-risk of becoming homeless. The proposed temporary transitional housing

facility will allow continued services to those enrolled in the program while the construction of a new building that improves the living conditions of the transitional housing residents. The short-term operation of the temporary transitional housing facility will not adversely affect the applicable land use plan as the Planned District Ordinance (PDO) and Land Development Code (LDC) require the review and approval of a CUP/PDP to address the proposed use and any issues that may conflict with the surrounding neighborhood.

2. **The proposed use or development will not be detrimental to the public health, safety, and welfare.** The proposed use will not be detrimental to, but rather contribute to, public health, safety, and welfare by continuing to provide members of the community with needed services and living facilities during construction of the new facility.

The proposed conditions of approval will ensure that the use is not a detriment to the public health, safety, and welfare of the surrounding neighborhood by providing all services on-site with appropriate security. The new facility will greatly improve the surrounding area as it will consolidate uses, provide a more attractive building and greatly improve the quality of life for the residents.

3. **The proposed use or development will comply to the maximum extent feasible with the regulations of the Land Development Code.** The proposed facility is designed, and will continue to operate, in conformance with the regulations of the City's LDC, the Downtown Community Plan, and the Centre City PDO to the maximum extent feasible. Due to the temporary nature of the facility, it is appropriate to allow flexibility from the development standards of the PDO and LDC for transitional housing facilities. The LDC allows for facilities such as this to exist within certain areas of the city with reasonable conditions of approval and provides the ability to grant exceptions through the PDP process provided certain findings can be made.
4. **The proposed use is appropriate at the proposed location.** The proposed temporary transitional housing facility site is located within the Mixed Commercial District which allows the proposed use with the approval of a CUP. The facility will be located on a vacant site and conditions of approval will require that the site be properly screened and maintained so as not to create a nuisance to the surrounding neighborhood. The facility would be

located at this site only during construction of the new facility (no more than thirty months).

B. PLANNED DEVELOPMENT PERMIT FINDINGS:

- 1. The proposed development will not adversely affect the applicable land use plan.** The project site is within the Mixed Commercial land use district which accommodates a wide variety of uses, including residential, commercial services, transportation, retail, and the separately regulated uses proposed in the project. Under this land use classification, a CUP is required for Transitional Housing Facilities. The granting of the CUP/PDP for a temporary facility would only provide relief from strict application of the development standards and transitional housing requirements in order to allow the relocation of an existing facility for a limited period of time.

This accommodates the construction of a more attractive and functional project for the neighborhood, which would not negatively affect the applicable land use plan.

- 2. The proposed development will not be detrimental to the public health, safety, and welfare.** The proposed use will not be detrimental to, but rather contribute to public health, safety, and welfare by providing members of our community with needed services and living facilities. When the new 15th & Commercial project is complete, it will significantly improve the transitional housing and day care facilities currently located on-site and add much-needed affordable housing in an attractive new building. The project is consistent with the Downtown Community Plan and complies with all requirements of the Centre City PDO and LDC. The project will provide an attractive building for this site that is compatible in scale and materials with the redeveloping neighborhood.
- 3. The proposed development will comply with the regulations of the Land Development Code.** The proposed project will not meet many of the requirements of the LDC and Centre City PDO as described above. However, deviations are allowed with the approval of the PDP and the project will meet such regulations of the LDC and PDO as needed to ensure the temporary facility is compatible with surrounding land uses. Three deviations to the Transitional Housing Requirements listed in Section 141.0313 of the LDC with this project as follows: Approximately 3.3 square-feet of living area per

bed, not including sleeping space, dining areas, and kitchen areas shall be allowed where five square-feet of living areas is usually required; 20 square-feet of sleeping space for each resident shall be allowed where 70 square-feet is required; no off-street parking requirements per bed will be required and six off-street parking spaces for employees allowed where at least one off-street parking space for each employee and one off-street parking space for every seven beds would be required.

4. **The proposed development, when considered as a whole, will be beneficial to the community.** When considered as a whole, the proposed project would be beneficial to the community by allowing the existing services to relocate for a short period of time to facilitate the construction of the new project as discussed earlier.
5. **Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.** The proposed deviations are appropriate for this location given the temporary nature of the facility. The deviations will not result in any negative adverse impacts on the surrounding land uses as the use will only be at the proposed location for a defined period of time. The development standards in the PDO are intended to apply to structures that will exist for significant periods of time, not temporary structures such as the proposed facility.

The above findings are supported by the minutes, plans and exhibits, all of which are incorporated herein by this reference;

Declaring that this activity is covered under the Final Environmental Impact Report (FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, the Redevelopment Plan for the Centre City Project Area, which was certified by the Redevelopment Agency by Resolution R-04001 and by the City Council by Resolution R-301265 on March 14, 2006, and the Addendum to the FEIR for the 11th Amendment to the Redevelopment Plan for the Centre City Redevelopment Project, Amendments to the San Diego Downtown Community Plan, Centre City Planned District Ordinance, Marina Planned District Ordinance, and the Redevelopment Plan for the Centre City Project Area certified by the Redevelopment Agency by Resolution R-04193 and by the City Council by R-302932 on July 31, 2007. The activity is adequately

addressed in the environmental documents noted above and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved project, the activity is not a separate project for the purposes of the California Environmental Quality Act (CEQA) review per CEQA Guidelines Sections 15060(c)(3) and 15378(c);

Declaring that the Centre City Conditional Use/Planned Development Permit No. 2008-25 is granted to S.V.D.P. Management, Inc., Owner/Permittee, under the terms and conditions set forth in the permit which is made a part of this Resolution.

SUPPORTING INFORMATION:

S.V.D.P. Management, Inc. ("SVDP") has submitted a request for a CUP/PDP to allow the operation of a temporary transitional housing facility at 1402 Commercial Street. The temporary facility would accommodate the relocation of an existing 150 bed transitional housing facility during the construction of the 15th & Commercial Project to be located on the north side of Commercial Street between 15th & 16th Streets. This proposal includes a request for deviations to the development regulations of the Centre City PDO, as well as deviations to three transitional housing requirements of the LDC.

FISCAL CONSIDERATIONS: None.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION:

The Centre City Development Corporation ("Corporation") this item was heard on September 24, 2008. An oral report will be made with their recommendation.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On September 17, 2008, the Centre City Advisory Committee (CCAC) voted 21-0 with 3 recusals, and the Project Area Committee (PAC) voted 19-0 with 3 recusals, to recommend that the facility be permitted at this location no longer than 30 months or 30 days after a Certificate of Occupancy has been issued for the new 15th and Commercial Project, whichever is sooner.

Contreras/Kaiser/Richter

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:07 p.m. – 2:31 p.m.)

MOTION BY FAULCONER TO ADOPT. Second by Emerald. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-not present, Emerald-yea, Hueso-yea.

ITEM-350: **Notice of Pending Final Map Approval – 4666 Utah Street Condominiums.**

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “4666 Utah Street Condominiums” (T.M. No. 65412/PTS No. 149681), located on Utah Street between Adams Avenue and Madison Avenue in the Mid-City: Greater North Park Community Plan Area in Council District 3, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

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REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Hueso at 3:48 p.m. in honor of the memory of:

Dr. Raul Contreras as requested by Council Member Gloria; and
Richard Ives as requested by Council Member Faulconer.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 3:45 p.m. – 3:48 p.m.)

Elizabeth S. Maland, City Clerk
City of San Diego

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UNAPPROVED

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR THE ADJOURNED REGULAR COUNCIL MEETING
OF
MONDAY, JANUARY 19, 2009
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

Present: None.

Not Present: Council Members Lightner, Faulconer, Gloria, Young, DeMaio, Frye,
Emerald, Hueso.

Clerk: Richardson.

Due to the observance of Martin Luther King, Jr. Day, the City Council meeting of Monday, January 19, 2009, has been adjourned, pursuant to the 2008 Legislative Calendar, adopted by Resolution R-303207 on December 3, 2007.

The meeting of Monday, January 19, 2009, will be held in conjunction with the regularly scheduled meeting of Tuesday, January 20, 2008. (The Closed Session Agenda for Tuesday, January 20, 2008, will commence immediately following the conclusion of the regular open session meeting.)

Elizabeth S. Maland, City Clerk
City of San Diego

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UNAPPROVED

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, JANUARY 13, 2009
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Hueso at 10:01 a.m. The meeting was recessed by Council President Hueso at 11:55 a.m.

The meeting was reconvened by Council President Hueso at 2:01 p.m. with Council Member Young not present. Council President Hueso recessed the regular meeting at 4:04 p.m. to convene the Redevelopment Agency. Council President Hueso reconvened the regular meeting at 4:12 p.m. with Council Member Young not present and recessed the meeting, thereafter, for the purpose of a break. Council President Hueso reconvened the regular meeting at 4:18 p.m. with Council Member Young not present, and thereafter, reconvened the Redevelopment Agency. Council President Hueso reconvened the regular meeting at 4:20 p.m. with Council Member Young not present. The meeting was adjourned by Council President Hueso at 4:22 p.m.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Lightner-present
- (2) Council Member Faulconer-present
- (3) Council Member Gloria-present
- (4) Council Member Young-not present
- (5) Council Member Demaio-present
- (6) Council Member Frye-present
- (7) Council Member Emerald-present

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(8) Council Member Hueso-present

Clerk-Maland (dlc/mz)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Lightner-present
- (2) Council Member Faulconer-present
- (3) Council Member Gloria-present
- (4) Council Member Young-not present
- (5) Council Member DeMaio-present
- (6) Council Member Frye-present
- (7) Council Member Emerald-present
- (8) Council Member Hueso-present

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Don Stillwell commented on prayer and the flag salute.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:04 a.m. – 10:06 a.m.)

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PUBLIC COMMENT-2:

Hud Collins commented on the city finances.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:06 a.m. - 10:08 a.m.)

PUBLIC COMMENT-3:

Joy Sunyata commented on the budget.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:08 a.m. - 10:11 a.m.)

PUBLIC COMMENT-4:

Izean Rim Jr. commented on public safety.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:11 a.m. - 10:14 a.m.)

PUBLIC COMMENT-5:

Blu Gengo and Andrew Moore commented on harbor seals in La Jolla.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:14 a.m. - 10:17 a.m.)

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PUBLIC COMMENT-6:

Robert McNamara commented on the 2010 public budget input.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:17 a.m. - 10:20 a.m.)

PUBLIC COMMENT-7:

Jarvis Ross commented on his reflections.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:20 a.m. - 10:23 a.m.)

PUBLIC COMMENT-8:

J. Nathaniel Howard commented on the pedi-cab industry.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:23 a.m. - 10:25 a.m.)

PUBLIC COMMENT-9:

Bill Bradshaw commented on the city budget.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:25 a.m. - 10:28 a.m.)

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PUBLIC COMMENT-10:

Ellen Shively commented on La Jolla.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:28 a.m. - 10:30 a.m.)

PUBLIC COMMENT-11:

Cynthia Conger commented on the city revenue.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:30 a.m. - 10:33 a.m.)

PUBLIC COMMENT-12:

David Ross commented on a health crisis.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:34 a.m. - 10:36 a.m.)

PUBLIC COMMENT-13:

Marvin commented on non-smoking tenants.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:37 a.m. - 10:40 a.m.)

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COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council President Hueso welcomed students from Saint Augustine High School.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:02 a.m. - 10:02 a.m.)

COUNCIL COMMENT-2:

Council Member Gloria also welcomed students from Saint Augustine High School.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:40 a.m. - 10:40 a.m.)

INDEPENDENT BUDGET ANALYST COMMENT:

None.

CITY ATTORNEY COMMENT:

None.

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ITEM-30: Approval of Council Minutes.

TODAY'S ACTION IS:

APPROVED

Approval of Council Minutes for the meetings of:

12/01/2008

12/02/2008

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:02 a.m. – 10:03 a.m.)

MOTION BY DEMAIO TO APPROVE. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

* ITEM-50: Second Amendment to Cooperative Agreement with CalTrans for Auxiliary Lanes on Interstate 15. (Rancho Peñasquitos, Rancho Bernardo, and Carmel Mountain Ranch Community Areas. Districts 1 and 5.)

STAFF'S RECOMMENDATION:

Introduce the following ordinance:

(O-2009-88) INTRODUCED, TO BE ADOPTED ON TUESDAY,
JANUARY 27, 2009

Introduction of an Ordinance authorizing the Mayor, or his designee, to execute an Amendment to a Cooperative Agreement with CalTrans for the completion of the construction of auxiliary lanes on Interstate 15, extending the termination date of the Agreement to December 31, 2012, under the terms and conditions filed in the Office of the City Clerk;

Declaring that this activity is covered under the I-15 Managed Lanes Final IS/EA and MND, SCH No. 2002101112. The activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved project, the activity is not a separate project for purposes of California Environmental Quality Act (CEQA) review, pursuant to State CEQA Guidelines Section 15060(c)(3).

NOTE: 6 votes required pursuant to Section 99 of the City Charter.

STAFF SUPPORTING INFORMATION:

On January 26, 2005, the City and CalTrans entered into an Agreement with CalTrans for the construction of auxiliary lanes on Interstate 15 as part of the I-15 Managed Lanes Project. The locations of the auxiliary lanes are: from Carmel Mountain Road to Camino del Norte (two northbound lanes); from Bernardo Center Drive to Rancho Bernardo Road (two northbound lanes); and from Bernardo Center Drive to Camino del Norte (one southbound lane). The termination date for this original Agreement was December 31, 2007.

Upon execution of the Agreement, the City contributed a one-time lump-sum payment of \$3,263,285 toward the construction of the auxiliary lanes. This represented the City's total contribution to the project.

Because project construction was not completed by the termination date of the Agreement, the Agreement was amended by Council action on January 18, 2008, to extend the termination date by one year to December 31, 2008.

CalTrans is requesting that the termination date for this Agreement be extended again to cover project completion, including all final accounting and other administrative activities at CalTrans, by four years to December 31, 2012.

Because this extension will extend the original Agreement beyond five years' duration, Council approval via ordinance is required.

FISCAL CONSIDERATIONS:

None with this action.

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PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Council approved the Cooperative Agreement to fund the construction of the auxiliary lanes on January 26, 2005.

Council approved a one-year extension of the Agreement on January 18, 2008.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

CalTrans is the key stakeholder in this action.

Boekamp/Jarrell

Staff: Deborah Van Wanseele - (619) 533-3012
Michael P. Calabrese - Chief Deputy City Attorney

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 10:03 a.m. - 10:04 a.m.)

CONSENT MOTION BY FAULCONER TO INTRODUCE. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

* ITEM-100: Inviting Bids for the Construction of Alvarado Water Treatment Plant (WTP) Upgrade and Expansion (Phase III – Rehabilitation of Basins 1 and 2). (Navajo Community Area. District 7.)

(See Engineering and Capital Projects Department’s 11/26/2008, Executive Summary Sheet.)

TODAY’S ACTION IS:

Adopt the following resolution:

(R-2009-666) ADOPTED AS RESOLUTION R-304586

Approving the plans and specifications for the construction of Alvarado Water Treatment Plant (WTP) Upgrade and Expansion (Phase III - Rehabilitation of Basins 1 and 2), on Work Order No. 189121;

Authorizing the expenditure of an amount not to exceed \$25,927,030, of which \$24,761,530 is for construction and project related costs from CIP-73-261.3, Alvarado WTP Upgrade and Expansion (Phase III - Rehabilitation of Basins 1 and 2) Fund No. 41500, Water, and \$1,165,500 is for CIP-73-331.0, Annual Allocation-Water Pooled Contingency, Fund No. 41500, Water solely, and exclusively, for the purpose of providing funds for the Project and related costs, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer;

Authorizing the Mayor, after advertising for bids in accordance with law, to award the Project construction contract to the lowest responsible and reliable bidder, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the use of City Force Work in CIP-73-261.3, Alvarado WTP Upgrade and Expansion, pursuant to recommendation indicating that said work can be done by the City Forces more economically than if let by contract, for the construction of Alvarado WTP Upgrade and Expansion (Phase III - Rehabilitation of Basins 1 and 2) in an amount not to exceed \$450,000;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves;

Declaring that this activity is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines Section 15378(b)(4). This activity is a subsequent discretionary approval covered under the Alvarado WTP Upgrade and Expansion EIR, LDR No. 98-0130 and Alvarado Water Filtration Plant Expansion and Rehabilitation EIR, DEP No. 88-0459. The activity is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review pursuant to CEQA Guidelines Section 15177. (BID-K094371C)

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 12/3/2008, NR&C voted 3 to 0 to forward this item to the full City Council. (Councilmembers Peters, Faulconer, and Frye voted yea. Councilmember Atkins not present.)

SUPPORTING INFORMATION:

As part of the Water Department Capital Improvements Program, the Alvarado Water Treatment Plant (AWTP) is undergoing an upgrade and expansion to increase its treatment capacity as well as provide infrastructure improvements to address new Federal Drinking Water Standards, and improve the operations and maintenance at the facility.

The existing flocculation/sedimentation basins 1 and 2 require rehabilitation and upgrade which is the third phase of the AWTP upgrade and expansion project. The project consists of partial demolition of both flocculation basins; and the construction of new influent and effluent pipelines, overflow channels, flocculation basins and flocculator systems, modification of the settled water conduit to accommodate conveyance of ozonated settled water to the filters on the west end of the plant, upgrades of sedimentation equipment, and the sludge collection and conveyance systems.

This project will meet the new drinking water standards set by the U.S. Environmental Protection Agency and included as Items Number 99 and 100 in the California Department of Public Health Compliance Order (04-14-96CO-022). In order to fulfill the Compliance Order, construction of these improvements must complete by June 30, 2012. In addition, the completion of this project is related to the Ozone project which needs to be completed by December 31, 2010, for water treatment and disinfection purposes.

The City of San Diego, as Lead Agency under the California Environmental Quality Act, has reviewed and considered the Addendum, LDR No. 98-0130, dated May 20, 1994, covering the AWTP Upgrade and Expansion, adopted on June 29, 1998, R-290389, to the Alvarado Water Filtration Plant Expansion and Rehabilitation EIR, DEP No. 88-0459, dated May 20, 1994, and adopted on June 29, 1998, R-290389.

City Forces will be utilized on this project for coordinating and effecting operational changes and difficult plant shutdown during construction, while maintaining continuous service to the City of San Diego customers. The work scope also includes closing and opening large diameter valves, monitoring flow in the existing clear wells and day-to-day coordination with the project team. Their knowledge, experience and participation on the project are essential to the success of the project. The cost for this work is estimated at \$450,000 for the duration of the Project.

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP):

Funding Agency: City of San Diego - Prevailing wages apply to this contract.

Goals: 29.3% Mandatory Subcontractor Participation Goal, 2.6% Advisory Participation Goal Disadvantaged Business Enterprise (DBE), 2.1% Advisory Participation Goal Disabled Veteran Business Enterprise (DVBE), 2.6% Small Minority Business Enterprise (SMBE), 0.6% Minority Women Business Enterprise (MWBE), 21.4% Other Business Enterprise (OBE).

Other: Prior to award, a workforce report, and if necessary, an Equal Opportunity Plan shall be submitted. Staff will monitor the Plan and adherence to the Nondiscrimination Ordinance. EOC staff will evaluate the bidder's compliance with SCOPE. Failure to comply with SCOPE will lead to the bid being declared non-responsive. This contract will be advertised for bids in the San Diego Daily Transcript, the City of San Diego's website, and the E-Bid Board. In addition, once implemented, the Bidder Registration Program will notify registered participants of bid opportunities. Prior to implementation of the Bidder Registration Program, the City will notify trade associations and eligible firms via fax and/or e-mail.

FISCAL CONSIDERATIONS:

The total estimated cost of this project is \$29,712,559, of which \$3,785,529 was previously approved by O-19763. Enterprise funding of \$24,761,530 will be available in CIP-73-261.3, AWTP Upgrade and Expansion (Phase III - Rehabilitation of Basins 1 and 2) Fund 41500, Water, and \$1,165,500 is from CIP-73-331.0, Annual Allocation-Water Pooled Contingency, Fund 41500, Water for the purpose of providing funds for this project contingency. The project costs of \$29,712,559 may be reimbursed approximately 80% by current or future debt financing. This project is scheduled to be phase-funded over three fiscal years from FY09 to FY11. No future funding is anticipated. Contingent upon the availability of funds, the City Comptroller will issue an Auditor Certificate for each phase of the Project.

PREVIOUS COUNCIL COMMITTEE ACTION:

Council Ordinance O-19763 approved the Amendment No. 2 with Malcolm Pirnie, Inc., and Amendment No. 3 with CH2M Hill, Inc. for various AWTP Upgrade and Expansion projects. The Committee on Natural Resources and Culture on December 3, 2008, consent motion by Council President Peters, second by Council member Faulconer. Vote to approve 3-0.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community meetings have been conducted to inform members of the public, including the Friends of Lake Murray, Mission Trails Regional Park Citizen's Advisory Committee (CAC) and Task Force (TF), and local residents about the scope and schedule of the AWTP Upgrade and Expansion Project.

A CIP hotline is regularly maintained to answer questions and provide information to the public. Door hangers, fact sheets, newsletters, AWTP WaterWorks newsletters, and updates on the City of San Diego Web-site also add to the public outreach efforts.

KEY STAKEHOLDERS AND PROTECTED IMPACTS (if applicable):

Citywide Water Customers, MPI, Inc. (Design Consultant), CH2M HILL, Inc. (Construction Management Consultant), Mission Trails Regional Park Citizen's Advisory Committee and Task Force, San Diego County Water Authority and California Department of Public Health.

Boekamp/Jarrell

FILE LOCATION: W.O. 189121

COUNCIL ACTION: (Time duration: 10:03 a.m. - 10:04 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

* ITEM-101: Appointment to the Funds Commission.

(See memorandum from Mayor Sanders dated 12/16/2008, with resume attached.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2009-744) ADOPTED AS RESOLUTION R-304587

Council confirmation of the following appointment by the Mayor of the City of San Diego, to serve as a member of the Funds Commission, for a term ending as indicated:

<u>NAME</u>	<u>TERM ENDING</u>
Geri Dillingham (La Jolla, District 1) (Replacing Chuck Lemoine, who has resigned)	January 28, 2010

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:03 a.m. - 10:04 a.m.)

CONSENT MOTION BY FAULCONER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

ITEM-330: Office of the City Auditor Fraud Hotline Administration Plan.

(See City Auditor's 10/20/2008, PowerPoint.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2009-644) ADOPTED AS RESOLUTION R-304588

Approving the City of San Diego's Fraud Hotline Administration Plan.

AUDIT COMMITTEE'S RECOMMENDATION:

On 10/20/2008, Audit voted 3 to 0 to approve the Hotline Administration Plan and forward to the City Council with the recommendation to approve the Plan. (Councilmembers Faulconer, Atkins, and Young voted yea.)

SUPPORTING INFORMATION:

The Kroll Report made specific recommendations regarding the establishment and monitoring of effective policies and procedures for dealing with "whistleblower" complaints, including an internal employee hotline. On December 2, 2005, in response to San Diego Municipal Code Section 26.1703(c), the City Auditor and Comptroller's Office implemented the Fraud Hotline (866-809-3500). Upon the transition to the Strong Mayor form of Government on January 1, 2006, the Mayor's Office of Ethics and Integrity was created and through a third-party provider administered the Fraud Hotline.

On January 28, 2008, the Jefferson Wells, professional audit consultant issued a written report to the Audit Committee entitled "Analysis and Recommendations for an Effective Internal Employee Hotline" to the Audit Committee. This report and subsequent Jefferson Wells memoranda to the Audit Committee (dated February 18, 2008, and March 20, 2008) discussed considerations related to the Audit Committee's Charter responsibilities with respect to the City's employee hotline, and additionally provided four recommendations to assist the Audit Committee in complying with Kroll Report recommendations and best practices. On February 25, 2008, the Audit Committee received the Hotline Report and a related memorandum dated February 22, 2008 from Jefferson Wells, and unanimously adopted a motion to forward recommendations from the report to the City Council.

The Securities and Exchange Commission required and the Independent Consultant to the City recommended, in his First Annual Report of Independent Consultant dated March 25, 2008, that the City implement within 45 days, consistent with the advice of Jefferson Wells, for steps prior to Charter revision, the procedure contemplated by the Audit Committee Charter for a confidential and anonymous hotline involving the Audit Committee, independent of City management, for complaints and concerns regarding financial control or financial and auditing matters.

On April 28, 2008, (Final passage on June 13, 2008), the City Council approved a resolution that contained the following six sections:

- Section 1 That the Hotline Report, and related hotline memoranda from Jefferson Wells and the Office of Ethics and Integrity, are accepted.
- Section 2 That Recommendation 1 of the Hotline Report which states "Hotline Complaints Should Be Reported to the Audit Committee" be implemented except that the recommendation is amended to replace the word "should" with "shall", and to state that the Hotline complaints involving Senior City Management shall be reported to the Audit Committee Chair, or another designated member of the Committee, so as to ensure compliance with the Brown Act.
- Section 3 That Recommendation 2 of the Hotline Report which states "Hotline Activity Should Be Reported to the Audit Committee and Audited" be implemented except that the recommendation is amended to replace the word "should" with "shall".
- Section 4 That Recommendation 3 of the Hotline Report which states that the "Hotline Number Should Be Publicized to All Citizens" be implemented except that the recommendation is amended to replace the word "should" with "shall".
- Section 5 That in anticipation of possible Charter reform in June 2008, and as soon as is practicable, Recommendation 4 of the Hotline Report which advocates "Hotline Oversight by the Independent City Auditor" be implemented.
- Section 6 That the Auditor is to present a Hotline administration plan to the Audit Committee, and if approved, present the plan to the City Council for approval.

The Fraud Hotline was transferred to the Office of the City Auditor, effective July 21, 2008, and made available to the public on August 25, 2008.

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To comply with Section 6 of Resolution R-303626, on October 17, 2008, the Office of the City Auditor issued a Fraud Hotline Administration Plan to comply with the requirements of Resolution Number R-303626. The Fraud Hotline Administration Plan was presented to the Audit Committee on October 20, 2008, and was approved by the members of the Audit Committee. Additionally, at the same meeting, the Office of the City Auditor presented hotline statistics for the period July to September 2008.

FISCAL CONSIDERATIONS: None.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On October 20, 2008, the Audit Committee approved a motion to forward to the City Council the Fraud Hotline Administration Plan.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A

Luna/Goldstone

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:04 a.m. - 11:22 a.m.)

MOTION BY FAULCONER TO ADOPT. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

ITEM-331: Ratifying Emergency Sole Source Contracts and Related Actions Regarding the Ruffin Road Storm Drain Emergency Repair. (Kearny Mesa Community Area. District 6.)

(See memorandum from Hildred Pepper dated 4/25/2008.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-713) ADOPTED AS RESOLUTION R-304589

Ratifying the Sole Source Design Contract with Harris & Associates and the First Amendment thereto, on file in the Office of the City Clerk as Document Nos. C-14581 and C-14655 respectively, in connection with the Ruffin Road Storm Drain Emergency Repair Project, in an amount not to exceed \$322,762;

Authorizing the Mayor, or his designee, to execute a Second Amendment to the Design Contract with Harris & Associates in an amount not to exceed \$54,590;

Ratifying the Sole Source Construction Contract with Cass Construction, Inc., in connection with the Ruffin Road Storm Drain Emergency Repair Project, in an amount not to exceed \$1,700,000, a copy of which is on file in the Office of the City Clerk as Document No. C-14613;

Authorizing an increase to the Fiscal Year 2009 Capital Improvements Program budget by an amount not to exceed \$2,610,131.35 in CIP-13-005.0, Emergency Drainage Projects (Job Order 130092 - Ruffin Road Storm Drain Emergency Repair), provided that the City Comptroller furnishes one or more certificates demonstrating that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the City Comptroller to transfer the following amounts:

- a) \$910,131.35 from General Fund - General Services Department, Fund No. 100, Dept. 534, to Fund No. 630221, General Fund Contributions to the CIP.
- b) \$910,135 in expenditures and encumbrances from General Fund – General Services Department, Fund No. 100, Dept 534, Job Order 007011, to CIP-13-005.0, Emergency Drainage Projects (Job Order 130092 - Ruffin Road Storm Drain Emergency Repair).
- c) \$700,000 from General Fund - Storm Water Department, Fund No. 100, Dept. 533, Job Order 007816 and Job Order 007800, to CIP-13-005.0, Emergency Drainage Projects (Job Order 130092 - Ruffin Road Storm Drain Emergency Repair).
- d) \$1,000,000 from General Fund - Storm Water Department, Fund No. 100, Dept. 533, to Fund 630221, General Fund Contributions to the CIP, and \$500,000 and \$200,000 from previously encumbered funds in Auditor's Certificate Nos. 2900142 and 2800789 respectively;

Authorizing the City Comptroller to appropriate and expend an amount not to exceed \$2,610,131.35 from Fund No. 630221, General Fund Contributions to the CIP, CIP-13-005.0, Emergency Drainage Projects (Job Order 130092 - Ruffin Road Storm Drain Emergency Repair), solely and exclusively, to provide funds for the above agreements and related costs;

Authorizing the City Comptroller to return excess budgeted funds, if any, to the appropriate reserves on advice of the administering department;

Declaring that the above activities are statutorily exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15269(b) and 15269(c) as an emergency project necessary to repair public facilities essential to public health, safety, and welfare, and to prevent or mitigate an emergency.

STAFF SUPPORTING INFORMATION:

The existing storm drain pipe at 4141 Ruffin Road is located in a fill slope at the west end of a ravine behind commercial buildings on Ruffin Road. The pipe and slope were eroding at an accelerated rate and threatening to undermine the existing structures and creating a public safety concern if not stabilized immediately. Additionally, the pipe was not functioning as intended, and its continued failure could result in upstream flooding.

Due to the emergency status of this project, staff awarded sole source contracts to Harris and Associates for the emergency design of the repairs, and to CASS Construction Inc., for the construction. An informational memo dated April 25, 2008, was sent to City Council to describe the emergency nature of the project and the sole source contracts being awarded to repair the storm drain facilities. The cost for these two contracts is approximately \$377,352 for Harris and \$1,700,000 for CASS Construction. The scope of work for Harris & Associates includes research of existing records, soil testing and evaluation, and preparation of construction drawings and specifications. The scope of work for Cass Construction, Inc., includes the placement of fill material to stabilize and reconstruct the slope, the installation of 60-inch reinforced concrete pipe and associated structures, as well as landscaping and restoration of the slope.

Construction is currently at 92% complete, the pipeline has been installed and construction is expected to finish by late December 2008.

EQUAL OPPORTUNITY CONTRACTING:

Funding Agency:	City of San Diego
Goals:	15% Voluntary (MBE/WBE/DEB/DVE/OBE)
Subcontractor Participation:	
Harris & Associates, Inc. -	\$78,389 Certified Firms (24.29%) \$43,727 Other Firms (13.55%) . Work Force Report Submitted-Equal Opportunity Plan required. Staff will monitor plan and adherence to Nondiscrimination Ordinance.
CASS Construction Inc. -	N/A. As an emergency sole source construction project being done on a time and material basis, subcontractors are hired for small, specialized tasks (e.g. fencing, steel reinforcement, and pavement restoration). Actual percentages will not be known until construction is finished.

FISCAL CONSIDERATIONS:

The funds for this action are available in Fund 100, General Fund.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Informational memo dated April 25, 2008.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

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KEY STAKEHOLDERS:

Harris & Associates
Cass Construction, Inc.
Progressive Insurance

Boekamp/Jarrell

Aud. Certs. 2800768, 2800789, and 2900467.

Staff: Marnell Gibson - (619) 533-5213
Thomas C. Zeleny - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:22 a.m. - 11:35 a.m.)

MOTION BY EMERALD TO ADOPT. Second by Frye. Passed by the following vote:
Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-yea,
Emerald-yea, Hueso-yea.

ITEM-332: Developer Impact Fees Fiscal Year 2008 Annual Report.

(See Report to the City Council No. 09-002.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-745) ADOPTED AS RESOLUTION R-304590

Reviewing and accepting the Developer Impact Fees Fiscal Year 2008 Annual
Report, with attachments, more specifically identified as Report to the City
Council No. 09-002;

Finding with respect to funds reflected in the Developer Impact Fees Fiscal Year 2008 Annual Report, as having been collected over five years before July 1, 2008, and as stated in Attachment 6 of the Developer Impact Fees Fiscal Year 2008 Annual Report, that the documentation: (1) Identifies the purpose to which the fee is to be put; (2) Demonstrates a reasonable relationship between the fee and the purpose for which it is charged; and (3) Identifies sources and amounts of funding anticipated to complete financing of incomplete improvements and the approximate dates on which such funding is expected to be deposited into the appropriate fund;

Incorporating and adopting the findings set forth in Attachment 6 of the Developer Impact Fees Fiscal Year 2008 Annual Report, entitled "FINDINGS FOR FUNDS COLLECTED OVER FIVE YEARS AGO DEVELOPMENT IMPACT FEES FISCAL YEAR 2008 ANNUAL REPORT;"

Declaring that this activity is not subject to CEQA pursuant to State Guidelines Section 15060(c)(3).

STAFF SUPPORTING INFORMATION:

The purpose of this Report to the City Council, and the accompanying attachments, is to fulfill state mandated annual reporting and disclosure requirements with respect to the imposition of development impact fees by local governments.

The California Government Code requires that local agencies that impose fees in connection with the approval of development projects make certain information available to the public on an annual basis. This section of the Government Code requires that the following be disclosed: a) a brief description of the type of fee in the fund; b) the amount of the fee; c) the beginning and ending balance of the fund; d) the amount of fees collected and the interest earned; e) an identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement; and f) an identification of an approximate date by which the construction of the public improvement will commence if the public agency determines that sufficient funds have been collected to complete financing of an incomplete public improvement.

Reports 1 through 3 relate to Development Impact Fees, Park Development Fees, and Urban Impact Fees. Reports 4 and 5 relate to the Sewerage Utility Expansion Fund and the Water Utility Expansion Fund. These reports were made available to the public in the City Clerk's Office on November 19, 2008.

Section 66001 of the Government Code mandates additional disclosure with respect to any fees collected and remaining unexpended in the fifth year after collection. For this category, whether the fees are committed or not, the following findings must be made: 1) identify the purpose to which the fee is to be put; 2) demonstrate a reasonable relationship between the fee and the purpose for which it is charged; and 3) identify all sources and amounts of funding anticipated to complete financing of incomplete improvements and the approximate dates on which such funding is expected to be deposited into the appropriate fund. When sufficient funds have been collected to complete financing of incomplete public improvements and the improvements remain incomplete, the agency is required to identify an approximate date by which construction of the public improvement will be commenced, or shall refund to the then current owners of record the unexpended portion of the fee and interest accrued thereon with limited exception. Required findings for funds collected over five years ago are contained in Attachment 6.

FISCAL CONSIDERATIONS: Not applicable.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):
Not applicable.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:
As this is an annual report, the City Council approved the Developer Impact Fees FY 2007 Report on April 22, 2008, Resolution No. R-303613.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:
On November 19, 2008, Reports 1 through 5 were filed with the Office of the City Clerk for public review.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Not applicable.

Gabriel/Anderson

Staff: Megan Sheffield - (619) 533-3672
Jana L. Garmo - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:35 a.m. - 11:55 a.m.)

MOTION BY GLORIA TO ADOPT. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

ITEM-333: 4711 Biona Drive Tentative Map. Project No. 78145. Appeal of the Planning Commission's decision approving an application for a Tentative Map and a waiver of the requirement to underground the existing overhead utilities to allow the conversion of six existing residential units into condominiums on a 0.25-acre site located at 4711 Biona Drive. (Kensington-Talmadge Neighborhood of the Mid-City Communities Plan Area. District 3.)

Matter of the appeal by Cory J. Briggs, Briggs Law Corporation on behalf of Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development, from the decision by the Planning Commission approving an application for a Tentative Map and a waiver of the requirement to underground the existing overhead utilities to allow the conversion of six existing residential units into condominiums on a 0.25-acre site located at 4711 Biona Drive, in the RS-1-7 Zone, within the Kensington-Talmadge neighborhood of the Mid-City Communities Plan Area.

Should the condominium conversion project be approved, tenants may be required to vacate the premises. No units may be sold in this building unless the conversion is approved by the City and until after a public report is issued by the Department of Real Estate. Each tenant has the exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

If you are an existing tenant within this project, you may have rights to certain benefits as outlined in San Diego Municipal Code Section 144.0503. To learn more information regarding these benefits, please contact the Housing Commission at (619) 578-7580, or find the details on their website at: <http://www.sdhc.net/haotherprog1h.shtml>.

This project was determined to be categorically exempt from the California Environmental Quality Act on August 18, 2005, and the opportunity to appeal that determination ended September 8, 2005.

(TM No. 242521/Waiver to Underground Existing Overhead Utilities.)

STAFF'S RECOMMENDATION:

Take the following actions:

RETURNED TO STAFF

Granting or denying the appeal and upholding or overturning the Planning Commission's decision approving Tentative Map No. 242521 and approving waiver of the requirement to underground the existing overhead utilities.

Directing the City Attorney to prepare the appropriate resolution(s) according to Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission on October 9, 2008, voted 5-1-1 to approve.

Ayes: Otsuji, Golba, Schultz, Naslund, Ontai

Nays: Griswold

Not present: Smiley

Community Planning Group has been notified of this project and has not submitted a recommendation.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

Appeal of the Planning Commission's decision to approve Tentative Map No. 242521 and waive the requirement to underground existing overhead utilities to convert six existing residential units to condominiums at 4711-4721 Biona Drive, within the Kensington-Talmadge neighborhood of the Mid-City Communities Plan Area.

STAFF RECOMMENDATION:

Deny the appeal and uphold the Planning Commission's decision to **approve** the Tentative Map, including the request to waive the requirement to underground existing overhead utilities.

EXECUTIVE SUMMARY:

Tentative Map No. 242521, including the request to waive the requirement to underground existing overhead utilities, to convert six existing residential units to condominiums was approved by the Planning Commission and subsequently appealed by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation (Attachment 1). *This is a project appeal and not an environmental appeal; therefore, the environmental issues raised are not relevant to this appeal.* The project was determined to be exempt from review under the California Environmental Quality Act (CEQA) and the appeal period for that decision had expired September 8, 2005.

Although the majority of the concerns raised in the Appeal Application are environmental issues that have been previously addressed, there are references to several San Diego Municipal Code (SDMC) and California Government Code sections which are not CEQA-related and may be addressed through this project appeal. These code sections and Staff's responses are contained below:

SDMC Sections 125.0440(a)-(h): These sections describe the required findings for a Tentative Map. The State Map Act (SMA) restricts the scope of the City's review and limits the findings that apply to the conversion of existing buildings into condominiums. SMA Section 66427 precludes the City from reviewing the building design and the division of the airspace and SMA Section 66427.2 exempts condo conversions from six of the eight standard Tentative Map findings. Based on the above, only findings 125.0440 (b) and (h) apply to condominium conversion projects and the appellant's assertion that all of the findings listed in 125.0440 (a)-(h) apply is incorrect. The two findings that do apply are described below.

SDMC Section 125.0440(b): *“The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code.”* This project has been reviewed by staff and determined to be in compliance with the applicable zoning and development regulations, including the new condominium conversion regulations, as appropriate. Although the project does not comply with the current requirements for new construction, the project is allowed to maintain their current configuration because no additional units or expansion are proposed and it is considered previously conforming for density and development standards.

SDMC Section 125.0440(h) and California Government Code Section 66412.3: *“The decisionmaker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources.”* This condominium project was approved by the Planning Commission, who was the decisionmaker required to make this finding. Staff believes the intent of this required finding is to respond to “leapfrog” development and to provide necessary public facilities for additional housing in communities. In this instance there is no net loss or gain of housing units, therefore, staff believes this appeal point is not valid.

SDMC Sections 142.1304 and 142.1305: These sections describe the requirements for approving a variance or waiver from the City’s inclusionary housing requirements. The project would comply with the City’s requirements either by paying an in-lieu fee or by providing onsite affordable housing. This project is not requesting a variance or waiver from the inclusionary housing requirements; therefore, these code sections are not relevant to this approved condominium conversion project.

The appeal also asserts that the Housing Element of the City’s General Plan has become invalid due to the City’s failure to revise it lawfully and in a timely manner. The current Housing Element was adopted by the City Council on December 5, 2006, and certified by the U.S. Department of Housing and Urban Development on February 5, 2007. This project was approved after the certification of the most recent Housing Element update. A 2007 California appeals court case addressed the question about whether a housing element updated beyond time periods identified in Government Code Section 65588 is invalid and determined that it was not. Therefore, the City’s Housing Element has never been considered invalid and would not be grounds for denial of this project.

FISCAL CONSIDERATIONS:

None. All costs associated with the processing of this project are paid by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On October 9, 2008, Planning Commission voted 5-1-1 to approve the project. The applicant has indicated that they received approval from the Kensington-Talmadge Community Planning Group on December 14, 2005, however, the Planning Group has no record of this approval. The applicant has elected to proceed without a formal Planning Group recommendation.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Owners: Matthew Browar and Nancy Browar; Applicant: D. Scott Peters, Sterling Land Services, Inc.; Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. Other key stakeholders include those associated with condominium conversions in the development industry, the housing industry, and residents.

Anderson/Broughton

LEGAL DESCRIPTION:

The project site is located on the east side of Biona Drive between Adams Avenue and Alder Drive at 4711-4721 Biona Drive, and is legally described as Lots 1 and 2, Block B, Kensington Park Annex, Map No. 1780, in the RS-1-7 Zone, within the Kensington-Talmadge neighborhood of the Mid-City Communities Plan Area.

NOTE: This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15301, on August 18, 2005, and the opportunity to appeal that determination ended September 8, 2005.

Staff: Paul Godwin – (619) 446-5103
Keith Bauerle– Deputy City Attorney

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:01 p.m. – 3:18 p.m.)

Testimony in favor by Cory Briggs, Richard Lawrence, Crickett Bradburn and Joy Sunyata.

Testimony in opposition by Matt Browar and Scott Peters.

MOTION BY COMMON CONSENT TO RETURN TO STAFF FOR FURTHER REVIEW. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

ITEM-334: 7827 Stalmer Street Tentative Map, Project No. 104906. Appeal of Planning Commission's decision approving an application for a Tentative Map to convert twenty (20) residential units to condominiums, including a waiver of the requirement to underground existing overhead utilities. The 0.79-acre project site is located at 7827-67 Stalmer Street in the RM-2-5 Zone, the Residential Tandem Parking Overlay Zone, and the Clairemont Mesa Height Limitation Overlay Zone, within the Clairemont Mesa Community Plan area. (Clairemont Mesa Community Plan Area. District 6.)

Matter of the appeal by Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation, from the decision by the Planning Commission approving an application for the conversion of twenty (20) existing residential units to condominium, including a waiver of the requirement to underground the existing overhead utilities. The 0.79-acre project is located at 7827-67 Stalmer Street in the RM-2-5 Zone, the Residential Tandem Parking Overlay Zone, and the Clairemont Mesa Height Limitation Overlay Zone, within the Clairemont Mesa Community Plan area.

Should the condominium conversion project be approved, tenants may be required to vacate the premises. No units may be sold in this building unless the conversion is approved by the city and until after a public report is issued by the Department of Real Estate. Each tenant has the exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to

the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

If you are an existing tenant within this project, you may have rights to certain benefits as outlined in San Diego Municipal Code Section 144.0503. To learn more information regarding these benefits, please contact the Housing Commission at (619) 578-7580, or find the details on their website at: <http://www.sdhc.net/haotherprog1h.shtml>.

This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) on June 22, 2008. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on March 20, 2007. The scope of the subject hearing only includes the project, and not the environmental determination.

(See Report to Planning Commission No. PC-08-122/TM No. 347677/Waiver of undergrounding of existing overhead utilities.)

STAFF'S RECOMMENDATION:

Take the following action:

(R-2009-) DENIED APPEAL AND UPHELD THE DECISION OF
THE PLANNING COMMISSION AND GRANTED
TENTATIVE MAP, ADOPTED AS
RESOLUTION R-304591

Granting or denying the appeal and upholding or overturning the decision by the Planning Commission approving Tentative Map No. 347677 and approving the waiver to the requirement to underground existing overhead utilities.

Directing the City Attorney to prepare the appropriate resolution(s) according to Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission on October 9, 2008, voted 5-1-1 to approve.

Ayes: Schultz, Naslund, Ontai, Otsuji, Golba

Nays: Griswold

Not present: Smiley

The Clairemont Mesa Community Planning Group has recommended approval of this project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

Should the City Council deny the project appeal and approve the condominium conversion project?

STAFF RECOMMENDATION: DENY the appeal and APPROVE the Tentative Map for 7827 Stalmer Street, Project No. 104906.

EXECUTIVE SUMMARY:

This Executive Summary describes the project that was approved by the Planning Commission and subsequently appealed by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation (Attachment 2). Please note this is a project appeal and not an environmental appeal, therefore the environmental issues raised are not relevant to this project appeal. The project was determined to be exempt from review under the California Environmental Quality Act (CEQA) and the appeal period for that decision has expired and an appeal of the CEQA exemption has been previously heard and rejected by the City Council.

Although the majority of the concerns raised in the Appeal Application are environmental issues that have been previously addressed, there are references to several San Diego Municipal Code (SDMC) and California Government Code sections which are not CEQA-related and may be addressed through this project appeal. These codes sections and staff's responses are contained below:

SDMC Sections 125.0440(a)-(h): These sections describe the required findings for a Tentative Map. The State Map Act (SMA) restricts the scope of the City's review and limits the findings that apply to the conversion of existing buildings into condominiums. SMA Section 66427 precludes the City from reviewing the building design and the division of the airspace and SMA Section 66427.2 exempts condo conversions from six of the eight standard Tentative Map findings. Based on the above, only findings 125.0440 (b) and (h) apply to condominium conversion projects and the appellant's assertion that all of the findings listed in 125.0440 (a)-(h) apply is incorrect. The two findings that do apply are described below.

SDMC Section 125.0440(b): *"The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code."* The project has been reviewed by staff and determined to be in compliance with the applicable zoning and development regulations, including the new condominium conversion regulations. Although the project does not comply with the current requirements for new construction, the project is allowed to maintain the current configuration because no additional units or expansions are proposed and they are considered previously conforming for density and development standards.

SDMC Section 125.0440(h) and California Government Code Section 66412.3: *"The decisionmaker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources."* The project has been approved by the Planning Commission, who was the decisionmaker required to make this finding. Staff believes the intent of this required finding is to respond to "leapfrog" development and to provide necessary public facilities for additional housing in communities. In this instance there is no net loss or gain of housing units, therefore, staff believes this appeal point is not valid.

SDMC Sections 142.1304 and 142.1305: These sections describe the requirements for approving a variance or waiver from the City's inclusionary housing requirements. The project would comply with the City's requirements by providing onsite affordable housing. The project is not requesting a variance or waiver from the inclusionary housing requirements, therefore, these code sections are not relevant to these approved condominium conversion projects.

The appeal also asserts that the Housing Element of the City's General Plan has become invalid due to the City's failure to revise it lawfully and in a timely manner. The current Housing Element was adopted by the City Council on December 5, 2006, and certified by the U.S. Department of Housing and Urban Development on February 5, 2007.

The project was approved after the certification of the most recent Housing Element update. A 2007 California appeals court case addressed the question about whether a housing element updated beyond time periods identified in Government Code Section 65588 is invalid and determined that it was not. Therefore, the City's Housing Element has never been considered invalid and would not be grounds for denial of this project.

FISCAL CONSIDERATIONS:

None. All costs associated with the processing of this project are paid by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On January 16, 2007, the Clairemont Mesa Planning Committee voted 6-3-0 to recommend approval of the proposed project without recommendations. In addition, on October 9, 2008 the project was unanimously approved by a 6-0-1 vote by the Planning Commission.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. Owner: Mesa Villas Investors, LLC, Managing Members: Paul Ruchlewicz & Joseph Sonnabend. Other key stakeholders include those associated with condominium conversions in the development industry, the housing industry, and residents.

Broughton/Anderson/DJ

Staff: Derrick Johnson – (619) 446-5238

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:01 p.m. – 3:18 p.m.)

Testimony in favor by Cory Briggs, Crickett Bradburn and Joy Sunyata.

Testimony in opposition by Robert Bateman.

MOTION BY DEMAIO TO ADOPT STAFF’S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE DECISION OF THE PLANNING COMMISSION GRANTING THE TENTATIVE MAP AND THE WAIVER TO THE REQUIREMENT TO UNDERGROUND EXISTING OVERHEAD UTILITIES. Second by Faulconer. Passed by the following vote: Lightner-nay, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-nay, Emerald-yea, Hueso-yea.

ITEM-335: Promenade at Rio Vista Tentative Map. Project No. 105158. Appeal of Planning Commission’s approval of an application for a Tentative Map to convert 970 residential units to condominiums and create 17 commercial condominium units on a 15.67 acre site. The property addresses include 8405-8715 Rio San Diego Drive, 8555 Station Village Lane, 2185-2195 Station Village Way and 2173 Camino Del Este. (Mission Valley Community Plan Area. District 6.)

Matter of the appeal by Cory J. Briggs, Briggs Law Corporation, on behalf of Affordable Housing Coalition of San Diego County, and Citizens for Responsible Equitable Environmental Development, from the decision by the Planning Commission approving an application for a Tentative Map to convert 970 residential units to condominiums and create 17 commercial condominium units on a 15.67 acre site. The property addresses include 8405-8715 Rio San Diego Drive, 8555 Station Village Lane, 2185-2195 Station Village Way and 2173 Camino Del Este in the MV-M/SP Zone of Mission Valley Planned District within the Mission Valley Community Plan Area.

Should the condominium conversion project be approved, tenants may be required to vacate the premises. No units may be sold in this building unless the conversion is approved by the City and until after a public report is issued by the Department of Real Estate. Each tenant has the exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to

the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

If you are an existing tenant within this project, you may have rights to certain benefits as outlined in San Diego Municipal Code Section 144.0503. To learn more information regarding these benefits, please contact the Housing Commission at (619) 578-7580, or find the details on their website at: <http://www.sdhc.net/haotherprog1h.shtml>.

This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) on February 5, 2007. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on June 12, 2007. The scope of the subject hearing only includes the project, and not the environmental determination.

(TM No. 348629.)

STAFF'S RECOMMENDATION:

Take the following actions:

(R-2009-) DENIED APPEAL AND UPHELD THE DECISION OF THE PLANNING COMMISSION AND GRANTED TENTATIVE MAP WITH CONDITION, ADOPTED AS RESOLUTION R-304592

Granting or denying the appeal and upholding or overturning the decision of the Planning Commission approving Tentative Map No. 348629, with appropriate findings to support Council action.

Directing the City Attorney to prepare the appropriate resolution(s) according to Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission on October 9, 2008, voted 6-0-1 to approve.

Ayes: Griswold, Golba, Schultz, Naslund, Ontai, Otsuji
Not present: Smiley

The Mission Valley Unified Planning Committee on July 11, 2007, voted 20-0-0 to recommend approval with no conditions.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

Appeal of the Planning Commission's decision to approve the Promenade @ Rio Vista condominium conversion project located within the Mission Valley Community Plan Area.

STAFF RECOMMENDATION: Deny the appeal and approve Tentative Map No. 348629.

EXECUTIVE SUMMARY:

This condominium conversion project was approved by the Planning Commission on October 9, 2008, and subsequently appealed by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. The appeal language is the same as past appeals on condominium conversions filed by the same entity. This is a project appeal not an environmental appeal, therefore the environmental issues raised are not relevant. The project was determined to be exempt from review under the California Environmental Quality Act (CEQA) and an appeal of the CEQA exemption was heard and rejected by the City Council on June 12, 2007.

Although the majority of the concerns raised in the Appeal Application are environmental issues that have been previously addressed, there are references to several San Diego Municipal Code (SDMC) and California Government Code sections which are not CEQA-related and may be addressed through this project appeal. These code sections and Staff's responses are contained below:

Adopting the "Procedure for Formation and Election of a Project Area Committee for the San Ysidro Redevelopment Project Area" ("Formation and Election Procedure"), incorporated herein by reference;

Authorizing and directing the Redevelopment Agency of the City of San Diego (Agency), by and through its staff, consultants and members, to implement the Formation and Election Procedure for the Project Area in the manner and within the times required by law;

Finding and determining that this activity is not a "project" as defined by Section 15378 of the State California Environmental Quality Act (CEQA) Guidelines and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

STAFF SUPPORTING INFORMATION:

The proposed actions would allow for the formation of a Project Area Committee ("PAC") for the San Ysidro Redevelopment Project Area. On April 16, 1996, the San Ysidro Redevelopment Project Area ("Project Area") was formed by the City Council to reverse blighting conditions, redevelop a vital business district, attract new investment opportunities, and encourage continued tourism on both sides of the international border. The Project Area encompasses approximately 766 acres, and is located along the world's busiest International Border, where Interstates 5 and 805 merge. A map of San Ysidro is included as Attachment 1.

The San Ysidro Redevelopment Plan ("Plan"), adopted on April 16, 1996, provided the Agency with the authority to acquire property by eminent domain for 12 years from the date of Plan adoption, which expired on April 16, 2008. As such, Agency staff has initiated the process of preparing a Plan Amendment to extend the Agency's eminent domain authority within the Project Area for an additional 12 years.

Pursuant to *California Community Redevelopment Law* ("CCRL"), the formation of a PAC is required whenever a redevelopment project area includes a substantial number of low and/or moderate income persons and the proposed redevelopment plan will provide the Agency with authority to acquire land by eminent domain. Since a substantial number of low and/or moderate income persons reside within the Project Area and the proposed Plan will extend the Agency's authority to acquire property by eminent domain for an additional 12 years, the CCRL requires that a PAC within the Project Area must be formed.

A San Ysidro PAC was originally formed when the Project Area was adopted in 1996. However, the PAC was dissolved after three years as it was determined that a PAC was no longer needed to meet the goals and objectives of the Plan. The CCRL requires the use of PACs during preparation of a redevelopment plan and for 3 years after the adoption of a redevelopment plan. Thereafter, PACs are subject to one year extensions by the approval of the legislative body. Since the PAC's dissolution, Agency staff has sought recommendations concerning redevelopment matters from the San Ysidro Community Planning Group ("SYCPG").

The primary role of PACs is to provide input to redevelopment agencies on policy matters that deal with the *planning and provision* of residential facilities or replacement housing for those that may be displaced by project implementation activities. PACs also provide input on Plan Amendments, and other policy matters that affect residents within a project area. Prior to forming a PAC, the CCRL requires that the City Council adopt procedures to guide the formation and election process. The "Procedure for Formation and Election of a Project Area Committee for the San Ysidro Redevelopment Project Area" ("PAC Procedure") is included as Attachment 2.

ENVIRONMENTAL IMPACT:

The proposed action to form a PAC is not a project as defined by CEQA Section 15378 and therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3). A final Environmental Impact Report (EIR) for the San Ysidro Redevelopment Plan was certified in 1996.

FISCAL CONSIDERATIONS:

There is no direct fiscal impact with this action. If approved, Agency staff shall be designated as the PAC's staff. It is estimated that the Agency will spend approximately \$50,000 for PAC administration over the next 3 years. This cost includes the initial legal costs to form the PAC and to notice elections.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On April 16, 1996, Council approved the San Ysidro Redevelopment Project.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On September 16, 2008, the San Ysidro Community Planning Group unanimously recommended (10-0) to proceed with the Plan Amendment effort for extending the Agency's eminent domain authority for another 12 years and to form a PAC.

Weinrick/Anderson

Staff: Sam Johnson - (619) 236-6265
Kendall D. Berkey - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:20 p.m. – 4:21 p.m.)

MOTION BY FAULCONER TO ADOPT. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

ITEM-337: 3558 5th Avenue Tentative Map, Project No. 78878. Appeal by the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development c/o Cory J. Briggs, Briggs Law Corporation of the decision by the Planning Commission approving an application for a Tentative Map to convert 12 existing residential units into condominiums located at 3558-3572½ 5th Avenue and to waive the requirement to underground existing overhead utilities. (Uptown Community Plan Area. District 3.)

Matter of the appeal by the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development c/o Cory J. Briggs, Briggs Law Corporation of the decision by the Planning Commission approving an application for a Tentative Map to convert 12 existing residential units into condominiums and to waive the requirement to underground existing overhead utilities. The 0.23 acre site is located at 3558 5th Avenue, between Brookes Avenue and Walnut Avenue, in the CV-1 zone of the Mid-City Communities Planned District within the Uptown Community Plan area.

Should the condominium conversion project be approved, tenants may be required to vacate the premises. No units may be sold in this building unless the conversion is approved by the city and until after a public report is issued by the Department of Real Estate. Each tenant has the exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

If you are an existing tenant within this project, you may have rights to certain benefits as outlined in San Diego Municipal Code Section 144.0503. To learn more information regarding these benefits, please contact the Housing Commission at (619) 578-7580, or find the details on their website at: <http://www.sdhc.net/haotherprog1h.shtml>.

STAFF'S RECOMMENDATION:

Take the following actions:

(R-2009-) DENIED APPEAL AND UPHELD THE DECISION OF
THE PLANNING COMMISSION AND GRANTED
TENTATIVE MAP WITH CONDITION, ADOPTED AS
RESOLUTION R-304594

Granting or denying the appeal and granting or denying Tentative Map No.
245505, including the waiver of the requirement to underground existing
overhead utilities, with appropriate findings to support Council action.

Directing the City Attorney to prepare the appropriate resolution according to
Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission on November 6, 2008, voted 5-1-0 to approve Tentative Map No.
245505 and approve waiver to the requirement to underground existing overhead utilities
as presented in Report No. PC-08-141.

Ayes: Otsuji, Naslund, Schultz, Ontai, Golba
Nays: Griswold
Abstaining: None
Not present: Smiley

The Uptown Community Planning Committee has recommended denial of this project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

Appeal of the Planning Commission's decision to approve Tentative Map No. 245505 and waive
the requirement to underground existing overhead utilities to convert 12 existing residential units
to condominiums at 3558 5th Avenue within the Uptown Community Plan area.

STAFF RECOMMENDATION:

DENY the appeal and uphold the Planning Commission's decision to APPROVE the Tentative Map, including the request to waive the requirement to underground existing overhead utilities.

EXECUTIVE SUMMARY:

Tentative Map No. 245505, including the request to waive the requirement to underground existing overhead utilities, to convert 12 existing residential units to condominiums was approved by the Planning Commission and subsequently appealed by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation (Attachment 1). This is a project appeal and not an environmental appeal; therefore, the environmental issues raised are not relevant to this appeal. The project was determined to be exempt from review under the California Environmental Quality Act (CEQA) and the appeal period for that decision had expired September 26, 2005.

Although the majority of the concerns raised in the Appeal Application are environmental issues that have been previously addressed, there are references to several San Diego Municipal Code (SDMC) and California Government Code sections which are not CEQA-related and may be addressed through this project appeal. These codes sections and staff's responses are contained below:

SDMC Sections 125.0440(a)-(h): These sections describe the required findings for a Tentative Map. The State Map Act (SMA) restricts the scope of the City's review and limits the findings that apply to the conversion of existing buildings into condominiums. SMA Section 66427 precludes the City from reviewing the building design and the division of the airspace and SMA Section 66427.2 exempts condo conversions from six of the eight standard Tentative Map findings. Based on the above, only findings 125.0440 (b) and (h) apply to condominium conversion projects and the appellant's assertion that all of the findings listed in 125.0440 (a)-(h) apply is incorrect. The two findings that do apply are described below.

SDMC Section 125.0440(b): *"The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code."* This project has been reviewed by staff and determined to be in compliance with the applicable zoning and development regulations, including the new condominium conversion regulations, as appropriate. Although the project does not comply with the current requirements for new construction, the project is allowed to maintain their current configuration because no additional units or expansion are proposed and it is considered previously conforming for density and development standards.

SDMC Section 125.0440(h) and California Government Code Section 66412.3: *“The decisionmaker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources.”* This condominium project was approved by the Planning Commission, who was the decisionmaker required to make this finding. Staff believes the intent of this required finding is to respond to “leapfrog” development and to provide necessary public facilities for additional housing in communities. In this instance there is no net loss or gain of housing units, therefore, staff believes this appeal point is not valid.

SDMC Sections 142.1304 and 142.1305: These sections describe the requirements for approving a variance or waiver from the City’s inclusionary housing requirements. The project would comply with the City’s requirements either by paying an in-lieu fee or by providing onsite affordable housing. This project is not requesting a variance or waiver from the inclusionary housing requirements; therefore, these code sections are not relevant to this approved condominium conversion project.

The appeal also asserts that the Housing Element of the City’s General Plan has become invalid due to the City’s failure to revise it lawfully and in a timely manner. The current Housing Element was adopted by the City Council on December 5, 2006, and certified by the U.S. Department of Housing and Urban Development on February 5, 2007. This project was approved after the certification of the most recent Housing Element update. A 2007 California appeals court case addressed the question about whether a housing element updated beyond time periods identified in Government Code Section 65588 is invalid and determined that it was not. Therefore, the City’s Housing Element has never been considered invalid and would not be grounds for denial of this project.

FISCAL CONSIDERATIONS:

None. All costs associated with the processing of this project are paid by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On November 6 2008, Planning Commission voted on consent to approve Tentative Map No. 245505 and approve waiver to the requirement to underground existing overhead utilities, passed by a vote of 5-1-1 with Commissioner Griswold voting nay and Commissioner Smiley not present.

On March 13, 2006, the Uptown Planning Committee voted 10-0-1 to recommend denial of the project. Please refer to the Report to Planning Commission for the basis of denial.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Owners: Matthew Browar and Nancy Browar; Applicant: D. Scott Peters, Sterling Land Services, Inc.; Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. Other key stakeholders include those associated with condominium conversions in the development industry, the housing industry, and residents.

Broughton/Kelley/CC

Staff: Cherlyn Cac -- (619) 446-5226
Keith Baurele -- Deputy City Attorney

NOTE: This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:01 p.m. -- 3:57 p.m.)

Testimony in favor by Cory Briggs, Richard Lawrence, Crickett Bradburn and Joy Sunyata.

Testimony in opposition by Matt Browar.

MOTION BY DEMAIO TO ADOPT STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE DECISION OF THE PLANNING COMMISSION GRANTING THE TENTATIVE MAP, INCLUDING THE WAIVER OF THE REQUIREMENT TO UNDERGROUND EXISTING OVERHEAD UTILITIES, WITH APPROPRIATE FINDINGS TO SUPPORT COUNCIL ACTION, AND TO ADD AS A CONDITION TO THE MAP TO INCLUDE THE REQUIREMENT THAT ANY IMPROVEMENTS SHALL MEET THE SECRETARY OF THE INTERIOR'S STANDARDS. Second by Faulconer. Passed by the following vote: Lightner-nay, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-nay, Emerald-yea, Hueso-yea.

ITEM-338: 1949 Grand Avenue Tentative Map, Project No. 96319. Appeal by the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation of the decision by the Planning Commission approving an application for a Coastal Development Permit and Tentative Map (Process 4) including a request to waive the requirement to underground the existing utilities and to convert an existing, 4 residential dwelling unit apartment building located at 1949 Grand Avenue. (Pacific Beach Community Plan Area. District 2.)

Matter of the appeal by the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation of the decision by the Planning Commission approving an application for a Coastal Development Permit and Tentative Map (Process 4) including a request to waive the requirement to underground the existing utilities and to convert an existing, 4 residential dwelling unit apartment building with first floor commercial office into 4 residential condominium units and two commercial office condominium units on a 0.143 acre site. The property is located at 1949 Grand Avenue, in the CN-1-2 Zone, Coastal Overlay Zone (non-appealable), Coastal Height Limit Overlay Zone and within the Pacific Beach Community Plan Area.

Should the condominium conversion project be approved, tenants may be required to vacate the premises. No units may be sold in this building unless the conversion is approved by the city and until after a public report is issued by the Department of Real Estate. Each tenant has the exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

If you are an existing tenant within this project, you may have rights to certain benefits as outlined in San Diego Municipal Code Section 144.0503. To learn more information regarding these benefits, please contact the Housing Commission at (619) 578-7580, or find the details on their website at: <http://www.sdhc.net/haotherprog1h.shtml>.

This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) on March 27, 2006. An appeal of the CEQA determination was previously made and the City Council denied the CEQA appeal on July 31, 2006. The scope of the subject hearing only includes the project, and not the environmental determination.

The final decision by the City of San Diego is not appealable to the California Coastal Commission. If you want to receive a Notice of Final Action, you must submit a written request to the City Project Manager listed above.

STAFF'S RECOMMENDATION:

Take the following actions:

Subitem-A: (R-2009-) DENIED APPEAL AND UPHELD THE DECISION OF THE PLANNING COMMISSION AND GRANTED COASTAL DEVELOPMENT PERMIT, ADOPTED AS RESOLUTION R-304595

Granting or denying the appeal and granting or denying Coastal Development Permit No: 314328, with appropriate findings to support Council action.

Directing the City Attorney to prepare the appropriate resolution according to Section 40 of the City Charter.

Subitem-B: (R-2009-) DENIED APPEAL AND GRANTED TENTATIVE MAP, ADOPTED AS RESOLUTION R-304596

Granting or denying the appeal and granting or denying Tentative Map No. 592418, including the waiver of the requirement to underground existing overhead utilities, with appropriate findings to support Council action.

Directing the City Attorney to prepare the appropriate resolution according to Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission voted 4-0-3 to approve Coastal Development Permit No. 314328, resolution approving Tentative Map No. 492418 with request to waive the requirement to underground existing overhead utilities.

Ayes: Schultz, Ontai, Otsuji, Naslund
Nays: None
Recusing: Golba
Not present: Smiley, Griswold

The Pacific Beach Community Planning Committee has recommended approval of this project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

Appeal of the Planning Commission's decision to approve the 1949 Grand Avenue condominium conversion project located within the Pacific Beach Community Plan area.

STAFF RECOMMENDATION: DENY the appeal and APPROVE Coastal Development Permit No. 314328 and Tentative Map No. 592418.

EXECUTIVE SUMMARY:

This condominium conversion project was approved by the Planning Commission on October 23, 2008, and subsequently appealed by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. The appeal language is the same as past appeals on condominium conversions filed by the same entity. This is a project appeal not an environmental appeal, therefore the environmental issues raised are not relevant. The project was determined to be exempt from review under the California Environmental Quality Act (CEQA) and the appeal period for that decision has expired and an appeal of the CEQA exemption has been previously heard and rejected by the City Council.

Although the majority of the concerns raised in the Appeal Application are environmental issues that have been previously addressed, there are references to several San Diego Municipal Code (SDMC) and California Government Code sections which are not CEQA-related and may be addressed through this project appeal. These codes sections and staff's responses are contained below:

SDMC Sections 125.0440(a)-(h): These sections describe the required findings for a Tentative Map. The State Map Act (SMA) restricts the scope of the City's review and limits the findings that apply to the conversion of existing buildings into condominiums. SMA Section 66427 precludes the City from reviewing the building design and the division of the airspace and SMA Section 66427.2 exempts condo conversions from six of the eight standard Tentative Map findings. Based on the above, only findings 125.0440 (b) and (h) apply to condominium conversion projects and the appellant's assertion that all of the findings listed in 125.0440 (a)-(h) apply is incorrect. The two findings that do apply are described below.

SDMC Section 125.0440(b): *"The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code."* The project has been reviewed by staff and determined to be in compliance with the applicable zoning and development regulations, including the new condominium conversion regulations. Although the project does not comply with the current requirements for new construction, the project is allowed to maintain the current configuration because no additional units or expansions are proposed and they are considered previously conforming for density and development standards.

SDMC Section 125.0440(h) and California Government Code Section 66412.3: *"The decisionmaker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources."* The project has been approved by the Planning Commission, who was the decisionmaker required to make this finding. Staff believes the intent of this required finding is to respond to "leapfrog" development and to provide necessary public facilities for additional housing in communities. In this instance there is no net loss or gain of housing units, therefore, staff believes this appeal point is not valid.

SDMC Sections 142.1304 and 142.1305: These sections describe the requirements for approving a variance or waiver from the City's inclusionary housing requirements. The project would comply with the City's requirements by paying an in-lieu fee. The project is not requesting a variance or waiver from the inclusionary housing requirements, therefore, these code sections are not relevant to these approved condominium conversion projects.

The appeal also asserts that the Housing Element of the City's General Plan has become invalid due to the City's failure to revise it lawfully and in a timely manner. The current Housing Element was adopted by the City Council on December 5, 2006, and certified by the U.S. Department of Housing and Urban Development on February 5, 2007. The project was approved after the certification of the most recent Housing Element update.

A 2007 California appeals court case addressed the question about whether a housing element updated beyond time periods identified in Government Code Section 65588 is invalid and determined that it was not. Therefore, the City's Housing Element has never been considered invalid and would not be grounds for denial of this project.

FISCAL CONSIDERATIONS:

None. All costs associated with the processing of this project are paid by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On September 4, 2008, the Pacific Beach Community Planning Committee voted 8-2-0 to recommend approval of the proposed project without recommendations. In addition, on October 23, 2008, the project was unanimously approved by a 4-0-3 vote by the Planning Commission.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. Owner: West of Ingrahm, LLC, Managing Member: Michael E. Turk. Other key stakeholders include those associated with condominium conversions in the development industry, the housing industry, and residents.

Broughton/Anderson/GG

Staff: Glenn Gargas – (619) 446-5142
Keith Bauerle – Deputy City Attorney

NOTE: This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15301(k) (Existing Facilities).

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:01 p.m. – 4:04 p.m.)

Testimony in favor by Cory Briggs, Richard Lawrence and Crickett Bradburn.

Testimony in opposition by Paul Ross and Richard Bateman.

MOTION BY DEMAIO TO ADOPT STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE DECISION OF THE PLANNING COMMISSION GRANTING THE COASTAL DEVELOPMENT PERMIT AND THE TENTATIVE MAP WITH APPROPRIATE FINDINGS TO SUPPORT COUNCIL ACTION, INCLUDING THE WAIVER OF THE REQUIREMENT TO UNDERGROUND EXISTING OVERHEAD UTILITES. Second by Faulconer. Passed by the following vote: Lightner-nay, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-nay, Emerald-yea, Hueso-yea.

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

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**Minutes of the Council of the City of San Diego
for the Regular Meeting of Tuesday, January 13, 2009**

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ADJOURNMENT:

The meeting was adjourned by Council President Hueso at 4:22 p.m. in honor of the memory of:

Walter Joller as requested by Council Member DeMaio.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 4:21 p.m. – 4:22 p.m.)

Elizabeth S. Maland, City Clerk
City of San Diego