

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
TUESDAY, MARCH 24, 2009  
AT 9:00 A.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

**Table of Contents**

CHRONOLOGY OF THE MEETING .....	4
ATTENDANCE DURING THE MEETING .....	4
ITEM-300: ROLL CALL .....	5
NON-AGENDA COMMENT .....	5
COUNCIL COMMENT .....	10
INDEPENDENT BUDGET ANALYST COMMENT .....	10
CITY ATTORNEY COMMENT .....	10
ITEM-30: Palm Patrons of Ellen Browning Scripps Park Day .....	11
ITEM-31: Project Safe Way Day .....	11
ITEM-32: San Diego State All-Girl Cheer Squad Day .....	12
ITEM-50: Amendments to the Permanent Rules of the Council .....	13
ITEM-51: Wastewater System – Sewer Revenue Bonds and Sewer Revenue Refunding Bonds .. .....	16
ITEM-100: Awarding Consultant Agreement to Helix Environmental Planning, Inc., for University Avenue Mobility Plan Phase 1 .....	17
ITEM-101: Awarding of Contract to RBF Consulting for the Rosecrans Corridor Study .....	20
ITEM-102: Amendment No. 1 to the Participation Agreement with Pardee Homes (MWD- 9037) for Sewer Pump Station 79 Upgrades.....	23
ITEM-103: Agreement with MuniServices LLC for Revenue Enhancement and Information Services .....	26

ITEM-104:	Agreement with the County of San Diego for Animal Control Services for Fiscal Year 2009 through Fiscal Year 2013 .....	30
ITEM-105:	Approval of the City of San Diego's Sewer System Management Plan (SSMP)- ..	32
ITEM-106:	Acceptance of Insurance Funds and Execution of Agreement with Replacement Contractor for Bonita Pipeline Project Phase II.....	34
ITEM-107:	Additional Funding for Annual Allocation for Metropolitan Wastewater Department (MWW) Trunk Sewers .....	38
ITEM-108:	Application for Vernal Pool Species Habitat Conservation Plan Grant Funding ...	40
ITEM-109:	Ransom Street and Darwin Way Storm Drain Replacement Project .....	42
ITEM-110:	Design and Construction of the Mission Trails Regional Park Equestrian Center Comfort Station/Service Building.....	44
ITEM-111:	Fiscal Year 2009 Urban Area Security Initiative Grant Program Application .....	47
ITEM-112:	Brown Field Airport Gypsum Removal Grant .....	50
ITEM-113:	Transfer of Funds for the Logan Heights Branch Library .....	52
ITEM-114:	Settlement of Wrongful Death Claim of Richard Faust, Lynne Faust, and the Estate of Jacob Faust .....	55
ITEM-115:	Proposed 2009 Legislative Program.....	57
ITEM-116:	Appointment and Reappointments to the Park and Recreation Board .....	59
ITEM-117:	Reappointments to the International Affairs Board .....	60
ITEM-118:	Reappointments to the Balboa Park Committee .....	61
ITEM-119:	The Confucius Institute at San Diego State University Day.....	62
ITEM-120:	Arts in Education Month .....	63
ITEM-121:	Kosen-Rufu Day .....	64

ITEM-122: Excusing Council President Ben Hueso from Attending the March 10, 2009, Council Meeting..... 64

ITEM-123: Declaring a Continued State of Emergency Regarding the Wildfires ..... 65

ITEM-124: State of Local Emergency Declaration Regarding the Landslide on Mount Soledad ..... 66

ITEM-125: Declaring a Continued State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico ..... 66

ITEM-126: Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City ..... 67

ITEM-330: Agreement with Flow Science Incorporated for Limnology and Reservoir Detention Study of San Vicente Reservoir for the Indirect Potable Reuse/Reservoir Augmentation Demonstration Project..... 68

ITEM-331: Housing Commission Approach to the Foreclosure Problem..... 71

ITEM-332: Emerald Street Tentative Map, Project No. 25879 ..... 73

ITEM-333: Santa Margarita Vesting Tentative Map and Easement Vacation No. 318389, Project No. 97654 ..... 79

ITEM-334: 4711 Biona Drive Tentative Map. Project No. 78145 ..... 83

REPORT OUT OF CLOSED SESSION ..... 89

NON-DOCKET ITEMS ..... 90

ADJOURNMENT..... 90

**CHRONOLOGY OF THE MEETING:**

The meeting was called to order by Council President Hueso at 10:07 a.m. The meeting was recessed by Council President Hueso at 11:18 a.m. to convene into Closed Session; thereafter for the noon recess and thereafter to reconvene at 2:00 p.m.

The meeting was reconvened by Council President Hueso at 2:02 p.m. with all Council Members present. Council President Hueso recessed the regular meeting at 3:32 p.m. to convene the Housing Authority. The regular meeting was reconvened by Council President Hueso at 3:33 p.m. with all Council Members present. Council President Hueso recessed the regular meeting at 3:50 p.m. to reconvene the Housing Authority. Council President Hueso reconvened the regular meeting at 4:32 p.m. with all Council Members present. The meeting was adjourned by Council President Hueso at 4:33 p.m.

**ATTENDANCE DURING THE MEETING:**

- (1) Council Member Lightner-present
  - (2) Council Member Faulconer-present
  - (3) Council Member Gloria-present
  - (4) Council Member Young-present
  - (5) Council Member DeMaio-present
  - (6) Council Member Frye-present
  - (7) Council Member Emerald-present
  - (8) Council Member Hueso-present
- Clerk-Maland (sr/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-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 at Council and a SANDAG presentation at the Metropolitan Transit System.

FILE LOCATION: AGENDA

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

PUBLIC COMMENT-2:

Crickett Bradburn commented on “The trees are falling.”

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:33 a.m. - 10:36 a.m.)

**PUBLIC COMMENT-3:**

Hud Collins commented on City finances.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:36 a.m. - 10:39 a.m.)

**PUBLIC COMMENT-4:**

Al Strohleim commented on too many parades.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:39 a.m. - 10:42 a.m.)

**PUBLIC COMMENT-5:**

Steve Bruce commented on benefits ending starvation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:42 a.m. - 10:45 a.m.)

**PUBLIC COMMENT-6:**

Rudy Reyes commented on medical cannabis.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:45 a.m. - 10:48 a.m.)

**PUBLIC COMMENT-7:**

Phil Hart commented on the airport and “Accept documents.”

FILE LOCATION: AGENDA

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

**PUBLIC COMMENT-8:**

Izean Rim, Jr., commented on public safety.

FILE LOCATION: AGENDA

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

**PUBLIC COMMENT-9:**

Nathaniel P. Hatcher commented on fiscal matters.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:54 a.m. - 10:55 a.m.)

**PUBLIC COMMENT-10:**

Reginald Tisdale commented on San Diego Planning Council and Metropolitan Transit System.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:55 a.m. - 10:58 a.m.)

PUBLIC COMMENT-11:

Jarvis Ross commented on the proposed airport expansion.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:58 a.m. - 11:01 a.m.)

PUBLIC COMMENT-12:

Robert McNamara commented on the car allowance and Council compensation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:01 a.m. - 11:03 a.m.)

PUBLIC COMMENT-13:

Gary Samuel Wright commented on mental health.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:03 a.m. - 11:05 a.m.)

PUBLIC COMMENT-14:

Thomas D. Glasser commented on two years of attacks.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:05 a.m. - 11:07 a.m.)



PUBLIC COMMENT-15:

Elinor Rector commented on websites.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:07 a.m. - 11:10 a.m.)

PUBLIC COMMENT-16:

David Ross commented on portable bathrooms for the homeless.

FILE LOCATION: AGENDA

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

PUBLIC COMMENT-17:

Robert M. Stader commented on putting a subway system at the airport.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:13 a.m. - 11:14 a.m.)

PUBLIC COMMENT-18:

Riccardo Gaudino commented on The Golden State History Organization award.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:14 a.m. - 11:17 a.m.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member Lightner announced there was a major water main break in the Torrey Pines State Reserve and to visit the Council District 1 website for more information.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:51 p.m. – 2:51 p.m.)

INDEPENDENT BUDGET ANALYST COMMENT:

None.

CITY ATTORNEY COMMENT:

None.



[ITEM-30:](#) Palm Patrons of Ellen Browning Scripps Park Day.

**COUNCILMEMBER LIGHTNER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-948) ADOPTED AS RESOLUTION R-304735

Declaring March 24, 2009, to be "Palm Patrons of Ellen Browning Scripps Park Day" in the City of San Diego, in recognition of the generous spirit of Robert and Ann Dynes, Jack Holzman, Betty-Jo Peterson, and George and Billie Gerrodette.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:08 a.m. – 10:13 a.m.)

MOTION BY LIGHTNER TO ADOPT. Second by Emerald. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.



[ITEM-31:](#) Project Safe Way Day.

**COUNCILMEMBER YOUNG'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-919) ADOPTED AS RESOLUTION R-304736

Proclaiming March 24, 2009, to be "Project Safe Way Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:14 a.m. - 10:21 a.m.)

MOTION BY YOUNG TO ADOPT. Second by Frye. Passed by the following vote:  
Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-  
yea, Hueso-yea.



ITEM-32: San Diego State All-Girl Cheer Squad Day.

**COUNCILMEMBER EMERALD'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-939) ADOPTED AS RESOLUTION R-304737

Proclaiming March 24, 2009, to be "San Diego State All-Girl Cheer Squad Day".

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:22 a.m. - 10:27 a.m.)

MOTION BY EMERALD TO ADOPT. Second by Frye. Passed by the following vote:  
Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-  
yea, Hueso-yea.

ITEM-50: Amendments to the Permanent Rules of the Council.

(See memorandum from Councilmembers Frye, DeMaio, Lightner, and Emerald dated 2/3/2009; memorandum from Councilmember DeMaio dated 1/28/2009; memoranda from Council President Hueso dated 1/27/2009 and 1/14/2009; memorandum from Councilmembers Frye and DeMaio dated 11/13/2008, with accompanying documents; Council District Eight's PowerPoint; and Independent Budget Analyst Report Mo. 09-11.)

**CITY COUNCIL'S RECOMMENDATION:**

Adopt the following ordinance which was introduced as amended on 3/2/2009, Item 200, with referrals to the Rules Committee and direction to the City Attorney to return to Council with additional amendments. Council voted as follows:

- Portion relating to Rule 2.2, Order of Business: Unanimous: all present.
- Portion relating to Rule 4.2 Electing the Council President: Unanimous: all present.
- Portion related to directing the City Attorney to return to Council with an amendment to Rule 1.3 regarding Evening Meetings: Districts-1, 2, 3, 4, 5, 6, and 7 voted yea. District 8 voted nay.

(O-2009-104 Rev. 2)

INTRODUCED AS AMENDED, TO BE  
ADOPTED TUESDAY, APRIL 14, 2009

Amending the San Diego Municipal Code by amending Chapter 2, Article 2, Division 1, Section 22.0101.5, entitled "Permanent Rules of the Council," by amending Rule 2.2 and Rule 4.2, to read as follows:

**Rule 2.2 Order of Business (Former Rule 3)**

The order of business for Council meetings shall be as follows:

**Monday at 2:00 p.m.**

1. Roll Call
2. Invocation and Pledge of Allegiance
3. Requests for Continuances
4. Communications
5. Adoption Agenda
  - a) Committee Items
  - b) Other Legislative Items
  - c) Noticed Hearings (to be scheduled at various times throughout the day by the City Clerk based on the number of hearings and reasonable expectation of length) and Special Hearings
6. Public Comment on Closed Session Items
7. Public Notices
8. Non-Agenda Items
9. Adjournment

**Tuesday at 9:00 a.m.**

1. Closed Session

**Tuesday at 10:00 a.m.**

1. Roll Call
2. Pledge of Allegiance
3. Special Orders of Business
4. Non-Agenda Public Comment (limited to three minutes)
5. Requests for Continuance
6. Adoption Agenda
  - a) Consent Items
  - b) Noticed Hearings (to be scheduled at various times throughout the day by the City Clerk based on the number of hearings and reasonable expectation of length) and Special Hearings
  - c) Unfinished Business from Monday
7. Non-Agenda Items
8. Adjournment

**Rule 4.2 Selection of the President**

At the first regular Council meeting held after 10:00 a.m. the first Monday after the first day of December, the Council shall select a President from one of its members by majority votes of the Council. The President shall serve for a term of one year, commencing on the date set forth above, or until a successor is selected and qualified, whichever is later. The President may serve more than one term.

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

**FILE LOCATION:** NONE

**COUNCIL ACTION:** (Time duration: 2:05 p.m. – 2:08 p.m.)

MOTION BY FRYE TO INTRODUCE AS AMENDED TO ADD 5A "CONSENT" TO THE MONDAY MEETING AND RETURN TO COUNCIL FOR ADOPTION ON TUESDAY, APRIL 14, 2009. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

ITEM-51: Wastewater System – Sewer Revenue Bonds and Sewer Revenue Refunding Bonds. (Citywide.)

(See Independent Budget Analyst Report No. 09-19; memorandum from City Attorney dated 3/6/2009; PowerPoint dated 3/9/2009; Reports to the City Council No. 09-016 and 09-017; and memorandum from Lakshmi Kommi dated 2/19/2009.)

**CITY COUNCIL’S RECOMMENDATION:**

Adopt the following ordinance which was introduced as amended on 3/9/2009, Item 202, Subitem A. (Council voted 7-1. Councilmember Frye voted nay):

(O-2009-103 Rev.) ADOPTED AS ORDINANCE 19841 (New Series)

(I) Approving the form and authorizing the execution and delivery of (a) Indentures, (b) Supplemental Indentures, (c) Supplements to Master Installment Purchase Agreement, (d) Bond Purchase Agreements (e) Escrow Agreements, and (f) Continuing Disclosure Certificates; (II) Approving and authorizing the issuance and sale by the Public Facilities Financing Authority of the City of San Diego of its (a) Sewer Revenue Bonds in an aggregate principal amount not to exceed \$259,000,000 to refinance existing subordinated notes, (b) Sewer Revenue Bonds in an aggregate principal amount not to exceed \$168,000,000 to finance new facilities of the Wastewater System, (c) Sewer Revenue Refunding Bonds in an aggregate principal amount not to exceed \$900,000,000 to refund all or a portion of existing senior debt to achieve savings, (d) Sewer Revenue Bonds in an aggregate principal amount not to exceed \$65,100,000 to fund certain debt service reserve funds; and (III) 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 City Charter.**



FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:08 p.m. – 2:09 p.m.)

MOTION BY DEMAIO TO ADOPT. Second by Faulconer. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-nay, Emerald-yea, Hueso-yea.

- \* ITEM-100: Awarding Consultant Agreement to Helix Environmental Planning, Inc., for University Avenue Mobility Plan Phase 1. (Greater North Park Community Area. District 3.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-886 Cor. Copy) ADOPTED AS RESOLUTION R-304738

Authorizing the Mayor to execute, for and on behalf of the City, an Environmental Consultant Services Agreement with Helix Environmental Planning, Inc., for environmental consultant services for the University Avenue Mobility Plan Phase 1, under the terms and conditions set forth in the Agreement, together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement;

Authorizing the expenditure of an amount not to exceed \$640,939 from CIP-52-766.0, University Avenue State Fund Grant of which \$265,509 is from Fund 38930, Federal Fund Grant; and \$34,410 from Fund 38931, State Fund Grant and \$341,020 from Fund 30300, TransNet Fund, for the purpose of providing funds for the above referenced Project;

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

Declaring that this activity is not a "project" and is therefore not subject to CEQA per CEQA Guidelines Section 15060(c)(3).

**STAFF SUPPORTING INFORMATION:**

The University Avenue Mobility Plan (UAMP) includes multi-modal improvements in the community of North Park in the City of San Diego. The project is on University Avenue from Florida Street to Boundary Street with a focus of improvements in the core area of University Avenue from Idaho/28th St. to Grim Avenue.

The objective of the project is to improve safety and mobility along the University Avenue corridor for pedestrians, bicyclists, transit and automobile traffic. It will enhance the pedestrian environment, increase opportunities for pedestrians to cross University Avenue safely, decrease transit travel times in the corridor. The project includes landscaped and painted medians, restriping University Avenue, pedestrian pop-outs, removal of an existing traffic signal and installation of two (2) new traffic signals, three (3) new enhanced pedestrian crossings with in-pavement flashers, 110 pedestrian countdown signal heads, eastbound and westbound transit/right-turn only lanes, consolidation of transit stops and relocation of parking to side streets.

Under this Consultant Agreement, the consultant will complete all the necessary environmental studies, the Environmental Impact Report (EIR) for the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) Environmental Document for CalTrans approval.

The Consultant Services Coordinator provided a list of four consultants to be interviewed for the project. These four firms were interviewed in accordance with Council Policy 300-7 and Administration Regulation 25.60 and CalTrans regulation for hiring consultants for Federally Funded projects. Helix Environmental Planning, Incorporated, was selected based on their professional expertise and experience.

**FISCAL CONSIDERATIONS:**

\$640,939 is needed to fund the Consultant Agreement with Helix Environmental Planning, Inc., to complete the CEQA and NEPA requirements for the UAMP Project.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

Funding Agency: City of San Diego (TransNet, Federal and State Smart Growth Funds)

Goals: 15% Voluntary (MBE/WBE/DBE/DVBE/OBE)

Sub-consultant Participation: \$293,266 (45.7%); \$49,423 Certified Firms (7.7%), \$243,843 OBE (38%).

Other: Work Force report submitted - Equal Opportunity Plan required. Staff will monitor plan and adherence to Non Discrimination Ordinance.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Council Resolution R-300698 dated June 25, 2005, authorized acceptance, appropriation and expenditure of \$2,000,000 in Smart Growth Grant Funds for the University Avenue Mobility Plan Project.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Six Community Workshops were conducted in 2004 by City of San Diego staff from City Planning and Community Investment Department along with their consultant RBF Consulting. SANDAG, North Park Main Street, Greater North Park Planning Committee members, and residents and business owners from the North Park community attended these workshops. One EIR scoping meeting will be scheduled during the Notice of Preparation (NOP) period. Helix Environmental Planning team members and City of San Diego Engineering Department staff will attend North Park Planning Group meetings during the environmental process.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

City of San Diego, North Park Community, North Park Main Street, North Park Planning Committee, Helix Environmental Planning, Inc., SANDAG, CalTrans.

Boekamp/Jarrell

Aud. Cert. 2900579.

Staff: Marnell Gibson - (619) 533-5213  
Ryan Kohut - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.



ITEM-101: Awarding of Contract to RBF Consulting for the Rosecrans Corridor Study. (Peninsula, Old Town, and Midway Community Areas. District 2.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-878 Cor. Copy) ADOPTED AS RESOLUTION R-304760

Authorizing the Mayor to execute, for and on behalf of the City, an Engineering Services Agreement with RBF Consulting, for Professional Engineering Services for the Rosecrans Corridor Study under the terms and conditions set forth in the Agreement, together with any reasonably necessary modifications or amendments thereto which do not increase Project scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this Project and Agreement;

Authorizing the expenditure of an amount not to exceed \$324,000 of which \$30,000 is from Fund 30300, (TransNet); and \$294,000 from Fund 38940 (State of California Transportation Planning Grant) CIP-59-021.0, Rosecrans Corridor Study, for the purpose of providing funds for the above referenced Project;

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

Declaring that this activity is not a "Project" and is therefore not subject to CEQA per CEQA Guidelines Section 15060(c)(3).

**STAFF SUPPORTING INFORMATION:**

The City of San Diego is the recipient of a \$300,000 grant through the California Department of Transportation (CalTrans) Community-Based Transportation Planning Grants Program to study Rosecrans Street in order to review and analyze various proposals for improvements to traffic flow and operations. The scope of services includes development of a design concept for improvements to traffic flow and circulation, transit, bicycle and pedestrian facilities, and parking. Also, the study will analyze traffic speeds along Rosecrans Street through the Peninsula, Old Town and Midway communities.

Six consultant teams responded to the request for proposal (RFP). All six teams were interviewed. The panel consisted of City staff, CalTrans staff, and community representatives. As a result of this process, RBF Consulting was selected as the Consulting Engineering Firm that best matches the City's and communities' needs for completing this Project.

The interview was conducted in conformance with Council Policy 300-7. The evaluation criteria included: specialized experience and technical competence; proposed method to accomplish the work; strength of key personnel and commitment to the Project and knowledge and understanding of the local environment.

The consultant team will work with the community to solicit their input, perform detailed analysis to assess existing transportation conditions and projected 2030 conditions, develop concepts, evaluate alternatives, formulate a refined conceptual design plan, estimate the cost of concepts, and put forth a project implementation plan. The primary components of the work program include: (1) outreach for public involvement, (2) mobility assessment of all modes of travel in the corridor, and (3) development of a conceptual mobility plan and streetscape concepts.

**FISCAL CONSIDERATIONS:**

The compensation for the identified scope of services shall not exceed \$324,000. Funds for this action are available in CIP-59-021.0 (Job Order 590211), Rosecrans Corridor Study.

**EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):**

Funding Agency: Sate of California, Department of Transportation and  
City of San Diego.

Goals: 15% Voluntary (MBE/WBE/DBE/DVBE/OBE)

Sub-consultant participation: 9.1%

Other: Workforce Report Submitted - Equal Opportunity Plan Submitted.  
Staff will monitor plan and adherence to Nondiscrimination Ordinance.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Resolution Number R-301960, dated October 17, 2006, authorized and accepted the Community Based Transportation Planning Grant for the Project.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Community input will be solicited throughout the Project.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Peninsula Community Planning Group, Midway Community Planning Group, Old Town Chambers of Commerce, and RBF Consulting

Boekamp/Jarrell

Aud. Cert. 2900588.

Staff: Deborah Van Wanseele - (619) 533-3012  
Ryan Kohut - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:09 p.m. – 2:10 p.m.)

MOTION BY FAULCONER TO ADOPT. Second by Emerald. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

- \* ITEM-102: Amendment No. 1 to the Participation Agreement with Pardee Homes (MWD-9037) for Sewer Pump Station 79 Upgrades. (Carmel Valley and Pacific Highlands Ranch Community Areas. District 1.)

(See Metropolitan Wastewater Department's January 15, 2009, Executive Summary Sheet.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2009-921)                      ADOPTED AS RESOLUTION R-304739

Authorizing the Mayor, or his designee, to execute, for and on behalf of the City, an Amendment to the Participation Agreement with Pardee Homes for the design and construction of Sewer Pump Station 79, under the terms and conditions in Amendment No. 1;

Authorizing the expenditure of an amount not to exceed \$471,283 from Sewer Fund No. 41506, CIP-46-602.6, Sewer Pump Station 79 Upgrades, solely and exclusively, to provide funds for the above Amendment No. 1;

Declaring that this activity is not a separate project subject to review under the California Environmental Quality Act because the upgrade to Sewer Pump Station 79 was previously addressed in Project No. 165135 dated December 2, 2008, and there is no change in circumstance, additional information, or project changes to warrant additional environmental review.

**NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:**

On 2/25/2009, NR&C voted 4 to 0 to approve. (Councilmembers Lightner, DeMaio, Frye, and Emerald voted yea.)

**SUPPORTING INFORMATION:**

The existing Sewer Pump Station 79 (PS 79) has been in operation since 1984. The facility is located in the Carmel Valley/Pacific Highlands Ranch area on the north side of San Dieguito Road, just east of the intersection of El Camino Real and San Dieguito Road. The City has determined that PS 79 is in need of upgrade to serve existing and future flows.

Pardee Homes is the owner and developer of a portion of the area commonly known as Pacific Highlands Ranch (PHR). The PS 79 sewer basin serves parts of PHR.

On September 18, 2007, by Resolution No. R-303003, the City Council approved a Participation Agreement with Pardee Homes for the design and construction of upgrades to PS 79. This agreement obligates Pardee to design and construct approximately 8,230 feet of 12-inch force main in addition to upgrades to the pump station, which was estimated at \$4,469,000. Pardee is required to pay 26.474% of the total actual project cost for the PS 79 improvements, which is based on their percentage of future flows to the pump station. The remaining 73.526% is the City's share.

During the final design, additional electrical work, new storage facilities for equipment, and additional environmental mitigation requirements were added, which increased project costs above the engineer's original cost estimate. Bids for the construction of PS 79 were opened on December 2, 2008. Based on the lowest bid, the total project cost has increased by \$641,000. Therefore, the cost estimate in the Participation Agreement will be revised from \$4,469,000 to \$5,110,000. Of this increase, \$432,920 is directly due to additional project scope, and the remaining \$208,080 is for project related costs. Based on the revised total project cost, Pardee's share is now \$1,352,821 (26.474%), and the City's share is \$3,757,179 (73.526%).

This action will amend the Participation Agreement with Pardee Homes, increasing the City's share by \$471,283 bringing the City's share to \$3,757,179. Of this amount, \$320,250 is for City processing, reviews, and field inspections and is funded directly by City accounts. Therefore, the reimbursable amount to Pardee for the agreement is an amount not to exceed \$3,436,929. Funding for this increase is being reallocated from within the project.

**FISCAL CONSIDERATIONS:**

Funding for this increase is being reallocated from within the project. The total amount of this request is \$471,283 which is available in Fund 41506, CIP-46-602.6, Sewer Pump Station 79 Upgrades, by reallocating funds previously authorized for project related costs. There will be no impact on current or future projects or the rate case as a result of this increase.



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

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

- R-294378, 12/11/2000, Design Agreement with Brown & Caldwell.
  - R-298364, 09/15/2003, Sewer Easement.
  - R-297087, 09/24/2002, Grand Vesting Tentative Map No. 7248 to Pardee Homes.
  - R-299673, 09/21/2004, Grand Vesting Tentative Map No. 4653 to Pardee Homes.
  - R-303003, 09/18/2007, Design and construction agreement with Pardee Homes.
- This action was reviewed and approved by the Natural Resources and Culture Committee on February 25, 2009.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

City of San Diego, Pardee Homes, and other Developers within the Sewer Pump Station 79 service area.

Ferrier/Barrett

Aud. Cert. 2900574 and 2900513.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

- \* ITEM-103: Agreement with MuniServices LLC for Revenue Enhancement and Information Services (Sales Tax Recovery Services). (Citywide.)

(See Report to the City Council No. 09-024 and memorandum from Beryl Bailey Rayford dated 3/3/2009.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-891 Cor. Copy)      ADOPTED AS RESOLUTION R-304740

Appointing the Mayor, the Chief Operating Officer or the Chief Financial Officer, or other officer, employee, retained consultant or representative of the City designated in writing by the City to the Board (City's Authorized Representative), to represent the City with authority to examine sales and use tax records of the Board pertaining to sales and use taxes collected for the City by the Board;

Declaring that the City's Authorized Representative shall examine those sales and use tax records of the Board, for purposes related to the following governmental functions of the City:

- a. Detect, document and assist in correcting the sales and use tax reporting errors of businesses that, based on the location of their activities, are not properly registered with the City;
- b. Detect, document and assist in correcting the reporting of businesses that are improperly reporting sales tax as use tax, resulting in a reduction of sales tax revenue for the City;
- c. Detect, document and assist in correcting sales and use tax reporting errors or omissions and thereby generate previously unrealized revenue for the City;
- d. Provide the City with business-to-business use tax monitoring; and
- e. Provide Geo-coding in order to allow City staff to complete analyses of specific geographic areas by type and economic activity.

The information obtained by examination of Board records shall be used only for those governmental functions of the City listed above.

Declaring that MuniServices is hereby designated the City's Authorized Representative in order to examine the sales and use tax records of the Board pertaining to sales and use taxes collected for the City by the Board. MuniServices shall meet the following conditions:

- a. has an existing agreement with the City to examine those sales and use tax records;
- b. is required by that agreement to disclose information contained in, or derived from, those sales and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information;
- c. is prohibited by that agreement from performing consulting services for a retailer during the term of that agreement; and
- d. is prohibited by that agreement from retaining the information contained in, or derived from those sales and use tax records, after that agreement has expired.

The information obtained by examination of Board records shall be used only for purposes related to the collection of City sales and use taxes by the Board for purposes relating to the governmental functions of the City listed in Section 2 of resolution.

Declaring that this resolution supersedes all prior resolutions of the City Council of the City of San Diego adopted pursuant to Section 7056, subdivision (b) of the Revenue and Taxation Code;

Authorizing and directing the Mayor, the Chief Operating Officer or the Chief Financial Officer, in consultation with the City Attorney, to cause to be executed the Agreement with MuniServices for revenue enhancement and information services, under the terms and conditions set forth in the aforementioned Agreement.

**STAFF SUPPORTING INFORMATION:**

In March 1991, City Council approved an Agreement with Municipal Revenue Consultants (at that time named as Municipal Revenue Advisors, subsequently renamed to MBIA MuniServices and to MuniServices, LLC) to provide sales tax audit and information services. In March of 1997, the City Council approved the renewal of an Agreement with MuniServices, LLC ("MuniServices"), which incorporated the provisions of a previous contract and included new revenue enhancement services. In both years, 1991 and 1997, the City issued RFPs. Since 1997, the company has been retained as a sole source consultant to the City. Currently, the City has an agreement with MuniServices which was renewed in March 2003 but will expire in March, 2009.

The previous resolutions adopted by City Council authorized MuniServices to review confidential State Board of Equalization (BOE) taxpayer information on the City's behalf, per the requirements of the State of California Revenue and Taxation Code.

The BOE maintains agreements for the reciprocal exchange or release of information (including personal or confidential information) with state agencies, other states, local government agencies, the Federal Government, and private contractors, permitting disclosure of information contained in the files and records of the agencies (subject to the restrictions prescribed in the agreements or provided by statutes and regulations).

In September 2008, a Request for Proposals (RFP) for the sales and use tax audit services was issued by the City calling for provision of sales and use tax audit services as follows:

- To detect, document, and assist in correcting the sales and use tax reporting errors of businesses that, based on the location of their activities, are not properly registered with the City.
- To detect, document, and assist in correcting the reporting of businesses that are improperly reporting local tax (e.g., classifying sales tax as use tax) and thereby depriving the City of sales tax revenue.
- To detect, document, and assist in correcting sales and use tax reporting errors/omissions and thereby generate new, previously unrealized revenue for the City.
- To provide the City with Business to Business use tax monitoring.
- To provide for Geo-coding allowing City staff to complete analyses of specific geographic areas by type and economic activity.

The City received two responses to this RFP. Both proposers were uniquely qualified to handle sales and use tax audit services for the City of San Diego. By evaluating technical qualifications and pricing of the proposals, MuniServices was selected for submitting the lowest bid. The original bids submitted by both companies were competitive, and both companies were given the opportunity to submit a Best and Final Offer (BFO) in this RFP. MuniServices was the only firm that responded to a BFO by lowering its original bid.

**FISCAL CONSIDERATIONS:**

The sales and use tax audit and recovery services consultant generates approximately \$2 million in new revenue per year for the City of San Diego. The City's sales tax annual budget and projections include recovered revenues from sales and use tax audit services provided by MuniServices.

Under provisions in prior agreements, the City has paid a contingency fee of 20% of all new (recovered) sales tax revenue resulting from sales tax audits performed by MuniServices.

The City has benefited by participating in an RFP process by reducing consultant fees for this service by 10% (from 20% contingency fee paid under prior agreements to a new negotiated fee of 18%). Retaining a sales tax consultant providing the sales and use tax audit services will ensure that new (recovered) sales tax revenue is continually generated and realized by the City.

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

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

The City Council previously approved the use of the sales tax audit consultant services for revenue enhancement purposes (Resolution No. R-277510, adopted March 18, 1991; Resolution No. R-288426, adopted March 17, 1997).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The consultant's sales tax audit services generate new sales tax revenue of approximately \$2 million per year. The City's new revenue from sales tax audit will not be maximized without the use of the consultant's services.

Tirandazi/Lewis

Staff: Irina Kumits - (619) 235-5714  
Lourdes M. Epley - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Falconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

- \* ITEM-104: Agreement with the County of San Diego for Animal Control Services for Fiscal Year 2009 through Fiscal Year 2013.

(See Report to the City Council No. 09-013.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2009-929)                      ADOPTED AS RESOLUTION R-304741

Authorizing the Mayor, or his designee, on behalf of the City of San Diego, to negotiate and execute an Agreement with the County of San Diego for animal control services, for the period of July 1, 2008 to June 30, 2013, under the terms and conditions set forth in the Agreement;

Authorizing the City Comptroller to expend an amount not to exceed \$6,932,600 in Fiscal Year 2009 for animal services, the amount to be adjusted at year-end, but not to exceed fixed gross cost of \$8,401,400 and Spay/Neuter Trust funding of \$57,000, less actual revenue (estimated at \$1,525,800).

**PUBLIC SAFETY AND NEIGHBORHOOD SERVICES COMMITTEE'S  
RECOMMENDATION:**

On 3/4/2009, PS&NS voted 3 to 0 to approve the staff recommendations in the report, forward the item to the full City Council with recommendation for approval and to direct the City Auditor to perform an audit of the program for Fiscal Year 2010. (Councilmembers Lightner, Gloria, and Emerald voted yea. Councilmember Young not present.)

**SUPPORTING INFORMATION:**

Historically, the County of San Diego has provided municipal animal services for the City of San Diego, a majority of cities in the region, and the unincorporated areas of San Diego County. Three facilities provide for convenient and efficient shelter, patrol and emergency operations. Over the past ten years, there have been significant service-level improvements and notable accomplishments by the Department of Animal Services, including a reduction in euthanasia; an increase in adoptions; reduced response times; facility improvements; and enhanced partnership with private shelters and animal rescue groups, as well as with other law enforcement agencies.

FISCAL CONSIDERATIONS:

The City's FY 2009 Budget includes \$6,945,000 appropriated in the Police Department for payment of the animal services contract. The contract amount estimated for FY 2009 is \$6,932,600. This net cost is based on a fixed gross cost of \$8,401,400, less forecasted revenues of \$1,525,800, and spay/neuter program financing of \$57,000.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

The contract stipulates that the County shall comply with the City's Equal Opportunity Contracting Program Contractor Requirements; shall not discriminate against any employee or applicant for employment on any basis prohibited by law; shall provide equal opportunity in all employment practices; and shall ensure that its Subcontractors comply with the City's Equal Opportunity Contracting Program Contractor Requirements.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On August 3, 1998, the City Council authorized the City Manager to execute a contract with the County of San Diego for animal services for the five-year period of July 1, 1998, through June 30, 2003 (Document No. RR-290573). On August 4, 2003, a contract extension for the five-year period July 1, 2003, through June 30, 2008 was authorized (Document No. RR-298276). A new five-year agreement has been reviewed and approved by the City Attorney's Office. There are no significant changes to the contract other than specific inclusion of the City's requirements of a drug-free workplace, ADA certification, and non-discrimination. On March 4, 2009, the Public Safety and Neighborhood Services Committee unanimously approved staff recommendations for a five-year agreement to continue service by the County and further recommended that the City Auditor perform a formal audit of the animal services agreement in FY 2010.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

No public outreach has been conducted as staff is recommending continuing animal services as currently provided. If Council determines that a different approach is warranted, then extensive community outreach will be required.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include all residents in the City of San Diego that own any type of animal regardless of licensing requirements. Also, any resident of the City of San Diego that has a concern or issue with animals or custodians of animals. Additionally, the members of the San Diego Animal Welfare Coalition, which include the Chula Vista Animal Care Facility, County of San Diego Department of Animal Services, El Cajon Animal Shelter, Escondido Humane Society, Helen Woodward Animal Center, North County Humane Society and SPCA, Rancho

Coastal Humane Society, and the San Diego Humane Society and SPCA. This group focuses on the overall wellbeing of animals throughout San Diego County.

Villa/Goldstone

Aud. Cert. 2900585.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-105: Approval of the City of San Diego's Sewer System Management Plan (SSMP)-MWD-9040. (Citywide.)

(See Metropolitan Wastewater Department's January 29, 2009, Executive Summary Sheet.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2009-923) ADOPTED AS RESOLUTION R-304742

Approving the City's Sewer System Management Plan (SSMP) as prepared by the Metropolitan Wastewater Department.

**NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:**

On 2/25/2009, NR&C voted 4 to 0 to move to the full City Council without a recommendation. (Councilmembers Lightner, DeMaio, Frye, and Emerald voted yea.)



**SUPPORTING INFORMATION:**

On May 2, 2006, the State Water Resources Control Board adopted Statewide General Waste Discharge Requirements (WDRs) for Sanitary Sewer Systems, Water Quality Order No. 2006-0003. The purpose of this Order is to provide a consistent statewide regulatory approach to address Sanitary Sewer Overflows (SSOs). This Order requires public agencies that own or operate sanitary sewer systems to develop and implement sewer system management plans and report all SSOs to the State Water Board's online SSO database. The Order also includes a timeline for implementation.

The Metropolitan Wastewater Department (MWWD) began posting SSO data to the Board's online database on January 1, 2007, and is in compliance with that portion of the Order. MWWD has also prepared a Sewer System Management Plan (SSMP) which documents the City's programs to properly operate and maintain our sanitary sewer system. The SSMP addresses the following elements: Goal, Organization, Legal Authority, Operation and Maintenance Program, Design and Performance Provisions, Overflow Emergency Response Plan, Fats, Oils, and Grease (FOG) Control Program, System Evaluation and Capacity Assurance Plan, Monitoring, Measurement, and Program Modifications, SSMP Program Audits and Communication Program.

Many of the programs included in the SSMP were developed by MWWD in 2001 and 2002 in response to concerns raised by the U.S Environmental Protection Agency and the Regional Water Quality Control Board during that time period, and have been in operation since then. These programs have subsequently evolved and have been incorporated into the City's existing Consent Decree with these regulatory agencies.

Metropolitan Wastewater Department (MWWD) is required to certify that the final SSMP is in compliance with the Sanitary Sewer Order by May 2, 2009. MWWD achieves this self certification through the City Council's approval of the SSMP. Once the SSMP is certified, MWWD will post the document on the MWWD website and will conduct periodic internal audits every two years to evaluate the effectiveness of the SSMP and to maintain compliance with SSMP requirements.

**FISCAL CONSIDERATIONS:**

No additional costs. Resources needed for the programs described in the plan were included in the FY07 rate case and are included in the FY09 budget.

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

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:**

This item was reviewed and approved by the Natural Resources and Culture Committee on February 25, 2009.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

This item was presented to the Metro Commission Technical Advisory Committee on October 15, 2008, Metro Commission on January 8, 2009, and the Independent Rate Oversight Committee on January 12, 2009.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:** None.

Ferrier/Barrett

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

- \* ITEM-106: Acceptance of Insurance Funds and Execution of Agreement with Replacement Contractor for Bonita Pipeline Project Phase II. (Mount Hope, Chollas View, and Mountain View Community Areas. District 4.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-844) ADOPTED AS RESOLUTION R-304743

Authorizing the Mayor to accept \$100,653 from Great American Insurance Company, Inc., pursuant to the terms of the Agreement, for the purpose of paying the replacement contractor El Cajon Grading and Engineering Company, Inc., to perform warranty work on the Bonita Pipeline Phase II Project;

Authorizing the City Auditor and Comptroller to deposit \$100,653 from Great American Insurance Company, Inc., to Water Fund 41500, Revenue Account 78710, Insurance and Loss Payment upon receipt;

Authorizing the City Comptroller to transfer \$100,653 from Water Fund 41500 and Revenue Account 788710, Insurance and Loss Payment to Water Fund 41500, Organization Number 140, Appropriated Reserve, upon completion of depositing funds received from Great American Insurance Company, Inc.;

Authorizing the City Comptroller, to appropriate and expend \$105,653 from Water Fund 41500, Organization Number 140 for the purpose of paying the replacement contractor El Cajon Grading and Engineering Company, Inc., to perform warranty work on Bonita Pipeline Phase II Project;

Authorizing the Mayor, or his designee, to execute a three party Agreement with Great American Insurance Company, El Cajon Grading and Engineering Company, Inc., to perform warranty work for the Bonita Pipeline Phase II Project in Water Fund 41500, Organization No. 140 in an amount not to exceed \$100,653;

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

Declaring that this activity is exempt from the California Environmental Quality Act pursuant to Guidelines Section 15282(k) since this Project is repairing an existing pipeline less than one mile in length.

**STAFF SUPPORTING INFORMATION:**

The Bonita Pipeline was originally constructed in 1915 and is one of the City's oldest water transmission mains. The pipeline conveys water from both the Alvarado and Otay Water Treatment Plants to service customers in the central and southeastern portions of the City. There have been several upgrades in the past to this pipeline including replacement of 4.3 miles in 1993 and 1994.

The most recent upgrade was a Water Department Capital Improvement Project named Bonita Pipeline Project Phase II, which was completed in June of 2004. The City Council approved Project R-295152 for advertisement, bidding and construction on July 16, 2001, and the construction contract was awarded to the lowest bidder C&L Construction Company, Inc.

The Project consisted of the replacement of the exiting 28-inch pipe at three locations with 3,200 linear-feet of 30-inch steel pipe. These segments are located at 30th Street and Broadway, 45th Street between Hilltop Drive and Market Street, 45th Street at Market Street and intersection of Imperial Avenue and YMCA Way extending north. The original contractor, C&L Construction Company, Inc., defaulted under the original Contract, and ceased performing work on the Project.

Prior to expiration of the warranty period in July 2005, the City called upon the Surety (Great American Insurance Company) to correct the trench settlement discovered at 45th Street between Hilltop Drive and Market Street. The City entered into negotiations with the Surety on the assessment of defective work, impacted area, scope of the repair, future liabilities and requested immediate action by the Surety. In accordance with the Surety's obligations under the Performance and Payment Bond No. 5442417 in the penal sum of \$1,337,759.69 the Surety complied with the City's request to correct the defective work. The Surety proceeded with advertisement, bidding and selection of the contractor to repair work and tendered to the City the replacement contractor, ECG, to fulfill its warranty obligations under the original contract in the amount of \$100,653. Under this Agreement, the City agreed to release and forever discharge Surety from any and all obligations identified as part of the warranty work in July of 2005. ECG reviewed the Project plans, specifications, and all related original contract documents, inspected the Project site and is familiar with the warranty requirements; and has taken into consideration the nature and current condition of the work previously performed on the Project. ECG has provided the bid sheet and schedule for the warranty work.

ECG has furnished the new performance and payment bond guaranteeing the warranty work, in addition to all the required insurance policies. The Engineering and Capital Projects Department is requesting the authorization to enter into an Agreement with ECG to complete all warranty work per the original contract for Bonita Pipeline Project Phase II.

**EQUAL OPPORTUNITY CONTRACTING:**

Funding Agency: City of San Diego  
Goals: 10% Voluntary (MBE/WBE/DBE/DVBE/OBE)

**FISCAL CONSIDERATIONS:**

The total amount of this request is \$105,653, of which \$5000 for in-house engineering and \$100,653 related construction cost. The Surety (Great American Insurance Company) to fulfill its warranty obligations under the original Contract reimburses the amount of \$100,653.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Council authorization Document No. R-295152 dated July 16, 2001, for advertisement and construction award of the Project in the amount of \$2,021,573. Authorization of an amount of \$3,894, Document No. R-297242 dated October 28, 2002, for Insurance Premiums for Water CIP Owner Controlled Insurance Program. Authorization of an amount of \$98,899.84, Document No. R-298501 dated October 20, 2003, for additional funding to close out the Project. The total cost of the Project was \$2,501,786.84.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders are the Water Department, the Surety (Great American Insurance Company), EI Cajon Grading and Engineering Company, Inc. (Contractor).

Boekamp/Jarrell

Aud. Cert. 2900631.

Staff: Dave Zoumaras - (858) 627-3201  
Mark M. Mercer - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-107: Additional Funding for Annual Allocation for Metropolitan Wastewater Department (MWWD) Trunk Sewers. (Citywide.)

(See Metropolitan Wastewater Department's December 15, 2008, Executive Summary Sheet.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2009-814)            ADOPTED AS RESOLUTION R-304744

Authorizing the Comptroller to transfer the amount of \$2,900,000 from Fund 41506, CIP-44-001.0, Annual Allocation – Sewer Main Replacements to Fund 41506, CIP-40-933.0 Annual Allocation - MWWD Trunk Sewers;

Declaring that this activity is not a project and therefore is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines Section 15060(c)(3) and 15004.

**NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:**

On 2/25/2009, NR&C voted 4 to 0 to approve. (Councilmembers Lightner, DeMaio, Frye, and Emerald voted yea.)

**SUPPORTING INFORMATION:**

The Metropolitan Wastewater Department (MWWD) uses Annual Allocations to fund the upgrade and replacement of sewer mains throughout the City in need of repair due to deterioration or insufficient capacity. MWWD has a consent decree goal to replace 45 miles of sewer per year to reduce the potential for sewer spills and protect the public's health and safety. This action is to transfer \$2.9 million from the Annual Allocation- Sewer Main Replacements to the Annual Allocation – MWWD Trunk Sewers, to fund various accelerated projects, including the Oleander Drive Accelerated Sewer Relocation, 54th and Market Street, Alvarado Channel Pipe Crossing and Quincy Street and Wilbur Avenue. The Annual Allocation - Sewer Mains has unallocated funds available for this transfer and the overall CIP budget will remain the same. No other projects will be impacted by this transfer.

FISCAL CONSIDERATIONS:

The total amount of this request is \$2,900,000 and is available for transfer from Fund 41506, CIP No. 40-001.0 Annual Allocation – Sewer Main Replacements.

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

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

This action was reviewed and approved by the Natural Resources & Culture Committee on February 25, 2009.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS: N/A

Ferrier/Barrett

Aud. Cert. 2900513.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

- \* ITEM-108: Application for Vernal Pool Species Habitat Conservation Plan Grant Funding. (Citywide.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-924 Cor. Copy)      ADOPTED AS RESOLUTION R-304745

Authorizing the Mayor, or designee, for and on behalf of the City, to apply to the U.S. Fish and Wildlife Services for the Habitat Conservation Planning Assistance Grant funding for the City of San Diego Vernal Pools Species Habitat Conservation Plan (Project);

Authorizing the Mayor, or designee, to take all necessary actions to secure funds from the U.S. Fish and Wildlife Services for the Project;

Authorizing the Mayor, or designee, to accept the Habitat Conservation Planning Assistance Grant, in the amount of \$500,000 for Community Planning and Community Investment (CPCI);

Declaring that this activity is exempt from CEQA pursuant to CEQA Guidelines Section 15307.

**STAFF SUPPORTING INFORMATION:**

The Cooperative Endangered Species Conservation Fund (CESCF) is a component of Section Six of the Federal Endangered Species Act. The portion of this program related to Habitat Conservation Planning Assistance grants was established by Congress in Fiscal Year 2001. The purpose of grants awarded within the category is to support the development of regional habitat conservation plans (HCPs) at the local level.

The City's current HCP, the Multiple Species Conservation Program, does not authorize take of wetland species, including those associated with vernal pool ecosystems. Because this application represents a new, separate HCP for vernal pool species, the City is eligible to apply for this grant.



In 1998, a lawsuit was filed against the City and the U.S. Fish and Wildlife Service by thirteen environmental groups alleging that vernal pools were not adequately protected by existing programs and regulations. The court ruled on the case in October 2006; subsequently, the parties agreed to participate in the Ninth Circuit Court's mediation program. As a result of the ongoing mediation, the City is now considering pursuing development of a new HCP to cover vernal pool species. The City, however, has not made a determination whether it would proceed with preparation of a new HCP if the mediation proceedings do not resolve the litigation referenced above. If the Settlement Agreement is not executed, the City would have the option of using other City funds to match.

The City of San Diego is proposing to apply for grant monies in the amount of \$615,000 (\$115,000 would be for State of California administrative costs) to fund the development of an HCP for vernal pool species, including assessment of existing biological information, a funding study, and NEPA/CEQA documents. A portion of the funding would be provided through the proposed CESCO grant; the match would include: 1) \$200,000 from the Center for Biological Diversity and 2) \$5,000 in City staff time. If approved, the current grant application would help fund the preparation of a new HCP for vernal pool species, to ensure ongoing protection of the species while streamlining the project approval process and facilitating economic development.

FISCAL CONSIDERATIONS:

The grant application process has no fiscal impact. The grant, if awarded, will generate \$500,000 for the City of San Diego to prepare an HCP for vernal pool species. The proposed matching funds are 1) \$200,000 from the Center for Biological Diversity and 2) \$5,000 in City staff time.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

U.S. Fish and Wildlife Service, California Department of Fish and Game, Southwest Center for Biological Diversity, Building Industry Association.

Anderson/Goldstone

Staff: Jeanne Krosch - (619) 236-7225  
Christine M. Leone – Chief Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-109: Ransom Street and Darwin Way Storm Drain Replacement Project. (Otay Mesa-Nestor Community Area. District 8.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-826) ADOPTED AS RESOLUTION R-304746

Authorizing the City Comptroller to transfer \$730,000 within Fund No. 38941, Proposition 1B, from CIP-13-005.0, Emergency Drainage Projects, to CIP-11-302.0, Ransom and Darwin Storm Drain Replacement Project;

Authorizing the City Comptroller to appropriate and expend an amount not to exceed \$730,000 from Fund No. 38941, Proposition 1B, CIP-11-302.0, Ransom and Darwin Storm Drain Replacement Project, solely and exclusively for design, construction, and related costs of this project;

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

Declaring that the above activity is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15282(k) because it is a pipeline less than one mile in length.

**STAFF SUPPORTING INFORMATION:**

The transfer of the \$730,000 from CIP-13-005.0, Emergency Drainage Projects, to CIP-13-002.0, Ransom Street and Darwin Way Storm Drain Replacement Project, will be used to update the contract documents, advertise, award, and construct the project. The project will consist of replacing 1,100 linear feet of deteriorated corrugated metal pipe with reinforced concrete pipe. The condition of the existing corrugated metal pipe (CMP) on Darwin Way (610 linear feet of 24-inch diameter from 120-feet east of Tico Court to Ransom Street) and Ransom Street (490 linear feet of 42-inch diameter from 1080 to 975 Ransom Street) has been deteriorating. The deterioration has become critical as evident from the physical and televising inspections of the pipe by the General Services Department. The inspections revealed a need for immediate replacement. Failure of the pipe could pose a safety risk and could jeopardize the integrity of surrounding infrastructure.

**FISCAL CONSIDERATIONS:**

The funds for this action in the amount of \$730,000 are available in CIP-13-005.0, Emergency Drainage Projects, Proposition 1B, Fund 38941.

**EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):**

The Ransom Street and Darwin Way Storm Drain Replacement Project will be awarded under the Mayor's authority to award contracts when the project and funding have been approved by Council. SCOPE goals will be determined after the contract documents have been completed. Prior to award of any contract, a work force report, and if necessary, an Equal Opportunity Employment Plan shall be submitted. EOC staff will evaluate the bidder's compliance with contract goals and good faith effort. Failure to comply with the program requirements will lead to bid being declared non-responsive.

Funding Agencies: City of San Diego & State

Prevailing Wages: Yes

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:**

- Council Resolution Number R-302719, dated 06/27/2007, increased TransNet funding in the project.
- Council Resolution Number R-303705, dated 05/19/2008, authorized Proposition 1B funding for the project.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

Residents will be notified prior to start of construction.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Otay Mesa – Nestor

Boekamp/Jarrell

Aud. Cert. 2900622.

Staff: Marnell Gibson - (619) 533-5213  
Frederick M. Ortlieb - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-110: Design and Construction of the Mission Trails Regional Park Equestrian Center Comfort Station/Service Building. (Mission Trails Regional Park. District 7.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-883) ADOPTED AS RESOLUTION R-304747

Authorizing the transfer of \$209,000 from General Fund Capital Outlay No. 302453 to CIP No. 29-992.0, for the purpose of design and construction of the Mission Trails Regional Park Equestrian Staging Area Comfort Station/Service Building;

Authorizing the transfer of \$300,000 from Antennae Fund No. 10580 to CIP No. 29-992.0, for the purpose of design and construction of the Mission Trails Regional Park Equestrian Staging Area Comfort Station/Service Building;

Authorizing the addition of CIP No. 29-992.0, Mission Trails Regional Park Equestrian Staging Area Comfort Station/Service Building, to the Fiscal Year 2009 Capital Improvement Program;

Authorizing a \$509,000 increase in the Fiscal Year 2009 Capital Improvement Program Budget for CIP No. 29-992.0, Mission Trails Regional Park Equestrian Staging Area Comfort Station/Service Building, General Fund Capital Outlay No. 302453 and Antennae Fund No. 10580;

Authorizing the Comptroller to appropriate and expend \$509,000 from CIP No. 29-992.0, Mission Trails Regional Park Equestrian Staging Area Comfort Station/Service Building, General Fund Capital Outlay No. 302453, for the purpose of design and construction of Mission Trails Regional Park Equestrian Center Comfort Station/Service Building;

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

Declaring that this activity is adequately addressed in the environmental document LDR 40-0524 (certified on November 7, 2001) and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental document 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 per CEQA Guidelines Sections 15060(c) and 15378(c).

**STAFF SUPPORTING INFORMATION:**

This project provides for the design and construction of a comfort station/service building within the Mission Trails Regional Park Equestrian Staging Area. The comfort station includes two self-contained restroom facilities, while the Service facility will include a storage area for landscape maintenance supplies and a small concession space with a counter for ticket sales and will serve as an information booth for special events. This Equestrian Center Comfort Station/Service Building implements the recommendations of the Tierrasanta Community Plan, and is in conformance with the City's Progress Guide and General Plan.

FISCAL CONSIDERATIONS:

The \$509,000 will be transferred from General Fund Capital Outlay, Fund No. 302453 (\$209,000) and Mission Trails Regional Park Antennae Fund, Fund No. 10580 (\$300,000) to CIP-29-992.0, Mission Trails Regional Park Equestrian Center Comfort Station/Service Building.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

Not Applicable.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

\$209,000 (Fund 302453) is revenue from the land sale of City Property for the Mission Trails Flow Regulatory System approved by City Council on March 11, 2008. The Mission Trails Regional Park Citizen Advisory Committee and Task Force, and the County Water Authority have adopted a Good Neighbor Policy – which states all efforts shall be made to direct revenue of the lease or sale of land in Mission Trails Regional Park specifically for use in Mission Trails.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On July 1, 2008, the Mission Trails Regional Park Citizens' Advisory Committee approved the Equestrian Staging Area Feasibility Study and Conceptual Plans for the Comfort Station/Service Building.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

This project will provide a much needed restroom facility for park users and the general public. No adverse impacts have been identified.

Boekamp/Jarrell

Aud. Cert. 2900599.

Staff: Mark Nassar - (619) 533-3172  
Kimberly Ann Davies - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

- \* ITEM-111: Fiscal Year 2009 Urban Area Security Initiative Grant Program Application.  
(Citywide.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-941)                      ADOPTED AS RESOLUTION R-304748

Authorizing the Mayor, Chief Operating Officer, Fire Chief, or Office of Homeland Security Program Manager, for and on behalf of the City, to apply for, accept and expend grant funds from the FY 2009 Urban Area Security Initiative Grant Program under the FY 2009 Homeland Security Grant Program as the City's Authorized Agent;

Authorizing the Mayor, Chief Operating Officer, Fire Chief, or Office of Homeland Security Program Manager, for and on behalf of the City, to make application to the Federal Emergency Management Agency via the California Emergency Management Agency to take all necessary actions to secure grant funding under the FY 2009 Urban Area Security Initiative Grant Program, and to execute and submit all documents necessary to comply with the FY 2009 Urban Area Security Initiative Grant Program, for up to \$16,208,500 in grant funds to assist in building and sustaining regional and City capabilities to prevent, protect against, respond to, and recover from threats or acts of terrorism, major disasters, and other emergencies;

Authorizing the City Comptroller to accept, appropriate and expend up to \$16,208,500 in FY 2009 Urban Area Security Initiative Grant Program funds under the FY 2009 Homeland Security Grant Program for the purpose of building and sustaining regional and City capabilities to prevent, protect against, respond to, and recover from threats or acts of terrorism, major disasters, and other emergencies, contingent upon receipt of a fully executed grant agreement;

Authorizing the City Comptroller to establish a special interest-bearing fund for the FY 2009 Urban Area Security Initiative Grant Program funds under the FY 2009 Homeland Security Grant Program;

Declaring that this activity is not a "project" and is therefore exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

**STAFF SUPPORTING INFORMATION:**

The City of San Diego has been identified by the federal Department of Homeland Security (DHS) as the "core city" for the San Diego Urban Area's participation in the federal FY 2009 Homeland Security Grant Program (HSGP), specifically the Urban Area Security Initiative (UASI). The Urban Area is defined as the 18 incorporated cities in San Diego County, unincorporated areas of the county and the related special districts. As the core city, San Diego will be the grantee and administrator of the UASI grant for the San Diego Urban Area. The FY 2009 UASI program provides financial assistance to address the unique multi-discipline planning, operations, equipment, training, and exercise needs of high-threat, high-density Urban Areas, and to assist in building and sustaining capabilities to prevent, protect against, respond to, and recover from threats or acts of terrorism, major disasters, and other emergencies.

The San Diego Urban Area has applied for up to \$16,208,500 under the UASI grant. The FY09 Homeland Security Grant Program is a competitive process requiring Urban Areas to submit applications to formally request funding in support of State and Urban Area Homeland Security Strategies and related program planning documents. For FY 2009, funding for the UASI program is based on risk analysis methodology and anticipated effectiveness of planned investments. Risk is defined as Threat (likelihood of an attack) plus Vulnerability and Consequence (relative exposure and expected impact of an attack).

The San Diego Urban Area will submit its planned investments in the initial application phase. These investments address significant regional needs within the Urban Area as defined in our Regional Urban Area Security Strategy and include investments in the Regional Terrorism Threat Assessment Center, Interoperable Communications for both data and voice, Regional Interoperable Technology and Geospatial Data, Strengthening Emergency Planning and Citizen Preparedness, Critical Infrastructure and Key Resource Protection, and CBRNE/WMD Detection and Response Capabilities.

All funding must be allocated in support of the goals and objectives identified in the San Diego Urban Area Homeland Security Strategy that was developed as a prerequisite to participation in the HSGP and updated in 2007. A regional metropolitan area approach was taken in the development and implementation of this program by involving all 19 jurisdictions and mutual aid partners. While the focus of this program is to strengthen homeland security preparedness, the benefits will be seen in all of the emergency preparedness programs in the region.



FISCAL CONSIDERATIONS:

There is no non-federal match or cost share required for grants under the HSGP covered by this resolution. However, these grants are reimbursement in nature requiring the City, as the core city in the urban area, to expend funds prior to requesting reimbursement.

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

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Identified below.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The regional approach of the San Diego Urban Area's grant application impacts the 18 incorporated cities in San Diego County, the unincorporated areas of the county and the related special districts as well as contiguous jurisdictions and mutual aid partners. These key stakeholders will derive significant improvement in response capabilities with better prepared, trained and equipped first responders.

The citizens of the San Diego region will benefit from an expanded public outreach program designed to increase public involvement in emergency preparedness activities. This outreach will achieve a dramatic increase in the level of resident preparedness and self-reliance in the wake of a terrorism-related event or catastrophic natural disaster among the numerous diverse populations in the region. A better prepared community, including the business community, will unburden first responders and other emergency services personnel and allow them to engage in high priority life saving activities. It will also speed recovery and reduce economic loss.

Jarman/Goldstone

Staff: Donna Faller - (619) 533-6763  
Rachel C. Lipsky - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

- \* ITEM-112: Brown Field Airport Gypsum Removal Grant. (Otay Mesa Community Area. District 8.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-848)            ADOPTED AS RESOLUTION R-304749

Authorizing the Mayor, or his designee, to file a Grant Application with the California Integrated Waste Management Board and its AB2136 Solid Waste and Code Disposal Site Cleanup Program, for a Grant not to exceed \$750,000, for the cleanup of solid waste at the former Organic Recycling West, Inc., site at Brown Field Airport (Project), the total cost of which shall not exceed \$840,000;

Certifying that the City of San Diego has, or will have, matching funds for the Project, plus funds to pay for all ineligible work and eligible work in excess of the grant awarded; and authorizing the expenditure of said funds solely and exclusively for the Project; all contingent on execution by the Mayor, or his designee, of a Grant Agreement;

Certifying that the City of San Diego has, or will have, sufficient funds to operate and maintain the Project, and authorizing the City Comptroller to accept, appropriate, and expend grant funds received for the cleanup of the Project, and to establish a separate fund to track expenditures and receive grant-related reimbursement for eligible expenditures; all contingent on execution by the Mayor, or his designee, of a Grant Agreement and receipt of grant funds;

Appointing the Mayor, or his designee, as agent of the City of San Diego, to conduct all negotiations, execute and submit all documents including, but not limited to applications, grant agreements, amendments, and payment requests, which may be necessary for the completion of the Project;

Declaring that the above activity is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15330 in that the Project is a minor cleanup action taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of a release of a hazardous waste or substance, which is a small or medium removal action costing \$1 million or less.

**STAFF SUPPORTING INFORMATION:**

In December 1995, the Airports Division (Airports) signed a 10-Year Agreement with Organic Recycling West, Inc., (ORW) on a 25-acre site at the northeast corner of Brown Field. In February 2005, Airports gave ORW notice that its lease would be terminated, consistent with a 2004 FAA directive to diminish the non-aviation use of the airport. A series of legal actions followed regarding the eviction of ORW, which concluded in March 2007, when ORW went into Chapter 7 bankruptcy and abandoned the site. On May 14, 2008, Airports regained possession of the property from the bankruptcy court, and contracted with KPI West to remove 60,000 cubic yards of smoldering, green and wood waste, and 2,000 cubic yards of the 14,000 cubic yards of gypsum drywall, at a cost of \$310,000 from the Airports Enterprise Fund. The City is currently under an order from the Local Enforcement Agency (LEA) to complete the removal of the gypsum drywall. The cost of removing and recycling the remaining 12,000 cubic yards of gypsum is estimated to be \$672,000 - \$840,000, of which, \$750,000 can be reimbursed by a grant from the California Integrated Waste Management Board (CIWMB) through the AB 2136 Solid Waste and Code Disposal Site Cleanup Program.

**FISCAL CONSIDERATIONS:**

This action authorizes the use of \$750,000 California Integrated Waste Management Board Grant, for the removal of approximately 12,000 cubic yards of gypsum.

**EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):** None.

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:** None.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

Airports Advisory Committee, Otay Chamber of Commerce, and Otay Planning Group.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

Brown Field Tenants, Otay Mesa Community.

Chao/Jarrell

Staff: Mike Tussey - (858) 573-1441  
Debra J. Bevier - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.



ITEM-113: Transfer of Funds for the Logan Heights Branch Library. (Southeastern San Diego Community Area. District 8.)

(See memorandum from Beryl Bailey Rayford dated 2/11/2009.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-911) ADOPTED AS RESOLUTION R-304761

Authorizing an increase of \$889,694 (\$389,694 of First 5, Fund No. 38030, and \$500,000 of Library Improvement System, Fund No. 102216) in Fiscal Year 2009 Capital Improvements Program Budget in CIP No. 35-101.0, Logan Heights Branch Library;

Authorizing the City Comptroller to transfer appropriations of \$389,694 from CIP No. 35-089.0, Serra Mesa Branch Library, to CIP No. 35-101.0, Logan Heights Branch Library within Fund No. 38030, First 5 Grant Fund;

Authorizing the City Comptroller to appropriate \$500,000 from Fund No. 102216, Library System Improvements to CIP No. 35-101.0, Logan Heights Branch Library;

Authorizing the City Comptroller to appropriate and expend \$389,694 from CIP No. 35-101.0, Logan Heights Branch Library, Fund No. 38030, First 5 Grant Fund, and to expend \$500,000 from CIP No. 35-101.0, Logan Heights Branch Library, Fund No. 102216, Library System Improvement, solely and exclusively, for the purpose of providing funds for the design, construction and Project related

expenses, provided that the City Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditures are, or will be, on deposit with the City Treasurer;

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

Declaring that this activity is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(c). This activity is a subsequent discretionary approval covered under Finding of No Significant Impact/Negative Declaration No. 42-0267 (Logan Heights Branch Library). The activity is adequately addressed in the environmental document and there are no changes in circumstances, additional information, or project changes to warrant additional environmental review.

**STAFF SUPPORTING INFORMATION:**

This project provides a 25,000 sq. ft. library on a school site to serve the Logan Heights Community. The existing 3,967 square foot facility, built in 1927, lacks adequate space for materials and public seating, and has no meeting room. This project consists of two phases: Phase I construction was completed in February 2006, consisted of parking areas, fencing, exterior lighting, landscaping, and irrigation; Phase II consists of the library construction.

On November 29, 2004, the First Five Commission of San Diego entered into a capital project agreement with the San Diego Public Library to make capital improvements and provide library services for children between ages 1 to 5 at the College/Rolando, Logan Heights, Serra Mesa/Kearny Mesa and Skyline Hills branch libraries for a not-to-exceed sum of \$4,000,000. Per R-299708, adopted on October 4, 2004, a \$1,000,000 grant budget was set up in each one of the four libraries' CIP. However, it was later established that this grant funding could be only used for future work, and College Rolando Branch Library was already under construction. The maximum allowable First Five funding of \$490,321 was used for the completion of the College Rolando Branch Library, and the balance of \$509,679 was transferred into Logan Heights Branch Library for a total First Five Grant budget of \$1,509,679 for the project. At this point since the construction of Serra Mesa Branch Library is completed and Serra Mesa First 5 Project Phase II is fully funded, an additional \$389,694 will be transferred into this project.

Also an additional \$500,000 Library System Improvement Funds No. 102216 is available and will be transferred into the project. This additional funding is required to complete construction, fully fund fixtures, furnishing and equipment, (FF&E), telecommunications equipment, and purchase books that were not originally included in the project budget.

FISCAL CONSIDERATIONS:

Funds are available in Fund No. 38030, First Five Grant (\$389,694) and Fund No. 102216, Library System Improvement Fund (\$500,000) for this purpose.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

City Council approved an application to HUD 108 loan for \$3,030,000 on July 31, 2001 (R-295242). On June 11, 2002, the City and San Diego Unified School District entered into a Ground Lease Agreement for the Logan Heights Branch Library. City Council (R-297961) approved an Amendment to HUD 108 application for an additional amount of \$353,000 and adopted Consultant Agreement on May 20, 2003. On September 2003, the City entered into a Grant Agreement with the California State Library, and on November 29, 2004, the City entered into a First 5 Commission of San Diego Capital Projects Agreement for the project funding. First Amendment to the Agreement, approving plans and specifications, and authorizing award of construction contract to lowest, responsible and reliable bidder (R-300992) adopted October 31, 2005. Per Resolution (R-303475) dated March 14, 2008, City Council approved appropriations of expenditure of \$509,679 Fund 38030, First Five Grant Fund.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

- City Council's Natural Resources & Culture Committee November 14, 2001
- Boys and Girls Club December 12, 2001
- Community-wide Survey January thru April 2002
- Boys & Girls Club January 23, 2002
- Community Meetings and input regarding viable site locations and program*
- Logan Elementary School March 20, 2002
- Barrio Station March 21, 2002
- Principal & Community presentation/design discussion & site selection*
- Logan Elementary School April 12, 2002
- Logan Elementary School April 19, 2002
- Memorial Junior High School May 1, 2002
- Meetings with Principal, Staff, District Architect, parents & community*
- Board of Education, SDUSD May 28, 2002
- Ground Lease Agreement Approval*
- City Council
- Ground Lease Agreement & State Library Grant Application Approval*
- Boys & Girls Club September 9, 2003
- Meeting with Community Group/parking, lighting, security discussions*
- Logan Library October 18, 2004
- Meeting with Community for Status update*

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Logan Heights community members will benefit from the expansion of their branch library.

Boekamp/Jarrell

Aud. Cert. 2900581.

Staff: Darren Greenhalgh - (619) 533-6600  
Christina L. Bellows- Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:10 p.m. – 2:11 p.m.)

MOTION BY FRYE TO ADOPT. Second by Emerald. Passed by the following vote:  
Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-  
yea, Hueso-yea.

\* ITEM-114: Settlement of Wrongful Death Claim of Richard Faust, Lynne Faust, and the  
Estate of Jacob Faust.

**CITY ATTORNEY’S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-768) ADOPTED AS RESOLUTION R-304750

Authorizing the City Comptroller to issue a check in the amount of, but not  
exceeding, \$325,000 made payable to Michael R. Marrinan Trust Account, in full  
and final settlement of all claims;

Authorizing the City Council to pay the sum of \$325,000 from the Public  
Liability Fund 81140.

**SUPPORTING INFORMATION:**

The proposed settlement would resolve all claims brought by Richard Faust, Lynne Faust, and the Estate of Jacob R. Faust.

**FISCAL CONSIDERATIONS:**

Settlement will be paid from the Public Liability Fund 81140.

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

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:**

The item was considered in Closed Session on November 18, 2008. The Council approved the settlement amount of \$325,000. The motion passed 7-0 with Councilmember Young absent. The motion was made by Council President Pro Tem Madaffer and seconded by Council President Peters. The Council was briefed on February 3, 2008, for information purposes only.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:** N/A

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:** N/A

Bellows/Jones

Aud. Cert. 2900477.

**FILE LOCATION:** MEET

**COUNCIL ACTION:** (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.





[ITEM-115](#): Proposed 2009 Legislative Program. (Citywide.)

(See Report to the City Council No. 09-025; Intergovernmental Relations Department's 1/23/2009, report; and PowerPoint dated 1/23/2009.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2009-892 Rev.) ADOPTED AS AMENDED AS RESOLUTION R-304762

Approving the Proposed 2009 Legislative Program, as set forth in the Report to the City Council, Report No. 09-025.

**RULES, OPEN GOVERNMENT, AND INTERGOVERNMENTAL RELATIONS  
COMMITTEE'S RECOMMENDATION:**

On 1/28/2009, Rules voted on the following:

- Motion by Councilmember Frye, second by Councilmember Young, to accept City Legislative Priorities regarding proposed storm water solutions. Direction to staff to support Constitutional amendment to treat sewage fee changes similar to water fee changes. Vote 5-0; Hueso-yea, Faulconer-yea, Frye-yea, Gloria-yea; Young-yea.
- Motion by Councilmember Frye, second by Councilmember Young, to accept City Legislative Priorities regarding proposed water reliability solutions. Vote 5-0; Hueso-yea, Faulconer-yea, Frye-yea, Gloria-yea; Young-yea.
- Motion by Councilmember Frye, second by Councilmember Young, to accept City Legislative Priorities regarding fire protection and prevention sponsorship priority. Vote 5-0; Hueso-yea, Faulconer-yea, Frye-yea, Gloria-yea; Young-yea.
- Motion by Councilmember Frye, second by Councilmember Young, to accept City Legislative Priorities regarding budget and infrastructure sponsorship priority. Vote 5-0; Hueso-yea, Faulconer-yea, Frye-yea, Gloria-yea; Young-yea.
- Motion by Councilmember Frye, second by Councilmember Young, to accept City Legislative Priorities regarding economic development sponsorship priority and continuing legislative priorities. Vote 5-0; Hueso-yea, Faulconer-yea, Frye-yea, Gloria-yea; Young-yea.

- Motion by Councilmember Young, second by Council President Pro Tem Faulconer, to accept City Legislative Priorities regarding transportation, airport and border funding sponsorship priority and housing sponsorship priority. Direction to staff to include housing trust funds, homeless issues, and increasing Section 8 and CDBG allocations to priorities. Vote 5-0; Hueso-yea, Faulconer-yea, Frye-yea, Gloria-yea; Young-yea.

**SUPPORTING INFORMATION:**

The Intergovernmental Relations Department (IRD) is charged with developing the City's draft annual legislative program for approval by the City Council. The legislative program is the City's proactive list of legislative, budgetary or regulatory priorities for the upcoming year in both Sacramento and Washington D.C. The 2009 legislative and administrative sponsorship priorities include: storm water pollution prevention, water reliability, wildfire prevention, transportation and border funding, budget and infrastructure proposals, housing and economic development. The program also highlights continuing legislative and funding priorities including: implementation of the statewide infrastructure bonds, gang prevention funding and homeland security funding.

**FISCAL CONSIDERATIONS:** No fiscal impact.

**EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):**  
Not Applicable.

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:**

The 2009 Legislative Program was unanimously approved 5-0 by the Rules Committee on January 28, 2009. The report was amended to remove several recommendations, as well as add funding priorities under housing and a legislative recommendation for Youth Improvement Districts.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:** Not Applicable.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:** Not Applicable.

Nelson/Michell

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:11 p.m. – 2:29 p.m.)

MOTION BY GLORIA TO ADOPT AS AMENDED TO INCLUDE SB 572,  
DESIGNATING “HARVEY MILK DAY.” Second by Young. Passed by the following  
vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea,  
Emerald-yea, Hueso-yea.



ITEM-116: Appointment and Reappointments to the Park and Recreation  
Board.

(See memorandum from Mayor Sanders dated 2/24/2009, with resume attached.)

**MAYOR SANDERS’ RECOMMENDATION:**

Adopt the following resolution:

(R-2009-933 Rev.) ADOPTED AS AMENDED AS RESOLUTION R-304763

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

<u>NAME</u>	<u>TERM ENDING</u>
Lorie Zapf (Clairemont, District 6) (Replacing Evonne Schulze, who has resigned)	March 1, 2010
Vickie Granowitz (North Park, District 3) (Reappointment)	March 1, 2011
Roz King (Encanto, District 4) (Reappointment)	March 1, 2011

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:29 p.m. – 2:51 p.m.)

MOTION BY FRYE TO ADOPT AS AMENDED TO APPOINT VICKIE GRANOWITZ AND ROZ KING TO THE PARK AND RECREATION BOARD. Second by Emerald. Passed by the following vote: Lightner-yea, Faulconer-nay, Gloria-yea, Young-yea, DeMaio-nay, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-117: Reappointments to the International Affairs Board.

(See memorandum from Mayor Sanders dated 2/27/2009.)

**MAYOR SANDERS' RECOMMENDATION:**

Adopt the following resolution:

(R-2009-937) ADOPTED AS RESOLUTION R-304751

Council confirmation of the following reappointments by the Mayor of the City of San Diego, to serve as members of the International Affairs Board, for terms ending as indicated:

<b><u>NAME</u></b>	<b><u>TERM ENDING</u></b>
Daniel Abbott (North Park, District 3)	March 1, 2011
Cath DeStephano (Pacific Beach, District 2)	March 1, 2011
Feraidoon (Fred) Raafat (Del Mar Heights, District 1)	March 1, 2011
Elizabeth Robles (Nestor, District 8)	March 1, 2011

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-118: Reappointments to the Balboa Park Committee.

(See memorandum from Mayor Sanders dated 2/27/2009.)

**MAYOR SANDERS' RECOMMENDATION:**

Adopt the following resolution:

(R-2009-936) ADOPTED AS RESOLUTION R-304752

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

<b><u>NAME</u></b>	<b><u>CATEGORY</u></b>	<b><u>TERM ENDING</u></b>
Jerelyn Dilno (Kensington, District 3)	Council District 3 Representative	March 1, 2011
Mike Singleton (Mission Hills, District 2)	Council District 3 Representative	March 1, 2011
Donald Steele (Clairemont, District 6)	Council District 3 Representative	March 1, 2011
Dr. Mick Hager (Rancho San Diego)	Member representing a large institution in Balboa Park	March 1, 2011

David Kinney  
(North Park, District 3)

Member representing  
a small or mid-sized  
institution in Balboa Park

March 1, 2011

Declaring that pursuant to Council Policy 000-13, for the purposes of deliberation and consideration of appointment, it is determined that Dr. Mick Hager is a resident of San Diego County, but not the City of San Diego, and has unique qualifications to serve as a member of the Balboa Park Committee; therefore, a conscious exception to Council Policy 000-13 is hereby declared.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-119: The Confucius Institute at San Diego State University Day.

**COUNCILMEMBER GLORIA'S AND COUNCILMEMBER DEMAIO'S  
RECOMMENDATION:**

Adopt the following resolution:

(R-2009-928) ADOPTED AS RESOLUTION R-304734

Commending and congratulating the Confucius Institute at San Diego State University for its dedication to education and culture in San Diego;

Proclaiming March 26, 2009, to be "The Confucius Institute at San Diego State University Day" in the City of San Diego.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-120: Arts in Education Month.

**COUNCILMEMBER FRYE'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-947) ADOPTED AS RESOLUTION R-304753

Proclaiming March 2009, to be "Arts in Education Month" in the City of San Diego, and commending San Diego Unified School District and Madison High School for their ongoing efforts to keep the arts in our public schools.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-121: Kosen-Rufu Day.

**COUNCILMEMBER FRYE'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-906)            ADOPTED AS RESOLUTION R-304754

Proclaiming March 16, 2009, to be "Kosen-Rufu Day," and recognizing the contributions that Daisaku and Kaneko Ikeda and Soka Gakkai International have made.

FILE LOCATION:            MEET

COUNCIL ACTION:            (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-122: Excusing Council President Ben Hueso from Attending the March 10, 2009, Council Meeting.

**COUNCIL PRESIDENT HUESO'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-940)            ADOPTED AS RESOLUTION R-304755

Excusing Council President Ben Hueso from attending the regularly scheduled City Council Meeting of March 10, 2009, due to illness.

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



FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

\* ITEM-123: Declaring a Continued State of Emergency Regarding the Wildfires.

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2009-737) ADOPTED AS RESOLUTION R-304756

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

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

- \* ITEM-124: State of Local Emergency Declaration Regarding the Landslide on Mount Soledad.

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2009-870)            ADOPTED AS RESOLUTION R-304757

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

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

FILE LOCATION:            MEET

COUNCIL ACTION:            (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

- \* ITEM-125: Declaring a Continued State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico. (District 8.)

**TODAYS ACTION IS:**

Adopt the following resolution:

(R-2009-809)            ADOPTED AS RESOLUTION R-304758

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

- \* ITEM-126: Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City.

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2009-897) ADOPTED AS RESOLUTION R-304759

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:27 a.m. - 10:30 a.m.)

CONSENT MOTION BY LIGHTNER TO ADOPT. Second by Gloria. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.



[ITEM-330](#): Agreement with Flow Science Incorporated for Limnology and Reservoir Detention Study of San Vicente Reservoir for the Indirect Potable Reuse/Reservoir Augmentation Demonstration Project.

(See Water Department's 1/14/2009, Executive Summary Sheet.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2009-893)            ADOPTED WITH DIRECTION AS  
RESOLUTION R-304764

Authorizing the Mayor, or his designee, to execute an Agreement between the City of San Diego and Flow Science Incorporated, in an amount not to exceed \$420,000.00 to conduct the Limnology and Reservoir Detention Study of San Vicente Reservoir for the Indirect Potable Reuse/Reservoir Augmentation Demonstration Project;

Authorizing the expenditure of an amount not to exceed \$420,000 from Water Fund 41500, Organization 861, to conduct the Limnology and Reservoir Detention Study of San Vicente Reservoir for the Indirect Potable Reuse/Reservoir Augmentation Demonstration Project, provided that the City Auditor and Comptroller first furnishes a certificate certifying that 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 any excess funds to the appropriate department;

Declaring that this activity is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15306.

**NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:**

On 1/28/2009, NR&C voted 3 to 1 to approve. (Councilmembers Lightner, Frye, and Emerald voted yea. Councilmember DeMaio voted nay.)

**SUPPORTING INFORMATION:**

In October and December 2007, the City Council directed the Mayor to undertake an Indirect Potable Reuse/Reservoir Augmentation Demonstration Project (Demonstration Project). Also in December 2007, the City Council directed the Water Department to add the Demonstration Project to the Integrated Regional Water Management Plan and Grant Application, which subsequently resulted in an award of \$1,072,835 in state Proposition 50 Grant Funds for the Project. In November 2008, the City Council approved a temporary water rate increase, effective January 1, 2009, to fully fund the Demonstration Project. The Demonstration Project will provide the technical, environmental, public outreach and stakeholder involvement, regulatory, and funding requirements necessary to implement a full-scale project. An Independent Advisory Panel of scientific and technical experts will be established to advise on the development and implementation of the project. If the Demonstration Project meets regulatory requirements and provides evidence of the viability of the Indirect Potable Reuse/Reservoir Augmentation (IPR/RA) process, the City would then explore the feasibility of constructing a full-scale IPR/RA plant to send advanced treated water to San Vicente Reservoir via a 23-mile pipeline where, after blending and additional treatment, it would be distributed as potable water. A key component of the Demonstration Project - required by the above mentioned Council directions and for approval of the project by state regulatory agencies - is a limnology and detention study of San Vicente Reservoir. The Water Department will contract with Flow Science Incorporated for the limnology and reservoir detention study. Flow Science will use highly sophisticated computer applications - three dimensional hydrodynamic modeling - for this work. Three dimensional hydrodynamic modeling is unique, specialized work. Flow Science is a proven leader in this field and has unique capabilities and experience possessed by no other firm. Flow Science has previously performed limnology studies of San Vicente Reservoir, both for the Water Department and for the San Diego County Water Authority (CWA), and is currently under contract with CWA to perform hydrodynamic modeling of the future enlarged San Vicente Reservoir. As a result of this previous and on-going work Flow Science has data and information on San Vicente Reservoir, and its models are partially set-up for San Vicente. The cost of the limnology and reservoir detention study is \$420,000, which includes a planned budget of \$385,000 plus \$35,000 as a contingency for additional services. The total budget for the Demonstration Project is \$11,811,000.

**FISCAL CONSIDERATIONS:**

Funding is available from the Water Department Fund 41500, Organization Number 861.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This Agreement is subject to the City's Equal Opportunity Contracting (Ordinance No. O-18173, Sections 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On October 29 and December 3, 2007, the City Council voted (R-303095 and R-303096) to undertake an Indirect Potable Reuse/Reservoir Augmentation Demonstration Project (Demonstration Project). On December 4, 2007, the City Council directed (R-303237) the Water Department to add the Demonstration Project to the Integrated Regional Water Management Plan and Grant Application. On November 18, 2008, the City Council approved (R-304434) a temporary water rate increase to fully fund the Demonstration Project. Water staff has made three presentations on the Demonstration Project to the Independent Rates Oversight Committee (IROC), and has provided periodic updates to the Natural Resources and Culture Committee. At its January 12, 2009, meeting the IROC voted to support this consultant agreement and expenditure of the funds. On January 28, 2009, the Natural Resources and Culture Committee approved the currently requested action.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Preparation of the Water Reuse Report (March 2006) involved significant stakeholder involvement and public outreach activities. The Water Reuse Study stakeholders identified Reservoir Augmentation at the San Vicente Reservoir to be the preferred water reuse strategy. The Demonstration Project will include a sizable public outreach and education component.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The California Department of Public Health and the San Diego Regional Water Quality Control Board are the state agencies that will grant permits for the full-scale IPR/RA Project. Securing these agencies regulatory approvals is a paramount goal of the Demonstration Project. Other local water agencies (and these agencies' customers) may receive water from San Vicente Reservoir and are stakeholders for the full-scale Project.

Ruiz/Barrett

Aud. Cert. 2900624.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:52 p.m. – 3:05 p.m.)

MOTION BY FRYE TO ADOPT WITH DIRECTION TO STAFF TO PROVIDE AND UPDATE COUNCIL ON A MONTHLY BASIS. Second by Hueso. Passed by the following vote: Lightner-yea, Faulconer-nay, Gloria-yea, Young-nay, DeMaio-nay, Frye-yea, Emerald-yea, Hueso-yea.



ITEM-331: Housing Commission Approach to the Foreclosure Problem.  
(Citywide).

(See Report to the City Council No. CCR 09-003; and San Diego Housing Commission's Report No. LUH 09-003.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2009-955 Rev. Copy) ADOPTED WITH DIRECTION AS  
RESOLUTION R-304765

Declaring that in accordance with San Diego Municipal Code Section 98.0301(d)(8), the Commission's Advisory Authority is modified to allow the Commission to acquire real estate in conformance with proposed San Diego Housing Commission Real Estate Acquisition Policy No. 300.103.

**LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:**

On 3/11/2009, LU&H voted 4 to 0 to approve the report and to send recommendations to City Council. (Councilmembers Lightner, Faulconer, Gloria, and Young voted yea.)

**SUPPORTING INFORMATION:**

At its meeting of November 18, 2008, the Housing Authority directed the Housing Commission to report on its strategy to respond to the foreclosure problems that exist and are anticipated in the City. An approach was presented to the Housing Authority in a January 30, 2009, memorandum from the President and CEO. This report incorporates actions needed to begin implementing the foreclosure approach including updating the Housing Commission's Acquisition Policy.

**FISCAL CONSIDERATIONS:**

There is no Net Fiscal impact from this action.

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:**

The Public Housing Disposition Program was approved on October 31 and November 18, 2008, by the Housing Commission and the Housing Authority, respectively. The NSP Plan was approved by the Land Use and Housing Committee on October 29, 2008, the Housing Commission on October 31, 2008, and by the City Council on November 18, 2008.

The Housing Commission Board approved the foreclosure approach at its meeting of February 20, 2009. On March 11, 2009, the Land Use and Housing Committee unanimously approved this item. This is a companion report to the same item on today's Housing Authority docket.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

Public hearings on the NSP program, including discussions on the foreclosure problem, were held in October and November 2008. To ensure that the Housing Commission's foreclosure efforts address a broad spectrum of interests and concerns, a Stakeholder Advisory Committee has been convened from people who have expressed interest in the foreclosure issue. This group will provide valuable feedback on community needs and resources; it will also allow the Housing Commission to disseminate information to interested parties as federal programs evolve and other proposals and resources are identified.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

Residents of low and moderate income neighborhoods, particularly those areas most affected by foreclosures (focused in Council Districts 3, 4, 7 and 8), community based organizations, planning groups, and community based service providers.



Clemens/Vaughan

**NOTE:** See the Housing Authority Agenda of March 24, 2009, for a companion item.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:05 p.m. – 3:32 p.m.)

MOTION BY GLORIA TO ADOPT WITH DIRECTION TO APPROVE THE POLICY WITH THE CLARIFICATION THAT SECTION 7 INCLUDES THE MAYOR, AND CHANGE SECTION 15 TO PROVIDE QUARTERLY WRITTEN UPDATES AS OPPOSED TO TWICE A YEAR. Second by Young. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.



ITEM-332: Emerald Street Tentative Map, Project No. 25879. Environmental and project appeals of the Planning Commission's decision approving an application for a Tentative Map including a request to waive the requirement to underground the existing utilities and to convert an existing 48 residential dwelling unit apartment complex into 48 residential condominium units on a 0.789 acre site. The site consists of three buildings located at 4655 Lamont Street, 1918 and 1930 Emerald Street. (Pacific Beach Community Plan Area. District 2.)

Matter of the environmental and project appeals by Cory J. Briggs, Briggs Law Corporation on behalf of the Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development from the Planning Commission's decision approving an application for a Tentative Map including a request to waive the requirement to underground the existing utilities and to convert an existing 48 residential dwelling unit apartment complex into 48 residential condominium units on a 0.789 acre site. The site consists of three buildings located at 4655 Lamont Street, 1918 and 1930 Emerald Street, in the RM-2-5 Zone, 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>.

(See Report to the City Council No. 09-022. TM-Requesting Waiver of Undergrounding Existing Utilities No. 70179.)

**STAFF'S RECOMMENDATION:**

Take the following action(s):

Subitem A: (R-2009- ) DENIED APPEAL AND UPHELD THE DECISION OF THE PLANNING COMMISSION TO AFFIRM THE ENVIRONMENTAL DETERMINATION, ADOPTED AS RESOLUTION R-304766

According to San Diego Municipal Code Section 112.0520, the City Council shall consider the appeal and shall, by a majority vote:

- 1) Deny the appeal, uphold the *environmental determination* and adopt the CEQA findings of the previous decision-maker, where appropriate; or
- 2) Grant the appeal and make a superceding *environmental determination* or CEQA findings; or
- 3) Grant the appeal, set aside the *environmental determination*, and remand the matter to the previous decision-maker, in accordance with Section 112.0520,

to reconsider the *environmental determination* that incorporates any direction or instruction the City Council deems appropriate.

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

Subitem B: (R-2009- ) DENIED APPEAL AND UPHELD THE DECISION OF THE PLANNING COMMISSION TO GRANT THE TENTATIVE MAP, ADOPTED AS RESOLUTION R-304767

Granting or denying the appeal and upholding or overturning the Planning Commission's decision approving Tentative Map No. 70179 and the request to waive 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 December 11, 2008, voted 6-0-1 to approve Tentative Map No. 70179 and the request to waive the requirement to underground existing overhead utilities as presented in Report No. PC-08-130.

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

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

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

Appeal of Staff's environmental exemption determination and the Planning Commission's decision to approve the Emerald Street condominium conversion project, including a request to waive the requirement to underground existing overhead utilities located within the Pacific Beach Community Plan Area.

STAFF RECOMMENDATION:

**Deny** the appeals, upholding the Planning Commission's decision to approve Tentative Map No. 70179, including the request to waive the requirement to underground existing overhead utilities and affirm Staff's environmental exemption determination for this project.

EXECUTIVE SUMMARY:

This condominium conversion project was approved by the Planning Commission on December 11, 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 and an appeal of the environmental determination that the project is categorically exempt under the California Environmental Quality Act (CEQA).

The project appeal points raised and Staff's responses are contained in this Executive Summary. The appeal points and Staff's response are consistent with the previous condominium conversion project appeals that have previously been heard and rejected by the City Council. The environmental appeal points raised and Staff's responses are contained in the Report to the City Council and are also consistent with the previous condominium conversion environmental appeals that have been previously heard and rejected by the City Council.

The appeal application references several San Diego Municipal Code (SDMC) and California Government Code sections which may be addressed through a 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."* 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 26, 2007, the Pacific Beach Community Planning Committee voted 9-4-0 to recommend approval of the proposed project without recommendations. In addition, on December 11, 2008, the project was unanimously approved by a 6-0-1 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: John W. Reed, Managing Partner of Emerald Manor Apartment House LLC. Other key stakeholders include those associated with condominium conversions in the development industry, the housing industry, and residents.

Broughton

**LEGAL DESCRIPTION:**

The project site consists of three buildings located at 4655 Lamont Street, 1918 and 1930 Emerald Street, on the northeast corner of Emerald Street and Lamont Street, and is legally described as Lots 30 through 40, Block 167, Pacific Beach, Map No. 854, in the RM-2-5 Zone, Coastal Height Limit Overlay Zone and within the Pacific Beach Community Plan Area.

**NOTE:** This project is exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, 15301(k), as “Existing Facilities.”

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

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:34 p.m. – 3:42 p.m.)

Testimony in opposition by Joseph Scarlatti.

Testimony in favor by Makaela Gladden.

MOTION BY FAULCONER TO ADOPT STAFF’S RECOMMENDATION TO AFFIRM STAFF’S ENVIRONMENTAL EXEMPTION DETERMINATION, DENY THE APPEALS AND UPHOLD THE DECISION OF THE PLANNING COMMISSION TO APPROVE THE TENTATIVE MAP, INCLUDING THE REQUEST TO WAIVE THE REQUIREMENT TO UNDERGROUND EXISTING OVERHEAD UTILITIES. Second by Young. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.



ITEM-333: Santa Margarita Vesting Tentative Map and Easement Vacation No. 318389, Project No. 97654, an application for a Vesting Tentative Map and Easement Vacation to allow the conversion of 47 existing residential units into condominiums, including a request to waive the requirement to underground the existing overhead utilities. (Southeastern San Diego Community Plan Area. District 4.)

Matter of approving, conditionally approving, modifying or denying an application of a Vesting Tentative Map and Easement Abandonment to convert 47 existing residential units to condominiums, vacate utility easements, and a request to waive the requirement to underground existing overhead utilities. The 3.04 acre site is located at 5391 - 5393 and 5411 - 5425 Santa Margarita Street in the MF-3000 Zone of the Southeastern San Diego Planned District.

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>.

(Vesting Tentative Map and Easement Abandonment No. 318389/Project No. 97654.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-922)            RETURNED TO MAYOR

Adoption of a Resolution granting Vesting Tentative Map/Easement Vacation No. 318389-Santa Margarita Street Vesting Tentative Map-Project No. 9765;

That it adopts the findings with respect to Vesting Tentative Map/Easement Vacation No. 318389;

That pursuant to San Diego Municipal Code section 125.0941, the City Council adopts the findings for the easement vacation noted on the map pursuant to California Government Code section 66499.20 ½;

That pursuant to Council Policy 600-25, the Council adopts the following findings for waiver of undergrounding existing utilities;

That the findings are supported by the staff report, written and oral testimony, minutes, maps and exhibits, all of which are herein incorporated by reference;

That Vesting Tentative Map/Easement Vacation No. 318389 and the waiver of the requirement to underground existing overhead utilities is granted to Vista Grande Apartments, a California General Partnership Applicant/Subdivider and Sterling Land Services, Inc., Engineer, subject to the attached conditions which are made a part of this resolution by this reference.

**OTHER RECOMMENDATIONS:**

Planning Commission on September 4, 2008, voted 4-0-3 to deny.

Ayes: Schultz, Griswold, Ontai, Golba

Not present: Naslund, Otsuji, Smiley

The Encanto Neighborhoods Community Planning Group has not made a recommendation on this project.



REQUESTED ACTION:

Approval of a project to convert 47 existing residential units into condominiums, a two-lot subdivision, the vacation of a public utility easement and a waiver of the requirement to underground existing overhead utilities located at 5391 – 93 and 5411 – 25 Santa Margarita Street in the Southeastern San Diego Community Planning Area.

STAFF RECOMMENDATION:

Approve Vesting Tentative Map and Easement Vacation No. 318389.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The requested Vesting Tentative Map proposes to subdivide the subject property into two legal lots identified as Parcels 1 and Parcel 2, and create a 47-unit condominium development on Parcel 2 only. Parcel 1 is developed with a one story rental duplex building located at 5391 – 93 Santa Margarita Street and is not proposed as condominiums with this application. Parcel 2 is developed with eight detached, two and three story buildings located at 5411 – 25 Santa Margarita Street containing the 47 residential apartments units. This item requires a Process Five action before the City Council due to the requirement to vacate a portion of a five-foot wide utility easement located partially below one of the buildings.

This project is subject to the condominium conversion regulations that became effective prior to June 13, 2006, based on the City Council’s specific adoption language for the “new” condominium conversion regulations. (Those new regulations included additional landscape requirements, the preparation of a building conditions report, provision for on-site inclusionary housing, additional public noticing and parking requirements). At the June 13, 2006, hearing the City Council specifically excluded all projects that had California Environmental Quality Act (CEQA) appeals pending on or before June 13, 2006. This project is one of those which had a pending appeal. The appeal hearing was held on July 31, 2006, and the City Council denied the appellant’s appeal of the CEQA determination of exemption.

This project is not subject to the current requirements for a building conditions report or a review of a landscape concept plan, therefore the applicant is not required to submit these documents.

The requested Vesting Tentative Map includes a request to vacate a five-foot wide general utility easement located partially beneath one of the buildings and to waive the requirement to underground existing overhead utilities. San Diego Municipal Code Section 144.0240 allows the subdivider to apply for a waiver from the requirement to underground the existing overhead utilities within the boundary of the subdivision or within the abutting public rights of way.

The City's Undergrounding Master Plan designates the site within Block 4F and the date for undergrounding has been established for the year 2022. City staff has determined the undergrounding waiver request qualifies under the guidelines of Council Policy 600-25, Underground Conversion of Utility Lines at the Developer's Expense, in that the requested underground waiver involves a short span of the overhead facility (less than a full block in length), it is not a part of a continuing effort to accomplish a total undergrounding within a specific street or area and it would represent an isolated undergrounding with a minimum probability of extension in the future.

The subdivider will be required to underground all existing service to the site per Condition No. 11 of the draft Vesting Tentative Map resolution and to underground any new service run to any new or proposed structures within the subdivision per Condition No. 2 the draft Vesting Tentative Map resolution.

A five-foot wide sewer, water, drainage and public utilities easement is located beneath one of the buildings. This easement is not being utilized and is no longer required for its original intended use, therefore, it must be vacated with this action.

FISCAL CONSIDERATIONS:

All processing costs associated with this project are collected from a deposit account funded by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On September 8, 2008, the Planning Commission voted 4-0-3 to recommend denial of the project. The Planning Commission identified lack of information as the basis for the denial, specifically, that the applicant did not provide a building conditions report, a landscape concept plan, information regarding tenant relocation assistance and a marketing plan of the units to the existing tenants.

The Encanto Neighborhoods Community Planning Group has not made a recommendation on this project. The applicant attended two community meetings in May and June of 2007. No action was taken on the item.

The chair of the community group has stated that, at their June 2007 meeting, members of the group requested that additional information be provided regarding the building and site conditions at a future meeting. The property owner has elected to not seek a recommendation from the community group.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Owner: Michael J. Davies, General Partner, Vista Grande Apartments, L.P.

Broughton/ST

**NOTE:** This project was determined to be categorically exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15031.

Staff: Sandra Teasley – (619) 446-5271  
Nina M. Fain – Deputy City Attorney

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:33 p.m. – 3:33 p.m.)

MOTION BY COMMON CONSENT TO RETURN TO THE MAYOR AS REQUESTED BY THE APPLICANT. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.



ITEM-334: 4711 Biona Drive Tentative Map. Project No. 78145. Environmental and project appeals 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 and the determination by City Staff that the request to convert residential dwelling units to condominium ownership are exempt from the California Environmental Quality Act. The 0.25-acre project site is located at 4711 Biona Drive. (Kensington-Talmadge neighborhood of the Mid-City Communities Plan Area. District 3.)

Matter of the environmental and project appeals by Cory J. Briggs, Briggs Law Corporation on behalf of the Affordable Housing Coalition of San Diego County and the Citizens for Responsible Equitable Environmental Development concerning the decision by the Planning Commission to approve 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 and the determination by City Staff that the request to convert residential dwelling units to condominium ownership are exempt from the California Environmental Quality Act. The 0.25-acre project site is 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>.

(See Report to the City Council No. 09-022. TM-Requesting Waiver of Undergrounding Existing Utilities No. 242521.)

**STAFF'S RECOMMENDATION:**

Take the following action(s):

Subitem A: (R-2009- ) ADOPTED AS RESOLUTION R-304768

According to the San Diego Municipal Code Section 112.0520, the City Council shall consider the appeal and shall, by a majority vote:

- 3) Deny the appeal, uphold the *environmental determination* and adopt the CEQA findings of the previous decision-maker, where appropriate; or
- 4) Grant the appeal and make a superceding *environmental determination* or CEQA findings; or

- 3) Grant the appeal, set aside the *environmental determination*, and remand the matter to the previous decision-maker, in accordance with Section 112.0520, to reconsider the *environmental determination* that incorporates any direction or instruction the City Council deems appropriate.

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

Subitem B: (R-2009- ) ADOPTED AS RESOLUTION R-304769

Granting or denying the appeal and upholding or overturning the Planning Commission's decision approving Tentative Map No. 242521 and the request to waive 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 Tentative Map No. 242521; and approve waiver of the requirement to underground the existing overhead utilities as presented in Report No. PC-08-113.

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

The Kensington-Talmadge Community Planning Group's recommendation for this project was not available for the previous City Council hearing. Subsequent to the January 13, 2009, hearing, the group provided minutes for their December 14, 2005, meeting, where they voted unanimously to recommend approval of the project.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

Appeal of Staff's environmental exemption determination and the Planning Commission's decision to approve Tentative Map No. 242521, including a request to 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 project and environmental appeals, upholding the Planning Commission's decision to approve the Tentative Map, including the request to waive the requirement to underground existing overhead utilities and affirm Staff's environmental exemption determination for this project.

**EXECUTIVE SUMMARY:**

This condominium conversion project appeal was previously heard by the City Council on January 13, 2009. The Council voted to continue this project so that it could be re-noticed to include an appeal of Staff's environmental exemption determination. 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 on October 9, 2008, and subsequently appealed by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation.

The project appeal points raised and Staff's responses are contained in this Executive Summary. The appeal points and Staff's response are consistent with the previous condominium conversion project appeals that have previously been heard and rejected by the City Council. The environmental appeal points raised and Staff's responses are contained in the attached Report to the City Council and are also consistent with the previous condominium conversion environmental appeals that have been previously heard and rejected by the City Council.

The appeal application references several San Diego Municipal Code (SDMC) and California Government Code sections which may be addressed through a 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.

**PREVIOUS AND/OR COMMITTEE ACTION:**

On January 13, 2009, the City Council voted to continue the project so it could be renoticed to include both a project and environmental appeal.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

The Kensington-Talmadge Community Planning Group's recommendation for this project was not available for the previous City Council hearing. Subsequent to the January 13, 2009, hearing, the group provided minutes for their December 14, 2005, meeting, where they voted unanimously to recommend approval of the project. On October 9, 2008, the Planning Commission voted 5-1 to approve the project.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

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.

Goldstone/Westlake

**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 is exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, 15301(k), as “Existing Facilities.”

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: 3:42 p.m. – 3:50 p.m.)

Testimony in opposition by Matt Peterson.

MOTION BY GLORIA TO ADOPT STAFF’S RECOMMENDATION TO AFFIRM STAFF’S ENVIRONMENTAL EXEMPTION DETERMINATION, DENY THE APPEALS AND UPHOLD THE PLANNING COMMISSION’S DECISION TO APPROVE THE TENTATIVE MAP, INCLUDING THE REQUEST TO WAIVE THE REQUIREMENT TO UNDERGROUND EXISTING OVERHEAD UTILITIES. Second by Young. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

**REPORT OUT OF CLOSED SESSION:**

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

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

**FILE LOCATION:** MINUTES

**COUNCIL ACTION:** (Time duration: 4:32 p.m. – 4:32 p.m.)

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Hueso at 4:33 p.m. in honor of the memory of:

Mrs. Frances Harvey as requested by Council President Pro Tem Faulconer.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 4:32 p.m. – 4:33 p.m.)

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Elizabeth S. Maland, City Clerk  
City of San Diego