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Development Permit/ Environmental Determination Appeal Application

THE CITY OF SAN DIEGO

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
 Process Three Decision - Appeal to Planning Commission
 Process Four Decision - Appeal to City Council
 Environmental Determination - Appeal to City Council
 Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

(Craig Jones filing for) the Scripps Ranch Community Planning Group

Name
 10055 Wildlife Road San Diego CA 92131 (cell) 858-354-1785 (home) 858-695-1998
 Address City State Zip Code Telephone

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Western Pacific Housing, Inc. (D.R. Horton)

4. Project Information

Permit/Environmental Determination & Permit/Document No.:
 Project & MND No. 53037; SDP No. 153465; VTM
 No. 178023

Date of Decision/Determination:
 June 22, 2006

City Project Manager:
 Leslie Goossens

Decision (describe the permit/approval decision):

Action of the Planning Commission to certify MND No. 53037, make findings and approve SDP No. 153465 and VTM No. 178023

5. Grounds for Appeal (Please check all that apply)

- Factual Error (Process Three and Four decisions only)
 Conflict with other matters (Process Three and Four decisions only)
 Findings Not Supported (Process Three and Four decisions only)
 New Information (Process Three and Four decisions only)
 City-wide Significance (Process Four decisions only)

Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

The Planning Commission erred in certifying the proposed Mitigated Negative Declaration, based on an incomplete and inadequate traffic impact assessment which fails to identify the potential for significant negative traffic impacts.

Factual errors presented in the staff report, traffic impact assessment and MND were accepted as basis for Planning Commission decision.

The Planning Commission made findings to approve the Site Development Plan application and the Vesting Tentative Subdivision Map application which cannot be supported, based on the incomplete and inadequate environmental assessment.

The Planning Commission decision to approve this project is in conflict with sections of the City of San Diego Municipal Code.

Evidence addressing and supporting these grounds for appeal exists in the record of review of this project: comments submitted during the review period of the proposed MND; responses to said comments and submitted additional comments addressing such responses; written and verbal testimony and information presented to the Planning Commission at and for its sessions of May 18, June 15, and June 22; and the proposed project MND inclusive of all elements, including the proposed traffic impact assessment.

Additional information not considered by the Planning Commission has been forthcoming which addresses the City's ability to make a fair and informed decision on this project, including the project's environmental determination, which information should be in the public record. Introduction to said information is attached hereto.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: Craig Jones

Date: 7/5/2006

Note: Faxed appeals are not accepted.

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DS-3031 (06-06)

Scripps Ranch Community Planning Group
Appeal of Planning Commission approval of the "Wisteria" project
Additional Information

The Wisteria project's Initial Study states the following on page 4:

The study determined that the proposed project causes an increase greater than 0.02 in the volume-to-capacity ratio at Mira Mesa Boulevard between I-15 Northbound ramps and Scripps Ranch Boulevard. However, pursuant to City of San Diego Traffic Impact Study Manual, such an impact would not be regarded as significant if the segment meets the following three criteria: 1) The roadway segment is built to its ultimate roadway classification; 2) The intersections at the ends and along the segment are operating at acceptable levels of service; and 3) An arterial analysis for the same segment is calculated to operated at an acceptable level of service.

Upon a review of the City's Traffic Impact Manual, the criteria cited above does not exist. Instead, the manual states on page 18 "if a proposed project's impact exceeds the values shown in the table, then the impacts are deemed 'significant.' The project applicant shall identify 'feasible mitigations' to bring the facility back to the level previously held by the facility prior to the project's impacts."

If there are no feasible traffic control mitigation measures, then the size of the project should be reduced pursuant to CEQA Guidelines Section 15370(b):

"Mitigation" includes:

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

Otherwise, a reasonable argument could be made that there is a significant impact and an EIR should be prepared.

City of San Diego staff report No. 04-106, page 6, item no. 3: Introduces a revised threshold for traffic impacts based on court rulings. This threshold was referred to by Planning Commissioner Chase during discussion of the Wisteria project after testimony at the June 15, 2006 Commission session. The City Manager recommendation in this staff report was to adopt this revised threshold, recognizing the court ruling. This revised threshold further establishes the potential for significant negative traffic impacts from the proposed Wisteria project.

Note further Attachment 3 of this same City staff report, page 3, item 15: makes clear that this threshold for significant negative traffic impacts applies in situations potentially applicable to the proposed Wisteria project.

Ref. further pages 68-70, significance thresholds for project-generated traffic impacts, in the Significance Determination Thresholds, California Environmental Quality Act (CEQA), City of San Diego Development Services Department, Land Development Review Division, Environmental Analysis Section; Nov. 2004 (as posted on the City's Web site).

Further, note the observation, p. 3 of staff report No. 04-106:

Thresholds do not substitute for the agency's use of careful judgment in determining significance and they do not replace the legal standard for significance (i.e., if there is a fair argument, based on substantial evidence, in light of the whole record that a project may have a significant effect, the effect should be considered significant). Significance thresholds are intended to supplement other provisions in CEQA for determining significant environmental effects.

Further: note that an important member of the Mayor's staff, Jim Waring, set new precedent by appearing at the Planning Commission public hearing, to promote the approval of the proposed project, without a thorough review of the project record or the submittals noting potential for significant negative impacts. What made this particular project worth Jim Waring appearing for public comment before the Planning Commission?

It is rumored that the City of San Diego is or has been embroiled in a lawsuit over the price of land controlled by the same applicant, DR Horton, that was condemned for SR56; and that while the City won the initial case over the disputed price, an Appeals Judge ruled preliminarily for the City to place \$10 million in a trust fund.

Such a ruling establishes a potential conflict of interest for the City and staff, for example, possibly triggering additional negotiations over what DR Horton might settle for instead of waiting for the ruling. The status of this rumored lawsuit situation, rulings, negotiations between the City and DR Horton, and discussions/agreements, formal or informal, between the parties need to be made public to clarify whether any conflicts may exist related to the City's consideration of Wisteria, a DR Horton proposed project.