

MEMORANDUM OF LAW

DATE: June 21, 1990

TO: Councilmember Ron Roberts
FROM: City Attorney
SUBJECT: Sorrento Hills Exclusion from the Resource
Protection Ordinance

By memorandum to me dated May 31, 1990, you asked that I review the "Sorrento Hills" development agreement (Agreement) and determine whether the Agreement explicitly exempts the "owners property" or "the park trade property" from the Resource Protection Ordinance (RPO) (Section 101.0462 of the San Diego Municipal Code). The Agreement was authorized by Ordinance No. O-17300, is on file in the office of the City Clerk as Document No. OO-17300, and became effective on June 14, 1989. The terms "owners property" and "the park trade property" are defined in the Agreement. The questions raised by Deputy Mayor Wolfsheimer in her memorandum to this office dated April 25, 1990, have been responded to by memorandum dated May 24, 1990, copy attached hereto for ready reference.

Section 5.1.1 of the Agreement explicitly references the RPO. A copy of that section is attached hereto for ready reference. Five exemptions are granted in Section 5.1.1 in five separate subsections.

Subsection (1) provides that the RPO shall not apply to AT1 ROOT:PXS.OATDF1E61AC.WPC;1 Sorrento Property or the Sammis Property if the coastal development permit for such properties necessitates grading changes to the Sorrento or Sammis discretionary permissions.

Subsection (2) provides that RPO shall not apply to amendments to the discretionary permissions granted to the Newland Property necessary to achieve, reasonable and integrated, grading and public improvements with the McReynolds/Graff Property and "the park trade property."

Subsection (3) provides that RPO shall not apply to grading upon the McReynolds/Graff Property necessary to integrate it with the Newland Property and "the park trade property" in order to achieve the reasonable improvement of "the park trade property."

Subsection (4) provides that RPO shall not apply to amendments to the discretionary permissions granted to the "owners property," other than McReynolds/Graff, which are necessary to accommodate the alignment and grading for MTDB's LRT line.

Subsection (5) provides that RPO shall not apply to any development undertaken pursuant to an existing Hillside Review Permit.

In our view Section 5.1.1 does not exempt "the park trade property" from the RPO.

Section 5.6 of the Agreement purports to preclude application of rules, regulations, and policies which become effective subsequent to the effective date of the Agreement, inter alia, to the discretionary approvals enumerated in Section 5.6.1 (attached hereto for ready reference). The four subsections of Section 5.6.1 refer solely to tentative map or HR permit discretionary approvals (or revisions thereto) for the identified properties under the specified conditions. In our view this section does not exempt "the park trade property" from the application of future amendments to the RPO but the section would exempt the identified properties from future amendments to the RPO when the specified conditions are satisfied.

JOHN W. WITT, City Attorney

By

Thomas F. Steinke

Deputy City Attorney

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Attachments 3

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