

DATE ISSUED: June 1, 2006 **REPORT NO. PC-06-116**

ATTENTION: **Planning Commission, Agenda of June 8, 2006**
(continued from May 18, 2006)

SUBJECT: CHABAD ERUV LINE OF DEMARCATION – PROJECT NO. 48457
PROCESS 4.

**OWNER/
APPLICANT:** Chabad Congregation (Attachment 8)
Ileana Ovalle, Public Solutions

SUMMARY

Issue(s): Should the Planning Commission approve a Public Right-of-Way Use Permit to allow the establishment and installation of an Eruv (line of demarcation) using existing City-owned utility poles and five new poles within the public right-of-way?

Staff Recommendation:

1. CERTIFY Mitigated Negative Declaration No. 48457, and ADOPT the Mitigation, Monitoring and Reporting Program (MMRP); and
2. APPROVE Public Right-of-Way Use Permit No. 138120

Community Planning Group Recommendation: On December 13, 2005, the University Community Planning Group voted 12-0-0, recommending that the Planning Commission approve the project with no additional conditions (Attachment 7).

Environmental Review: Mitigated Negative Declaration No. 48457 has been prepared for the project in accordance with the State of California Environmental Quality Act (CEQA) Guidelines. A Mitigation, Monitoring and Reporting Program has been prepared and will be implemented which will reduce, to a level of insignificance, any potential impacts identified in the environmental review process.

Fiscal Impact: All of the cost associated with processing this application is paid for by the applicant.

Code Enforcement Impact: None.

Housing Impact Statement: The request for a Public Right-of-Way Use Permit for the establishment of an Eruv line will not result in the creation of additional housing units, nor result in the loss of any existing housing in the University community.

BACKGROUND

The Chabad Congregation was established in the La Jolla community in 1978 and moved to University community in 1985. It has been located on the present site at 3813 Governor Drive since 1999. The Chabad Congregation is an Orthodox Jewish community comprised of approximately 16 families and has historically strong social and economic ties to the surrounding neighborhood.

The Chabad Congregation is requesting the approval of a Public Right-of-Way Use Permit to establish an Eruv within the proximity of their synagogue. An Eruv is a symbolic “wall” enclosing the area around the synagogue. The area within the confines of the Eruv is considered a single “private domain” by the members of the congregation which in turn allows certain activities to be undertaken on the Sabbath in compliance with Jewish Law.

DISCUSSION

Project Description:

The City of San Diego Land Development Code was amended on February 27, 2001, to include Article 6, Division 9: Public Right-of-Way Use Permit. The purpose of the Public Right-of-Way Use Permit is to establish a process for approval of encroachments in the public right-of-way when the applicant is not the record owner of the property on which the encroachment would be located. The intent of the Public Right-of-Way Use Permit is to protect the public right-of-way for use and enjoyment by the public, to protect the public health, safety and welfare, and to maintain the aesthetic character of the community.

In order to approve the proposed encroachment, the decision maker must make all of the findings in Section 126.0905 that affirm the encroachment is reasonably related to public travel, or benefits a public purpose; would not interfere with the free and unobstructed use of the public right-of-way for public travel; is not detrimental to the public health, safety or welfare; does not interfere with the record owners’ use or enjoyment of their property; does not adversely affect the land use plan; would not be harmful to the aesthetic character of the community; and would not violate any other Municipal Code provisions or other local, state or federal law.

The proposed route of the Eruv starts at Genessee Avenue and the Rose Canyon Open Space Park, extends west along Rose Canyon to Interstate 5, then south along Interstate 5 to State Route 52, then east along State Route 52 to Interstate 805, then north along Interstate 805 to Rose Canyon and then west along Rose Canyon back to the starting point (Attachment 1).

The Eruv line of demarcation is approximately 44,880 linear feet (8.5 miles) encompassing nearly three square miles of the University community. Approximately 43,878 linear feet of the Eruv would be symbolic, established by using existing walls and fencing that provide an unbroken line nearly the entire length of the Eruv. The existing land uses on properties adjacent to the proposed Eruv route vary depending on the zone and include single and multi-family development, commercial development and open space.

The remaining 1,002 linear feet would be installed using 200-pound test monofilament line attached to thirty-foot high City of San Diego utility poles such as light standards and traffic poles. The installation of five new poles and one pole extension within the public right-of-way would be required to create the Eruv. They would be installed at the following locations:
Section 1 - a new pole on the west side of Genessee Avenue across from University City High School and a pole extension to an existing fence pole on the east side of Genessee Avenue;
Section 3 - A new pole on both the east and west sides of Genessee Avenue; Section 4 - A new pole on both the north and south sides of Governor Drive.

The majority of the Eruv would be constructed by attaching an inert monofilament line (similar to heavy-gauge fishing line) to the top of existing light standards and utility poles within the dedicated public right-of-way. The monofilament line would be attached to the poles utilizing one of two methods. Poles that are topped with an ornate cap such as a ball finial would facilitate a loop attachment wherein the monofilament line would be wrapped around the base of the finial and secured (Attachment 4). Poles that do not have any type of top cap would require an attachment consisting of an "X" shaped band of flexible stainless steel with a welded half ring on the top center. This attachment is known as the Teichman Adapter. The adapter is placed over the top of the pole and secured with an adjustable metal band. Neither the loop method nor the Teichman adapter would have any impact on the primary function of the pole (Attachment 4).

Installation of the Eruv would take approximately five to seven days. The line is required to be inspected and repaired as needed on a weekly basis to ensure the integrity of the Eruv prior to each Sabbath. A public right-of-way permit would be required from the City for the installation of the Eruv.

Public Right-of-Way Use Permit No. 138120 would be conditioned to afford protection to the record owner, the City and public utilities. Conditions attached to the permit would ensure that the applicant maintains the encroachment in a safe and sanitary condition at the sole cost, risk and responsibility of the applicant. The permit is also conditioned so as to ensure the applicant defends, indemnifies, protects and holds harmless the City against any claims or liability resulting from the design, construction or maintenance of the encroachment. Additional permit conditions ensure the timely removal of the encroachment if the applicant is so notified to do so by the City, and all rights the City acquired with respect to the public right-of-way would

continue and remain in full force and effect (Attachment 5 – Conditions 12 through 18).

Development Services staff has reviewed the proposed Eruv project and determined that all of the required findings can be made to support the encroachment into the right-of-way (Attachment 6). The staff determination was based on the design and location of the proposed encroachment within the right-of-way. Specifically, staff considered the clear monofilament line appropriate for the line of demarcation as it poses virtually no visual impact in the right-of-way and the surrounding neighborhoods. Staff also considered the strength of the monofilament line (200-pound test) and concluded that the proposed weight of the line is appropriate to avoid unsightly sagging between spans and could best withstand the rigors of the climate and inclement weather so as to not be a constant maintenance issue. Staff believes that the location and height of the monofilament line would be adequate so as not to interfere with either pedestrian or vehicular travel in or through the right-of-way and would not pose any public health, safety or welfare issues. And, staff concluded that the permit conditions are sufficient to protect the City and adjacent properties from any risk or liability resulting from the encroachment.

Community Plan Analysis:

The University Community Plan does not address projects dealing with the application of religious or symbolic boundaries within the public right-of-way. As proposed, the project does not adversely impact recommendations found in the University Community Plan.

Environmental Analysis:

A Mitigated Negative Declaration was prepared for the Eruv project in conformance to the California Environmental Quality Act. The environmental analysis focused on the potential impacts the project could have on avian species within the area. A biological survey report was required to document and quantify the current biological resources associated with the project site and to determine the direct, indirect and cumulative effects of the proposed project on these resources in accordance with the City's *Guidelines for Conducting Biological Surveys*. The results of the survey were presented in a letter survey report entitled, *Biological Letter Report for Chabad Eruv Line of Demarcation, Project No. 48457*, RC Biological Consulting dated November 12, 2004. The biological field surveys included vegetation mapping and sensitive plant species assessment, and a general wildlife survey.

The report indicated that no direct impacts were identified. The potential impacts that could result from the project were identified for birds (particularly raptors) flying within close proximity to the Eruv and the potential to incur injury or death as a result of striking the monofilament line.

The report reviewed specific scientific literature concerning avian collisions on overhead wires, entanglement, power line corridors, guy wires and mitigation measures. There has been documented avian injury and mortality in association with the placement of transmission lines or other utility lines within or adjacent to open space areas (e.g., wetlands and agricultural fields)

and that depending upon their locations, overhead lines pose a hazard to birds in flight. However, the report concluded that when considering the Eruv in its proposed location there was a low potential to cause injury or mortality to avian species as a result of incidental strikes with the line.

The impact could not be discounted entirely and as a precautionary measure to further limit any incidental bird strike impacts associated with the Eruv, silver reflective tape would be attached on the approximately 1002 linear feet of line located at all sections, Nos. 1, 2, 3 and 4, due to the appropriate raptor foraging habitat being present at all locations. This silver reflective tape would be attached at approximately fifteen (15) foot intervals and would be cut into six-inch lengths and folded in half over the line. Therefore, a Mitigation, Monitoring and Reporting Program (MMRP) as detailed in Section V of the MND would be implemented. With implementation of the MMRP, impacts to biological resources would be below a level of significance.

Critical Project Features to Consider During Substantial Conformance Review

When staff considered the merits of the Eruv project, support of the proposed encroachment was largely based on the fact that the line of demarcation was innocuous due to the use of clear monofilament securely mounted well above the pedestrian level of the public right-of-way within urbanized areas. The clear line poses minimal visual impact in the urban environment and the attachment techniques do not interfere with the functional or aesthetic use of the utility poles. Any deviation from or alteration to the approved design, location or materials should not increase the visual impact of the Eruv on the community and should not effect the functional, vehicular or pedestrian use of the right-of-way.

Conclusion:

Development Services staff has reviewed the proposed encroachment and determined that the design and placement of the Eruv complies with all applicable regulations and land use policies for development within the public right-of-way. Public Right-of-Way Use Permit No. 138120 includes permit conditions that ensure the proposed encroachment would be maintained in a safe and sanitary manner and that the City would not incur any damages as a result of the encroachment. A Mitigated Negative Declaration has been prepared for the project in accordance with CEQA and includes a Mitigation, Monitoring and Reporting Program (MMRP) designed specifically to reduce the risk of bird strikes with the Eruv line. Planning Department staff has determined that the proposed encroachment would not adversely impact the University Community Plan and the University Community Council voted to recommend approval of the project. Staff has determined that all of the findings necessary to affirm the project can be made and therefore recommends that the Planning Commission approve the project.

ALTERNATIVES

1. **Approve** Public Right-of-Way Use Permit No. 138120, with modifications; or
2. **Deny** Public Right-of-Way Use Permit No. 138120 if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

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HALBERT/RPT

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Plans (attachment methods)
5. Draft Permit with Conditions
6. Draft Resolution with Findings
7. Community Planning Group Recommendation
8. Ownership Disclosure Statement
9. Project Chronology