THE CITY OF SAN DIEGO

MANAGER'S REPORT

DATE ISSUED: July 7, 2004 REPORT NO. 04-139

ATTENTION: Honorable Mayor and City Council
Docket of July 13, 2004

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION FOR MIA ARBOLITO, PROJECT NO. 19032, COUNCIL DISTRICT 3

OWNER/
APPLICANT: Mi Arbolito, LLC

APPELLANT: Banker's Hill, Hillcrest, Park West Community Preservation Group c/o Johnson & Hanson, LLP

SUMMARY

Issues - Should the City Council AFFIRM the staff Environmental Determination that the Mi Arbolito project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the State CEQA Guidelines?

Manager's Recommendation - Deny the appeal and uphold the Environmental Determination.

Environmental Review – The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) has prepared an exemption pursuant to Section 15332 of the State CEQA Guidelines (Infill Development Projects).

Fiscal Impact – All costs associated with processing approvals of this project are paid from an existing fee paid by the applicant and, possibly, a future deposit account that would be maintained by the applicant if the applicant re-submits an application for a discretionary approval. Staff costs associated with processing this appeal have been borne by the Development Services Department because there is currently no deposit on account with Development Services.

Code Enforcement Impact – None with this action.

Housing Impact Statement - None with this action.

BACKGROUND

The proposed project is a 14-story, 14-unit multi-family residential building over underground parking. The 10, 247-square-foot site is zoned MR-400 and is located on the northeast corner of the intersection of Sixth Avenue and Upas Street.

This appeal is before the City Council because of an amendment to CEQA. Effective January 1, 2003, Section 21151(c) of CEQA has been amended as follows: *If a non-elected decision making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision making body, if any.*

Pursuant to this amended legislation, Banker's Hill, Hillcrest, Park West Community Preservation Group c/o Johnson & Hanson, LLP filed an appeal (Attachment 2) of the staff environmental determination to exempt the project on April 12, 2004. However, this new appeal process applies only to the environmental determination.

The appeal is partly based on the allegation that an Environmental Impact Report (EIR) should have been prepared for the project. CEQA and case law require the preparation of an EIR when there is a fair argument that there is substantial evidence, in light of the whole record, that a project may have a significant impact on the environment. Section 21080(e) of CEQA states that "…substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative…."

The exemption prepared for this project is a categorical exemption found in Section 15332 of the State CEQA guidelines (Infill Development Projects). The appeal is also partly based on the following standard for using categorical exemptions:

> Section 15300.2 (c) – Significant effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to **unusual circumstances** [emphasis added].

Finally, the appeal is also based on the applicability of the following conditions. A finding that these conditions have been met is a necessary precedent to using the Section 15332 exemption:

> Section 15332 (a) – The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
>
> Section 15332 (d) – Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

The staff response to each of these challenges has been provided below within the list of the appellants' specific concerns.

Pursuant to the issued permits noted below, construction of the underground parking garage is currently underway on the site.

Date Submitted	Permit Type	Application #	Status
March 27, 2003	Map Waiver and SDP	6686	Not Completed; Withdrawn
June 23, 2003	Grading/Temp Shoring	10278	(Approved, W-51473) Closed.
July 16, 2003	Building Permit: Footings	11489	(Approved, # 21521)
October 2, 2003	Building Permit: Building	15900	Approval Pending
January 7, 2004	Tentative Map	19032	Withdrawn

Because the Map Waiver and Tentative Map applications placed the City on notice that the project may require an approval by the Planning Commission (which would be deemed a "discretionary" decision for purposes of CEQA), the Environmental Analysis Section (EAS) of the Development Services Department reviewed this project assuming that the applications may be resubmitted. Since this project did not include an application for a Tentative Map or Map Waiver at the time it was reviewed by EAS, EAS could not deem this project to be a "discretionary" project for CEQA purposes. However, since Mi Arbolito, LLC had twice placed the City on notice that the project may require a discretionary decision; EAS considered the CEQA review requirements for this project assuming it may include a discretionary decision in the future.

DISCUSSION

Issues raised by the appellant, along with staff responses, are as follows:

1. This project is a Process 3, 4, or 5 decision, all of which require a public hearing. No public hearing was noticed or held.

Staff response: This issue addresses noticing requirements for Process 3, 4, and 5 decisions and not the validity of the environmental determination. No application for this site which would require any sort of notice is currently on file with Development Services. The permits which have been issued to the applicant were properly issued as Process 1 decisions. This Appeal allowed under PRC section 21151(c), has brought this environmental exemption before the City Council which renders this issue moot.

2. The building will physically block the reception of the cellular antennae currently located atop the adjacent Del Prado condominium building.

Staff response: The existing cellular antennae have no regulatory protection from new development, under CEQA, or otherwise. The project would render infeasible proposed new antennae on top of the building at 666 Upas but would not impact the existing antennae (email from Mac Strobl, 6/7/04). It would be speculative to conclude that location elsewhere of the planned antennae would have a significant effect on the environment.

3. The condominium project is not consistent with the general plan and zoning regulations for reasons including, but not limited to, the size of the lot not allowing the proposed project to be built consistent with the applicable zoning, maximum diagonal plan dimensions, parking requirements, and gross floor area ratio.

Staff response: The project is in compliance with all of the respective Mid-City Communities Planned District Ordinance (PDO) regulations and requires only approval of a building permit. The project proposes: 14 units where 26 units would be permitted; 43,811 square feet of floor area where 48,281 would be permitted and 9,294 square feet of floor area above 100 feet where 10,247 square feet would be permitted; 37 percent lot coverage where 50 percent would be permitted, and the project provides 28 parking spaces where a minimum of 25 would be required. The project does comply with the diagonal plan dimension requirements of the PDO (100% of the width of the property) and is providing a 12.5 -foot front yard setback from the property line to the face of the building along Upas Street where only five (5) feet is required and a 8-foot setback to the upper story balconies. The proposed building is setback 15 feet (for the full height of the building) along the interior side yard (adjacent to the abutting property) where the code would allow a six-foot setback for the first two floors, a nine-foot setback at the 3rd floor, a 12-foot setback for the 4th floor and a 15-foot setback for the 5th floor through the 14th floor. The rear yard setback off of the alley is 14 feet where one-foot could have been observed at the 1st and 2nd floor with an additional seven (7) feet (eight (8) feet total) required at the 3rd floor and 14 feet required at the 4th floor and above.

4. As is obvious from the evidence before the City, and the fact that the Uptown Partnership is considering options for improving the 6th and Upas intersection to address safety concerns, the project will have significant traffic impacts and the urban infill exemption cannot be used. Access to the Marston House and the major Balboa Park entry at Sixth and Upas will be further congested, restricted, and more hazardous.

Staff response: An April 22, 2003 memo generated by the Transportation Department in response to a route slip from Council District 3 indicates that there were two reported accidents within five years prior to the memo date at the subject intersection with no discernible pattern. A pedestrian entered the intersection running and was hit by a vehicle in 1988. A bicyclist was rear ended by a vehicle southbound on Sixth Avenue in 2002. Two additional accidents have been reported between April 22, 2003 and March 30, 2004 (the last date for which data are available. The first of these accidents involved a car northbound on Sixth Avenue south of Upas Street sideswiping a parked car. The second involved an eastbound-facing car backing into a parked car as it was trying to park. Again, the conclusion is that there is no discernible pattern.

The existing Level of Service at the Upas Street/Sixth Avenue intersection is "B" in the morning peak hour and "C" in the afternoon peak hour. The proposed project would be expected to generate a total of 84 average daily trips, including 7 during the morning peak hour and 8 during the afternoon peak hour. The project would not adversely affect the safety, level of service, or volume/capacity ratio of the streets, the intersection, or the park access. There are no adopted plans in place to adjust the intersection; therefore,

construction of the project would not affect any reasonably foreseeable intersection improvements/modifications.

5. The Notice of Exemption's conclusion that the project is ministerial is incorrect.

Staff response: This project is being treated as if it may be a discretionary project for purposes of determining CEQA compliance.

6. The project will impact the views of the Del Prado condominiums.

Staff response: Absent an impact to designated view corridors or viewsheds, the City does not consider impacts to private views to be potentially significant.

7. The project will create driver and line of sight safety issues on Sixth Avenue, Upas Street, at the intersection of these two streets, and at the ingress/egress alley intersection with Sixth Avenue.

Staff response: The building is setback 22 ½ feet from the face of the northerly curb on Upas Street and 20 feet from the face of the easterly curb on Sixth Avenue. Vehicular ingress and egress to the project would occur via a driveway to an underground parking garage which is connected to an east-west alley to the north of the project site. The building would not be located within the line of sight of drivers at the intersection or the alley.

The project fully complies with the City's requirements for visibility areas at the street and alley intersections. The planters that would be built between the building and the street are 36 inches tall and, like all structures 36 inches or less in height, do not interfere with lines of sight.

8. The building location poses a significant life-safety hazard due to the fact that automobiles northbound on Sixth Avenue routinely plow through the chain link fence that will soon define the southwest corner of someone's living space (under a normal review process, anyone in the neighborhood could have told the City that this same accident occurs at least twice a year).

Staff response: No accident reports have been filed to verify the above allegation. Northbound drivers on Sixth Avenue must negotiate a jog to the west to pass through the intersection with Upas Street. Similarly, westbound drivers on Upas Street must negotiate a jog to the south to pass through the Sixth Avenue intersection. The project would build a series of 36" tall planters along the southern and western perimeter of the site. See also response to comment 4.

9. Project traffic will bog down use of the alley. Parking spaces belonging to the apartments at 3511 Sixth Avenue have to pull into their spaces directly from the alley just after turning off Sixth Avenue and must back into the alley to leave their spaces. Double parking occurs and moving vans, delivery vehicles, etc. often block the alley.

Staff response: The project would be expected to generate a total of 84 average daily trips, including 7 in the morning peak hour and 8 in the afternoon peak hour. Though there is no design ADT assigned to alleys, the additional trips generated by the project would not significantly affect traffic operations in the alley.

The subject project would dedicate an additional five feet of property to widen and improve the existing 15-foot-wide alley to the City standard of 20 feet when only an additional 2 ½ feet are required and full alley width would have had to wait for future redevelopment of the property to the north of the alley.

10. The project has resulted in the loss of 20 parking spaces during construction, and the developer has stated that eight of those spaces will be permanently lost. Even if there is adequate parking for the owners of the property, their guests, service personnel and deliveries will only add to the already inadequate parking situation. Already existing parking problems for visitors to the Marston house and to Balboa Park will be further exacerbated. This condition should be considered with respect to parking requirements for the new building.

Staff response: The City parking standards have been designed to accommodate parking demand while addressing other City goals and policies. At the intensity to which the project is designed, 25 parking spaces are required. Twenty-eight parking spaces are proposed. Parking impacts are considered to be potentially significant if a project fails to provide the required number of spaces; therefore, parking impacts from this project would not be considered significant.

A statement that eight on-street parking spaces would be lost as a result of the project is incorrect. Prior to construction, only five un-metered, on-street parking spaces existed along the project site's street frontage (two on Upas Street and three on Sixth Avenue). The three parking spaces on Sixth Avenue would be lost as a result of the project widening the alley at the intersection of Sixth Avenue, painting the curb red for fire truck access, and designating a parking space for a mail truck. No spaces would be lost on Upas Street.

11. The tower will appear out of place and out of scale to anyone coming up or down Sixth Avenue. It will form part of a nearly solid massive barrier at the north end of the park as its easterly wall is to be only about 20 feet from the Del Prado monolith. The project is also out proportion to the remainder of the buildings on Sixth Avenue north of the Park.

Staff response: The project site, like the adjacent Del Prado site on the north side of Upas Street is zoned MR-400. In fact, all of the easterly facing property along Sixth Avenue north of Laurel Street is also zoned MR-400. The only solid massive barrier at the north end of the park is the Del Prado. The Del Prado is about 150 feet in height and three and one-half times as wide as the proposed project.

The Mi Arbolito building is more refined in its bulk and scale than the Del Prado because it is well articulated and complies with the Code's off-setting planes and diagonal dimension requirements, as well as the architectural features requirements. The Mi Arbolito project

only covers 34 percent of the lot where 50 percent would be permitted and has 4,470 square feet less floor area than the Code allows.

The Uptown Community Plan anticipated the scale and character of development consistent with the MR-400 Zone regulations in this area, and the development regulations of the PDO were specifically amended to address design and development concerns of the community plan when the ordinance was amended to include the Uptown community plan area. The relevant community plan recommendation is that "very high density residential use with appropriate setbacks, façade articulation, and pedestrian scale amenities should be permitted in the area along Sixth Avenue from Laurel Street to Upas Street."

The Purpose and Intent section of the residential zone section of the PDO states that the multi-family zones are designed to provide for development compatible with the pattern of the existing neighborhoods and that the standards (regulations) are tailored to the density of the individual zones and are intended to provide a variety of attractive, functional and affordable housing types and styles. With ministerial building permits, applicants must show compliance with all of the underlying zone regulations; these regulations are designed to result in that is development compatible with the existing neighborhoods.

12. The building is so tall that the sun will not clear it during the shortest days of winter, and the homes on Seventh Avenue will be subject to as many as three extra hours of shade on winter afternoons. This makes it hard for our gardens to prosper and causes a slimy coating to grow on our brick patios. Further impingement of sun access [along Seventh Avenue from Upas north to the dead end] would cause safety risks due to the slippery conditions of moss-covered walkways. The building shadow will also permanently cover vegetation, including significant segments of Balboa Park.

Staff response: Shadowing extremes can be demonstrated by evaluating near-sunset conditions on December 21 and June 21. On these days, the sun sets in its southernmost and northernmost locations. On December 21, the shadow created by the proposed project extends to the northeast for a significant distance, almost as far as the shadow cast by the existing Del Prado building and begins to expand the Del Prado shadow at noon. Between noon and sunset (4:47 p.m.), the proposed project results in a new, 12-foot wide shadow northwest of the shadow cast by the Del Prado building. On June 21, the shadow created by the proposed project extends to the southeast, crossing Upas Street at 5:00 p.m. and ultimately extending 130 feet into Balboa Park by sunset. The proposed project would result in a new, 44-foot wide shadow to the southwest of the shadow cast by the Del Prado during this time of year; no permanent shading would occur. The shadow generated by the proposed building is not considered to result in significant impacts to adjacent properties or to use of Balboa Park.

13 The project will block cooling breezes in summer, and contribute to the Del Prado-created wind-tunnel effect through the alley. The current breezes allow us to avoid the use of air-conditioners in the summer. The Del Prado creates a wind-tunnel effect that makes these [Seventh Avenue] backyards very breezy at some times and at other times prevents cooling breezes from reaching our properties.

Staff response: As noted in the comment, the effects of a new building on a micro-climate will differ at different times given changes in wind direction and speed. Due to the friction of the ground, wind speeds are typically higher at higher locations. Also, air tends to continue moving in the same direction when it encounters an obstruction. As a result, it tends to flow around objects, much like water flowing around a rock in a stream, rather than reflecting off the objects. When air flow is constricted, such as between two buildings, velocities also tend to increase because of the venturi effect. While a precise determination of the exact effects of the project on adjacent properties would require complex mathematical modeling or wind tunnel experiments, it is anticipated that the impact would actually be an overall slight increase in breezes between buildings rather than a blockage of wind at any particular building.

14. Construction of the project has created constant traffic, safety, and noise problems.

Staff response: Construction impacts, as long as construction complies with applicable standards regarding noise, daily construction timing, dust suppression, and pedestrian/vehicular detouring, are not considered to be potentially significant for a project of this size and construction duration.

15. The building will adversely affect parades, foot races and motion picture filming in and around the portion of Balboa Park next to 6th and Upas.

Staff response: It is unclear how conversion of the site from a two-story medical office building to a vacant lot (the actual CEQA baseline for this project) to a 14-story building would affect parades, foot races, or motion picture filming.

CONCLUSION

Staff has exhaustively investigated the issues raised by the appellant and has determined that no substantial evidence of unmitigated impacts exists. Staff believes that the exemption prepared for the project is in conformance with the California Environmental Quality Act. Staff therefore recommends affirming the Development Services Director's exemption of the project under Section 15332 of the State CEQA Guidelines.

ALTERNATIVES

1. Grant the appeal, set aside the environmental determination, and remand the matter to the previous decision maker, with any direction or instruction the City Council deems appropriate.

2. Grant the appeal and make a superceding environmental determination or findings.

Respectfully submitted,

Tina P. Christiansen, A.I.A. Development Services Director	Approved: George Loveland Assistant City Manager

TPC/CZ

Note: The attachments are not available in electronic format. A copy is available for review in the Office of the City Clerk.

Attachments:
1. Project Location Map
2. Full Copy of Appeals
3. Ownership Disclosure Statement