

DATE ISSUED: July 16, 2003 REPORT NO. 03-144

ATTENTION: Honorable Mayor and City Council. Docket of July 22, 2003.

SUBJECT: **THE EGYPTIAN**. TENTATIVE MAP/SITE DEVELOPMENT PERMIT. PROJECT TRACKING NO. 5331. JOB ORDER NO. 41-0088. COUNCIL DISTRICT 3. PROCESS 4.

REFERENCE: Planning Report No. P-03-101. Planning Commission Agenda of May 29, 2003.

OWNER/  
APPLICANT: CITYMARK EGYPTIAN, LLC (Attachment 18)

#### SUMMARY

Issues - Should the City Council AFFIRM the Planning Commission's May 29, 2003, adoption of Mitigative Negative Declaration (MND) and Mitigation and Monitoring and Reporting Program (MMRP) No. 5331, Site Development Permit (SDP) No. 012921 and Tentative Map (TM) No. 012922?

City Manager's Recommendation - Deny the appeal and uphold the environmental determination (MND and MMRP No. 5331), Site Development Permit No. 012921 and Tentative Map No. 012922.

Planning Commission Recommendation - On May 29, 2003, the Planning Commission voted 5:0:0 to adopt Mitigated Negative Declaration and Mitigation Monitoring and Report Program No. 5331, Site Development Permit No. 012921 and Tentative Map No. 012922.

Community Planning Group Recommendation - On June 7, 2002, the Uptown Community Planning Group voted 10:1:0 to recommend approval of the project as proposed.

Historic Review Board - On May 22, 2003, the Historic Resources Board (HRB) voted

10:1:0 to approve the project.

San Diego Housing Commission - Citymark Egyptian, LLC has entered into an Affordable Housing Agreement with the San Diego Housing Commission. The property will be the subject of a density bonus granted under the provisions of local law and Government Code Section 65915. This density bonus allows the construction of an additional 16 units for a total of 80 units.

In order to obtain the density bonus, the Developer has agreed to restrict the occupancy of seven of the units to be affordable units. This means that these units will be affordable to very low-income households at a rent that does not exceed thirty percent (30%) of fifty percent (50%) of area median income. If the 80 units are approved it would support two housing goals of the City, increasing the overall supply of housing (even beyond the 64 units maximum originally designated in the community plan and providing seven affordable units.

Environmental Impact - The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) has prepared Mitigated Negative Declaration (MND) No. 5331 dated May 6, 2003, and Mitigation, Monitoring and Reporting Program (MMRP) covering this activity.

Water Quality - Grading for the subterranean parking garage requires approximately 13,140 cubic feet of excavation which would require implementation of construction-related Best Management Practice=s (BMP=s). Storm water runoff from University Avenue, Park Boulevard and the alley to the west currently is conveyed to the southwest where it enters the City=s storm drain system at the closest inlet on the south side of Essex Street. These patterns would not be altered with the proposed development. However, specific BMP=s would be implemented to reduce potential water quality impacts.

Fiscal Impact - None with this action. 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.

Traffic Impact Statement - This project is estimated to generate approximately 800 average daily trips (ADT); 280 of these trips are estimated to occur on the nearby State Route 163, which has an estimated near term plus project volume of 142,980. There are no improvements planned by CALTRANS on State Route 163 in the vicinity of this project. This project is also estimated to increase the daily trips on University Avenue from 21,330 to 21,610, operating at level of service D, and is also estimated to increase the daily trips on Park Boulevard from 15,700 to 16,060, operating at level of service B. As a condition of this permit, the project is required to install a raised median on University Avenue between Park Boulevard and approximately 45 feet west of the center line of the alley west of the site, and to install a raised median on Park Boulevard between University Avenue and Essex Street, satisfactory to the City Engineer.

## BACKGROUND

### Project Description

The proposed project site is located at the southwestern corner of the intersection of University Avenue and Park Boulevard (Attachment 1) in the Hillcrest neighborhood within the Uptown Community planning area (Attachment 2). The site is zoned mixed use (CN-1 and CN-2). The immediate surroundings include restaurants/retail stores along Park Boulevard, a bar across Essex Street, apartments/condominiums west across the narrow alley, and retail to the north across University Avenue. Park Boulevard is the physical boundary between the Uptown and North Park Community Planning areas (Attachment 3).

The project proposes a mixed use development with approximately 8,000 square feet of commercial space on the ground floor along with a residential lobby and 80 residential units (Attachment 4). The proposed structure would be six stories above grade at the north end of the site, along University Avenue, rising to seven stories above grade at the south end of the site, along Essex Street (Attachment 5).

The building exterior would include smooth finish stucco with painted finishes, painted aluminum, cast-in-place concrete balconies with powder coated tubular steel railings and a flat built-up roof. In addition, two levels of subterranean parking are proposed. The lowest level of parking takes access at ground-level off the alley to the west, and the upper parking level takes access from Essex Street. The proposed subterranean parking garage includes 17 commercial spaces and 136 residential spaces (Attachment 6).

An internal courtyard with landscaping would provide the necessary open space required by the Land Development Code (Attachment 7). The project also includes street trees in pedestrian safe tree grates along Park Boulevard, University Avenue and Essex Street. Bike racks, sidewalk ramps (ADA required) and a new bus stop are included in the proposal.

Grading for the subterranean parking garage requires approximately 13,140 cubic feet of excavation which would require implementation of construction-related Best Management Practice=s (BMP=s). Storm water runoff from University Avenue, Park Boulevard and the alley to the west currently is conveyed to the southwest where it enters the City=s storm drain system at the closest inlet on the south side of Essex Street. These patterns would not be altered with the proposed development. However, specific BMP=s would be implemented to reduce potential water quality impacts.

### Planning Commission Action

After receiving the staff report and public testimony on May 29, 2003, the Planning Commission voted 5:0:0 to certify Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program No. 5331 and to approve Tentative Map No. 012922 and Site Development Permit No. 012921.

## DISCUSSION

## Appellant's Position

The appellant, Mr. Robert Grinchuk, has appealed the Planning Commission's decision of May 29, 2003, based on the grounds that the findings are not supported by the information provided to the decision maker (Attachment 8). Under Municipal Code, Section 112.0508, Aa Planning Commission's Process Four Decision may be appealed if the decision maker's stated findings to approve, conditionally approve, or deny the permit, map, or any other matter are not supported by the information provided to the decision maker. Mr. Robert Grinchuk's position is that the findings to approve the project were not supported by the information provided to the decision maker. Mr. Grinchuk, states in his appeal, A the Planning Commission's decision was made without resort to any studies of potential impacts and that an Environmental Impact Report (EIR) should be prepared@.

## California Environmental Quality Act (CEQA) Requirements For Environmental Documents

Mr. Grinchuk states in his appeal that,

A to his knowledge, the results of the Initial Study have not been made available, so that is difficult to know what significant impacts could have been mitigated. Nonetheless, a Mitigated Negative Declaration is only appropriate where a project is revised once significant impacts are discovered. Instead the Planning Commission decided that the potentially significant effects identified early on would actually not have a significant impact on the environment without the appropriate inquiry and simply issued an Migrated Negative Declaration. Procedurally, this is incorrect. Once the potentially negative effects were identified, either revisions should have been made to the project before the City issued a Mitigated Negative Declaration or an EIR should have been prepared.@

Mr. Grinchuk's statement that the Initial Study was not made available and that the granting of the MND for the Egyptian project is incorrect, and that an EIR should have been prepared is not valid for the following reasons.

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)).

Further, pursuant to CEQA, if a project is not conclusively exempt from environmental review, a preliminary analysis, referred to as an Initial Study, to determine whether the project may have a significant effect on the environment is conducted by City staff. All phases of the project planning, implementation, and operation are considered in the Initial Study of the project. The

Initial Study includes a worksheet, a checklist with references, and a brief report with a discussion of the project description and location. It also discusses the environmental effects from the project and includes a brief summary of any technical reports prepared as part of the Initial Study process.

The purpose of an Initial Study is to provide staff with information to use as the basis for deciding whether to prepare an Environmental Impact Report (EIR), Mitigated Negative Declaration (MND), Negative Declaration (ND) or exemption (State CEQA Guidelines, Section 15063). If the Initial Study identified potentially significant impacts, but the applicant can revised the project or agrees to enforceable conditions which would mitigate the identified significant impacts and there is no substantial evidence that the revised project may have a significant impact then an MND may be prepared.

The Initial Study for the Egyptian project determined that the proposed project could have significant environmental impacts in the areas of historical resources (architectural and archaeology), noise, water quality and paleontological resources. However, subsequent revisions in the project proposal created the specific mitigation identified in Section V of the MND. It was then concluded that the project as revised now avoids or mitigates potentially significant environmental effects previously identified, and the preparation of an EIR is not required.

Regarding disclosure, MNDs are required to include the Initial Study, a description of the project, the project name, legal description, project applicant and the Mitigation, Monitoring and Reporting Program (MMRP). The MND for the Egyptian project was distributed for public input on April 11, 2003. Public input closed on May 1, 2003 and the document was finalized on May 6, 2003. Distribution of the MND to the public is listed on pages 12 and 13 of the document and it is also noted, on page 13, that ANo comments were received during the public input period@ (Attachment 9).

In Mr. Grinchuck appeal application, and at the Planning Commission public hearing on May 29, 2003, he also raised the following issues.

### Shading

The appellant believes that the proposed 7-story Egyptian project would block light to his property, the adjacent Casa Grande apartment building. Under CEQA the only time shading is considered is when it is associated with shading on public spaces such as parks, plazas and sidewalks. Neither CEQA nor the City consider shading of residential buildings as a significant impact. However, at 6-stories, the adjacent Casa Grande Apartment building, will be similar in height to the 7-stories proposed for the Egyptian. The interior courtyard planned for the Egyptian, along the alley, is designed such that the central portion of the building will be 90-feet

away from the Casa Grande apartment units as opposed to being a continuous building façade along the alley. This design allows for light penetration through the alley corridor. Also, the 7th floor will be setback an additional 8-feet. Additionally, the alley will be widened by 2.5-feet providing a minimum of 17.5-feet of separation between the two buildings (Attachment 10).

### Public Notice

The appellant states that there was insufficient notice prior to the Planning Commission public hearing. The Egyptian proposal is a Decision 4 Process. Under the Process 4, the Planning Commission is the Asole@decision maker. Pursuant to the Municipal Code property owners within 300-feet of the site were mailed a public notice 10-days prior to the public hearing. A notice was also published 10-days prior to the Planning Commission public hearing on May 29, 2003, in the Daily Transcript.

The appellant contends that meetings with the Uptown Planners were also insufficiently noticed. All Community Planning Groups are advisory to the City and their meetings are not required to be publicly noticed. In the case of the Egyptian there were numerous meetings with the Uptown Planner=s and the group=s subcommittee, some of which Mr. Grinchuck was in attendance. Also, to ensure the public is made aware of proposed development a ANotice of Application@ is required to be posted on the subject site which includes a description of the proposed project, the Project Manager=s name and phone number to contact if questions. The Notice of Application was posted on the Egyptian site on February 14, 2000.

### Hazardous Materials

The appellant contends, Athere is potential, as in all building constructed prior to 1978, that dangerous levels of lead paint, mold and asbestos may be released into the air upon demolition, needless to say, such hazards were not formally dealt with given the lack of an EIR requirement@.

Although the Human Health/Public Safety Hazardous Material Section of the MND did not specially address the potential for lead paints, mold spores and asbestos in the existing buildings, the standard requirement, is that the applicant is required to provide verification that the County of San Diego, Department of Environmental Health has reviewed and approved the proposed work plan for the treatment and disposal of hazardous materials or contaminated soils that may be encountered within the project site prior to issuance of a demolition permit.

### Noise

The appellant states that noise was not considered. The Initial Study references a Noise Analysis prepared by URS Corporation (September 27, 2002) that considered the impacts of noise on future residents of the Egyptian. It was concluded that exterior noise level in 2020 will reach 68 dBA CNEL. Pursuant to the Progress Guide and General Plan when exterior traffic noise exceeds 65 dBA CNEL in residential areas mitigation is required.

The appellant is concerned with the noise generated from the proposed parking garage on the alley. Today there is a 26 space parking lot on site with access off the alley. The proposed project will result in 79 parking spaces (62 residential and 17 retail spaces) also accessed from the alley. Additionally, traffic from the retail spaces will generally be used during the day, when adjacent residents are least impacted. Therefore, noise from the parking garage off the alley is not considered to be significant.

## Alley Traffic

The appellant is concerned about traffic impacts to alley access. The Egyptian would generate a approximately 768 ADT=s; of which 48 trips would occur in the morning peak hour and 72 trips in the afternoon peak hour. This amount of ADT=s is not considered a significant impact. Additionally, access to and from the alley would be modified, as the applicant is required to construct a raised median on University Avenue to restrict alley access at University Avenue to a right turn in and out only (Attachment 11).

The appellant also questioned the alley access safety due to the location of the Egyptian=s alley access across from the parking area designated for the Casa Grande Apartments (Attachment 12). The proposed plan calls for a total of 153 parking spaces, with 79 lower level spaces (62 residential and 17 retail spaces) to be accessed via the alley and 74 upper level spaces (all residential) to be accessed via Essex Avenue. No connection between levels would exist. Thus, the potential conflict with the Casa Grande apartments parking lot off the alley would only relate to parking spaces taking access off the alley (approximately half of the trip generation discussed at the top of this section).

The appellant is also concerned with the location of the garage entrance on the alley. The concern stems from the fact that the cars parking in the Casa Grande parking area need to back into the alley, and have a limited sight distance due to the location of the Casa Grande building on the property line with no setback from the alley (Attachment 13). The Egyptian is proposing to widen the alley by 2.5 feet, enhancing visibility for the tenants parking in the Casa Grande parking area. Cars leaving the Egyptian parking structure would leave the garage going forward and would have an opportunity to see cars backing out of the Casa Grande parking lot.

## CONCLUSION

Staff investigated the potential for significant impacts relative to all aspects of the proposed Egyptian project pursuant to CEQA, both during the Initial Study phase and preparation of the MND. Staff believes that the MND prepared for the project is in conformance with Section 2080(c) of CEQA, 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 recommends affirming the Planning Commission's adoption of Mitigated Negative

Declaration and Mitigation and Monitoring and Reporting Program No. 5331, Site Development Permit No. 012921 and Tentative Map (TM) No. 012922.

## ALTERNATIVE

Grant the appeal and remand the matter to the Planning Commission for reconsideration, with any direction or instruction the City Council deems appropriate.

Respectfully submitted,

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

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Approved: P. Lamont Ewell  
Assistant City Manager

CHRISTIANSEN/PXG:

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

Attachments:

1. Project Location Map
2. Community Plan Land Use Map
3. Aerial Photo
4. Project Site Plan
5. Elevations
6. Subterranean Parking Garages
7. Landscape Concept Plan
8. Appeal Application
9. MND, Page 13
10. Alley Diagram
11. Modified Alley Access Diagram
12. Alley Access Photo
13. Casa Grande Parking Photo
14. Tentative Map
15. Tentative Map Resolution
16. Site Development Permit
17. PC Resolution with Findings
18. Ownership Disclosure Statement