

DATE ISSUED: June 25, 2003 REPORT NO. 03-135
ATTENTION: Honorable Mayor and City Council
Docket of July 1, 2003

SUBJECT: AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA, MITIGATED
NEGATIVE DECLARATION NO. 42-0127, PTS PROJECT NUMBER,
2379, COUNCIL DISTRICT 6, PROCESS 3, LDR NO. 42-0127

REFERENCE: Planning Commission Report No. P-03-114

OWNER/
APPLICANT: **Automobile Club of Southern California**

SUMMARY

Issues - Should the City Council AFFIRM the Planning Commission's May 1, 2003 adoption of Mitigated Negative Declaration (MND) and Mitigation, Monitoring, and Reporting Program No. 2379?

City Manager Recommendation - Deny the appeal and uphold the Environmental Determination [Mitigated Negative Declaration (MND)No. 2379 and the Mitigation Monitoring and Reporting Program].

Planning Commission Recommendation - On May 1, 2003, the Planning Commission voted 4-1 to adopt Mitigated Negative Declaration No. 2379.

Community Planning Group Recommendation - On August 7, 2002, the Mission Valley Planning Committee voted 15-1-0 to recommend approval of the project.

Other Recommendations - On March 19, 2003, the Hearing Officer adopted Mitigated Negative Declaration No. 2379.

Environmental Impact - The City of San Diego as Lead Agency under the California Environmental Quality Act has prepared and completed a Mitigated Negative Declaration, Project No. 2379, dated January 4, 2003, and Mitigation, Monitoring, and Reporting Program covering the project Site Development Permit No. 4256.

Fiscal Impact - All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

Code Enforcement Impact - None with this action.

Housing Impact Statement - None with this action.

Traffic Impact Statement - The project is estimated to generate 565 average daily trips

(ADT). The pr

Water Quality Impact Statement - The total amount of runoff from the site would be decreased. Pollutants generated at the site would be treated either by a filtering device in combination with a natural site feature or by treatment through discharge into vegetation prior to leaving the site. This development would treat site run-off in compliance with the City of San Diego Storm Water Standards regulations effective December 2002 and would mitigate any water quality impacts to below a level of significance.

BACKGROUND

The subject property is an irregular shaped, relatively flat, 2.18 acre site. It is located on the north side of Interstate I-8 near the I-8 westbound Taylor Street off-ramp, immediately south of the San Diego River at 2432-2440 Hotel Circle Place. The site is zoned Mission-Valley Commercial Visitor (MV-CV), within the San Diego River Subdistrict of the Mission Valley Planned District in the Mission Valley Community Plan, Council District 6. Also, the Floodway boundary line is located just north of the subject site. The entire site is located in the Flood Fringe boundary and subject to the Environmentally Sensitive Lands Regulations. The Mission Valley Community Plan designates the site for Commercial Recreation. The subject site previously contained an abandoned tennis court, a parking lot, a restaurant building and an auto repair garage. The adjacent property to the east is improved with a hotel and the property to the west is improved with a restaurant. The San Diego River and the area to the north is part of the Multi-Habitat Planning Area (MHPA) and contains the Warner Ranch mitigation site with riparian habitat. North of the San Diego River is the River Valley Golf Course. An approximately 0.16-acre developed/disturbed portion of the site at the northeastern corner is located in the MHPA.

After receiving the staff report and testimony from the public, the subject project was approved by the Hearing Officer, on March 19, 2003.

Appeal to Planning Commission

On April 1, 2003, Randy Berkman and James Peugh appealed the Hearing Officer's approval of this project with concerns about consistency with the Land Development Code, Council Policy 600-14 and the environmental document prepared for the project.

After receiving the staff report and testimony from the appellants and interested parties on May 1, 2003, the Planning Commission voted 4-1 to uphold the decision of the Hearing Officer and to adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

Appeal to City Council

Subsequent to the Planning Commission's adoption of the environmental document, it was determined that effective January 1, 2003, Section 21151(c) of the California Environmental

Quality Act had been amended as follows: *If a non-elected decision making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision making body, if any.*

Pursuant to this amended legislation, Randy Berkman, James Peugh and Eric Bowlby filed an appeal of the Planning Commission's decision on May 14, 2003. Note that CEQA now allows any interested party to appeal the adoption of an environmental document to the agency's elected decision making body, which in this case is City Council. However, this new appeal process applies only to the environmental document. Planning Commission's decision regarding the Site Development Permit, which was the result of an appeal of a Hearing Officer's decision (Process 3), is not appealable to the City Council.

DISCUSSION

The project will be located on a previously developed site. The project would construct a two story building of approximately 28,242 square feet. The first floor would be used for tourist services and the second floor would be reserved for future lease space. The applicant has modified the project to bring it into conformance with all applicable regulations of the Land Development Code. A Mitigated Negative Declaration, No. 2379, has been completed for this project. It includes a Mitigation Monitoring and Reporting Program to address Historical Resources (Archaeology), Biological Resources: (least Bell's vireo) Multi-Habitat Planning Area (MPHA), Transportation, Water Quality/Hydrology and Health/Public Safety. Subsequent revisions in the project proposal mitigate the potentially significant environmental effects. In addition, the proposed development will treat the water quality in compliance with the approved City of San Diego Storm Water Standards Regulations and will mitigate any water quality degradation to below a level of significance.

Appellant's Position

The appellant's position is that there is substantial evidence of significant impacts in several environmental issue areas, and that an Environmental Impact Report (EIR) should be prepared. City staff investigated the potential for significant impacts related to all aspects of the AAA project, both during the initial study phase and in response to all communications from the appellants, and did not find such substantial evidence. Staff believes that the MND prepared for the project is the appropriate document and is in conformance with the requirements of the California Environmental Quality Act (CEQA).

CEQA Requirements For Environmental Documents

CEQA requires the preparation of an EIR when there is substantial evidence, in light of the whole record, that a project may have a significant impact on the environment (Section 21080(d)). However, if any identified significant effects can be mitigated to below a level of significance through revisions in the project which are made by or agreed to by the applicant,

CEQA requires the lead agency to adopt a Mitigated Negative Declaration (Section 21080(c)).

CEQA Definition of Substantial Evidence

Section 21080(e) of CEQA states that "...substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative...."

In evaluating whether there was substantial evidence of significant impacts resulting from the AAA project and the activities that took place prior to permit issuance, staff relied upon expert opinions supported by facts and documentation.

Expert Opinion

Expert opinion was obtained from a variety of disciplines, including professional biologists (City staff and consultants), archaeologists (City staff and consultants), a registered professional engineer who is also a Certified Floodplain Manager (City staff), traffic engineers (City staff and consultants), electrical engineers (consultants), geologists (City staff and consultants), City community planning staff, and environmental health professionals (County of San Diego staff). Such expert opinions were obtained from field visits, technical reports, a FEMA-approved hydraulic analysis, and the Implementing Agreement regarding the treatment of biological resources between the City of San Diego, the United States Fish and Wildlife Service (USFWS), and the California Department of Fish and Game.

Facts

The facts supporting the expert opinions are contained within the above-mentioned documents. For instance, the facts related to demolition noise impacts on least Bells vireo are: 1) The demolition occurred during the first two weeks of September 2002; 2) While the City's guidelines for construction assume September 15 as the close of the breeding season of this species, USFWS uses the end of August. Therefore, it is reasonable to conclude that while the demolition activities were done outside of the City's official guidelines, in reality there is little or no likelihood that there were noise impacts to the breeding success of the least Bells vireo, as any young birds would have already fledged before the activities took place.

The concerns raised in the appeals as well as the issues raised by the public and resource agencies are included in the responses to the Planning Commission Appeal letters and letters addressing the adequacy of the draft MND. Please see Attachments 4 and 5.

CONCLUSION

Staff has exhaustively investigated the issues raised by the public and resource agencies and has determined that no substantial evidence of unmitigated impacts exists. Staff believes that the

MND prepared for the project is in conformance with Section 2080(c) of the California Environmental Quality Act, which requires the lead agency's decision maker to adopt an MND if significant effects can be mitigated to below a level of significance through project revisions made by or agreed to by the applicant. Staff therefore recommends affirming the Planning Commission's adoption of Mitigated Negative Declaration NO. 2379.

ALTERNATIVE

Grant the appeal, set aside the environmental determination, and remand the matter to the lower decision maker for reconsideration, with any direction or instruction the City Council deems appropriate (Mitigated Negative Declaration No.2379.)

Respectfully submitted,

Tina P. Christiansen, A.I.A.
Development Services Director

Approved: P. Lamont Ewell
Assistant City Manager

TPC/MEE/jrj

Attachments:

1. CEQA - New Law
2. Community Plan Land Use Map
3. Project Location Map
4. Letters submitted to Planning Commission with City Staff's Response
5. Letters Addressing the MND With City Staff's Response
6. Full Copy of Appeal
7. Ownership Disclosure Statement

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.