

Meeting Date: 08/03/2009		Item Number: JPH-1	
JOINT CITY COUNCIL/REDEVELOPMENT AGENCY BOARD AGENDA ITEM: PUBLIC HEARING (CONTINUED FROM JULY 20, 2009) – 1) City Council Consideration of an Appeal of the Planning Commission's Approval of Site Plan Review SPR P-2008047 to Allow the Construction of a 43 Foot High, Commercial Building and Parking Structure with 775 Parking Spaces, 41,520 Square Feet of Retail, and 10,000 Square Feet of Restaurant at 8511 Warner Drive in the Industrial General (IG) Zone (the "Project"); and 2) Redevelopment Agency Board Consideration of a Determination that the Project is Consistent with the Redevelopment Plan.			
Contact Person/Dept.: Jose Mendivil, Associate Planner and Joe Susca, Redevelopment Project Manager		Phone Number: (310) 253-5757 and (310) 253-5763	
Fiscal Impact: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		General Fund: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Public Hearing: <input checked="" type="checkbox"/>		Action Item: <input type="checkbox"/> Attachments: <input checked="" type="checkbox"/>	
Commission Action Required: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Date: Planning Commission on 05/13/09 and Cultural Affairs Commission (Date To Be Determined)			
Public Notification: 06/29/09: sign posted on site; notices mailed to the Rancho Higuera HOA and all the property owners and occupants in Hayden Tract and Schaefer Street (beyond 500-foot radius); notice emailed to the Planning Commission Master Notification List on 06/29/09; and on 7/15/09: (E-Mail) Meetings and Agendas – City Council (07/29/09), (E-Mail) Meetings and Agendas – Redevelopment Agency (07/29/09)			
Department Approval: Sol Blumenfeld (07/27/09)		City Attorney Approval: Carol Schwab (by H. Baker (07/29/09) Agency General Counsel Approval: Murray Kane (07/24/09)	
Chief Financial Officer Approval: Jeff Muir (by M. Noller) (07/29/09)		City Manager/Executive Director Approval: Mark Scott (07/29/09)	
 <u>RECOMMENDATION:</u> Staff recommends: 1. The City Council adopt a Resolution (Attachment No. 1) denying the appeal and upholding the Planning Commission's approval of Site Plan Review SPR P-2008047 to allow the construction of a 43 foot high commercial building and parking structure with 775 parking spaces, 41,520 square feet of retail, and 10,000 square feet of restaurant at 8511 Warner Drive in the Industrial General (IG) Zone. AND 2. The Redevelopment Agency Board makes a determination that the proposed development project for the 8511 Warner Drive property is consistent with the Redevelopment Plan for this location.			

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PROCEDURE:

1. Mayor seeks a motion to open the public hearing to allow for public comment, if any (the Public Hearing was opened on July 20, 2009 and immediately continued to August 3, 2009 without receipt of public comment, and remains open).
2. Mayor calls on staff for a brief staff report.
3. Appellant given first opportunity to speak.
4. Applicant given second opportunity to speak.
5. Receive comments from the public.
6. Opportunity for rebuttal given to appellant and applicant.
7. Mayor seeks a motion to close the public hearing after all testimony has been presented.
8. Council discusses the matter and arrives at its decision.
9. Agency discusses the matter and arrives at its decision (if necessary).

BACKGROUND ON CONTINUANCE:

On July 15, 2009, Michael Wellman, one of four Hayden Tract property owners, the others being Aaron Kay, Greg Toomey Sr., and Scott Martin (the "Appellants"), submitted a request to continue the agenda item July 20, 2009 Public Hearing for the project described in this Agenda Item Report. They requested the continuance because Council Member Silbiger was not able to attend the July 20th Public Hearing, and they wanted all five members of the Council present to vote on their appeal. On July 16, 2009, Council Member Silbiger e-mailed staff asking the City Council to continue the Public Hearing so he could participate. On July 20th prior to the meeting, the Applicant informed staff through an e-mail that they would reluctantly agree to a continuance of the Public Hearing to August 3, 2009.

At the July 20th Public Hearing, staff read into the record the Appellant's request, Council Member Silbiger's request, and the Applicant's response. Staff informed Council that the Applicant would prefer the Public Hearing be continued to a date no later than August 3, 2009. Staff further advised the Council that should they continue the agenda item, it would be preferable to hold all public comment for the continued hearing date so that the full Council would have the opportunity to hear all testimony at the same time. All Council Members present voted to open the public hearing and immediately continue the hearing to August 3, 2009. Other than the items mentioned above, no public testimony was taken on July 20, 2009.

BACKGROUND:

On May 13, 2009, the Planning Commission held a public hearing regarding Samitaur Constructs' (the "Applicant") request for a Site Plan Review approval to allow the construction of a 43 foot high commercial building and parking structure

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with 775 parking spaces, 41,520 square feet of retail space, and 10,000 square feet of restaurant space in the Hayden Tract at 8511 Warner Drive in the Industrial General (IG) Zone (the "Project"). The Project proposes to include:

- Three levels of subterranean parking with some retail;
- One at-grade level with parking and retail/restaurant;
- Second level above grade with parking and retail.

Originally the site was a City owned parking lot that was sold to the Applicant. The Applicant originally planned to construct a much larger multi-story theatre complex and parking structure on the site. That project request was discontinued in favor of the proposed Project. As part of the sale of the lot, the City required that the current 242 parking spaces on the lot be covenanted to allow their continued availability to surrounding businesses.

Subsequent to a public hearing, the Planning Commission adopted Resolution No. 2009-P002 adopting a Mitigated Negative Declaration pursuant to the California Environmental Quality Act (CEQA) finding that the Project, as mitigated, would not have significant adverse impacts on the environment and approved the Site Plan Review subject to the conditions of approval contained in said Resolution (Attachment No. 2).

On May 27, 2009, Hayden Tract property owners Michael Wellman, Aaron Kay, Greg Toomey Sr., and Scott Martin (the "Appellants") filed a timely appeal of the Planning Commission's decision (Attachment No. 3).

Planning Commission Staff Report

Attachment No. 4 contains the May 13, 2009 Planning Commission staff report, with all attachments including the Mitigated Negative Declaration and Initial Study as revised by the Planning Commission at the Public Hearing. The report describes the Project in detail, including analysis on architectural design, parking, traffic and circulation, landscaping, noise, construction and area compatibility.

DISCUSSION:

Planning Commission

At the May 13, 2009 public hearing, the Planning Commission (Commission) received input from approximately 9 members of the public. The concerns noted included: not enough time given for public review; the traffic study did not adequately address potential impacts; impacts resulting from the loss of street parking spaces; and overall potential impacts not addressed in the staff report and attachments.

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Following thorough discussion of the matter, the Commission recognized the concerns raised by the public, but felt that they were sufficiently addressed in the Applicant's proposal, the conditions of approval with some additional conditions, and the Initial Study/Mitigated Negative Declaration (MND) with some clarifying language. The Commission made modifications to the MND (contained within Attachment No. 4) in order to clarify certain descriptions of potential environmental impacts and to strengthen one mitigation measure relating to paleontological and archeological resources. Pursuant to CEQA Guidelines Section 15073.5(c)(1) and (4), such revisions did not require recirculation of the MND. Resolution No. 2009-P002 was revised with added or amended conditions that address shoring during construction (Condition No. 27), paleontological and archeological resources (Condition No. 79), coordination with the Willows School during construction (Condition No. 100), traffic (Condition No. 134), reservation of parking spaces for short term hourly use (Condition No. 137), Transportation Demand and Trip Reduction Measures (Condition No. 142), and a voluntary fee contribution for a street segment study on Higuera Street between Lucerne Avenue and Hayden Avenue (Condition No. 143). Attachment No. 5 contains the minutes of the meeting.

One Commissioner expressed a concern that the parking garage will generate trips that are not addressed in the traffic study. The City's Traffic Engineer addressed this comment and stated that a parking garage without an associated land use is not usually considered to be trip generator. Further explanation on this topic is given below in the **Appeal** discussion.

Appeal

The concerns raised in the appeal documentation (Attachment No.3) state the Planning Commission approval of the Site Plan Review should be overturned due to a flawed Mitigated Negative Declaration and Initial Study and that an Environmental Impact Report should be required for this project. Below is a summary of and response to the appeal components.

1. The Traffic Study ignores the traffic generated by the parking garage component of the project and does not analyze traffic generated by the new parking spaces. The Institute of Transportation Engineers (ITE) Manual does not have a Parking Structure land use category; consequently the traffic study should have surveyed and preformed traffic counts at existing similar parking garages. The traffic study did not take into account the possibility that the new parking structure will bring new visitors and employees to the Hayden Tract impacting traffic circulation; the parking structure has an indirect growth-inducing impact by providing additional parking spaces (an ITE article analyzing traffic generated by parking structures was also included with the appellant's appeal).

Response:

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The appeal received May 27, 2009 indicates that the parking garage is the primary component of the Project, and since the traffic study does not analyze the traffic generated by the new parking structure, the traffic study underestimated the trips generated by the Project. The appeal referred to an April 1992 article in the ITE Journal entitled, "An Innovative Technique for Estimating Trip Generation for Parking Facilities", which indicates how to calculate traffic generation from this type of facility.

The traffic study for 8511 Warner Drive was prepared in accordance with industry standards from the ITE Manual, analyzing the traffic generated by the retail and restaurant component and not adding any additional traffic for the parking structure component of the project. The Project's parking facility will contain 775 parking spaces. There are 242 existing parking spaces in the surface parking lot which, per conditions of the Purchase and Sale Agreement between the City and the Applicant, will be replaced in the parking structure as covenanted parking spaces made available to surrounding business. The retail and restaurant component of the project requires 219 parking spaces. Therefore, there are 314 $[775 - (242+219)]$ parking spaces in excess of the requirements of the Culver City Municipal Code (CCMC) (considering both the covenanted 242 spaces and 219 spaces together as code required).

The excess spaces in the parking structure are intended to support the existing parking demand in the Hayden Tract and will not generate trips. The proposed parking structure will satisfy the current Warner lot parking demand (the 242 covenanted spaces noted above) plus the parking demand by the businesses currently on the waiting list for the Warner lot. The applicant surveyed tenants of properties in the project area to determine who might lease spaces in a new garage. According to the applicant, the current waiting list for parking in the Warner Lot is 383 parking spaces.

The reuse of many of the Hayden Tract properties was carried out without a corresponding increase in the supply of off-street parking but has resulted in a positive economic revitalization of the area. The current demand for parking in the Hayden Tract has resulted in spillover parking in the adjacent residential areas.

The City recently conducted parking surveys for two neighborhoods adjacent to the Hayden Tract and adopted preferential parking areas for both (See Attachment No. 6 - Map of Preferential Parking District). The excess parking demand in the Hayden Tract is generated by the insufficient supply of parking that is a result of the adaptive reuse of industrial properties in the area to more intense office and studio-related businesses that generate and attract higher volumes of employees and vehicles than anticipated when the buildings were originally designed and permitted.

Currently, employees and visitors to the Hayden Tract must circulate through the area to find an on-street parking space unless an off-street space is available for their use. This results in excess traffic movements throughout the day. Further, as a result of the preferential parking districts, available parking on residential streets

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will become increasingly constrained. The proposed parking structure will help to alleviate the excessive traffic movements and parking on residential streets by providing additional parking for the employees and visitors to the Hayden Tract. The development of the parking structure will reduce neighborhood intrusion, improve traffic circulating and congestion impacts, lessen air pollution and noise. The resulting change in localized travel patterns is expected to be generally beneficial as a result of less circulating traffic searching for parking.

It is widely accepted in the traffic engineering profession that a parking facility by itself, without an associated land use, does not generate any traffic. The ITE publication **Trip Generation** does not have an entry for parking lots because of this reason. In researching this matter, staff contacted traffic engineers Randy Mc Court and Patrick Gibson who were involved with the trip generation studies conducted for **Trip Generation**. Both traffic engineers confirmed that a parking facility without an associated land use does not generate traffic. People will not drive to the project's parking facility without a reason to do so or an associated land use. The reason motorists will park in the project's parking facility is to get to their destination, which is in the immediate area. As stated above, the Hayden Tract has a shortage of on-street and off-street parking. Because of this shortage of parking, motorists who park on the street near their destinations may find it more convenient to park in the Project's parking facility and walk to their destinations. This does not create additional trips. Although more motorists will enter the project's driveway, the short change in driving patterns from a nearby parking space to the project's driveway will not create a significant change in traffic patterns nor would the change have an impact at any intersections in the area.

The Hayden Tract is not a downtown with retail, restaurant and entertainment uses attracting numerous discretionary trips. Nearly all trips in the Hayden Tract are work-related and are, therefore, not discretionary. There are few opportunities for shopping, dining or entertainment; a limited number of restaurants are available – most of which are frequented by employees in the Hayden Tract. Therefore nearly all the trips in the Hayden Tract are non-discretionary (mostly people traveling to and from work). While people could use transit to get to the area, it is unlikely that they would forgo employment related trips. The Hayden Tract has limited bus service, and it is not anticipated that a substantial number of people would switch from transit to passenger vehicles with more parking available (because they are currently not taking the bus and already driving into the Hayden Tract).

Parking supply in the immediate vicinity of the Project site, while limited, does not constrain full use of the developed adjacent land uses. Presently, parking spills over in to adjacent neighborhoods, and these neighborhoods have become impacted by this parking (as documented in the City's implementation of two preferential parking districts on neighborhood streets in the project vicinity - see discussion below). Additional development in the Project area is not anticipated as a result of the Project, which is simply designed to meet the existing demand and relieve the spillover problem on neighborhood streets.

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Further Discussion on Preferential Parking Districts in Neighborhoods Adjacent to the Project Area Document Parking Deficit (Attachment No. 6)

In May 2009, the City Council approved a preferential parking district (District) along the 9000 block of Lucerne Avenue (located adjacent to the Hayden Tract). Adjacent streets were also included in the District in order to prevent displaced parking demand being shifted onto those streets (including Ince Boulevard, Higuera Street between Lucerne Avenue and Poinsettia Court, Carson Street and Hubbard Street). As described in the January 27, 2009 Parking Study Report to the Culver City Traffic Committee, the parking intrusion experienced by the 9000 block of Lucerne Avenue resulted from the success of local businesses and an apparent shortage of parking for those businesses.

Prior to adopting the District, the City conducted a parking occupancy and parking intrusion survey of the 9000 block of Lucerne Avenue adjacent to the Hayden Tract. The results of the survey indicate that the parking occupancy along Lucerne Avenue ranged from 81% to 92% (based on six site visits). It was further determined that intrusion parking ranged between 73% and 81%. Staff commented there appears to be an unmet need in parking availability from the local business community in the Hayden Tract. Staff also observed that the parking intrusion of business related parking into the residential neighborhood may be caused by shortages in parking supply at the business locales, growth beyond the existing parking availability by the businesses, or operational deficiencies of the businesses' parking lots.

In December 2008, a preferential parking district was approved for the residential area immediately adjacent the Hayden Tract west of Ince Boulevard. Similar to the 9000 Lucerne District, this preferential parking district also is a result of spillover parking from the Hayden Tract.

The preferential parking districts generally restrict non-permitted parking to 2 hours Monday to Saturday, 8 AM to 6 PM (except Higuera which is restricted to 1 hour). Nonetheless, many of the streets currently remain parked at capacity (in excess of permitted time limits) as workers continue to park there.

As stated above, construction of the parking structure will alleviate parking, traffic, and circulation impacts by providing 314 excess parking spaces not for new developments but for existing businesses in the Hayden Tract which are already contributing to the current traffic accounted for in the Traffic Study.

2. The MND does not mitigate for the loss of approximately 22 street parking spaces due to restriping as required by the Traffic Study. Currently these 22 parking spaces are available all day at no charge; in contrast the applicant will likely limit the parking hours and will be free to charge whatever rate desired. A mitigation requiring replacement of the 22 spaces free of charge should have been required to offset the impact created by the loss of the 22 spaces.

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Response:

The Project is a parking structure that provides more than sufficient parking to offset the loss of 22 on-street spaces. The removal of 22 on-street parking spaces will be more than mitigated by the development of a parking structure with sufficient capacity to accommodate both excess Hayden Tract parking demand as well as the demand generated by the commercial elements of the Project. The Planning Commission, at the May 13th public hearing, stipulated that at least 150 of the 219 spaces required by the CCMC for project uses be reserved for short-term users such as those who might have used the 22 spaces. The net result will be a reduction in the demand for area-wide on-street parking of substantially more than 22 spaces. There is no provision in CEQA that requires these offset parking spaces to be "public" or "free."

Furthermore, the City is not obligated to provide free street parking on any City street and the Public Works Department could, upon receipt of Council authorization, install parking meters along Warner Drive. The Public Works Department is currently conducting a City-wide parking meter assessment and one potential outcome of that assessment may be recommended changes to the current street parking situation (vis a vis parking meters). That change may include metered street parking in the Hayden Tract, including Warner Drive.

3. A Noise Study was not conducted and the Initial Study does not include a quantitative noise study analyzing the construction and operational noise impacts of the project; the Initial Study did not quantify existing or projected noise levels.

Response:

The adopted MND concludes that with six mitigation measures the Project noise impacts would be less than significant. These mitigations include: restrictions on construction hours that is more stringent than the construction hours allowed in the CCMC; location of construction and stationary equipment as far from nearby sensitive receptors as possible; a requirement that all construction equipment be equipped with mufflers and sound control devices no less effective than those provided on the original equipment and that no equipment have unmuffled exhaust; proper maintenance of all construction equipment to minimize noise emissions; servicing of all equipment to be performed so as to maintain the greatest distance from sensitive land uses; and a requirement that the name and telephone number of a contact person be posted on-site and that the construction contractor coordinate construction activities with the Willows Community school to minimize disturbance to classes.

This appeal comment essentially asserts that all construction noise should be considered significant. Culver City does not use construction noise levels alone as a threshold of significance. Construction activity generally results in similar noise

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levels for all construction projects with larger construction projects resulting in the same levels as smaller construction projects, just over a more-extended period. Given the temporary nature of construction activity associated with the Project, as explained in the adopted MND (page 15), Culver City does not have a specific limitation on temporary construction noise levels, rather it regulates noise levels by limiting hours of construction activity and applying other requirements such as equipment mufflers and sound control devices and the maintenance of construction equipment. Compliance with the requirements of the CCMC and the mitigation measures is considered to reduce construction noise to a level of insignificance. While residual noise levels after all mitigation measures have been applied may be temporarily disturbing to adjacent uses, it is not anticipated that such temporary impacts would rise to the level of "significant impact." Additionally, as stated above, a mitigation was included that restricts hours of construction for the current Project further than the CCMC general requirements. The CCMC generally allows construction between 8 AM and 8 PM, Monday through Friday; 9 AM and 7 PM on Saturday; and 10 AM and 7 PM on Sunday. Noise Mitigation No. 1 allows construction between 8 AM and 6 PM, Monday through Friday; 9 AM to 6 PM on Saturday; with no construction permitted on Sundays. In addition, there was discussion by Commission and staff regarding short term construction noise impacts. In response thereto, staff recommended and the Commission approved a condition to drill rather than drive piles in order to reduce construction noise (see Condition No. 27 of the Planning Commission resolution).

4. The Initial Study improperly defers analysis of geology and soils until the final project design; a comprehensive geotechnical investigation should take place as part of the environmental review to determine the feasibility of constructing a subterranean parking structure considering the soil conditions in the area.

Response:

The environmental assessment contained in the MND indicates that based on previous studies in the area, liquefaction potential at the site is considered low as a result of underlying clayey soil conditions. Nonetheless, the MND requires a specific mitigation measure: preparation of a geotechnical investigation to identify construction methods and foundation designs applicable to the site conditions "pursuant to the guidelines contained in the California Geological Survey, Special Publication 117, and Guidelines for Evaluating and Mitigating Seismic Hazards in California, 1997." The measure further indicates that recommendations of the study "shall be included in the final project designs and prior to Building Permit issuance in a manner meeting the approval of the Building Official." The mitigation measure does require further study and it also identifies a performance standard — appropriate design, according to Special Publication 117 and subject to the approval of the Building Official. This is a standard mitigation measure required of most projects in California. Detailed technical understanding of soil conditions is not needed at the concept level at which environmental review is undertaken; rather a general understanding of conditions and potential hazards is sufficient if compliance

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with a specific performance standard and review by appropriate agency staff would mitigate any potential impact.

In this case, a high groundwater table and low potential for liquefaction are common geotechnical conditions encountered in California; detailed technical engineering investigation and solutions are used to address such conditions. The details of any technical engineering solutions would not be appropriate for a CEQA document that addresses concept level design and is aimed at a non-technical audience. Rather the MND serves to ensure according to specific performance standards, appropriate technical design to address site soil and groundwater conditions. With implementation of the mitigation measure identified in the MND, pursuant to the details of the technical studies, any potential impact would be reduced to a less than significant level. Further, the Building Official would require a geotechnical study as part of any building permit application if it is determined to be warranted.

5. The Initial Study improperly defers analysis of contaminated soils until excavation of the site; the project site is an industrial area and many properties in the vicinity of the project site suffer from soil contamination. Analysis of impacts from contaminated soils must take place prior to project approval.

Response:

Contrary to assertions in the appeal, the MND (page 10) indicates that a Phase I Environmental Site Assessment Report (Phase I Report) was prepared for the Project site, and this report concluded that the site is not on any list or database that identifies potential contamination of the site. A Phase I Report is the first step taken to assess potential contamination issues. Only if a Phase I Report identifies the potential for contamination is a Phase II (sampling) Program initiated. In the case of the 8511 Warner Drive site, the Phase I Report **did not** indicate areas for potential sampling. Random sampling of sites (even in industrial areas) is not routinely undertaken without reasonable cause as provided in the Phase I Report. However, the MND requires work stoppage and testing at the first sign of any (unanticipated) contamination, and compliance with specified performance standards of the Culver City Fire Department, State Department of Toxic Substances Control and Regional Water Quality Control Board.

6. The Initial Study does not analyze Global Warming and per AB32 this analysis is now required of all CEQA documents; it was not preformed for this Initial Study.

Response:

Local regional single purpose governments (SCAQMD and SCAG) are still formulating Climate Change CEQA thresholds and strategies on how to mitigate Climate Change impacts. Therefore no specific language on this topic was included in the Initial Study. Further, it is currently not mandated that this analysis be done.

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Nevertheless, aspects of this Project result in reducing impacts related to Climate Change.

Despite the lack of a mandate to analyze climate change as part of the environmental review, there are a number of Project factors which are related to climate change that are worth mentioning:

- a. The Project is intended to provide services (retail and restaurant) to support existing commercial office and light industrial uses in the Hayden Tract, thus generally reducing trips and air emissions in the Project area (Hayden Tract employees will not have to drive out and back during lunch time and may find retail options at the project site suitable instead of making extra trips to stores after work). The parking structure would provide parking for: a) on-site uses, b) existing uses in the area that currently have a deficit, and c) replacement of existing spaces lost on-site, in the Project area as a result of construction of the Exposition Light Rail Project (the former parking area along the National Boulevard median), and from the implementation of residential preferred parking districts. The overall centralization of parking for these various needs along with the retail/restaurant use will limit overall vehicle engine start-ups and concentrate traffic circulation towards the Project site thereby relieving extra distances travelled for individuals looking for parking.
- b. The Project would be required to meet the requirements of the Culver City Green Building Ordinance.
- c. The SCAQMD has not adopted a threshold for commercial or residential green house gas emissions. A threshold of 10,000 Metric Tons (MT) per year has been adopted for industrial projects. Based on Urbemis modeling (see below), preliminary discussions regarding a potential threshold for commercial projects have suggested a screening threshold between 3,000 MT and 6,000 MT per year may be an appropriate project-specific criterion.

Urbemis is an air quality model (recommended by the California Air Resources Board and SCAQMD) used to estimate criteria pollutants (SO_x, NO_x, CO, ROG, PM₁₀ and PM_{2.5}) and CO₂ (the primary greenhouse gas) from construction and operation of a wide variety of land uses. It includes emissions from project traffic and electrical and natural gas consumption. Although it does not include a threshold, SCAQMD is working on a threshold (they have thresholds in their CEQA Guide for criteria pollutants). Regulatory discussions by SCAQMD and the Southern California Association of Governments continues as to the appropriate level of review (and appropriate CEQA thresholds) – whether it should be 1) project specific or 2) a community level or regional level of review with requirements imposed on the project level.

Using Urbemis (which assumes 7 days per week full project operation, which is unlikely for the Project given its business focus) unmitigated Project emissions

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are anticipated to be about 2,996 MT/year (See Attachment No. 7), which is less than the lowest threshold suggested in preliminary documentation by SCAQMD (no quantification of project mitigation is available; LEED certification could reduce green house gas emissions by 10% or more).

7. CEQA requires that the City prepare and Environmental Impact Report (EIR) because there is substantial evidence in the record that supports a "fair argument" that significant impacts may occur.

Response:

The standard for requiring preparation of an EIR is that there is **substantial evidence** to support a **fair argument** that an impact could be significant (CEQA Guidelines Section 15064). An argument, even when lengthy and supported by substantial but irrelevant studies, is not sufficient. As documented above, the appellant does not present **substantial evidence to support a fair argument** that the Project, as mitigated in the MND, could have a significant impact on the environment.

Redevelopment Agency

Pursuant to Agency policy, items requiring review by the Culver City Planning Commission that are within the Culver City Redevelopment Project Area must also be approved by the Agency.

This matter is before the Agency to determine if the proposed Project is consistent with the Redevelopment Plan for this location. The Agency's evaluation of a project involves evaluating the project's conformance with the Redevelopment Plan's goals and objectives and consistency with the General Plan. At this location, the General Plan designation is Industrial General (IG); and the Applicant's project is consistent with this designation without exception or variance.

There is no applicable Agency Design for Developments, Owner Participation Agreements or Disposition and Development Agreements applicable to the Project. Therefore, staff recommends the Agency determine the Project, as approved by the Planning Commission, is consistent with the Redevelopment Plan.

Council Review Procedure:

Pursuant to CCMC Section 17.640.030.C.2, appeals shall be based upon an error in fact, dispute of the findings made in the approval of the Site Plan Review or inadequacy of the conditions imposed on the project to mitigate potential impacts.

Pursuant to CCMC Section 17.640.030.D, during the hearing, Council may "consider any issue involving the matter that is the subject of the appeal, in addition to the specific grounds for the appeal." After considering the administrative record,

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including, but not limited to, the project application, plans, staff report, environmental information and all testimony presented, and in accordance with the procedures set forth in Section 17.640.030.D, the Council may:

- Affirm, affirm in part or reverse the actions of the Planning Commission that are the subject of the appeal.
- Amend or adopt additional conditions of approval that may address other issues or concerns than those raised in the appeal.
- If new or different evidence is presented on appeal, the Council may, but shall not be required to, refer the matter back to the Planning Commission for further consideration.

Conclusion:

The Project that was presented to and approved by the Planning Commission has been designed to address issues of neighborhood compatibility and to conform with all applicable provisions of the IG Zone and all City development standards. The Project is scaled and massed to fit within the zone. The Project meets all setback requirements, exceeds parking requirements (more than making up for the loss of street parking due to the required street re-striping), and does not exceed the zone's maximum allowable height. The Project will assist in providing for the current parking needs of the Hayden Tract thereby reducing spill-over parking into residential neighborhoods. The Project will provide local Hayden Tract employees with retail and restaurant options diminishing the need for extra vehicle trips by those same employees.

Therefore, staff believes the Mitigated Negative Declaration finding adopted by the Planning Commission adequately addresses all environmental issues related to the Project including potential impacts related to traffic, parking, noise, geology, soil contamination, global warming, and EIR threshold requirements and recommends the City Council adopt the Mitigated Negative Declaration and approve the Project.

FISCAL ANALYSIS:

This is a private venture project with no financial participation by the City or Redevelopment Agency. If the Project is approved, then the City and Agency, where applicable, would gain commercial taxes (i.e. business tax, sales tax, utility users tax) and additional tax increment once construction is complete and all commercial space is leased. It is estimated that once built and fully occupied, the project will generate approximately \$184,000 annually in various City taxes and \$305,000 annually in net new tax increments for the Redevelopment Agency.

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Additionally, there is staff time associated with the initial processing of the Site Plan Review entitlement, the appeal of that entitlement, and the processing of Building Permits (should the project be approved by the City Council. A portion of the cost of staff's time is recovered through user fees and charges as approved annually by City Council. Planning Division Site Plan Review entitlement fees for this project were \$26,335; the Appeal fee was \$1,500. Building Safety building permit fees for this project are estimated to be \$1,202,676 and will be recorded in the General Fund when received; New Development Impact Fees are estimated to be \$46,520 and will be recorded in Fund 417 – Community Development Fund.

ATTACHMENTS:

1. City Council Resolution No. 2009-R____
2. Planning Commission Adopted Resolution No. 2009-P002
3. Appeal filed on May 27, 2009
4. May 13, 2009, Planning Commission Staff Report Including all Attachments as Listed Below:
 - Project Summary
 - Public Notice Area Map
 - Aerial Photo
 - Revised Initial Study/Mitigated Negative Declaration dated May 13, 2009
 - Traffic Study prepared by KOA, dated February 23, 2009
 - Summary of Community Outreach by the Applicant
5. Minutes of the May 13, 2009, Planning Commission Public Hearing
6. Map of Preferential Parking District
7. Urbemis Modeling Tables
8. Planning Commission Approved Development Plans

MOTION(S):

That the City Council:

1.A. (Staff Recommendation) Adopt the Resolution (i) **denying the appeal** of the Planning Commission's adoption of a Mitigated Negative Declaration for Site Plan Review, SPR P-2008047; (ii) **adopting said Mitigated Negative Declaration** for the Project, in accordance with the California Environmental Quality Act (CEQA), finding that no new information has been provided regarding the Project and no new potentially significant environmental impacts have been identified since the Planning Commission's adoption of the Mitigated Negative Declaration that would require changes to the adopted Mitigated Negative Declaration or preparation of an Environmental Impact Report, and the project, as mitigated, will not result in significant adverse environmental impacts; (iii) **denying the appeal** of the Planning Commission's conditional approval of Site Plan Review, SPR P-2008047; and (iv)

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conditionally approving Site Plan Review, SPR P-2008047, as set forth in Planning Commission Resolution No. 2009-P002.

OR

1.B. **Grant** the appeal **in its entirety** and **overturn** the Planning Commission's approval of the Project and direct staff to return to the Council with the appropriate resolution outlining the findings for denial of the Project;

OR

1.C. **Grant** the appeal **in part** but **modify** the Planning Commission's approval of the Project and direct staff to return to the Council with the appropriate resolution adopting the Mitigated Negative Declaration and outlining the findings for modifying the Project.

(If the City Council should adopt either motion 1A or 1C) That the Redevelopment Agency Board:

1.A. (Staff Recommendation) Make a determination that the proposed Project is consistent with the Redevelopment Plan for this location.