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7

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
9 **CENTRAL BRANCH**

10 LA JOLLA VILLAGE RESIDENTS
ASSOCIATION; NO THIRD STORY

11

12 Petitioners and Plaintiffs,

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14 CITY OF SAN DIEGO, CITY COUNCIL OF
THE CITY OF SAN DIEGO, and DOES 1-10,
15 inclusive,

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17 Respondents and Defendants

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19 MARK LYON AND ASSOCIATES; RK
DEVELOPMENT PARTNERS; MICHAEL
20 KRAMBS; AND DOES 1-20, inclusive

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Case No.: 37-2008-00095903-CU-TT-CTL

**OPPOSITION BRIEF SUBMITTED BY
MICHAEL KRAMBS AND RK
DEVELOPMENT PARTNERS**

Hearing Date: October 26, 2009
Time: 10:00 a.m.
Judge: Hon. Ronald S. Prager
Dept.: 71

Petition Filed: November 17, 2008
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TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. THE PLANNED DEVELOPMENT PERMIT WAS PROPERLY GRANTED 2

A. Courts Have Routinely Allowed General Zoning Statutes..... 2

B. The San Diego Municipal Code Meets the Required Standard for Zoning Statutes 3

III. THE MITIGATED NEGATIVE DECLARATION SHOULD NOT BE SET ASIDE.. 4

A. Petitioner’s Argument Regarding Land Use Does Not Present a Fair Argument
 That There Would be a Significant Effect on the Environment..... 5

B. Petitioner’s Argument Regarding Aesthetics Does Not Present a Fair Argument
 That There Would be a Significant Effect on the Environment..... 6

C. Petitioner’s Argument Regarding Traffic Does Not Present a Fair Argument
 That There Would be a Significant Effect on the Environment..... 7

D. Petitioner’s Argument Regarding the Dissolved Gas Plume Does Not Present a
 Fair Argument That There Would be a Significant Effect on the Environment..... 8

IV. THE CITY OF SAN DIEGO MADE THE NECESSARY FINDINGS 9

A. Tentative Map Findings..... 9

B. Site Development Permit Findings. 10

C. Circulation of Mitigated Negative Declaration. 10

V. PETITIONER’S ARGUMENTS REGARDING THE ADMINISTRATIVE
 RECORD ARE NOT JUSTIFIED SINCE PETITIONER AGREED TO
 PROCEED 11

VI. CONCLUSION 11

TABLE OF AUTHORITIES

Cases

Briggs v. City of Rolling Hills (1995) 40 Cal.App.4th 637..... 3

Briggs v. Eden Council for Hope & Opportunity (1999) 19 Cal.4th 1106..... 2

Friends of Davis v. City of Davis (2000) 83 Cal.App.4th 1004 3, 4

Harris v. Capital Growth Investors XIV (1991) 52 Cal.3d 1142..... 2, 3

Novi v. City of Pacifica (1985) 169 Cal.App.3d 678..... 3

People v. Gates (1974) 41 Cal.App.3d 590..... 2

Pocket Protectors v. City Of Sacramento (2004) 124 Cal.App.4th 903 6

San Joaquin Raptor/Wildlife Rescue Center v. County Of Stanislaus (1996)
42 Cal.App.4th 608 6

Statutes

SDMC § 126.0601 2

SDMC § 126.0604 3, 5, 10

SDMC § 143.0401 2, 3

SDMC § 143.0410 3, 4, 10

SDMC § 159.0101 5

Other Authorities

Public Resources Code § 21080..... 4, 7

Public Resources Code § 21082.2..... 6

1 Real Parties in Interest RK DEVELOPMENT PARTNERS and MICHAEL KRAMBS
2 respectfully submit this brief in opposition to the Petition for a Writ of Mandate and Declaratory
3 Relief.

4 I.

5 INTRODUCTION

6 Real Party in Interest, Michael Krambs ("Krambs"), is the owner and developer of
7 5702 La Jolla Ave. in La Jolla, California (the "Project"). As proposed to the City, the Project is
8 a three-story, mixed-use, residential and commercial project with balconies, archways, building
9 articulation, open space for walkways, a varied roof line, and a public plaza space on the
10 southeast corner of the site that would include a fountain, enhanced paving, benches and
11 landscaped trellises. (Exhibit 2, Project Description). Clearly, the aspect of the Project that is
12 most troubling to Petitioner is the third-story. However, the inclusion of the third story allowed
13 Krambs, to have the upper third of the building set back approximately 25 feet away from
14 La Jolla Boulevard, presenting a two-story appearance at the sidewalk level. (Exhibit 2, Project
15 Description). This resulted in an overall improvement to the development of the site, because
16 an alternative two-story development could have pushed a 30' wall to the edge of the
17 development.

18 On October 14, 2008, the City Council approved two resolutions regarding the
19 development rights for the Project. The first resolution denied an appeal of a Planning
20 Commission decision to grant a Mitigated Negative Declaration. (See Exhibit 60, Resolution
21 R-304264, CITYAR 00013-00021. The second resolution denied an appeal of a Planning
22 Commission decision to grant a Coastal Development Permit, a Planned Development Permit, a
23 Site Development Permit, and a Tentative Map for the Property. (See Exhibit 61, Resolution
24 R-304265, CITYAR 00027-00037). These resolutions, and the supporting reports and records
25 of the City Staff, are at the heart of Petitioner's claim that the City violated provisions of CEQA
26 in approving the Project.

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1 II.

2 THE PLANNED DEVELOPMENT PERMIT WAS PROPERLY GRANTED

3 The Project was approved, in part, through the use of a “deviation,” which is codified in
4 the San Diego Municipal Code at SDMC §126.0601, et seq. and SDMC § 143.0401, et seq.
5 (These statutes are included as Exhibits 4 & 5 in Petitioner’s Notice of Lodgment). Petitioner’s
6 first argument is that the “deviation” process and these statutes, authorizing the Planning
7 Commission and the City Council to grant the Planned Development Permit, are impermissibly
8 vague. (Opening Brief, pg. 6, II. 1-3).

9 A. Courts Have Routinely Allowed General Zoning Statutes

10 According to People v. Gates (1974) 41 Cal.App.3d 590, 595, “in California, the most
11 general zoning standards are usually deemed sufficient. “The standard is sufficient if the
12 administrative body is required to make its decision in accord with the general health, safety,
13 and welfare standard.” [Citation]. This rule also applies to an ordinance regulating
14 nonconforming use. **“California courts permit vague standards because they are sensitive to
15 the need of government in large urban areas to delegate broad discretionary power to
16 administrative bodies if the community’s zoning business is to be done without paralyzing
17 the legislative process.”** [Citation].”

18 Petitioner begins its attack on the “deviation” process by citing to the “stated purpose” of
19 the Planned Development Permit, set forth in SDMC § 143.0401. This section functions as a
20 preamble and describes the purpose of the “deviation” allowed under the Planned Development
21 Permit in broad, general terms.

22 In the interpretation of written laws, the intent of the legislative body is not gleaned
23 solely from introductory statements such as a preamble, but is gleaned from the law as a whole,
24 which includes particular directives. Briggs v. Eden Council for Hope & Opportunity (1999)
25 19 Cal.4th 1106, 1118. As a general rule, known as the canon of *ejusdem generis*, the
26 enumeration of specific items or factors will be controlling over general statements placed
27 before or after the list of specific items or factors. Harris v. Capital Growth Investors XIV
28 (1991) 52 Cal.3d 1142, 1160-1161 & fn. 7. In other words, “the general term or category is

1 'restricted to those things that are similar to those which are enumerated specifically.' ” *Id.* at
2 p. 1160, fn. 7.

3 **B. The San Diego Municipal Code Meets the Required Standard for Zoning Statutes**

4 The sections of the San Diego Municipal Code addressing deviations are consistent with
5 the legal requirements for zoning regulations. Beyond the preamble section in SDMC
6 §143.0401, there are several other sections applicable to the Project at issue, including:
7 §143.0410(a)(1), §143.0410(a)(2), §143.0410(a)(3), §143.0410(j), and §126.0604. The text of
8 these sections is included as Appendix A to this opposition brief.

9 In the Opening Brief, Petitioner focuses almost exclusively on SDMC §126.0604, which
10 lists the findings that are necessary for a Planned Development Permit. (Opening Brief,
11 pp. 7-9). Petitioner claims that the regulations “provide no specificity other than to permit
12 deviations to allow a project if it would be better than what could be built without the
13 deviations.” Opposition Brief, pg. 8, ll. 15-16).

14 The findings required by SDMC § 126.0604 are more extensive than this. The City
15 Council was required to find that: 1) the Project would not adversely affect the applicable land
16 use plan; 2) the Project would not be detrimental to public health; 3) the Project would comply
17 with the regulations of the Land Development Code; 4) the Project, when considered as a whole,
18 would be beneficial to the community; and 5) the deviations in the Project would be appropriate
19 for the location and would result in a more desirable project than would be achieved if designed
20 in strict conformance with the applicable zone development regulations. (SDMC § 126.0604).

21 Petitioner complains that these criteria are too vague, but they are consistent with other
22 statutes that have been upheld, including those cited in Petitioner’s own brief. See, e.g., Friends
23 of Davis v. City of Davis (2000) 83 Cal.App.4th 1004 [upholding zoning statute to address “the
24 adverse effects of ‘poor or inappropriate exterior design of improvements.’”]; Briggs v. City of
25 Rolling Hills (1995) 40 Cal.App.4th 637 [upholding zoning statute “requiring the design to
26 ‘respect the existing privacy of surrounding properties’”]; Novi v. City of Pacifica (1985)
27 169 Cal.App.3d 673 [upholding zoning statute requiring “variety in the design of the structure
28 and grounds to avoid monotony in the external appearance.”].

1 In the Opening Brief, Petitioner fails to acknowledge that the SDMC provides specific
2 Criteria for Development Design in SDMC § 143.0410(j). In conjunction with the required
3 findings, the SDMC sets forth ten specific criteria to be used when evaluating proposed
4 developments. (See Appendix A, pg. 2). These criteria include factors such as, “The scale of
5 the project should be consistent with the neighborhood scale as represented by the dominant
6 development pattern in the surrounding area or as otherwise specified in the applicable land use
7 plan.” (SDMC §143.0410(j)). This language from the SDMC is consistent with the statutes
8 listed above that were previously upheld in other cases. Since the zoning statute in Friends of
9 Davis was not unconstitutionally vague when designed to address “the adverse effects of ‘poor
10 or inappropriate exterior design of improvements,” then the instant statute must also be found
11 valid since it similarly mandates that, among other criteria, the project “be consistent with the
12 neighborhood scale.”

13 III.

14 THE MITIGATED NEGATIVE DECLARATION SHOULD NOT BE SET ASIDE

15 Petitioner begins its argument regarding the Mitigated Negative Declaration (“MND”)
16 by stating the general proposition that “A public agency must prepare an EIR whenever
17 substantial evidence supports a fair argument a proposed project may have a significant effect
18 on the environment.” (Opening Brief, pg. 9, ll. 17-19). Public Resources Code § 21080 (e)
19 defines the limits of “substantial evidence”:

20 (1) For the purposes of this section and this division, substantial evidence
21 includes fact, a reasonable assumption predicated upon fact, or expert opinion
supported by fact.

22 (2) Substantial evidence is not argument, speculation, unsubstantiated opinion or
23 narrative, evidence that is clearly inaccurate or erroneous, or evidence of social
24 or economic impacts that do not contribute to, or are not caused by, physical
impacts on the environment.

25 Petitioner identifies four issues where it claims there is a fair argument that there is a significant
26 effect on the environment: Land Use, Aesthetics, Traffic, and Human Health/Public
27 Safety/Hazardous Materials.

28 ///

1 **A. Petitioner's Argument Regarding Land Use Does Not Present a Fair Argument**
2 **That There Would be a Significant Effect on the Environment.**

3 The Project does not conflict with the policy of the San Diego Municipal Code. The
4 SDMC allows deviations from the base zone regulations through the Planned Development
5 Process, so long as the criteria for the PDP are met. There is no conflict between the Land
6 Development Code (SDMC § 126.0604) and the La Jolla Planned District (SDMC § 159.0101,
7 et seq.) because the City Council has made the specific, required findings necessary to allow a
8 deviation from the general two-story limitation. If those findings had not been made, then the
9 City Council would not have been justified in granting the deviation, and the Petitioner's
10 argument would be correct.

11 Petitioner is concerned that if the Court allows the Project to continue, there will be a
12 "precedent for allowing a third-story through the use of a deviation." (Opening Brief, pg. 12,
13 ln. 1). However, the only precedent that will be set is for buildings that also comply with the
14 specific requirements of the Planned Development Permit process. (See Appendix A). There is
15 not a fair argument that this will have a significant effect on the environment because it only
16 requires that buildings comply with the land use regulations.

17 Petitioner cites to several portions of the record, but does not present substantial
18 evidence to support a fair argument that the allowing a deviation for a third story through a
19 Planned Development Permit would have a significant impact on the environment. For
20 instance, Petitioner cites the testimony of Joe La Cava, stating that "the 30-foot three-story
21 creates a very boxy building." (Opening Brief, pg. 11, ln. 21). However, the truth is that the
22 third story has no effect on whether the development is a "boxy" building. Under the current
23 regulations, a developer could design and build a "boxy" 30-foot two-story building without
24 obtaining a deviation. **Thus, the third-story has no effect on whether the environment**
25 **changes to the more "boxy" design.**

26 Such buildings would not pass muster under the Planned Development Permit process
27 because the criteria for development design used to evaluate proposed development include,
28 among other criteria: (3) Buildings, structures, and facilities on the premises should be well

1 integrated into, oriented towards, and related to, the topographic and natural features of the site;
2 ... (5) Buildings should avoid an overwhelming or dominating appearance as compared to
3 adjacent structures and development patters ...; (6) Larger structures should be designed to
4 reduce actual or apparent bulk.” (See Attachment A, pg. 2).

5 Petitioner also cites to the testimony of Angeles Liera and other members of the
6 community and proffers this as substantial evidence of a significant impact on the environment.
7 (Opening Brief, pg. 11, ln. 16 – pg. 12, ln. 5). However, this testimony does not support a fair
8 argument. “The existence of public controversy over the environmental effects of a project shall
9 not require preparation of an environmental impact report if there is no substantial evidence in
10 light of the whole record before the lead agency that the project may have a significant effect on
11 the environment.” (Public Resources Code § 21082.2, subd. (b); San Joaquin Raptor/Wildlife
12 Rescue Center v. County Of Stanislaus (1996) 42 Cal.App.4th 608, 622. This testimony, even
13 from an “expert” such as Ms. Liera, does not support a fair argument that there would be a
14 substantial effect on the environment because the actions of the City Council were consistent
15 with the provisions of the San Diego Municipal Code.

16 Essentially, Petitioner is seeking relief in the wrong forum. If the Petitioner and its
17 supporters are unhappy with the provisions of the SDMC, then their remedy is to change
18 through the law through the political process, not through this CEQA claim.

19 **B. Petitioner’s Argument Regarding Aesthetics Does Not Present a Fair Argument**
20 **That There Would be a Significant Effect on the Environment.**

21 Regarding aesthetics, both sides presented evidence to the City Council. The City
22 Council heard this evidence, and then decided in favor of allowing the Project. With respect to
23 the testimony regarding aesthetics, the City Council was entitled to weigh the credibility of the
24 various witnesses, and the Court must: “giv[e] [the lead agency] the benefit of [the] doubt on
25 any legitimate, disputed issues of credibility.” [Citation]. The lead agency has discretion to
26 determine whether evidence offered by the citizens claiming a fair argument exists meets
27 CEQA's definition of “substantial evidence.” [Citations].” Pocket Protectors v. City Of
28 Sacramento (2004) 124 Cal.App.4th 903, 928.

1 Here, there was substantial testimony from the Project's architect, Mark Lyon, regarding
2 the benefits of the three-story design over a two-story design. (See Exhibit 62, Testimony from
3 Mark Lyon, CITYAR 02449-02454; Exhibit 63, Massing Diagram Demonstrating Three-Story
4 vs. Two-Story Design, CITYAR 06346-06349). There was also testimony from numerous
5 members of the community in support of the three-story design. (See Exhibit 64, Testimony
6 from 12 individuals in favor of the Project, CITYAR 02456-02472).

7 The City Council was entitled to weigh this testimony against the testimony from the
8 Petitioner's supporters. Although Petitioner cites to a PowerPoint presentation showing what it
9 thought would happen, the City Council was not required to accept this as substantial evidence
10 of an aesthetic impact. (Opening Brief, pg. 14, ll. 20-22). The City Council could weigh this
11 evidence and determine whether the depiction was credible. The Petitioner's supporters had
12 their opportunity to persuade the City Council on the aesthetical issues. Petitioner cites to no
13 part of the record where the City Council determined that the Project presented a significant
14 impact on the environment. Absent such a finding that there would be a substantial impact on
15 the environment, the Petitioner's argument fails.

16 **C. Petitioner's Argument Regarding Traffic Does Not Present a Fair Argument That**
17 **There Would be a Significant Effect on the Environment.**

18 Petitioner argues that a one-paragraph opinion from Douglas Kim supports a fair
19 argument that there would be a significant impact on the environment. (Opening Brief, pg. 15,
20 ll. 14-15). Petitioner's argument on this point fails for several reasons. First, there is no
21 evidence that Mr. Kim has ever visited the site or has any first hand knowledge, other than his
22 review of the report. Expert opinion unsupported by fact does not constitute substantial
23 evidence. (Public Resources Code § 21080 (e)(1)).

24 In Exhibit 19, Petitioner highlights Table 5-3 from the Traffic Impact Analysis ("TIA")
25 and comments that "Relying on the City's accepted methodology for determining project
26 impacts on roadway segments, the TIA found the roadway segment along La Jolla Boulevard
27 would function as LOS F and the project would have a significant impact." (Opening Brief,
28 pg. 15, ll. 23-25). However, Petitioner and Mr. Kim fail to address the additional findings in the

1 Traffic Impact Analysis. (See Exhibit 65, the Near Term Conditions Analysis from the Traffic
2 Impact Analysis, CITYAR 06787-06802).

3 In particular, Petitioner fails to address the actual analysis undertaken as part of the
4 study. According to the study, a speed survey was conducted to determine the travel speeds of
5 vehicles between the two existing roundabouts. (See Exhibit 65, CITYAR 06800). This
6 analysis determined that the actual speed between the two roundabouts at issue was determined
7 to be at LOS C or better, which meets the City guidelines and therefore does not require
8 mitigation. (Id.) Mr. Kim fails to point to any evidence that criticizes or contradicts this
9 analysis.

10 **D. Petitioner’s Argument Regarding the Dissolved Gas Plume Does Not Present a Fair**
11 **Argument That There Would be a Significant Effect on the Environment.**

12 The Project is to be built on the site of an old gas station, and Krambs has worked with
13 the City to develop an extensive remediation plan to address any lingering contaminants. (See
14 Exhibit 66, Remedial Excavation Work Plan, CITYAR 06692-06704). Krambs has prepared a
15 Community Health and Safety Plan to address any hazards, in the unlikely event that they arise.
16 (See Exhibit 67, Community Health and Safety Plan, CITYAR 06739-06747).

17 Petitioner states that it hired Peter Geissler “to review the project” regarding the clean-up
18 and other issues. (Opening Brief, pg. 16, ll. 24-25). As with Mr. Kim, there is no indication
19 that Mr. Geissler actually visited the site or performed any independent analysis. Mr. Geissler’s
20 opinions are speculative and do not constitute substantial evidence that there would be a
21 significant impact on the environment. Mr. Geissler opines that the level of hazardous
22 hydrocarbons may be elevated beyond the currently perceived levels. (Exhibit 23). However,
23 Mr. Geissler does not opine that the levels will, or even would likely, be hazardous. Moreover,
24 Mr. Geissler makes no opinion that either the Remedial Plan or the Health and Safety Plan
25 would be ineffective. Absent such an opinion, there is no substantial evidence to support a fair
26 argument that there is a significant environmental impact.

27 Mr. Geissler speculates that the construction of the underground garage is that it may
28 cause groundwater to seep around the building and cause “below-grade soil erosion.”

1 (Exhibit 23, CITYAR 00419). Mr. Geissler does not explain what factors would lead to such an
2 occurrence. More importantly, Mr. Geissler bases his opinions on certain portions of the
3 hydrological reports. (Exhibit 23, CITYAR 00418). When those reports are analyzed, it is clear
4 that: 1) The damage from any changes in subsurface hydrologic conditions "is expected to be
5 localized and cosmetic in nature" (See Exhibit 68, Excerpt from 2005 Hydrology Report,
6 CITYAR 03612); and 2) that, in 2007, a solution was identified to the exact groundwater flow
7 issue raised by Mr. Geissler (See Exhibit 69, Geotechnical Exploration, Inc Letter Dated
8 January 4, 2007, CITYAR 03218-03219). Mr. Geissler makes no attempt to demonstrate that
9 the solution presented by certified engineers would not solve the stated concerns. Without such
10 an expert opinion supported by fact, there is not substantial evidence to support a fair argument
11 regarding a significant impact on the environment.

12 IV.

13 THE CITY OF SAN DIEGO MADE THE NECESSARY FINDINGS 14 BASED ON SUBSTANTIAL EVIDENCE

15 All of the necessary findings were made by the City Council to support the Tentative
16 Map, the Planned Development Permit, and the Mitigated Negative Declaration.

17 A. Tentative Map Findings

18 It appears that the findings for the Tentative Map were left out of the typed resolutions.
19 (See Exhibits 60 and 61). However, on October 14, 2008, Council President Scott Peters made
20 the motion to adopt the staff recommendation with respect to the Tentative Map. (See
21 Exhibit 70, Excerpts from the City Council Meeting, CITYAR 02482, In. 7). The staff
22 recommendation dated October 8, 2008 prior to the Council Meeting was to approve Tentative
23 Map No. 361919. (See Exhibit 71, the Staff Report to the City Council, CITYAR 00059-
24 00068). Attached to the Staff Report to the City Council was the Report to the Planning
25 Commission dated May 8, 2008. (See Exhibit 72, the Report to the Planning Commission,
26 CITYAR 00069-00076). Attached as Exhibit 7 to the Report to the Planning Commission was
27 the Tentative Map Resolution, which included all of the necessary findings. (See Exhibit 73,
28

1 the Tentative Map Resolution, CITYAR 00104-00111). Thus, the City Council made all of the
2 necessary findings to support the Tentative Map.

3 **B. Site Development Permit Findings.**

4 The City Council made all of the necessary findings to support a planned development
5 permit. Encompassed in Resolution R-304265, and the supporting information in the City Staff
6 Reports, are findings that specifically address each of the findings required for a Planned
7 Development Permit under SDMC §126.0604. (See Exhibit 61, CITYAR 00032-00036). The
8 deviation was consistent with the overall plan because the Project met the additional design
9 criteria included in SDMC § 143.0410(j). (See Exhibit 61, CITYAR 00036-00037).

10 The Project does not set a precedent for every possible three-story building. The two-
11 story limitation will still apply, and the only three-story buildings that could possibly be allowed
12 would be those that meet all necessary design criteria under SDMC § 143.0410(j), and the
13 necessary findings under SDMC § 126.0604, including being beneficial to community when
14 considered as a whole, and resulting in a more desirable project than would be achieved through
15 strict conformance to the applicable development zone regulations.

16 The City Council found that the Project is beneficial to the community because a bulkier,
17 more box-like structure would have resulted from a two-story configuration. (See Exhibit 61,
18 CITYAR 00034). There was substantial evidence to support this finding. (See Exhibits 62-63).
19 The City Council found that the deviation was appropriate for the location because the Project
20 allows for more open spaces, more landscaping opportunities, and a softening of blank walls.
21 The third story will be recessed from the edge of the building and will present a two-story
22 appearance from the sidewalk level. (Exhibit 61, CITYAR 00035-00036). Substantial evidence
23 in the record supports these findings, and Petitioner does not dispute these specific findings.

24 **C. Circulation of Mitigated Negative Declaration.**

25 Petitioner's penultimate argument is that the Mitigated Negative Declaration ("MND")
26 was not sent to the City Council prior to their review of the matter. In fact the draft MND states
27 on its face that it was sent to many City officials, including the City Council President, Scott
28 Peters. (Exhibit 74, Mitigated Negative Declaration, CITYAR 05965). The MND was

1 submitted to the Planning Commission and included numerous comments from City Staff. (See
2 Exhibit 6, CITYAR 00148-00154, CITYAR 00155-00163). Finally, the records from the City
3 Clerk relating to the City Council's Docket for October 14, 2008 states that 22 copies of the
4 MND reports were provided. (See Exhibit 75, Exhibits for Docket of October 14, 2008,
5 CITYAR 00004-00005). There is therefore substantial evidence that the MND was considered
6 by the City Council, and therefore justification for its inclusion in the City Council's Resolution.

7 V.

8 **PETITIONER'S ARGUMENTS REGARDING THE ADMINISTRATIVE RECORD**
9 **ARE NOT JUSTIFIED SINCE PETITIONER AGREED TO PROCEED**
10 **WITH THE CURRENT RECORD**

11 The Court will recall that there were several *ex parte* hearings over the course of this
12 year regarding the status of the administrative record. Counsel for Petitioner, the City, and
13 Krambs all appeared over the pendency of this case to discuss the status of the record, most
14 recently on August 26, 2009. At that time, the City informed the Court that it lodged a certified
15 record. Petitioner agreed to proceed on the record, and cannot now fairly claim that it has been
16 prejudiced.

17 VI.

18 **CONCLUSION**

19 For the reasons stated herein, and in the Opposition Brief submitted by the City, Michael
20 Krambs and RK Development Partners respectfully request that the Court deny Petitioner's
21 requests for declaratory relief, a writ of mandate, and all other relief.

22
23 PETERSON & PRICE, A.P.C.

24
25 Dated: 10-5-09

By: 

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APPENDIX A TO KRAMBS OPPOSITION BRIEF

San Diego Municipal Code Section	Text of Regulation
§143.0401	The purpose of these regulations is to provide flexibility in the application of development regulations for projects where strict application of the base zone development regulations would restrict design options and result in a less desirable project. The intent of the Planned Development Permit regulations is to accommodate, to the greatest extent possible, an equitable balance of <i>development</i> types, intensities, styles, site constraints, project amenities, <i>public improvements</i> , and community and City benefits. The regulations in this division provide the standards and guidelines by which applications for Planned Development Permits will be evaluated.
§143.0410(a)(1)	The base zone development regulations apply to all <i>developments</i> except to the extent that deviations are included as part of the approved Planned Development Permit.
§143.0410(a)(2)	In accordance with the purpose of this division, deviations from the applicable base zone development regulations may be requested in order to provide flexibility in achieving a zone-equivalent project design that will be consistent with the intent of the base zone. Significant deviations from the base zone regulations that are not consistent with the purpose of this division require a variance in conjunction with the approval of the Planned Development Permit.
§143.0410(a)(3)	<p>A Planned Development Permit may not be used to request deviations from any of the following regulations:</p> <p>(A) Maximum building height of 30 feet for the area in the Coastal Height Limit Overlay Zone as identified in Section 132.0502;</p> <p>(B) <i>Floor area ratio</i> for the entire <i>premises</i> except as permitted in the Kearny Mesa Community Plan;</p> <p>(C) Residential <i>density</i> unless an affordable housing density bonus is obtained in accordance with Chapter 14, Article 3, Division 7 (Affordable Housing Density Bonus Regulations);</p> <p>(D) Residential <i>density</i> unless the residential component is part of a mixed-use (commercial/residential) project and the applicable <i>land use plan</i> establishes a higher <i>density</i> than the base zone;</p> <p>(E) Applicable supplemental regulations identified in Table 143- 04A;</p> <p>(F) The regulations in Chapter 14, Article 3, Division 1 (Environmentally Sensitive Lands Regulations); and</p> <p>(G) The regulations in Chapter 14, Article 3, Division 2 (Historical Resources Regulations).</p>

APPENDIX A TO KRAMBS OPPOSITION BRIEF

<p>§143.0410(j)</p>	<p>Criteria For <i>Development Design</i></p> <p>The following design criteria will be used to evaluate proposed <i>developments</i> in conjunction with the required <i>findings</i>.</p> <p>(1) The overall <i>development</i> design should be comprehensive and should demonstrate the relationships of the proposed <i>development</i> on-site with existing <i>development</i> off-site.</p> <p>(2) The scale of the project should be consistent with the neighborhood scale as represented by the dominant <i>development</i> pattern in the surrounding area or as otherwise specified in the applicable land use plan.</p> <p>(3) Buildings, <i>structures</i>, and facilities on the <i>premises</i> should be well integrated into, oriented towards, and related to, the topographic and natural features of the site.</p> <p>(4) Proposed <i>developments</i> should avoid repetitious <i>development</i> patterns that are inconsistent with the goals of the applicable <i>land use plan</i>.</p> <p>(5) Buildings should avoid an overwhelming or dominating appearance as compared to adjacent <i>structures</i> and <i>development</i> patterns. Abrupt differences in scale between large commercial buildings and adjacent residential areas should be avoided. Instead, gradual transitions in building scale should be incorporated.</p> <p>(6) Larger <i>structures</i> should be designed to reduce actual or apparent bulk. This can be achieved by using pitched roof designs, separating large surface masses through changes in exterior treatment, or other architectural techniques.</p> <p>(7) To the greatest extent possible, landscaping should be used to soften the appearance of blank walls and building edges and enhance the pedestrian scale of the <i>development</i>.</p> <p>(8) Elements such as curbside landscaping, varied <i>setbacks</i>, and enhanced paving should be used to enhance the visual appearance of the <i>development</i>.</p> <p>(9) Roof forms should be consistent in material, design, and appearance with existing <i>structures</i> in the surrounding neighborhood. Plant materials and other design features should be used to define and enhance the appearance of roof spaces, especially flat roofs that are visible from higher elevations.</p> <p>(10) Building material and color palettes should be consistent with applicable guidelines in the applicable <i>land use plan</i>, if provided.</p>
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APPENDIX A TO KRAMBS OPPOSITION BRIEF

§126.0604	<p>Findings for Planned Development Approval</p> <p>A Planned Development Permit may be approved or conditionally approved only if the decision maker makes all of the <i>findings</i> in Section 126.0604(a) and the supplemental <i>findings</i> in Section 126.0604(b) that are applicable to the proposed <i>development</i> as specified in this section.</p> <p>(a) Findings for all Planned Development Permits</p> <ol style="list-style-type: none">(1) The proposed <i>development</i> will not adversely affect the applicable <i>land use plan</i>;(2) The proposed <i>development</i> will not be detrimental to the public health, safety, and welfare;(3) The proposed <i>development</i> will comply with the regulations of the Land Development Code;(4) The proposed <i>development</i>, when considered as a whole, will be beneficial to the community; and(5) Any proposed deviations pursuant to Section 126.0602(b)(1) are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.
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1 **LJVRA v. CITY OF SAN DIEGO, et al.**
2 SAN DIEGO SUPERIOR COURT CASE NO. 37-2008-00095903-CU-TT-CTL

3 **PROOF OF SERVICE**

4 I, Christopher R. Mordy, declare as follows: That I am, and was at the time of service of the
5 papers herein referred to over the age of eighteen years, and not a party to the action; and I am employed
6 in the County of San Diego, State of California, in which county the within-mentioned mailing occurred.
7 My business address is 655 West Broadway, Suite 1600, San Diego, California, 92101.

8 On October 2, 2009, I served the foregoing document(s) described as:

9 **OPPOSITION BRIEF SUBMITTED BY MICHAEL KRAMBS**
10 **AND RK DEVELOPMENT PARTNERS**

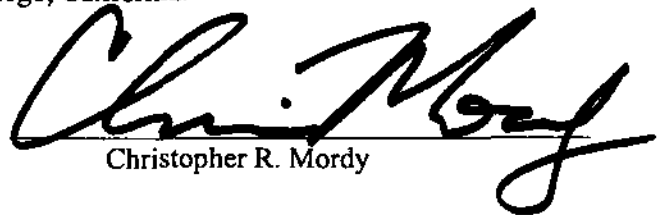
11 [X] by placing [] the original [X] a true copy(ies) thereof on the interested party(ies), enclosed in a
12 sealed envelope, addressed as follows:

13 <u>julie@jmhamilton.com</u>	<u>cbrock@sandiego.gov</u>
14 Julie M. Hamilton, Esq.	Carmen Brock, Deputy City Attorney
15 2835 Camino del Rio So., Ste. 300	Office of the City Attorney
16 San Diego, CA 92108	1200 Third Avenue, Suite 1100
17 <i>Attorneys for Petitioner La Jolla Village</i>	San Diego, CA 92101-4100
18 <i>Residents Association</i>	<i>Attorneys for Respondents and</i>
	<i>Defendants City of San Diego and City</i>
	<i>Council</i>

19 [X] (BY ELECTRONIC SERVICE) I caused the documents to be sent to the persons at the
20 electronic addressee listed above. I did not receive within a reasonable time after the transmission, any
21 electronic message or other indication that the transmission was unsuccessful.

22 [X] (State) I declare under penalty of perjury under the laws of the State of California that the above
23 is true and correct.

24 Executed this October 2, 2009 at San Diego, California.

25 
26 Christopher R. Mordy

1 LJVRA v. CITY OF SAN DIEGO, et al.
2 SAN DIEGO SUPERIOR COURT CASE NO. 37-2008-00095903-CU-TT-CTL

3 **PROOF OF SERVICE**

4 I, Jennifer Wolber, declare as follows: That I am, and was at the time of service of the papers
5 herein referred to over the age of eighteen years, and not a party to the action; and I am employed in the
6 County of San Diego, State of California, in which county the within-mentioned mailing occurred. My
7 business address is 655 West Broadway, Suite 1600, San Diego, California, 92101.

8 On October 5, 2009, I served the foregoing document(s) described as:

9 **OPPOSITION BRIEF SUBMITTED BY MICHAEL KRAMBS
10 AND RK DEVELOPMENT PARTNERS**

11 [X] by placing [] the original [X] a true copy(ies) thereof on the interested party(ies), enclosed in a
12 sealed envelope, addressed as follows:

13 julie@jmhamilton.com

14 Julie M. Hamilton, Esq.
15 2835 Camino del Rio So., Ste. 300
16 San Diego, CA 92108

17 *Attorneys for Petitioner La Jolla Village
18 Residents Association*

cbrock@sandiego.gov

Carmen Brock, Deputy City Attorney
Office of the City Attorney
1200 Third Avenue, Suite 1100

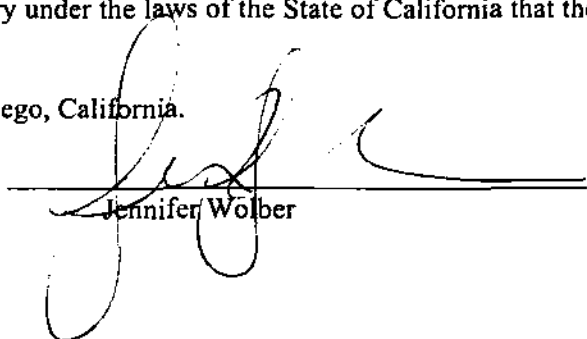
San Diego, CA 92101-4100

*Attorneys for Respondents and
Defendants City of San Diego and City
Council*

19 [X] (BY U.S. POSTAL SERVICE) I deposited such envelope(s) in the area wherein mail is
20 processed to be sent. The envelope(s) was(were) mailed with postage thereon fully prepaid. I am readily
21 familiar with the business practice for collecting, processing and mailing correspondence and pleadings.
22 Such correspondence and pleadings are(were) deposited on the same day with the U.S. Postal Service,
23 with postage thereon fully prepared, in the ordinary course of business. I am aware that on motion of the
24 party served, service is presumed invalid if postal cancellation date or postage meter date is more than
25 one day after date of deposit for mailing in affidavit.

26 [X] (State) I declare under penalty of perjury under the laws of the State of California that the above
27 is true and correct.

28 Executed this October 5, 2009 at San Diego, California.


Jennifer Wolber