



THE CITY OF SAN DIEGO
MANAGER'S REPORT

DATE ISSUED: July 30, 2003
REPORT NO.
03-159

ATTENTION: Honorable Mayor and City Council
Docket of August 4, 2003

SUBJECT: ARENA PHARMACEUTICALS, CITY COUNCIL OVERRIDE,
PTS NO. 4932. COUNCIL DISTRICT 5, Process 3

REFERENCE:

OWNER/
APPLICANT: Arena Pharmaceuticals, Owner
Russell Rex, Architect - Delawie, Wilkes, Rodrigues, Barker

SUMMARY

Issues - Can the City Council make the findings to override the City Staff determination of noncompliance with the land use recommendations of the adopted NAS Miramar Comprehensive Land Use Plan (CLUP), in accordance with Land Development Code Section 132.0310, for a “research & development and laboratory” use located within the 70-75 db Community Noise Equivalent Level (CNEL) area, for a site located at 6154 Nancy Ridge Drive (Attachment No. 2-A, 2-B & 3) in the Airport Environs Overlay Zone within the Mira Mesa Community Plan area (Attachment No. 1).

Staff's Recommendation - Staff has determined that Research & Development and Laboratories are incompatible land uses within the 70-75 db CNEL as specifically identified in the adopted NAS Miramar CLUP and the Mira Mesa Community Plan's Airport Noise/Land Use Compatibility Matrix. However, City Council at its sole discretion has the option to override this determination if certain findings are made.

City Council Option - Based on the permitted land use for research & development in the

IL-2-1 zone in the Land Development Code, as well as other regulations and information identified in this report, staff believes City Council could consider this information and make the necessary findings identified in Land Development Code Section 132.0310(b) (Attachment No. 4 & 14), and override the staff's determination, per Land Development Code Section 132.0310 and NAS Miramar CLUP regulations.

Planning Commission Recommendation - A recommendation from the Planning Commission is not part of this process per Land Development Code Section 132.0310.

Community Planning Group Recommendation - The Mira Mesa Community Planning Group met on December 16, 2002 and voted to approve the proposed use and overall project by a 12-0-1 vote, with the provision that appropriate mitigation is provided to reduce interior noise levels below a level of significance (Attachment No. 10).

Other Recommendations - The Marine Corps (MCAS Miramar) opposes the override (Attachment No. 8-A & 8-B). In addition, the San Diego Regional Airport Authority (SDRAA) met on April 3, 2003 in an advisory public compatibility determination hearing and voted 7-2, determining that this project is not a compatible use, based on the adopted NAS Miramar CLUP (Attachment No. 9-A & 9-B).

Environmental Impact - None with this action. The Environmental Analysis Section (EAS) of the Land Development Review Division has determined that this action for City Council override is exempt from California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(1) of the State CEQA Guidelines (the activity is not a project as defined in Section 15378) (Attachment No. 16). Should City Council override the City Staff land use compatibility determination, a determination of Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report will be made on the project, in accordance with a Process 3 decision for the proposed expansion and modification of the existing building.

Fiscal Impact - None with this action

Code Enforcement Impact - None with this action

Housing Impact Statement - The existing building is a office/warehouse/light industrial building. The overall project is to add additional square feet to the existing building, and change the use to "Research & Development". No housing is proposed with this project, nor should any be allowed due to the noise levels.

Traffic Impact Statement - No Traffic Impacts with this action. Pending additional information from the applicant, a traffic study may be required for review by City staff prior to decision of the project by the Hearing Officer (Process 3), pending this override action.

Water Quality Impact Statement - No Water Quality Impacts with this action. The project's storm water Best Management Practices (BMPs) will be reviewed and approved by City staff with the review of the project, pending this override action.

BACKGROUND

In accordance with Land Development Code Section 132.0310 and Section 4.1 of the 1990 NAS Miramar CLUP, the applicants have filed a petition dated February 6, 2003 for City Council to override the City Manager's determination of noncompliance with the land use recommendations of the adopted NAS Miramar's Comprehensive Land Use Plan, for the site located at 6154 Nancy Ridge Drive.

The existing 2-story, 48,054 square foot office/light industrial/warehouse building is located on a 5.89 acre site south of Carroll Canyon Road and west of Carroll Road at 6154 Nancy Ridge Drive, in the IL-2-1/AR-1-1 Zone and the Airport Environs Overlay Zone, within the Mira Mesa designated Industrial Community Plan area. The existing building was approved under Planned Industrial Development Permit (PID) No. 93-0525 (Attachment No. 13), allowed for office/light industrial/and warehouse use. The applicants are in the process of amending the existing PID (Process 3) to allow for the addition of more square footage than what was previously allowed under PID 93-0525, for Research and Development Office and Laboratory use. The further processing and decision of the proposed amendment (Process 3) is pending this override action by City Council.

The site is located within the 70-75 db CNEL as identified in the adopted 1990 NAS Miramar CLUP, which is the current CLUP followed by the Marines, and the Community Plan's Noise Matrix. The 1990 NAS Miramar CLUP identifies and specifically groups "Research and Development and Laboratory" uses into "office" uses, which are shown as incompatible uses within the 70-75 db CNEL matrix. During staff review of the proposed PID amendment, acting on behalf of the City Manager, staff determined that the specific use for Research and Development and Laboratories, are incompatible with the NAS Miramar CLUP and incompatible with the NAS Miramar CLUP noise matrix within the Mira Mesa Community Plan. In addition, MCAS Miramar and the San Diego Regional Airport Authority determined that the specific uses for Research and Development and Laboratories, are incompatible uses with the NAS Miramar CLUP noise matrix.

Arena Pharmaceuticals is an industrial business engaged in the discovery, development and manufacturing of proprietary drug compounds to be used to treat a variety of human diseases and afflictions. Their existing facilities are located at adjacent lots at 6138 and 6166 Nancy Ridge Drive in the 65-70 db CNEL. In addition, they also have existing facilities located at 6124 Nancy Ridge Drive where approximately 1/3 of the site is located in the 70-75 db CNEL, and the remaining portion of this site is located in the 65-70 db CNEL.

On July 9, 2002, a Preliminary Review Meeting was held with the applicants where City Staff identified and informed the applicants that research and development, offices, and laboratories are incompatible land uses within the 70-75 CNEL contour, as indicated in the Miramar CLUP and the Mira Mesa Community Plan land use noise matrixes (Attachment No. 6). In addition,

MCAS Miramar's response letters dated July 25, 2002, and October 29, 2002, also indicated to the applicant that research and development, offices, and laboratories were incompatible uses within the 70-75 CNEL contour of the CLUP. Given this information, the applicants continued pursuit of their project.

DISCUSSION OF ISSUE

Staff believes the proposed tenant use is inconsistent with the NAS Miramar CLUP noise matrix and therefore inconsistent with the same noise matrix in the Community Plan. The proposed use is consistent with the General Plan noise matrix, the Community Plan Land Use, the Land Development Code Land Use, and other airport CLUPs noise matrixes. However, there are credible arguments the applicant makes that point out inconsistencies in the various land use documents which could support the Council's decision to override the CLUP and approve the proposed use at this site, should you choose to do so.

The proposed project site at 6154 Nancy Ridge Drive is primarily located in the 70-75 db CNEL, identified in the NAS Miramar CLUP, Airport Noise/Land Use Compatibility Matrix as an incompatible land use for research & development offices and laboratories. The NAS Miramar CLUP, Airport Noise/Land Use Compatibility Matrix (separate from the other adopted CLUPs - Attachment No. 5-A through 5-D) specifically groups research and development and laboratory uses in the same category as office buildings-business, educational, professional and personal services (Category 6- incompatible within the 70-75 CNEL). Montgomery Field, Brown Field, and the General Plan CLUP matrixes are more general and do not specifically address research & development offices and laboratories in any particular category. A determination as to which category would be most likely appropriate in those CLUPs, for research & development and laboratories (offices in Category 6; or commercial-wholesale; industrial; manufacturing in Category 9, which would be a compatible use in the 70-75 CNEL), would be subjective to a decision maker, because the Land Development Code identifies research and development and laboratories as industrial uses.

The NAS Miramar CLUP is more specific than these other adopted CLUPs. In staff's review of the California Airport Land Use Planning Handbook (January 2002), there is no reference as to how research & development and laboratories should be categorized. The Land Development Code (LDC) Section 131.0112 (a)(10)(D) under Descriptions of Use Categories and Subcategories identifies Research and Development under the Industrial Use Category.

Because the proposed project site is located within the Mira Mesa Community Plan's Airport Environs Overlay Designation, the proposed land uses of research and development, office and laboratory were reviewed and compared to the Miramar CLUP noise matrix identified within the Community Plan. Staff's determination of the incompatible land use is based on the land use recommendations of the adopted Miramar CLUP noise matrix which specifically identifies research & development and laboratories in Category 6 with "office use," which is shown as an incompatible land use within the 70-75 db CNEL contour. Therefore, the proposed land uses are not compatible in the 70-75 CNEL with the Community Plan's Airport Noise/Land Use Matrix.

Compatibility with other regulations:

Developed in the late 1990's after research with industrial groups, the Land Development Code (LDC) Section 131.0112 (a)(10)(D) under Descriptions of Use Categories and Subcategories identifies Research and Development under the Industrial Use Category. In this code section, "Research and Development" is described as "Uses engaged in scientific research and testing leading to the development of new products and processes." In addition, research and development are identified as permitted uses in the IL-2-1 zone of the Land Development Code, which is the zone designation of this site.

The City's General Plan identifies this site area as "general industrial" use. The "general industrial" use is listed as a compatible use within the 70-75 CNEL. The subject property is also located within the Miramar subarea of the Mira Mesa Community Plan and designated for "Light Industrial" use. The "Light Industrial" designation is intended for manufacturing, storage, warehousing, distribution and similar uses. The development proposes research and development offices, and laboratories, with accessory uses of a training room, cafeteria, and fitness center, for their employees. These uses are compatible uses within the "Light Industrial" designation of the Community Plan.

In a letter dated December 30, 2002 to the Regional Airport Authority from Mr. Russell Gibbon of Economic Development (Attachment No.11), Mr. Gibbon identifies and attaches information that the North American Industry Classification System (NAICS), pages 105,209,559, and 576 identifies research and development as part of a manufacturing use. Manufacturing and Industrial uses would be a compatible use in Category 9, within the 70-75 db CNEL of the Miramar CLUP, which would also be compatible in the Airport Noise/Land Use table within the Mira Mesa Community Plan. These arguments support a finding that would support a Council action to override the CLUP and approve the proposed land use.

Existing incompatible tenant uses (Based on current NAS Miramar CLUP Noise Matrix Table):

Within the immediate area surrounding the project site, there are a number of existing Research and Development offices and laboratory uses located within the 70-75 db CNEL. Attachment No. 7-A & 7-B identifies these locations and uses in table and map format. The previous NAS Miramar CLUP prior to 1990, allowed category 6 uses (professional offices) in 70-75 db CNEL noise contours. Some of the existing identified uses pre-date the current 1990 NAS Miramar CLUP. Tenant improvements were and are reviewed for compliance to the allowed land use of the approved discretionary permits, Municipal Code, and/or Land Development Code at the time of issuance. Therefore, many of these buildings are grand fathered under the regulations at the time they were approved.

Project analysis/noise mitigation:

As indicated in the letter of petition dated February 6, 2003 (Attachment No.12) from Arena Pharmaceuticals, Arena Pharmaceuticals is an industrial business engaged in the discovery, development and manufacturing of proprietary drug compounds to be used to treat a variety of human diseases and afflictions. Should City Council override the determination of incompatible use, and should the project be approved pursuant to a Process Three public hearing, the proposed addition and the existing building will be constructed/modified such that interior noise levels will be attenuated to a level below the 50 db CNEL noise threshold, so as to protect the hearing of their employees and escorted visitors, and to safeguard the effectiveness and efficiency of their operations. They intend to accomplish this by consulting with an acoustics engineer.

On page 120 of the Community Plan on the NAS Miramar Airport Noise/Land Use Compatibility Matrix table, it states under incompatible uses “The community noise equivalent level is severe. Although extensive mitigation techniques could make the indoor environment acceptable for performance of activities, the outdoor environment would be intolerable for outdoor activities associated with the land use.” Arena Pharmaceuticals does not propose any outdoor activities associated with their business other than walking a short distance to and from the parking lot. Their acoustics report would be reviewed by the Environmental Analysis Section of the Development Services Department and the appropriate Environmental Document would be prepared, and put forth for certification by the Hearing Officer, pending the decision on this City Council override action. Should Council choose to approve the override, staff is satisfied the building could be constructed to mitigate the noise levels on the site.

FINDINGS:

Per Land Development Code Section 132.0310(b), the City Council may, by a two-thirds vote, override the staff’s decision and determine that the proposed use meets the intent of the Comprehensive Land Use Plan if the City Council makes the necessary findings, as identified and discussed in Attachment No. 14. Excerpts from these attached findings that would support a Council action to override the CLUP are as follows:

- The proposed land uses would be consistent with existing land uses, employee density, and intensities for industrial uses, already established in the immediate area, which consist of primarily research & development, laboratories and office uses, within the 70-75 CNEL area.
- The proposed addition and the existing building will be constructed/modified such that interior noise levels will be attenuated to a level below the 50 db CNEL noise threshold, so as to protect the hearing of their employees and escorted visitors, and to safeguard the effectiveness and efficiency of their operations.
- Arena Pharmaceuticals does not propose any outdoor activities associated with their business.
- The proposed uses will not have any impact on airport operations that would be different than any other industrial use allowed

- The City’s General Plan identifies this site area as “general industrial” use, and the site is zoned as Industrial use, as identified in the Land Development Code IL-2-1 designation and the “light industrial” use designation of the Mira Mesa Community Plan

CONCLUSION:

Research and Development and Laboratory land uses are compatible with the Land Development Code, the “light industrial” land use of the Mira Mesa Community Plan, the “general industrial” use category of the General Plan, and the North American Industry Classification System.

The NAS Miramar CLUP Airport Noise/Land Use Compatibility Matrix is specific as to which category research and development offices, and laboratories should be placed. In this case, the site is located in the 70-75 CNEL and research and development and laboratories are not compatible uses in the noise matrix for Category 6 (Office buildings-business, educational, professional and personal services; R&D offices and laboratories). Unlike other CLUP’s, which are interpretive to research and development and laboratory uses, the NAS Miramar CLUP Airport Noise/Land Use Compatibility Matrix does not consider any research and development offices and laboratories as an industrial or manufacturing use, which would be in Category 9, and a compatible use in the 70-75 CNEL. The Miramar CLUP is the only CLUP in the City that specifically addresses and categorizes research and development office and laboratories within Category 6. The other Airport CLUPS are silent to the specific use of research and development and laboratories.

In addition, the NAS Miramar CLUP has not been updated since the Marines took possession of the airbase, previously occupied by the Navy. Therefore, the current adopted 1990 NAS Miramar CLUP does not include up-to-date noise contours, based on the Marine’s aircraft.

If City Council overrides the staff’s determination of noncompliance with the land use recommendations of the NAS Miramar CLUP, the decision would need to pass by a two-thirds vote, per the NAS Miramar CLUP and LDC Section 132.0310. If the vote is passed, the amendment to the existing PID for this project would continue (where it left off) as a Process 3 level decision by the Hearing Officer.

Because the NAS Miramar CLUP is specific to this use, and because the Mira Mesa Community Plan requires that this project be reviewed for compliance to the NAS Miramar CLUP, City Staff, acting on behalf of the City Manager, has made the determination of noncompliance with the land use recommendation of the adopted Comprehensive Land Use Plan. City Staff, Hearing Officer, nor Planning Commission, have authority to override the determination of noncompliance with the land use recommendation of the adopted Comprehensive Land Use Plan, and a petition has been filed by the applicant in accordance with LDC Section 132.0310 for City Council to override this decision (Attachment No. 12).

Staff has analyzed the land use in relation to the Land Development Code uses, and existing uses in the immediate area, and staff believes that this override would be consistent with the determinations of other CLUPS, the Municipal Code, and General Plan, and City Council could determine that this use is compatible with the general intent of the PUC 21670.

ALTERNATIVES -

1. Based on the permitted land use for research & development in the IL-2-1 zone in the Land Development Code, as well as other regulations and information identified in this report, staff believes City Council could consider this information and make the necessary findings identified in Land Development Code Section 132.0310 (b) (Attachment No. 4 & No. 14), and override City Manager's determination by a 2/3 vote, per Land Development Code Section 132.0310 and NAS Miramar CLUP.

Respectfully submitted,

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

Approved: P. Lamont Ewell
Assistant City Manager

TPC:cm

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

Attachments:

1. Community Plan Land Use Map
2. Project Location Map
3. Site Plan with CNEL lines
4. LDC Override Section 132.0310
5. CLUPs (Miramar, Montgomery & Brown Field, General Plan)
6. Prelim Report, CLUP incompatibility section
7. Table & Vicinity Map with surrounding incompatible uses
8. MCAS Miramar letters of inconsistency (recommendation)
9. SDRAA Recommendation/Resolution
10. Community Planning Group Recommendation
11. Russell Gibbon letter dated 12/30/02, City of S.D., Economic Dev.
12. Copy of Petition
13. Copy of Recorded existing Permit

14. City of San Diego Resolution and Findings
15. Findings Omitted
16. Environmental Exemption
17. Ownership Disclosure Statement