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January 16, 2004

CITY COUNCIL  
Sacramento, California

Honorable Members in Session:

**SUBJECT:** Soil Remediation at Mandella Garden

**LOCATION AND COUNCIL DISTRICT:** Fourth Council District

**RECOMMENDATION:** This report is being made pursuant to the request of Mayor Heather Fargo and is for informational purposes only.

**CONTACT PERSON:** Gerald C. Hicks, Senior Deputy City Attorney, 264-5346

**FOR COUNCIL MEETING OF:** January 27, 2004

**SUMMARY:** At the December 2, 2003 Liane Bruckstein addressed the Council with respect to the removal of trees from the Mandella Garden. At the end of Ms. Bruckstein's presentation, Mayor Heather Fargo asked that the City Attorney report back on whether the Capitol Area Development Authority (CADA) had properly removed trees from Mandella Garden.

Based upon a court order allowing soil remediation and finding that the soil remediation "has independent utility separate and apart from any development," and based upon comments of the City Arborist, it appears that removal of the trees was appropriate.

**BACKGROUND:** In response to a lawsuit brought by the Ron Mandella Community Garden, Inc. under the California Environmental Quality Act (CEQA), a new Environmental Impact Report (EIR) is being prepared for the Fremont Mews Housing Development (Project). In response to a motion by Ron Mandella Community Garden, Inc. to stop the remediation of the Garden, on October 31, 2003, the Court denied the motion and granted CADA the authority to proceed with the removal of contaminated soils on Site 13 (Mandella Garden). The Court's order states in pertinent part:

The proposed activity of soil remediation does not violate the writ issued by this court. The writ was limited in its scope. Soil remediation is independent from the approvals that were the subject of the writ. Soil remediation has independent utility separate and

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apart from any development at the site. Remediation is a project separate from any development. It went through a separate CEQA process and was determined to be exempt. Petitioner did not challenge that determination. Petitioner's argument that remediation precludes mitigation or alternative analyses for a future project is not persuasive.

According to the June 30, 2003 Remedial Action Work Plan accepted by the Sacramento County Environmental Health Department, soil remediation requires removal of approximately 4,500 cubic yards of soil, with depths ranging from 12 inches to over 36 inches from the former garden and the adjacent surface parking lot. Excavation was required and completed across the entire eastern portion of the former Mandella Garden and excavation of the former parking lot is currently underway. According to CADA Director John Dangberg, remediation of the western portion of the former Mandella Garden will be completed under a separate and subsequent contract using US EPA Grant funding.

Also according to Mr. Dangberg, Sacramento County Environmental Health evaluated suggestions for in-situ remediation of the soil. The County determined that due to concentrations of heavy metals in the soil, in-situ soil remediation was not feasible and that soil excavation and disposal at an appropriate hazardous waste disposal site would be required. The soil contamination was pervasive and thus excavation could not be completed without the removal of tree root systems. All soil removed to date has been classified as Class 1 hazardous waste and disposed at the Kettleman City landfill.

Prior to soil removal, the City Arborist inspected the site. He determined that the trees to be removed were primarily fruit trees and no permit was required for their removal.

**FINANCIAL CONSIDERATIONS:** There is no known current or anticipated adverse financial impact on the City's budget as a result of this report.

**ENVIRONMENTAL CONSIDERATIONS:** Though the subject of this report is the propriety of the removal of trees under the California Environmental Quality Act (CEQA), this report involves ongoing administrative activities of the City Attorney's Office and does not constitute a project within the meaning of the California Environmental Quality Act (CEQA) and is exempt from the requirements of CEQA under CEQA Guidelines, Sections 15061(b)(1) and 15378(b)(3).


**POLICY CONSIDERATIONS:** This report is for Council information only. It does not require the examination of policy considerations.

**ESBD CONSIDERATIONS:** None.

RECOMMENDATION APPROVED:

  
ROBERT P. THOMAS  
City Manager

Respectfully submitted,

  
SAMUEL L. JACKSON  
City Attorney

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