



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: Nov. 22, 2006

REPORT NO.: 06-174

ATTENTION: Council President and City Council
Docket of November 27, 2006

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION for
Dinofia Residence – Project No. 5596. Council District 1.

OWNER: Matthew C. Dinofia

APPELLANTS: Kathleen Vaughan and John Treadway

REFERENCE: Planning Commission Report No. PC-06-218 (includes attachment of
Hearing Officer Report No. HO 06-183), and Mitigated Negative Declaration No. 5596.

REQUESTED ACTION: Should the City Council deny the appeal thereby upholding the
Hearing Officer's and the Planning Commission certification of Mitigated Negative
Declaration No. 5596 for the Dinofia Residence – Project No. 5596, located within the La
Jolla Community Plan Area?

STAFF RECOMMENDATION:

1. DENY the appeal;
2. UPHOLD Environmental Determination; and
3. Make an express finding that the information submitted by the appellant does not constitute substantial evidence supporting a fair argument that the project may result in a significant environmental impact, because it is argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly erroneous or inaccurate.

SUMMARY:

The only issue before the City 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 City Council's discussion of the Mitigated Negative Declaration No. 5596. Any project details and conditions discussed relate to an already approved project, and they cannot be changed. If the City Council grants the appeal, the project can be subject to additional environmental review.

Hearing Officer:

On July 26, 2006, the Hearing Officer granted all approvals for the Dinofia Residence – Project No. 5596 (including all variances, certification of the Mitigated Negative Declaration (MND) No. 5596 and adoption of the Mitigation, Monitoring and Reporting Program (MMRP)) as presented by staff.

Planning Commission:

On September 14, 2006, the Planning Commission voted 5-1-0 to DENY the appeal and UPHOLD the Hearing Officer's Decision.

Background:

On July 26, 2006, the Hearing Officer approved:

1. Coastal Development Permit No. 9217 for Lot Line Adjustment No. 341288 to make 7157 Country Club Drive (front lot) 10,004.72 square feet in order to comply with the minimum lot size of 10,000 square feet for the RS-1-4 zone, and Variance No. 341289 to allow 52.56 linear feet of street frontage where at least 65 feet of street frontage is required; and
2. Coastal Development Permit No. 355814; Site Development Permit No. 355815 for the construction of a new single family residence and Variance No. 355816 to allow no street frontage where at least 65 feet of street frontage is required at 7159 Country Club Drive (rear lot).

On August 9, 2006, the Hearing Officer's decision to approve the Dinofia Residence – Project No. 5596 was appealed by James J. Eischen, Jr., Attorney for Kathleen Vaughan and John Treadway. However, on September 14, 2006 the Planning Commission upheld the Hearing Officer's decision.

On September 28, 2006, James J. Eischen, Jr., Attorney for Kathleen Vaughan and John Treadway appealed the September 14, 2006, Planning Commission certification of the MND No. 5596.

Project Description:

The project consisted of two parcels totaling approximately 26,068 square feet. The front lot was approximately 5,192.08 square feet and containing an existing single family residence. The rear lot (environmentally sensitive lands - biology) was approximately

20,875.93 square feet and vacant. Development of a new dwelling unit was proposed for the rear lot. The approved project allows for a lot line adjustment between the two parcels and the construction of a new single family residence on the vacant rear lot. The reconfigured parcels increases the front lot by 4,812.64 square feet bringing it into compliance with the minimum 10,000 square-foot lot size requirement under the RS-1-4 zone and decreases the square footage of the vacant site, resulting in a 16,063 square-foot rear lot.

Project approval also permits the front lot a variance in order to maintain the existing 52.56 linear feet of street frontage where 65 linear feet is required for the RS-1-4 zone. The rear lot (ingress/egress by an existing road easement) has a variance allowing no street frontage where at least 65 feet of street frontage is required. The lack of street frontage is the result of the City's vacation of Carrizo Road, which was originally intended to serve the rear lot.

Project Setting:

The project site is southwest of Carrizo Drive, north of La Jolla Parkway and east of Torrey Pines Road in a neighborhood that is developed with single family homes. The 16,063 square-foot rear lot is undeveloped and contains sensitive biological resources, and is subject to the Environmentally Sensitive Lands (ESL) Regulations. Onsite elevations range from approximately 430 feet above mean sea level (MSL) at the street to 500 feet MSL at the back edge of the property. The house would be set into a portion of the slope which continues partly into the property. It was determined during the project review that there are no natural steep slopes areas on the property. Therefore, the steep slope encroachment was not a consideration in the environmental determination of the project.

Onsite vegetation consists of coastal sage scrub and ornamental plants. The project would impact a total of 0.30 acres of coastal sage scrub which is considered significant. The City requires that any impacts to areas of more than a tenth of an acre of coastal sage scrub must be mitigated in accordance with the adopted Land Development Code Biology Guidelines. To reduce the direct impacts to coastal sage scrub to a less than significant level, the applicant has chosen to contribute \$8,250.00 to the City of San Diego Habitat Acquisition Fund.

Community Plan Analysis:

The subject site is located in a single family residential neighborhood and is designated as Very Low Density Residential (0-5 DU/acre) in the 1975 La Jolla Community Plan and the 1985 La Jolla – La Jolla Shores Local Coastal Program. The potential development on the rear lot is a maximum of one dwelling unit and the application proposes a two-story residence over a basement.

The La Jolla Community Plan and the La Jolla – La Jolla Shores Local Coastal Program recommends that in order to promote transition in scale between new and older structures

new development should compliment the scale, form and proportion of older development and minimize extreme contrasts in color, shape and architectural elements. The lot for the proposed residence does not front a public right of way. The surrounding area consists of one, two, and three story homes with a variety of architectural styles. The exterior of the residence includes stucco walls, glass windows, wood doors and trim and is articulated by balconies and Mediterranean influenced tile roof. Access to the site is from an existing driveway easement that crosses both lots and serves the subject site and adjacent residences. Due to the configuration of the driveway easement the proposed residence is located on a sloped portion at the south end of the rear lot. The residence is set into the sloped portion of the site and appears as a three story structure from the front with the basement garage exposed. From the rear, only the second floor is visible. The proposed residence does not appear visible from the right-of-way as the rear lot is located behind two adjacent parcels.

The Community Plan and Local Coastal Program provide a recommendation for preserving natural steep slopes and native vegetation. It was determined during the review process that there are no natural steep slopes areas. However, it was determined there are impacts to sensitive biology. The Local Coastal Program requires environmental review and mitigation for impacts upon or destruction of natural habitat and further analysis and mitigation measures are identified and discussed in the environmental document.

Environmental Review:

The City's Land Development Code (Section 128.0103) 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.

In November 2002, the Dinofia Residence 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. 5596, identified potentially significant but mitigable impacts in the issue areas of Paleontological, Historical, and Biological resources. The Initial Study also addressed Geologic Conditions and Visual Effects. (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.)

Environmental Issues Raised in the Appeal:

The appellants state that "The City certified the MND in order to permit the construction of a second residence on the real property that is legally permitted to have only one residence." This statement is inaccurate. Certification of the MND does not permit the construction of the residence. Approval of the Site and Coastal Development Permits would allow the construction of the project.

In addition, the Deputy City Attorney has clarified the legal development rights of the existing two parcels within his memorandum to the Planning Commission and Development Services Acting Director dated September 7, 2006, Subject: Dinofia Residence – Certificate of Compliance (Attachment 1).

The appellants also state “Due to the significant omissions regarding environmental effects along with the invalid authorization of the MND prior to the mitigation assessments, an Environmental Impact Report (EIR) is warranted.” This too is inaccurate, as staff conducted an Initial Study and determined that the proposed project could have a significant environmental effect in the following areas: Paleontological, Historical and Biological Resources. Subsequent revisions in the project create the specific mitigation identified in Section V of the MND. The project as revised now avoids or mitigates the potentially significant environmental effects previously identified, and the preparation of an EIR will not be required.

The appellant also states that the MND fails to address the project’s significant effects on land use, the steep hillside, the groundwater table, loss of raptors’ breeding habitat, coastal sage scrub, and density. In addition, the appellant states that the MND fails to properly notice appellants and that the MND was certified without public comment. The appellant’s claims and staff’s responses are grouped under each issue area heading.

Land Use

The appellant claims the MND ignores the following Local Coastal Land Use Plan’s guidelines and that in doing so, the MND fails to address the project’s significant environmental effects on the steep hillside.

- a. Design structures on slopes to adapt to existing hillside conditions. Avoid the use of standard prepared pads on slopes with grades above 25 percent...These solutions include open foundations, pier supports, split level, cascading level, cascading developments and similar techniques designed to minimize grading.
- c. Design structures on hillsides with a 25 percent or greater slope in a manner that does not excessively alter the natural hillside conditions, thereby minimizing the need for cut and fill grading.

Staff Response: The Community Plan and Local Coastal Program provide a recommendation for preserving natural steep slopes and native vegetation. It was determined during the review process that the project site does not contain Steep Hillsides as defined in SDMC section 113.0103. However, it was determined there are impacts to sensitive biology. The Local Coastal Program requires environmental review and mitigation for impacts to Sensitive Biologic Resources and further analysis and mitigation measures are identified and discussed in the environmental document.

Although the site does not contain Steep Hillsides as defined by the SDMC, the project was designed in a sensitive manner in relationship to the slope on site. The garage of the

residence was placed at the lower grade that fronts the access easement. The two story residence with a basement will be set into the sloped portion of the site. From the rear, only the second floor is visible. The proposed residence does not appear visible from the right-of-way as the rear lot is located behind two adjacent parcels. The design proposes a balance of cut and fill in order to minimize the alteration of the slope. In addition, the structure has been designed to a lower floor area ratio (at a .23 where a .45 is permitted) than allowed on site and observes greater setbacks than are required. The surrounding area consists of single family residences that are larger than the proposed.

In analyzing the potential for impacts to *steep hillsides*, staff relies on Section 113.0103 of the Land Development Code, which defines *steep hillsides* as "...all lands that have a slope with a natural gradient of 25 percent (4 feet of horizontal distance for every 1 foot of vertical distance) or greater and a minimum elevation differential of 50 feet, or a natural gradient of 200 percent (1 foot of horizontal distance for every 2 feet of vertical distance) or greater and a minimum elevation differential of 10 feet."

The project site does have a gradient of 25 percent, but the elevational differential at the natural slope area is approximately 25 feet. It does have a minimum elevation differential of over 10 feet, but it does not have a natural gradient of 200 percent. The slope on the site does not meet the Code's definition of a *steep hillside*; therefore, there is no potential for the project to result in an impact on a *steep hillside*.

The appellant claims that the steep hillside retains its natural state, citing the geotechnical report that was prepared for the project, which states that approximately 9 percent of the total area retains a "naturally" weathered and undisturbed soil profile; approximately 89 percent of the site area is covered by one foot or more of fill/disturbed soil; and approximately 2 percent of the lot area is disturbed by cut and grading.

The geotechnical report cited by the appellant is substantial evidence the site has been extensively disturbed.

Groundwater:

The appellant states that the MND fails to address the project's significant effect on the local, seasonal, perched groundwater table, (discussed in the geotechnical report). The appellant states that the table is "likely located on the steep slope," and that "the severe hillside excavation and grading will create a pathway for contaminants to travel to the Ground Water Table and eventually contaminate ground water.

Staff response: Staff believes that the appellant's statement that the groundwater table is likely located on the steep slope is inaccurate. The *Soil and Geological Evaluation Report*, (Terra Costa Consulting Group, March 11, 2005) states "There is no evidence of a perched ground water table under the site, although the upper soil profiles were noted to be moist. There is likely at least a local and possibly seasonal perched water table within the west trending drainage along the northern limits of the site." While the location of a water table, if any, is not on the slope or in the area where the house would be built, some

of the northern portion of the site is within the grading footprint. However, graded areas of the site would be refilled and compacted, leaving no pathways to any groundwater table.

During construction, the project would be required to comply with the City's Storm Water Standards. The Storm Water Standards would require the adoption of a Water Pollution Control Plan (WPCP), which would outline the best management practices (BMP's) that would be employed during construction to alleviate the potential for impacts to receiving waters. Source control BMP's employed during construction would include the preventative maintenance of equipment to avoid their leakage of fluids and the proper storage of construction materials to avoid the contamination of site runoff or the groundwater.

According to the County of San Diego Department of Environmental Health Hazardous Materials Listing (2004), no recorded hazardous materials exist on-site or within the proximity of this site. The site is located in a residential area of La Jolla, and does not have a history of any uses that would be considered to result in the deposit of hazardous materials on the site.

It is staff's position that for the above reasons, the grading activities would not create a pathway for contaminants to enter any groundwater table.

Significant Environmental Effects on the Raptors' Loss of Breeding Habitat

The applicant states that the MND fails to mitigate the significant effect on the raptors' loss of breeding habitat and defers mitigation assessment without public opinion until after the project is finished, citing Mitigation Measure 4E on Page 7 of the MND, which states "This report shall address findings of active/inactive nests and any recommendations for retention of active nest, removal of inactive nests and mitigation for offsetting loss of breeding habitat."

Staff response: Staff acknowledges that this measure is included in the MND. However, the phrase "and mitigation for offsetting loss of breeding habitat" should not have been included in the measure. The Multiple Species Conservation Plan, which is designed to preserve a set of functioning habitats within the City, already provides mitigation for such loss. The MSCP was analyzed in Environmental Impact Report/Environmental Impact Statement No. 93-0287, and the document was subject to public review prior to its certification on March 18, 1997 (per Resolution No. R-288457). The applicant has elected to contribute to the City's Habitat Acquisition Fund (HAF), which is used to acquire specific targeted areas of contiguous habitat.

In addition, according to the biological resources report prepared for the project, the only raptor that was observed in nearby eucalyptus trees during the wildlife survey was the Red-tailed hawk, which could forage, but not likely breed, on the site (Page 9, *Revised Biological Resources Report for the Di Nofia Property, San Diego California*, November 2004, Revised May 2006). In spite of this low likelihood of the occurrence of breeding

raptors, the project is subject to a mitigation program that would protect any breeding raptors that could be affected by construction activities.

The recommendation to “suggest any recommendations for retention of active nests” is appropriate, as the applicant is required to comply with the Migratory Bird Treaty Act, which prohibits any removal of such nests.

Significant Environmental Effect on the Coastal Sage Scrub :

The appellant states that the applicant’s payment into the HAF is not an assurance that the City will eventually acquire the lost .30 acres of coastal sage scrub, and the City’s failure to acquire coastal sage scrub will be a potentially significant environmental effect on the coastal sage scrub.

Staff response: Payment into the HAF is a mitigation method allowed by the City’s adopted *Land Development Code Biology Guidelines* (May 19, 2001, as amended by Resolution No. R-294943). Discussion of this method (“Monetary Compensation”) is found on Page 23 of the Guidelines. There is a two million dollar cap on the amount of money that can accumulate in the HAF in order to ensure that the funds are spent in a timely manner. When the cap is reached, no further funds can be accepted until the money is expended.

The biological resources mitigation measures were developed in cooperation with the United States Fish and Wildlife Service and the California Department of Fish and Game.

Significant Environmental Effect on Density:

The appellant states that the Very Low Density Residential (0-5 DU/acre) neighborhood cannot support the creation of an additional second residential unit on an illegally subdivided lot. Also, the journey of equipment, materials, and laborers up to the project site will cause unnecessary noise, dust, and traffic impacts on the neighborhood.

Staff response: DSD staff and the City Attorney’s Office have determined that Lot 16 (rear lot) is a legal lot and the applicant has the right to develop a residential unit on the site. For the purposes of calculating density, the La Jolla Community Plan does not distinguish between lots. Density is calculated by dwelling units per acre and the subject site is designated as Very Low Density Residential (0-5 du/ac) in the La Jolla Community Plan. The application consists of two parcels totaling approximately 26,068 square feet (0.598-acres). According to the community plan, the land use designation would permit the development of a maximum of two dwelling units for the 26,068 square foot subject area at a density of three dwelling units to the acre. The proposed density of three dwelling units to the acre is within the 0-5 du/ac range identified in the plan. The front parcel has been improved with a single family home and the rear parcel (Lot 16) is currently undeveloped. The project proposes the development of a new dwelling unit on the undeveloped parcel. A net increase of one dwelling unit is proposed. The project is consistent with the density allowance on the site, and no impacts related to density would

occur.

Regarding noise, dust, and traffic: The project is required to comply with the City's noise ordinance (Sections 59.5.0404 (a) and (b) of the Municipal Code). The City's significance threshold related to particulate matter (PM₁₀, or dust) is 100 pounds per day. The South Coast Air Quality Management District's (SCAQMD) *CEQA Air Quality Handbook* (1993) estimate of PM₁₀ emissions from site grading is 26.4 pounds per graded acre. The area of grading to be done on the project site is approximately 4,925 square feet, which is approximately 0.11 acre. Using SCAQMD's dust emission estimate, this project has the potential to produce about 2.98 pounds of dust per day, which is below the City's threshold of 100 pounds per day. Standard dust abatement practices, such as watering of the site, would further reduce dust emissions. Construction-related traffic would not be allowed to block entrances to other residences. While the construction-related noise, dust, and traffic may be perceived as an inconvenience to the surrounding residents, there is no evidence that would lead staff to believe the temporary construction activities related to one single-family house would result in significant environmental dust, noise, or traffic impacts.

MND Fails to Properly Notice Appellants:

The appellant states that the MND must be set aside for the City's failure to notify appellants, citing Sections 21092.4 and 21092 of the Public Resource Code (PRC).

Staff response: This statement is not related to the adequacy of the environmental document. However, it should be noted that staff complied with all CEQA noticing requirements. Section 21092.4 of the PRC addresses consultation with transportation planning agencies and public agencies. Section 21092.4 is not applicable to this project. Section 21092 addresses public notice of preparation of environmental documents. Per Section 21092(b)(3), "The notice required by this section shall be given to the last known name and address of all organizations and individuals who have previously requested notice and shall also be given by at least one of the following procedures:

- (A) Publication, no fewer times than required by Section 6061 of the Government Code, by the public agency in a newspaper of general circulation in the area affected by the proposed project. If more than one area will be affected, the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.
- (B) Posting of notice by the lead agency on- and off-site in the area where the project is to be located.
- (C) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

Staff noticed the availability of the draft MND in the *San Diego Daily Transcript* on June 5, 2006. In addition, staff posted the MND and the public notice on the City's web site. Copies of the document were sent to several entities, including the La Jolla Town

Council and the La Jolla Community Planning Association. It is DSD's practice to send the environmental document to anyone who requests it in writing (per Section 21092.2 of the PRC). Environmental staff did not receive a request from the appellant.

In addition to the above actions, applicant also posted a Notice of Application on the project site in accordance with Sections 112.0301 and 112.0304 of the Municipal Code. The Notice included the Development Project Manager name and phone number as the contact.

MND Certified Without Public Comment:

The appellant states that the MND was certified without public comment.

Staff response: The MND was noticed in the *San Diego Daily Transcript*, and the MND and Public Notice were posted for 30 days on the City's web page on June 5 2006. The MND was mailed to several entities and went through a 30-day public review period. One comment letter (from CDFG) was received. No comments were provided by the appellant. The MND was approved after the public comment period.

NOTE

The applicant has also provided a response to the Appeal of the Environmental Determination. Please see the attached.

CONCLUSION

It is Environmental Analysis Section staff's professional opinion that the MND prepared for the subject project adequately addresses all project impacts and proposes appropriate mitigation measures, and that implementation of the measures would reduce the project's potential significant impacts to below a level of significance. It is also staff's professional opinion that the information provided by the appellant does not rise to the level of substantial evidence supporting a fair argument that the project may result in significant impacts.

ALTERNATIVES

1. GRANT the appeal, set aside the environmental determination, and REMAND the matter to the Planning Commission 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.

Marcela Escobar-Eck
Director
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James T. Waring
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ATTACHMENTS:

- [1. Applicant Response to Appeal](#)
- [2. Deputy City Attorney Memorandum](#)