

MEMORANDUM OF LAW

DATE: February 27, 1992

TO: Tom Behr, Councilmember  
Council District Five

FROM: City Attorney

SUBJECT: Applicability of the Resource Protection Ordinance  
(Municipal Code Section 101.0462) to the Rancho La Cresta  
Project (VTM No. 88-0767 and PRD No. 88-0767)

You have asked this office to review the referenced project to determine whether the provisions of the Resource Protection Ordinance can be applied to the vesting tentative map and planned residential development application.

The Subdivision Map Act provides that "when a local agency approves or conditionally approves a vesting tentative map, that approval shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards described in California Government Code Section 66474.2." (Cal. Gov't Code section 66498.1(b).) It further provides that "consistent with subdivision (b), an approved or conditionally approved vesting tentative map shall not limit a local agency from imposing reasonable conditions on subsequent required approvals or permits necessary for the development and authorized by the ordinances, policies and standards described in subdivision (b)." (Cal. Gov't Code section 66498.1(e), emphasis added.)

In determining which ordinances, policies and standards are to be considered it is necessary to refer to California Government Code section 66474.2(a) which provides, inter alia, that in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies and standards in effect at the date the local agency has determined that the application is complete.

I have been informed by the Planning Department that the applications for the project were determined to be complete on October 14, 1988.

The original Resource Protection Overly Zone (San Diego Municipal Code section 101.0462; referred to as "RPOZ") was enacted by Ordinance No. O-16939 (New Series) on September 4, 1987. This ordinance contained a list of areas which were excluded from the provisions of the ordinance. Section 101.0462(C)(6) of the ordinance excluded the County Island Annexation portion of the Scripps Miramar Ranch Community Plan. The project is within the County Island Annexation area and, therefore, is not subject to the provisions of RPOZ.

Municipal Code section 101.0462 was substantially revised on February 27, 1989, by Ordinance No. O-17253 (New Series) and was renamed the Resource Protection Ordinance ("RPO"). However, the exclusion of the County Island Annexation area was carried forward into RPO as subsection (E)(6).

On February 13, 1990, the City Council adopted an interim emergency ordinance (O-17424 (New Series)) which made the provisions of RPO applicable to the County Island Annexation area but Section 2 of the ordinance provided that the provisions of the emergency ordinance would not apply to vesting tentative map applications accepted as complete prior to the enactment of Ordinance No. O-17424. Because the applications in question were filed in 1988, the ordinance was not applicable.

Finally, the exclusion provision relating to County Island was removed from Municipal Code section 101.0462 by Ordinance No. O-17602 (New Series) on February 19, 1991. This action would not affect the project in question because the Subdivision Map Act mandates that the project be reviewed in light of the ordinances, policies and standards in effect when the applications were determined to be complete which occurred in 1988.

In conclusion, neither RPOZ nor RPO would be applicable to the project. The project must be approved, conditionally approved or denied based on the ordinances, policies and standards applicable on October 14, 1988.

JOHN W. WITT, City Attorney

By

Frederick C. Conrad

Chief Deputy City Attorney

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