City of Encinitas

F7a

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CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

January 27, 2009

Bonnie Neely, Chair California Coastal Commission
Board of Supervisors
825 Fifth Street, Room 11
Eureka, CA 95501

RE: Appeal No. A-6-ENC-08-106
Agenda Item F7a (February 6, 2009)

Dear Chair Neely,

The City of Encinitas appreciates the thorough and dedicated work of the San Diego Area Coastal Commission Staff and is in complete support of their recommendation of No Substantial Issue regarding Appeal No. A-6-ENC-08-106. Approved by the City Council in October 2008, the project that has been appealed involves the construction of a 44 acre Special Use Park including softball/baseball fields, multi-use turf fields, a teen center, 419 parking spaces, a dog park, an amphitheatre, a skate park, aquatic facility, gardens, picnic areas, trails and a scenic overlook.

As stated in the Staff Report and Recommendation on Appeal:

> *"The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The appellants have raised a number of issues including night-time sports field lighting, traffic congestion, impacts on community character, scenic visual impacts and protection of natural environmental areas. After review of the appellants' applications, it has been determined that the concerns are not of regional or statewide significance and that the project is fully consistent with the certified LCP."*

The City agrees with your staff's conclusion and would like to provide some additional background regarding the project. In summary, the proposed project:

1. Provides recreational opportunities and open space in a public park on 44-acres within the Coastal Zone.

2. Does not have any direct impacts to coastal resources and is conditioned to implement measures to ensure the protection of the off-site riparian area of Rossini Creek during construction and on a permanent basis.

APPLICANT RESPONSE TO STAFF RECOMMENDATION

Tel 760/633-2600 FAX 760/633-2627, 505 South Vulcan Avenu

3. Is located near Interstate 5 and General Plan Circulation Element roads , providing good access to the project and not impacting or interfering with coastal access.

4. Fully complies with the City's Local Coastal Program and the Coastal Act.

Completion of the proposed development of a 44-acre Special Use Park addresses the long standing deficiency in City parkland and is consistent with the City's Recreation Element of the General Plan / Local Coastal Program. Development of this project will help alleviate, but not fulfill, the identified need for athletic fields and Special Use Parks in our City.

The proposed park's City Council approved conceptual site plan was developed via a master planning process that incorporated several public workshops over the course of six (6) years and enjoys considerable local support. Issues raised at the local level have been addressed by the City Council through the imposition of specific conditions which, among other things, require implementation of BMPs and other measures to control erosion and treat runoff from the site; installation of 6 ft.-high masonry walls around the dog park to mitigate noise; adequate landscaping and a prohibition in use of invasive plants; requirements that general park lighting be shielded and directed so as to prevent glare; mitigation for traffic impacts that include various street improvements, adequate onsite parking and offsite parking and shuttle service for special events. As concluded by your staff, the current appeal contentions do not rise to a level of "regional or statewide significance."

Further, your staff recommends that, "*the Commission determine that Appeal No. A-6-ENC-08-106 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act*" and states "*there is strong factual and legal support for the City's determination that the proposed development is consistent with the certified LCP.*"

On behalf of the City of Encinitas, I thank you for your time. Please do not hesitate to contact me by email, chazeltine@cityofencinitas.org or by telephone, 760-943-2210 should you have any questions or concerns.

Sincerely

Signature on file

Chris Hazeltine
Director of Parks & Recreation

PROJECT AREA MAP

HALL PROPERTY COMMUNITY PARK

EXHIBIT NO. 1
APPLICATION NO.
A-6-ENC-08-106
Location Map
California Coastal Commission

3

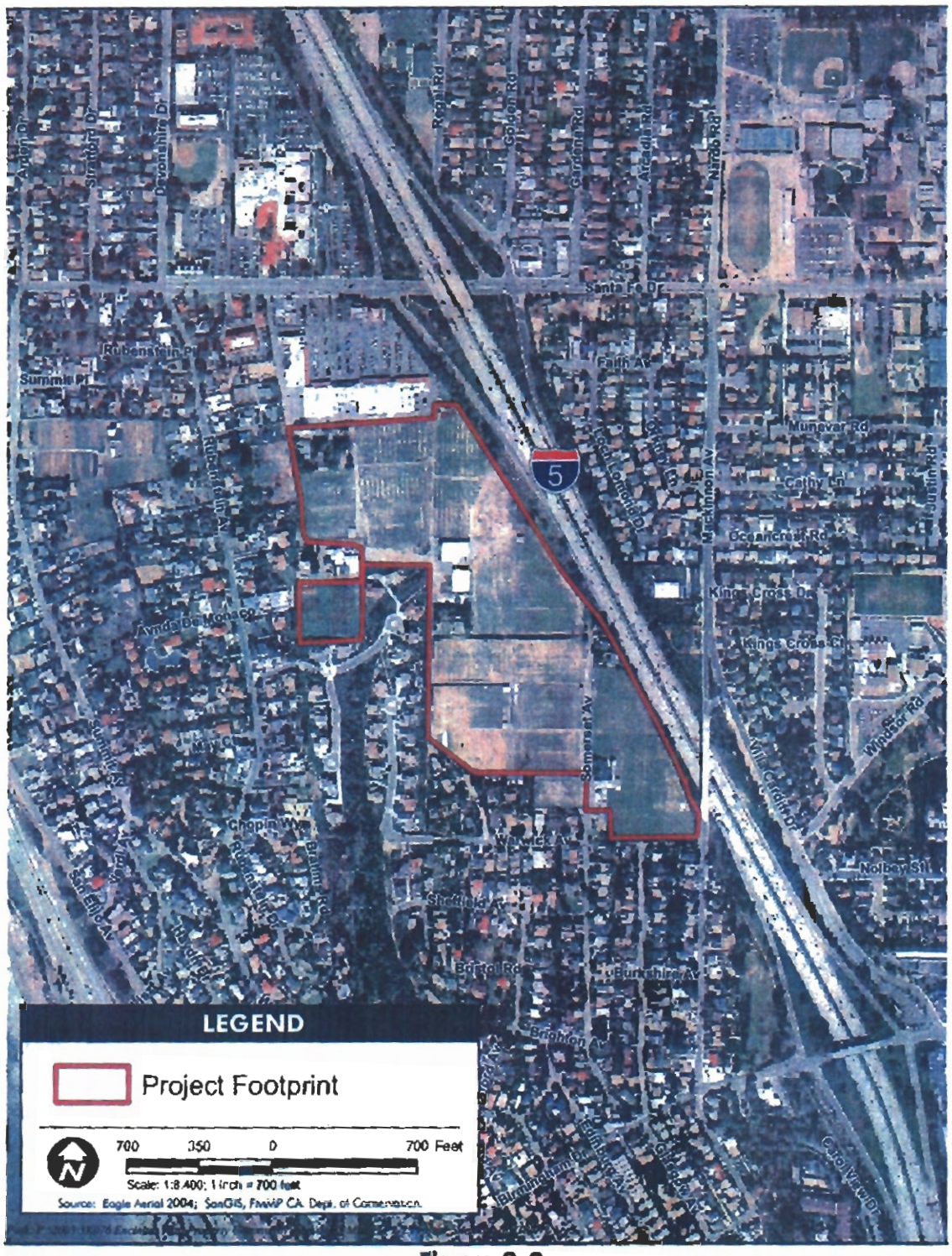
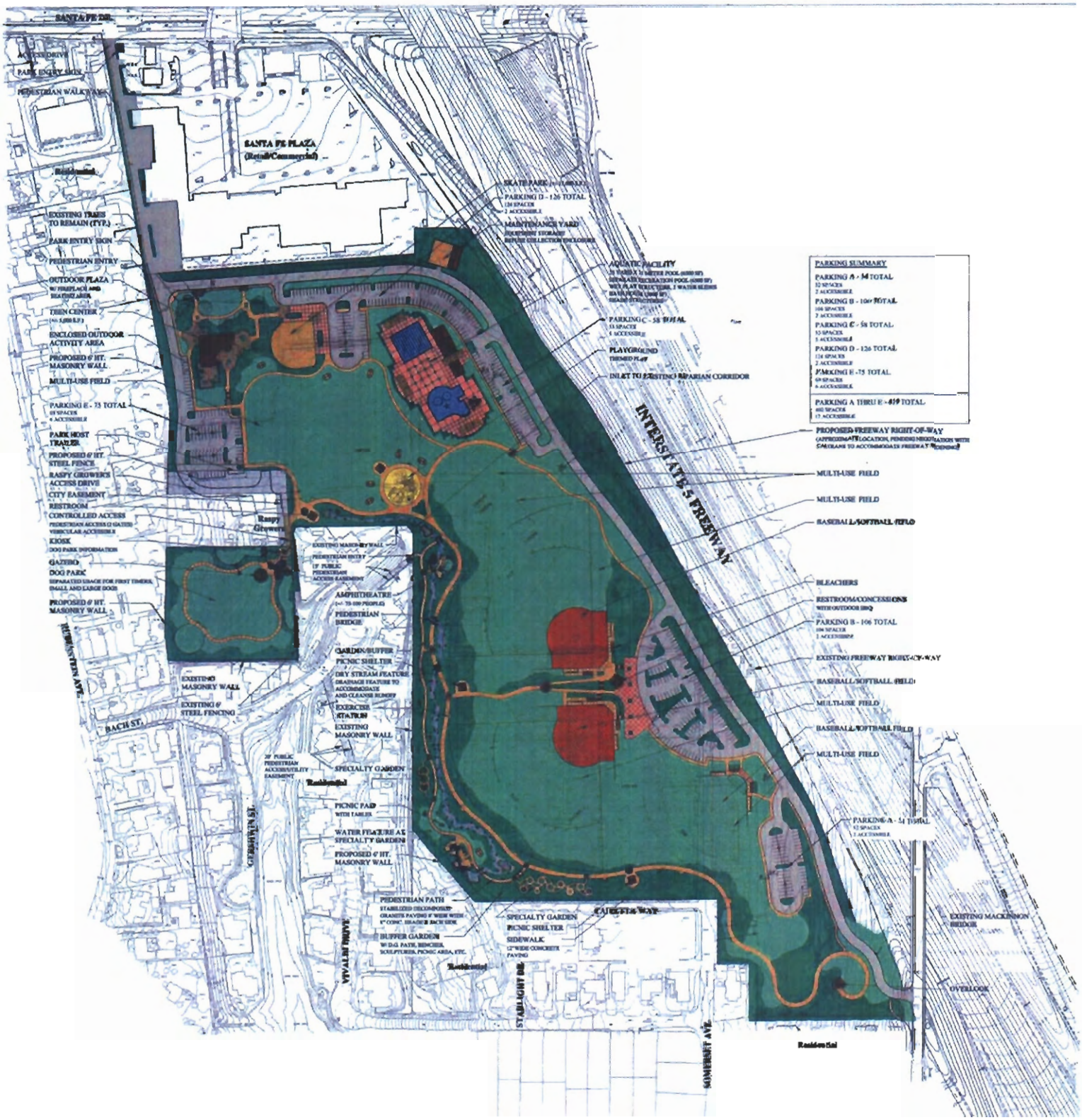


Figure 2-2
Project Site

EXHIBIT NO. 2
APPLICATION NO.
A-6-ENC-08-106
Project Footprint
California Coastal Commission



HALL PROPERTY
SITE PLAN
CITY OF ENCINITAS

RJM DESIGN GROUP, INC.

F7a

LAW OFFICES OF EVERETT L. DELANO III

220 W. Grand Avenue
Escondido, California 92025
(760) 510-1562
(760) 510-1565 (fax)

January 27, 2009

VIA E-MAIL AND U.S. MAIL

California Coastal Commission
San Diego Coast District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421

Re: Agenda Item F 7a; Appeal of City of Encinitas Decisions Concerning the Hall Property Community Park Project and Final Environmental Impact Report; Case No. 04-197 MUP/DR/CDP/EIA

Dear California Coastal Commission:

I write on behalf of Citizens for Quality of Life ("CQL") regarding its appeal of the approvals of the Hall Property Community Park Project ("Project") and related Final Environmental Impact Report ("FEIR"). CQL does not agree with the Commission staff report's suggestion that no substantial issue exists. This letter is intended to respond to certain specific information found in the Commission staff report and in the response to the appeal from City staff.

Both the Commission staff report and the City's response claim that the Project is consistent with Land Use Element Policies 2.3 and 2.10 because supposedly the appellants have failed to identify what infrastructure or services are lacking. However, the FEIR itself acknowledges that significant impacts to freeway interchanges at Santa Fe Drive and Birmingham Drive are not expected to be mitigated until the year 2030. The "Findings for a Use Permit," adopted by the City Council, state that these impacts "are expected to be mitigated by the future improvement and widening of Interstate 5 by Caltrans, but are considered significant and unavoidable impacts since the City cannot ensure that the improvements will take place." Attachment A to City's responses, attached to the Commission staff report (emphasis added).[1]

Both the Commission staff report and the City's response claim that the Project is consistent with several Recreation Element and Land Use Element policies because the site is not "in a natural state." While it is true that there are several places on the site that are relatively barren, it must be remembered that this is because the City already removed several site features. In fact, on April 29, 2004, Superior Court Judge Michael Anello found that the City had violated the California Environmental Quality Act ("CEQA") by doing such work before preparing any environmental analysis. A copy of that decision is enclosed (*see e.g.*, page 6: "The removal of all shrubs and bushes and all other landscape

[1] It is hard to see how impacts to freeway interchanges are merely "a local concern."

features except for the trees is an adverse change to the flora on the site"). It is also important to note that there are still several on-site trees, some of which are to be removed by the Project.

Both the Commission staff report and the City's response claim that the Project is consistent with Recreation Element Policy 2.6 because the City is in short supply of recreation acreage. However, Policy 2.6 talks about providing a full range of recreation facilities throughout the area, not merely locating facilities in Cardiff. There is no showing that Cardiff needs more recreational facilities. As a December 12, 2008 letter from Jed L. Staley notes (attached to the Commission staff report), Cardiff already has more than its fair share of recreational facilities.

Both the Commission staff report and the City's response claim that the Project does not affect any coastal views that matter. However, as noted in a letter from James Wang (attached to the Commission staff report), hundreds of homes enjoy coastal views across the site. *See* Pub. Res. Code § 30251 ("Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas ....").

Both the Commission staff report and the City's response claim that the Project is consistent with Recreation Element Policy 1.9 because the City already has joint-use agreements with local school districts. This is a misinterpretation of Policy 1.9, which requires joint use of facilities wherever possible. The City failed to meet its burden to show that it has adequately explored all joint-use possibilities with the several school fields currently located within Encinitas, thereby reducing the need to cram five athletic fields into this site.

Both the Commission staff report and the City's response claim that the Project is consistent with Land Use Element policies and goals designed to protect community character because Cardiff's community character does not "raise a concern of regional or statewide importance." This may be the most disturbing aspect of the Commission staff report, which would essentially determine that considerations of community character are not worthwhile subjects for the Commission. Clearly, this is not and has not been the case, as community character is an important aspect for a unique California coastal community like Cardiff. *See* Pub. Res. Code § 30251 ("Permitted development shall be sited and designed ... to be visually compatible with the character of surrounding areas ....) & § 30253 ("New development shall ... [w]here appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses").

Both the Commission staff report and the City's responses ignore the significant environmental impacts of the Project. The FEIR acknowledges significant traffic impacts that may never be mitigated. Additionally, on-site contamination is substantial. Potential water quality and related effects to Rossini Creek, San Elijo Lagoon, and the Pacific Ocean should not be ignored. Consider, for example, Land Use Element Policy 2.8, which specifically prohibits development that will significantly degrade surface and

ocean water quality. *See also* Pub. Res. Code § 30231 ("The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored ...."). Despite this mandate, inadequate attention has been paid to the effects on area waters, and no consideration was given to restoring Rossini Creek as it goes through the park site.

Accordingly, CQL requests that the Commission find that its appeal does raise substantial issues. Thank you for your consideration of these concerns.

Sincerely,

Signature on file

Everett DeLano

Enc.

Copy

FILED
Clerk of the Superior Court
JUN - 7 2004
BY: S. KUSH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

CITIZENS FOR QUALITY OF LIFE, Petitioner, vs. CITY OF ENCINITAS, a public body, corporate and politic, and DOES 1 through 5, inclusive, Respondents.	Case No.: GIN027489 **~~[PROPOSED]~~ JUDGMENT GRANTING PETITION FOR WRIT OF MANDATE** Dept.: 29 Judge: Michael N. Anello

The Petition for Writ of Mandate came on regularly for hearing on May 14, 2003, in the above-entitled Court, the Honorable Michael M. Anello presiding. Everett L. DeLano III appeared as attorney for Petitioner and Plaintiff CITIZENS FOR QUALITY OF LIFE, an unincorporated association, and Glenn Sabine appeared as attorney for Respondent and Defendant CITY OF ENCINITAS.

10

Copy

After reviewing the evidence in light of the arguments of counsel, the Court, for the reasons set forth in the attached Telephonic Ruling dated April 24, 2004,[1] orders as follows:

1. That the Petition for Writ of Mandate is granted.
2. That Respondent ("the City") shall be enjoined from taking any further steps toward demolition or redevelopment on the subject property site until appropriate environmental analyses are prepared and considered.

IT IS HEREBY ORDERED, JUDGED AND DECREED.

DATED: 6-7-04

By: *Signature on file*
Honorable Michael N. Anello
Judge of the San Diego Superior Court

APPROVED AS TO FORM:

Dated: _____

_____
Glenn Sabine
Attorney for Respondent/Defendant

[1] Telephonic Ruling issued April 24, 2004 is attached hereto as Exhibit 1 and is hereby incorporated as the statement of decision.

11

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CALENDAR NO.

NUMBER	COMPLAINT DATE	HEARING DATE	HEARING TIME	DEPT	COURT USE ONLY
GIN027489	02-06-03	05/14/04	01:30PM	29	Clerk of the Superior Court MAY 14 2004 BY: S. KUSH

JUDGE/COMMISSIONER	CLERK
HON. MICHAEL M. ANELLO	S. KUSH

REPORTER CSR #2885
SUSANNE ANDERSON
P.O.BOX 120128, SAN DIEGO, CA 92112-0128

PLAINTIFF/PETITIONER	DEFENDANT/RESPONDENT
CITIZENS FOR QUALITY OF LIFE	CITY OF ENCINITAS
ATTORNEY FOR PLAINTIFF/PETITIONI *Signature on file* EVERETT L. DELANO	ATTORNEY FOR DEFENDANT/RESPONDEN *Signature on file* RANDAL R. MORRISON

1. DEFENDANT ORAL ARGUMENT - CEQA WRIT - 4/29/04

THIS MATTER HAVING COME BEFORE THE COURT THIS DATE, THE COURT ORDERS:

☐ PRIOR TO CALENDAR CALL ☐ OFF-CALENDAR ☐ GRANTED ☐ BOND$ _____
☐ DENIED ☐ WITH/WITHOUT PREJUDICE

☐ PRIOR TO CALENDAR CALL ☐ CONT. TO _____ IN DEPT_____ AT_____

☐ TRO ☐ CONTINUED ☐ VACATED

☐ ALL PREVIOUS ORDERS REMAIN IN FULL FORCE AND EFFECT.

☐ TELEPHONIC ☐ CONTINUED FOR ORAL ARGUMENT ON _____

☒ ORAL ARGUMENT ☒ TELEPHONIC DATED 4-29-04 ☒ CONFIRMED ☐ MODIFIED

☐ DISPOSES OF ENTIRE ACTION ☐ DOES NOT DISPOSE OF ENTIRE ACTION

☐ PREVAILING PARTY TO PREPARE AND FILE FORMAL ORDER PURSUANT TO CRC 391.

☐ OTHER

Dated: 05/14/04

Signature on file

JUDGE/COMMISSIONER OF THE SUPERIOR COURT

12

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CALENDAR NO.

NUMBER	COMPLAINT DATE	HEARING DATE	HEARING TIME	DEPT	COURT USE ONLY
GIN027489	02-06-03	04/29/04	03:00PM	29	FILED Clerk of the Superior Court APR 29 2004 BY: L. BRODY

JUDGE/COMMISSIONER	CLERK
HON. MICHAEL M. ANELLO	LORI BRODY

REPORTER CSR #
TELEPHONIC
P.O.BOX 120128, SAN DIEGO, CA 92112-0128

PLAINTIFF/PETITIONER	DEFENDANT/RESPONDENT
CITIZENS FOR QUALITY OF LIFE	CITY OF ENCINITAS
ATTORNEY FOR PLAINTIFF/PETITIONER	ATTORNEY FOR DEFENDANT/RESPONDENT
EVERETT L. DELANO (1) ☐P ☐NP	RANDAL R. MORRISON ☐P ☐NP

1. PLAINTIFF WRIT OF MANDATE (CEQA)

THIS MATTER HAVING COME BEFORE THE COURT THIS DATE, THE COURT ORDERS:

☐ PRIOR TO CALENDAR CALL ☐ OFF-CALENDAR ☐ GRANTED ☐ BOND$ _____
☐ DENIED ☐ WITH/WITHOUT PREJUDICE
☐ PRIOR TO CALENDAR CALL ☐ CONT. TO _____ IN DEPT_____ AT_____
☐ TRO ☐ CONTINUED ☐ VACATED
☐ ALL PREVIOUS ORDERS REMAIN IN FULL FORCE AND EFFECT.
☐ TELEPHONIC ☐ CONTINUED FOR ORAL ARGUMENT ON _____
☐ ORAL ARGUMENT ☐ TELEPHONIC DATED _____ ☐ CONFIRMED ☐ MODIFIED
☐ DISPOSES OF ENTIRE ACTION ☐ DOES NOT DISPOSE OF ENTIRE ACTION
☐ PREVAILING PARTY TO PREPARE AND FILE FORMAL ORDER PURSUANT TO CRC 391.
☐ OTHER

Petitioner's Petition for a Writ of Mandate is granted. Respondent ("the City") shall be enjoined from taking any further steps toward demolition or redevelopment on the subject property site until appropriate environmental analyses are prepared and considered.

"The pertinent requirements of CEQA are that any state agency with authority to approve or disapprove a private 'project' shall: (1) Determine whether the project is exempt from CEQA. (2) If the project is not exempt, conduct an 'initial study' of the environmental impacts. (3) Depending on the outcome of the initial study, either (a) Prepare, or to cause to be prepared, an environmental impact report ('EIR') on any project they propose to . . . approve which may have a significant effect on the environment, or (b) Adopt a 'negative declaration' to the effect the project will not have 'a significant effect on the environment.'" Lexington Hills Assn. v. State of California (1988) 200 Cal.App.3d 415, 428-429 (internal citations omitted). For CEQA purposes, a "project" is defined as the whole of an action that may result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Cal. Code Regs., tit. 14, § 15378(a); CEB Guide, Practice under the California Environmental Quality Act, "Glossary," at p. 1269. A project is the whole activity that is being approved and that may be subject to several discretionary approvals by government agencies. Cal. Code Regs., tit. 14, § 15378(c). "CEQA establishes the administrative procedure of an environmental impact report. So that the environmental effect of every public agency action is assessed and evaluated, EIRs must be prepared for all 'projects' that 'may have a significant effect on the environment.' The language of

CEQA and its guidelines includes all discretionary projects that have a direct or ultimate impact on the environment." City of Antioch v. City Council of the City of Pittsburg (1986) 187 Cal.App.3d 1325, 1330 (internal citations omitted).

"CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences. In part, CEQA avoids such a result by defining the term 'project' broadly. 'Project' means the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately . . . . The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval. Where the lead agency could describe the project as either the adoption of a particular regulation . . . or as a development proposal which will be subject to several governmental approvals . . . the lead agency shall describe the project as the development proposal for the purpose of environmental analysis." Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo (1985) 172 Cal.App.3d 151, 165 (internal citations omitted).

In this case, Petitioner objects to the City's failure to prepare an Initial Study or an EIR prior to proceeding with a "demolition and deconstruction" project on a 46-acre site that formerly housed greenhouses and agricultural materials ("the site"). The City purchased the property from Robert Hall, Inc. sometime after April 18, 2001, the date the two parties signed a Purchase Agreement and Escrow Instructions. AR 9:3891-3946. In that agreement, the City acknowledged it "requires the Property, a property not now appropriated to a public use, for the construction of a public improvements [sic] described as a public park, a public use." Id. at 3891.

Petitioner argues that the first step in the development of the site for a public park was to tear down existing structures and prepare the site for future use and argues that the City was required to conduct an environmental analysis before it awarded a $450,000 contract to West-Tech Contracting to "cleanse" the site. The preliminary issue raised by this writ petition include whether the performance on the contract, when considered with a change order that was accepted prior to the start of any work, did or could result in a direct physical change in the environment, such that environmental review was required before the contract was awarded.

The original "Notice to Contractors" issued in December 2002 contained the following project description:

> The Project includes the demolition and removal of a wood framed single family house (includes asbestos and lead based paint abatement), removal of underground and above ground fuel tanks, demolition and removal of masonry walls and retaining walls, removal of concrete slabs and asphalt concrete pavement, removal of all existing

> landscape features, removal of all trees, shrubs, bushes, removal of greenhouses, removal of underground septic tanks, and all other appurtenant work as called out in these specifications and the hazardous materials study done by Gradient Engineers, Inc. This project contains mandatory waste diversion requirements as specified within these specifications.

AR 24:11463. The "Work to Be Done" attachment to the "Notice to Contractors" additionally included the removal of chemical containers and boilers. AR 24:11612. The contract further required the contractor to "grade and level the two dirt piles that exist on the Hall Property." AR 24:11484. An Addendum dated 1/9/03 made several changes to the original project description. It deleted the sentences calling for the removal of all trees, and added sentences to indicate that "all trees shall be protected in place." It deleted sentences calling for demolition and removal of concrete slabs and asphalt concrete pavement and added sentences indicating that "all concrete slabs and asphalt concrete pavement shall be protected in place." It required "all demolition, removal, and grading work" on two sites to be completed within 60 working days. It further stated:

> B. The following are answers to questions that had been brought up during the walk through, but couldn't be answered until afterwards:
>
> 1. Tests were run on the material inside the Boilers on the site, and it was determined that the boilers <u>do not</u> contain asbestos.
>
> 2. The lead weights on the existing drip irrigation tubing has been determined not to be a lead hazard, and does not require special handling during removal. However, the lead weights shall be removed <u>only</u> during the final phase of work on the Hall Property.

AR 28:12861-12862.

Even the City might admit that the work originally contemplated by the contract – e.g., removal of chemical containers; removal of all trees, bushes, and other landscaping; removal of a residence with lead-based paint and asbestos -- could result in either a "direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment," such that the award of the contract could constitute a "project" under CEQA and such that – at the very least – an Initial Study was required. The City argues, however, that it issued and the contractor accepted a change order that removed from the scope of the contract all those items which might disturb the soil in any significant way and that would therefore have required CEQA review.

The Change Order dated 1/24/03 (AR 28:13011) requires the contractor to:

> DELETE DEMO OF THE 10 AREAS SHOWN ON THE ATTACHED PLAN. THESE AREAS MAY BE ADDED BACK INTO CONTRACT UPON ISSUANCE OF A COASTAL DEVELOPMENT PERMIT.

Id. The "Attached Plan" is a map of the site that marks 10 different areas of the site. The City points to no part of the Administrative Record that actually identifies the areas or structures highlighted. The City states in its brief (and Petitioner does not state otherwise) that the ten areas deleted from the contract by this change order are: (1) a storage shed; (2) a former storage structure; (3) a structure that formerly housed boilers, fertilizer, employee lockers, and a restroom, (4) a retaining wall; (5) a single-family house; (6) a former office building/restroom; (7) a storage shed; (8) an underground storage tank; (9) a structure formerly housing employee facilities; and (10) a shed that formerly housed boiler and fuel tanks. Opposition at 5:23-28; at 6:8-26.

The City argues that the net effect of the change order was to remove from the scope of work all items that would have required CEQA review. However, even the performance of the remaining portions of the contract could have resulted in a direct physical change in the environment, such that the cleanup by itself could be deemed a "project" under CEQA. That is, even assuming that these 10 items identified in the City's brief were indeed those to which the Change Order referred, the performance of the contract still resulted in the demolition and removal of masonry walls; the removal of all shrubs, bushes, and other "existing landscape features," except for the trees; the removal of greenhouses; the removal of chemical containers and boilers; and the grading and leveling of the two dirt piles that existed on the Hall Property. The City itself repeatedly states the performance of the contract resulted in a cleanup of the "debris field." Such a cleanup resulted in a direct physical change in the environment. Accordingly, the cleanup by itself could be viewed as a "project" under CEQA. As such, assuming this project was not "exempt,"[1] the City was required to conduct an "Initial Study" of the environmental impacts of the cleanup, and depending on the outcome of the Initial Study, either prepare an EIR on the project (if the cleanup might have a "significant effect on the environment") or adopt a "negative declaration" to the effect the project would not have a significant effect on the environment. The administrative record indicates the City did nothing in terms of environmental analyses prior to awarding its contract for cleanup of the debris field and prior to the full performance of the contract. It does not even address in its opposition the Initial-Study issue raised by Petitioner. Its failure to perform an Initial Study as to the potential impact of the contract is a violation of the requirements of CEQA.

As to whether an EIR was required for the "debris cleanup," EIRs must be

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1 Although the City never directly argues that the cleanup was exempt under certain provisions of the Public Resources Code or Title 14 of the California Code of Regulations because an emergency situation existed, its argument that cleanup was required because the site posed a threat to health and safety is addressed below.

prepared for all "projects" that may have a "significant effect on the environment." A "significant effect on the environment" is a substantial or potentially substantial adverse change in the physical conditions of the area affected by a project. Public Resources Code § 21068; Cal. Code Regs., tit. 14, §§ 15002(g), 15382. See also Stanislaus Audubon Society, Inc. v. County of Stanislaus (1995) 33 Cal.App.4th 144, 152 ("A 'significant effect on the environment' is defined as 'a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance."). If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared. Public Resources Code § 21080(d). A local agency is required to secure preparation of an EIR "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact." Friends of "B" Street v. City of Hayward (1980) 106 Cal.App.3d 988, 1002. "If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact. Stated another way, if the trial court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed 'in a manner required by law.'" Id. "Substantial evidence" is "simply evidence which is of ponderable legal significance . . . reasonable in nature, credible, and of solid value. . . . 'Substantial evidence' is enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." Stanislaus Audubon Society, Inc., supra, at 152.

The cases addressing the issue of whether an agency has improperly failed to secure the preparation of an EIR generally relate to an agency's initial determination that no EIR is required. That is, the cases involve an agency's issuance of a "negative declaration" (presumably made after completion of an Initial Study) and an actual determination that no EIR was required because the agency concluded the project would not have "a significant effect on the environment." In this case, the City did not prepare an Initial Study before the award or performance of the contract. Thus, it made no determination and issued no "negative declaration" regarding the contract it awarded. It is not clear that the Court is required to reach the issue of whether it could be fairly argued that the award and performance of the contract might have a significant environmental impact when the City has not addressed this issue for itself. It appears to the Court that the City should first be required to complete an Initial Study (regarding the project as a whole) and determine whether the project will have a significant effect on the environment. Until the City makes that determination, it does not appear to the Court that the record is sufficiently developed to address the issue of whether an EIR should be or should have been required. See Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, 305 ("Without a properly prepared initial study, the record may prove inadequate to permit judicial review of the agency decision."). See also Topanga Assn.

17

for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506, 514 (With respect to zoning decisions, the decision-making body "must render findings sufficient both to enable the parties to determine whether and on what basis they should seek review and, in the event of review, to apprise a reviewing court of the basis for the board's action. We hold further that a reviewing court, before sustaining the grant of a variance, must scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision."); Citizens Assn. for Sensible Development of Bishop Area, supra, at 171 (internal citations omitted) ("An important purpose of the initial study is to [provide] documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment. . . . This purpose is particularly relevant to courts reviewing the administrative action pursuant to Public Resources Code section 21168. As discussed above, Public Resources Code section 21168, and thereby Code of Civil Procedure section 1094.5, apply to the instant case. Section 1094.5, subdivision (b), states that '[abuse] of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.' . . . [I]mplicit in section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Therefore, although an initial study can identify environmental effects by use of a checklist, it must also disclose the data or evidence upon which the person(s) conducting the study relied. Mere conclusions simply provide no vehicle for judicial review."). Perhaps, once an Initial Study is completed as to the entire project or, as discussed below, perhaps once the "project" is properly defined, the City will determine for itself that an EIR is necessary for the project as a whole. However, because the City does not does not distinguish the cases cited by Petitioner on the ground that any determination on an EIR would be premature absent an agency finding that an EIR is not required, and because Petitioner relies on the negative-declaration cases without acknowledging that the cases are based on an actual determination by the agency that no EIR is required, the Court in this case will review the record to determine whether a fair argument could be made based on this record that the project – either in part or as a whole – may have a significant environmental impact.

No matter how the project is defined, it appears that a fair argument can be made that the project could result in a substantial or potentially substantial adverse change in the physical conditions of the area affected by a project. Assuming that the "project" is as narrowly defined as the City wishes and involves only the initial cleanup that has now been completed, that project involved demolition and removal of masonry walls; the removal of all shrubs, bushes, and other "existing landscape features," except for the trees; removal of greenhouses; removal of chemical containers and boilers; and the grading and leveling of the two dirt piles that existed on the Hall Property. The removal of all shrubs and bushes and all other landscape features except for the trees is an adverse change to the flora on the site. Additionally, those who live directly across from the site complained about the "dust that comes from demolition and clean up." AR 35:14996 (complaint from neighbors dated 2/17/03). Environmental assessments performed on the site before the cleanup began indicated diesel and chlorinated pesticides were present in

the soil (AR 8:3471-3472), thus indicating a danger that the dust coming from demolition cleanup could contain such chemicals. See also AR 29:13402-13403 ("The presence of residential properties adjacent to the Site and the possible disturbance of soils that may lead to exposure of off-site receptors and the potential for off-site ecological reports to be affected by contaminants in run-off from the Site must be evaluated prior to the issuance of a Negative Declaration for the Site."). Although the Phase II Environmental Assessment found that "there does not appear to be any significant health risks associated with the VOCs, TPH, or chlorinated pesticides at this site" (AR 8:3472), a different assessment found that the standard used in the Phase II Environmental Assessment "is not encouraged or approved by California regulatory agencies" (AR 29:13401) and further indicated that "redevelopment of the site may result in exposure of off-site residents to the contaminants that exist at the Site." AR 29:13401. Because the preparation of an EIR is excused only when it cannot even be argued that a project would have an adverse impact on the environment, it appears that even this initial work, if it had been considered by itself, may have required an EIR. Additionally, although the record is sparse on the impact contaminants in the soil may have (or may have had) on off-site residents, this lack of information actually bolsters Petitioner's argument. See Sundstrom, supra, at 311 ("While a fair argument of environmental impact must be based on substantial evidence, mechanical application of this rule would defeat the purpose of CEQA where the local agency has failed to undertake an adequate initial study. The agency should not be allowed to hide behind its own failure to gather relevant data. Thus, in Christward Ministry v. Superior Court, supra, 184 Cal.App.3d 180, 197, the city adopted an initial study and negative declaration concluding in brief, conclusory language that the project would not have a significant environmental impact. Ordering the preparation of an EIR, the court commented, 'the City's assertion it could find no 'fair argument' there would be any potentially significant environment impacts rests, in part, in its failure to undertake an adequate environmental analysis.' CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.").

The initial "debris cleanup" should also have been subjected to environmental review as part of the larger demolition and development plan contemplated by the City. As noted above, "CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment -- which cumulatively may have disastrous consequences." Citizens Assn. for Sensible Development of Bishop Area, supra. The clearing of debris, shrubs, and bushes, the removal of chemical containers and boilers, and the completion of some grading (the tasks already completed), along with the contemplated removal of other buildings and structures, are the preliminary steps necessary for redevelopment of the subject property. These three phases – clearing of the "debris field," demolition of the remaining buildings and other structures on the property, and development of the property for another use, e.g., a park – are "the whole of an action that may result in . . . a direct physical change in the environment." These three phases together constitute the whole of the activity which is being approved and which

may be subject to several discretionary approvals by governmental agencies. As such, just one "project" is involved, and the City was required to prepare an initial study and, most probably, an EIR, before it took the first step in that project. See, e.g., City of Santee v. County of San Diego (1989) 214 Cal.App.3d 1438, 1452 (EIR required where record indicated that some future action on a "temporary" project was contemplated and where the temporary project was just "one small part of the larger project to ease jail crowding in the entire county."); City of Carmel-by-the-Sea v. Board of Supervisors of Monterey County (1986) 183 Cal.App.3d 229, 251 ("Where a project may have a significant effect on the environment, an EIR must be prepared. Where a project has several phases an EIR must be prepared which covers all phases. The agency simply cannot choose to prepare an EIR on a later phase of a project while ignoring an earlier phase."). The City itself seemed to recognize that the cleanup, demolition, and development of the site constitute one "project." In a 6/6/01 memo from one city employee to another recapping a meeting "pertaining to the planning/development of the Hall property," the issues discussed at that meeting included demolition and grading at the site, the possible uses for the site, and the traffic and noise impacts to local neighborhoods from possible uses. AR 11:5023-5024. Thus, the City's own document indicates that just one "project" is involved here. Environmental analysis should have been performed before any work was done.

It also appears that such an analysis should have included an EIR for the entire project. As noted above, a fair argument could be made that the portion of the project already completed could have resulted in a substantial, or potentially substantial, adverse change in the physical conditions within the area affected by the project. Certainly, the record could support a "fair argument" that the additional work which remains to be done in the demolition phase – potentially removing all trees; demolishing and removing a wood framed single family house (including asbestos and lead based paint abatement); removing underground and above ground fuel tanks; removing concrete slabs and asphalt concrete pavement; and removing underground septic tanks – could result in a substantial adverse change in the physical conditions of the site. The City itself recognized that an EIR would likely be necessary if the project as a whole were considered. See AR 32:14357-14358/April 2003 memo re: "Consideration and Possible Adoption of the Hall Property Conceptual Plan and Possible Authorization to Execute Exclusive Negotiating Agreements with Potential Users":

> A thorough and comprehensive environmental review is required and must be integrated with the planning process before development of the park. Staff seeks authorization to request Statements of Qualifications and Proposals from firms interesting [sic] in providing professional environmental review services for the Hall property project and to begin the "scoping" process in anticipation of an environmental impact report. Scoping helps to identify the range of actions, alternatives, environmental effects, and mitigation measures to be analyzed in depth and eliminates from detailed study those issues that are not important to

the decision at hand.

> A complete Environmental Impact Report, along with California Environmental Quality Act findings and Notice of Completion shall include a discussion of environmental impacts and mitigation measures focused on, but not limited to, such resource issues as: drainage/stormwater runoff and other water resources; vehicle traffic circulation; noise; agricultural land conversion; lights; land use compatibility; recreation services, hazardous materials; historic or cultural resources; biological resources; visual resources, include scenic views; and evaluation of project alternatives.

The fact that the City may not have known at the time it awarded the cleanup/demolition contract the precise use to which the site would be put does not excuse the City from preparation of an Initial Study or an EIR. See, e.g., City of Antioch, supra, at 1338 ("[T]he fact that a particular development which now appears reasonably foreseeable may, in fact, never occur does not release it from the EIR process. Similarly, the fact that future development may take several forms does not excuse environmental review.").

By failing to comply with the requirements of CEQA – to consider the cleanup/demolition/
redevelopment project as one project and perform the required environmental analyses (Initial Study and, most probably, an EIR) for the project as a whole -- the City abused its discretion by failing to proceed "in a manner required by law." Petitioner's petition for a writ of mandate enjoining the City from taking any further steps toward demolition on or redevelopment of the site until appropriate environmental analyses are prepared and considered is therefore granted. The Court will not at this time, however, order the City to prepare an EIR. Although the record appears to support the conclusion that an EIR is required when the project is viewed as a whole, the fact that no Initial Study was prepared and that no Negative Declaration has been issued indicates the City has not made a decision as to the environmental impacts of the project as a whole. Only after such a decision is made will the record be sufficiently developed to review the propriety of that decision and determine whether an EIR is or is not required.

The Court notes that Petitioner's writ petition also asks the Court to "vacat[e] approval of all aspects of the Project" that have already been approved. The record indicates that the contract for the cleanup of the site has been approved. The Court will not vacate that approval at this date, as the work has already been completed, and the contract has been paid. However, recognition of the work done on this initial phase of the project – and the environmental effect of this work -- must be included in the environmental analyses to be completed by the City on the project as a whole.

The Court has considered the City's argument that it acted properly in the cleanup of the subject property without environmental review, because the site "posed a serious and immediate threat to the public health and safety, and that it had a duty to abate the

known danger." Opposition at 3:15-17. "Specific actions necessary to prevent or mitigate an emergency" are exempt from CEQA requirements. Public Resources Code § 21080(b)(4). However, an emergency is defined as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services." Public Resources Code § 21060.3. "Emergency" includes such occurrences as "fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage." Id. "[T]he definition limits an emergency to an 'occurrence,' not a condition, and . . . the occurrence must involve a 'clear and imminent danger, demanding immediate action.'" Western Municipal Water Dist. v. Superior Court (1986) 187 Cal.App.3d 1104, 1111 (disapproved on other grounds by Western States Petroleum Assn. v. Superior Court (1995) 9 Cal.4th 559). In this case, the City points to no evidence of a "sudden, unexpected occurrence, involving a clear and imminent danger" that required cleanup without environmental review. It was the condition of the property, not an occurrence, which required cleanup. As such, CEQA's emergency exception does not apply.

The Court has considered the City's argument that, before the "cleanup contract" was formally approved by the City Council and before this lawsuit was filed, the City Attorney met with Petitioner's counsel and his clients to address their concerns. It argues that the City Attorney assured Petitioner that a change order would be issued that removed from the scope of the contract all items that disturbed the soil in any significant way. It argues that this change to the contract "moved all 'CEQA project' activities into a future environmental analysis." As explained above, however, CEQA does not permit the City to "chop a large project into many little ones." The cleanup of the property was just one phase of the redevelopment of that property. The City was not permitted to "move all CEQA project activities" into the future by narrowly defining the project.

The Court has considered the City's argument that it has not segmented a CEQA project. It argues that there is no connection between "removing the debris field and installing a sports park" and that, because the cleanup project did not include any grading to accommodate recreational facilities and did not make the land more or less suitable for any particular land use, the cleanup is entirely compatible with every conceivable use of the land. Opposition at 8:12-22. The City's own argument defeats its position. That is, its argument acknowledges that the cleanup is the first step in whatever use the City decides to make of the land, i.e., that it is the first phase in whatever project is contemplated. As noted above, the fact that the City had not finally approved a specific plan for development of the property does not excuse the City from environmental review. See, e.g., City of Antioch, supra, at 1338 ("[T]he fact that a particular development which now appears reasonably foreseeable may, in fact, never occur does not release it from the EIR process. Similarly, the fact that future development may take several forms does not excuse environmental review.").

The Court has considered the City's argument that CEQA analysis is being conducted as early as is feasible in the planning process. In reliance on Laurel Heights Improvement Assn. of San Francisco, Inc. v. Regents of the University of California

(1988) 47 Cal.3d 376, 395-396, it argues that, because future development is still uncertain, no good purpose is served by speculating as to future environmental impacts. "A basic tenet of CEQA is that an environmental analysis should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." Id. at 395. "[W]here future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences." Id. Laurel Heights establishes a test for determining whether future development must be considered in conducting an environmental analysis: "[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project." Id. at 396.

In this case, even if one could restrict the "initial project" definition in this case to the cleanup of and demolition on the site only, the future construction of some sort of recreational park on that site is certainly foreseeable. There are countless references to a plan for construction of a park or recreational facilities throughout the administrative record. See, e.g., AR 11:5043/Letter from Community Services Director to resident (February 2001) ("Please be assured that the City is not only cognizant of the need to provide additional fields, but is avidly working towards their provision. The City is in the process of acquiring 43 acres of land which will, at least in part, be dedicated towards meeting some of the recreational facility deficits our City is experiencing."); AR 11:5023-5024/Memorandum from assistant to the City Manager to City Community Services Director (June 2001) ("Potential Uses – Ball Fields, Public Works Yard, Aquatic Center, Gardens, Open Space, Retention of existing house. Issues against utilization of site for anything other than meeting unmet recreational needs of our City."); AR 19:9344/E-mail to City Manager from representative of developer regarding potential use of the site for multifamily housing (May 2002) (City Manager's response to e-mail: "I would say that this would fall in to the category of 'politically impossible' given the city council's ongoing desire to develop the entire site for recreational purposes."); AR 22:10787/Joint Exercise of Powers Agreement Between the City of Encinitas and the County of San Diego for the Development of Park and Recreational Facilities (July 2002) ("The purpose of this Agreement is for the Agency and County to cooperate in the funding of improvements for parks and recreational purposes. . . . Agency shall use the funds provided by the County to develop recreational facilities (Improvements) at the park site located at 425 Santa Fe Drive, Encinitas, CA 92024 (Premises). . . ."); AR 26:12192-12194/City Council Agenda Report (December 2002) (direction to design group and staff to make adjustments to plan for recreational facilities, including "flip[ping] the ball fields on the eastern boundary of the park," "mov[ing] the amphitheater out of the buffered area and reduc[ing] the amount of hardscape," "design[ing] the park in anticipation of the I-5 expansion"; and "provid[ing] as much interchangeability regarding the ball fields as possible and provid[ing] as much open green space as possible."); AR 27:12303/City of Encinitas Storm Water Pollution

Prevention Plan (January 2003) ("This project consists of the demolition of an existing nursery and grading of portions of the 35 acre site. In 2-3 years a park will be built on site that will include an Aquatic Center, Ball Fields, and Soccer Fields."); AR 32:14357-14358/City Council Agenda Report (April 2003) ("A thorough and comprehensive environmental review is required and must be integrated with the planning process before development of the park."). As to the second prong of the test ("the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects"), even if one could define the project as narrowly as the City wishes such that it includes only the initial cleanup, the demolition of the structures on the rest of the site and/or the construction of a park or recreational facility will certainly change the scope of the initial project, i.e., from cleanup to demolition to redevelopment of a park or recreational facilities. Thus, the application of the test in Laurel Heights in this case indicates that environmental analysis should have included the cleanup, the demolition, and the construction of a park or recreational facilities and that such an analysis should have been conducted before the cleanup began.

The Court has considered the City's argument that CEQA analysis is only required when a public agency "approves" a "project," and the City has not yet approved a sports park or other recreational facility. Again, this argument misses the point. Petitioner challenges in this case the award of the cleanup/demolition contract (only the cleanup portion of which was performed), the first phase of the "project" that may ultimately include a park. The City was required to view the cleanup, demolition, and construction of a new park or other facility as one project and conduct environmental review of the project as a whole. As noted several times above, Petitioner cannot segregate the "project" into several smaller parts and conduct environmental review as to each individual part. The term "project" does not mean each separate governmental approval. Where the lead agency could describe the project as the approval of a particular contract or as a development proposal that will be subject to several governmental approvals, the lead agency shall describe the project as the development proposal for the purpose of environmental analysis. The City approved a cleanup/demolition contract for a particular site. It was required to consider the foreseeable future uses of that site and conduct environmental analyses, before contract approval, with such uses in mind. The City did not act in the manner required by law.

The Court has considered the City's argument that the cleanup already performed did not include the disturbance of any chemical residues in the soil. It points to no portion of the Administrative Record supporting this argument.

The Court has considered the City's argument that Petitioner is barred by the doctrine of laches from obtaining writ relief at this time. It argues that Petitioner and its attorney were aware of the cleanup contract before it was executed on 1/22/03, that the cleanup operations started on 1/24/03, and that this action was filed on 2/3/03. The City argues that, knowing the cleanup operation "was going full bore, Petitioner did nothing" and argues that Petitioner did not seek a TRO to halt any soil-disturbing activities until 7/9/03, after the cleanup was finished. The City argues that Petitioner should have sought to stop the City before the cleanup was completed, and "no one wants the land put back

in the debris field condition." The Court agrees that it should not order the site "put back in the debris field condition." But this does not mean that the City should not have conducted some sort of environmental analysis – an Initial Study, at the very least – before it awarded a contract for, and conducted, its cleanup. It does not mean that Petitioner, who filed this action just 12 days after the cleanup contract was executed, engaged in delay. The City shall not be required to return the site to its previous state; it shall be required to recognize the potential environmental impact caused by the cleanup, the future demolition or change of any other portion of the site, the future development planned for the site, and consider these activities as one project and evaluate the environmental impacts accordingly. The City cannot prevail in this action simply because the cleanup has already been completed. See Woodward Park Homeowners Assn. v. Garreks, Inc. (2000) 77 Cal.App.4th 880, 889 ("What the City fails to recognize is that Garreks proceeded with construction and completion of the project after WPHA filed its mandamus petition. How can the City or Garreks now legitimately complain that compliance with the court's order is unnecessary? In addition, despite the trial court's order mandating the preparation of an EIR, the City chose to delay preparation of the EIR and Garreks chose to operate the facility absent the EIR. It would hardly be sound public policy to allow a party to avoid CEQA by continuing with construction of a project in the face of litigation, delaying preparation of a court-ordered EIR pending appeal, and then arguing the case is moot because the project has been completed and is operating."). In this case, the City proceeded with the cleanup after Petitioner filed its mandamus petition. It would hardly be sound public policy to allow a party to avoid CEQA by continuing with construction of a project in the face of litigation and then arguing the case is moot because the project has been completed and is operating.

Petitioner's objection to Exhibits 1 and 2 to the City's opposition papers is sustained. The City labels these exhibits "Augmentation of Administrative Record." However, the Court finds no procedure by which the City may unilaterally augment the administrative record. The City was required to either obtain a stipulation permitting such augmentation or file a motion seeking such relief. The evidence lodged by the City with its opposition papers has not been considered.

Parties wishing to request oral argument on this tentative ruling must call the Department 29 staff attorney at (760) 806-6316 by 4:30 p.m. on the second court day following the telephonic ruling to schedule the hearing. The party requesting oral argument must be prepared to specifically identify the issues the party wishes to argue. If oral argument is requested on this ruling, it will be held at 1:30 p.m. on Friday, May 7, 2004. No additional papers will be accepted for filing prior to oral argument. If oral argument is not requested, this ruling will become the final order of the court as of the date of this telephonic ruling and shall serve as the statement of decision in this matter.

Signature on file

DATED: APRIL 29, 2004

JUDGE OF THE SUPERIOR COURT

F7a

January 23, 2009

To: Gary Cannon, Lee McEachem & Area Director
From: Mike and Mary Conway
Subject: Hall Property Park Appeal

Follow-up to letter faxed and mailed 1-09-09.

Gentlemen, It has come to our attention that staff has found no substantial issue in the matter of the Hall Park Property Appeal, please reconsider this determination for the following reasons:

1. This presently designed "sports park" does not belong in this small coastal community and will destroy the community character.
2. Traffic generated by the "sports park" will overwhelm and congest the main coastal access from I-5 to the beach (i.e. Birmingham Dr. and Santa Fe Dr.).
3. Night lighting although theoretically not a part of the current park design will eventually be implemented and should be considered by the Coastal Commission. Sports field lighting will destroy the dark sky community character of Cardiff.
4. Staff did not analyze the importance of restoring Rossini Creek, which bisects the park site. The restored area of the Cardiff Glen riparian habitat along with areas of Rossini Creek are a vital part of the coastal habitat and state law requires that these areas be protected for the public good.

Sincerely,

Signature on file

Mike and Mary Conway
575 Arden Drive
Encinitas, Ca. 92024
760-753-6864

LETTERS OF OPPOSITION 27

Gordon H. Miles
1526 Rubenstein Avenue
Cardiff, CA 92007

January 8, 2009

California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4402
Fax: (619) 767-2384

Attention: Gary Cannon & Lee Eachern

Re: Hall Property Appeal – City of Encinitas

Gentlemen:

My wife and I have lived at 1526 Rubenstein Avenue, Cardiff for the last twenty years. We were drawn to Cardiff because of its long standing character as a noted California beach community. I am writing to you to urge you to grant the appeal of the Citizens for Quality of Life (CQL) of the recent action take by the City Council of Encinitas in approving the permit for the Hall Property Development.

There are two principal questions before the Commission in this matter. First, is a public sports complex masquerading under the misnomer of a "park" compatible with the character of our neighborhood and second, does this sports complex as currently designed confirm to the City's own Local Coastal Plan? The answer to both of these questions is most emphatically no!

With regard to the community character issue it is worth noting that the City's own Planning Commission rejected the design as proposed as "too intense of a use" for the neighborhood. Taking into consideration the number of ball fields, minimal parking availability and 90 foot tall light standards, the City of Encinitas might as well plop down QUALCOMM Stadium in the middle of our residential neighborhood. We have never objected to the development of a community park as originally proposed; but make no mistake about it, this is not a park but a single purpose facility devoted to jamming as many sports fields as possible into a sliver of land bordering on our Cardiff residential area.

With regard to conforming to the Local Coastal Plan, I could site many examples of specific features of the design that are in conflict with the requirements of the Local Coastal Plan, however, the most blatant example, to my mind, is completely ignoring Policy 2.10 of the Plan which provides:

> "Development shall not be allowed prematurely, in that access, utilities, and services shall be available prior to allowing the development (emphasis supplied)."

Those of us at the public hearing held by the City Council clearly heard testimony from the City's own traffic department representative to the effect that most of the street and entrance improvements (mitigating defects outlined in the EIR) necessary for adequate entering and exiting, parking and the like to be built by Cal Trans will "probably not happen for ten years or more." I find it outrageous that this uncontroverted testimony was completely ignored by a majority of the City Council members in approving this project as designed.

In short, my neighbors and I respectfully request that the Coastal Commission grant the appeal and undertake a full, complete and fair hearing of this matter.

Very truly yours,

Signature on file

Gordon H. Miles

January 23, 2009

To: Gary Cannon, Lee McEachem & Area Director
From: Mike and Mary Conway
Subject: Hall Property Park Appeal

Follow-up to letter faxed and mailed 1-09-09.

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4. Staff did not analyze the importance of restoring Rossini Creek, which bisects the park site. The restored area of the Cardiff Glen riparian habitat along with areas of Rossini Creek are a vital part of the coastal habitat and state law requires that these areas be protected for the public good.

Sincerely,

Michael Conway

Mike and Mary Conway
575 Arden Drive
Encinitas, Ca. 92024
760-753-6864

30

January 22, 2009

To: California Coastal Commission
Re: Rossini Creek in Cardiff

Gary Cannon,
Lee McEachern,
Area Director,

Coastal Commission staff last week recommended denying the appeal by Citizen's for Quality of Life and upholding the permits approved for the Hall Property project. The report states that there is no substantial issue of regional or statewide significance and that the park is consistent with the city's coastal policies.

I ask that the Commission reconsider because Rossini Creek was not addressed in the decision. It is the policy of Fish and Game Code Section# 1385-1391 called the California Riparian Habitat Conservation Act, that riparian habitats be preserved and protected. In a previous appeal on a residential development that abuts the project, the Commission required the restoration and protection of the riparian habitat. The same should apply to the Hall Property project. Waters from this creek flow directly to the ocean and this makes it a regional issue. The project directly affects the creek and cannot be approved without considering the health of Rossini Creek.

I also have to wonder that the traffic that will be generated by this project is not a regional issue as both the Coast Highway and I-5 will be greatly affected, not to mention Scripps Hospital on Santa Fe Drive. How will emergency vehicles and every day patients get to the hospital when thousands of people are trying to get to the park, causing gridlock on every surface street in the area? This project will affect more people than just those in Cardiff or Encinitas and should be denied.

Thank you,

Cheryl Schwaebe

31

January 23.2009

CALIFORNIA COASTAL COMMISSION
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108-4402

ATTN: Gary Cannon, Lee McEachern, and Area Director

Appeal No.: A-6-ENC-08-106 Hall property Park, Encinitas

I am concerned that the Coastal Commission staff report on this appeal did not include discussion of the restoration of Rossini Creek, which crosses the property and connects directly to the protected riparian habitat in Cardiff Glen, abutting the property on the west side. This protected riparian habitat was established by the Coastal Commission when the subdivision was developed.

FISH AND GAME CODE, SECTION 1385-1391 mandates that "The preservation and enhancement of riparian habitat shall be a primary concern of ...all state agencies whose activities impact riparian habitat, including ... the California Coastal Commission.... This section of the code is known as the CALIFRONIA RIPARIAN HABITAT CONSERVATION ACT. It goes on to say that these habitats provide valuable and finite resources and that public interest requires the coordinated protection of riparian resources.

The City of Encinitas is a public entity which needs to explain its non-compliance with this state act. The city has ignored public input on this question and never justified its actions. This project was proposed by the city and then approved by the city, with most of the public input dismissed. A private project of this kind would have been under greater scrutiny and never approved without modification.

Additionally the city has rejected concerns about documented pesticide, diesel oil, and heavy metal contamination from pressure-treated lumber on the property, all of which have the potential of runoff into Rossini Creek, the protected riparian habitat, San Elijo Lagoon, and the ocean. My comments on these issues are in the FEIR under the public commentary section.

Finally the staff report does not fully appreciate the unique community of Cardiff by the Sea. This is not Anywhere, USA. A recent television program on KPBS Channel 15 in San Diego, recent articles in both the Orange County Register and the Los Angeles Times travel sections , and a recent article in the AAA Westways magazine all point to the uniqueness of Cardiff and its attractiveness as a beach town and tourist destination. CARDIFF BEACH STATE PARK fronts about 1/3 of our coastline. I was riding a ski lift at Whistler ski area in British Vancouver. My Canadian companions on the 4-man chair asked where I was from. When I told them Cardiff, they immediate knew Cardiff, as it is well-known to our northern neighbors for its climate and beach town charm, unlike so many other Southern California coastal cities.

Please take these comments under consideration.

Respectfully,
Gerald Sodomka
105 Mozart Avenue
Cardiff by the Sea, CA 92007-2314
760-753-0052

32

January 22, 2009

To: California Coastal Commission
C/O Mr. Gary Cannon
Lee McEachern
FAX: 619 767-2384

From: Ron Ranson
760-632-6859

Reference: Hall Property report in Encinitas

To Whom It May Concern:

I am very concerned about the staff report on the proposed Hall property in Encinitas and that the CC staff did not take into consideration the important restoration of Rossini Creek which used to run through that area.

With your staff's report it seems that the California Riparian Habitat Conservation Act is being ignored. That can't happen according the law. Why wasn't this relevant topic addressed in the report?

Sincerely,

Signature on file

Ron Ransbn
174 Andrew Avenue
Leucadia, CA 92024

33

Attention: Gary Cannon, Lee McEachern, and Area Director
California Coastal Commission
San Diego office
Fax: 619-767-2384

From: John Mitchell
Phone/Fax: 760-230-1832
Date: January 22, 2009
Re: Hall Property in Encinitas

Dear Coastal Commission:

It has come to my attention that the Coastal Commission staff, in its report on the Hall Property plan for the City of Encinitas, did not discuss the restoration of Rossini creek, which runs through the park. The following statements taken from the California Fish and Game Code, sections 1385-1391, are pertinent to the Coastal Commission's review of the Hall Property plan (emphasis added).

1) **California's rivers, wetlands, and waterways, and the fisheries and wildlife habitat they provide, are valuable and finite resources** that benefit the people of the state ...
2) **The public interest requires the coordinated protection of rivers and riparian resources** in order to maintain an equilibrium between the natural endowment of, and manmade alterations to California's river environment, and in order to preserve the scenic beauty of these natural resources and the recreational and economic benefits they provide.
3) **The preservation and enhancement of riparian habitat shall be a primary concern of** the Wildlife Conservation Board and the department, and of **all state agencies whose activities impact riparian habitat, including ... the California Coastal Commission**

I also want to point out to the Commission that the restored riparian habitat of Cardiff Glen abuts the edge of the proposed park are on the west side.

According to California law, the City of Encinitas must explain why they decided not to restore Rossini Creek, and the Coastal Commission has the responsibility to ensure that riparian habitat such as the Rossini Creek is preserved. The City's negligence in this matter seems to be one more piece of evidence that the City Council is indifferent to the adverse impact of the proposed park on the character of our city, and that the Council willfully ignores both the Encinitas Planning Commission's recommendations and California environmental laws and guidelines. Based on these facts, I once again urge the Coastal Commission to rule against the Encinitas City Council's plan for the Hall Property park.

Sincerely,

Signature on file

John Mitchell
1106 Wotan Drive
Encinitas, California 92024
Phone/Fax: 760-230-1832
john.mitchell@cox.net

3A

1/26/09

Attn: Gary Cannon & Lee McEachern
CALIFORNIA COASTAL COMMISSION
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108-4402

Because of the short time allowed to present information in front of the commission in the case of the Hall property park, please regard this letter as my testimony.

The slim majority of council members that overrode their own planning department and citizen's recommendations, approved the major use permit, and certified the Environmental Impact Report for the Hall Property, also directed its staff to prepare an amendment to the Encinitas General Plan allowing the 90 foot lights in the project. I understand the Coastal Commission staff's position that defines the proper time to appeal the 90 foot light standards as after the amendment to the Encinitas General Plan has been drafted, however please realize progress on the park has been delayed for sometime because of the cities actions and by finding substantial issue and taking care of this now will ultimately save time and help my community get the park built. Certainly your commission has the authority and responsibility and I doubt you are so naïve as not to know eventually it will reappear.

I would also like to ask why the staff didn't discuss the restoring of Rossini Creek through the park. The restored riparian habitat of Cardiff Glen abuts the edge of the park on the west side and the city as a public entity needs to consider restoring Rossini Creek and justify why they decide not to do it. Below is the relevant part of the state Fish and Game Code, 1386a and b, and 1389 stating "The preservation and enhancement of riparian habitat shall be a primary concern of... the California Coastal Commission." This mandates you to find substantial issue with the Hall Property Park and address an action of the City of Encinitas that is in direct violation of The California Riparian Habitat Conservation Act.

35

I understand the relationship between The City of Encinitas and The California Coastal Commission. I understand your support of the city and belief finding no substantial issue is in the best interest of the city and state coastal land. However, Cardiff-by-the-Sea and a portion of the states riparian habitat will be forever destroyed by this park and the time for the Coastal Commission to consider the effects of this project is now.

Thank you for your time,

Signature on file

Jim Norris
961 Birmingham Drive
Cardiff-by-the-Sea, CA 92007

Cc: Dept. of Conservation, Dept. of Boating and Waterways, Dept of Parks and Recreation, Dept. of Water Resources, Dept. of Forestry and Fire Prevention, the State Coastal Conservancy, California Conservation Corp, the State Lands Commission, Governor Arnold Schwarzenegger, Lt. Governor John Garamendi, Secretary of State Debra Bowen, Attorney General Edmund G. Brown Jr., Senator Mark Wyland, Assembly Member Martin Garrick, Representative Brian Bilbray, Senator Barbara Boxer, Senator Diane Feinstein

Att/1

FISH AND GAME CODE
SECTION 1385-1391

1385. This chapter shall be known and may be cited as the California Riparian Habitat Conservation Act.

1386. The Legislature finds and declares all of the following:

(a) **California's rivers, wetlands, and waterways, and the fisheries and wildlife habitat they provide, are valuable and finite resources** that benefit the people of the state and are threatened with deterioration or degeneration that may endanger the natural beauty and productivity of these valuable resources.

(b) **The public interest requires the coordinated protection of rivers and riparian resources** in order to maintain equilibrium between the natural endowment of, and manmade alterations to, California's river environment, and in order to preserve the scenic beauty of these natural resources and the recreational and economic benefits they provide.

(c) By virtue of the special conditions and circumstances of the natural ecology, the increasing human populations and needs in the state, and the numerous governmental agencies with an interest in coordinating activities which affect rivers and riparian habitat resources, there is a need for a coordinated state rivers and riparian habitat protection program.

1387. The Wildlife Conservation Board shall establish and administer, through the department, the California Riparian Habitat Conservation Program pursuant to this chapter and Chapter 4 (commencing with Section 1300). The purpose and goal of the program is to protect, preserve, and restore riparian habitats throughout the state by the acquisition of interests and rights in real property and waters to the extent deemed necessary to carry out the purposes of the program.

1388. The board, pursuant to this chapter, shall approve projects to acquire, preserve, restore, and enhance riparian habitat throughout the state, and coordinate its activities undertaken pursuant to this program with other resources protection activities of the board and other state agencies.

1389. **The preservation and enhancement of riparian habitat shall be a primary concern of** the Wildlife Conservation Board and the department, and of **all state agencies whose activities impact riparian habitat, including** the Department of Conservation, the Department of Boating and Waterways, the Department of Parks and Recreation, the Department of Water Resources, the Department of Forestry and Fire Protection, the State Coastal Conservancy, the California Conservation Corps, the California Tahoe Conservancy, the Santa Monica Mountains Conservancy, **the California Coastal Commission**, the San Francisco Bay Conservation and Development Commission, and the State Lands Commission.

1390. In order to accomplish the objectives of this chapter, the Wildlife Conservation Board may authorize the department to do all of the following:

(a) Acquire interests in real property and water rights through gift, purchase, lease, easement, and transfer or exchange of easements, development rights or credits, and other interests in real property.

(b) Coordinate its activities under the program with any governmental program for surplus real property sales in the state.

(c) Award grants and loans to local public agencies, state agencies, federal agencies, and nonprofit organizations for the purposes of this program.

(d) For the purposes of this chapter, "nonprofit organization" means any private, nonprofit organization which qualifies for exempt status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, and has among its principal charitable purposes the preservation of real property for scientific, historic, educational, recreational, scenic or open-space values, the protection of the natural environment, or the preservation and enhancement of fisheries and wildlife or their habitat.

(e) Exercise any authority and comply with requirements contained in Sections 1348 and 1350, as appropriate, to preserve and enhance riparian habitat for purposes of this chapter.

1391. Grants to nonprofit organizations pursuant to Section 1390 for the acquisition of real property or interests therein shall be subject to all of the following conditions:

(a) The purchase price of any interest in real property acquired by the nonprofit organization may not exceed fair market value as established by an appraisal approved by the Wildlife Conservation Board.

(b) The Wildlife Conservation Board approves the terms under which the interest in real property is acquired.

(c) The interest in real property acquired pursuant to a grant from the Wildlife Conservation Board may not be used as security for any debt to be incurred by the nonprofit organization unless the board approves the transaction.

(d) The transfer of real property acquired pursuant to a grant shall be subject to the approval of the Wildlife Conservation Board and the execution of an agreement between the board and the transferee sufficient to protect the interest of the State of California.

(e) The state shall have a right of entry and power of termination in and over all interests in real property acquired with state funds, which may be exercised if any essential term or condition of the grant is violated.

(f) If the existence of the nonprofit organization is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the state. However, prior to that termination, upon approval of the board, another public agency or nonprofit organization may receive title to all or a portion of that interest in real property by recording its acceptance of title in writing. Any deed or other instrument of conveyance whereby real property is being acquired by a nonprofit organization pursuant to this section shall be recorded and shall set forth the executory interest or right of entry on the part of the state.

38

To: Lee McEachern

From: Marie Dardarian

RE: Failure of California Coastal Commission staff to address restoring Rossini Creek through the proposed Encinitas Community Park
Appeal No. A-6-ENC-08-106 (Encinitas community park)
Appeals by Peter Stern and Citizens for Quality Life

January 27, 2009

Dear Mr. Mc Eachern,

I am most concerned that the restoration of Rossini Creek, a riparian habitat in the proposed Encinitas Community Park, not discussed in the Staff recommendations to the California Coastal Commission. This riparian habitat is under your jurisdiction and should have been addressed.

The Fish and Game Code, Sections 1385-1391 address riparian resources. Section 1389 in particular states that the preservation of riparian habitat *shall* be a primary concern of the California Coastal Commission, as well as all state agencies whose activities impact the riparian habitat.

I would appreciate your help in correcting this error before the CQL Appeal comes before the California Coastal Commission on February 6, 2009.

I look forward to your response.

Regards,

Signature on file

Marie Dardarian
1376 Evergreen Drive
Cardiff by the Sea, CA 92007

Agenda Item 7a
Permit no. A-6-ENC-08-106
Gary Cohn
Opposed to project

January 27, 2009

CALIFORNIA COASTAL COMMISSION
7575 Metropolitan Drive, Ste. 103
San Diego, CA 92108-4402

Re: Hall Property Appeal – City of Encinitas
Permit number A-6-ENC-08-106

Dear Members of the Commission:

I am writing in response to the staff report recommending that no substantial issue exists in regard to the appeal of the Hall Park approvals. I believe that staff did an inadequate job of interpreting the issues and that substantial issue should be found.

First staff misstated some of the facts. Under *Findings & Declarations* they indicate that the park is approved without the use of night time sports field lighting. This is not true; the resolution of approval does not include 90' high sports field lighting. It does not prohibit the installation of 30' high sports field lighting. The report goes on to state that interstate 5 is a scenic corridor, but that there are no views across the site to the shore or the ocean. This is a blatant misrepresentation of the facts. The ocean is clearly visible from the western lanes of interstate 5. In section 3 *Traffic/Public Access and Community Character* the staff report claims that Santa Fe Drive is the main access to the park. This is not true. The southern access point at Mackinnon Avenue has always been the main entrance to the park and in reality will be used as much if not more than the Santa Fe access. These facts and others are important to the analysis of substantial issue.

Staff indicates that there are no beach access issues with traffic congestion because Santa Fe Drive does not provide direct access to the beach. They failed to mention Birmingham Drive and the Interstate 5 access ramps at Birmingham which **does** provide direct access to the Cardiff State Beach and the State campgrounds. The Final EIR indicates that congestion at these ramps and at Birmingham will be a result of the Park Development and that mitigation will not be provided until Caltrans rebuilds these ramps.

Another lack in the staff report is under section 4 *Recreation.* The staff states the project is not in violation of the Recreational Element of the city code and the Local Coastal Program in regard to providing a balance of open space and improved recreational elements. They cite the playing fields as open space. These fields are improved recreational spaces and are not open to general public use. Their first priority of use is to organized sports leagues. The area associated with the sports fields and other active uses comprises approximately 70 percent of the park acreage. This is hardly a balance as required by the City code and local Coastal Program.

In staff's analysis of policy 2.6 they accurately indicate "*the intent is to encourage a full range of recreational facilities throughout the area, which means throughout the City.*" Yet they fail to explain that Cardiff already has the only other lighted sports park in the city of Encinitas and that the vast majority of the city's sports fields are currently located in Cardiff. How does adding five more fields in Cardiff address the requirement of policy 2.6 to locate these facilities throughout the City? The report goes on to state that even if there are too many facilities in one area, this is not a matter of regional or state importance. The staff fails to make the connection that this is a matter of maintaining community character and thus raises a substantial issue.

The Staff report has failed to address the issue of preserving the community character of the Cardiff Beach community as required by the Local Coastal Plan. They somehow do not address the issues of noise, lighting (whether approved now or later), traffic, safety and intensity of use and their impacts upon an older established Beach Community. The failure to maintain the existing character of the community is in direct violation of the Local Coastal Program and therefore merits a finding substantial issue.

The adequacy of the city to regulate itself should be a major concern to the Commission. If this project was brought before the city as a private development with as many impact issues and as much public opposition as the Hall Park has presented, the City would have required the project to be modified. Indeed, the City's own Planning Commission rejected the current park design. Since the City is the applicant, it is impossible for them to adequately judge their own project. That is why this project is before you. The staff report basically repeats the City's position and fails to address the issues. In the very least, substantial issue should be found so that the commission members can fully examine the facts surrounding this development and then make an informed judgment as to whether this park in its current configuration is appropriate or not.

I do not believe that the project is in conformance with Local Coastal Plan and the requirement to not impair beach access. I therefore urge you to make a finding of substantial issue.

Thank you.

Sincerely,

Signature on file

Gary Cohn

BRETT FARROW
ARCHITECT

125 MOZART AVE, CARDIFF BY-THE-SEA CA 92007
T 760 230 6851 F 760 230 6852

www.brettfarrowarchitect.com
brettfarrow@cox.net

TRANSMITTAL

TRANSMITTED VIA:

- ☒ FAX No.: (619) 767-2384
- ☐ U.S. MAIL
- ☐ COURIER
- ☐ OVERNIGHT
- ☐ HAND DELIVER
- ☐ PICK UP
- ☐ OTHER:

NO. OF PAGES: (1)

DATE: January 30, 2009

TO: California Coastal Commission

PROJECT: Hall Property- Encinitas

RE: Comments

REMARKS:

To Whom It May Concern:

I am writing this letter to express my opposition to the approval of the Hall Property in Encinitas as currently designed. My reasons for opposing the park are the nighttime lighting and the intensity of use.

I believe that the light poles proposed for the park will co ntribute to light pollution and be a source of visual blight.

Further, the intensity of the proposed sports complex does not do enough to provide passive use areas for local residents.

Lastly, it is important to consider that the Planning Commission for the City of Encinitas opposed the park as designed and that the vote by our City Council was split, 3 – 2. This vote does not represent consensus and no attempt at compromise has been offered.

It is an unnecessarily divisive proposal that could be made better by simply removing the lights and creating a buffer between residents and the park. It is my impression that this community in general supports a park but just not the way it is currently designed. I urge you to deny the approval and support a modification to the design as previously requested by local residents.

Sincerely,

Signature on file

Brett Farrow

c: file

42

Pg. 1 of 2

Friday, January 30, 2009

ATTN: Commissioners
California Coastal Commission
San Diego Coast District
c/o FAX (619) 767-2384

RE: Permit Number A-6-ENC-08-106, 44 Acre Special Use Park At 425 Santa Fe Drive, Encinitas, San Diego County (Formerly Hall Property)

Dear Commissioners,

A main concern to many of us environmentalists around this area is the disappearance of many local species of wildlife in the past decade. Ten years ago we had bushtits in our yards, and many more migratory song birds (numbers and varieties) stopping by. There was much more open space back then. Locally, since the late '90s there has been much previously undeveloped land fall victim to too much development and wildlife has suffered for it. One good example is: from 1989 (when we first moved here) until 2002/2003, when the Hall Property was deconstructed by the city of Encinitas, little foxes were heard and seen quite frequently. They mostly lived along Rossini Canyon which was developed into a luxury neighborhood. Because their habitat was destroyed and development continued to take over most open space in this area, they are never heard or seen anymore, not for several years.

Neighbors of mine will approach you with scientific facts on many things that would be detrimental if this paved park is built. Most importantly, this park project is way too paved and too huge for the residential area it would directly impact. As the crow flies, it would be about a block or two away from our house. The sports fields (baseball and softball) with huge lights, multi-use turf fields, a skate park, aquatic facility plus 419 parking spaces would cause high-level noise, too much traffic, pollution and even undesirables (gangs, etc.) making this area's homes drop in value even more than the present economic crises has impacted local real estate. I am sure many residents will file lawsuits over many of these things should the present plan for the park pass.

Unless this park is scaled back, we will be forced into accepting a lower quality of life entailing more polluted air to breath, more traffic congestion, polluted runoff/toxic groundwater, more loss of local water supply (rapidly dwindling at best), not to mention too much noise for an upscale residential area to accept. And aren't we in a water crises at this time?

We would not object to a scaled-back park: smaller parking lot, more nature paths and open space, including a larger dog park. The ampitheatre would be acceptable with some provisions such as gardens with native plants only and no grass. The scenic overlook and picnic areas are acceptable but noise-generating sports fields are not; nor is accepting toxic runoff from heavily fed and watered lawns with non-native species. The skate park and aquatic facilities are debatable depending on their size and amount of environmental impact. The aquatic facility should use non-chlorine products. Nothing toxic to the local environment should be used at this park, since its about one mile from the beach and coastal waters.

Obviously, we encourage you to reject this park. Based on coastal pollution alone we are sure many of you will agree: a monster park this size has no business hovering over our coast line and devastating too much open space, impacting local wildlife too greatly and disturbing a well-established residential area beyond repair.

Thank you for your time and consideration in this urgent matter.

Sinc[illegible] *Signature on file* [illegible] Family

(Margie Lazar)

Signature on file

[illegible]

Signature on file

[illegible]

Ms. Margie Lazar
207 Avenue De Monaco
Cardiff CA 92007-2422

[illegible]

4B

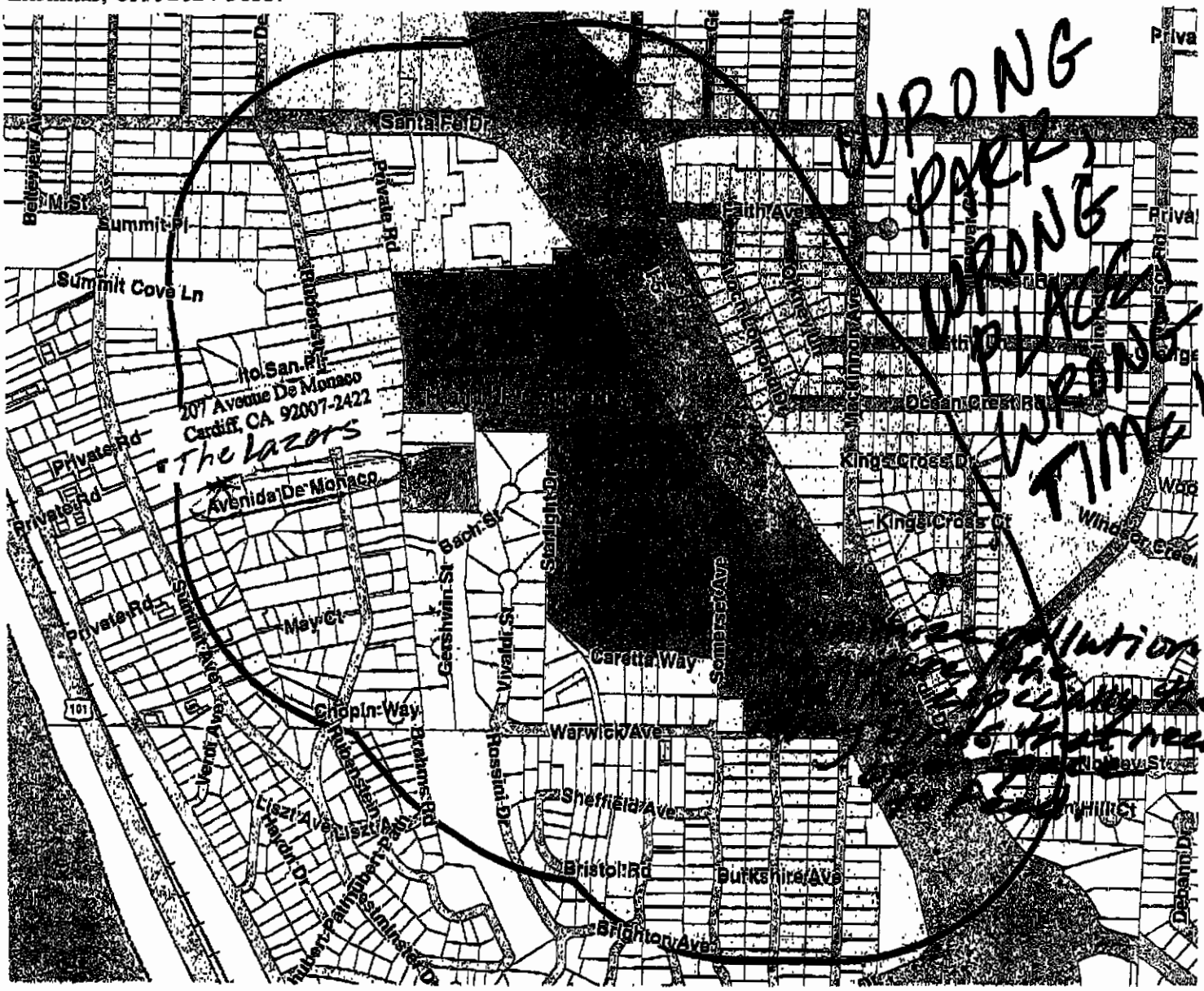
The city sees revenue, while we & our neighbors see pollution, traffic & devalued property

This appeal will be considered by the City Council pursuant to Chapter 1.12 of the M
person who wishes to submit a written position with arguments, documents, exhibits, l
diagrams, videos, etc., addressing the challenged determination MUST submit these to t
P.M. on Monday, October 13, 2008, seven (7) calendar days prior to this hearing. No ne
considered by the City Council after this deadline. Upon filing with the City Clerk
available to the public. If you have any questions, please contact the City Clerk at (760)

Page 2 of 2

Under California Government Code Section 65009, if you challenge the nature of the propos may be limited to raising only the issues you or someone else raised regarding the matter described in this notice or written correspondence delivered to the City at or before the time and date of the determination. The above item is located within the Coastal Zone and requires issuance of a regular Coastal Development Permit. **The action of the City Council may be appealed to the California Coastal Commission within ten (10) business days following the date of Council action. The Coastal Commission will determine the exact dates of the Coastal Commission appeal period.**

For further information, or to review the project application prior to the hearing, contact Kerry Kusiak, Senior Planner, at (760) 633-2719, or the Planning and Building Department at (760) 633-2710, 505 South Vulcan Avenue, Encinitas, CA 92024-3633.



Vicinity Map
North↑

*We have lived here on

1-30-09
Margie

about Hall Property in Cardiff.
City of Encinitas Park & Rec.

to Calif Coastal Commission,

I have wrote once before about the hall park. I live on 1511 Villa Cardiff Dr. right across the freeway from future park.

They only show Santa Fe Drive into the park. We know we will get more traffic on our street.

Also the light would be right into our bedrooms;

I believe if they just had a good old fashion park - with lots of green & / or 2 ball field our community wouldn't complain.

as it is Cardiff has a big sport field already on Lake street

Most of the soccer coaches and teams do not live in this area.

Please take and think of those of us who live right around this park.

Signature on file

1511 Villa Cardiff Dr.
Cardiff, Ca. 92007

California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-4421
Tel 619-767-2370, Fax 619-767-2384

Reference: January 15, 2009, Important Public Hearing Notice: Public Appeal from the California Coastal Commission, attached.

To whom it may concern: **All Commissioners and Gary Cannon**

It was never my concern what the future 44 acre park here in Cardiff-by-the-Sea should have and should not have, that I leave to my neighbors and the City planners.

However I am concerned about some Engineering and Quality of Life issues that need to be taken care of.

1. **Traffic:** The park must have several exit and entrances in order to decentralize the Santa Fe Drive bottle neck and any other streets.
2. **Noise**: A noise **absorbing wall(s)** is to be constructed along highway # 5 , so as not to impact activities in the park. This must be done along any other streets that will carry park-visiting vehicles. This technology already exists.
   The pavement of the streets should be of the lowest tire-generating-noise material.
3. **Air Quality**: Wherever possible trees, shrubs, plants etc. must be planted to counteract the air pollution generated by the park activities, vehicles, equipment etc.
   Noise absorbing walls may be partially hidden with greenery and or trees.
4. **Buildings:** All buildings and structures must be green.
5. **Free Solar Electricity:** All building and structures are to incorporate free solar electricity generation. Parking lots structures are not only to provide shade for the vehicles but also incorporate free solar electricity generation.
6. **Storm Drain Water**: 20 years ago the City approved the Monaco development dumping **polluted** water onto the neighboring properties. Just recently it approved a development on Rubenstein Avenue repeating the same mistake.
   Therefore all storm drain waters must be collected and cleaned. If discharged into the ocean the **water must not harm aquatic life and people swimming and surfing**. The water could also be used for park irrigation.
7. **Global Warming:** All the above fundamentals will help reduce global warming. The challenge for the designers, planners etc. is to create a global cooling 44-acres elegant economic footprint. This is in concert with Nature thereby improving our quality of life.

Thank you for listening.

Signature on file

Elio Capra
1447 Summit Avenue
Cardiff-by-the-Sea, CA 92007

LETTER OF COMMENT 47

FRIDAY, ITEM 7A

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:
Appeal No. A-6-ENC-08-106 (Encinitas community park) Appeals by Peter Stern and Citizens for Quality Life from decision of City of Encinitas granting permit with conditions to City of Encinitas Parks and Recreation Department to construct 44 ac. community park to include softball/baseball fields, multi-use turf fields, teen center, dog park, amphitheatre, skate park, aquatic facility, gardens, picnic areas, trails and scenic overlook, at 425 Santa Fe Drive, Cardiff, Encinitas, San Diego County.

Date and time of receipt of communication:
January 29, 2009, 10:00 am

Location of communication:
Phone

Type of communication:
Teleconference

Person(s) in attendance at time of communication:
Susan McCabe, Chris Hazeltine, Anne Blemker

Person(s) receiving communication:
Patrick Kruer

Detailed substantive description of the content of communication:
(Attach a copy of the complete text of any written material received.)
I received a briefing from the project representatives in which they described the project and informed me that they are in agreement with the staff recommendation of No Substantial Issue. They described the benefits of the project, including the establishment of much-needed recreational opportunities and public open space. The representatives described their efforts to address issues raised at the local level, including those related to water quality, noise, appropriate landscaping, lighting, traffic and parking. According to the representatives, all of these issues were fully addressed through special conditions imposed by the City Council in October 2008. They informed me that staff has determined the appellants' concerns are not of regional or statewide significance and that the project is fully consistent with the certified LCP.

Date: 1/30/09

Signature of Commissioner: *Signature on file*