



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: September 20, 2006 REPORT NO. 06-125

ATTENTION: Honorable Council President and City Council,
Agenda of September 26, 2006

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION for
Pacific Coast Office Building - Project No. 54384, Council District No. 6

OWNER: Dr. Robert Pollack

APPELLANTS: Ellen M. Shively, Lynn Mullholland, Randy Berkman, James A. Peugh

SUMMARY

Issues - Should the City Council uphold the Hearing Officer's and Planning Commission's certification of Mitigated Negative Declaration No. 54384?

Staff Recommendations

1. DENY the appeal and UPHOLD the Environmental Determination (Mitigated Negative Declaration No. 54384).
2. Make an express finding that the information provided by the appellants is not substantial evidence of significant unmitigated impacts, because it is "...argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous...." (Reference: State CEQA Guidelines Section 15384(a)).

Environmental Review - The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) prepared an Initial Study and completed a Mitigated Negative Declaration (No. 54384).

Fiscal Impact Statement - None with this action. All costs associated with the processing of this appeal are paid by the applicant.

Code Enforcement Impact - None with this action.

Housing Impact Statement - None with this action.

Water Quality Impact Statement – The proposed project design incorporates site design and source control best management practices (BMPs) to reduce the amount of potential pollutants that could be generated from the development. Runoff from the existing vegetated slope, located south of the project site, would continue to sheet flow into a new concrete brow ditch. Two new catch basins with filtration inserts would be added to the project to collect runoff from parking and sidewalk areas and reduce or eliminate the anticipated pollutants prior to discharging into the public drainage system. Various source control BMPs have also been incorporated into the project design to further reduce negative effects to water quality. During construction, the developer must comply with best management practices to reduce or eliminate potential pollutants in runoff from the construction site. The project features described above have been designed in accordance with the City's Storm Water Standards. Compliance with the standards through the above project elements would preclude direct and cumulatively considerable hydrology/water quality impacts.

BACKGROUND

A Site Development Permit for the Pacific Coast Office Building project was approved by the City of San Diego Hearing Officer on April 19, 2006. The project was appealed to the Planning Commission and on June 15, 2006 the Planning Commission denied the appeal and upheld the Hearing Officer's decision to approve the Site Development Permit and certify Mitigated Negative Declaration (MND) No. 54384.

The only issue before the Council today is the appeal of the environmental document. However, information about the project has been included in this report to provide a context for Council's discussion of the Mitigated Negative Declaration. Any project details and conditions discussed relate to an already approved project, and they cannot be changed. However, if Council grants the appeal, the project can be subject to additional environmental review cycles.

Project Description

The approved Site Development Permit allows the development of a 9,845-square-foot commercial and medical office building on the northern 1.05-acre portion of an undeveloped 4.94-acre parcel. The southern portion of the site is within an open space easement, which would remain as open space. The building would have a maximum height of 38.7 feet. The site is accessed from Scheidler Way. Thirty six parking spaces would be provided on-site, with 20 parking stalls located at grade in a tuck-under area located along the northern side of the building. The remaining 16 parking stalls would be located on a second-level parking area on the eastern side of the building. The building would be located on a slope, and the project includes alternative design features to reduce grading, including tucking the rear of the building into the hillside and terracing the second story, creating a roof garden and/or deck. Because of this design, nine shotcrete, crib, and retaining walls varying in length from 99 to 393 feet and from two to ten feet in height are required. The walls would be terraced and landscaped, and would be minimally visible from public viewing areas.

Project Setting

The site is located on a south slope, at the terminus of Schiedler Way off of Camino Del Rio South, in the Mission Valley Community Planning Area. The 4.94-acre parcel is undeveloped and contains both steep hillsides and sensitive biological resources, and is subject to the Environmentally Sensitive Lands (ESL) Regulations. The lot is also subject to the regulations of the Mission Valley Planned District Ordinance.

Vegetation on the site is primarily Diegan coastal sage scrub. The site is not in the City's Multi-Habitat Planning Area (MHPA); however, an area of MHPA is approximately 150 feet uphill, south of the project site.

The Mission Valley Community Plan designates the parcel as Open Space. The surrounding area includes commercial office uses to the north, northwest, and northeast along Camino Del Rio South; open space to the south, southwest, and southeast along the hillside, and residential uses at the top of the hillside.

The site slopes upward from the north to the south at an elevation of approximately 144 feet at the bottom of the lot to approximately 340 feet at the top of the slope. The lower portion of the parcel (approximately 1.05 acres) where development is proposed is zoned MV-CO. The lower portion of the site contains a sliver of land located below the 150-foot contour line. Therefore, the majority of the site is above the 150-foot contour line. The remaining 3.8 acres is zoned RS-1-1 and is restricted from development by an open space easement.

Site History

In 1961, a subdivision map was recorded which created two lots. Lot 1 is the subject parcel. Lot 2, located at 3511 Camino Del Rio South, is currently developed with a commercial office building. The map also reserved the panhandle portion of Lot 1 for a future street.

In March 1977, the Mesa Mortgage Company submitted an application for a Planned Commercial Development Permit (PCD NO. 35) and Rezone from RS-1-40 to CO, to allow development of the lower 1.05-acre northerly (24%) portion of the site with a three and one-half story, 10,000 square-foot office building, parking and landscaping. In July 1977, the Planning Commission denied the project.

The Planning Commission's decision was appealed to the City Council. In December 1977, the Council voted 5-3-1 to grant the appeal and approve the project. Permit Condition No. 5 required that an open space easement be provided on the remaining southerly 3.8-acre portion of the site, which represented approximately 76% of the parcel area. This portion, located within the prior Hillside Review (HR) Overlay Zone, remained zoned RS-1-40 (now RS-1-1). The City also accepted the dedication of the narrow panhandle portion of the parcel for a street (Schiedler Way), as reserved on the above-mentioned subdivision map, to provide vehicular access to the parcel and also to properties located adjacent to the north and west.

The City's Planning Director granted an extension of time of 24 months to use the Planned Development Permit (PCD No. 35) in July 1979 and again in April 1982. In 1982, the City accepted the dedication of the southerly 3.8-acre portion of the parcel as an open space easement, as required by Condition 5 of the PCD. However, the lower 1.05-acre portion of the property zoned CO remained undeveloped and the permit eventually expired.

In 1985, the City Council approved the Mission Valley Community Plan (MVCP). The Plan designated the southerly slopes in this area as open space. From 1990 to 1992, amendments to this Plan were approved which included restrictions on development located above the 150-foot elevation/contour line to be preserved as open space. The Plan states that "large scale development at the base of slopes should not cut or grade nor extend above the 150-foot contour line on the south slopes." The plan then further provides design recommendations and guidelines for hillside development.

In 1990, the Mission Valley Planned District Ordinance (MVPDO) was adopted. This Ordinance includes regulations pertaining to the subject property, which requires a Mission Valley Development Permit (processed as a Site Development Permit), to be approved or denied in accordance with Process Three, for a proposal containing acreage in "steep hillsides" as defined in the Land Development Code Section 113.0103.

In January 2004, the current owner/applicant, Dr. Robert Pollack, submitted an application and conceptual development plans for Preliminary Review.

Based on comments received from Long-Range Planning staff, in June 2004, Dr. Pollack submitted an application to initiate an amendment to the Mission Valley Community Plan. However, through the initiation process and review, Planning Department staff determined that a Community Plan Amendment would not be required for the proposed project, and the community plan amendment initiation was withdrawn.

DISCUSSION

Environmental Review

The City's Land Development Code (Section 128.0103) assigns the responsibility for implementation of 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.

In November 2004, the Pacific Coast Office Building project was submitted for discretionary review. After preparing an Initial Study, EAS staff determined that an MND was the appropriate environmental document for the project. The Initial Study, contained in MND No. 54384, identified potentially significant but mitigable impacts in the issue areas of land use/MSCP, biological resources, and paleontological resources. The Initial Study also addressed geologic conditions, human health/public safety, historical resources, and water quality. (Prior to preparing the Initial Study, staff also evaluated potential impacts in all of the issue areas listed in the MND's Initial Study Checklist.)

Because CEQA encourages lead agencies to focus on significant effects in writing environmental documents, staff does not typically include extensive discussions of issues that were found not to be potentially significant during the environmental review of the project. Until the draft document is circulated for review, it is not always possible to know which issue areas will be of concern to the public. It is not unusual for staff to provide additional information in the final document addressing those issues that were commented on by the public during the review

period, even though those issues were determined not to be potentially significant during the project review. That is the case with this project. In response to public comment and a request from the Hearing Officer, staff provided additional information on landform alteration, development features, and land use, (although these issues were not found to be potentially significant during the environmental review of the project). In fact, staff revised the final MND three times to clarify issues raised by the appellants. In addition, staff prepared an errata sheet to address a design change between the Hearing Officer and Planning Commission hearings, which resulted in modifications of the brush management zones and a 0.12-acre reduction in impacts to coastal sage scrub.

In accordance with CEQA Section 15073.5(c)(4), an environmental document must be recirculated when new significant environmental impacts are identified or new mitigation measures are required to avoid a significant impact. The addition of new information that clarifies, amplifies, or makes insignificant modifications does not require recirculation. The additional information provided in the Pacific Coast Office Building MND did not result in the identification of any new impacts or mitigation measures, and therefore the MND was not recirculated.

Environmental Issues Raised in the Appeal

Pursuant to Section 211151(c) of the CEQA statutes, Ms. Ellen Shively, Ms. Lynn Mullholland, Mr. Randy Berkman, and Mr. James A. Peugh filed an appeal of the City of San Diego Hearing Officer's certification of the MND for the Pacific Coast Office Building project, and of the Planning Commission's validation of the Hearing Officer's certification. It should be noted that the appellants have also stated that they are preserving their right to appeal the project. However, the City Attorney's office has determined that all project appeal rights have been exhausted. The only issue before the Council today is the appeal of the environmental determination.

The appeal is lengthy, with the issue areas somewhat intermixed, so staff has highlighted the issue area pertaining to the environmental document and summarized the main topics addressed in the appeal received June 29, 2006, (Attachment 1), as follows:

Land Use (development above the 150-foot contour line): The appellants claim that the project would result in a significant land use impact because the structure would be above the 150-foot contour line.

Staff response: The project site is designated Commercial Office and Open Space in the Mission Valley Community Plan. The project as originally proposed would have resulted in a flat pad with exposed surface parking, extensive exposed walls and a nearly box-style, two-story building. This design was determined to be inconsistent with the recommendations outlined in the Mission Valley Community Plan, specifically with respect to how grading, building and parking areas should be adapted to the natural terrain (i.e., tucking into the hillside, utilizing small pad areas, emphasizing horizontal orientation, and terracing structures). The Mission Valley Community Plan also recommends that roof areas be designed to minimize disruption of views from crest hillsides and that "large scale development should not extend above the 150-foot contour," which is the boundary of the open-space designation. Given that the structures on abutting parcels are up to 71,000 square feet in floor area (with an average building size of

30,000 square feet), it was determined by Planning Department staff that the proposed structure of less than 10,000 square feet is not large scale.

On an individual project basis, The Mission Valley Planned District Ordinance (MVPDO) allows for the criteria of this planned district to be increased or decreased when one or more of the following situations is applicable: 1) due to special conditions, or exceptional characteristics of the property, or of its location or surroundings, strict interpretation of the criteria of the planned district would result in unusual difficulties or unnecessary hardship or would be inconsistent with the general purpose of the planned district; 2) a superior design can be achieved by altering the adopted standards; or 3) conformance with the “Guidelines for Discretionary Review” necessitates deviations from adopted standards. As such, due to the topography of the site, specifically regarding the restriction of development above the 150-foot contour line, limiting the development area of the property to below the 150-foot contour line (8,811 square feet) would present an unnecessary hardship on the ability to develop the land. Therefore, the project was redesigned to be more consistent with the recommendations outlined within the community plan and in accordance with the MVPDO, tucking the rear of the building into the hillside and terracing the second story, thereby creating a roof garden and/or deck with a building roof. The project would be largely screened from the public right-of-way by existing development to the north. The remaining 3.8 acres are in an open space conservation easement adjacent to the MHPA and would not be impacted. The building footprint and the associated retaining walls are limited to the commercial/office portion of the site and would not encroach into the open space. As a result, staff determined that the project as designed would not result in land use impacts.

Land Use (coastal sage scrub/erosion potential): The appellants claim that the presence of coastal sage scrub and unstable soils on the site conflicts with the Mission Valley Community Plan (MVCP) and triggers a significant land use impact. The appellant included the following quotes from the plan:

“OBJECTIVE: Preserve as open space those hillsides characterized by steep slopes or geological instability in order to control urban form, ensure public safety, provide aesthetic enjoyment, and protect biological resources.”

“Designate the hillsides and canyons which have any of the following characteristics as open space in the community: a. Contain rare or endangered species of vegetation or animal life. b. Contain unstable soils.”

The appellant also included quotes regarding the sensitivity of coastal sage scrub from the 1977 EIR, which was prepared for the earlier on-site project, the EIR for the Mission Valley Light Rail Transit, and from Eric Bowlby of the Sierra Club and Elizabeth Lucas of the California Department of Fish and Game (CDFG). The 1977 EIR was also quoted regarding the “severe” erosion potential of the soil onsite.

Staff response: After the adoption of the MVCP, the City of San Diego entered into an Implementing Agreement with the CDFG and the United States Fish and Wildlife Service (USFWS). The agreement, which is related to the Multiple Species Conservation Program, allows the City to authorize “take” of certain habitats throughout the City, as described in the City’s Biology Guidelines. As discussed on pages 4-6 of the Initial Study, the project would result in

impacts to sensitive upland (Tier II and IIIB) habitats. The Biology Guidelines state that impacts to uplands outside of the coastal overlay zone and outside of the MHPA can be mitigated through various methods. Staff determined that direct impacts to 0.64 acre of coastal sage scrub and 0.10 acre of non-native grassland would be mitigated through payment into the City's Habitat Acquisition Fund, reducing impacts to biological resources to below a level of significance.

The project MND was sent to CDFG, USFWS, the Sierra Club, the Audubon Society, the California Native Plant Society, the Center for Biological Diversity, and the Endangered Habitats League, and no comments were received from these agencies and groups by staff. However, in response to an e-mail about the project from one of the appellants, Mr. Randy Berkman, Elizabeth Lucas of CDFG stated in a January 13, 2006 e-mail: "You are in your right to quote my response to your question about the biological sensitivity of CSS. But, understand that I was not aware of the context of your question. Also, the MSCP requires that mitigation for CSS occur within the preserve for the MSCP (i.e., the MHPA). Since the project site is not within the MHPA and since the proposed mitigating is consistent with the MSCP (I believe), the impacts on the CSS are acceptable to the Wildlife Agencies."

Regarding erosion potential, the project would be appropriately landscaped, precluding soil erosion. Also, as discussed on page 9 of the Initial Study, a geotechnical report was prepared to address site stability. The report, which was deemed adequate by City Geology Section staff, concluded that there are no geologic conditions on the site that would preclude development provided the report recommendations are followed.

Considering the fact that the MVPDO allows a case-by-case exception to the goal of limiting development above the 150-foot contour line; that the biological resources mitigation is entirely consistent with the Biology Guidelines; and that on-site erosion would be prevented and the geologic conditions on the site are suitable for development, staff's position is that construction of the Pacific Coast Office Building would not defeat the goals of the MVCP, and significant land use impacts would not result from the project.

Landform Alteration: The appellants claim that the amount of grading would create a significant impact, triggering an Environmental Impact Report (EIR).

Staff response: According to DSD's significance determination guidelines, projects that alter the natural (or naturalized) landform by grading more than 2,000 cubic yards (CY) of earth per graded acre by either excavation or fill could result in a significant impact. In addition, one or more of the following conditions must apply:

- A. The project would disturb steep (25 percent gradient or steeper) sensitive slopes in excess of the encroachment allowances of the Environmentally Sensitive Lands regulations and steep hillsides guidelines as defined in the LDC;
- B. A project would create manufactured slopes higher than ten feet or steeper than a 2:1 gradient; or
- C. A project would result in a change in elevation of steep natural slopes (25 percent gradient or steeper) from existing grade to proposed grade of more than five feet by

either excavation or fill, unless the area over which the excavation or fill would exceed five feet is only at isolated points on the site.

The project requires more than 2,000 CY of earthwork (6,300 CY of excavation and 2,600 CY of fill), and in that the rear of the building would be tucked into the hillside, Condition C above could be considered to apply to the project. However, none of the above conditions would be considered significant if one or more of the following apply:

1. Grading plans clearly demonstrate, with both spot elevations and contours, that the proposed landforms would closely imitate the existing on-site landform and/or the undisturbed, pre-existing surrounding neighborhood's landforms (achieved through naturalized variable slopes);
2. Grading plans clearly demonstrate, with both spot elevations and contours, that the slopes follow the natural existing landform and at no point vary more than 1.5 feet from the natural landform elevation; or
3. The excavation or fill is necessary to permit installation of alternative design features, such as step-down or detached buildings, non-typical roadway or parking lot design, and alternative retaining wall designs which reduce the project's overall grading requirements.

Grading for the project would require approximately 6,300 cubic yards of cut and 2,600 cubic yards of fill on approximately 0.83 acre of the total 4.94-acre site within areas defined under ESL regulations as stated above. However, the project proposes to tuck the rear of the building into the hillside and terrace the second story, thereby creating a roof garden and/or deck. Therefore, based on the project's use of alternative design features to reduce the project's overall grading requirements, staff determined that Condition No. 3 above applies to the project; therefore, a significant landform alteration impact would not occur. In addition, with implementation of the landscape concept plan, and the above described design features, the site would be visually compatible with surrounding development.

Visual Quality (Development Features): The appellant claims that the number and length of the retaining, noise, and crib walls would create a significant visual quality impact.

Staff response: DSD's significance guidelines include thresholds for determining impacts related to a negative visual appearance for projects which include crib, retaining or noise walls greater than six feet in height and 50 feet in length with minimal landscape screening where the walls would be visible to the public. No noise walls are included in the project design. The design includes two types of retaining walls: soil-nailed shotcrete and crib walls (keystone type). The shotcrete walls are located along the southern side of the project, and have an approximate total length of 817 feet. The crib walls are located along the northern and eastern sides of the project, with an approximate total length of 784 feet. The walls would vary in height from two to ten feet. The exterior wall treatment would blend with the surrounding landform features and the walls would be planted with a mix of vines, shrubs, and accent shrub plantings along the perimeters and tops of the walls. In addition, the walls would be terraced, creating planter areas between the walls for landscaping, further screening them from view.

Although the height and length of the walls exceed the City's threshold as stated above, due to the limited area of visibility from Scheidler Way and Camino del Rio South, large portions of the walls would be completely screened by the proposed building and enhanced landscaping. In addition, existing buildings along Camino del Rio South block views of the majority of the project site. Therefore, staff concluded that construction of the proposed walls would not result in a significant visual impact.

Health and Safety: The appellant states that the removal of the brush management zones represents a public health and safety issue.

Staff response: Where brush management is required, a comprehensive program is required to reduce fire hazards around all structures by providing an effective fire break between structures and contiguous area of flammable vegetation. The fire break must consist of two distinct brush management zones: a 35- and a 65-foot-wide brush management zone per the City of San Diego's Land Development Code (LDC). In addition, per LDC Section 142.0412(i), the Fire Chief may modify the requirements of this section if the following conditions exist:

1. The modification to the requirement shall achieve an equivalent level of fire protection as provided by this section, other regulations of the LDC, and the minimum standards contained in the Land Development manual; and
2. The modification to the requirements is not detrimental to the public welfare of persons residing or working in the area.

Due to the steepness of the southern on-site slopes, the project would implement alternative compliance in lieu of the required 100 feet of brush management area. The entire structure would have one-hour fire-rated construction; a one-hour fire-rated wall/parapet with no openings would be constructed along the southern elevation of the building; the roof would be non-combustible; and the entire structure would be equipped with a fire sprinkler system. DSD's Landscape and Fire Review sections have determined that the modified brush management adequately addresses any fire safety issues affecting the project site.

CONCLUSION

Staff believes that MND No. 54384 adequately addresses the project's potential impacts, and that implementation of the MMRP would avoid or reduce such impacts to below a level of significance.

ALTERNATIVES

1. 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.
2. GRANT the appeal and make a superceding environmental determination or CEQA findings. If Council chooses this alternative, staff respectfully requests direction from Council regarding the existence of substantial evidence, as required by Section

21082.2 of the California Public Resources Code, supporting a fair argument that the project would result in significant environmental effects.

Respectfully submitted,

Kelly Broughton
Deputy Director
Development Services

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

Attachment: [Appeal Application \(Dated June 27, 2006 and received by the City Clerk's Office on June 29, 2006\)](#)