



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

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DATE ISSUED: September 10, 2008                      REPORT NO.: 08-126

ATTENTION: Council President and City Council

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION for  
Wightman Street Neighborhood Park. Council District 7.  
Docket of September 16, 2008

OWNER: City of San Diego, Park and Recreation Department

APPLICANT: City of San Diego, Engineering and Capital Projects Department

APPELLANT: Theresa Quiroz (Attachment 1)

SUMMARY

Issues - Should the City Council deny the appeal thereby upholding the determination of the Development Services Department (DSD) and the Mayor's Designee that a Mitigated Negative Declaration is the appropriate environmental document and that no additional environmental review is necessary for the proposed project?

Staff Recommendations

1. DENY the appeal and UPHOLD Environmental Determination Final Mitigated Negative Declaration (No. 149112); and
2. Make an express finding that the information submitted by the appellant does not constitute substantial evidence of significant unmitigated impacts, because it is "...argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous..." (Reference: State California Environmental Quality Act (CEQA) Guidelines Section 15384(a)).

Environmental Review – The City of San Diego as Lead Agency under the CEQA conducted an Initial Study which considered the proposed project components and found that the project would result in significant but mitigable impacts to Historical Resources (Archaeology). Other issue areas evaluated but determined to be not significant included Land Use (Mid City Community Plan, Chollas Creek

Enhancement Plan, Multiple Species Conservation Program/Multi-Habitat Planning Area Consistency), Biological Resources, Human Health/Public Safety/Hazardous Materials, Hydrology and Water Quality. A Mitigated Negative Declaration (MND) was prepared for the project and certified by the Deputy Chief Operating Officer for Public Works on July 29, 2008.

Fiscal Statement - All costs are recovered through CIP 29-925.0. Design and construction of the park is currently estimated to be \$3,049,000 which includes partial funding from Special Park Fees in the amount of \$686,000. If City Council denies the appeal and upholds the Mitigated Negative Declaration, the City will send a revised application to the State of California Parks and Recreation Department requesting that grant number UP-37-002, funded via the Urban Park Act of 2001 in the amount of \$2,363,000, be moved from Fox Canyon Park to Wightman Street Park (Resolution Number 302498). Pending State approval this project will be fully funded.

Code Enforcement Impact - None with this action.

Housing Impact Statement - None with this action.

Water Quality Statement - The proposed project design incorporates site design and source control best management practices (BMP's) to reduce the amount of potential pollutants that could be generated from the development of the park site. Storm drain inlet protection consisting of gravel bags and filter fabric such as polyethylene or polypropylene would be placed around curb inlets. Catch basin inlet protection would be specified in paved areas by using filter fabric over catch basin grates. Specifications for stabilized construction entrance/exit areas would be provided to minimize transport of sediment off-site. Silt fences and fiber rolls would be specified to minimize surface transport of sediments. The construction contractor would be required to prepare and use a Sewer Spill Prevention and Response Plan. In addition, the applicant is required to provide post-construction BMP's due to proximity to Auburn Creek. The project as designed would include a vegetated swale planted with lawn adjacent to the creek which would act as a filter for run-off from park irrigation and storm flow. The project will not contribute additional pollutants into the creek by eliminating the use of: specific Diazanone insecticides, fertilizers with concentrations of copper and zinc, and lead based paint. Other specific measures have been identified and incorporated into the California Regional Quality Control Board Application for Clean Water Act 401 Water Quality Certification, dated May 6, 2008. 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 water quality impacts.

## BACKGROUND

The only issue before the City Council is the appeal of an environmental determination by the Mayor Designee to approve a General Development Plan (GDP) and certify a Mitigated Negative Declaration (MND No. 149112) and adopt the Mitigation, Monitoring and Reporting Program for the design and development of an approximately 1-acre, City-owned park site for the Wightman Street Neighborhood Park located at 5024-5050 Wightman Street in the City Heights neighborhood within the Mid-City Communities Planning Area (Attachment 2). The MND was prepared, distributed, and finalized in accordance with all applicable CEQA guidelines and City of San Diego land use regulations and policies (Attachment 5). The environmental analysis focused on all potential impacts the proposed project might have on the surrounding community and determined the appropriate mitigation to reduce potential impacts below a level of significance for one issue area: Historical Resources (Archaeology) because of the potential to impact resources during construction related activities. No other issue areas required mitigation.

The Wightman Street Neighborhood Park property was acquired by the City of San Diego on August 24, 2006 as a settlement of all claims and litigation arising from damages to the property as a result of flooding at or near the City's Oak Park Drainage Channel. During storm events, the Auburn Creek Channel located along the north and western property boundaries would overtop resulting in ponding of water at the base of one residential building on the property resulting in mold. Mr. Metzger, the previous property owner filed a claim with the City's Risk Management Department because this one unit could not be rented due to the on-going issues with standing water and mold. The Risk Management claim ultimately resulted in the City's acquisition of the entire property. Risk Management funds were used to acquire the property and demolish the buildings and accessory structures onsite. During this time, staff determined that due to deficiencies in park facilities for this area, the former Metzger property which the City now owned would be a good location for a small neighborhood park.

On April 2, 2007 the City Council authorized by Resolution (R-302498) the addition of Wightman Street Park to the FY'07 CIP Program, and the transfer of \$686,000 of Special Park Fees along with the request to the State of California to amend the project location in grant contract number UP-37-002, Urban Park Act Grant, in the amount of \$2,363,000 from Fox Canyon Park to Wightman Street Park (Resolution No. 302498). The Urban Park Grant has specific milestones which must be met in order for the City to be reimbursed which includes the provision for construction to be complete, all vendors paid, the park open to the public and the City fully reimbursed by the State prior to the grant liquidation date of June 30, 2010. No extension of the grant is available.

On November 28, 2007, following three public workshops on the proposed GDP, the Colina Del Sol Recreation Council voted unanimously (4-0-0) to recommend approval of the GDP with one recommendation that the park designers resolve the safety condition presented at the opening of an adjacent drainage culvert box in Wightman Street. On April 9, 2008 the Park and Recreation Area Committee – Community Parks II Division voted (8-2-1) to recommend approval; on May 14, 2008 the Design Review Committee voted unanimously (10-0) to recommend approval of the GDP as presented with specific recommendations, and on July 17, 2008 the Park and Recreation Board voted unanimously to recommend approval of the GDP (Attachment 4).

## Project Description

The Wightman Street Neighborhood Park GDP was developed based on community input received during a series of three public workshops at the Colina Del Sol Recreation Council, recommendations and comments from the Park Area Committee and Design Review Committee, and coordination with the Park and Recreation Department. The proposed park includes amenities such as a children's play area with playground equipment, basketball courts, picnic furniture and shade structure, trails and exercise stations, and landscapes. In addition, this project also implements the Chollas Creek Enhancement Plan for the portion of Auburn Creek (tributary to Chollas Creek) adjacent to the site by enhancing it to a more natural riparian condition, featuring it as an educational and recreational amenity for the public, improving drainage flow in the creek channel and providing a 20-foot buffer area and wood rail fence to deter the public from entering the creek (Attachment 3).

The project will contribute to the population-based park acreage requirements set forth in the City's General Plan and implements the recommendations found in the Mid-City Communities Plan (pp. 111-114).

## Environmental Appeal Process

This appeal is before the City Council because Section 21151(c) of the California Environmental Quality Act (CEQA) was amended in 2003 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.* The action taken by the Chief Operating Officer of Public Works (Mayor Designee) to approve the General Development Plan and certify the Mitigated Negative Declaration in accordance with Sections 111.0205 and 112.0502 of the Land Development Code (LDC) is appealable as described in Section 112.0520 of the LDC.

Pursuant to the amended CEQA legislation, an appeal was filed by Theresa Quiroz on August 4, 2008 (Attachment 1) which asserts that significant environmental impacts have not been adequately addressed in the Mitigated Negative Declaration. The appeal further contends that there is a potential for significant impacts on the environment necessitating the preparation of an Environmental Impact Report (EIR) for public health due to sewage and other run-off contaminants based on evidence in the Administrative Record for a settlement agreement related to the subject property. This appeal applies only to the environmental determination.

## DISCUSSION

### Appeal Issues

The appeal contends that an Environmental Impact Report (EIR) should be prepared for the project rather than the Mitigated Negative Declaration based on the potential for significant impacts for public health due to sewage and other run-off contaminants as evidenced in the

Administrative Record from a settlement agreement related to the subject property. The appeal application makes these contentions, but provides no factual, substantial evidence of significant unmitigated impacts necessitating the preparation of an EIR. The appeal issues identified are clearly speculative and unsupported by fact. Further, CEQA Section 21082.2(b) states: The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment. An EIR would be required pursuant to CEQA if the project may have a significant effect on the environment. Staff disagrees with the contention that there are potential impacts associated with the proposed project that cannot be mitigated to below a level of significance and therefore concludes that the MND is the appropriate environmental document for this action.

### **Appeal Issue No. 1: Impacts to Public Health due to Sewage**

#### Staff Response

Because it's unclear what new information or substantial evidence the Appellant is presenting related to public health due to sewage, staff has provided a summary of the City's existing sewer facility conditions and how they apply to the project site.

Two existing sewer pipelines and two sewer access manholes are located within the project site. The Home Avenue Trunk Sewer was constructed in 2002 and crosses from north to south through the middle of the site. The second sewer line follows the creek alignment on the north and western property boundaries. Both sewer lines are currently in operation allowing excess capacity. According to Metropolitan Wastewater Department (MWWD) staff, there are currently no active sewer improvement projects in the project area. Emergency access to the existing sewer lines and manholes has been accommodated on the GDP.

According to information provided by MWWD, two sewage spills can be documented in the project vicinity: one offsite within the creek, along the park's western boundary (910 gallons, August 2002) and one within the eastern segment of Wightman Street between Manholes 122 & 586(680 gallons, January 2008), which flowed southwesterly and was collected at the street inlet adjacent to the proposed park site. No sewage spills have been recorded on the sewer pipeline within the project site. Therefore, the allegation that public health impacts due to sewage on the proposed park site cannot be supported by evidence provided by the appellant.

### **Appeal Issue No. 2: Impacts to Public Health due to other Run-Off Contaminants**

#### Staff Response

Because it's unclear what new information or substantial evidence the Appellant is presenting related to run-off contaminants, staff has provided a summary of the City's

requirements for reducing potential water quality impacts to impaired water bodies and the proposed Best Management Practices to be implemented.

Auburn Creek is identified as a tributary to Chollas Creek (Type R California watershed 90822000), which is listed on the 2002 Clean Water Act (CWA) Section 303(d) list of Water Quality Limited Segments, prepared by the San Diego Regional Water Quality Control Board (RWQCB), approved by the USEPA, July, 2003. Bacteria indicators within the creek have been rated medium, while Cadmium, Copper, Diazinon, Lead, and Zinc from nonpoint/Point Sources are rated high.

Urban runoff discharged from municipal storm water conveyance systems has been identified by local, regional, and national research programs as one of the principal causes of water quality problems in most urban areas. Water quality is affected by sedimentation caused by erosion, runoff carrying contaminants and direct discharge of pollutants (point-source pollution). As land is developed, impervious surfaces send an increased volume of runoff containing oils, heavy metals, pesticides, fertilizers and other contaminants (non-point source pollution) into the storm drain system. Point sources are discrete conveyances such as pipes or man-made ditches. As a result, the City of San Diego has adopted Stormwater Regulations that require all project applicants to submit Water Quality documentation with applications for ministerial (construction grading and/or building permits) and discretionary actions regardless of when the original project was approved and/or whether there is an environmental document with specific mitigation.

Best Management Practices (BMPs) are required during construction activities which would include (but is not limited to) features such as storm drain inlet protection, catch basin inlet protection, stabilized construction entrance/exit areas, and silt fencing. Storm drain inlet protection consisting of gravel bags and filter fabric such as polyethylene or polypropylene would be placed around curb inlets. Catch basin inlet protection would be specified in paved areas by using filter fabric over catch basin grates. Specifications for stabilized construction entrance/exit areas would be provided to minimize transport of sediment off-site. Silt fences and fiber rolls would be specified to minimize surface transport of sediments. The construction contractor would be required to prepare and use a Sewer Spill Prevention and Response Plan. In addition, the applicant is required to provide post-construction BMP's due to proximity to Auburn Creek. The project as designed would include a vegetated swale planted with lawn adjacent to the creek which would act as a filter for run-off from park irrigation and storm flow. In addition, the following permanent BMP's would be required:

- The site drainage will be routed through a vegetated swale (bio swale) to detain run-off, and cause it to flow through a series of planted areas to help cleanse it of excess fertilizer, bacteria and other pollutants that may be contained in the park run-off. The lower portion of the vegetated swale will consist of native riparian plant species. Much of the site drains through the lawn and planting areas slowing run-off, allowing water percolation and biofiltration.
- Channel slopes will be vegetated with native plant materials planted from 1 gallon stock, and hydroseed to minimize erosion.

- The existing creek bottom is substantially cobble covered, minimizing erosion. The existing creek bottom would not be disturbed.
- The open soil areas throughout the site will be vegetated with permanent planting and maintained by the City Park and Recreation Department.
- Tree cover will be increased over the site resulting in a reduction of run-off during rain events.
- Irrigation systems will be designed, automatically controlled, and maintained to minimize run-off.
- Bonded fiber matrix hydroseed will be applied to stabilize the channel slopes until germination
- Litter receptacles will be set on concrete surfaces, and emptied on a regular basis.

With these permanent BMP's in place, the amount of impervious surface will be decreased significantly from the previous residential land use.

In addition, the project will not contribute additional pollutants into the creek by eliminating the use of the following products: specific Diazanone insecticides, fertilizers with concentrations of copper and zinc, and lead based paint. Other specific measures have been identified and incorporated into the RWQCB Application for Clean Water Act 401 Water Quality Certification, dated May 6, 2008. Project specific BMP's have been incorporated into the construction documents, and compliance with the City's Municipal Permit would be assured through adherence to the construction documents and contract specification in accordance with the City's Stormwater Regulations and DSD Field Inspection Section.

### **Appeal Issue No. 3: Evidence in the Administrative Record from a settlement agreement related to the subject property**

#### Staff Response

Although the Appellant did not specify what evidence from the Settlement Agreement they are referring to, Staff believes it is related to allegations made in the deposition about sewage in general in the area. However, the Risk Management claim, and subsequent property acquisition for the subject site did not result from sewage, but from damages to the property as a result of flooding at or near the City's Oak Park Drainage Channel, and because one unit on the property could not be rented due to the on-going issues with standing water and mold. Because it's unclear what new information or substantial evidence the Appellant is presenting, staff has provided a description of the City-owned park sites' existing hydrologic conditions and the post-construction condition relative to this issue.

#### Existing Hydrologic Site Conditions

There are no City storm drains crossing the property. Auburn Creek enters the site from the north through two parallel 48" diameter storm drains, which flows on the surface in the creek bed, and crosses under Wightman Street in a 7' wide x 3.5' high concrete box culvert. According to the Hydrology and Channel Hydraulics Analysis for Auburn Creek prepared by Masson & Associates, Inc. (June 10, 2007) for the project, the size of this culvert does not

accommodate the 10 and 100-year flood volumes, resulting in the potential for water to pond on the upstream side of Wightman Street, eventually rising to a level that allows over-topping the lowest portions of the street. This type of storm water back up at culverts is not unique to the site, and is known to occur in other places along the Chollas Creek drainage. According to the Hydraulics Analysis (Masson), in the existing condition, the entire site is anticipated to flood during the 10 and 100-year storm events to an elevation of approximately 279.74 near the culvert at the north edge of Wightman Street, approximately 1 foot over the lowest portion of the north curb at elevation 278.53. In 100-year events, flooding over the site can be anticipated to be up to 2.8 feet at the southwest corner of the site outside the creek. With smaller flood events, similar ponding may occur when the culvert becomes blocked by a temporary obstruction such as tires, furniture, sinks, and mattresses that accumulate in the creek from upstream. This urban debris is typical throughout the Chollas Creek drainage. However, it is anticipated that the amount of illegal dumping at the Wightman Avenue culvert will diminish with the recent completion of the Auburn Park Residential development upstream and the proposed Wightman Street Neighborhood Park.

#### Proposed Hydrologic Site Conditions

Because of the previously known on-site flood conditions, a Preliminary Drainage Study was prepared by Nasland Engineering (October 2007) to determine the amount of storm runoff generated by the proposed improvements in comparison with the amount of runoff generated by the previously developed site. According to the Drainage Study, the existing and proposed storm runoff from the project site would discharge into Auburn Creek near the southwest corner of the project site. In a site specific basin analysis, a comparison of composite stormwater runoff for the existing and proposed conditions is provided for a 100-year storm event. The report concluded that due to the reduction of impervious surfaces on the proposed park site, there would be a decrease of 0.55 cubic feet/second (cfs) in the peak runoff discharge in a potential 100-year storm event, based on the 100-year intensity factor of 3.0 in/hr, for the approximately 1-acre project site. The existing Q100 was calculated to be 1.95cfs, while the proposed Q100 was calculated to be 1.40 cfs, and as such would not result in an impact to the existing hydrologic basin and drainage systems. As a result, the GDP design proposal would raise the eastern portion of the site approximately 3 feet above the existing grade to allow for the installation of park facilities above the 100-year flood elevation. The eastern creek bank would be widened by reducing the channel steepness, and a larger holding area within the vegetated swale under the park bridge has been added, increasing the capacity of the creek. It is anticipated that the flooded areas of the site would be reduced to approximately half with these hydrologic improvements.

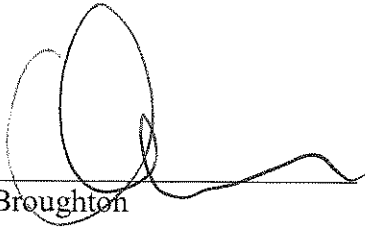
#### CONCLUSION

Staff has reviewed the appeal of the environmental document and disagrees with the contention that an EIR is required. Staff believes that MND No. 149112 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.

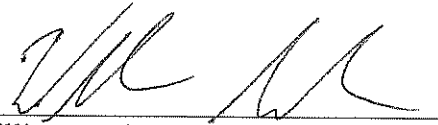


ALTERNATIVES

1. Grant the appeal and make a superceding environmental determination or CEQA finding; or
2. Grant the appeal, set aside the environmental determination, and remand the matter to the previous decision-maker, in accordance with section 112.0520(f)(3), to reconsider the environmental determination that incorporates any direction or instruction the City Council deems appropriate. If Council chooses this alternative, staff respectfully requests direction from Council regarding the existence of substantial evidence, as required by CEQA Section 21082.2 of the California Public Resources Code, supporting a fair argument that the project would result in significant environmental effects leading to the preparation of a new environmental document.



Kelly Broughton  
Director  
Development Services Department



William Anderson  
Deputy Chief Operating Officer:  
Executive Director of City Planning and  
Development

- ATTACHMENTS:
1. Appeal Application
  2. Location Map
  3. Site Plan
  4. Park and Recreation Board Report No. 102
  5. Mitigated Negative Declaration