



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: March 15, 2006 REPORT NO. 06-029

ATTENTION: Honorable Mayor and City Council  
Docket of March 21, 2006

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION FOR THE  
FOX CANYON NEIGHBORHOOD PARK, PROJECT NO. 70422,  
Council District 7

REFERENCE: Hearing Officer Report No. HO 05-176, October 12, 2005.  
Planning Commission Report No. PC-05-358.

REQUESTED ACTION: Should the City Council AFFIRM staff's environmental determination of Mitigated Negative Declaration (MND) No. 70422 and the Mitigation, Monitoring and Reporting Program (MMRP)?

STAFF RECOMMENDATION: Deny the appeal and uphold the Environmental Determination.

SUMMARY:

Background

The subject site is bounded by Landis Street and Sterling Court on the north and south and Altadena Avenue and Ontario Avenue on the east and west (Attachments 1 and 2). The site is zoned RM 2-5 and is designated in the Mid-City Communities Plan for multi-family residential development (Attachment 3). The site is not designated as open space. The site consists of a small undeveloped canyon, a north facing slope, and a relatively flat disturbed area (Attachment 4). The site is surrounded by residential development. With the exception of a few scattered patches of exotic plant species, this area is devoid of vegetation.

The site can be accessed from University Avenue via Winona Avenue. A total of four unpaved roads exist within the project area. One service road, approximately 4 to 6 feet in width, exists along the eastern boundary of the project area. Two unpaved service roads, approximately 7-feet wide lead into the project area. A fourth service road, approximately

10 to 15 feet in width, extends northeast from Ontario Avenue terminating at the proposed community park/staging area.

The project site is not within and/or adjacent to the Multi-Habitat Planning Area (MHPA). However, a portion of Auburn Creek is the site of a City habitat restoration project. This habitat restoration project serves as mitigation for impacts resulting from a sewer main emergency repair completed in July, 2001. A small part of the restoration area occurs within the northeastern boundary of the project site. The habitat restoration area would not be impacted as a result of implementing the proposed park project.

The proposal is subject to the Environmentally Sensitive Lands (ESL) regulations per San Diego Municipal Code (SDMC) Section 143.0110(a)(1) because the site contains "sensitive biological resources" as defined per the SDMC, Section 113.0102). Therefore, a Site Development Permit (Process 3) was required.

#### Hearing Officer Decision

On October 12, 2005, the Hearing Officer approved a Site Development Permit to develop a 1.9-acre passive park plus the Ontario Avenue connection for a total of 2.7-acres. At the hearing, the Hearing Officer expressed his strong concern that staff had received two different recommendations from the community; the Fox Canyon group which wanted the park and the road to go through, and the City Heights Area Committee which also wants the park, but does not want the road. He noted that while the Ontario Avenue connection could possibly be used for park purposes or even emergency access, given the configuration of the lot, the right-of-way usability for park purposes would be limited given the width of it. He asked staff if the right-of-way for the Ontario Avenue connection had been set aside as part of a subdivision. If it was, he stated that it would confirm the fact that the connection was envisioned. At the time of the hearing, staff was unable to answer the question. Subsequent to the hearing, it has been confirmed that the right-of-way was established as early as 1911.

#### Planning Commission Appeal Decision

On December 1, 2005, the Planning Commission heard an appeal of the Hearing Officer's decision to approve the Fox Canyon Park project. At that hearing the Planning Commission upheld the Hearing Officer's decision to approve the project and denied the appeal with the condition that Councilmember Madaffer's Office take the lead in coordinating a Task Force prior to construction of the road to evaluate alternatives.

#### Delegation of Responsibilities

In keeping with Section 15025 of CEQA, Section 128.0103 of the City's Land Development Code assigns the responsibility for implementation of the California Environmental Quality Act (CEQA) to the Development Services Department (DSD). The Environmental Analysis Section (EAS) of DSD evaluates all discretionary project

proposals to determine whether there is a potential for such actions to result in physical impacts on the environment. Anyone can submit information to EAS to assist in its evaluation; but by law, the evaluation must be impartial and independent of any outside influences.

On December 15, 2005, the environmental determination for the project was appealed to the City Council by the Friends of Fox Canyon Park, J. W. Stump (Attachment 10). This appeal is before the City Council because of an amendment to the California Environmental Quality Act (CEQA). Effective January 1, 2003, Section 21151 (c) CEQA has 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 a 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, the Friends of Fox Canyon Park, J. W. Stump, filed an appeal of the City of San Diego staff's determination of the Mitigated Negative Declaration for the project. This appeal applies only to the environmental determination.

## DISCUSSION

The following lists the reasons given for the appeal (in italics) to the environmental determination for the Fox Canyon Neighborhood Park (Attachment 8).

*1. The proposed road does not have a project specific environmental study.*

The proposed Ontario Avenue road connection did have a project specific environmental study. The Initial Study, for Mitigated Negative Declaration No. 40722, in the project description reads,

“The project also proposes the development and realignment of an existing paper street (Ontario Avenue) as well as enhancements to the east side of Auburn Creek adjacent to the existing undeveloped portion of Ontario Avenue.”

*2. Substantial public controversy caused by the proposed road.*

Public controversy alone does not invalidate the adequacy of an environmental analysis for any project. Further, as stated in the response to number 1 above, the Initial Study for the project did identify the construction and realignment of Ontario Avenue in the Mitigated Negative Declaration.

*3. Cumulative Housing Impacts - Analysis of the project failed to analyze the impacts of resultant housing development directly from this project nor does it reasonably analyze the impacts that will result from this project. City staff is actively negotiating some kind of linked land subdivision contingent on this road park project. There are other immediate pending building permits surrounding the road project that could be affected by the*

*opening of this road that should have been studied for cumulative impacts. Further, the project is adjacent to and adjoining a highly volatile redevelopment high density housing area that could have cascading cumulative impacts if a new road was opened up. The Planning Commission raised concerns about improperly or illegally segmenting the CEQA analysis when there was a known development.*

The privately owned property is zoned RM-2-5 and is designated in the Mid-City Communities Plan for multi-family residential development. The City is in the process of purchasing a portion of the site to develop the proposed Fox Canyon Neighborhood Park. The remaining portion would be available for future residential development. While City staff did conduct a preliminary review of the remaining portion of the site, to date, a development permit application has not been received. A preliminary review does not constitute a project or necessarily define a future project.

The park project and any potential future development of the remainder site are not linked, and are therefore not required to be analyzed together for purpose of this environmental review. The CEQA review is required to analyze the physical effects of the proposed “project” on the environment which is the development of a passive park and road.

In response to the Planning Commission’s concern about improperly or illegally segmenting the CEQA analysis when there was a known development on the remainder portion of the site; it has been determined by the City Attorney’s Office that the City’s purchase is not intertwined in such a way that the second escrow by another party would constitute a “project” under CEQA.

*4. The City’s analysis of the project failed to analyze the impacts that may result directly from the project nor does it reasonably analyze environmental effects that building an impervious surface road in a canyon on an impaired watershed might have. The analysis also failed to consider how much road wash will enter the Auburn Creek when this road is opened and operated; and at what level. The cumulative impacts of other urban pollution from the loss of this surface appear not to have been fully studied, with alternatives. Although, the City is charged with San Diego Bay clean-up and Chollas Creek restoration when it comes to the treatment of projects adjacent to this tributary in the 100 year flood plain, they want to treat it as a drainage ditch.*

The environmental analysis did analyze the impacts that building an impervious surface road in the project site would have on the watershed. The project’s Water Quality Technical Report identifies the Best Management Practices (BMP’s) that would be required to reduce sedimentation into the creek in accordance with the City’s Stormwater Regulations. Also, the project complies with the Chollas Creek Enhancement Plan, the purpose of which is to protect the creek. The project is providing a twenty-foot buffer along both portions of the creek parallel to Ontario Avenue and Landis Street. This buffer will protect the functions and values of the creek and wetland areas by reducing sedimentation and filtering runoff from the adjacent land uses.

*5. Staff's analysis fails to analyze the impacts that may result directly from this project nor does it reasonably analyze the project within the known setting. Staff knows this is a very active redevelopment area with City funded and financed projects planned, or being constructed all around the project; the analysis presented for this project does not appear to take this into account. Evidence is not present to show that traffic analysis took into account for example, the new road configuration at Home and Euclid; the signal on Euclid West of Alta Dena; the Affirmed Housing project directly to the north of this project ; or several other active City funded projects.*

The environmental analysis did not fail to analyze the impacts that would result from the proposed park development. The analysis for the project determined that the park project itself is not expected to generate enough traffic to require a Traffic Study. The purpose of the analysis that was conducted for the project was to estimate the change in travel patterns which would result if the proposed road were constructed.

Other development projects in the area that are consistent with the current community plan are cumulatively considered via the community plan long term traffic forecasts.

*6. City-wide Impacts - Analysis of this project proposed to mitigate adverse habitat and species impacts by purchasing lands many miles away in some far off obscure place. The report never considers the alternate to purchasing local replacement habitat. Almost without exception every member of the City Heights community wants the Fox Canyon environmental harm mitigated as close to home as possible and not outside the Chollas Creek watershed.*

The proposed project has the potential to impact biological resources; therefore, a biological survey was required which evaluated potential project related impacts and provided measures necessary to mitigate those impacts to below a level of significance. While it was determined that the proposed project would not result in impacts to sensitive wetland habitat, implementation of the project would result in impacts to Upland habitats. Project impacts to native upland habitats required mitigation in accordance with the City's Biological Resources Guidelines (July, 2002). Because the project area is located outside of the MHPA mitigation for impacts to the 0.05-acres of southern maritime chaparral requires mitigation at a 1:1 ratio; impacts to the 0.10-acre of non-native grassland requires mitigation at a 1:0.5 ratio. In accordance with the City's Biological Guidelines, projects with small impacts (less than 5 acres, isolated sites with lower long-term conservation value) may compensate through a contribution to the City's Habitat Acquisition Fund. The applicant department has opted to pay into the Habitat Acquisition Fund. In addition, the project must still comply with the Chollas Creek Enhancement Plan which will serve to improve the riparian corridor of Auburn Creek within Fox Canyon Park.

*7. Factual Error – There were three material facts given to the Planning Commission that formed the basis of their decision.*

*That the geometry and location of Auburn Drive was unchanged as challenged by Mrs. Theresa Quiroz.*

The alignment of the proposed paper street, Ontario Avenue would vary slightly from the originally dedicated area to accommodate the creek, but is not materially changed.

*No zoning amendment was necessary as there is not currently City zoning classification for park uses.*

The project does not require a community plan amendment or a rezone for a park use. Parks are permitted in residential zones. A community plan amendment or a rezone is not a condition of the State grant and the anticipated park use is consistent with the definition of a passive park as described in the grant application.

*The acreage presented in the original State Grant application was the very same footprint and content as the development permit project, further that there is some close correlation to the site plan submitted to the State and the project for which the City staff seek its development and environmental permit.*

The plan submitted to the State was a preliminary schematic for illustrative purposes (Attachment 6). The acreage as referenced in the grant application was a total of 1.9 acres. For clarification, neither “gross” nor “useable” was specified. Typically, when there is no reference to gross or useable, gross is implied, as was the case here. The gross acreage remains the same, as submitted in the grant application, approximately 1.9-acres. The usable acreage also remains the same as shown on the schematic and on the grant application, which is approximately 0.4 acres.

Additionally, as submitted in the grant application, the general amenities in the park remain unchanged and include picnic areas; children play areas and areas for passive recreation. These amenities are only assumed. In the future, community workshops will be conducted to determine the park amenities. Still included in the project are trails adjacent to the creek, enhanced buffer area and interpretive signage.

The only difference in what was submitted to the State is that the existing undeveloped right of way (Ontario Avenue) was shown to have been landscaped with a 9-foot wide utility/service road. The proposed project now includes developing the existing right-of-way. Street vacations/dedications were not described in the grant application, but were identified in the Initial Study. Again, the schematic submitted in the application was preliminary and did not include extensive reviews by other departments. The State is aware that the project has changed from the original grant submittal to include development of the paper street, Ontario Avenue, going through the site adjacent to the park.

For clarification, the design of the road is not funded via the State grant. Construction of the road currently remains unfunded and would also not be funded from the State grant.

8. *Factual Error* – *The City seems to have made an error in the “Environmental Checklist” and responsive mitigation actions. The “NO IMPACTS” box is checked on the Checklist for the sections on POPULATION AND HOUSING (when part of this project is a known lot split resulting in a multi-family housing project); TRANSPORTATION AND TRAFFIC (when \$1.5 million dollars of this project is for road construction); and MANDATORY FINDINGS OF SIGNIFICANCE (does the project not have impacts that are in isolation limited but together induce considerable cumulative impacts because of traffic, population and housing and infrastructure?).*

#### *Section XII - Population and Housing*

The site is zoned for multi-family. However, no housing is proposed, therefore, the Initial Study Checklist was checked “no impacts” for this section. Development of the 1.9-acre neighborhood park results in the loss of, and not an increase in dwelling units.

If the remainder portion of the site is developed in conformance with the existing zoning and land use designation, it will also not result in population growth because the population that would result was analyzed when the community plan was adopted.

#### *Section XV - Transportation and Traffic*

The purpose of an Initial Study Checklist is to provide staff with information to use as the basis for deciding whether to prepare an Environmental Impact Report, Mitigated Negative Declaration, Negative Declaration, or an exemption pursuant to State CEQA Guidelines. At the time the Checklist was prepared for the grant application City staff assumed that the Ontario Avenue paper street was to be vacated. However, subsequent to submittal of the grant application the project scope changed to include the road connection. Although, the road connection was not included in the Initial Study Checklist prepared for the grant application it does not render the Mitigated Negative Declaration invalid for the proposed project. The Mitigated Negative Declaration for the project thoroughly evaluated all project components and features pursuant to CEQA, including the road connection, as well as all other site improvement for park amenities.

It is estimated that construction of the road is \$1.5 million. Construction of the road will not be funded via the State grant. Construction of the road currently is an unfunded CIP project.

#### *Section XVII - Mandatory Findings of Significance*

The appellants allege that the MND is inadequate because it did not consider the cumulative impacts that the park would have on traffic; population and housing; and infrastructure. Staff believes this comment refers to recent or pending projects not directly related to the park project and does not reflect the adequacy or accuracy of the MND prepared for the Fox Canyon Park project.

*12. Conflict With Other Matters – The Planning Commission raised the concern regarding a split of CEQA document and land swap for the road and park with the current owner.*

Please see response to No. 3 above.

ALTERNATIVES

1. Deny the appeal, uphold the determination of environmental exemption pursuant to State CEQA Guidelines Section 15301(k).
2. Grant the appeal, set aside the environmental determination, and remand the matter to the Development Services Director for reconsideration, with direction or instruction the City Council deems appropriate.

FISCAL CONSIDERATIONS:

There is no fiscal impact. The project is processed through a deposit account paid for by the applicant which is the Park and Recreation Department.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The City Heights Area Planning Committee on July 6, 2005, voted 12:0:1 to recommend approval of the Site Development Permit to construct Fox Canyon Neighborhood Park and to recommend that Ontario Avenue and the unpaved portion of Winona Avenue not be improved.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Stakeholders- The City of San Diego's Park and Recreation Department is the applicant for this project.

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Gary Halbert  
Director  
Development Services Department

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James T. Waring  
Deputy Chief of Land Use and  
Economic Development



Attachments:

1. Aerial Photograph
2. Location Map
3. Community Plan Land Use Map
4. Site Photographs
5. Project Site Plan
6. State Grant Application/Schematic
7. Ownership Disclosure Statement
8. Appeal

PLEASE NOTE: Attachments are not available in electronic format. A complete copy is available for review in the Office of the City Clerk.