

MEMORANDUM OF LAW

May 25, 1990

DATE:

TO: Charles G. Abdelnour, City Clerk

FROM: City Attorney

SUBJECT: Whether the Land Use Resolutions are Subject to
Referendum

This is in response to your memorandum of May 16, 1990, in which you query whether two resolutions, R-275678 and R-275679, adopted by the City Council on May 8, 1990, are legislative acts and therefore subject to referendum under San Diego Municipal Code section 27.2601.

In our opinion, neither resolution is subject to referendum, because neither is a legislative act. Rather, each is an administrative act for the reasons set forth below.

Resolution No. R-275678 certifies that Environmental Impact Report (EIR) No. 89-0218 complies with applicable law and adopts findings of mitigation, feasibility and project alternatives. By statute, judicial review of an agency's certification of an EIR and related findings must be made pursuant to Code of Civil Procedure 1094.5, which is the writ of mandamus for administrative acts. (In contrast C.C.P. section 1085 is used for judicial review of legislative actions.)

In further support of our position that certification of an EIR and approval of mitigation measures is an administrative, as opposed to a legislative, act is Public Resources Code section 21004. This Code section, as explained by legislative findings and by case law, clarifies that the California Environmental Quality Act (CEQA) does not confer on the City Council independent authority to levy fees or impose exactions to comply with the general CEQA requirements. Legislative findings to Section 4, 1982 Stat. ch. 1438, p. 5484; *San Franciscans for Reasonable Growth v. City & County of San Francisco*, 209 Cal. App. 3d 1502, 1525 (1989). In other words, approval of the EIR and mitigation measures can only be taken in conjunction with a power exercised pursuant to another body of law. CEQA cannot be

used independently to require a private party to mitigate an environmental hazard. We interpret this to indicate that certification of an EIR and adoption of findings regarding mitigation measures is an administrative, not a legislative, act.

It is our conclusion that Resolution No. R-275679 is also an administrative act for purposes of referendum, but for different

reasons. This resolution approves several land use actions, including amendments to two (2) precise plans, two (2) community plans, a local coastal program land use plan and the general plan. It also places conditions on those approvals pertaining to construction of a new state route 56 and requires studies relating to light rail transit in the area affected by the amendments. Arguably, legislative and quasi- legislative actions are mixed amongst the clearly administrative actions in Resolution R-275679. On balance, however, it is our opinion that the resolution read as a whole comprises an administrative act, because it "did not amount to a substantial . . . alteration" to previously established land use polices. *Fishman v. City of Palo Alto*, 86 Cal. App. 3d 506, 512 (1978). This conclusion conforms with the view of court cases facing similar fact situations. *Id.*; *Lincoln Property Company No. 41, Inc. v. Law*, 45 Cal. App. 3d 230 (1975).

In conclusion, it is our view that Resolutions Nos. R-275678 and R-275679 are administrative, not legislative, acts and, therefore, are not subject to referendum under San Diego Municipal Code (SDMC) section 27.2601. Therefore, your other question as to the time in which the referendum period starts under SDMC section 27.2603 is moot.

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By

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CCM:jrl:014(x043.2)

cc Mikel Haas

ML-90-62