

ATTACHMENT 1

Brown Act Presentation Slides

FUNDAMENTALS OF OPEN GOVERNMENT

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Program Order

- Brown Act
- Political Reform Act and Conflicts of Interest
- Due Process in quasi-judiciary hearings
- Recommended Resources

You are a Public Official

- Your service as a member of an elected or appointed body is fundamentally different from the private sector or the volunteer/non-profit sector
- As a public official you have certain rights and obligations conferred upon you by the City and by California law
- You owe it to yourself and to the public you serve to familiarize yourself with the rules governing your service

What's at Stake?

- Foster Good Government (decisions based on what best serves the public interest)
- Enhance Participatory Democracy by Promoting Confidence in Public Processes
- Avoid Criminal and Civil Penalties
- Avoid Technical and Process Grounds to Set Aside Decisions

KEY CONCEPTS

- Serial Meetings after SB 1732
- 500 Foot Rule For Conflicts of Interest
- Due Process in Quasi-Adjudicatory Hearings

The Brown Act

California's Open Meeting Law

- Premised on two concepts:
 - (1) The people's business should be conducted openly and in public, and
 - (2) Several minds are better than one, and through debate and discussion, including public participation, the best ideas will emerge
- The City Council, the Planning Commission, and other boards and commissions created by formal action of the City Council are each subject to the Brown Act

WHO IS SUBJECT TO THE BROWN ACT?

- Governing Bodies and their members (e.g. city councils)
- Subsidiary Bodies and their Members (e.g., Planning Commission)
- Some Private Corporations (publicly created or funded)
- Successful candidates and nominees to one of the above

PURPOSES OF THE BROWN ACT

- Public Access to Decision-Making Process
- Public Oversight of Decision-Making Process
- Protection of Legitimate Privacy Concerns of Public Agencies

SCOPE OF BROWN ACT

- What constitutes a "meeting"
- Notice Requirements for Meetings
- Agenda Requirements
- Public Participation at Meetings
- Recording of Meetings
- Disclosure of Written Materials
- Closed Sessions

What is a Meeting?

- Majority of members of body present
- Members present at same time and place to hear, discuss or deliberate
- Item of discussion within subject matter jurisdiction of body
- Serial Meeting

KEY CONCEPT: SERIAL MEETING

- Consecutive or serial communications, each of which involves less than a quorum of the public body but when taken as a whole involve a majority of the body's members, either directly or indirectly through intermediaries, in person or by telephone, e-mail, or other electronic means, to develop collective concurrence or consensus on action to be taken
- Types: Hub-and-Spoke, Daisy Chain

Individual Contact Distinguished

- A member of a legislative body may contact an individual including another member of the same legislative body without an illegal meeting occurring
- BUT there is always a risk that one participant in the communication will disclose the views of the other participant to a third member, creating the possibility of achieving collective concurrence outside a public meeting

Three Common Serial Meeting Scenarios (and one new one)

- Staff Briefings
- Constituent or Lobbyist as Intermediary
- Serial e-mails
- Blog on website?

COMMON PITFALLS Staff Briefings

- *Wolfe v. City of Fremont*-- "the Brown Act is violated by such serial meetings only if (1) the city official acts as a 'personal intermediar[y]' for council members during the course of such meetings and (2) the meetings are used by a majority of the legislative body to develop a 'collective concurrence' regarding a matter of interest."

COMMON PITFALLS Staff Briefings

- SB 1732 (effective 1/1/09) -- The Legislature overturns Wolfe to the extent Wolfe held that it was permissible to have serial communications that did not result in a collective concurrence on action to be taken.
- "A majority of the members of a legislative body shall not outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body."

Common Pitfalls with Constituents

- A constituent can inadvertently become an intermediary among a majority of a legislative body by sharing thoughts among a majority of members through a series of individual contacts.
- Constituents may ask you to commit to a position in a private conversation in advance of a meeting
- Response: "State law prevents me from giving you a commitment outside a public meeting."

An Ounce of Prevention!

- Virtually all serial meeting violations can be prevented by following two simple rules of conduct:
- Avoid discussing City business with a more than one other board member outside a public meeting
- Avoid soliciting or communicating the views of other board members outside a public meeting

WHAT'S NOT A MEETING SUBJECT TO BROWN ACT?

- Individual contacts (unless serial)
- Conferences
- Community meetings
- Another body of agency
- Social or ceremonial events
- Query: carpool?

NOTICE REQUIREMENTS

- Notice must include time, place and a brief general description of business to be discussed (not exhaustive detail of business)
- Regular Meetings: notice and agenda posted at least 72 hours in advance
- Special Meetings: notice and agenda posted at least 24 hours in advance
- Emergency Meetings (only applicable to City Council)

MEETING AGENDAS

- Post in freely accessible location
- NO ACTION OR DISCUSSION ON SUBJECT OR ITEM NOT DESCRIBED IN AGENDA (w/ very limited exceptions)
- Materials provided to body within the 72 hours before meeting must be made available to public at same time

PUBLIC PARTICIPATION

- General Rule: members of the public must be given an opportunity to address body on any item within subject matter jurisdiction of body, whether on the agenda or not
- Special meeting: Comment limited to items on the agenda

CLOSED SESSIONS

- If no specific basis exists under Brown Act to conduct a closed session, session must be open to public. Most closed sessions applicable only to City Council
- Common grounds for closed session are:
 - Real property negotiations/Labor negotiations
 - Litigation
 - Performance evaluation/discipline of public employee

OTHER BROWN ACT ISSUES

- Public has nearly absolute right to record meetings
- Recordings of meetings by public agency are public records
- Written materials distributed to all or a majority of body members are, subject to very narrow exceptions, public records and must be made available for inspection and copying

Remedies for Violation of Brown Act

- Criminal
 - Misdemeanor (fine of not more than \$1000 and/or imprisonment of not more than 1 year)
 - Specific Intent Required: member must have intended to deprive public of information or right to participate
- Civil
 - Action by DA or by other interested party to invalidate action at improper meeting, costs, and attorneys' fees
 - Potential to infect decisions by other boards.

CONFLICTS OF INTEREST

- Sources of Law on Conflicts
 - Political Reform Act (financial conflicts)
 - Common Law Rules (bias or prejudice)
 - Government Code Section 1090 (contractual conflict)
- Purpose: Ensure City's decisions are based solely on what best serves the public's interest by eliminating bias and prejudice from public decision-making AND contributing to public's perception of process as both fair and legitimate

IMPORTANT THINGS TO REMEMBER ABOUT CONFLICTS

- Conflicts of interest do not mean the official is a bad person--everyone has them from time to time
- If officials have a conflict of interest, it doesn't mean they have done anything wrong, only that they shouldn't participate in making the decision

POLITICAL REFORM ACT

- DISCLOSURE REQUIREMENTS FOR PUBLIC OFFICIALS
 - Applicable to Council members and Planning Commissioners under State law
- PROHIBITS PUBLIC OFFICIALS FROM MAKING, PARTICIPATING IN, OR INFLUENCING A DECISION IN WHICH THEY HAVE REASON TO KNOW THEY HAVE A FINANCIAL INTEREST

DISCLOSURE REMINDER

- Form 700: Annual, Assuming Office, and Leaving Office Filings Required
- Failure to File Could Expose You Individually to Civil and/or Criminal Penalties
- Failure to File Could Infect Proceedings With Error Causing an Action to be Invalidated
- Your Responsibility

How Do You Know If You Have A Conflict?

- Eight Step Analysis
- Practical Test:
 - Is it reasonably foreseeable that the decision will have a material financial effect on you, your spouse, dependent children, or your business that is distinguishable from its effect on the public generally?

Eight Step Analysis

- Are you a "public official" within the meaning of the rules?
- Are you making, participating in making, or influencing a governmental decision?
- What are your economic interests? That is, what are the possible sources of a financial conflict of interest?
- Are your economic interests directly or indirectly involved in the governmental decision?
- What kinds of financial impacts on your economic interests are considered important enough to trigger a conflict of interest?
- The important question: Is it substantially likely that the governmental decision will result in one or more of the materiality standards being met for one or more of your economic interests?
- If you have a conflict of interest, does the "public generally" exception apply?
- Even if you have a disqualifying conflict of interest, is your participation legally required?

Key Concept: Presumed Effect on Real Estate Interest

- If a proposed action or decision involves a location or project whose boundaries are within 500 feet of real property in which you have an interest (fee, leasehold, security) having a value in excess of \$2000, the law presumes you are materially and directly affected and requires your disqualification.

FPPC Conflict Checklist

- State that you have a conflict of interest in the item once it is called on the agenda.
- Unless the item is set for closed session, identify details about your interest:
 - If an investment, name the business entity;
 - If a business position, name the business and what it does;
 - If real property, state the address; if the property is a residence, state "residence."
 - If income or gifts, name the person who is your source;
 - If a personal financial effect, identify the expense, liability, asset or income affected.

FPPC Checklist (More)

- For a consent calendar item, state that you are recusing yourself from discussing or voting on the matter and the reasons. You may vote on the rest of the consent calendar. You need not leave the room.
- For a non-consent-calendar item, leave the room until after discussion and action on the item has concluded (but see next slide).

FPPC Checklist (End)

- To speak as a member of the public:
- The item must relate to your personal interests, such as:
- A real property interest you or immediate family owns;
- A business entity you or your immediate family owns or controls
- Leave the dais and speak from the same area as members of the public. You may remain with members of the public while the item is being discussed.

CONSEQUENCES OF VIOLATION OF PRA

- Action can be rescinded
- Willful violations can lead to civil penalties up to \$5000 and criminal penalties

WHAT TO DO IF YOU HAVE CONFLICT QUESTIONS

- Informal advice from FPPC (1-866-ASK-FPPC)
- Formal Advice from FPPC
- General advice from City Attorney
- Advice from your own lawyer
- Self-Help (see recommended resources at end of presentation)

Other Conflict Issues

- Government Code Section 1090
- Common Law Conflicts
- Prohibits making of contract where you or a member of your family would have an interest (direct or indirect) in a contract with the City
- Common law of conflicts prohibits your participation wherever important, but non-financial, personal interests or biases (positive or negative) about the facts or the parties cast a reasonable doubt on your ability to make a fair decision.

CONFLICT AVOIDANCE: Parting Advice

- Conflicts happen
- Get advice early
- Obtain formal opinion of FPPC on close calls whenever possible
- Don't accept travel, honoraria, or abnormal gifts from persons interested or likely to be interested in body's subject matter

Key Concept: Disclosure of Ex Parte Communications in Adjudicative Decisions

- Variances, CUPs, and other project-specific matters requiring a public hearing and the presentation and weighing of evidence, and requiring the body to exercise discretion in applying the law to the facts shown by the evidence require procedural due process
- Does not apply to strictly legislative acts (general plan, ordinances)

Receipt of evidence outside the hearing process denies the parties due process

- Fair hearing requires a party be apprised of evidence against him or her
- Ex parte communications are antithetical to fair hearing
- Advice: Minimize ex parte communications and when they occur disclose them prior to hearing

Common Due Process Pitfalls and Cures

- Individual Site Visits are one of most common sources of Due Process Problems
- Noticing Site Visit as a special meeting is one way to avoid problem
- If you do have private communications with an applicant and receive information relevant to a matter pending before you, immediately after the matter is called ask the chair to recognize you and disclose the fact and general nature of communication

AB1234 and Ethics

- AB1234: Local officials that receive compensation, salary, stipends, or expense reimbursements must receive training in public service ethics laws and principles every two years.
- Many resources available for this training (this session is NOT AB1234 training)

RECOMMENDED RESOURCES

- OPEN MEETINGS/THE BROWN ACT
- Open and Public III: The User's Guide to the Ralph M. Brown Act, League of California Cities [Available in print version from the League's CityBooks service (\$15) or on-line at www.cacities.org [search "Brown Act"]]
- The Brown Act - Open Meetings for Local Legislative Bodies 2003 CA Atty. General [available on-line at www.caag.state.ca.us/publications/2003_Intro_BrownAct.pdf]
- The Ralph M. Brown Act, Government Code Sections 54950 et seq. [available on-line at www.leginfo.ca.gov/calaw.html and www.caag.state.ca.us]

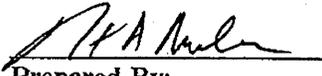
RESOURCES - Conflicts

- CONFLICTS OF INTEREST
- A Local Officials Guide to Ethics Laws, Institute for Local Government [Available from League's CityBooks service or on line at www.ca-ilg.org]
- Fair Political Practices Commission, 1.866.ASK.FPPC [toll free advice line]
- ILG's AB 1234 Compliance assistance
 - <http://www.ca-ilg.org/ab1234.compliance>
- Free on-line AB1234 training:
 - <http://localethics.fppc.ca.gov/ab1234/>

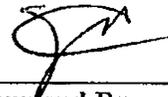
RESOURCES (Cont.)

- CONFLICTS OF INTEREST (Cont.)
- California Political Reform Act, Government Code Sections 81000 et seq. [available on-line at www.leginfo.ca.gov/calaw.html]
- Government Code Section 1090 [available on-line at www.leginfo.ca.gov/calaw.html]
- Institute for Local Government--Ethics issues: <http://www.ca-ilg.org/ethicsfaqs>

REPORT TO THE PLANNING COMMISSION
February 17, 2010



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SUBJECT: Planning Commission Workshop: Role and Purview of the Planning Commission

EXECUTIVE SUMMARY:

Last fall, the Planning Commission requested that staff review with the Commission the Planning Commission's purview and discretion in considering development applications and similar entitlement requests.

Planning staff will present a brief review of the Commission's options and latitude in reviewing projects and requests before them, and will be available to go into further detail on this topic of discussion.

RECOMMENDATION:

- 1) Receive a presentation from staff
- 2) Allow for Commission discussion and/or questions and answers on the workshop topic

DISCUSSION:

Staff will provide a review of the typical types of applications and requests that will come before the Planning Commission and discuss the Commission's purview and options for such applications and requests. Staff will review the main tools for considering Planning applications and requests, which are: the City's General Plan and the City's Zoning Code, as well as the purpose of noticing and public hearings, the application of conditions of approval, and the need to make findings.

In advance of the workshop, the Commission is encouraged to review the first couple of pages of Chapter 1 and the pertinent section of Chapter 4 (pages 41-49) of the Planning Commissioner's Handbook. For the convenience of the Commission, the pertinent excerpt of the handbook is included as an attachment to this staff report.

ATTACHMENT:

- 1) Pertinent Excerpts of the Planning Commissioner's Handbook

AGENDA ITEM:

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ATTACHMENT 1

**PERTINENT EXCERPTS OF THE PLANNING COMMISSIONER'S
HANDBOOK**

SECTION 1

The Planning Commissioner's Role



WHAT IS A PLANNING COMMISSION?

The planning commission is a permanent committee made up of five or more individuals who have been appointed by the governing body (city council or board of supervisors) to review and act on matters related to planning and development.¹ Most planning commissioners are lay people without any previous land use experience. Commissioners serve at the pleasure of the council or board of supervisors, so commission membership may change in response to changes in those bodies. A local agency need not create a planning commission; in some jurisdictions, the governing body functions in that capacity.²

WHY PLAN?

Planning is a proactive process that establishes goals and policies for directing and managing future growth and development. Local agencies plan to address

fundamental issues such as the location of growth, housing needs, and environmental protection. Additionally, planning helps account for future demand for services, including sewers, roads, and fire protection. In addition, planning:

- **Saves Money.** Good planning can save on infrastructure and essential service costs.
- **Sets Expectations.** Planning establishes the ground rules for development. A comprehensive general plan, for example, sends a clear signal that accepted standards and procedures apply to community development. This will not eliminate conflicts entirely, but at least sets expectations that can help minimize conflict.
- **Improves Economic Development and Quality of Life.** Economic development and quality of life issues go hand in hand because businesses want to locate in communities where their employees want to live. Planning outlines alternatives and choices so that the community can promote employment and economic well-being.
- **Provides a Forum for Reaching Consensus.** Planning processes, such as the development of the general plan, provide a forum for seeking community consensus. Planning efforts should always involve broad and diverse segments of the community to assure that the resulting plan fully addresses community needs. This will provide the public with a sense of ownership over the plan.

¹ Cal. Gov't Code § 65100.

² Cal. Gov't Code § 65101.

- **Connects People to the Community.** Planning ensures that architectural and aesthetic elements are incorporated into projects to connect people to their community and establish a sense of place.
- **Protects Property Values.** Property values are enhanced when a community plans for parks, trails, playgrounds, transit, and other amenities. Planning also protects property and property values by separating incompatible land uses. Imagine if a factory could just set up shop in the middle of a neighborhood. Planning assures that this will not occur.
- **Reduces Environmental Damage and Conserves Resources.** Planning helps identify important natural and cultural resources and can channel development in a way that protects or augments these resources.

THE COMMISSION'S DUTIES

The planning commission plays a central role in the planning process in three important ways. First, it acts as an advisory board to the main governing body on all planning and development issues. Second, the commission assures that the general plan is implemented by reviewing development applications on a case-by-case basis. Just as you build a building one brick at a time, you implement a community vision one project at a time. Third, the commission functions as the decision-making body for many proposals. However, any planning commission action can be appealed to the governing body, which can uphold the commission's decision, overturn it, modify it, or send it back for further study.

Planning commission duties vary depending on the jurisdiction. You can learn about your commission's particular responsibilities by asking the planning department. Most commissions have the following responsibilities:³

- **General Plan.** Assist in writing the general plan and hold public hearings on its adoption. (The governing body retains authority to actually adopt the general plan.) Promote public interest in the general plan.

Consult with and advise public officials and agencies, utilities, organizations, and the public regarding implementation of the general plan. Also review, hold hearings on, and act upon proposed amendments to the plan.

- **Specific Plans.** Assist in writing any specific plans or community plans and hold public hearings on such plans. (The governing body retains authority to actually adopt specific plans.) Also review, hold hearings on, and act upon proposed amendments to such plans.
- **Zoning and Subdivision Maps.** Review, hold hearings on, and act upon zoning ordinances, maps, conditional use permits, and variances. Similarly consider subdivision applications.
- **Individual Project Approvals.** Review individual projects for consistency with the general plan, any applicable specific plans, the zoning ordinance, and other land use policies and regulations.
- **Report on Capital Improvements Plans.** Annually review the jurisdiction's capital improvements program and the public works projects of other local agencies for consistency with the general plan.
- **Coordinate Planning Efforts.** Coordinate local plans and programs with those of other public agencies.
- **Consider Land Acquisitions.** Report to the governing body on the consistency of proposed public land acquisition or disposal with the general plan.
- **Special Studies.** Undertake special planning studies as needed.

With so many responsibilities, it is important for every planning commission to think about how it will divide its time between day-by-day approvals and long-range planning efforts, both of which are important. It is easy to get caught up in the day-to-day efforts at the expense of long-range planning.

³ See for example Cal. Gov't Code §§ 65103, 65353, 65400, 65401, 65402, 65854 and 66452.1.



For More Information

For more information on specific plans, see *The Planner's Guide to Specific Plans* (Governor's Office of Planning and Research, 2001 ed.).

similar to that for a general plan, with a few exceptions. Unlike the general plan, which must be adopted by resolution, a specific plan may be adopted by resolution or ordinance, or a combination of both. Additionally, a specific plan can be amended as often as necessary.

ZONING

Zoning is the separation of a city into districts, or "zones," that provide for the regulation of the intensity of development and uses of land. A zoning designation is typically assigned to every parcel. An accompanying map helps citizens (and commissioners) know where the boundaries between zones are and understand which uses can be permitted where. Zoning ordinances must be consistent with the general plan and, except in some charter cities, are invalid when they are not. Typically, zoning ordinances:

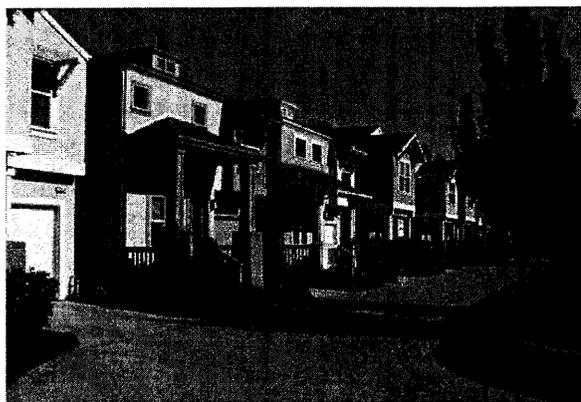
- Divide a jurisdiction into various land use designations, such as heavy and light industrial, commercial, residential, open space, agricultural, recreational, scenic corridor, natural resource, and other purposes.
- Provide for the intensity of use (for example, 18 units per acre).
- List permitted uses within each designation.
- Provide for conditional and accessory uses.
- Establish development standards, such as building height and bulk, setbacks, lot coverage, parking, signage, and landscaping.

- Provide for administrative procedures for variances, conditional use permits, design review, and zone changes.

Zoning works to assure that neighboring land uses are compatible. Residential uses, for example, are generally incompatible with heavy industrial uses. Most agencies have multiple zones in which similar uses are permitted but with differing development standards. For example, a minimum residential density might be 12 units to the acre in one zone and 16 units to the acre in another.

A zoning ordinance will list permitted uses that are allowed "by right" for each zone. However, the term "by right" does not mean that the zoning ordinance confers a universal right to develop a particular use. Zoning is merely a legislative planning designation. As such, zones are always subject to change and do not confer a right or entitlement. Instead, the term "by right" means that the permit is not subject to the discretionary review that is typical of the conditional use permit process.

The planning commission is not necessarily the only body within a local agency that may be responsible for making zoning decisions. A board of zoning adjustment or a zoning administrator may be appointed to consider use permit and variance requests. Building design may also be subject to approval by a design review or architectural review board.



STATUTORY LIMITATIONS

The state has imposed many specific limitations on the exercise of local zoning power. The following are some examples.²⁴

- **Residential Zoning.** Sufficient land must be zoned for residential use based on how much land has been zoned for non-residential use and on the future housing needs. A small exception applies to built-out communities.
- **Mobilehome Park Conversions.** A developer converting a mobilehome park must submit a report describing the displacement of the residents and the availability of replacement space. The local agency may require mitigation.
- **Second Units (“Granny Flats”).** Qualifying second unit applications are not subject to discretionary review.
- **Density Bonuses/Affordable Housing.** A local agency must allow a housing development to proceed at a density level that is 25 percent higher than allowed by the zoning ordinance when a developer agrees to make 25 percent of the pre-bonus units affordable to low-income households (or 10 percent affordable to very low-income households).
- **Group Homes and Child Care Facilities.** Day care facilities for six or fewer children licensed under the Community Care Facilities Act must be treated as single-family type residential uses. In addition, residential facilities serving six or fewer persons must also be considered equivalent to conventional single-family uses. The law also requires cities and counties to treat large family day care centers as single-family homes.
- **Coastal Zone.** Land in the coastal zone cannot be developed without a coastal development permit. (See page 72).
- **Solar Energy Systems.** Local agencies, including charter cities, may not unreasonably restrict the use of solar energy systems in a way that significantly increases cost or decreases efficiency.
- **Discrimination.** Ordinances that deny rights to use or own land or housing based on ethnic or religious grounds are illegal.
- **Manufactured Homes.** Manufactured homes cannot be prohibited on lots zoned for single-family dwellings.
- **Timber and Agricultural Land.** Farm and timber lands that are enrolled in special zones or preserves—which provide tax breaks in return for the promise to keep the land in agricultural or timber production—may not be developed without payment of a penalty. For agricultural lands, additional controls include (in some cases) a prohibition on annexation while the land is enrolled in such programs.
- **Psychiatric Care.** Zoning ordinances may not discriminate against general hospitals, nursing homes, and psychiatric care and treatment facilities.
- **Billboards and Signs.** Outdoor advertising displays cannot be removed without payment of just compensation. Reasonably sized and located real estate “for sale” signs must also be permitted.
- **Surplus School Sites.** If all public agencies waive their rights to purchase a surplus school site, the city or county with jurisdiction over the site must zone the property in a way that is consistent with the general plan and compatible with surrounding land uses.

Conditional Use Permits

Conditional uses are land uses that are not automatically authorized but may be approved under the zoning code upon meeting specific conditions. The conditional use permit (“CUP”—also called a “special use permit”)

allows a local agency to review individual projects that may potentially affect neighboring land uses negatively. The review process allows staff and the planning commission to develop a set of conditions to minimize the impact before allowing the development to proceed.

²⁴ See Cal. Gov't Code § 65913.1 (Residential Zoning); Cal. Gov't Code § 65863.7 (Mobilehome Park Conversions); Cal. Gov't Code § 65852.1 (Second Units); Cal. Gov't Code § 65915 (Density Bonus); Cal. Health & Safety Code §§ 1597.45 & 1597.46 (Group Homes and Child Care Facilities); Cal. Gov't Code § 65850.5 (Solar Energy); Cal. Gov't Code § 65852.3 (Manufactured Homes); Cal. Gov't Code §§ 51100 and following (Timberland); Cal. Gov't Code §§ 51200 and following (Agricultural Land); Cal. Welf. & Inst. Code § 5120 (Psychiatric Care); Cal. Bus. & Prof. Code § 5412 (Billboards); Cal. Civ. Code § 713 (Signs Advertising Real Property); Cal. Gov't Code § 65852.9 (Surplus School Sites).

The typical local zoning ordinance allows the city or county to grant a conditional use permit when the proposed use is in the interest of public convenience and necessity and is not contrary to the public health, morals, or welfare.²⁵

Common conditions on approval include limited hours of operation, road improvements, soundproofing, additional landscaping, and additional parking. A condition must bear a reasonable relationship to the public need created by the development. This should be supported by evidence on the record.²⁶ Conditions often include a requirement that the use be commenced within a reasonable time or the permit will expire.

Conditional use permits are quasi-judicial actions and require a public hearing. A decision either to grant or reject the permit must be supported by findings. The terms of the permit may be modified by the agency if the original permit so provides.²⁷ The permit is granted on the land, not to the property owner, and will remain valid even if the property changes hands. A conditional use permit may be revoked for noncompliance or other reasons cited in the permit. Notice and a hearing will be required before the permit can be revoked.²⁸

Variances

A variance is a limited waiver of zoning standards for a use that is already permitted within a zone. Variances are usually considered when the physical characteristics of a piece of property, such as size, shape, topography, location, or surroundings, pose unique challenges. For example, a very small or oddly shaped lot may need a variance from a setback or floor area ratio requirement in order to be developed.

A variance can only be granted in special cases where the strict application of zoning regulations deprives the owner of the uses enjoyed by nearby lands in the same zone. The variance should not be a grant of a special privilege. Economic hardship alone is not sufficient justification for approval of a variance. A variance may not be used to permit a land use that is not otherwise allowed in a zone, such as a heavy industrial use within a residential zone. This would require a zoning change, as there is no such thing as a “use variance.”



Questions to Ask When Considering a Conditional Use Permit:

- Is the permit consistent with the general plan?
- Is the site appropriate for the proposed use?
- Is the proposed use compatible with surrounding uses?
- If not, can mitigation measures be imposed that will make it compatible?
- Will the proposed mitigation measures address any underlying issues?
- Will the project have any environmental effects? What will those effects be? What level of environmental review is required?
- Can the proposed use adequately be served by infrastructure and other services, such as police and fire protection?

Nonconforming Uses

There are two types of nonconforming uses: illegal and legal. Legal nonconforming uses—sometimes called grandfathered uses—are uses that were in place prior to the adoption of the zoning ordinance. Such uses are generally permitted for as long as they operate. However, the use typically is not allowed to expand or be replaced if voluntarily abandoned or accidentally destroyed.²⁹ The idea is to strike a balance between the notion of fairness (the use was legitimate at the time of development) and the changed circumstances of the community (the use is no longer compatible with the character of the area).

There are a few situations where tougher regulation of legal nonconforming uses may be appropriate. A local agency may require that a legal nonconforming use terminate after a reasonable period of time. This is called amortization. The idea behind amortization is to allow the owner enough time to recoup the value of the investment in developing the property while also addressing the needs of the greater community.

²⁵ *Upton v. Gray*, 269 Cal. App. 2d 352 (1969).

²⁶ *Bank of America v. State Water Resources Control Bd.*, 42 Cal. App. 3d 198 (1974).

²⁷ *Garavatti v. Fairfax Planning Comm.*, 22 Cal. App. 3d 145 (1971).

²⁸ *Community Development Comm. v. City of Fort Bragg*, 204 Cal. App. 3d 1124 (1988).

²⁹ *Paramount Rock Co. v. County of San Diego*, 180 Cal. App. 2d 217 (1960); *City of Fontana v. Atkinson*, 212 Cal. App. 2d 499 (1963).

Reasonableness depends upon such factors as the useful life of the structure, the extent of investment and present value, and the possibility and cost of relocation.³⁰

On the other hand, illegal nonconforming uses are those that were built or started in violation of an existing zoning ordinance. Such uses are not allowed. Local agencies have the right to require that such uses be terminated immediately, regardless of the investment on the part of the owner. Illegal nonconforming uses are usually addressed through code enforcement. (See "Code Enforcement" sidebar on page 45).

Interim Zoning or Zoning Moratoria

Interim zoning—or a zoning moratorium—is a temporary halt to all or a particular kind of development. A moratorium is enacted to prohibit any

uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the agency plans to study within a reasonable time. The adoption of a moratorium requires a four-fifths vote for an initial 45-day period and may be extended for a total period that does not exceed 22 months and 15 days.³¹ Additional limitations apply to moratoria that affect projects that include a significant percentage of multifamily housing. (See Section 5, page 59).

Floating and Overlay Zones

A zoning ordinance may include regulations for a zone that is not tied to any piece of property on the zoning map. This is referred to as a floating zone. The zone "floats" until such time that a property owner requests to have it applied to his or her land through rezoning. A common example is a mixed-use district. The zoning

ZONE CHANGE CHECKLIST

The following are some questions to which you should be able to answer "no" before approving a zone change to enable a specific project to proceed:

Relationship to Community

- Is the proposed change contrary to the land use map in the general plan?
- Is the proposed change incompatible with established land use patterns?
- Would the proposed change alter the population density pattern and thereby increase the load on public facilities (schools, sewers, streets, etc.) beyond community desires, plans, or capabilities?
- Are present zone boundaries properly drawn in relation to existing conditions or development plans with respect to size, shape, and position?

Changed Conditions

- Have the basic land use conditions remained unchanged since adoption of the existing zones?
- Has the development of the area conformed to existing regulations?

Public Welfare

- Will the change adversely affect neighborhood living conditions?
- Will the change adversely affect property values in adjacent areas?
- Will the change deter improvement or development of adjacent property in accordance with existing regulations?
- Will the change constitute a grant of special privilege to an individual?

Reasonableness

- Can the property be used in accordance with the existing zoning regulations?
- Is the change requested out of scale with the needs of the neighborhood or community?
- Are there adequate sites for the proposed use in zones permitting such uses?
- Will allowing the zone change set an undesirable precedent?

³⁰ *Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848 (1980); *City of Los Angeles v. Gage*, 127 Cal. App. 2d 442 (1954); *United Business Com. v. City of San Diego*, 91 Cal. App. 3d 156 (1979).

³¹ Cal. Gov't Code § 65858.

CODE ENFORCEMENT

As a planning commissioner, you typically enforce the zoning code through the permit process. A permit is granted only when specified conditions—like setbacks and hours of operation—are met. What happens when those conditions are violated after the permit is issued? Zoning codes may include provisions that authorize administrative³², civil, or criminal penalties.³³ Most agencies have a code enforcement officer. The building official and fire inspector also enforce the code to the extent that related health and safety issues are involved.

Enforcement will vary. A city ordinance may classify violations of the zoning code as infractions and authorize enforcement officials to issue citations similar to traffic tickets. Typically, a warning is the first step. If the condition persists, the ordinance may provide that a separate infraction can be charged for each day a violation continues.³⁴ Infractions may be punished by fines of up to \$100 for a first violation, up to \$200 for a second violation, and up to \$500 for each additional violation of the same ordinance within a year.³⁵

A local agency may also ask a court to issue an order requiring a property owner to correct violations of a zoning ordinance.³⁶ Enforcement costs may be recovered by a judgment lien when authorized by local ordinance.³⁷

In addition, there may be special enforcement mechanisms. For example, a business that sells alcohol is subject to a permit issued by the state Department of Alcoholic Beverage Control (ABC). If the violation is related to rental housing, a local agency may be able to block the owner from taking various tax deductions and collect fees through the Franchise Tax Board.³⁸ A local agency may also file a notice against a property and “cloud” its title for violations of the local subdivision ordinance.³⁹

conditions associated with mixed-use development “attach” as soon as the proposal is made.

An overlay zone, on the other hand, places additional regulations on existing zones within areas of special concern. Their boundaries are fixed, and usually encompass all or part of multiple zones. They are often used in floodplains, near fault lines, around airports, and in other areas where additional regulations are necessary to ensure public safety. Overlay zones are also commonly applied to downtowns and historic districts to ensure a certain aesthetic character.

Planned Unit Developments

Planned unit developments (“PUDs” or “planned communities”) are both a type of development and a zoning classification. As a development, they normally consist of individually owned lots with common areas for open space, recreation and street improvements.

They often set aside many conventional zoning standards to permit a more imaginative use of undeveloped property, such as clustering of residential uses and compatible commercial and industrial uses. The plan of development for a PUD is usually so specific that it meets or exceeds all of the typical zoning requirements. Any substantial alteration in the physical characteristics and configuration of the development usually requires that rezoning procedures be followed.⁴⁰

SUBDIVISIONS

The Subdivision Map Act governs how local agencies oversee the subdivision of land. A subdivision is any division of contiguous land for sale, lease, or financing. Usually, any land transaction that creates a new right to exclusive occupancy is a subdivision. Each city, charter city, and county must adopt an ordinance that

³² Cal. Gov’t Code § 53069.4.

³³ Cal. Gov’t Code § 36900(a).

³⁴ See *People v. Ratko Djekich*, 229 Cal. App. 3d 1213 (1991).

³⁵ Cal. Gov’t Code § 36900(b).

³⁶ *City of Stockton v. Frisbie & Latta*, 93 Cal. App. 277 (1928).

³⁷ Cal. Gov’t Code § 38773.1.

³⁸ Cal. Rev. & Tax. Code §§ 17274, 24436.5.

³⁹ Cal. Gov’t Code § 66499.36.

⁴⁰ *Millbrae Ass’n. for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222 (1968).



Zoning vs. Building Codes

It is easy to confuse building codes with zoning codes, but they are not the same thing. Building codes are established at the state level and are incorporated into local codes to set structural safety requirements. They regulate details of construction, including use of materials; and electrical, plumbing, and heating specifications. Zoning ordinances, on the other hand, regulate the compatibility of neighboring land uses in terms of use, intensity, location, height and/or mass, and a number of other factors.⁴¹ Unlike the flexibility cities and counties enjoy in adopting zoning requirements, local discretion with respect to building codes is limited.

designates a local process for subdivision approval.⁴² In this way the Map Act encourages orderly development and infrastructure. The process also protects against fraud by assuring that all subdivisions are recorded with the county recorder.⁴³ Local ordinances can be more restrictive than the Map Act so long as they do not contradict or override its provisions.

The Map Act contains two procedures to process subdivision applications based on project size. “Major subdivisions”—those with five or more parcels—require more formal procedures that involve filing both a *tentative map* and a *final map* for approval. On the other hand, “minor subdivisions”—those that involve four or fewer parcels—require only a single *parcel map* and the oversight is more abbreviated (though the local ordinance can specify that tentative maps be filed for minor subdivisions as well). The reasoning behind this distinction is that larger subdivisions will raise more complex issues, such as traffic and infrastructure needs, than a minor subdivision.

Tentative Map Applications

Tentative map applications typically include a map of the proposed design of the lots, public streets, sidewalks, parks, utilities, and other improvements. Upon receipt, staff checks the application to see that it is complete and conforms to the general plan and the zoning code. Once the application is deemed complete, it is submitted to the “advisory agency,” which is usually the planning commission. The local subdivision ordinance designates whether the advisory agency can actually approve or deny tentative maps, or merely make recommendations to the governing body. If no advisory agency is designated, then the tentative map is submitted directly to the governing body.⁴⁴

After a public hearing, the local agency may approve, conditionally approve, or deny the map after making specific findings. The advisory agency may impose additional conditions when approving a tentative map. The Map Act includes a number of provisions that govern specific conditions, such as bike paths, transit facilities, school fees, and parkland, to name a few.⁴⁵ The local agency may incorporate other conditions that are consistent with the general plan and the zoning code.⁴⁶

After the tentative map is approved, the applicant has two years in which to meet the conditions. Local ordinances may extend this period by an additional year and the applicant can apply for a five-year extension.⁴⁷ The applicant will then prepare a final map that incorporates the imposed conditions. All conditions must either be performed or guaranteed—by agreement, bond, letter of credit, or otherwise—before the final map can be approved. The final map must be filed before the tentative map expires. If not, then the process begins all over again. An engineer usually reviews of the final map. Approval of the final map is a ministerial act—meaning there is no discretion to reject the final map if all the conditions are met.⁴⁸ The approved final map is then recorded with the county and the applicant can proceed with the development.

⁴¹ *Taschner v. City Council of the City of Laguna Beach*, 31 Cal. App. 3d 48 (1973).

⁴² Cal. Gov't Code § 66411.

⁴³ Cal. Gov't Code § 66464.

⁴⁴ Cal. Gov't Code §§ 66452.1, 66452.2.

⁴⁵ See generally, Cal. Gov't Code §§ 66475–66498.

⁴⁶ Cal. Gov't Code §§ 66411, 66418–66419.

⁴⁷ See Cal. Gov't Code § 66452.6.

⁴⁸ Cal. Gov't Code § 66458.

CHECKLIST FOR APPROVING SUBDIVISION MAPS

Commissioners should be able to answer “yes” to the following questions when approving a subdivision map.

- Is the proposed map and design consistent with the general plan and any applicable specific plans?
- Is the site physically suited to the proposed type and density of development?
- Is the design of the subdivision or the proposed improvements unlikely to cause serious public health problems?
- Is the design of the subdivision or the proposed improvements unlikely to cause either substantial environmental damage or substantial and avoidable injury to fish or wildlife or their habitat?
- Have adequate conditions been applied to the approval (or has the project been redesigned) to mitigate the environmental effects identified in the environmental analysis?
- Are all dedications and impact fees reasonably related to the impacts likely to result from the subdivision?
- If a mitigated negative declaration or environmental impact report has been adopted or certified for the project, have the identified mitigation measures been made conditions of approval?

Source: *The Planning Commissioner’s Book* (Governor’s Office of Planning and Research, 1998).

Vesting Tentative Map Applications

Some tentative maps are filed as “vesting tentative maps.”⁴⁹ If approved, a vesting tentative map confers a vested right to proceed with the development in accordance with the local ordinances, policies, and standards that were in effect when the local agency deemed the map application complete. Vesting tentative maps offer developers a degree of assurance not otherwise available except through a development agreement. The applicant may file a vesting tentative map for a parcel map even if the local subdivision ordinance does not require tentative parcel maps. Vesting tentative maps must be processed just like a standard tentative map. However, local agencies may impose additional application requirements and almost all do, which is why developers do not always use vesting tentative maps.

Parcel Map Applications

Procedures and approvals for parcel maps are left to local ordinance.⁵⁰ The primary difference between parcel maps and tentative maps is the number of conditions that can be applied. With a parcel map, a city or county can only impose requirements for the dedication of rights-of-way, easements, and the construction of

reasonable off-site and on-site improvements for the parcels that are being created. Additionally, absent urgent health and safety reasons, local agencies cannot require the installation of improvements until the development permit is issued, although the subdivider may agree to early installation voluntarily.



Illegal Quartering

On occasion, a subdivider may try to avoid tentative map and final map requirements by subdividing one parcel four times using a parcel map and then repeating the process over and over again. Known as “quartering” or “4 X 4,” this process is illegal and can result in severe penalties.⁵¹ When a subdivider seeks to divide property that is contiguous to property he or she already subdivided, the earlier subdivisions are counted to determine the total number of parcels and thus what sort of map is required.⁵²

⁴⁹ Cal. Gov’t Code § 66498.1.

⁵⁰ Cal. Gov’t Code § 66463.

⁵¹ Cal. Gov’t Code § 66499.31; Cal. Bus. & Prof. Code §§ 11000 and following.

⁵² *Bright v. Board of Supervisors*, 66 Cal. App. 3d 191 (1977).

DEVELOPMENT AGREEMENTS

In California, developers generally do not have a vested right to develop until they obtain a building permit and have performed substantial work in reliance on that permit.⁵³ Until then, there is no guarantee that the local policies and regulations affecting the development will remain the same. A project that is in the approval process or not yet built may be subject to new regulations and fees as they are adopted.

To offset this risk, developers often propose that their development be approved through a development agreement, which is a detailed contract between a developer and a local agency that spells out the rules of development for a particular project in very specific terms. For developers, the advantage is that they can “lock in” their entitlements and the local regulations that are in effect at the time the agreement is approved, allowing them to obtain financing and get the project moving. For local agencies, the advantage is that the developer will usually agree to additional conditions—such as extra parkland, school facilities, and other public improvements—that go beyond what the agency could require through the normal development process.

A development agreement must describe the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for the reservation or dedication of land for public purposes. It also must specify the duration of the agreement, commonly as long as 15 to 20 years. However, most agreements go well beyond these minimums and will include construction and phasing elements, terms for financing public facilities, a description of the scope of subsequent discretionary approvals, and a host of other items. A development agreement affords a tremendous amount of flexibility, but also requires a great deal of planning and forethought.

The development agreement constitutes a negotiated—and thus voluntary—deal. Once approved, the agreement works like any contract. The developer therefore cannot come back later and challenge the conditions as being excessive. On the other hand, the local agency is also bound to the terms of the deal. If the

agency wants to make changes, the developer will likely seek certain concessions if he or she agrees to modify the agreement at all.

The timing of a development agreement in the development process can also vary. Some come late in the process, some come early. In many cases, the agreement is combined with a tentative map. For large projects, a development agreement may be the very first step to lock in the laws that will apply during a lengthy approval process. These “front-end” development agreements are often the most detailed because they will have to include provisions for every stage in the approval and development process.

DESIGN REVIEW

Design review is often used to enhance aesthetic character. A community may prohibit uses detrimental to the general welfare, as well as developments that are



More on Development Agreements

- Development agreements only “lock in” local regulations, not federal and state laws.
- Upon request, local agencies must establish procedures for processing development agreements.
- Agreements should be reviewed annually to evaluate the developer’s good faith compliance.
- Agreements may be terminated or modified if the developer does not comply with the terms.
- Agreements must be consistent with the general plan and are subject to environmental review. (Development agreements are projects under the California Environmental Quality Act.)
- A development agreement can be amended or canceled by mutual consent of the parties to the agreement, but the amendment itself is subject to the same approval procedures as the original agreement.

⁵³ *Consaul v. City of San Diego*, 6 Cal. App. 4th 1781 (1992); *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785 (1976).

“monotonous” in design and external appearance.⁵⁴ As one court put it: “Mental health is certainly included in the public health.”⁵⁵ Whereas the zoning code usually focuses on the type and intensity of a use, design review focuses on aesthetic and architectural standards. Design review procedures usually rely on deeply held values and beliefs about what is beautiful and what is ordinary. The use of an appointed review board is standard. In larger communities, this is usually a separate “design review board” or an “architectural review committee.” In some communities, the planning commission functions as the design review board.

Local design review ordinances are usually folded into the zoning process in some way. The amount of information included in a design review application will vary. An application for a small addition, for example, will probably not have as much information as an application for a large subdivision. Here is a list of some of the information likely to be presented as part of a design review application:

- Color boards showing the site plan, including the shape and size of the building or buildings, their relationship to the site, landscaping, and parking.
- Conceptual color elevations of each wall of the building(s), especially those seen by the public or from off-site.
- Models sufficient to show building mass, form, relationship to the landscape, and effects caused by grading. These can range from simple hand-built models to sophisticated computer-generated analyses.
- Design details, such as plazas, pavement design, window treatments (sills, awnings, etc.), entry gateways, building top (molding) and base treatment, screening details, pedestrian walkways, and lighting.
- Colored landscape plans sufficient to illustrate how landscaping will be used to soften the building’s impact on its environment.
- Controls to ensure that signage will fit in with the rest of the development.
- Summary data, including facts on adjacent properties and sight lines.

Design review has some drawbacks. First, it makes it more difficult from the landowner’s or developer’s perspective to determine what will be an acceptable level of development. Accordingly, the more specific the design standards, the greater the certainty from the developer’s perspective. Second, design review can breed monotony (or even mediocrity) to the extent that all buildings must conform to a narrow set of guidelines. The trick is to develop design guidelines that leave enough room for creativity. Finally, in some instances, the design review process may be abused by those who are looking for an opportunity to stop a development.

DEDICATIONS AND FEES

Dedications and fees are often imposed as conditions on development approvals to offset new demands on public resources. New development usually requires the extension of infrastructure, such as roads, parks, pathways, libraries, and schools. At one time, local agencies could fund infrastructure with property tax revenues, but such revenue has become more limited since the adoption of Proposition 13 in 1978. State legislation and voter-approved revenue limitations have further diminished local finances.⁵⁶ As a result, cities and counties rely heavily on dedications and fees to ensure that new development “pays its way.” (See Section 10, page 113).

Dedications and fees are sometimes called “exactions.” A dedication occurs when ownership of an interest in real property is transferred to a local agency. Dedications are most frequently used to secure land for parks, roads, bike paths, and schools. Development fees are often imposed in lieu of dedications when the type of infrastructure does not lend itself easily to case-by-case dedications of property, such as with sewers, water systems, affordable housing, libraries, and open space.

The basic rule when imposing dedications and fees is that they must be reasonably related in purpose and roughly proportional in amount to the impacts caused by the development.⁵⁷ Thus, a small development that will only generate light traffic cannot be required to cover the cost of an entire freeway interchange. The basis for a dedication or fee is often established in the general plan, but can also be established by a capital

⁵⁴ *Novi v. City of Pacifica*, 169 Cal. App. 3d 678 (1985).

⁵⁵ See *Crown Motors v. City of Redding*, 232 Cal. App. 3d 173, 178 (1991).

⁵⁶ J. Fred Silva & Elisa Barbour, *The State-Local Fiscal Relationship in California: A Changing Balance of Power* (1999) (available online at www.ppic.org).

⁵⁷ *Ehrlich v. City of Culver City*, 15 Cal. App. 4th 1737 (1993); Cal. Gov’t Code §§ 66000-66025.

REPORT TO THE PLANNING COMMISSION

February 17, 2010


Prepared By:
Rob Fitzroy, Associate Planner


Approved By:
Regan M. Candelario

SUBJECT: Potential Locations for a Community Skate Park

EXECUTIVE SUMMARY:

The Planning Commission previously requested that staff review potential locations for a community skate park. Staff identified zone districts/land use designations that would permit skate parks or similar recreational facilities within the City including within the DJ Farms Specific Plan Area. Planning staff will present a brief review of the potential locations for a community skate park.

RECOMMENDATION:

- 1) Receive a presentation from staff
- 2) Allow for Commission discussion and/or questions and answers on the topic

DISCUSSION:

Planning staff reviewed all zone districts within the City and the DJ Farms Specific Plan to determine which zones districts would permit a community skate park. Per the City's Zoning Code, the only zone district that would permit a community skate park would be the "Open Space" zone district. As stated in Section 18.48.020, the Open Space zone district permits public parks and playgrounds. A community skate park would be considered a recreational facility that supports recreational activities, which is the intent of the permitted use. A skate park could also be located within Jack O'Connell Park in the River View Specific Plan Area. As shown in Attachment 1, there are several locations within the City that are zoned Open Space, and could potentially support a skate park. Areas already containing recreational facilities, such as Jack O'Connell Park, Leroy Park, Tognazzini Park, and Central Park may be the best candidates; however, there are other options as well. The DJ Farms property provides several areas that could be developed as future parks. This property is subject to a Specific Plan, with a revised Specific Plan under consideration by the City Council.

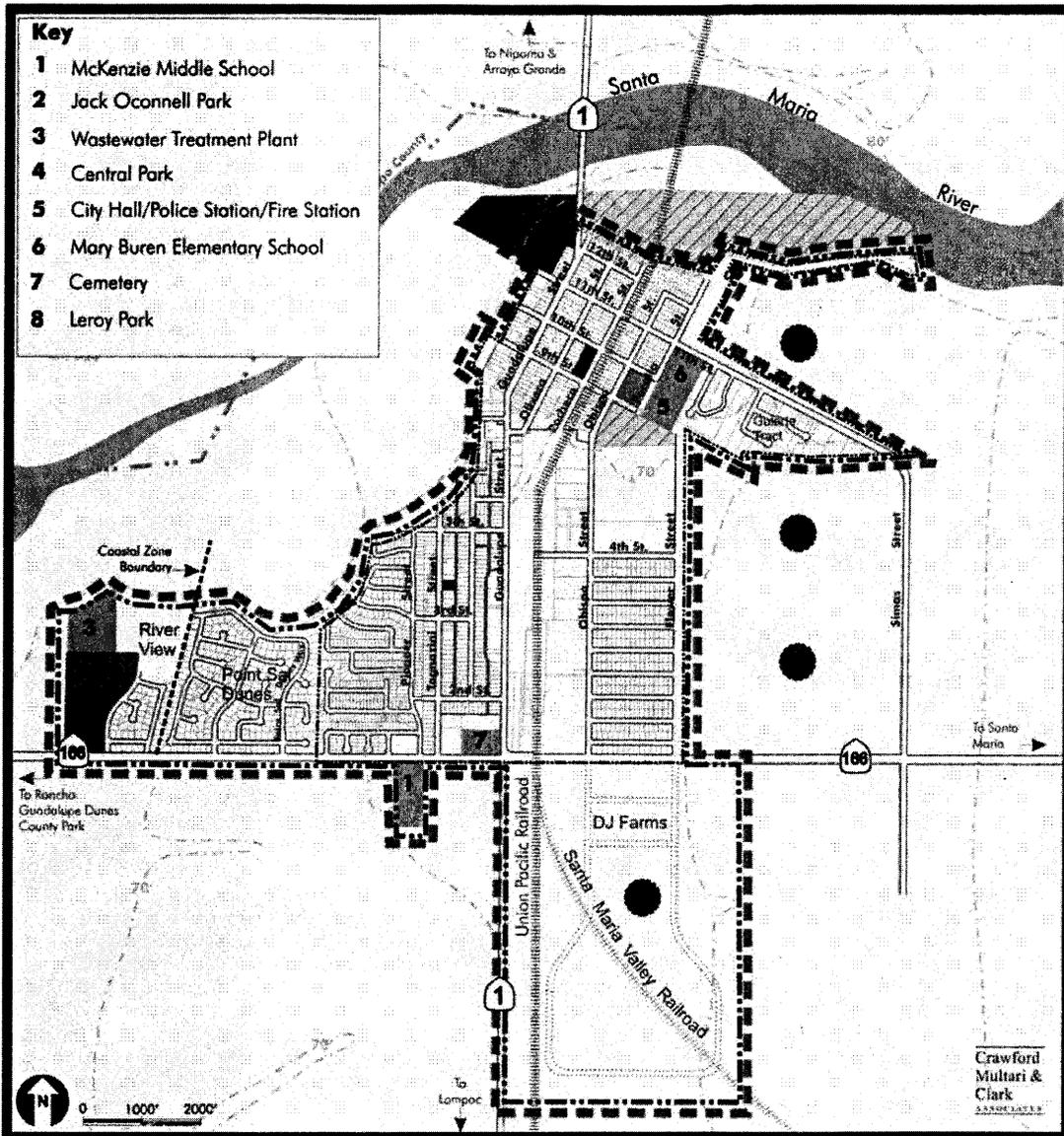
ATTACHMENT:

- 1) Potential Skate-Park Locations on City of Guadalupe Zoning Map
- 2) Other Potential Locations: DJ Farms Specific Plan Land Use Map

AGENDA ITEM: 10

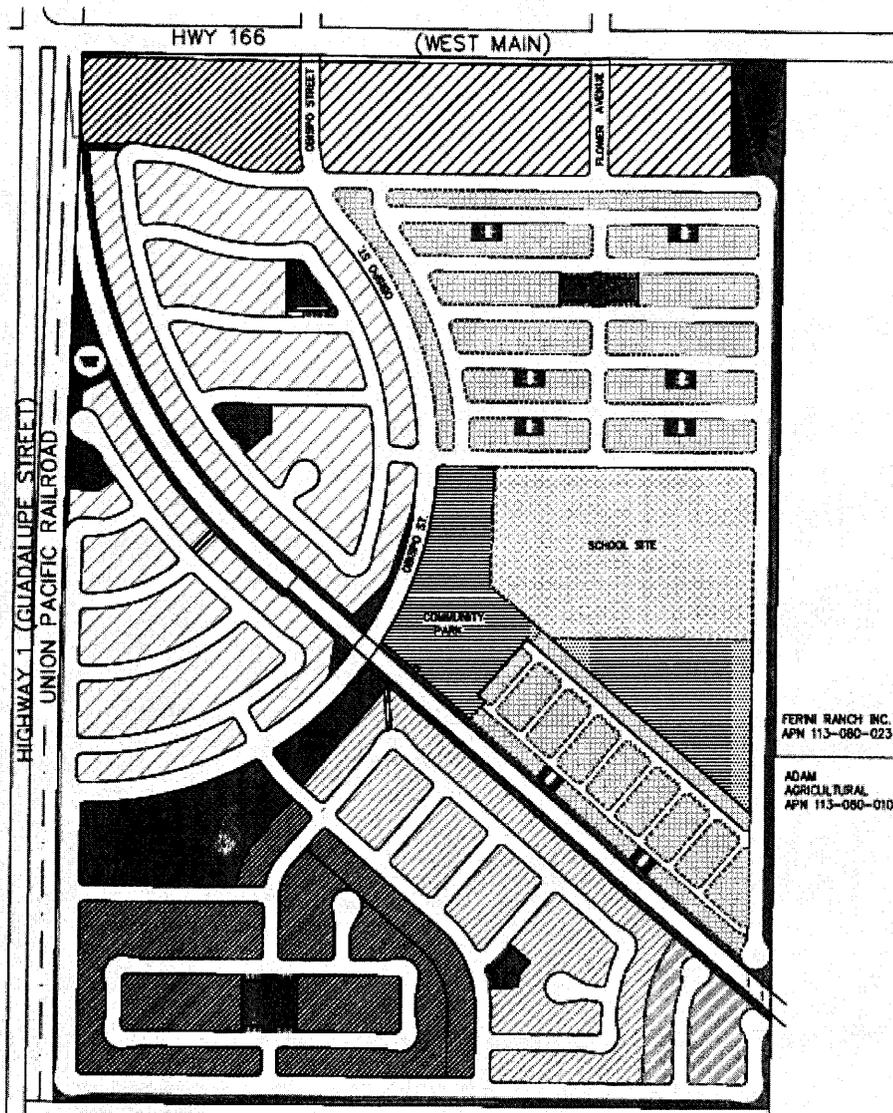
ATTACHMENT 1

POTENTIAL LOCATIONS FOR A COMMUNITY SKATE PARK



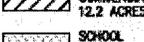
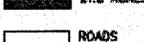
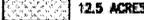
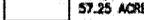
ATTACHMENT 2

OTHER POTENTIAL LOCATIONS: DJ FARMS LAND USE MAP



FERNI RANCH INC.
APN 113-080-023

ADAM
AGRICULTURAL
APN 113-080-010

 VLD-6 VERY LOW DENSITY RESIDENTIAL 2.7 ACRES	 MDR-8 MEDIUM DENSITY RESIDENTIAL 45.4 ACRES	 SERVICE COMMERCIAL 6.1 ACRES	 COMMUNITY FACILITIES 10.85 ACRES
 LDR-7 LOW DENSITY RESIDENTIAL 18.2 ACRES	 RSL-14 HIGH DENSITY RESIDENTIAL 22.5 ACRES	 NEIGHBORHOOD COMMERCIAL 12.2 ACRES	 OPEN SPACE 21.8 ACRES
	 SCHOOL 12.5 ACRES	 ROADS 57.25 ACRES	


1" = 500'

BETHEL
engineering
UPCO URBAN
PLANNING
CONCEPTS, INC.
GENERAL SERVICES • LAND PLANNING • ENVIRONMENTAL ANALYSIS

D. J. FARMS SPECIFIC PLAN

REVISED OCTOBER 15, 2009

LAND USE

FIGURE III-3