

**DATE ISSUED:** June 7, 2006 **REPORT NO. PC-06-194**

**ATTENTION:** **Planning Commission, Agenda of June 15, 2006**

**SUBJECT:** APPEAL OF THE HEARING OFFICER'S DECISION TO APPROVE  
PACIFIC COAST OFFICE BUILDING - PROJECT NO. 54384.  
PROCESS THREE

**REFERENCE:** 1) Report to the Hearing Officer No. HO-O5-203 (Attachment 5).  
2) Memo to Ken Teasley, Hearing Officer, dated April 12, 2006  
(Attachment 6).

**OWNER** Dr. Robert Pollack

**APPLICANT(S):** Robert Vacchi, Wertz McDade Wallace Moot & Bower  
Kim Sheredy, Project Design Consultants  
Doug Childs, Leary Childs Mascari Warner Architects

**SUMMARY**

**Issue(s):** Should the Planning Commission UPHOLD, REVERSE, or MODIFY the Hearing Officer's decision to approve a Site Development Permit (SDP No. 158004) to construct a 9,885 square-foot office building on an approximate five-acre site containing Environmentally Sensitive Lands, located east of the southerly terminus of Scheidler Way in the MV-CO zone of the Mission Valley Planned District?

**Staff Recommendation:**

1. CERTIFY Mitigated Negative Declaration (Project No. 54384), and ADOPT Mitigation, Monitoring, and Reporting Program (MMRP); and
2. DENY the appeal and UPHOLD the Hearing Officer Decision to APPROVE Site Development (Mission Valley PDO) Permit No. 158004.

**Hearing Officer Recommendation:** On April 19, 2006, the Hearing Officer certified Mitigated Negative Declaration No. 54384, approved the Mitigation, Monitoring, and Reporting Program, and approved the Site Development Permit No. 158004.

**Community Planning Group Recommendation:** On September 7, 2005, the Mission Valley Community Unified Planning Organization voted 15-0-0 to recommend approval of the project.

**Other Recommendations:** On January 3, 2006, the Normal Heights Planning Group voted 10-0-0 to deny the project.

**Environmental Review:** A Mitigated Negative Declaration, Project No. 54384, has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. A Mitigation, Monitoring and Reporting Program (MMRP) has been prepared and will be implemented, to reduce any potential impacts identified in the environmental review process to a level of below significance.

**Fiscal Impact Statement:** All costs associated with the processing of this project are recovered by a deposit account maintained by the applicant.

**Code Enforcement Impact:** None with this action.

**Housing Impact Statement:** None with this action.

## **BACKGROUND**

### ***Project Description***

On April 19, 2006, the City of San Diego Hearing Officer approved Site Development Permit No. 158004 to allow the development of a two-story, 9,885 square-foot office building to be sited on a 1.08-acre portion of an undeveloped 4.88-acre parcel.

The project site is located on a south slope, at the terminus of Schiedler Way off of Camino Del Rio South, within the Mission Valley Community Plan (Attachment 1). The 4.88 acre parcel is currently undeveloped and contains both steep hillsides and sensitive biological resources, subject to the Environmentally Sensitive Lands (ESL) Regulations (Attachment 2). The lot is also located within and subject to the regulations of the Mission Valley Planned District Ordinance.

The Mission Valley Community Plan designates the parcel as Open Space (Attachment 3). 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 topography of 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 1.08 acres) where development is proposed is zoned MV-CO. The lower portion of the site contains a sliver of land that is located below the 150-foot contour line. Therefore, the majority of the site is above the 150-foot contour line. The remaining 3.88 acres is zoned RS-1-1 and is restricted from development with an open space easement. The subject property is accessed from Scheidler Way.

The Hearing Officer Report dated November 2, 2004, (Attachment 5) and the Memo to the Hearing Officer dated April 12, 2006, (Attachment 6) provides further site development detail. Since the Hearing Officer approval on April 19, 2006, staff has determined that the brush management zones located within the open space easement are not required. The construction of the building (non-combustible roof and a fire sprinkler system) and the retaining wall (with no openings) adjacent to the open space easement will satisfy fire safety requirements on-site. The exhibits have been revised and Site Development Permit No. 158004, condition no. 29 is no longer required.

### ***Site History***

In 1961, a subdivision map was recorded which created two lots. Lot 1 is the subject parcel being developed. 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. The site is legally described as Lot 1 of Nagel Tract Unit No. 2, Map No. 4737 (Attachment 8).

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 1.08-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 approval of the project.

The Planning Commission's decision was appealed to the City Council. In December 1977, the Council voted 5-3-1 to approve the project that was previously denied by Planning Commission. A copy of the approved PCD No. 35 is included as Attachment 9. A copy of the Rezoning Ordinance No. 12262 and Rezoning Map noted as "B-2993" are included as Attachment 10. Permit Condition No. 5, required that an open space easement (Attachment 11) 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 subject 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 of the PCD previously described. However, the

lower 1.08 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, by Hearing Officer, in accordance with Process Three, for a proposal containing acreage in "steep hillsides" as defined in the Land Development Code Section 113.0103, south of Interstate 8.

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

Based on comments received from Long-Range Planning staff, in June 2004, the Applicant 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. Therefore, the community plan amendment initiation was withdrawn.

In November 2004, the current development application was submitted for discretionary review. Staff identified issues related to the Community Plan, steep hillsides, design, drainage, grading, retaining walls, and landscape requirements.

In September 2005, the Mission Valley Community Planning Group voted 15-0-0 to recommend approval of the project. (Attachment 12)

City staff's analysis and conclusions have not changed since the Hearing Officer meeting. The only change in the project is the elimination of the brush management zones.

### ***Hearing Officer Decision***

The project was first heard on November 2, 2005. Testimony was taken from the opposition (Randy Berkman, Lynn Mulholland, and Eric Bowlby) and proponents (Robert Vacchi) of the project.

Based on the questions raised during the testimony, the Hearing Officer continued the project to allow environmental staff the opportunity to revise the Mitigated Negative Declaration (MND No. 54384) to clarify specific issues that were raised during the public testimony regarding

potentially significant impacts to Biological Resources, Landform Alteration/Visual Quality, Development Feature/Visual Quality, and Land Use. In addition, as disclosed in the Final MND No. 54384, dated March 31, 2006, staff added clarifying information with respect to the proposed retaining walls. Staff concluded that the changes to the MND do not affect the environmental analysis or conclusions contained in the document, no new significant impacts have been identified, and no new mitigation is required. Therefore, recirculation of the document for public review was not required in accordance with the California Environmental Quality Act (CEQA), Section 15073.5 (c)(4).

During this time, a question regarding the purpose of the proposed retaining wall in relation to the approval process was raised. The City Attorney's office provided staff a memorandum that discusses the purpose of the proposed retaining walls and justifies the decision for a Process 3 (Hearing Officer) approval. The memo states and the City Attorney's office concluded:

“Though a retaining wall constructed on a steep hillside for the purpose of erosion control requires, in the absence of existing structures, a deviation from ESL regulations, a retaining wall constructed on a steep hillside for the purpose of soil stabilization does not require a deviation,. Absent the need for a deviation, a Process IV hearing will not be required. SAN DIEGO MUNICIPAL CODE Section 125.0502(a)(4). In the current case, the retaining wall proposed serves as a soil stabilization measure. As a soil stabilization measure, the retaining wall does not deviate from the ESL regulation; therefore, it does not require a Process IV hearing.”

Upon resolution of the above mentioned issues, the project was rescheduled for Hearing Officer (Process 3) and then heard on April 19, 2006. Testimony was taken by both the opposition (Randy Berkman of the River Valley Preservation Project (appellant) and Eric Bowlby of the Sierra Club) and of support of the project (Dr. Pollack (applicant), Robert Vacchi (attorney), Doug Childs (architect) and David Backensto (San Diego Community College District). Two letters in opposition from the Normal Heights Community Planning Group and Dave Potter, representing two residents in Normal Heights, were also sent to the Hearing Officer and read into the public record. Based on the discussion and evidence presented at the hearing, the Hearing Officer certified the Mitigated Negative Declaration and approved Site Development Permit No. 158004.

### ***Appeal Issues***

On May 2, 2006, Randy Berkman of the River Valley Preservation Project and Lynn Mulholland, filed an appeal (Attachment 15) of the Process Three – Hearing Officer decision to certify Mitigated Negative Declaration No. 54384 and approval of Site Development Permit No. 158004, citing factual error, conflict with other matters, findings not supported, and new information as the reason for appeal.

## **DISCUSSION**

While the appeal itself is lengthy, staff has summarized the main issues addressed in the appeal received May 2, 2006. Therefore, staff has the following responses:

### **1. Adequacy of the Mitigated Negative Declaration (MND) prepared and the requirement for an Environmental Impact Report (EIR) (pgs. 1-5, 8, 10-11, and 14)**

Environmental Analysis Section (EAS) staff prepared a Mitigated Negative Declaration (MND) in accordance with the California Environmental Quality Act (CEQA) and the City of San Diego CEQA Significance Determination Thresholds. The MND identified potentially significant impacts to biological resources, land use/Multiple Species Conservation Program, and Paleontological Resources. However, implementation of specific conditions listed in the Mitigation, Monitoring, and Reporting Program would avoid or mitigate the potentially significant environmental effects and the preparation of an Environmental Impact Report (EIR) is not required. The MND also addresses geologic conditions, human health/public safety, historical resources, landform alteration/visual quality, development features/visual quality, land use, and water quality.

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 found to be of concern to 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. Staff revised the final MND three times to clarify issues raised by the public and to provide additional information in response to a request by the Hearing Officer.

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 recirculation of the MND is not appropriate.

The appeal claims that the MND contains false statements; does not adequately identify potential impacts to biological resources (encroachment into the open space easement), landform alteration (grading); erosion; and consistency or inconsistency with the land use plan (Mission Valley Community Plan) and Mission Valley Planned District Ordinance since development is allowed above the 150-contour elevation.

The Pacific Coast Office Building MND identifies the potentially significant impacts that could result from the project. Impacts to biological resources are described on pages 4-6 of the Initial Study and the errata sheet. The project would not encroach into the open space easement. The rear of the structure would be tucked into the hillside rather than affecting the contour of the ridgeline, and the second story would be terraced. The grading is needed to allow these alternative design features. Therefore, in accordance with the City's Significance Thresholds, a landform alteration impact would not occur. This issue is discussed on pages 11-12 of the Initial Study. Standard construction practices and adherence to the state and local stormwater standards would preclude erosion impacts during construction, and the site would be appropriately landscaped after construction. The project is not inconsistent with the land use plan as it meets the criteria in the PDO for allowing development above the 150-foot contour elevation. This issue is discussed on pages 13-14 of the Initial Study.

## **2. Development (Brush Management) within identified open space easement (1-3, 14)**

The appeal states that the project encroaches into the open space easement for fire zone clearing [brush management] of coastal sage scrub. After further review of the plans and discussions with landscape, fire, and environmental staff, brush management does not need to be required for the project. Therefore, the project would not encroach into the open space easement for brush management purposes.

The City's Fire Department has reviewed the revised plans and determined that the removal of the brush management zones will not significantly reduce the fire safety for this building based upon the proposed one-hour construction required for the entire building, the wall immediately adjacent to the brush will have no openings, the roof being non-combustible and the entire building equipped with a fire sprinkler system.

## **3. Exception to Mission Valley Planned District Ordinance to allow development above the 150-contour (pgs. 3-8, 14)**

The Mission Valley Planned District Ordinance (MVPDO) Section 103.2107(c)(3)(A) states "Development, including road construction, above the 150-foot contour line shall not occur."

As proposed, the development would encroach into and above the 150-foot contour line.

However, on an individual project basis, the PDO Section 103.2104(d)(1)(4) allows the criteria in this planned district to be increased or decreased when, due to special circumstances, or exceptional characteristics of the property, or its location or surroundings; the strict interpretation of the criteria of the PDO would therefore result in unusual difficulties or unnecessary hardship, or would be inconsistent with the general purpose of the PDO.

The appeal claims that since the proposed project would impact three sensitive resources: 1) designated open space above the 150-foot contour; 2) steep hillsides, and 3) coastal sage scrub, the City should deny the "exception" request.

In response, staff has reviewed the project in conformance with the local, state, and federal regulations and can make the appropriate findings for the Mission Valley Planned District Ordinance and Site Development Permit. Based solely upon the specific conditions of the site and given the authority in the PDO to allow the criteria (i.e. development above the 150-foot elevation) to be increased or decreased in special circumstance (of which evidence has been provided), no deviations or variances to the PDO regulations are being sought or required.

Attachment 16 illustrates the developable pad area (highlighted in yellow) below the 150-foot contour line (delineated in red) in relation to the existing topography of the site. Specifically, this small area is approximately 20 feet by 200 feet (4,000 square feet), would not be adequate for development of a commercial office building and associated improvements if strict application of the 150-foot contour elevation regulation is applied. The portion colored in blue is restricted from development by a recorded open space easement. The remaining portion not colored in between, is zoned MV-CO for commercial-office use.

The previous subdivision map and approval of PCD No. 35 has entitled a portion of the parcel zoned MV-CO to be developed for commercial office use. In addition, the majority of the parcel containing both steep hillsides and sensitive biological resources is still preserved with an open space easement. Subsequent to the approval of PCD No. 35, the Mission Valley PDO and Mission Valley Community Plan were adopted which limited development below the 150-foot elevation. Strict application of this requirement on this project site would leave a small pad area that could not support any commercial/office development.

Cited in the appeal, the applicant's attorney provided a memo to the City of San Diego dated April 14, 2006 (Attachment 17). In response to statements made in the appeal, the special circumstance to allow the exception to the PDO is not based upon a financial hardship to the owner but on the unique conditions of the site that if strict interpretation regarding development above the 150-foot contour line is applied, development could not take place on-site.

The memo and the base map exhibit illustrates and discloses that the subject property "is significantly different from every other property analyzed on the base map. The site is included within the PDO, yet has no street frontage along Camino Del Rio South. Access is taken mid-slope from Scheidler Way, a street previously dedicated by the City of San Diego in anticipation of the development of the site. The lot is located almost entirely above the 150-foot contour line. The developable area below the line is comprised of two, non-contiguous portions of land totaling less than 9,000 square feet. This represents about 4% of the entire 4.94 acre parcel."

The applicant's development is constrained to the area currently zoned MV-CO for commercial use, which is approximately at the 166-foot contour line. An existing 3.08 acre open space easement that contains a majority of sensitive biological resources (coastal sage scrub), steep slopes, well above the 150-foot contour line will be retained and restricted from any development.



Therefore, based on the provision in the PDO which allows for exceptions in special circumstances; staff determined that the proposed development would meet the purpose and intent of the Mission Valley PDO Section 103.2101, that ensures development will be accomplished in a manner that enhances and preserves sensitive resource areas (by maintaining open space easement, below the allowable encroachment into steep hillsides, and mitigating potential impacts to biological resources) and still provides reasonable use of the property.

#### **4. Requirement for an Amendment to the Mission Valley Community Plan (pgs 4-5, 9, 12-13)**

The information provided in the appeal regarding the requirement for an amendment to the Mission Valley Community Plan is out of context in relation to the actual development review process.

To clarify, in February 2004, the applicant submitted an application for a Preliminary Review of the project. Planning Department staff had initially required an Amendment to the Mission Valley Community Plan as indicated in the Preliminary Review Cycle 1 comments (Attachment 8 of the appeal).

As described in Information Bulletin 513, a Preliminary Review is a voluntary service for customers to obtain general information on the regulations with which their project must comply; find out which permits they must obtain; the review process that applies to the development; and obtain interpretations on how the City will apply code provisions to specific situations so that the customer can make a determination regarding the feasibility of their development to formally submit their project. Preliminary Review is not a comprehensive plan review, nor is it intended to replace the services provided by design professionals (architects, engineers, land use attorneys, code consultants, etc.).

As requested by staff, the applicant submitted an application to initiate a community plan amendment (CPA) and the applicant's attorney, John Michael McDade, provided a letter dated June 3, 2004 that disclosed the reasoning behind the CPA initiation.

However, when the project was submitted for discretionary review and the application was deemed complete in November 2004, Planning Department staff had a better opportunity to review the proposed project in conformance with the Mission Valley Community Plan. Planning Department staff determined that it could support the project without an accompanying community plan amendment and the initiation was not taken forward.

In response to the appeal, staff has determined that a community plan amendment is not required for this project based upon the following reasons:

1. The Plan indicates that "large scale development" should not extend above the 150-foot contour. Planning staff noted that existing structures on abutting parcels are up to 71,000 square-feet in area and average 30,000 square-feet in area. The proposed development of the site with a 10,000 square-foot structure can be considered less than large scale;

2. Due to the existing open space easement over the southerly majority of the property (76% of the site) comprising the majority of the upper slopes, and also that the northerly property line of the legally subdivided lot is located along the 144-foot contour line which would otherwise render development infeasible, the project could be located above the 150-foot contour;
3. Approximately 80 percent of the parcel is in an open space easement;
4. The development would be largely screened from the public right-of-way by existing structures; and
5. There is existing development to the west that extends above the 150-foot contour. This development includes a surface parking lot and associated retaining walls extending above the 150-foot contour line, to approximately the 166-foot contour. Research of available records indicates that this development occurred in 1975, prior to adoption of both the Mission Valley Community Plan (in 1985) and the Mission Valley Planned District Ordinance (in 1990).

### **CONCLUSION:**

Staff has reviewed the proposed project in conformance with local, state, and federal regulations and requirements. The issues raised in the appeal are the same issues raised at the Hearing Officer meeting. Staff has addressed these issues by revising the Mitigated Negative Declaration to identify impacts on the environment; eliminating the brush management zones which were located within the open space easement; providing substantial evidence to support the exception to allow development above the 150-foot elevation, and clarifying the process and providing reasons why staff can support the project without a community plan amendment.

Therefore, staff recommends denying the appeal and upholding the Hearing Officer's approval of Site Development Permit No. 158004, subject to the conditions in the draft permit. Staff can also make the appropriate Site Development Permit and Mission Valley Planned District Ordinance Findings as described in the draft Resolution.

### **ALTERNATIVES**

1. Uphold the appeal and Reverse the Hearing Officer Decision to Approve Site Development Permit No. 158004, if the findings required to approve the project cannot be affirmed.

**Respectfully submitted,**

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**Mike Westlake**  
**Program Manager**  
**Development Services Department**

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**Anne B. Jarque**  
**Project Manager**  
**Development Services Department**

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Attachments:

1. Project Location Map
2. Aerial Photograph
3. Community Plan Land Use Map
4. Project Data Sheet
5. Report to Hearing Officer without attachments (November 2, 2005)
6. Memo to Hearing Officer (April 12, 2005)
7. Project Site Plan(s)
8. Subdivision Map No. 4737
9. Planned Commercial Development (PCD) Permit No. 35
10. Rezone Ordinance No. 12262
11. Open Space Easement Acquisition Map
12. Community Planning Group Recommendation
13. Draft Permit with Conditions
14. Draft Resolution with Findings
15. Copy of Appeal (including attachments)
16. 150-Foot Contour Line Graphic
17. Modification of MVPDO Criteria Memo from Bob Vacchi (April 14, 2005)
18. Ownership Disclosure Statement
19. Project Chronology