



JERRY SANDERS
MAYOR

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SAN DIEGO
COUNTY GRAND JURY

July 10, 2008

Honorable Kenneth So
Presiding Judge
San Diego County Superior Court
Main Courthouse, Third Floor
220 West Broadway
San Diego, CA 92101

Dear Judge So:

Subject: 2007-2008 San Diego County Grand Jury Report entitled "San Diego City Development Services Department: Professionals in a Maze".

Facts (Mayor):

Fact: The ethics training recommended in the SawyerKnoll report has yet to be conducted.

Mayor's Response: Development Services was among the first departments to receive ethics training created by the City of San Diego's Office of Ethics and Integrity. The online training, conducted during August 2007, specifically addressed areas of misconduct such as: conflicts of interest; improper use of position; improper use of City resources; falsification of records (including theft of time); and favoritism/nepotism, among other topics. The training also covered City rules regarding gifts and favors; e-mail and Internet usage; whistleblower protection; and confidentiality, as well as other policies and procedures.

The compliance training helped clarify the City's ethics policies using realistic situations that City employees may find themselves in. Further, it reinforced to employees the importance of carefully thinking through their words and actions in order to protect the public's trust. Because all City employees are taking this training, employees come away from it with a shared understanding of City rules and every member of the workforce will be in a position to do the right thing when faced with situations that cause uncertainty.

Additional tailored ethics training designed around specific Development Services employee needs is also being developed by the Office of Ethics and Integrity and currently scheduled for deployment later this year.

Fact: The Land Development Code is 1700 pages long, difficult to access, disorganized, and has complicated indexing.

Mayor's Response: The Land Development Code (LDC) is available on the City of San Diego website and can easily be electronically searched for any term or subject using the freely available Adobe Acrobat software. As described in the LDC User's Manual, the code was arranged in a very conscious manner to keep like information grouped together and to provide an organization that allows users to find regulations easily. The User's Manual can be found at (www.sandiego.gov/development-services/industry/pdf/landdevmanual/lmusersguide.pdf)

The LDC, adopted by City Council in 1997 and made effective January 1, 2000 following California Coastal Commission certification, was a complete overhaul of the City's Municipal Codes affecting land development. This extensive update was done through a deliberate and public process involving more than 300 public meetings. The update's goals were to simplify regulations, to make them clearer, to make project outcomes more predictable, and to make regulations understandable. A City Council appointed Citizen's Advisory Committee (CAC) directed the staff update and provided guidance on all aspects of the effort. Following adoption of the LDC, this same citizen's group was maintained to help provide guidance on all updates to the code. Four citizens from the original (CAC) still voluntarily participate in the current advisory committee.

The City's Land Development Code received the League of California Cities 2001 Helen Putnam Award for excellence in City Government.

Fact: The DSD is budgeted strictly as an enterprise fund. This leads to frequent loss or position changes for trained personnel.

Mayor's Response: As an enterprise fund department, DSD relies on user fees to fund staff positions. Like in private industry, as DSD workload increases, additional staff are hired. Likewise, if DSD workload decreases, then DSD must eliminate positions to have control costs. This has not lead to "frequent loss or position changes" in the department. The recent reduction in staffing over the past two years is reflection of the national and statewide economic trends for development.

Findings (Mayor and City Council):

Finding: We found the DSD personnel to be knowledgeable, forthcoming, and helpful.

Mayor's Response: The respondent agrees with the finding.

Finding: Training is conducted informally on the job with no formal process prescribed.

Mayor's Response: The respondent wholly disagrees with this finding. DSD staff workgroups that require formalized training have established plans for their employees. Many employees are college educated professionals in development, design, and planning related fields with knowledge specific to the plan review functions. Others are registered professionals certified in their areas of expertise by the state.

The department also has established performance measures that include a goal of 4 hours of training per month per employee. Department work hours were modified over 4 years ago to provide adequate time for staff working public counters to achieve their training performance goals. During Fiscal Years 2005 and 2006, the Department met or exceeded their training goals. Due to reduction in staffing and decreased workloads in Fiscal Years 2007 and 2008, the Department has met their training performance measure 50% of the time.

Recommendations (Mayor and City Council):

08-28: Rewrite the Land Development Code to make it shorter, user friendly, better organized, and cross referenced for ease of use.

Mayor's Response: The recommendation will not be implemented. The City's regulations for development have evolved over many years and have to address the varying land uses and challenges that face a City as large and diverse as the City of San Diego.

The Land Development Code (LDC), adopted by the City Council in 1997 and made effective January 1, 2000 following California Coastal Commission certification, was a complete overhaul of the City's Municipal Codes affecting land development. This extensive update was done through a deliberate and public process involving more than 300 public meetings. The update's goals were to simplify regulations, to make them clearer, to make project outcomes more predictable, and to make regulations understandable. A City Council appointed Citizen's Advisory Committee (CAC) directed the staff update and provided guidance on all aspects of the effort. Following adoption of the LDC, the CAC was maintained to help provide guidance on all updates to the code. Four citizens from the original CAC still voluntarily participate in the current advisory committee referred to as the Code Monitoring Team.

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The City intends to continue its efforts to improve regulations as part of the ongoing community plan update process. As community plans are updated, regulations will be revised to clearly implement adopted land use policies in the most straight forward way

possible. Community plans are scheduled to be updated on a constant cycle over a 20 year period.

08-29: Make up-to-date version of the Land Development Code more accessible to citizens.

Mayor's Response: The recommendation will not be implemented. The Land Development Code is available on the City of San Diego website and can easily be electronically searched for any term or subject using the freely available Adobe Acrobat software. The City generally makes new regulations available on its website within one month of the effective date of new regulations.

The Mayor's Business Process Reengineering (BPR) effort for Development Services recommends changes that will further improve the timeliness and accuracy of publication of the current code and future updates. City Council must approve the recommendations before these changes can be implemented. It is anticipated the DSD's BPR will be heard early in fiscal year 2009.

08-30: Reconfigure the funding for the DSD to cap periods of high personnel needs and to put a floor under their funding during periods of low numbers of applications.

Mayor's Response: The recommendation requires further analysis. DSD is currently going through a pre-competition analysis to determine the best method to deal with changing workloads including both surge and decline scenarios. It is anticipated that pre-competition recommendations will be completed early in Fiscal Year 2009. Additionally, the Mayor's BPR effort for DSD recommends that strategies are put into place to address changing workloads. It is likewise anticipated that City Council will consider these recommendations for approval early in Fiscal Year 2009.

08-31: Institute formalized training in DSD.

Mayor's Response: This recommendation has been implemented before this grand jury was seated. DSD staff workgroups that require formalized training have established plans for their employees. Many employees are college educated professionals in development, design, and planning related fields with knowledge specific to the plan review functions. Others are registered professionals certified in their areas of expertise by the state.

The department also has established performance measures that include a goal of 4 hours of training per month per employee. Department work hours were modified over 4 years ago to provide adequate time for staff working public counters to achieve their training performance goals. During Fiscal Years 2005 and 2006, the Department met or exceeded their training goals. Due to reduction in staffing and decreased workloads in Fiscal Years

2007 and 2008, the Department has met their training performance measure 50% of the time.

Discussion 2: Six Minor Development Projects Under Consideration in the City of San Diego

Recommendation (Development Services Department):

08-32: Ensure the MNDs are complete and accurate and contain full disclosures.

DSD Response: This recommendation has been implemented. The City of San Diego already prepares accurate and complete environmental documents that contain full disclosures. The City's environmental review and preparation of Negative Declarations, Mitigated Negative Declarations, Environmental Impact Reports and Exemptions is based on the California Environmental Quality Act, recent case law, and the City's codes, policies and regulations.

For example, the Grand Jury Report states in Case Study #1 related to the Pacific Coast Office Building project, "The application for the Pacific Coast Office Building specified a building height that would rise to nearly 200 feet – 50 feet i.e., 33% higher than the recommended height limit in the Mission Valley Development Plan." This is incorrect. The proposed project was in compliance with the development requirements of the Mission Valley Planned District Ordinance, including the height limit. The case study goes on to state, "The proposal recently rejected by the City Council would require an intrusion into dedicated open space to ensure a mandated 100-foot brush clearance zone." This is incorrect. There was no intrusion into dedicated open space proposed by the project. The protected open space easement on the property was not impacted by the proposed development. Case Study #2 regarding the Stebbins Residence states, "The development proposals all showed a house with considerable elevation, which did not fit in with the surrounding area and might have obstructed ocean views." The Ocean Beach Community Plan and Local Coastal Program establish protected view corridors and public vantage points to the ocean. This is the City's standard of review for determining view impacts of a project. The case study fails to mention that none of the protected public vantage points or view corridors to the ocean were impacted by the development proposal. In Case Study #3, the Mesa College Parking Lot, the Grand Jury Report states "It is not clear whether the plans called only for grading and not inclusion of park property, or if any such distinction was made to Council." The development plans for the proposed parking lot identified encroachment into parkland for grading, and restoration of those graded areas. Limits of work for the project that extended into the adjacent Kearny Mesa Park were clearly identified on the project plans. It is assumed that this incorrect information was used to develop recommendations.

Recommendations (San Diego City Council):

08-33 Demand complete and accurate EIRs and MNDs with full disclosures

Mayor's Response: The recommendation will not be implemented because it is not warranted. The information summarized in the Grand Jury Case Studies #1 through #6 appears to contain inaccuracies and aspects of the projects and environmental documents that are factually incorrect.

For example, the Grand Jury Report states in Case Study #1 related to the Pacific Coast Office Building project, "The application for the Pacific Coast Office Building specified a building height that would rise to nearly 200 feet – 50 feet i.e., 33% higher than the recommended height limit in the Mission Valley Development Plan." This is incorrect. The proposed project was in compliance with the development requirements of the Mission Valley Planned District Ordinance, including the height limit. The case study goes on to state, "The proposal recently rejected by the City Council would require an intrusion into dedicated open space to ensure a mandated 100-foot brush clearance zone." This is incorrect. There was no intrusion into dedicated open space proposed by the project. The protected open space easement on the property was not impacted by the proposed development. Case Study #2 regarding the Stebbins Residence states, "The development proposals all showed a house with considerable elevation, which did not fit in with the surrounding area and might have obstructed ocean views." The Ocean Beach Community Plan and Local Coastal Program establish protected view corridors and public vantage points to the ocean. This is the City's standard of review for determining view impacts of a project. The case study fails to mention that none of the protected public vantage points or view corridors to the ocean were impacted by the development proposal. In Case Study #3, the Mesa College Parking Lot, the Grand Jury Report states "It is not clear whether the plans called only for grading and not inclusion of park property, or if any such distinction was made to Council." The development plans for the proposed parking lot identified encroachment into parkland for grading, and restoration of those graded areas. Limits of work for the project that extended into the adjacent Kearny Mesa Park were clearly identified on the project plans. It is assumed that this incorrect information was used to develop recommendations.

It is the Lead Agency's responsibility to determine if a project would have a significant impact on the environment. An EIR is required when clearly there is a significant impact that can not be mitigated to a level below significance even after project approval, for which the decision maker would have to adopt a Statement of Overriding Considerations for those unmitigated impact or impacts. However, if during the CEQA Initial Study process, substantial evidence shows that the project may not have a significant effect on the environment, the lead agency shall prepare a Negative Declaration.

Direct, indirect, and cumulative environmental impacts and corresponding significance thresholds vary from lead agency, as well as jurisdiction. Each agency's thresholds of significance provide a standardized baseline to determine whether or not a specific impact would be considered significant, potentially significant, or not a significant effect

on the environment. Because an opponent or interested party states that an EIR must be prepared, does not necessarily mean or require the lead agency to prepare an EIR. On the contrary, the lead agency's determination must be based on the substantial evidence (e.g. approved technical reports prepared in compliance with local, state and federal standards) in light of the whole record.

It was stated in the Grand Jury report that opponents of projects have indicated that the City's MNDs are sometime inaccurate and that EIRs would be more appropriate. If a project does not meet the requirements for the preparation of an EIR as stated in CEQA, the Lead Agency cannot make their determination of an EIR based on public controversy. Public Resources Code Section 21082.2(b) and CEQA Guideline 15064(f)(4) clearly state: "The existence of public controversy over the environmental effects of a project will not require a preparation of an EIR if there is no substantial evidence before the agency that project may have a significant effect on the environment."

The City of San Diego prepares accurate and complete environmental documents that contain full disclosures. This recommendation is standard practice for the City and therefore warrants no further action.

It is part of staff's professional practice to answer questions asked by City Council members in a public hearing in a thorough and complete manner. This recommendation is customary procedure and warrants no further action.

08-34: Insist on firm, clear answers to their questions at the time they are asked or at the next City Council meeting.

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Discussion 3: Sunroad Centrum 12

Fact (Mayor):

***Fact:** There are three New Century Center manuals being used by developers and the DSD.*

Mayor's Response: Although it is difficult to understand the Grand Jury's findings as it pertains to the three New Century Center Master Plans, we assume they are referring to the Master Plan having been approved in 1997 with amendments in 2000 and 2002. Land Use Entitlements can be amended; however, there is only one Master Plan guiding document for the New Century Center that is used to evaluate current development proposals. The document includes three volumes, titled Master Plan, Development Standards, and Design Guidelines which were approved November 12, 2002. Each manual is distinct to each area covered by the specific amendment made by subsequent property owners for a distinct area of the development site. The City believes each is very descriptive and easy to read.

Similar to the New Century Center, other development projects are often amended after their initial approval. Some are amended many times over many years. The Development Services Department is responsible for retaining these multiple amendments and helping property owners and members of the public to discern the applicable project requirements to any piece of property. DSD developed a project tracking system that is used to maintain information on multiple permits issued for the same property.

Finding (Mayor and City Council)

***Finding:** The relationships of the three manuals to each other and of the revisions to the whole plan area are not manifest.*

Mayor's Response: The respondent wholly disagrees with the finding. Although it is difficult to understand the Grand Jury's findings as it pertains to the three New Century Center Master Plans, we assume they are referring to the Master Plan having been approved in 1997 with amendments in 2000 and 2002. Land Use Entitlements can be amended; however, there is only one Master Plan guiding document for the New Century Center that is used to evaluate current development proposals. The document includes three volumes, titled Master Plan, Development Standards, and Design Guidelines which were approved November 12, 2002

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Recommendations (City Council and the Development Services Department):

08-35: Revise the three New Century Center manuals to reflect their relationship to each other and to the entire plan area.

Mayor's Response: The recommendation will not be implemented. Although it is difficult to understand the Grand Jury's findings as it pertains to the three New Century Center Master Plans, we assume they are referring to the Master Plan having been approved in 1997 with amendments in 2000 and 2002. Land Use Entitlements can be amended however there is only one Master Plan guiding document for the New Century Center that is used to evaluate current development proposals. The document includes three volumes, titled Master Plan, Development Standards, and Design Guidelines which were approved November 12, 2002

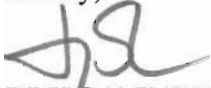
Each manual is distinct to each area covered by the specific amendment made by subsequent property owners for a distinct area of the development site. The City believes each is very descriptive and easy to read and enforce.

08-36: Impose a moratorium on all new building permits in all of the New Century Center development area until the City Council receives a density transfer audit for the property that they determine fits their criteria for the project.

Mayor's Response: The recommendation will not be implemented. The City does not recommend a moratorium on new building permits in the New Century Center Development Area but agrees that detailed development monitoring be implemented. DSD currently evaluates each proposed project to determine compliance with density transfer and transportation limits outlined in the approved master plan manuals and permits for the project. The City is creating a comprehensive inventory of existing development density and transportation approvals for the existing center. This inventory will be completed within 3 months and will be maintained in the project files for use by staff in reviewing all future projects proposed at the New Century Center.

Please contact Kelly Broughton, Director, Development Services at (619) 321-3233 if you have additional questions.

Sincerely,



JERRY SANDERS

Mayor

cc: San Diego County Grand Jury
Chief Operating Officer
San Diego City Council
Deputy Chief, City Planning and Development
Director, Development Services
City Clerk
Administration Department Director