

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM**

**DATE:** August 6, 2008

**TO:** Planning Commission

**FROM:** City Attorney

**SUBJECT:** Item-10: Torrey Hills Vesting Tentative Map Project, Comment on Final EIR, July 2008, SCH. No. 2007101032, Development Services Department Project No. 106228.

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**INTRODUCTION**

On August 6, 2008, the Planning Commission is set to consider the Final EIR [FEIR] for the Torrey Hills Vesting Tentative Map Project [project]. The project proposes to rezone the subject property from the IP 2-1 and RM 2-5 zones to the RM 3-8 and OR-1-1 zones; to amend the Torrey Hills Community Plan; to approve a Vesting Tentative Map and a Planned Development Permit; and, to amend the current Planned Industrial Development/Planned Residential Development/Hillside Review Coastal Development Permit [CDP] for the site. The project, if approved, would allow the development of 484 residential condominiums, and 4,000 square feet of commercial/office space, on 22 acres, located south of Calle Mar De Mariposa between Vista Sorrento Parkway and West Ocean Air Drive, in the Torrey Hills Community Plan Area.

**QUESTIONS PRESENTED**

1. Does the project require a water supply assessment under California Water Code Section 10912(a)(7)? If so, should the Planning Commission refrain from making recommendations on the project to City Council if the project has no water supply assessment?
2. Does the project FEIR adequately analyze and disclose environmental impacts, and other discretionary approvals required for the project, in compliance with the California Environmental Quality Act [CEQA] (Pub. Res. Code section 21000 et. seq.), and other state environmental laws?

### **SHORT ANSWERS**

1. Yes. California Water Code Section 10912(a)(7) requires a water quality assessment for this project because it will demand an amount of water equivalent to a 500 dwelling unit development. No water quality assessment has been prepared for the project. Therefore, until the project includes a water quality assessment, the Planning Commission must refrain from making recommendations on the project to City Council.
2. No. The project FEIR fails to adequately analyze and disclose numerous negative environmental impacts, including, but not limited to, impacts to water supply, growth inducing impacts, and impacts to community character. It also fails to disclose the discretionary approval required by the California Coastal Act to amend the current CDP for the site. Thus, the FEIR must be revised, and re-circulated, for public review, before the Planning Commission may make a project recommendation to City Council.

### **ANALYSIS**

Our office has numerous concerns about the adequacy of the project FEIR, including, but not limited to water supply impacts, growth inducing impacts, impacts to community character, and other required discretionary approvals.

- The failure to adequately analyze and disclose water supply impacts, and prepare a water supply assessment, as required by state law, for projects demanding an amount of water exceeding the equivalent of 500 dwelling units annually. FEIR Section 6.2.7; Cal. Water Code § 10912(a)(7).
- The failure to adequately analyze and disclose the growth inducing impacts of the rezone, which would allow 238 more dwelling units, or a third more than the project currently proposes, and without any guarantee of subsequent environmental review. FEIR Section 7-1; CEQA Guidelines § 15126(d); San Diego Municipal Code § 126.0113.
- The failure to adequately analyze and disclose impacts to community character, for example, by disregarding how development of other areas of Torrey Hills, a master planned community, has reduced the available density for the project site, from 310,000 to 74,000 square feet. FEIR Sections 5.3-1, 6.2.2; CEQA Guidelines Appendix G.
- The failure to analyze and require that the CDP amendment be approved by the California Coastal Commission, as required by the California Coastal Act, because the project, which is partially located in the coastal zone, involves a change in land use density and review under the Subdivision Map Act (Cal. Gov't Code 66410 et. seq.). FEIR, Sections 3.7, 5.1-7; California Coastal Act §§ 30106, 30600(a).

Water supply assessments are critical improve statewide water supply planning, and assist local decision makers to consider the future impacts of their decisions on local land use and economic

development. As stated, the project FEIR is fatally flawed with regards to water supply impacts, particularly for its failure to include a water supply assessment. Because the water supply impacts are integral to the analysis under CEQA, this memorandum discusses both CEQA and state law requirements together in the following analysis.

**I. Under state law, CEQA requires the FEIR to include a water supply assessment for projects with 500 or more dwelling units, or the development equivalent.**

The FEIR water supply analysis is deficient under CEQA, because state law mandates water supply assessments [WSA] for large development projects. Specifically, California Water Code section 10912(a)(7) requires a WSA for any project that demands an amount of water equivalent to, or greater than, what a 500 dwelling unit project would demand annually. The proposed 484 dwelling units, plus 4,000 square feet of commercial space, when taken together would readily appear to reach the water demand equivalent of 500 dwelling units annually. The FEIR fails to address whether a WSA is required under California Water Code section 10912(a)(7). Indeed, the FEIR concludes that no WSA is required. It asserts that project water demand would be 121.25 acre-feet, or 0.25 acre-feet per dwelling unit annually. Yet it cites for support the City of San Diego Water Department standard of 250 acre-feet, or 0.50 acre-feet per dwelling unit annually, for a 500 dwelling unit development. FEIR, Response to Comments, 6.29, 7.15. The FEIR fails to resolve this inconsistency, and explain why the project would demand half the water per dwelling unit annually than a 500 dwelling unit development.

**II. CEQA requires the FEIR to include a water supply assessment because the project water demand will exceed what is currently allocated for the site.**

CEQA alone requires a water supply analysis whenever the need for such information is relevant, regardless of the size of a proposed development. *Santa Clarita Organization for Planning the Environment v. County of Los Angeles*, 106 Cal. App. 4<sup>th</sup> 715, 717 (2003) (holding that “[a]n environmental impact report for a housing development must contain a thorough analysis that reasonably informs the reader of the amount of water available.”). If environmental review reveals that a proposed project would cause a significant adverse environmental impact, the lead agency must adopt any feasible means of substantially lessening or avoiding such an impact, and, if the impact still remains significant must adopt a statement of overriding considerations as to the impacts. *Mountain Lion Foundation v. Fish and Game Commission*, 16 Cal. 4<sup>th</sup> 105, 134 (1997); Pub. Res. Code § 21002. A water supply assessment is relevant here because the project would demand 33.74 acre-feet of water annually, or one-third more than was assumed for the site by the 2005 Urban Water Management Plan [UWMP]. FEIR, Response to Comments, 7.6.

**III. CEQA requires the FEIR water supply analysis to rely on accurate facts and current technical studies to provide decision-makers with adequate information.**

The FEIR relies on a three-year old water management plan that does not include water demand for the project. The FEIR states, “the project water demand for the site included in the City’s

2005 UWMP was 87.51 acre-feet per year . . . . The additional 33.74 acre-feet per year increase in water demand was not included in the demand assumptions of the 2005 UWMP.” FEIR, Responses to Comments, 7.6. To provide decision-makers with sufficient information to make an intelligent decision, the FEIR water supply analysis must rely on accurate and current technical information. CEQA Guidelines § 15151. Under state law, because the UWMP fails to take the project into account, the WSA must determine water supplies available for the project for the next twenty years. Cal. Water Code § 10910(c)(3).

“Decision makers must have sufficient facts . . . . An adequate environmental impact analysis . . . can not be limited to the water supply for the first stage or the first few years. . . . Speculative sources and unrealistic allocations (‘paper water’) are insufficient bases for decision making under CEQA. . . . CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.”

*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal. 4<sup>th</sup> 412, 432 (2007). If there is uncertainty regarding the availability of supplies, the FEIR must acknowledge and discuss the degree of uncertainty, reasonably foreseeable alternatives, and associated environmental impacts and feasible mitigation measures. *Id.* at 432-434. The WSA should also discuss recent legal developments reducing statewide water transfers to southern California, and changes in natural climatic and hydrological conditions, that are significantly impacting water supplies statewide.

The new information required to prepare an adequate water supply analysis, and a WSA for the project FEIR will be significant. Accordingly, the project FEIR will need to be revised and recirculated, for public review, pursuant to CEQA section 21092.1, before the Planning Commission may make a project recommendation to the City Council.

## CONCLUSION

In conclusion, the Planning Commission may not make project recommendations to City Council until the project includes a water quality assessment prepared pursuant to California Water Code Section 10912(a)(7). Further, the project FEIR must be revised, and re-circulated, for public review, because it fails to adequately analyze and disclose numerous negative environmental impacts, and it fails to disclose the required approval by the California Coastal Commission.

Please be advised that the Office of the City Attorney may, upon further review, submit additional comments, to ensure that the community of Torrey Hills, and the City of San Diego,

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fully understand the project impacts, and have an opportunity to comment, and to ensure the performance of all legally required discretionary reviews, as required by CEQA, and other state environmental laws.

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