

MEMORANDUM OF LAW

DATE: February 22, 1994

TO: Ella I. Paris, Senior Planner, Planning Department

FROM: City Attorney

SUBJECT: Did Certification by the California Coastal Commission (the "Commission") of The City of San Diego's Local Coastal Program ("LCP") Cause the City to Become Exempt from Having to Comply with the California Environmental Quality Act's ("CEQA") Requirements Regarding the Preparation of Environmental Impact Reports ("EIRs")?

This Memorandum of Law is in response to your Memorandum of February 9, 1994 requesting an opinion from the City Attorney regarding compliance with CEQA in issuing Coastal Development Permits ("CDP").

Issue

The Commission, which issued CDPs prior to the City's LCP, is certified by the California Secretary for Resources as being exempt from the requirements of CEQA to prepare EIRs. The question is whether the City, when it "stepped into the shoes" of the Commission for purposes of issuing CDPs also became exempt.

Background

This question arises in the context of a Regulatory Relief Day proposal to amend San Diego Municipal Code section 105.0201 et seq. relating to the issuance of CDPs. Concerns have been expressed by members of the general public and the City Council that it takes too long and costs too much to obtain a CDP.

The matter of how the City issues CDPs and improvements to the current procedures is now scheduled to be heard by the Transportation and Land Use Committee on February 23, 1994.

Analysis

State CEQA Guideline 15002(a) sets out the basic purposes of CEQA. Those are:

- (1) Inform governmental decision-makers and the public about the potential significant environmental effects of proposed

- activities.
- (2) Identify the ways that environmental damage can be avoided or significantly reduced.
 - (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the government agency finds the changes to be feasible.
 - (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

However, the State Legislature did provide for particular State of California (the "State") entities to be exempt from certain CEQA requirements, provided the basic purposes of CEQA were fulfilled. Public Resources Code section 21080.5 states:

- (a) When the regulatory program of a state agency, board or commission requires a plan or other written documentation, containing environmental information and complying with the requirements of paragraph (3) of subdivision (d), to be submitted in support of activities listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division; provided, that the Secretary of the Resources Agency has certified the regulatory program pursuant to this section. (Emphasis added.)

Section 21080.5 gives only two exceptions as to when

governmental entities, other than those of the State, may be considered for exemption. The language in the exceptions is very limiting. Subsection (i) says, "for purposes of this section, any county agricultural commissioner shall be considered a state agency." Subsection (j) reads in part, "for purposes of this section, any air quality management district or air pollution control district shall be considered a state agency."

State CEQA Guideline 15251 lists the State agencies, boards, and commissions that have been certified by the Secretary for Resources. Of relevance here is item (c) which states: "The regulatory program of the California Coastal Commission and the regional coastal commissions dealing with the consideration and granting of coastal development permits under the California Coastal Act of 1976, Division 20 (commencing with Section 30000), of the Public Resources Code."

As you can see there is currently no provision for the exemption to be "delegated" to a local jurisdiction, such as a city or county when their LCP is certified by the Commission. This appears to leave the City with two options. The first would be to petition the Secretary for Resources to be certified pursuant to Public Resources Code section 21080.5 as a "State" agency for purposes of issuing CDPs. The second option would be to seek an amendment to the statute allowing for certification of local jurisdictions with LCPs certified by the Commission.

Please note, that in order to be certified by the Secretary for Resources, the City would still have to "require a plan or other documentation, containing environmental information and complying with the requirements of paragraph (3) of subdivision (d)" to be prepared prior to issuance of the permit. The requirements of paragraph (3) of subdivision (d) are:

- (i) Include a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse environmental impact.
- (ii) Be available for a reasonable time for review and comment by other public agencies and the general public.

Conclusion

The law does not seem to currently provide for the City to be exempt from certain CEQA requirements under Public Resources Code section 21080.5. However, if the City believes that such certification would be in its best interests, it could attempt to be certified by the Secretary for Resources using the argument

that the City is acting on behalf of the Commission in issuing CDPs under its LCP. The City could also seek to have the legislation amended to allow for certification of local jurisdictions with certified LCPs.

If you have any further questions or would like additional information, please contact me.

JOHN W. WITT, City Attorney

By

Allisyn L. Thomas

Deputy City Attorney

ALT:lc:605X605.2(x043.2)

cc Steve Castaneda

Rachel A. Hurst

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