

DATE: October 4, 1989

TO: Milon Mills, Jr., Water Utilities Director  
FROM: City Attorney  
SUBJECT: Resource Protection Ordinance

By means of a memorandum, you recently inquired whether the Resource Protection Ordinance (San Diego Municipal Code section 101.0462 et seq.) as successor to the Resource Protection Overlay Zone (REPOZ) applies to require permits/approvals for public projects undertaken by the Water Utilities Department.

Our memorandum of law of May 25, 1988 (attached) articulated the general legal principle that the City is not bound by its own land regulations unless specifically mandated in the controlling ordinance. Section 101.0462 requires that improvements within regulated areas obtain a Resource Protection Permit. However, this permit is not specifically required of the City. Moreover, like its predecessor, Section 101.0462 has express exemptions:

K. PERMIT EXEMPTIONS

A Resource Protection Permit shall not be required for the following development, however, this development must comply with all other adopted City plans, ordinances and regulations.

....

14. Any park development plan, including but not limited to public recreational facilities, public-owned playing fields, and public-owned golf courses, or major public facility project which has been the subject of a public hearing at the City Council and has been released by the City Council upon making findings that the plan or project under consideration contains specific development requirements and/or environmentally sensitive area mitigation measures sufficient to achieve the general purpose and intent of this ordinance. . . .

San Diego Municipal Code section 101.0462 K.14. emphasis added

Since major water utility projects would be the "subject of a public hearing" and undoubtedly contain "specific development requirements" or "environmentally sensitive mitigation measures," the express exemption would relieve the public utility from obtaining a Resource Protection Permit. We note that this conclusion is consistent with our advice that a sludge management site similarly qualified as an exemption under the REPOZ ordinance wherein similar language was used for exemptions.

Therefore, both because the Resource Protection Ordinance

is not expressly binding on the City and because the express exemptions cover public projects of the type implemented by Water Utilities, the department is not subject to the Resource Protection Ordinance. While this answers your general questions, specific projects at Point Loma which were also referenced in your memorandum could very well be subject to the California Coastal Act (California Public Resources Code section 30000, 30601). Hence a coastal development permit could be required where a resource protection permit would not.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:mb:523:406:(x043.2)

Attachment

ML-89-96