

THE CITY OF SAN DIEGO, CALIFORNIA
 MINUTES FOR REGULAR COUNCIL MEETING
 OF
 MONDAY, SEPTEMBER 13, 2004
 AT 2:00 P.M.
 IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Mayor Murphy at 2:13 p.m. Mayor Murphy recessed the meeting at 3:46 p.m. for the purpose of a break. The meeting was reconvened by Mayor Murphy at 3:54 p.m. with all Council Members present and District 4 vacant. Mayor Murphy adjourned the meeting at 5:30 p.m. into Closed Session at 9:30 a.m. on Tuesday, September 14, 2004, in the twelfth floor conference room to discuss existing and anticipated litigation.

ATTENDANCE DURING THE MEETING:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-present
- (4) District 4-Vacant
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-present
- Clerk-Abdelnour/Maland (pr)

FILE LOCATION: MINUTES

ITEM-1: ROLL CALL

Clerk Abdelnour called the roll:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-present
- (4) District 4-Vacant
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-not present

FILE LOCATION: MINUTES

ITEM-10: INVOCATION

Invocation was given by Reverend Scott E. Richardson of St. Paul's Cathedral Church.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Peters.

FILE LOCATION: MINUTES

ITEM-30: Dr. Clive Granger Day.

(Continued from the meeting of August 10, 2004, Item S400, at the request of Councilmember Peters, due to lack of time.)

COUNCILMEMBER PETERS' RECOMMENDATION:

Adopt the following resolution:

(R-2005-162 Cor. Copy) ADOPTED AS RESOLUTION R-299616

Declaring September 13, 2004 to be "Dr. Clive Granger Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:15 p.m. – 2:19 p.m.)

MOTION BY PETERS TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

ITEM-31: Melody Morse Day.

COUNCILMEMBER MADAFFER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-230) ADOPTED AS RESOLUTION R-299617

Proclaiming September 13, 2004 to be "Melody Morse Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:21 p.m. – 2:27 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Frye. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

ITEM-32: Approval of Council Minutes.

TODAY'S ACTION IS: APPROVED

Approval of Council Minutes for the meetings of:

08/16/2004 - Adjourned

08/17/2004 - Adjourned

08/23/2004 - Adjourned

08/24/2004 - Adjourned

08/30/2004 - Adjourned

08/31/2004 – Adjourned

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:14 p.m. – 2:14 p.m.)

MOTION BY ATKINS TO APPROVE. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

CLOSED SESSION ITEMS:

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

**REFERRED TO CLOSED SESSION ON TUESDAY, SEPTEMBER 14,
2004**

CS-1 *Niesen v. City of San Diego*
San Diego Superior Court No. GIC824038

DCA assigned: Karlin

This matter arises from a slip-and-fall incident on the Ocean Beach Municipal Pier. In closed session, the City Attorney will brief the City Council on the matter and discuss possible settlement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:40 p.m. – 2:40 p.m.)

Mayor Murphy closed the Hearing.

- * ITEM-100: Two actions related to Inviting Bids for the Construction of Sewer Groups 746 and 749.

(See memorandum from Patti Boekamp dated 7/22/2004. City Heights Community Area. Districts-3, 4, and 7.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2005-165) ADOPTED AS RESOLUTION R-299618

Approving the plans and specification for the construction of Sewer Groups 746 and 749 (Project), on Work Order Nos. 177551/177581;

Authorizing the City Manager, after advertising for bids in accordance with law, to establish contract funding phases and to award the Project ~~contract~~ to the lowest responsible and reliable bidder for the Project, contingent upon: (a) City Council approval of expenditure of any additional Project funding that may become necessary as a result of the bid opening for the Project; in an amount not to exceed \$6,435,000 from Sewer Fund 41506, CIP-44-001.0, Annual Allocation-Sewer Main Replacement, provided that (b) the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed \$6,435,000 from Sewer Fund 41506, CIP-44-001.0. Annual Allocation-Sewer Main Replacement, consisting of \$3,540,000 for Sewer Group Job 746 and \$2,895,000 for Sewer Group Job 749, solely and exclusively, for the purpose of providing funds for the Project, contingency, and project-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 City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves. (BID-K051785C)

Subitem-B: (R-2005-166) ADOPTED AS RESOLUTION R-299619

Certifying that Mitigated Negative Declaration Project Nos. 12556 and 12552, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations Section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the Sewer Group 746 and 749 Project.

Approving the Mitigated Negative Declaration;

Adopting the Mitigation Monitoring and Reporting Program, pursuant to California Public Resources Code Section 21081.6;

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.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 8/4/2004, NR&C voted 4 to 0 to approve the project. (Councilmembers Lewis, Frye, Madaffer, and Inzunza voted yea. Councilmember Zucchet not present.)

SUPPORTING INFORMATION:

Sewer Groups 746 & 749 (Project) is part of the City of San Diego's continuing annual Capital Improvements Program (CIP) to replace aged and deteriorated sewer mains and service laterals within the City's right-of-way. Due to the sewer group size consideration and adjacent locations, the two Sewer Groups were combined in one contract to minimize the cost. The Project is in the City Heights community area and consists of installing approximately 14,044 feet (2.66 miles) of 8-inch and 10-inch sewer mains. The Project also includes installing 37 curb ramps at intersections within the Project limits and resurfacing of the impacted streets.

For Sewer Group 746, the streets affected by construction operation are: Altadena Avenue between Loris Street and Wightman Street, Sterling Court between 50th Street and Altadena Avenue, Landis Street between Lemona Avenue and Altadena Avenue, Lemona Avenue between Sterling Court and Landis Street, 51st Street between Sterling Court and Lemona Avenue, Ridge View Drive between Laurel Street and Baily Avenue, Laurel Lane South of Laurel Street, and Baily Place East of Baily Avenue.

For Sewer Group 749 the streets affected by construction operation are: Alley between Fairmount Avenue and Sumac Street from Sumac Drive to Laurel Street, Maple Street from Sumac Drive to 44th Street, Fairmount Avenue from Sumac Drive to Columbine Street, Columbine Street from Fairmount Avenue to Columbine Street, Alley between Fairmount Avenue and 44th Street from Olive Street to Laurel Street, Alley between 44th Street and Highland Avenue from Olive Street to Maple Street, Z Street from 43rd Street to 45th Street, Boston Avenue from 44th Street to 45th Street, and 45th Street from Mayberry Street to Boston Avenue. Installation of the new sewer mains will provide the community with a reliable sewer infrastructure.

Community meetings were conducted for Sewer Group 746 at City Heights Planning Committee meeting on June 2, 2003 and at Ridgeview Neighborhood Group on July 19, 2003. Community meetings were conducted for Sewer Group 749 as follows: Southeastern San Diego Planning Committee on May 12, 2003 and City Heights Area Planning Committee on June 2, 2003. Business owners and residents in the area will be notified by mail at least one month before construction begins by the City's Engineering and Capital Projects Department and again 10 days before construction begins by the Contractor.

FISCAL IMPACT:

The total estimated cost of this Sewer Group Job 746 is \$3,540,000 and Sewer Group Job 749 is \$2,895,000 which both total to \$6,435,000. The total funding of \$6,435,000 is available in Sewer Fund 41506, CIP-44-001.0, Annual Allocation - Sewer Main Replacement, for this purpose. These projects are scheduled to be phased-funded over FY 2005 and FY 2006.

Mendes/Boekamp/HR

FILE LOCATION: SUBITEMS A & B: CONT – Ortiz Corporation;
W. O. 177551/177581

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

- * ITEM-101: Two actions related to Inviting Bids for the Construction of Sewer and Water Group 726.

(See memorandum from Patti Boekamp dated 7/22/2004. Peninsula Community Area. District-2.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2005-192) ADOPTED AS RESOLUTION R-299620

Approving the plans and specifications for the construction of Sewer and Water Group 726 (Project) on Work Order Nos. 176491/186541;

Authorizing the City Manager, after advertising for bids in accordance with law, to establish contract funding phases and to award the Project 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 under established contract funding phases are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed \$3,540,425 from Sewer Fund 41506, CIP-44-001.0, Annual Allocation – Sewer Main Replacement, an amount not to exceed \$2,062,292 from Water Fund 41500, CIP-73-083.0, Annual Allocation – Water Main Replacement, 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;

Approving the City Forces on the Project for the purpose of providing additional services related to this project for a cost not to exceed \$230,000 from Sewer Fund 41506, CIP-44-001.0, Annual Allocation – Sewer Main Replacement and for a cost not to exceed \$311,628 from Water Fund 41500, CIP-73-083.0, Annual Allocation – Water Main Replacement, for a total amount not to exceed \$541,628;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves. (BID-K051410C)

Subitem-B: (R-2005-193) ADOPTED AS RESOLUTION R-299621

Certifying that the Mitigated Negative Declaration Project No. 6310 has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) as amended, and the State guidelines thereto (California Code of Regulations Section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the 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 Sewer and Water Group 726 Project;

Approving the Mitigated Negative Declaration;

Adopting the Mitigation Monitoring and Reporting Program, pursuant to California Public Resources Code Section 21081.6;

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.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 8/4/2004, NR&C voted 4 to 0 to approve the project. (Councilmembers Lewis, Frye, Madaffer, and Inzunza voted yea. Councilmember Zucchet not present.)

SUPPORTING INFORMATION:

Sewer Group Job 726 is part of the City of San Diego's continuing Annual Sewer Replacement Program. The sewer mains being replaced in this project were constructed as early as 1928 and are approaching the end of their service life. This project is located in the community of Peninsula Planning Area in District 2 and consists of replacing approximately 8,455 linear feet (1.60 miles) of existing 6", 8" and 12" sewer mains with 8,746 linear feet (1.66 miles) of new 8-inch sewer main and rehabilitation of 90 linear feet of existing 12-inch sewer mains. This project also consists of replacing approximately 5,711 linear feet (1.08 miles) of existing 4-inch and 6-inch water mains with 5,711 linear feet of new 8-inch and 16-inch water mains.

In addition, the project will abandon some existing mains on private properties and divert the flow to the City right-of-way by constructing 20-sewer lateral re-plumbs. Also, this project includes the construction of 74 curb ramps and street resurfacing. The streets affected by construction operations within this project are Catalina Boulevard, Atascadero Drive, Tennyson

Street, Udall Street, Wabaska Court, La Cresta Drive and Nimitz Boulevard. This project was presented two (2) times to the Peninsula Planning Community by the Engineering and Capital Projects Department.

Engineering and Capital Projects Department will notify the residents by mail at least one (1) month before the start of construction and again ten (10) days before construction begins by contractor through hand distribution of notices. The contractor will be required to provide control plans for the project area to the City of San Diego's Traffic Signal Design and Traffic Control Section for approval prior to starting construction to minimize traffic impact on the community.

FISCAL IMPACT:

The total estimated cost of this project is \$5,602,717. Authorizing the expenditure of \$3,540,425 from Sewer Fund 41506, CIP-44-001.0, Annual Allocation - Sewer Main Replacement and \$2,062,292 from Water Fund 41500, CIP-73-083.0, Annual Allocation - Water Main Replacement. This project is scheduled to be phase-funded in FY 2005 - FY 2006.

Mendes/Boekamp/HR

FILE LOCATION: SUBITEMS A & B: W. O. 176491/186541

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-102: Two actions related to Inviting Bids for the Construction of Sewer Group 745.

(See memorandum from Patti Boekamp dated 7/22/2004. Barrio Logan Community Area. District-8.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2005-163 Cor. Copy) ADOPTED AS RESOLUTION R-299622

Approving the plans and specifications for the construction of Sewer Group 745 (Project), on Work Order No. 177541;

Authorizing the City Manager after advertising for bids in accordance with law to establish contract funding phases and to award the Project ~~contract~~ to the lowest responsible and reliable bidder for the Project, contingent upon: (a) City Council approval of expenditure of any additional Project funding that may become necessary as a result of the bid opening for the Project; in an amount not to exceed \$6,713,250 from Sewer Fund 41506, CIP-44-001.0, Annual Allocation-Sewer Main Replacement, provided that (b) the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure under established contract funding phases are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed \$6,713,250 from Sewer Fund 41506, CIP-44-001.0 Annual Allocation-Sewer Main Replacement, for the purpose of providing funds for the Project, contingency, and project-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 City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves. (BID-K051842)

Subitem-B: (R-2005-164) ADOPTED AS RESOLUTION R-299623

Certifying that Mitigated Negative Declaration Project No. 12558, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations Section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the Sewer Group 745 Project.

Approving the Mitigated Negative Declaration;

Adopting the Mitigation Monitoring and Reporting Program, pursuant to California Public Resources Code Section 21081.6;

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.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 8/4/2004, NR&C voted 4 to 0 to approve the project. (Councilmembers Lewis, Frye, Madaffer, and Inzunza voted yea. Councilmember Zucchet not present.)

SUPPORTING INFORMATION:

Sewer Group 745 is part of the City of San Diego's continuing Annual Capital Improvements Program to replace aged and deteriorated sewer mains. This project is in the Barrio Logan community area and consists of installing approximately 15,300 feet (2.9 miles) of 8-inch, 10-inch, and 15-inch sewer mains. Also, this project includes installing 55 curb ramps at intersections within the project limits, and the resurfacing of the impacted streets.

The streets affected by construction operation within this project are: Logan Avenue between Sigsbee Street and Cesar Chavez Parkway, 26th Street between Logan Avenue and National Avenue, Sicard Street between Alley North of National Avenue and Main Street, Schley Street between Main Street and Harbor Drive, Harrison Avenue between S. Evans Street and Dewey Street, 21st Street between Commercial Street and Alley North of Julian Avenue, 22nd Street between Commercial Street and Beardsley Street, Main Street between Sicard Street and Schley Street, Commercial Street between 21st Street and 22nd Street, Alley between National Avenue and Logan Avenue from S. Evans Street to Sicard Street, Alley between Kearny Avenue and Julian Avenue from Beardsley Street to S. Evans Street, Alley between Julian Avenue and Irving Avenue from S. Evans Street to Beardsley Street, Alley between Irving Avenue and Harrison Avenue from Dewey Street to 28th Street, and Alley between Irving Avenue and Julian Avenue from Sampson Street to 28th Street. Installation of the new sewer mains will provide the community with a reliable sewer infrastructure.

Community Meeting was conducted for Group Job 745, at Barrio Logan Project Area Committee on June 16, 2003. Business owners and residents in the area will be notified by mail at least one month before construction begins by the City's Engineering and Capital Projects Department and again 10 days before construction begins by the contractor through hand distribution.

FISCAL IMPACT:

The total estimated cost of this project is \$6,713,250. Funding of \$6,713,250 is available in Sewer Fund 41506, CIP-44-001.0, Annual Allocation - Sewer Main Replacement, for this purpose. This project is scheduled to be phased funded over FY 05 to FY 06.

Mendes/Belock/HR

FILE LOCATION: SUBITEMS A & B: W. O. 177541

COUNCIL ACTION: (Time duration: 2:41 p.m. – 2:45 p.m.)

MOTION BY FRYE TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

- * ITEM-103: Awarding a Contract to Telliard Construction for Point Loma Community Park Ballfield Project Phase I.

(Peninsula Community Area. District-2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-209) ADOPTED AS RESOLUTION R-299624

Authorizing the City Manager to accept the generous donation of \$81,300 from the Point Loma Little League for the construction of a retaining wall, landscaping, and irrigation system (Phase I), and a seating/viewing terrace (Phase II) at Point Loma Community Park Ballfield (Project);

Accepting the bid of Telliard Construction and authorizing the City Manager to execute, a contract with Telliard Construction for the Project, in the amount not to exceed \$103,500 (BID-M042004);

Authorizing the City Auditor and Comptroller to increase by \$81,300 in Fiscal Year 2005 Capital Improvements Program Budget in CIP-29-844.1, Point Loma Community Park Ballfield Viewing Terrace - Phase I, Fund No. 63022, Private and Other Contributions - Capital Improvements Program;

Authorizing the City Auditor and Comptroller to transfer \$37,820 from Park and Recreation Community Matching Funds, Fund No. 10365, Org. No. 2444 and J.O. No. 020234, to CIP-29-844.1, Point Loma Community Park Ballfield Viewing Terrace - Phase I, Fund No.10365, Park and Recreation Community Matching Funds;

Authorizing the City Auditor and Comptroller to increase by \$37,820 in Fiscal Year 2005 Capital Improvements Program Budget in CIP-29-844.1, Point Loma Community Park Ballfield Viewing Terrace - Phase I, Fund No.10365, Private and Other Contributions - Capital Improvements Program, Park and Recreation Community Matching Funds;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$81,300 from CIP-29-844.1, Point Loma Community Park Ballfield Viewing Terrace - Phase I, Fund No. 63022, Private and Other Contributions – Capital Improvements Program, for the Project;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$37,820 from CIP-29-844.1, Point Loma Community Park Ballfield Viewing Terrace - Phase I, Fund No. 10365, Park and Recreation Community Matching Funds, for the Project;

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

CITY MANAGER SUPPORTING INFORMATION:

The project is located at the Point Loma Community Park at the corner of Catalina Boulevard and Varona Street in the Peninsula Community Area in Council District 2. Phase I of the project will include the construction of a retaining wall, landscaping, and irrigation system. Phase II will design and construct the remainder of the project, the seating/viewing terrace.

The Point Loma Little League has been an active private partner in this project and has contributed \$81,300 needed to complete construction of Phase I.

The project was processed through Minor Construction Program and Telliard Construction has been recognized as the apparent low bidder, for Point Loma Community Park Ballfield Viewing Terrace - Phase I.

FISCAL IMPACT:

The total project cost is estimated to be \$178,120. Additional funds, in the amount of \$81,300, are available in CIP-29-844.1, Point Loma Community Park Ballfield Viewing Terrace - Phase I, Fund No. 63022, Private and Other Contributions - Capital Improvements Program. The improvements in this project are funded by Capital Outlay Funds in the amount of \$59,000, and Park and Recreation Community Matching Funds in the amount of \$37,820.

Herring/Oppenheim/AP

Aud. Cert. 2500212.

FILE LOCATION: CONT-Telliard Construction; W.O. 298441

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-104: Settlement of Personal Property Damage Claim of John A. Whalen.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-232) ADOPTED AS RESOLUTION R-299625

A Resolution approved by the City Council in Closed Session on Monday, July 26, 2004 by the following vote: Peters-yea; Zucchet-yea; Atkins-not present; Lewis-yea; Maienschein-yea; Frye-yea; Madaffer-yea; Inzunza-not present. Mayor-yea.

Authorizing the City Manager to pay the total sum of \$286,668.48 in the settlement of each and every claim against the City, its agents and employees, in Superior Court Case No. 820996, John A. Whalen, Jr., et al., v. City of San Diego, et al., resulting from the flooding damage to Plaintiff's residence;

Declaring that out of the total sum of \$286,668.48, the sum of \$26,668.48 was previously paid to Luth & Turley, the City's designated contractor for clean-up and restoration of residences affected by back-up sewage, for work it had performed prior to being dismissed by Plaintiffs from completing the clean-up, and \$9,423 was previously paid to Plaintiffs for miscellaneous property damage. The balance of \$260,000 is owed to Plaintiffs;

Authorizing the City Auditor and Comptroller to issue one check in the amount of \$260,000, made payable to John A. Whalen, Jr., an individual, Sandra L. Whalen, an individual, and the Whalen Family Trust, in care of Timothy J. Tatro, Esq., Tatro and Zamoyski, 12264 El Camino Real, Suite 400, Del Mar, California, 92130, in full settlement of the lawsuit and of all claims;

Declaring said funds are to be payable from Fund No. 81140, Public Liability Reserve Fund.

CITY MANAGER SUPPORTING INFORMATION:

This constitutes the complete and final settlement of the property damage claim of John A. Whalen against the City of San Diego, its agents and employees, as a result of an incident, which occurred on October 26, 2002.

Lexin/Lopez/LH

Aud. Cert. 2500198.

NOTE: The Auditor's Certificate was not requested prior to Closed Session. The vote taken in Open Session shall be the official vote.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-105: Multi-Year Transient Occupancy Tax (TOT) Funding for the San Diego Bowl Game Association/Holiday Bowl.

(See City Manager Report CMR-04-171.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-128) ADOPTED AS RESOLUTION R-299626

Declaring that the Council expresses a desire and intention to fund the Holiday Bowl with TOT allocations, as follows: (1) subject to availability of funds in a given year, (2) subject to the discretionary prerogatives of the City Council to annually adopt a budget and annual appropriation ordinance for the City pursuant to the City Charter, and (3) subject to the City Auditor and Comptroller certifying the availability of funds by issuing an Auditor's Certificate prior to any contractual commitment, and in accordance with the following schedule:

Proposed Schedule of Funding

<u>FY 2006</u>	<u>FY2007</u>	<u>FY2008</u>	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>
\$434,597	\$459,597	\$484,597	\$509,597	\$534,597	\$559,597

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-106: Opposing California Performance Review’s Recommendation RES12: Restructure Funding and Governance for Certain Land Conservancies.

(See letter from Mayor Murphy and Councilmember Donna Frye dated 8/19/2004 and memorandum from J. Brent Eidson dated 9/1/2004. Districts-2, 3, 6, and 7.)

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-246) ADOPTED AS RESOLUTION R-299627

Declaring that the Council of the City of San Diego strongly opposes Recommendation RES12: Restructure Funding and Governance for Certain Land Conservancies, from the California Performance Review (CPR).

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-107: Agreement with Hawkins, Delafield & Wood, LLP, for Disclosure Counsel Services for Balboa Park Refunding.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-198) RETURNED TO THE CITY MANAGER

Authorizing the City Manager to execute an agreement with Hawkins, Delafield & Wood, LLP, for disclosure counsel services for the Balboa Park Refunding, in an amount not to exceed \$100,000, under the terms and conditions set forth in the Agreement, contingent upon the City Auditor and Comptroller first furnishing a certificate certifying that funds are available.

SUPPORTING INFORMATION:

The City issued Certificates of Participation (Balboa Park and Mission Bay Park Capital Improvements Program) Series 1996A for capital (Prior COPs) to finance the construction of capital improvements to Balboa Park and Mission Bay Park (Project). The City plans to refund the Prior COPs and issue refunding certificates of participation (COPs). It is in the best interest of the City to retain Hawkins, Delafield and Wood LLP (Firm) to provide disclosure counsel services in connection with the COPs. The Firm proposed to provide such services for an hourly rate in connection with the COPs for a maximum amount not to exceed \$100,000. Such fees are contingent upon the Bonds being sold and shall be paid from the proceeds of the Bonds. The City has determined to accept the Firm's proposal and retain it as disclosure counsel for the COPs.

Noone/KJS

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:30 p.m. – 5:30 p.m.)

MOTION BY COMMON CONSENT TO RETURN THIS ITEM TO THE CITY MANAGER FOR FURTHER REVIEW. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-108: Agreement with Hawkins, Delafield & Wood, LLP, for Disclosure Counsel Services for San Diego Open Space Refunding.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-197) RETURNED TO THE CITY MANAGER

Authorizing the City Manager to execute an agreement with Hawkins, Delafield & Wood, LLP, for disclosure counsel services for San Diego Open Space Refunding, in an amount not to exceed \$100,000, under the terms and conditions set forth in the Agreement, contingent upon the City Auditor and Comptroller first furnishing a certificate certifying that the funds are available.

SUPPORTING INFORMATION:

In February 1978, the City Council formed the San Diego Open Space Park Facilities District No. 1 (District). The City is the legislative body of the District. The District previously issued in 1978, 1986, and 1994 the San Diego Open Space Park Facilities General Obligation Bonds and has now determined that a portion of such outstanding bonds should be refunded and refunding bonds issued for such purpose (Bonds). It is in the best interest of the City to retain Hawkins, Delafield and Wood, LLP (Firm) to provide disclosure counsel services in connection with the Bonds. The Firm proposed to provide such services for an hourly rate in connection with the Bonds for a maximum amount not to exceed \$100,000. Such fees are contingent upon the Bonds being sold and will be paid out of the Bonds proceeds. The City has determined to accept the Firm's proposal and retain it as disclosure counsel for the Bonds.

Noone/KJS

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:30 p.m. – 5:30 p.m.)

MOTION BY COMMON CONSENT TO RETURN THIS ITEM TO THE CITY MANAGER FOR FURTHER REVIEW. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-109: Agreement with Hawkins, Delafield & Wood, LLP, for Bond Disclosure Counsel Services for Pension Obligation Bonds.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-201) RETURNED TO THE CITY MANAGER

Authorizing the City Manager to execute an agreement with Hawkins, Delafield & Wood, LLP, for bond and disclosure counsel services for Pension Obligation Bonds in an amount not to exceed \$175,000, under the terms and conditions set forth in the Agreement, contingent upon the City Auditor and Comptroller first furnishing a certificate certifying that funds are available.

SUPPORTING INFORMATION:

The City is contemplating the issuance of pension obligation bonds (Bonds) in early 2005 to reduce the City's outstanding pension Unfunded Accrued Liability (UAAL). It is in the best interest of the City to retain Hawkins, Delafield & Wood, LLP (Firm) to provide bond and disclosure counsel service in connection with the Bonds. The Firm proposed to provide such services for an hourly rate in connection with the Bonds for a maximum amount not to exceed \$175,000. Such fees are contingent on the Bonds being sold and shall be paid from the proceeds of the Bonds. The City has determined to accept the Firm's proposal and retain it as bond and disclosure counsel for the Bonds.

Noone/RD

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:30 p.m. – 5:30 p.m.)

MOTION BY COMMON CONSENT TO RETURN THIS ITEM TO THE CITY MANAGER FOR FURTHER REVIEW. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-110: Establishing a One-Hour Unmetered Time Limit Parking on the South Side of El Cajon Boulevard between 49th Street and Winona Avenue.

(City Heights Community Area. District-7.)

CONSENT MOTION BY MADAFFER TO RETURN THIS ITEM TO THE CITY MANAGER FOR FURTHER REVIEW. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-111: CCDC Area 1, Phase 2, Job 2, from Beech Street to Cedar Street and State Street to 7th Avenue.

(Centre City Community Area. District-2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-226) ADOPTED AS RESOLUTION R-299628

Calling for a public hearing to determine whether the public health, safety, or general welfare requires the formation of Underground Utility Districts financed through the City of San Diego Undergrounding Surcharge Fund.

CITY MANAGER SUPPORTING INFORMATION:

The formation of CCDC Area 1, Phase 2, Job 2, from Beech Street to Cedar Street and State Street 7th Avenue Underground Utility District will require the removal and/or underground conversion of certain overhead power and communications wires with poles within the established boundary. The expense of the underground installation and removal of overhead facilities within the right-of-way (street and sidewalk area) will be the responsibility of the utility companies in accordance with California Public Utilities Commission Rules.

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

FISCAL IMPACT:

The fiscal impact to the City is the construction cost estimated at \$1,702,982 and other indirect costs such as street light replacement, tree replacement, street improvement, minor City forces, and other related work estimated at \$115,785, will be financed through the City of San Diego

Fund 30100, Undergrounding Surcharge Fund, contingent upon receipt of funds from San Diego Gas & Electric.

Mendes/Boekamp/AO

FILE LOCATION: STRT-K-322 (38)

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-250: **Notice** of Pending Final Map Approval – 4154 Louisiana Street.

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 “4154 Louisiana Street” (T.M. No. 72188), a copy of which is available for public viewing at the Office of the San Diego City Clerk. Said project is located northwesterly of Polk Avenue and Louisiana Street in the Greater North Park Community Plan Area in Council District 3. 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 Deputy City Engineer Lee Hennes at (619) 446-5291.

ITEM-251: Notice of Pending Final Map Approval – 4950 Coronado Avenue.

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 “4950 Coronado Avenue” (T.M. No. 42-2179), located at 4950 Coronado Avenue, west of Cable Street and east of Bacon Street in Ocean Beach Community Planning Area in Council District 2, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Said project is. 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 Deputy City Engineer Lee Hennes at (619) 446-5291.

ITEM-S400: Rob Appel BRAVO San Diego Volunteer of the Year Day.

COUNCILMEMBER ZUCCHET’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-263) RETURNED TO COUNCIL MEMBER ZUCCHET

Declaring that the Council of the City of San Diego, for and on behalf of the Performing Arts and business communities of San Diego does recognize the exceptional contribution to the Arts that Rob Appel has devoted to BRAVO San Diego by helping to make it the premier Arts and Business event in San Diego;

Proclaiming September 13, 2004 to be “Rob Appel BRAVO San Diego Volunteer of the Year Day” in the City of San Diego.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:15.p.m. – 2:15 p.m.)

MOTION BY MADAFFER TO RETURN THIS ITEM TO COUNCIL MEMBER ZUCCHET FOR RESCHEDULING PURPOSES. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-S401: World Memorial Release of Souls 9-11 Tribute.

COUNCILMEMBER ZUCCHET’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-262) ADOPTED AS RESOLUTION R-299629

Declaring that September 11, 2004 is World Memorial “Release of Souls” 9-11 Tribute Day in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-S402: Regi Phelps Day.

DEPUTY MAYOR ATKINS’ AND COUNCILMEMBER FRYE’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-260) ADOPTED AS RESOLUTION R-299630

Commending Regi Phelps for his continued commitment to labor relations;

Proclaiming September 11, 2004 to be "Regi Phelps Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-S403: FY 2004 State Homeland Security Grant Program.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-255) ADOPTED AS RESOLUTION R-299631

Authorizing the City Manager, Deputy City Manager, or Director of the Office of Homeland Security, to accept, expend, appropriate, and administer the grant funds in the amount of \$1,758,903 from the FY 2004 State Homeland Security Grant Program, in accordance with the terms and conditions set forth in the FY 2004 State Homeland Security Grant Program;

Authorizing the City Auditor and Comptroller to establish a special grant fund account to facilitate the grant process.

CITY MANAGER SUPPORTING INFORMATION:

The County of San Diego has been awarded \$10,383,187 under the FY 2004 State Homeland Security Grant Program to prevent, deter, respond to, and recover from incidents of terrorism involving the use of chemical, biological, radiological, nuclear, and explosive weapons and cyber attacks. The County will administer and manage the grant funds for the Operational Area, which has been defined as the 18 incorporated cities in San Diego County, the county and special districts.

The City of San Diego has been allocated \$1,758,903 of these funds to be spent on first responder personal protective equipment, special law enforcement equipment needs, and the City's Interoperable Communications Project. The Police Department and the Fire-Rescue

Department will share \$764,735 to purchase standardized personal protective equipment of an appropriate level for response to weapons of mass destruction based on the type of hazard control zone in which the personnel will operate. This equipment will include protective outerwear, boots, gloves, face masks, and breathing apparatus. The Police Department will receive \$589,371 to purchase a Mobile Command Vehicle and other first responder equipment.

Additionally, \$404,797 will be provided to Information Technology and Communications to upgrade the Police Department's 15-year-old mobile data systems that have reached the end of their lifecycle. The funds will be used to purchase mobile data computer equipment for police patrol cars that will allow information sharing between city, county, state and federal agencies, and result in the rapid and timely dissemination of public safety data to field personnel.

This grant, which expires on November 30, 2005, is of a reimbursement nature, which requires the City to initiate the procurement process, encumber funds, receive the equipment, pay the invoices and then request reimbursement from the County. The reimbursement process should normally be completed within 30 days of the City's request to the County. The Auditor's Office will set up a special grant fund account to facilitate the process.

Arellano/Lee/DF

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-S404: FY 2003 State Homeland Security Grant Program-Part II.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-256) ADOPTED AS RESOLUTION R-299632

Authorizing the City Manager, Deputy City Manager, or Director of the Office of Homeland Security to accept, expend, appropriate, and administer the grant funds in the amount of \$1,075,191 from the FY 2003 State Homeland Security Grant Program-Part II, in accordance with the terms and conditions set forth in the FY 2003 State Homeland Security Grant Program-Part II;

Authorizing the City Auditor and Comptroller to establish a special grant fund account to facilitate the grant process.

CITY MANAGER SUPPORTING INFORMATION:

The United States Department of Homeland Security, Office of Domestic Preparedness is providing financial assistance under the FY 2003 State Homeland Security Grant Program - Part II to address equipment, training, planning, exercise, and administrative needs of state and local emergency services first responders.

The County of San Diego has been awarded \$6,689,008 and will administer and manage this grant for the Operational Area, which has been defined as the 18 incorporated cities in San Diego County, the county and the related special districts.

The City of San Diego has been allocated \$1,075,191 of these funds to be spent on first responder personal protective equipment and the City's Interoperable Communications Project. The Police Department and the Fire-Rescue Department will share \$603,022 to purchase standardized personal protective equipment of an appropriate level for response to weapons of mass destruction based on the type of hazard control zone in which the personnel will operate. This equipment will include protective outerwear, boots, gloves, face masks, and breathing apparatus.

Additionally, \$472,170 will be provided to Information Technology and Communications to begin the upgrade of the Police Department's 15-year-old mobile data systems that have reached the end of their lifecycle.

The funds will be used to purchase mobile data computer equipment for police patrol cars that will allow information sharing between city, county, state and federal agencies, and result in the rapid and timely dissemination of public safety data to field personnel.

This grant, which expires on April 30, 2005, is of a reimbursement nature, which requires the City to initiate the procurement process, encumber funds, receive the equipment, pay the invoices and then request reimbursement from the County. The reimbursement process should normally be completed within 30 days of the City's request to the County. The Auditor's Office will set up a special grant fund account to facilitate the process.

Arellano/Lee/DF

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S405: Wastewater System Financing Program.

(See City Manager Report CMR-04-200.)

CITY MANAGER'S RECOMMENDATION:

Introduce the following ordinance:

(O-2005-35) RETURNED TO THE CITY MANAGER

Introduction of an Ordinance approving the form of and authorizing the issuance of not to exceed \$1,200,000,000 aggregate principal amount of the Public Facilities Financing Authority of the City of San Diego Subordinated Sewer Revenue Bonds, Series 2005A and Series 2005B (payable solely from subordinated installment payments secured by Wastewater System Net Revenues); approving the form of an indenture and approving the form of and authorizing the execution and delivery of a 2005 supplement to the Master Installment Purchase Agreement relating to an installment purchase financing and approving certain other agreements and actions in connection therewith, pursuant to Section 99 of the Charter of the City of San Diego.

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:47 p.m. – 3:46 p.m.)

Motion by Frye to continue this item until the 2003 annual financial reports are in for Council review. Second by Maienschein. Failed by the following vote: Peters-nay, Zucchet-nay, Atkins-nay, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-nay, Inzunza-nay, Mayor Murphy-nay.

Motion by Peters to Introduce. Second by Mayor Murphy. Failed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-nay, Madaffer-nay, Inzunza-nay, Mayor Murphy-yea.

MOTION BY COMMON CONSENT TO RETURN THIS ITEM TO THE CITY MANAGER DUE TO A LACK OF SIX AFFIRMITIVE VOTES. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-S406: Appeal of Environmental Determination for the Mi Arbolito Project.

Matter of the appeal by Bankers Hill, Hillcrest Park West Community Preservation Group in care of Johnson and Hanson, L.L.P. of the decision by City staff that the subject project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the State CEQA Guidelines.

(See City Manager Report CMR-04-139. Uptown Community Plan Area. District-3.)

(Continued from the meetings of July 13, 2004, Item 335, August 10, 2004, Item 333, and September 7, 2004, Item 330, last continued at the request of the community to give the community time to respond and offer comments.)

NOTE: Hearing open. No testimony taken on 9/7/2004.
Hearing open. No testimony taken on 8/10/2004.
Hearing open. No testimony taken on 7/13/2004.

CITY MANAGER'S RECOMMENDATION:

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

(R-2005-) DENIED APPEAL; UPHOLD THE ENVIRONMENTAL DETERMINATION; ADOPTED AS RESOLUTION R-299633 (*See item S406 in the minutes of 09/14/04)

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

CITY MANAGER SUPPORTING INFORMATION:

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

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

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

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

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

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

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

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

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

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

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

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

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

FISCAL IMPACT:

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

Loveland/Christiansen/CZ

FILE LOCATION: LUP-Appeal of Environmental Determination for the Mi Arbolito Project, 07/13/04 (65)

COUNCIL ACTION: (Time duration: 3:54 p.m. – 5:29 p.m.)

Testimony in opposition by Kevin Johnson, Mark Trembly, Anita Chaffee-Mower, Don White, Jim Greer, Glenn Casey, Sandra Lawhon, Caroline Lent, Otto Mower, Cynthia Nelson, Florence Nemkov, Newton Pollock, and Yolanda Thomas.

Testimony in favor by Monty McIntyre.

MOTION BY ATKINS TO ADOPT THE RESOLUTION TO DENY THE APPEAL AND UPHOLD THE ENVIRONMENTAL DETERMINATION. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-nay, Frye-yea, Madaffer-nay, Inzunza-yea, Mayor Murphy-yea.

* ITEM-S407: Confirmation of Agreement with Orrick, Herrington and Sutcliffe for General Legal Services.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-261) TRAILED TO TUESDAY, SEPTEMBER 14, 2004

Authorizing the City Manager to execute the Confirmation of Agreement with Orrick, Herrington & Sutcliffe, for General Legal Services, under the terms and conditions set forth in the Agreement;

Authorizing the expenditure of an amount not to exceed \$470,216.75 (\$31,549.46 from Fund 10253, Dept. 10253, Org. 2001, Acct. 4151; \$171,005.99 from Fund 102214, Dept. 102214, Org. 250, Acct. 4151; \$31,549.46 from Fund 102212, Dept. 102212, Org. 100, Acct. 4151; \$31,549.46 from Fund 100, Dept. 601, Org. 3300, Acct. 4151; \$ 31,549.46 from Fund 10330, Dept. 930, Org. 2200, Acct. 4151; \$31,549.46 from Fund 10226, Dept. 918, Acct. 4151; \$31,549.46 from Fund 102240, Dept. 1024, Org. 1854, Acct. 4151; \$94,542.75 from Fund 72016, Dept. 92016, Acct. 4151; \$15,371.25 from Fund 41500, Dept. 760, Org. 163, JO 4141, Acct. 001015), for the purpose of providing funds for the above referenced Project.

SUPPORTING INFORMATION:

City previously retained the services of Orrick to render legal advice and assist the City with general legal services pertaining to disclosure issues for City bond financings. As directed by the City Attorney's Office, Orrick provided the City with the following general legal services related to such financings: (1) prepared voluntary disclosure for the General Fund; (2) prepared Rule 15c2-12 annual reports for the General Fund; (3) prepared voluntary disclosure for the Wastewater System of the City [Wastewater System]; (4) prepared a Rule 15c2-12 annual report for the Wastewater System; (5) prepared a Rule 15c2-12 annual report for the Water Utility System of the City; and (6) substituted amounts on deposit in the reserve fund established under the Indenture related to the Ballpark Project with debt service reserve credit facility. Payments

for these services are usually funded through bond proceeds, however, the issuance of bonds related to the Firm's services has been delayed and it is appropriate to provide for alternative funding. Funds are available from various project accounts related to the Firm's services.

FISCAL IMPACT:

Expenditure of an amount not to exceed \$470,216.75 as follows: (\$31,549.46 from Fund 10253, Dept. 10253, Org. 2001, Acct. 4151; \$171,005.99 from Fund 102214, Dept. 102214, Org. 250, Acct. 4151; \$31,549.46 from Fund 102212, Dept. 102212, Org. 100, Acct. 4151; \$31,549.46 from Fund 100, Dept. 601, Org. 3300, Acct. 4151; \$ 31,549.46 from Fund 10330, Dept. 930, Org. 2200, Acct. 4151; \$31,549.46 from Fund 10226, Dept. 918, Acct. 4151; \$31,549.46 from Fund 102240, Dept. 1024, Org. 1854, Acct. 4151; \$94,542.75 from Fund 72016, Dept. 92016, Acct. 4151; \$15,371.25 from Fund 41500, Dept. 760, Org. 163, JO 4141, Acct. 001015).

Noone/KS

Aud. Cert. 2500245.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 5:30 p.m. – 5:30 p.m.)

* ITEM-S408: Appointments and Reappointments to the San Diego Youth Commission.

(See memorandum from Mayor Murphy dated 9/2/2004, with resumes attached.)

MAYOR MURPHY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-252) ADOPTED AS RESOLUTION R-299634

Council confirmation of the following appointments and reappointments by the Mayor of the City of San Diego, to serve as members of the San Diego Youth Commission, for terms ending July 1, 2006:

NOMINEES:

Mayor

Deserae Dunn (Reappointment)
Zachary Story (Reappointment)

Mayor (Alternate)

Danielle Santos (Appointment)

Council District 1

Mitchell Duffy (Appointment)
Ashley Grand (Reappointment)

Council District 1 (Alternate)

Jon Thompson (Appointment)

Council District 2

Kim Truong (Appointment)
Anarie Salvador (Appointment)

Council District 2 (Alternate)

Jeremiha Douglas (Appointment)

Council District 3

Alexandra Hill (Reappointment)
Anne Shiraishi (Reappointment)

Council District 3 (Alternate)

Mariano Diaz (Appointment)

Council District 4

Jaleisha Jackson (Appointment)
Michael Fiszman (Appointment)

Council District 4 (Alternate)

Matthew Haulman (Appointment)

Council District 5

Boris Patlis (Reappointment)
Jill Hancock (Appointment)

Council District 5 (Alternate)

Ashley Brown (Appointment)

Council District 6

Julia Saba (Reappointment)
Michael Keating (Appointment)

Council District 7

David Daniels (Reappointment)
Kayleigh Neel (Appointment)

Council District 8

Adrian LeRay (Reappointment)
Valerie LeRay (Reappointment)

Council District 8 (Alternate)

Alex Guittard (Appointment)

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT THE RESOLUTION CONFIRMING THE APPOINTMENTS AND REAPPOINTMENTS. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-S409: Two actions related to Approving the Final Map of Black Mountain Ranch Unit No. 17 and Parcel Map W.O. No. 422389.

(Black Mountain Ranch Community Area. District-1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2005-243) ADOPTED AS RESOLUTION R-299635

Approving the Final Map of Black Mountain Ranch Unit No. 17.

Subitem-B: (R-2005-244) ADOPTED AS RESOLUTION R-299636

Approving the Map of Parcel Map W. O. No. 422389.

CITY MANAGER SUPPORTING INFORMATION:

The Final Map of Black Mountain Ranch Unit No. 17 is a 14.815-acre map proposing 4 lots for residential development, 1 lot for a private driveway, 1 lot to be deeded to the City for open space purposes and 4 building restricted lots. The Parcel Map is a 2-parcel lot line adjustment map totaling 20.604 acres. These maps are located in the Black Mountain Ranch Community Plan Area, northeasterly of El Camino Real and San Dieguito Road in Council District 1.

Market conditions have changed since the original maps recorded, and the developer is making revisions to the maps to accommodate the changes. A Substantial Conformance Review has approved the maps, resulting in the need to vacate building restricted easements in their current locations. Revised building restricted easements are being granted on the maps.

The public improvements required for the Final Map of Black Mountain Ranch Unit No. 17 are shown on Engineering Drawing No. 32808-1-20-D, for which an agreement has been entered into and a bond posted in the amount of \$585,580 to assure the work. There are no public improvements required in connection with the lot line adjustment map. There are no park fees due in connection with either project.

Staff recommends approval.

FISCAL IMPACT:

None.

Loveland/Broughton/GRB

FILE LOCATION: SUBITEMS A & B: DEED F-9817

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:30 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Zucchet. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 5:30 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 5:30 p.m.)