

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

(619) 533-5800

DATE: September 16, 2008

TO: Honorable Mayor and City Council

FROM: City Attorney

SUBJECT: Item 334 : Adequacy of Park Analysis Relating to Torrey Hills Vesting Tentative Map, Project No. 106228

INTRODUCTION

On September 16 , 2008, the City Council is set to consider the Final EIR [FEIR] for the Torrey Hills Vesting Tentative Map Project [Torrey Hills Project]. The project proposes to rezone the subject property from the IP 2-1 and RM 2-5 zones to the RM 3-8 and OR-1-1 zones; to amend the Torrey Hills Community Plan; to approve a Vesting Tentative Map and a Planned Development Permit; and, to amend the current Planned Industrial Development/Planned Residential Development/Hillside Review Coastal Development Permit [CDP] for the site. The project, if approved, would allow the development of 484 residential condominiums, and 4,000 square feet of commercial/office space, on 22 acres, located south of Calle Mar De Mariposa between Vista Sorrento Parkway and West Ocean Air Drive, in the Torrey Hills Community Plan Area, in an area originally designated as Planned Industrial Development [PID].

On August 6, 2008, the Planning Commission voted to recommend approval of the project and adoption of the Final Environmental Impact Report [FEIR]. At the Planning Commission hearing, the City Attorney's Office provided legal comment to the Planning Commission regarding the Torrey Hills Project, and indicated that, upon further review, the City Attorney's office, would supplement these comments with an additional review. Accordingly, the following comments are provided concerning the means used to calculate the park requirements for the Torrey Hills Project. As explained in the FEIR for this project, the estimated public park need, based upon a 1998 Park Agreement, is 1.04 acres, with the Applicant contributing the equivalent of 1.05 acres of private park land. It is this park estimate that is the subject of this memo.

QUESTION PRESENTED

Is it appropriate to rely upon the 1998 Park Agreement to calculate the acreage needed to satisfy the General Plan park requirements for this proposed Torrey Hills Project?

SHORT ANSWER

SHORT ANSWER

No. Under the most basic principles of contract law, the terms of the 1998 Park Agreement [1998 Agreement] were satisfied before the Torrey Hills Project was proposed and should not be used to provide park credits to the current Applicant for the purpose of fulfilling park requirements for new residential development. The 1998 Agreement did not entitle the Applicant to rely on it to meet the park requirements of a new residential development not contemplated or specified in the 1998 Agreement. This new project will add approximately 484 additional residential units to the Torrey Hills community providing housing for an additional 1,249 residents. In calculating the additional park needs of the community, the General Plan requirements of 2.8 acres per 1,000 people should be used as demonstrated in the letter of March 21, 2008, from the City's Department of Community Planning and Community Investment [CPCI] to the Applicant. Attachment A. In its March 21, 2008 letter, CPCI explained to the Applicant that the Torrey Hills Project mitigation for public parks was inadequate as proposed. CPCI determined the project was 2.45 acres short, and would require 3.5 acres of parkland.

BACKGROUND

On January 8, 1998, the City entered into the Park Agreement [1998 Agreement] with the original developer of the Torrey Hills community. Attachment B. The 1998 Agreement fulfilled the population-based park requirements for then-projected dwelling units, for the Planned Residential Development [PRD] section of Torrey Hills. The original Torrey Hills development contemplated and allowed for a Planned Industrial Development [PID] which is the location of the residential development sought in the proposed Torrey Hills Project. The effect of this new Torrey Hills Project is to amend the PID designation, from industrial to residential, thus effectively expanding the PRD section of Torrey Hills.

The FEIR calculates that the proposed Torrey Hills Project will cause an additional park deficit of 1.04 acres. FEIR, Section 5.8-2 – 3. To meet this deficit, the Torrey Hills Project proposes a private recreation easement over 1.05 acres of the project site. The FEIR concludes therefore that the Torrey Hills Project will have no significant direct impacts to public parks. FEIR, Section 5.8-16. In determining that there is only a 1.04 acre park deficit, the FEIR relies upon a formula used in the 1998 Agreement. The FEIR at Section 5.8-2-3 states:

This [1998] Agreement was specifically intended to provide for the recreational needs of a community population of 6,270 at 2.4 usable acres per 1000 population which is 0.4 acres less than the General Plan standard. Under the terms of the Agreement, the developer was required to provide funding for the design and construction of the 14.0-acre Torrey Hills Neighborhood Park and make a cash contribution sufficient to acquire 1.05 acres for the Carmel Valley South Community Park, for a total of 15.05 usable acres of population-based parks. These requirements have been fulfilled per the terms of the Agreement based on 2.4 acres per 1,000 population.

In the FEIR, it is presumed that the Torrey Hills PRD never reached the estimated population of 6,270 originally projected by the 1998 Agreement, and so the FEIR credits the current Applicant for park acreage achieved by the old development and a population estimate that was never met.

This [Torrey Hills Project] would represent [a net] increase of 370 persons over the total population of 6,270 which was assumed in the original Park Agreement . . . the additional 370 persons would generate a need for an additional 1.04 useable acres¹ . . . over and above the 15.05 usable acres covered by the Original Agreement.

FEIR, Section 5.8-16. In other words, the FEIR applies the current General Plan ratio of 2.8 acres per 1000 population, rather than the 2.4 ratio in the Park Agreement, but it applies a population credit to the proposed Torrey Hills Project, using the 6,270 population estimate in the Park Agreement.

During the Project Review Cycle,² however, the Department of Parks and Recreation [DPR] ~~determined the proposed Torrey Hills Project would have to provide an additional 2.5 acres of~~ public park land, beyond the 1.05 offered, to mitigate for impacts to public parks. Project Cycle Report, Cycle 6, August 18, 2006 states:

If the applicant's intention is to provide the required public park facilities on-site . . . the project would need to provide a 2.5 acre useable park within a separate parcel that is deeded to the City.

Attachment C, p. 3.³

On March 21, 2008, the Department of City Planning and Community Investment [CPCI] wrote to the Applicant that the Torrey Hills Project mitigation for public parks was inadequate. Attachment A. It determined the project was 2.45 acres short, and would require 3.5 acres, plus

¹ Note that the FEIR applies the General Plan ratio of 2.8 acres per 1000 population whereas the 1998 Park Agreement applies a ratio of 2.4 acres per 1000 for Torrey Hills. Attachment B, Recital K, p. 2.

² Attachment C contains relevant excerpts from the Project Issues Report on the project.

³ Project Cycle Report, Cycles 7, January 10, 2007; Cycle 15, April 2, 2007 allude to discussions with the applicant:

If it is not the intention of the applicant to provide a public park, please re-label the park to "private" park. The Planning Department has determined that the proposed development requires a community plan amendment to accommodate the increase in dwelling units. . . .

The Park and Recreation Department has met with the applicant to discuss the potential for satisfying population-based park requirements within the community that would be consistent with the Public Facilities Financing Plan amendment required by this project. As the applicant stated in their response, the discussion will continue and the project will be conditioned accordingly.

\$6.38 million to acquire, design, and develop the additional 2.45 acre park. It also determined the project must contribute towards a recreation center and swimming pool.

ANALYSIS

The 1998 Agreement simply does not apply to the proposed Torrey Hills Project. First, the terms of the 1998 Agreement have been fulfilled. A contract remains in force only until it has been terminated either according to its terms or through acts of parties evidencing abandonment. *Busch v. Globe Industries*, 200 Cal. App.2d 315, 319 (1962). The 1998 Agreement termination clause states:

City shall provide Westbrook with a written release of this Agreement upon fulfillment of Westbrook's obligations as set forth herein to the reasonable satisfaction of the City.

Attachment B, Park Requirements, Section 13, p. 8. The 1998 Agreement terminated when the developer at that time fulfilled the obligations of the Agreement by providing the 15.05 acres of public park and all other conditions were met. "These requirements have been fulfilled per the terms of the Agreement based on 2.4 acres per 1,000 population." FEIR, Section 5.8-2-3.

Second, the 1998 Agreement does not apply to this proposed Torrey Hills Project because the 1998 Agreement terms and conditions did not provide for a population or park credit against future amendments to the PID section of Torrey Hills. The 1998 Agreement was based on the configuration of the PRD and PID as shown on the Vesting Tentative Map when the Agreement was entered into on January 8, 1998:

On March 17, 1997, the City Council approved Vesting Tentative Map No. 95-0554 and Planned Industrial Development, Planned Residential Development . . . for the Torrey Hills development project on the property.

Attachment B, Recital B, p. 1. The 1998 Agreement was based on a population estimate of 6,270 for the purposes of establishing a baseline or criteria for calculating a set fixed park acreage to accommodate the project development as proposed at that time. The equation used to calculate the park acreage relied upon estimates since actual population numbers were not yet in existence (no units built). The 1998 Agreement does not specify that if the estimates turn out to be greater or less than the actual population that the developer or future developers would get a credit for excess park land provided or the City would be entitled to obtain additional park acreage from the developer. Since the proposed Torrey Hills Project adds residential units to an area of Torrey Hills not contemplated in the original 1998 Agreement, it would be a stretch to argue that the population estimates used in 1998 should now apply to a project proposed ten years later. The City was not required in the 1998 Agreement (contract terms) to guarantee a population or park credit. The 1998 Agreement did not state that the developer only had to provide 15.05 acres of park land only if the estimated population of 6,270 is achieved. In addition, there is no indication that the original developer ever sought to amend the Agreement because the population hoped for never materialized. The 1998 Agreement requires such an amendment to be in writing:

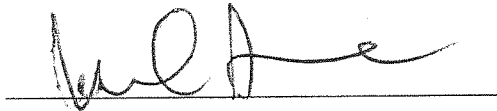
No amendment, modification, supplement, termination, or waiver of any provision of this Agreement shall be effective unless executed in writing by both parties.

Attachment B, Park Requirements, Section 14, p. 8. It is axiomatic that courts will extract only the mutual expressed intent, not the unexpressed intent, of the parties. *Brant v. California Dairies*, 4 Cal. 2d. 128, 133 (1935).

CONCLUSION

In conclusion, the City Attorney's office supports the original analysis of CPCI and DPR in the earlier determination that 3.5 acres was necessary to meet General Plan park requirements for the proposed Torrey Hills Project. The City should compute the required park acreage not on 370 residents as contemplated in the FEIR, which represents a fraction of the project population, but should compute the required park acreage using the whole population increase of 1,249 residents as originally contemplated by CPCI and the Department of Parks and Recreation.

MICHAEL J. AGUIRRE, City Attorney



ML-2008-17

MG:pev

Attachments:

cc: William Anderson, Deputy Chief Operating Officer
Beth Murray, Assistant Deputy Chief Operation Officer
Kelly Broughton, Development Services Director
Mary Wright, Deputy Director
Deborah Sharpe, Project Officer
John Fisher, Development Project Manager

Attachment A: March 21, 2008, Letter, Jeffrey C. Harkness, Park Designer, to Mark Rowson, Land Development Strategies, Inc., re: Torrey Hills VTM PTA #106228, Proposed Park Requirement.



THE CITY OF SAN DIEGO

March 21, 2008

Mark Rowson
Land Development Strategies, Inc.
16652 Maverick Lane
Poway, CA 92064

SUBJECT: Torrey Hills VTM PTS#106228
Proposed Park Requirement

Dear Mark;

This letter is in response to your letter of March 12, 2008 to John Fisher, City Development Project Manager, which proposes a methodology for satisfying off-site population-based park requirements for the Torrey Hills VTM.

The proposal is based on a project of 484 units, minus 99 units that have not been built within the Torrey Hills Community Plan Area as allowed under previous development agreements. This would leave a population-based park requirement for 385 units. (Your letter inaccurately indicated the number of units subject to population-based park requirements would be 395 using this methodology.)

Park Planning staff has reviewed your proposed methodology and can not support the request to reduce the unit count, which would reduce the population-based park acreage required to accommodate the new residents of the Torrey Hills VTM, for the reason explained below.

Population-based park requirements are based on population per the City's General Plan standards, not unit count. When calculating a community's population-based park needs, Park Planning staff utilizes SANDAG's Total Household Population Estimates which are based on the 2000 Census. According to SANDAG'S 2007 statistics, the current population in the Torrey Hills Community Planning Area is 5,391 people (2.58 people per household). Using the General Plan standards for population-based parks (2.8 acres per 1,000 people), Torrey Hills needs 15.09 useable acres of park land to serve the existing population. Currently, 13.22 useable acres of park land exists (4.0 acres of which is undeveloped.) This leaves the Torrey Hills Community with a current deficit of 1.87 useable acres of population-based parks for existing residents. To reduce the number of units in the Torrey Hills VTM which are subject to population-based park requirements would further exacerbate this deficiency.



City Planning and Community Investment

202 C Street, MS 4A • San Diego, CA 92101-3864
Tel (619) 235-5200 Fax (619) 533-5951

Resolution no. R-280787 and R-280788, states that "*The ability and capacity of parks and open spaces to provide for the recreational needs of the residents of the proposed development*" should be used to evaluate all development proposals within the Planned Urbanizing Areas. For the Torrey Hills VTM to meet this criterion, the population-based park requirements would need to address the entire 484 units. Therefore, population-based park requirements for this project shall be based on the following:

484 proposed units x 2.58 pph* = 1,249 residents

1,249 residents x 2.8 acres / 1,000 = 3.5 acres

3.5 acres - 1.05 acres on-site park = 2.45 acres

**(this persons per household figure has been adjusted from previous information provided to be consistent with 2007 SANDAG Estimates)*

Your letter referenced standard formulas that were provided in Garry Paper's e-mail dated November 19, 2007 to determine contributions that would be required of this project. However, the formulas provided only the land value for population-based parks (\$2,500,000/acre), but did not include the cost for the design and construction of the park improvements which is calculated at \$400,000 /acre. Additionally, staff has adjusted the land value by 15% to reflect the real estate market depreciation over the past few months. Therefore, the following revised population-based park calculation which includes updated persons per household estimates, the park design and construction cost, and reduced land value constitutes the proposed "contribution" for this project:

Land Value: 2.45 acres x \$2,125,000	= \$5,206,250
Design/Construction: 2.45 x \$400,000	= \$ 980,000
Recreation Center/Swimming Pool Value:	= \$ 195,500

Total "Contribution"

\$6,381,250

As the applicant requested, this "contribution" would be designated toward the development of the undeveloped corner of Torrey Hills Neighborhood Park.

Thank you for the opportunity to review your proposal. If you have any questions please call me at (619) 533-6595.

Sincerely,



Jeffrey C. Harkness
Park Designer

JCH/jch

Torrey Hills VTM PTS#106228

March 21, 2008

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Cc: Betsy McCullough, Assistant Planning Director, City Planning and Community
Investment (CP&CI), MS 5A
✓ Deborah Sharpe, Project Officer II, Park Planning Section, CP&CI, MS 5A
John Fisher, Development Project Manager, DSD, MS 302

Attachment B: January 8, 1998, Park Agreement between City of San Diego and
Westbrook Torrey Hills, LP.

PARK AGREEMENT

RECEIVED
JAN 26 1998

THIS PARK AGREEMENT ("Agreement") is entered into by and between the City of San Diego ("City"), a municipal corporation, and Westbrook Torrey Hills, L.P. ("Westbrook"), a Delaware limited partnership, effective as of January 8, 1998.

Recitals

A. Westbrook is the owner of certain real property located in City and known as the Torrey Hills property ("Property").

B. On March 17, 1997, the City Council of City ("City Council") approved Vesting Tentative Map No. 95-0554 ("VTM") and Planned Industrial Development, Planned Residential Development, Hillside Review, Coastal Development Permit No. 95-0554 ("PRD Permit") for the Torrey Hills development project ("Project") on the Property.

C. ~~Condition 76 of the VTM states that "Developer shall enter into an agreement with the City Manager to provide for the population-based park requirements of the proposed 2,098 dwelling units within this development or covered by letters of agreement."~~

D. Westbrook has retained Crosby Mead Benton & Associates ("Consultant") to design a neighborhood park ("Park") consistent with City standards.

E. The Consultant has prepared a General Development Plan - Preliminary Park Program ("GDP"), which is attached as Exhibit "A" to this Agreement, and an estimated development cost budget of One Hundred Fifty Thousand Dollars (\$150,000) per acre ("Estimated Budget") for the design and construction of the Park.

F. Westbrook desires to satisfy fully the requirements of Condition 76 of the VTM by entering into this Agreement with City.

G. City desires to ensure that the design and construction of the Park are consistent with City standards by entering into this Agreement with Westbrook.

H. Westbrook, pursuant to a valid consent granted by City, is a party to that certain Development Agreement between City and other developers in the Sorrento Hills Community Plan area ("Sorrento Hills"), filed May 15, 1989 as Document No. 00-173006 in the office of the City Clerk, San Diego, California ("Development Agreement"). Pursuant to the Development Agreement, Westbrook has the obligation to fund 9.2% of the actual cost of three parks in North City West, south of Carmel Valley Road, which parks were intended to satisfy the park requirements of development within Sorrento Hills.

I. In the most recent update of the Sorrento Hills Public Facility Financing

SD_DOCS\63084.4

DOCUMENT NO. C 08540
FILED JAN 21 1998
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIF.

Plan, the commitment referred to in Paragraph H of this Agreement applies to the Carmel Valley Community Park-South, including land and mitigation, park design and construction, and a recreation building (Projects 48-12A-1, 48A-12A-2, 48-12A-3); and Neighborhood Park - CV Neighborhood 10 (Project 48-12C). The justification section of the project sheets for these park projects states in part that "[t]he Sorrento Hills Area share represents 9.2% of the total. However, final percentages may be adjusted based on fair share criteria for General Plan Park requirements (Population-Based) and the development of Project 48-12D." Project 48-12D is the Park as defined in this Agreement.

J. The projected population to be generated within Sorrento Hills currently is 6,270, based upon the 2,104 dwelling units within Sorrento Hills and a population-generation factor of 2.98 persons per residential dwelling unit.

K. The population-based park requirements for Sorrento Hills is 17.56 gross acres and 15.05 net useable acres, based upon 2.8 and 2.4 acres per 1,000 population, respectively.

~~NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties herein expressed, City and Westbrook agree as follows:~~

1. Park Requirements.

1.1 Westbrook shall post a performance bond or letter of credit in favor of City in the amount of \$5,600,000, which will provide for all costs associated with the land acquisition of fourteen net useable acres of land, including the rough grading and adjacent public improvements, within thirty (30) days after the execution of this Agreement. Upon completion of the Park and acceptance by City pursuant to Section 9.3 of this Agreement, Westbrook shall deed the Park to City, consisting of Parcels 3, D, and E of Parcel Map Area B, as shown on the VTM, in accordance with Section 2 of this Agreement, but in any event prior to the Park being opened for public use. City shall release said performance bond or letter of credit upon acceptance of said deed for the Park.

1.2 Westbrook shall design and construct, in accordance with Section 9 of this Agreement, and at no cost to City, a fourteen net useable acre neighborhood park based upon the GDP, the Estimated Budget, and the provisions of Section 7 of this Agreement. Westbrook shall post two performance bonds or letters of credit in favor of City in the amounts of \$1,500,000 and \$600,000, for a total amount of \$2,100,000, within thirty (30) days after execution of this Agreement. If Section 1.3 of this Agreement is not applicable, the performance bonds or letters of credit shall be released upon acceptance of the deed for the Park referenced in Section 1.1 of this Agreement.

1.3 If Westbrook is not required to develop the four net useable acre site currently proposed for a YMCA, Westbrook shall post a performance bond or letter of credit in favor of City for the sum of \$600,000, less costs associated with that portion of the design and construction drawings for the four acre site to replace the \$600,000 performance bond or letter of credit referenced in Section 1.2 of this Agreement. Said performance bond or letter of credit shall be reduced as cash payments are made to City and released upon the earlier of the payment in cash to City of the full amount of said performance bond or letter of credit or the acquisition or design and construction of the first Carmel Valley South Community park project.

1.4 Westbrook shall post a performance bond or letter of credit in favor of City in the amount of \$624,750, within thirty (30) days after the execution of this Agreement, which will provide for the acquisition, design, and construction of the 1.05 net useable acre shortage of population based park requirements of the Project. The additional park acreage will be provided in the Carmel Valley South Community. The performance bond or letter of credit value was established on the basis of land costs of \$595,000 per acre, which includes grading, adjacent public improvements, and design and construction. Said performance bond or letter of credit shall be reduced as cash payments are made to City and released upon the earlier of the payment of \$624,750 to City or the acquisition or design and construction of the first Carmel Valley South Community park project.

1.5 Westbrook shall design and construct, subject to the provisions of Section 7 of this Agreement, and at no cost to City, a 3,135 square foot recreation building to be located within the Park. In lieu of designing and constructing the recreation building, Westbrook may elect, by providing written notice thereof to City and receiving City approval, to contribute \$627,000 toward the cost of the design and construction of a regional recreational facility ("Regional Facility"), which shall be either (a) a recreation building serving the joint Sorrento Hills-Carmel Valley South Community or (b) a YMCA facility providing the same or greater level of service to be located within the Park. Westbrook shall post a performance bond or letter of credit in favor of City in the amount of \$627,000 within thirty (30) days after the execution of this Agreement. Said performance bond or letter of credit shall be released upon the payment of \$627,000 to City for the cost of a Regional Facility or the issuance of an occupancy permit for the recreation building.

1.6 Within thirty (30) days after the execution of this Agreement, Westbrook shall post a performance bond or letter of credit in favor of City in the amount of \$363,660, which equals the Project's population-based fair-share cost of the Carmel Valley Town Center Swimming Pool ("Swimming Pool"). Said performance bond or letter of credit shall be reduced as cash payments are made to City for the cost of the Swimming Pool and released upon the earlier of the payment of \$363,660 to City or the public use of the Swimming Pool.

1.7 The obligations in the amounts of \$624,750, \$627,000, and \$363,660 described in Sections 1.4, 1.5, and 1.6 of this Agreement shall be increased annually on the anniversary of the effective date of this Agreement, in an amount equal to the percentage increase, if any, in the total estimated project costs for the applicable projects (21A-1 for

Sections 1.4 and 1.5 and 21A-22 for Section 1.6) of the Carmel Valley Public Facilities Financing Plan and Facilities Benefit Assessment, until such obligations are fully satisfied. The performance bonds and/or letters of credits posted pursuant to Section 5 of this Agreement to secure the obligations described in Sections 1.4, 1.5, and 1.6 of this Agreement shall be reviewed biannually and increased, if necessary, to equal the amount of the then applicable obligations.

2. Conveyance of Park. After acceptance of the Park by City, as provided for in Section 9.3 of this Agreement, Westbrook shall grant by deed the Park to City at no cost and free and clear of all encumbrances except:

2.1 Non-delinquent City and County general and specific taxes. Taxes owed will be determined by the County Tax Assessor's Office at the time of conveyance to City.

2.2 Any public improvement assessments imposed after the effective date of this Agreement.

2.3 Any covenants, conditions, restrictions, reservations, and existing easements of record as of the effective date of this Agreement or thereafter imposed and approved by City, which approval will not be unreasonably withheld.

3. Satisfaction of VTM Conditions. Westbrook shall be deemed to have satisfied the requirements of Condition 76 of the VTM upon the execution of this Agreement. City and Westbrook each acknowledge that the 2,098 dwelling units referred to in Condition 76 of the VTM was incorrect and agree that the correct number of dwelling units for Sorrento Hills is 2,104.

4. Satisfaction of Torrey View Development Project Requirement. On December 6, 1994, City approved Tentative Map No. 93-0142 ("Torrey View TM") and Planned Residential Development Permit No. 93-0142 ("Torrey View PRD") for the Torrey View development project, which is located adjacent to the Project. City agrees that Westbrook's execution of this Agreement shall be deemed to satisfy the requirements of Condition 44.b of the Torrey View TM and Conditions 2.f and 22 of the Torrey View PRD.

5. Satisfaction of the Development Agreement Park Obligations. Westbrook shall be deemed to have satisfied the park obligations included as part of the "Newland Pool Projects" in the Development Agreement upon the posting of the performance bonds and/or letters of credit in the following amounts, which total \$9,315,410:

5.1 \$5,600,000 pursuant to Section 1.1 of this Agreement.

5.2 \$1,500,000 pursuant to Section 1.2 of this Agreement.

5.3 \$600,000 pursuant to Section 1.2 of this Agreement.

5.4 \$624,750 pursuant to Section 1.4 of this Agreement.

5.5 \$627,000 pursuant to Section 1.5 of this Agreement.

5.6 \$363,660 pursuant to Section 1.6 of this Agreement.

The total obligations include all projects associated with the fourteen net useable acre neighborhood park in Sorrento Hills and the 1.05 net useable acre shortfall for population based park requirements of the Project that will be provided in the Carmel Valley South Community. Additionally, upon the receipt of the performance bonds or letters of credits referenced in this Section of the Agreement, City shall issue instructions to the Industrial Bank of Japan to reduce Letter of Credit No. SL0008675 (Bank of America Ref. # 3005763) by \$1,679,631.

6. Approval of Consultant, GDP, and Estimated Budget. City hereby approves the selection of the Consultant chosen by Westbrook to design the Park and, subject to Section 7 of this Agreement, the GDP and Estimated Budget prepared by the Consultant for the design and construction of the Park.

7. Final Approval of GDP and Recreation Building Design. The Consultant will present the GDP and recreation building design to the Local Recreation Council, Environmental Quality Division of City, Northern Area Committee, Design Review Committee, and City's Park and Recreation Board.

7.1 As a result of any presentation meetings described above, City may request changes in the GDP or recreation building design, if applicable, provided that the requested changes do not cause the Estimated Budget, as identified in Paragraph E, Section 1.2, and Section 1.5 of this Agreement, to increase by more than five percent (5%).

7.2 Promptly after the approval of the GDP and the recreation building design, if applicable, by City's Park & Recreation Board, the Consultant will prepare and deliver to City working drawings and specifications ("Specifications") consistent with the approved GDP and recreation building design, if applicable. The Consultant will, if requested by City, make changes to the Specifications but Westbrook shall not be responsible for implementing such changes if they would increase the Estimated Budget established pursuant to Section 7.1 of this Agreement. In such a case, the changes to the Specifications shall be considered phase two improvements to the Park and be the responsibility of City and not Westbrook.

7.3 The Specifications shall be subject to written approval of City and Westbrook.

8. Development Permit. After written approval of the Specifications and before the seven hundred fiftieth (750th) residential building permit for the Project is issued, Westbrook will apply for a development permit ("Permit") from City Development Services for the construction of the Park.

9. Construction. Promptly after the issuance of the Permit, Westbrook will start construction of the Park and will diligently pursue the completion of the Park within a one (1) year time period.

9.1 All Park construction will be accomplished in a good and workmanlike manner, lien free and in compliance with the (a) approved Specifications and (b) the current edition of Standard Specifications for Public Works Construction, including City of San Diego Standard Special Provisions ("Green Book") and City standard drawings. In the event of a conflict between the approved Specifications and the Green Book, the former will govern. When changes in the Specifications are made necessary due to reasonably unanticipated conditions encountered during construction or necessary changes in the Specifications after construction begins, a change order ("Change Order") may be necessary. Any Change Order to the Specifications must be approved by Westbrook and City. Westbrook shall notify City in writing of the need for a Change Order within five (5) working days of receiving a written request for such a Change Order from Consultant or a contractor. City shall exercise good faith and best efforts to grant or deny approval of the Change Order promptly. If City does not grant or deny the written request for a Change Order within five (5) working days after receiving written notice from Westbrook, the Change Order shall be deemed approved.

9.2 There shall be a pre-construction meeting to include Westbrook, the Consultant, the Park and Recreation Department, and City Field Inspection to review the Park and inspection requirements. The Park shall be inspected by a team composed of representatives of (a) the City Engineer, (b) the Park and Recreation Department, (c) Westbrook, and (d) the Consultant at the stages listed below:

- 9.2.1 Rough grading and drainage certification;
- 9.2.2 Mainline irrigation pressure test;
- 9.2.3 Hardscape (staking and layout);
- 9.2.4 Finish grading and soil preparation;
- 9.2.5 Irrigation coverage test;
- 9.2.6 Plant material (when delivered) and placement approval;
- 9.2.7 Pre-assembled equipment and/or on-site construction facilities;
- 9.2.8 An inspection ("Walk-Through Inspection") shall be conducted upon completion of the construction and planting requirements for the Park. A list of correction items ("Punch List") shall be prepared during the Walk-Through Inspection. Westbrook shall

correct these items within sixty (60) days of the date of the Walk-Through Inspection. Westbrook shall commence a plant maintenance period ("Plant Maintenance Period") upon the completion of the Walk-Through Inspection. The Plant Maintenance Period shall last no longer than ninety (90) days.

9.2.9 A final inspection for the Park ("Final Inspection") shall be scheduled upon completion of the Plant Maintenance Period as set forth in Section 9.2.8 above. Failure to pass the Final Inspection will result in an extension of the Plant Maintenance Period until outstanding items have been corrected. Upon completion of the Final Inspection, the Park shall be accepted by City.

9.3 Any minor items noted in the Final Inspection shall be corrected by Westbrook within thirty (30) calendar days of the date of the Final Inspection. A temporary construction fence may be erected and may remain until final acceptance by City. It is agreed between City and Westbrook that the Park shall not be available for use by the public until final acceptance by City.

9.4 During the Plant Maintenance Period, Westbrook will deliver to City As-Built drawings, and certificates from such consultants as City requests, stating that the Park was constructed in compliance with the Specifications, except as modified by the As-Built drawings.

9.5 City shall have the right to enter the Park area at any reasonable time for the purpose of inspection prior to its acceptance of the Park.

10. Conveyance Not a Violation. City represents to Westbrook that the conveyance of the Park to City pursuant to this Agreement shall not constitute a violation of the State Subdivision Map Act or City's Subdivision Ordinance.

11. Delay Beyond Westbrook's Control. If delays occur in the construction of the Park, through events or circumstances not within the direct control of Westbrook, Westbrook will not be considered to be in default of its obligations to construct the Park. Westbrook shall be excused for, among other things, any delays or defaults in the performance of this Agreement unavoidably caused by City or any other governmental authority, acts of God, the elements, war, litigation, shortage of materials, labor strikes, walkouts, or other causes beyond Westbrook's direct control.

12. Indemnity. Westbrook agrees to defend, indemnify, protect, and hold City and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Westbrook's employees, agents, or officers which arise from or are connected with and are caused or claimed to be caused by the acts or omissions of Westbrook, and its agents, officers, or employees, in performing the work or services herein, and all expenses of investigating and defending against

same; provided, however, that Westbrook's duty to indemnify and hold harmless shall not include any claims or liability arising from the established negligence or willful misconduct of City, its agents, officers, or employees. City and Westbrook agree that, in the event of any joint or concurrent negligence, they will apportion any established or agreed upon liability proportionate to their respective degree of fault. This provision shall remain in full force and effect until twelve (12) months after City accepts the Park pursuant to this Agreement.

13. Termination of Memorandum and Agreement. The execution of this Agreement shall supersede and thereby terminate the Memorandum of Agreement entered into by City and AG Land Associates, LLC and dated October 31, 1995. In addition, except as to the provisions of Section 12 above, City shall provide Westbrook with a written release of this Agreement upon fulfillment of Westbrook's obligations as set forth herein to the reasonable satisfaction of City.

14. Amendments. No amendment, modification, supplement, termination, or waiver of any provision of this Agreement shall be effective unless executed in writing by both parties.

15. Successors in Interest. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all parties to this Agreement have been succeeded by another entity, and all rights and obligations of the parties signatory to this Agreement shall be vested in and binding on their successors in interest.

16. Further Assurances. City and Westbrook each agree to execute and deliver such additional documents and issue such governmental permits as may be required to effectuate the purposes of this Agreement.

17. Assignment. Westbrook shall have the right to transfer or assign this Agreement, in whole or in part, to any person, partnership, joint venture, firm, or corporation at any time during the term of this Agreement; provided, however, that the rights of Westbrook under this Agreement may not be transferred or assigned to a person or entity that is not an affiliate or subsidiary of Westbrook unless the written consent of City Manager is first obtained. Any transfer or assignment of the rights under this Agreement shall include in writing the assumption of the duties, obligations, and liabilities arising from this Agreement. Such transfer or assignment to a person or entity that is not an affiliate or subsidiary of Westbrook shall not relieve Westbrook of any duty, obligation, or liability to City without the consent of the City.

Manager. If required, the City Manager's consent to the transfer, assignment, and release of liability shall not be unreasonably withheld.

THE CITY OF SAN DIEGO

By: Marian C. Madrid
City Manager

Dated: January 20, 1998

WESTBROOK TORREY HILLS, L.P.,
a Delaware limited partnership

By: Westerra Management, L.L.C.
Authorized Representative

By: John T. Potts

Name: John T. Potts

Title: Senior Vice President

Dated: January 8, 1998

[Signature]

AS TO FORM AMENDMENT

Deputy City Atty

EXHIBIT "A"

Torrey Hills Neighborhood Park General Development Plan - Preliminary Park Program

Two (2) baseball/softball fields (one minimum 300' field, with lighting)

One (1) Basketball court (full court with two baskets)

One (1) Multi-purpose field (minimum size 150' X 300')

Tot lot play area (with interactive sand play)

Children's play area

Restrooms (with concessions area)

Group picnic area

Exercise par-course

Sand volleyball court

Passive use turf area

Off street parking facilities

Security lighting

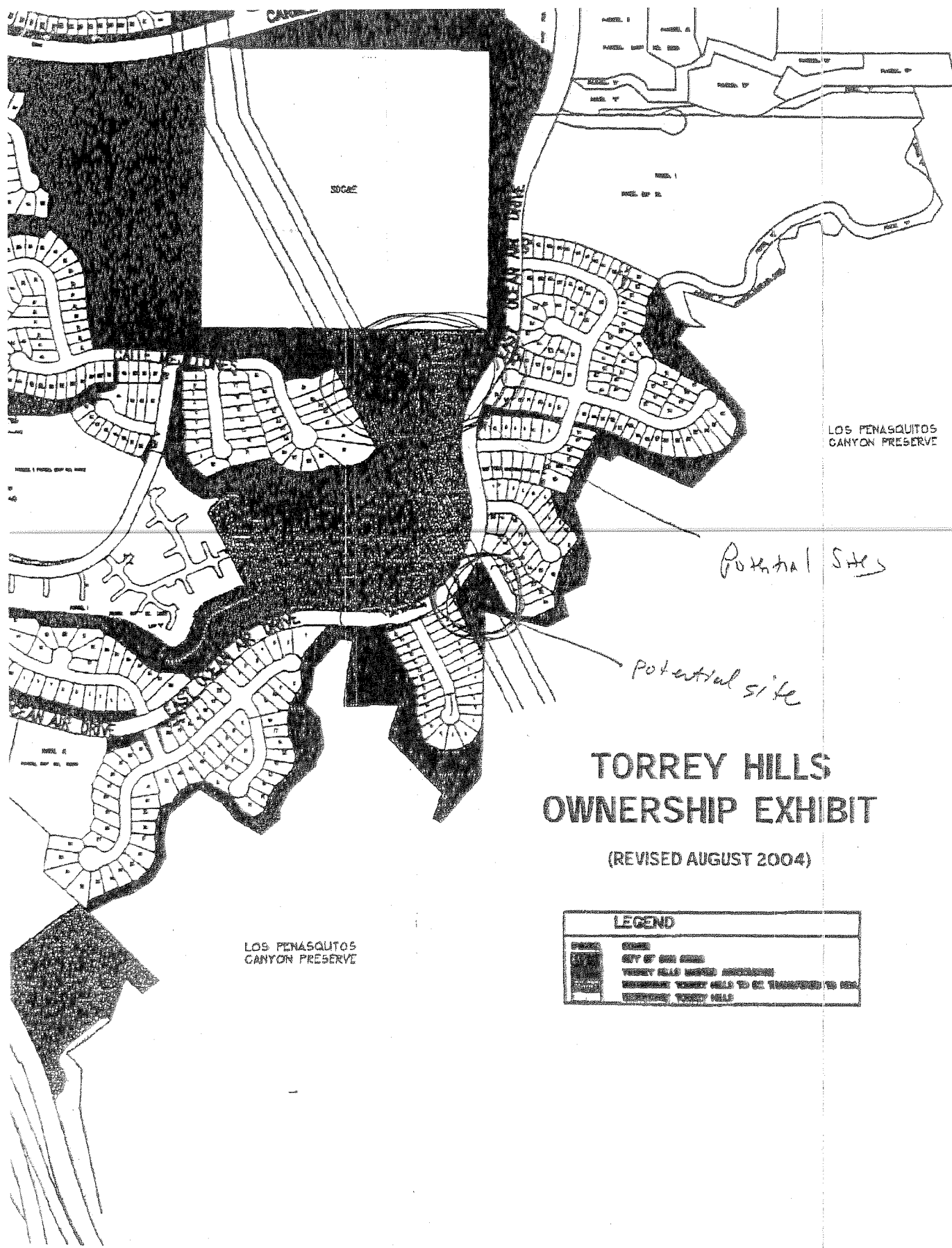
Standard park furniture - benches, trash receptacles, drinking fountains, picnic tables, charcoal disposal units

Security fencing

Landscaping (fully improved planting and irrigation)

Park identification\signage

Concrete sidewalks to provide barrier free pedestrian access



TORREY HILLS OWNERSHIP EXHIBIT

(REVISED AUGUST 2004)

LEGEND	
	STATE
	CITY OF SAN ANTONIO
	TORREY HILLS NATURE ASSOCIATION
	UNDEVELOPED TORREY HILLS TO BE TRANSFERRED TO SAN ANTONIO
	UNDEVELOPED TORREY HILLS

Attachment C: Excerpts from Development Services Department, Project Issues Report,
Torrey Hills VTM Project No. 106228.

Project Type: Discretionary

Status: In Review

Project Mgr: Fisher, John

Job Order:

System Managed: Current: ☐ Always: ☐

Matrix Code: C

Preliminary Review Wanted: ☐

Create Date: 6/16/2006 02:46 PM

Status Date: 7/14/2006 01:17 PM

Processing Code: Standard

Deemed Complete: 7/14/2006 01:17 PM

Expedite Reason:

Application Date: 7/14/2006 05:00 PM

Expiration Code: 720 days

Expiration Date: 10/29/2009 05:00 PM

Title: Torrey Hills VTM

Scope: Torrey Hills JO#42-6605 (PROCESS-5) Community Plan Amendment and Rezone from IP 2-1 and RM 2-5 to RM 3-8, Vesting Tentative Map and Planned Development Permit to allow tandem parking and to create 484 condos and 5,000 square feet of commercial/office space on a 22.3 acre site located south of Calle Mar De Mariposa between Vista Sorrento Parkway and West Ocean Air Drive in the IP-2-1 and RM-2-5 zone in the Torrey Hills Community Plan.

Added: YM3 6/16/2006 02:48 PM

Updated: JSFISHER 3/18/2008 03:51 PM

34A-004

Project Information

Project Nbr: 106228 Title: Torrey Hills VTM
Project Mgr: Fisher, John (619) 446-5231 jsfisher@sandiego.gov *106228*

Review Information

Cycle Type: 6 Submitted (Multi-Discipline) Submitted: 06/26/2006 Deemed Complete on 07/14/2006
Reviewing Discipline: LDR-Planning Review Cycle Distributed: 07/14/2006
Reviewer: Lopez, Ismael Assigned: 07/26/2006
(619) 687-5966 Started: 08/18/2006
Hours of Review: 6.00 Review Due: 08/18/2006
Next Review Method: Submitted (Multi-Discipline) Completed: 08/23/2006 COMPLETED LATE
Closed: 08/24/2006

The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: First Review Issues.
We request a 2nd complete submittal for LDR-Planning Review on this project as: Submitted (Multi-Discipline).
The reviewer has requested more documents be submitted.
Your project still has 10 outstanding review issues with LDR-Planning Review (all of which are new).
Last month LDR-Planning Review performed 117 reviews, 78.6% were on-time, and 44.1% were on projects at less than < 3 complete submittals.

1st Review

Information Only

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	1	The proposed project is located in the IP-2-1 and RM-2-5 zones, the Torrey Hills/Sorrento Hills Community Plan, the Marine Corps Air Station Miramar Airport Influence Area and is regulated by the Torrey Hills PID 95-0554. (New Issue)
<input checked="" type="checkbox"/>	2	The project proposes to rezone lots 1-4 Final Map no. 14301, to RM-3-9, construct 484 condominiums, 4,000 s.f. of commercial use and 1,002 parking spaces on a 22.3 acre site. (New Issue)
<input checked="" type="checkbox"/>	3	The project requires a Rezone, a Planned Development Permit (PDP), Land Development Review (LDR), Section 126.0601, Vesting Tentative Map, and an amendment to PID 95-0554 of the Torrey Hills component. The proposed project will be brought up to the highest applicable decision process, with Planning Commission recommendation to City Council. (New Issue)
<input checked="" type="checkbox"/>	4	The site is not subject to the Environmentally Sensitive Lands (ESL), according to Section 143.0110, because the site has already been graded as approved on PID 95-0554; therefore, a Site Development Permit will not be required. (New Issue)
<input type="checkbox"/>	5	The following issues will have to be considered in order to support the project for approval: (New Issue)

PDP

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	6	The proposed project will be deviating from the parking regulations in order to include 25 tandem parking spaces in the calculations. The project site is currently outside the Residential Tandem Parking Overlay Zone, Section 132.0901 and Map no. C-922, which means that any tandem parking spaces provided will only be counted as one parking space. (New Issue)
<input type="checkbox"/>	7	The tandem parking spaces may be included subject to a PDP deviation of the parking regulations and support for approval from the Transportation discipline. Planning staff may only support this deviation unless it is reviewed and approved by the Transportation discipline. (New Issue)

Use

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	8	Please clarify and justify the commercial space proposed. The RM-3-9 zone does not allow commercial uses other than what is called on Section 131.0423 a & b (Table 131-04B). Will this be a mixed-use development? Please state if this will be retail and commercial use as permitted in this zone and provide the elevations for this building. (New Issue)

Easements

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	9	Please overlay the Building Restricted Easement on the site plan to show where the limits of development are in relation to the easement. If the proposed project is encroaching beyond the existing easement, then a Easement Vacation might be required, please refer to the Engineering discipline for additional information. (New Issue)
<input type="checkbox"/>	10	According to the Land Use Plan, the building restricted easement appears to delineate the designated open space boundary. The area should remain and no development will be allowed. (New Issue)

For questions regarding the 'LDR-Planning Review' review, please call Ismael Lopez at (619) 687-5966. Project Nbr: 106228 / Cycle: 6

64A-004

Review Information

Cycle Type: 7 Submitted (Multi-Discipline)	Submitted: 12/12/2006	Deemed Complete on 12/12/2006
Reviewing Discipline: Park & Rec	Cycle Distributed: 12/12/2006	
Reviewer: Harkness, Jeff (619) 533-6595	Assigned: 12/15/2006	
Hours of Review: 1.00	Started: 01/08/2007	
Next Review Method: Submitted (Multi-Discipline)	Review Due: 01/10/2007	
	Completed: 01/10/2007	COMPLETED ON TIME
	Closed: 01/25/2007	

This review was not counted as a full review because the customer elected to partially submit, or this is a review for a phased project. The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Partial Response to Cmnts/Regs. The reviewer has requested more documents be submitted. Your project still has 2 outstanding review issues with Park & Rec (2 of which are new issues). The reviewer has not signed off 1 job. Last month Park & Rec performed 40 reviews, 82.5% were on-time, and 79.4% were on projects at less than < 3 complete submittals.

Review 8-18-06

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	1	This project was reviewed for conformance with the City's Progress Guide and General Plan guidelines for population-based parks, the [name of community] Community Plan and the [name of community] Public Facilities Financing Plan (PFFP). (From Cycle 6)
<input checked="" type="checkbox"/>	2	The City's Progress Guide and General Plan guidelines recommend a minimum 10.0 acre neighborhood park for every 3,500-5,000 residents located within .5 mile service radius and a minimum 20 acre community park and a recreation center for every 18,000-25,000 residents located within 1.5 mile service radius. For every 50,000 residents, a community swimming pool is recommended within 1.5 - 2 miles service radius. (From Cycle 6)
<input checked="" type="checkbox"/>	3	The Torrey Hills Community currently has a park deficit of 3.06 useable acres. This project proposal would raise the deficit to 5.56 useable acres. It is strongly encouraged that the applicant address their public park requirements on site. (From Cycle 6)
<input checked="" type="checkbox"/>	4	The plans currently show a "public" park. If the applicant's intention is to provide the required public park facilities on-site, per the City's Progress Guide and General Plan guidelines, the project would need to provide a 2.5 useable (2% grade) acre park within a separate parcel that is deeded to the City. (From Cycle 6)
<input checked="" type="checkbox"/>	5	cont'. This park would then need to include a public input process per Council Policy 600-33 "Community Notification and Input for City-Wide Park Development Projects", and be built to City Standards and the Consultant's Guide to Park Development. For this permit, the park area would need to be void of any improvements and labeled "future public park". (From Cycle 6)
<input checked="" type="checkbox"/>	6	cont'. Additionally, the subdivider would be required to provide a pro rata share of the cost of a community recreation building and a community swimming pool, to be paid as a portion of the Facilities Benefit Assessment (FBA) park fees at the time of issuance of building permits. These fees are based on current fair market value of the land and current design and construction costs, determined by the Park Planning and Development Division, at time of building permit issuance. (From Cycle 6)
<input checked="" type="checkbox"/>	7	cont'. If it is not the intention of the applicant to provide a public park, please re-label the park to "private" park. (From Cycle 6)
<input checked="" type="checkbox"/>	8	The Planning Department has determined that the proposed development requires a community plan amendment to accommodate the increase in dwelling units. This project would trigger a PFFP amendment to include the population-based park and recreational facilities needed to serve the new residents associated with this project if this hasn't already been addressed through public park facilities on-site. The City would amend the PFFP, that would result in an increase to the base dollar amount of the park requirements to the per-unit Facilities Benefit Assessment FBA. (From Cycle 6)
<input checked="" type="checkbox"/>	9	All building restricted easement on the surrounding open space areas will be privately owned and maintained. Therefore, there are no open space issues with this project. (From Cycle 6)

Review 1-10-07

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	10	The response to comment 12 of LDR Planning indicates that the park is to remain private to satisfy private open space requirements. Private open space requirements can not also satisfy population-based park requirements. (New Issue)

For questions regarding the 'Park & Rec' review, please call Jeff Harkness at (619) 533-6595. Project Nbr: 106228 / Cycle: 7

64A-004

<u>Issue</u>		
<u>Cleared?</u>	<u>Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	11	The Park and Recreation Dept. would like to meet with the applicant, as proposed in responses to P&R comments, to discuss the potential for satisfying population-based park requirements within the community that would be consistent with the Public Facilities Financing Plan amendment required by this project. (New Issue)

or questions regarding the 'Park & Rec' review, please call Jeff Harkness at (619) 533-6595. Project Nbr: 106228 / Cycle: 7

4/11

64A-004

Review Information

Cycle Type: 15 Submitted (Multi-Discipline)	Submitted: 04/16/2007	Deemed Complete on 04/18/2007
Reviewing Discipline: Park & Rec	Cycle Distributed: 04/18/2007	
Reviewer: Harkness, Jeff (619) 533-6595	Assigned: 04/23/2007	
	Started: 05/01/2007	
Hours of Review: 1.00	Review Due: 05/02/2007	
Next Review Method: Submitted (Multi-Discipline)	Completed: 05/02/2007	COMPLETED ON TIME
	Closed: 05/07/2007	

The review due date was changed to 05/02/2007 from 05/16/2007 per agreement with customer.

The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Partial Response to Cmnts/Regs.

We request a 3rd complete submittal for Park & Rec on this project as: Submitted (Multi-Discipline).

The reviewer has requested more documents be submitted.

Your project still has 4 outstanding review issues with Park & Rec (4 of which are new issues).

The reviewer has not signed off 1 job.

Last month Park & Rec performed 40 reviews, 82.5% were on-time, and 79.4% were on projects at less than < 3 complete submittals.

Review 1-10-07

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	10	The response to comment 12 of LDR Planning indicates that the park is to remain private to satisfy private open space requirements. Private open space requirements can not also satisfy population-based park requirements. (From Cycle 7)
<input checked="" type="checkbox"/>	11	The Park and Recreation Dept. would like to meet with the applicant, as proposed in responses to P&R comments, to discuss the potential for satisfying population-based park requirements within the community that would be consistent with the Public Facilities Financing Plan amendment required by this project. (From Cycle 7)

Review 4-02-07

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	12	The Park and Recreation Dept. has met with the applicant to discuss the potential for satisfying population-based park requirements within the community that would be consistent with the Public Facilities Financing Plan amendment required by this project. As the applicant has stated in their response, the discussion will continue and the project will be conditioned accordingly. (New Issue)
<input type="checkbox"/>	13	At the last meeting with the applicant, it was requested that the proposed acres of useable park land be provided to the Park and Recreation Dept for consideration in satisfying a portion of the population-based park requirements of the project. Please provide this before, or in the next review cycle. (New Issue)
<input type="checkbox"/>	14	The Park and Recreation Dept's definition for useable acreage is as follows: Useable Acres means a graded pad not exceeding 2 % rough grade, or gently sloping land not exceeding 10% grade, as required to provide for structured, public recreational programs of an active nature common to local parks in the City of San Diego (such as ball games or court games) or unstructured public recreational activities, (New Issue)
<input type="checkbox"/>	15	con't. such as children's play areas, appreciation of open spaces, or a combination thereof, unconstrained by environmental restrictions that would prevent its use as a park and recreation facility, free of structures, roads or utilities, and unencumbered by easements of any kind. (New Issue)

or questions regarding the 'Park & Rec' review, please call Jeff Harkness at (619) 533-6595. Project Nbr: 106228 / Cycle: 15

5/11

64A-004

Review Information

Cycle Type: 15 Submitted (Multi-Discipline)	Submitted: 04/16/2007	Deemed Complete on 04/18/2007
Reviewing Discipline: Plan-Facilities Financing	Cycle Distributed: 04/18/2007	
Reviewer: Sheffield, Megan (619) 533-3672	Assigned: 04/23/2007	
	Started: 04/27/2007	
Hours of Review: 3.50	Review Due: 05/02/2007	
Next Review Method: Conditions	Completed: 05/03/2007	COMPLETED LATE
	Closed: 05/07/2007	

The review due date was changed to 05/02/2007 from 05/16/2007 per agreement with customer.

We request a 3rd complete submittal for Plan-Facilities Financing on this project as: Conditions.

The reviewer has requested more documents be submitted.

Your project still has 1 outstanding review issues with Plan-Facilities Financing (1 of which are new issues).

Last month Plan-Facilities Financing performed 44 reviews, 97.7% were on-time, and 76.9% were on projects at less than < 3 complete submittals.

ADT Calculation

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	1	Developer will need to identify the existing ADT allocation, and how that allocation will change with this rezone. Contact: Megan Sheffield, Facilities Financing Project Manager (619) 533-3672. (From Cycle 6)

Community Plan Amendment

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input checked="" type="checkbox"/>	2	With the required Community Plan Amendment, an update to the Public Facilities Financing Plan would also be required. Contact: Megan Sheffield, Facilities Financing Project Manager (619) 533-3672. (From Cycle 6)

Housing Trust Fund

<u>Cleared?</u>	<u>Issue Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	3	4,000 square feet of non-residential development would be charged a Housing Trust Fund (HTF) fee of \$2,560. (New Issue) [Recommended]

or questions regarding the 'Plan-Facilities Financing' review, please call Megan Sheffield at (619) 533-3672. Project Nbr: 106228 / Cycle: 15

6/11

64A-004

Review Information

Cycle Type: 23 Submitted (Multi-Discipline) Submitted: 11/09/2007 Deemed Complete on 11/09/2007
Reviewing Discipline: Park & Rec Cycle Distributed: 11/09/2007
Reviewer: Harkness, Jeff Assigned: 11/13/2007
(619) 533-6595 Started: 11/27/2007
Hours of Review: 3.00 Review Due: 12/05/2007
Next Review Method: Submitted (Multi-Discipline) Completed: 11/28/2007 COMPLETED ON TIME
Closed: 12/06/2007

The review due date was changed to 12/05/2007 from 12/12/2007 per agreement with customer.

The reviewer has indicated they want to review this project again. Reason chosen by the reviewer: Partial Response to Cmnts/Regs.

We request a 4th complete submittal for Park & Rec on this project as: Submitted (Multi-Discipline).

The reviewer has requested more documents be submitted.

Your project still has 12 outstanding review issues with Park & Rec (12 of which are new issues).

The reviewer has not signed off 1 job.

Last month Park & Rec performed 40 reviews, 82.5% were on-time, and 79.4% were on projects at less than < 3 complete submittals.

Review 4-02-07

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	12	The Park and Recreation Dept. has met with the applicant to discuss the potential for satisfying population-based park requirements within the community that would be consistent with the Public Facilities Financing Plan amendment required by this project. As the applicant has stated in their response, the discussion will continue and the project will be conditioned accordingly. (From Cycle 15)
<input checked="" type="checkbox"/>	13	At the last meeting with the applicant, it was requested that the proposed acres of useable park land be provided to the Park and Recreation Dept for consideration in satisfying a portion of the population-based park requirements of the project. Please provide this before, or in the next review cycle. (From Cycle 15)
<input checked="" type="checkbox"/>	14	The Park and Recreation Dept's definition for useable acreage is as follows: Useable Acres means a graded pad not exceeding 2 % rough grade, or gently sloping land not exceeding 10% grade, as required to provide for structured, public recreational programs of an active nature common to local parks in the City of San Diego (such as ball games or court games) or unstructured public recreational activities, (From Cycle 15)
<input checked="" type="checkbox"/>	15	con't. such as children's play areas, appreciation of open spaces, or a combination thereof, unconstrained by environmental restrictions that would prevent its use as a park and recreation facility, free of structures, roads or utilities, and unencumbered by easements of any kind. (From Cycle 15)

Review 11-27-07

Cleared?	Issue Num	Issue Text
<input type="checkbox"/>	16	A recreation easement is required over 1.05 acres of Lot 3 to allow for public use. The property line for Lot 3 should reflect the easement area (1.05 acres) and not include the slope areas. (New Issue)
<input type="checkbox"/>	23	The Recreation Easement shall read as follows: WE (I) HEREBY GRANT TO THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, A PERMANENT EASEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF RECREATIONAL FACILITIES, INCLUDING, BUT NOT LIMITED TO, LANDSCAPING, IRRIGATION SYSTEMS, EROSION CONTROL FACILITIES, HIKING TRAILS, EQUESTRIAN TRAILS, BIKEWAYS, AND RELINQUISH ANY AND ALL RIGHT TO CONSTRUCT, ERECT, OR MAINTAIN ANY ABOVEGROUND ROOFED BUILDING OR COVERED STRUCTURE EXCEPT FOR RECREATIONAL BUILDING AND (New Issue)
<input type="checkbox"/>	24	con't. AND ASSOCIATED FACILITIES, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO THE GENERAL PUBLIC, OVER, UPON, AND ACROSS LOT 3, AS SHOWN ON THIS MAP WITHIN THIS SUBDIVISION AND DESIGNATED 'RECREATION EASEMENT GRANTED HEREON'. ALSO GRANTING TO THE CITY OF SAN DIEGO THE RIGHT TO PERMIT ANY PUBLIC UTILITY COMPANY TO CONSTRUCT DISTRIBUTION FACILITIES, PROVIDED SUCH FACILITIES ARE CONSTRUCTED UNDERGROUND. RESPONSIBILITY FOR MAINTENANCE OF SAID REAL PROPERTY SHALL REMAIN (New Issue)
<input type="checkbox"/>	25	con't. WITH THE OWNER OF THE FEE TITLE UNDERLYING SAID EASEMENT(S) HEREIN GRANTED AND NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO ASSIGN ANY MAINTENANCE RESPONSIBILITY TO THE CITY OF SAN DIEGO. (New Issue)
<input type="checkbox"/>	17	Retaining walls along the access drive adjacent to Lot 3 should not extend past the building set back. (New Issue)
<input type="checkbox"/>	18	A fence is required on any retaining wall over 30 inches in height. (New Issue)

Conditions

Cleared?	Issue Num	Issue Text
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or questions regarding the 'Park & Rec' review, please call Jeff Harkness at (619) 533-6595. Project Nbr: 106228 / Cycle: 23

7/11

<u>Issue</u>		
<u>Cleared?</u>	<u>Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	20	The Applicant shall place a recreation easement over 1.05 acres of useable recreation area of no more than a 2% grade within Lot 3. (New Issue)
<input type="checkbox"/>	30	Prior to Final Map recordation, the Applicant shall enter into a Park Development Agreement with the City to provide 1.05 acres of useable park (Lot 3) developed to City standards and specifications. (New Issue)
<input type="checkbox"/>	21	The Applicant shall provide a General Development Plan (GDP) for Lot 3, designed with public input, per Council Policy 600-33, COMMUNITY NOTIFICATION AND INPUT FOR CITY-WIDE PARK DEVELOPMENT PROJECTS. The GDP shall include any fencing that is part of the "park" boundaries. (New Issue)
<input type="checkbox"/>	22	The Applicant shall ensure that the GDP includes pedestrian access, in conformance with the Americans with Disabilities Act, to Lot 3 from Lots 2 & 5. (New Issue)
<input type="checkbox"/>	31	Prior to issuance of any Certificate of Occupancy, the Applicant shall complete construction of park improvements (New Issue)
<input type="checkbox"/>	28	Prior to building permit issuance, the Applicant shall pay a fee for the balance of park requirements in the amount of \$4,593,000, as follows: \$4,512,000 to be used for the design and construction of a 10,000 square foot recreation center and associated amenities on 1.51 acres at Torrey Hills Neighborhood Park; and \$81,000, to be used for the pro-rata share of a community swimming pool for the Torrey Hills Community. (New Issue)

64A-004

Review Information

Cycle Type: 28 Submitted (Multi-Discipline) Submitted: 02/22/2008 Deemed Complete on 02/22/2008
Reviewing Discipline: Park & Rec Cycle Distributed: 02/22/2008
Reviewer: Harkness, Jeff Assigned: 02/25/2008
(619) 533-6595 Started: 03/07/2008
Hours of Review: 1.00 Review Due: 03/07/2008
Next Review Method: Conditions Completed: 03/07/2008 COMPLETED ON TIME
Closed: 03/24/2008

The review due date was changed to 03/28/2008 from 03/21/2008 per agreement with customer.

We request a 5th complete submittal for Park & Rec on this project as: Conditions.

The reviewer has requested more documents be submitted.

Your project still has 6 outstanding review issues with Park & Rec (1 of which are new issues).

The reviewer has not signed off 1 job.

Last month Park & Rec performed 40 reviews, 82.5% were on-time, and 79.4% were on projects at less than < 3 complete submittals.

Review 11-27-07

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	16	A recreation easement is required over 1.05 acres of Lot 3 to allow for public use. The property line for Lot 3 should reflect the easement area (1.05 acres) and not include the slope areas. (From Cycle 23)
<input checked="" type="checkbox"/>	23	The Recreation Easement shall read as follows: WE (I) HEREBY GRANT TO THE CITY OF SAN DIEGO, A MUNICIPAL CORPORATION, A PERMANENT EASEMENT FOR THE CONSTRUCTION AND MAINTENANCE OF RECREATIONAL FACILITIES, INCLUDING, BUT NOT LIMITED TO, LANDSCAPING, IRRIGATION SYSTEMS, EROSION CONTROL FACILITIES, HIKING TRAILS, EQUESTRIAN TRAILS, BIKEWAYS, AND RELINQUISH ANY AND ALL RIGHT TO CONSTRUCT, ERECT, OR MAINTAIN ANY ABOVEGROUND ROOFED BUILDING OR COVERED STRUCTURE EXCEPT FOR RECREATIONAL BUILDING AND (From Cycle 23)
<input checked="" type="checkbox"/>	24	con't. AND ASSOCIATED FACILITIES, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO THE GENERAL PUBLIC, OVER, UPON, AND ACROSS LOT 3, AS SHOWN ON THIS MAP WITHIN THIS SUBDIVISION AND DESIGNATED 'RECREATION EASEMENT GRANTED HEREON'. ALSO GRANTING TO THE CITY OF SAN DIEGO THE RIGHT TO PERMIT ANY PUBLIC UTILITY COMPANY TO CONSTRUCT DISTRIBUTION FACILITIES, PROVIDED SUCH FACILITIES ARE CONSTRUCTED UNDERGROUND. RESPONSIBILITY FOR MAINTENANCE OF SAID REAL PROPERTY SHALL REMAIN (From Cycle 23)
<input checked="" type="checkbox"/>	25	con't. WITH THE OWNER OF THE FEE TITLE UNDERLYING SAID EASEMENT(S) HEREIN GRANTED AND NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO ASSIGN ANY MAINTENANCE RESPONSIBILITY TO THE CITY OF SAN DIEGO. (From Cycle 23)
<input checked="" type="checkbox"/>	17	Retaining walls along the access drive adjacent to Lot 3 should not extend past the building set back. (From Cycle 23)
<input checked="" type="checkbox"/>	18	A fence is required on any retaining wall over 30 inches in height. (From Cycle 23)

Conditions

Cleared?	Issue Num	Issue Text
<input checked="" type="checkbox"/>	20	The Applicant shall place a recreation easement over 1.05 acres of useable recreation area of no more than a 2% grade within Lot 3. (From Cycle 23)
<input type="checkbox"/>	30	Prior to Final Map recordation, the Applicant shall enter into a Park Development Agreement with the City to provide 1.05 acres of useable park (Lot 3) developed to City standards and specifications. (From Cycle 23)
<input type="checkbox"/>	21	The Applicant shall provide a General Development Plan (GDP) for Lot 3, designed with public input, per Council Policy 600-33, COMMUNITY NOTIFICATION AND INPUT FOR CITY-WIDE PARK DEVELOPMENT PROJECTS. The GDP shall include any fencing that is part of the "park" boundaries. (From Cycle 23)
<input type="checkbox"/>	22	The Applicant shall ensure that the GDP includes pedestrian access, in conformance with the Americans with Disabilities Act, to Lot 3 from Lots 2 & 5. (From Cycle 23)
<input type="checkbox"/>	31	Prior to issuance of any Certificate of Occupancy, the Applicant shall complete construction of park improvements (From Cycle 23)
<input type="checkbox"/>	28	Prior to building permit issuance, the Applicant shall pay a fee for the balance of park requirements in the amount of \$4,593,000, as follows: \$4,512,000 to be used for the design and construction of a 10,000 square foot recreation center and associated amenities on 1.51 acres at Torrey Hills Neighborhood Park; and \$81,000, to be used for the pro-rata share of a community swimming pool for the Torrey Hills Community. (From Cycle 23)

Review 3-07-08

Conditions

For questions regarding the 'Park & Rec' review, please call Jeff Harkness at (619) 533-6595. Project Nbr: 106228 / Cycle: 28

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<u>Issue</u>		
<u>Cleared?</u>	<u>Num</u>	<u>Issue Text</u>
<input type="checkbox"/>	32	The Applicant shall place a recreation easement over 1.05 acres of useable recreation area within Lot 3. (New Issue)

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