

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

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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

(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.)

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.)

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.)

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.)

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.



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.

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:~~ CONT-STANEK CONSTRUCTORS, INC.

~~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.

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.

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-2009-789) 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-2009-790) 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:

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 condominium 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. The development was constructed in 2003-2004 and meets all regulations in place at that time for the project.

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 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. This project meets the inclusionary housing requirement by providing ninety-seven onsite affordable housing units. The project does not request a variance or waiver from the inclusionary housing requirements, therefore, these code sections are not relevant.

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 October 9, 2008, the Planning Commission approved the project by a vote of 6-0-1.

On July 11, 2007, the Mission Valley Unified Planning Committee voted 20-0-0 to recommend approval of the project with no conditions.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. Promenade Acquisition, LLC. 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 at 8405-8715 Rio San Diego Drive, 8555 Station Village Lane, 2185-2195 Station Village Way and 2173 Camino Del Este in the Mission Valley Community Plan Area and is part of the First San Diego River Improvement Project (FSDRIP) and Rio Vista West Specific Plans and is legally described as Parcels 1 and 2 of Parcel Map No. 18407.

NOTE: This project is exempt from environmental review pursuant to Article 19, Section 15301(k), Existing Facilities, of the California Environmental Quality Act (CEQA). The environmental exemption determination for this project was made 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.

Staff: Jeannette Temple – (619) 557-7908
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. – 3:55 p.m.)

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

Testimony in opposition by Richard Schulman and Stephen Adams.

MOTION BY DEMAIO TO ADOPT STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE DECISION OF THE PLANNING COMMISSION GRANTING THE TENTATIVE MAP WITH APPROPRIATE FINDINGS TO SUPPORT COUNCIL ACTION AND TO AMEND CONDITION 5 TO INCLUDE INDEMNIFICATION LANGUAGE CONSISTENT WITH THE SUBDIVISION MAP ACT. Second by Faulconer. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-not present, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.



ITEM-336: Formation of a Project Area Committee ("PAC") for the San Ysidro Redevelopment Project and Approval of the Procedure for Formation and Election of Said PAC. (San Ysidro Community Area. District 8.)

(See Report to the City Council No. 09-004.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-544 Cor. Copy) ADOPTED AS RESOLUTION R-304593

Declaring that the City Council calls upon the residents, businesses and existing community organizations in the San Ysidro Redevelopment Project Area to form a project area committee (Project Area Committee);

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-2009-783) 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-2009-785) 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.

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