

MEMORANDUM OF LAW

DATE: July 25, 1995

TO: Tina Christiansen, Director  
Development Services Department

FROM: City Attorney

SUBJECT: Consideration of General Dynamics Corporation's  
Applications for Demolition Permits as Either Discretionary  
or Ministerial in Nature

Issue

This Memorandum of Law is in response to your request of July 24, 1994, for a legal opinion as to whether the demolition permits General Dynamics ("GD") is proposing to pull to demolish approximately eighty buildings on its Kearny Mesa site (the "Site"), should be considered ministerial or discretionary in nature. This question is being asked in the context of whether the demolitions should be included in the environmental review of a proposed redevelopment of the Site. The distinction is that if the demolition permits are ministerial, no environmental review is required. Whereas, if they are discretionary, environmental documents must be prepared and certified prior to commencement of any demolition.

Response

It appears that the demolitions are an integral part of the proposed redevelopment of the Site. As the proposed redevelopment will require several discretionary approvals from the City, San Diego Municipal Code section 69.0214.A applies, thereby making the applications for demolition permits discretionary.

Background

The facts as presented to me are briefly as follows: GD has owned the Site for approximately forty years. As it is no longer using the Site for its industrial and manufacturing endeavors, GD wishes to redevelop it. While still in the planning stages, GD has indicated that the redevelopment will probably consist of commercial, business, recreational and entertainment components and necessitate several discretionary actions on the part of the City including a General Plan amendment, a Community Plan amendment, a rezone, a tentative map/subdivision, and one or more development permits. Representatives from GD and City staff agree that this redevelopment will require environmental review pursuant to the California Environmental Quality

Act (California Public Resources Code section 21000 et seq.). As GD is refining its planning for the Site, it wishes to begin applying for demolition permits to remove the existing structures on the Site. GD contemplates accomplishing the demolition in four phases over a period of approximately two years. Prior to the completion of the demolitions, GD would like to begin the application process for the discretionary actions and permits listed above.

On July 25, 1995, the City Council approved a Memorandum of Understanding ("MOU") between GD and the City which set out a process for development of a Master Plan for the Site, including a time line for seeking the necessary discretionary approvals. The MOU is silent on the issue of demolition.

#### Analysis

At issue in this discussion is whether the demolition of the existing buildings on the Site should be included in the environmental review. GD maintains that its applications for demolition should be considered ministerial in that the demolition of the existing structures has no relationship to the subsequent redevelopment of the Site. However, a concern has been raised that San Diego Municipal Code section 69.0214.A would apply given these factors: that there is a fairly well-developed concept plan for the redevelopment which requires the demolition of the existing buildings on the Site; the MOU which sets out a process for considering the various discretionary actions; and finally, that GD would begin applying for the various discretionary reviews while the demolitions were still taking place.

Section 69.0214.A states in pertinent part:

Except as otherwise provided in Section 69.0214.B or the Act, an application for a demolition permit shall be subject to environmental review where the demolition is an integral part of a pending application for a development project requiring discretionary approval . . . . No demolition permit subject to environmental review shall be issued until the environmental review process is complete and the potential impacts associated with the demolition permit have been considered.

Section 69.0214.B says that 69.0214.A shall not apply to demolitions conducted "pursuant to judicial or administrative abatements . . . emergency demolitions . . . and ministerial demolition permits."

While not a "pending application," the MOU certainly evidences an intent to proceed with development on the Site, and clearly the type of development contemplated in the Master Plan necessitates the demolition of most, if not all, of the existing structures on the Site.

Furthermore, given GD's proposed timing for applying for the demolition

permits and the discretionary actions that will be needed for the redevelopment of the Site, the two processes appear to go hand-in-hand. Given these factors, it is reasonable to draw the conclusion that the demolitions are an "integral part of a pending application for a development project requiring discretionary approval."

Obviously, as GD begins its environmental review of the various buildings on the Site, and determines that certain buildings should be demolished for health and safety reasons, they can bring that information to you, and you can allow them to proceed with the demolition on those grounds. See San Diego Municipal Code section 69.0214.B(2).

Please note, that the California Environmental Quality Act allows for streamlining of the environmental process through either "tiering" an environmental impact report (see California Public Resources Code section 21093) or through the preparation of a Master Environmental Impact Report pursuant to California Public Resources Code section 21157. These options can be examined in greater detail if you wish.

If you have any questions, or need additional information on any aspect of this Memorandum of Law, please call me at your convenience.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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cc Maureen A. Stapleton, Asst. City Mgr.

P.J. Fitzgerald, Process 2000

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