



California Fair Political Practices Commission

July 18, 1989

Natalie E. West
Myers, Nave, Riback & West
777 Davis Street, Suite 300
San Leandro, CA 94577

Re: Your Request for Advice
Our File No. A-89-243

Dear Ms. West

This is in response to your request for advice on behalf of Mayor Christine Knight and Councilmembers Bill Cope, Ernest Gray, Hugh Turner and Harry Moore of the City of Novato (hereafter "city") regarding their responsibilities under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May Councilmembers Knight and Cope participate in a decision to approve the precise plan for Hillside Park Unit 4, a 68-unit, single-family development, which is part of the Anderson-Rowe property?

2. May Councilmembers Knight, Cope, Gray, Turner and Moore participate in the policy decision to review master plans of projects not fully subdivided and over three years old?

CONCLUSIONS

1. Councilmembers Cope and Knight may participate in the decision to approve the precise plan for Hillside Park unless the decision will increase or decrease the value of their real property interests by \$10,000 or more.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

2. Councilmembers Knight, Gray and Moore may participate in the policy decision to review master plans of projects not fully subdivided and over three years old. Their economic interests will be affected in substantially the same manner as the general public.

Councilmember Turner may not participate in the policy decision unless the decision will have no financial effect on his real property. Councilmember Cope may participate in the policy decision unless the decision will be likely to increase or decrease the value of his real property by \$10,000 or more.

FACTS

The Anderson Rowe Ranch property is located in the City of Novato. A precise plan for Hillside Park Unit 4 (hereafter "Hillside Park"), a 68-unit, single-family development which is part of the Anderson-Rowe property, has been submitted to the city council. A precise plan is a document setting forth specific development criteria for all or part of a land area for which an approved master plan is in effect.

Mayor Christine Knight owns a home that is located about 1600 feet from the boundary of Hillside Park. Councilmember Cope owns a home that is about 400 feet from the boundaries of the overall (Anderson-Rowe) property and about 1500 feet from the boundary of Hillside Park.

There are 10,800 owner-occupied residences in the city. There are 920 owner-occupied residences located within 1600 feet of the boundaries of Hillside Park. There are 1186 owner-occupied residences in the region between 300 feet and 2500 feet from Hillside Park.²

Other councilmembers own homes that are near developments over three years old, for which master plans have been approved but which have not been fully subdivided. Councilmember Gray's home is located 600 feet from the San Marin master plan and 1400 feet from the San Marin Estates master plan. Councilmember Turner's home is located about 500 feet from the Redwood Rowland master plan and 295 feet from the Auto-Mart master plan. Councilmember Moore's home is located more than 2500 feet from all the development properties.

² These numbers were provided by you in a telephone conversation on May 9, 1989.

ANALYSIS

1. Councilmembers Knight and Cope: Approval of the precise plan for Hillside Park Unit 4.

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

Councilmembers Knight and Cope are public officials. (Section 82048.) Therefore they may not make, participate in, or use their official position to influence any governmental decision in which they have a financial interest. (Section 87100.) They have a financial interest in a decision if the decision will have reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on their real property. (Section 87103(b).)

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

It is reasonably foreseeable that the Hillside Park project, if well developed, would result in an increase in property values in that area. Conversely, the possible increase in traffic might result in a decrease in property values in the area. Consequently, it is reasonably foreseeable that the decision concerning approval of the precise plan for Hillside Park will have an economic effect on the properties of the councilmembers.

Materiality

Councilmember Cope owns his home which is located 400 feet from the Anderson-Rowe property and 1500 from the boundaries of Hillside Park. Councilmember Knight owns her home which is located about 1600 feet from Hillside Park. The effect of the decision as to the councilmembers will be deemed material if the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

Regulation 18702.3(a)(3).

Public Generally

Even if the reasonably foreseeable financial effect of a decision is material, disqualification is required only if the effect is distinguishable from the effect on the public generally. (Section 87103.) The effect of a decision is distinguishable from the effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public, or a significant segment of the public. (Regulation 18703, copy enclosed.) The "public" is the population of the City of Novato because that is the jurisdiction of the city council. (See In re Owen (1976) 2 FPPC Ops. 77, 81, and In re Legan (1985) 9 FPPC Ops. 1, copies enclosed.) For the "public generally" exception to apply in this case, the decision to approve the precise plan for Hillside Park should affect the councilmembers in substantially the same manner as it would affect a significant segment of the public. (Regulation 18703.)

Councilmembers Cope and Knight's residences are located within 1600 feet of the boundary of the planned development at Hillside Park. Based on the information you have provided, the segment of the public within 1600 feet of Hillside Park owns 920 of the 10,800 owner-occupied residences in the City of Novato - approximately 8.5%.

The Commission has never adopted a strict arithmetic guideline for determining what constitutes a significant segment of the public. (Calhoun Advice Letter, No. A-88-362, copy enclosed). However, such a small group does not constitute a significant segment of the public and therefore does not meet the

test of the public generally exception. (Regulation 18703.) Accordingly, Councilmembers Cope and Knight may not participate in the decision to approve the precise plan for Hillside Park if the decision will have a material financial effect on their real property interests.

2. Councilmembers Knight, Cope, Gray, Turner and Moore: Policy decision concerning review of master plans that are over three years old.

Councilmembers Knight, Cope, Gray, Turner and Moore may not make, participate in, or use their official position to influence any governmental decision in which they have a financial interest. (Section 87100.) Each of the councilmembers owns his or her own home presumably worth over \$1,000. Accordingly they have a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on their real property. (Section 87103(b).)

Foreseeability

As discussed above, to be foreseeable, the effects of a decision must be more than a mere possibility, however, certainty is not required. (Downey Cares v. Downey Development Com., supra.) It is reasonably foreseeable that the development projects, whose master plans are subject to review, will have an economic effect on properties located in the vicinity of the projects.

If the councilmembers adopt the policy to review master plans of projects not fully subdivided and over three years old, it would subject the master plans of such projects to review and approval. The review and approval of such a master plan of a project would have a reasonably foreseeable economic effect on the properties in the vicinity of the project. The effect may be positive as a result of the development, or may be negative as a result of increased traffic and other similar concerns. But it is reasonably foreseeable that the decisions reviewing and approving such a project will have some economic effect on the properties located in the vicinity of the project.

The decision to adopt a policy to review master plans is too closely related to the decisions reviewing and approving such master plans to be considered independent of such decisions. Therefore it is reasonably foreseeable that the decision to adopt a policy to review master plans of projects not fully subdivided within three years would have an economic effect on properties located in the vicinity of these projects. Accordingly, it is reasonably foreseeable that the decision to adopt a policy to

review master plans of projects not fully subdivided within three years would have an economic effect on the councilmembers real property interests.

Materiality

Councilmember Turner's residence is located 295 feet from the Auto-Mart master plan. Regulation 18702.3 (copy enclosed) provides that the effect of a decision as to real property in which a public official has an interest is material if:

The real property in which the official has an interest, or any part of that real property, is located within a 300 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision, unless the decision will have no financial effect upon the official's real property interest.

Regulation 18702.3(a)(1).

Unless there will be no financial effect on Councilmember Turner's property, the effect of the decision as to his property is material since the property is located within a 300-foot radius of the boundaries of a development project not fully subdivided with a master plan more than three years old.

Councilmembers Cope, Gray, and Knight own property that is between 300 and 2500 feet from development projects not fully subdivided with master plans more than three years old. The effect of the decision on their properties will be deemed material if the decision will have a reasonably foreseeable financial effect of:

(A) Ten thousand dollars (\$10,000) or more on the fair market value of the real property in which the official has an interest; or

(B) Will affect the rental value of the property by \$1,000 or more per 12 month period.

Regulation 18702.3(a)(3).

Councilmember Moore owns real property that is more than 2,500 feet from any development project not fully subdivided with a master plan more than three years old. The effect of the decision on his property will not be deemed material unless:

(1) There are specific circumstances regarding the decision, its effect, and the nature

of the real property in which the official has an interest, which make it reasonably foreseeable that the fair market value or the rental value of the real property in which the official has an interest will be affected by the amounts set forth in subdivisions (a)(3)(A) or (a)(3)(B); and

(2) Either of the following apply:

(A) The effect will not be substantially the same as the effect upon at least 25 percent of all the properties which are within a 2,500 foot radius of the boundaries of the real property in which the official has an interest; or

(B) There are not at least 10 properties under separate ownership within a 2,500 foot radius of the property in which the official has an interest.

Regulation 18702.3(b).

Public Generally

As discussed earlier even if the reasonably foreseeable effect of a decision is material, disqualification is required only if the effect is distinguishable from the effect on the public generally. (Section 87103.) The effect of a decision is distinguishable from the effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect a significant of the public. (Regulation 18703.)

Councilmembers Turner and Cope's residences are located 295 feet and 400 feet respectively from a development project not fully subdivided with a master plan more than three years old. The segment of the public with owner occupied residences within 400 feet of such development projects does not appear to be large. Therefore it does not constitute a significant segment of the public. (Regulation 18703.) Accordingly, the public generally exception would not apply to Councilmembers Turner and Cope.

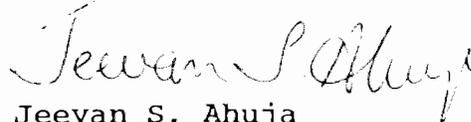
Councilmembers Gray and Knight reside 600 feet and 1600 feet from development projects not fully subdivided with a master plan more than three years old. Councilmember Moore resides more than 2500 feet from such development projects. Their residences appear to be located such that the policy decision (to review the master plans of projects not fully subdivided and more than three years old) would affect a sufficiently large group of the population of

the City of Novato in substantially the same manner as the councilmembers. Accordingly, Councilmembers Knight, Gray and Moore may participate in the policy decision to review master plans of projects not fully subdivided and over three years old.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

KED:JSA:aa

Enclosures

MEYERS, NAVE, RIBACK & WEST

MICHAEL R. NAVE
STEVEN R. MEYERS
NATALIE E. WEST
ELIZABETH H. SILVER
MICHAEL S. RIBACK
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OF COUNSEL
THOMAS F. BERTRAND

REPLY TO:
San Leandro

April 21, 1989

Diane Griffiths
General Counsel
California Fair Political
Practices Commission
428 "J" Street, Suite 500
P.O. Box 807
Sacramento, California 95804-0807

Re: Request for Advice: Government Code Section 83114

Dear Ms. Griffiths:

This letter requests advice on behalf of two members of the Novato City Council, who own and reside in homes located near a pending project in the City of Novato.

Both Mayor Christine Knight and Councilmember Bill Cope own homes that are located within a radius of 300 feet to 2,500 feet from the Anderson-Rowe Ranch (Pell) property. Councilmember Cope owns a home that is approximately 400 feet from the boundaries of the overall property and approximately 1,500 from the boundaries of the unit that is currently under review. Mayor Knight owns a home that is located approximately 1,600 from the project (See maps 1 and 2).

Summary of Novato's Zoning Ordinance.

Under Novato's Zoning Ordinance, a developer who proposes a project in a "planned district" zone must obtain master plan approval and precise plan approval, as well as tentative map and other required permits. A master plan is a general development plan for a specific area of land that is treated as a rezoning of the subject property and processed as an amendment to the zoning map. A master plan must include all contiguous property under the same zone and ownership, even if all portions of the property are not planned for development at the same time. Once adopted, the plan establishes the types and basic intensity of the uses to which the property can be put and establishes basic guidelines for the physical development of the specific property. NMC Section

19-11.046. A master plan does not expire. As a result, there are a number of undeveloped properties in Novato for which master plans have been adopted some years ago but the properties have not developed.

A precise plan is a document setting forth specific development criteria for all or a part of a land area for which an approved master plan is in effect. NMC Section 19-11.046.

Development of Anderson-Rowe Ranch (Pell)

There are two issues pending before the City Council, involving this property:

1. Precise development plan for Hillside Park Unit 4, a 68 unit single family development, which is part of the Anderson-Rowe property. ("Unit 4")

This proposal would develop the portion of the property, denoted "under review" on Map 1. The property is approximately 1,500 from the Cope residence and 1,600 from the Knight residence.

Because of the topography of this area, Unit 4 is not visible from either Councilmember's home. There is a ridge between Mayor Knight's home and the project, and other hills between the project and Councilmember Cope's residence. The development will not affect the quality, nature or type of services to the Councilmembers' properties other than the general increase in traffic on Ignacio Boulevard that will affect hundreds of other residents who use that street. Because of the lack of proximity, visibility and environmental changes that could affect the Councilmembers homes, city staff sees no apparent reason why this development would have any significant impact on their home prices. See Attachment 4.¹

Based on these facts, can Councilmembers Knight and Cope participate in decisions concerning the precise plan for Hillside Park Unit 4?

¹ The reference on the agenda summary to a masterplan amendment refers only to a proposal that a private recreational facility within Unit 4 be replaced by a public park and has no application to the rest of the property.

Margarito Altamirano
April 21, 1989
Page: 3

2. Master Plan Review.

When this precise plan came before the Planning Commission for review, the Commission recommended that the Anderson-Rowe Master Plan be reviewed to determine whether it is still consistent the City's current general plan. When that recommendation was transmitted to the Council and placed on the Council Agenda for action, the staff recognized that this is a problem in other areas of the City, and recommended that the Council adopt a general policy guideline requiring master plan review for projects that are not built out within three years. A map showing the locations of other similar properties is enclosed (Map 3), and the issue is more fully discussed in Attachment 5.

Based on these facts, can Councilmembers Knight and Cope participate in the policy decision concerning review of master plans that are over three years old? Whether or not they could participate in any future review of the Anderson-Rowe master plan is a different issue which is not before the Council at this time.

The City Council has continued its public hearing on both these matters until May 16, 1989, in order to obtain your advice.

Thank you for your prompt response to this matter.

Please feel free to contact me if you have any questions regarding the above.

Very truly yours,

MEYERS, NAVE, RIBACK & WEST



Natalie E. West

NEW/dks

Enclosures

cc: Mayor Christine Knight
Councilmember Bill Cope
John Quint, Pacific Consolidated Property

ANDERSON-ROWE
MASTER PLAN BOUNDARY

50. NOVATO BLVD.

FIRE STATION
DEVELOPED

CITY

OPEN

SPACE

FUTURE
DEVELOPMENT

FUTURE
DEV.

DEVELOPED

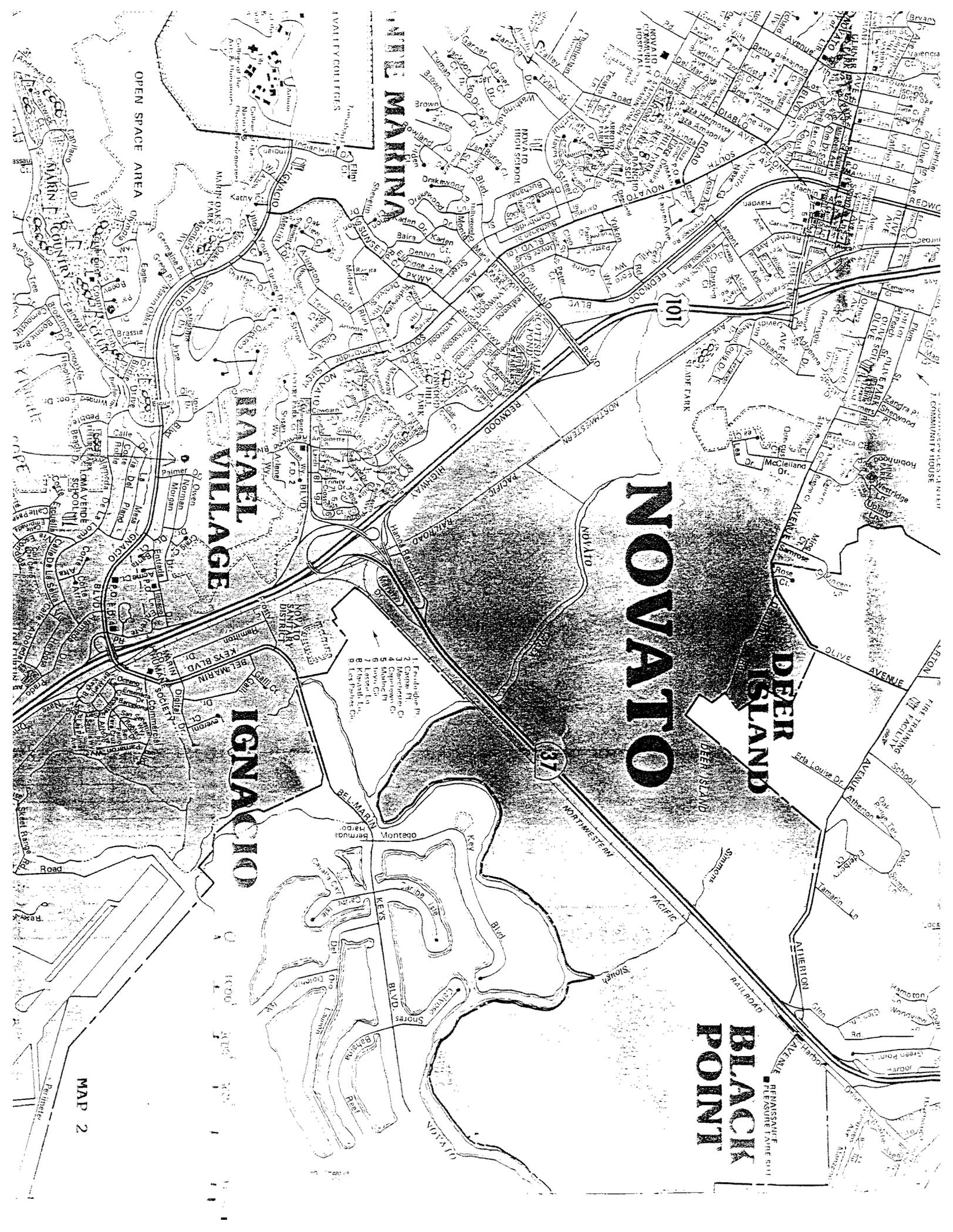
UNDER
(UNIT 4)
REVIEW

400'

COPE
RESIDENCE



1" = 600'



THE MARINA

RAFAEL VILLAGE

NOVATO

DEER ISLAND

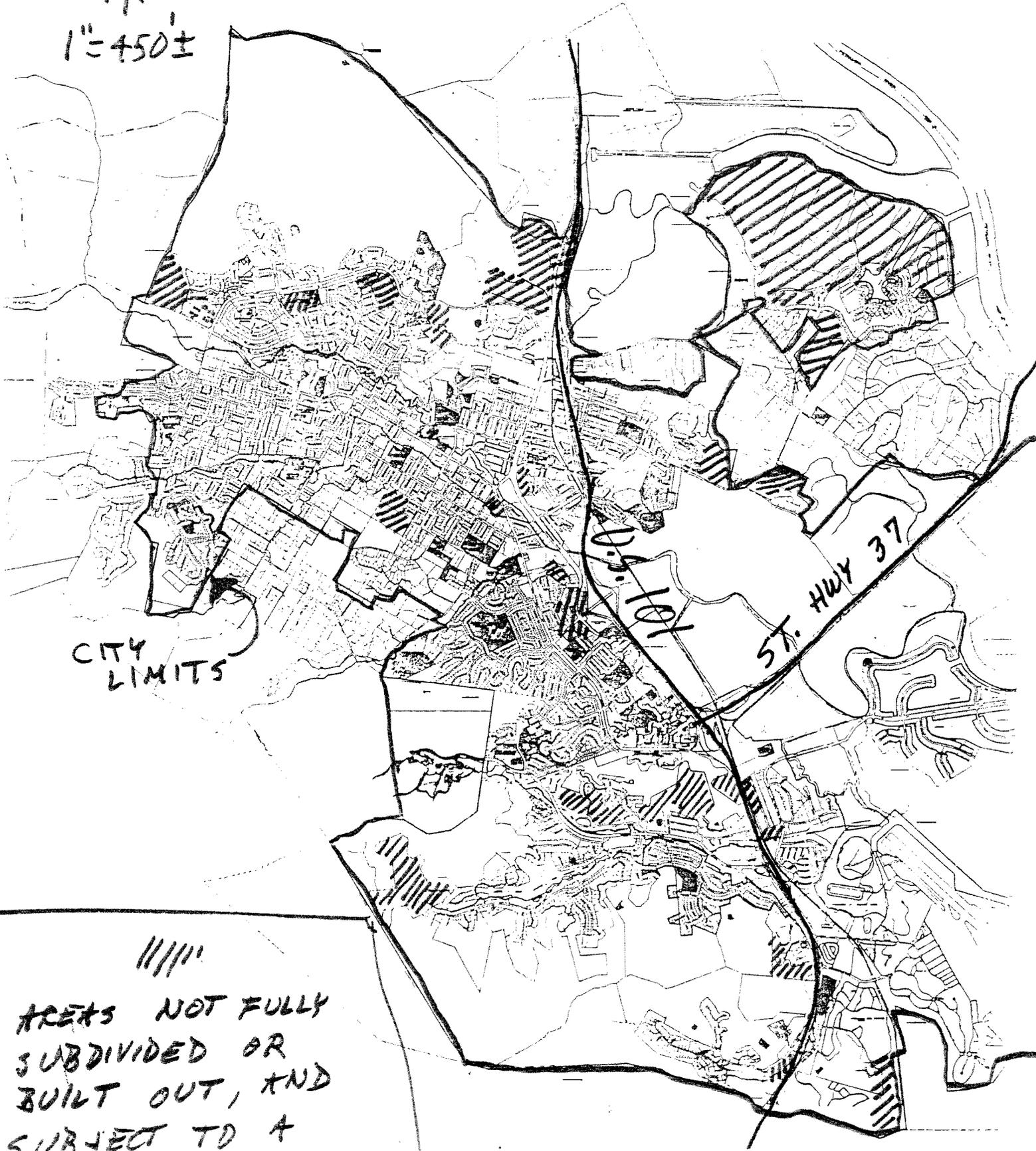
IGNACIO

BLACK POINT

1. Foundation Pt.
2. Center Pt.
3. Interchange Ct.
4. Spring Pt.
5. Lower Ct.
6. Upper Ct.
7. Lessen Ln.
8. Kharath Ln.
9. Fox Pasture Ct.



1" = 450' ±



CITY LIMITS

ST. HWY 37

D. H. 101



AREAS NOT FULLY
SUBDIVIDED OR
BUILT OUT, AND
SUBJECT TO A
MASTER PLAN OVER
THREE YEARS OLD

E-1 HILLSIDE PARK UNIT 4 (AL)
MP 89-003 & PD 88-016
APN 160-150-47 & 48; HIGHLAND DRIVE

TO CONSIDER AN AMENDMENT TO THE ANDERSON-ROWE RANCH MASTER PLAN TO MODIFY THE PRIVATE RECREATIONAL REQUIREMENTS AND TO CONSIDER A PRECISE DEVELOPMENT PLAN FOR A 40-ACRE SITE WITHIN THE ANDERSON-ROWE RANCH TO CREATE 68 SINGLE-FAMILY SITES LOCATED ON HIGHLAND DRIVE NORTH OF RANSOME DRIVE (OWNER: FOUR STAR INVESTMENT & MANAGEMENT COMPANY; APPLICANT: PACIFIC CONSOLIDATED PROPERTIES, INC.; ENGINEER: STUBER-STROEH & ASSOCIATES; LANDSCAPE ARCHITECT: BRUCE SHAFFER) (This item may be continued)

Discussion of Issue:

On March 13, 1989, the Novato Planning Commission adopted resolutions recommending approval of both the master plan amendment and the precise development plan. The precise development plan consideration by the City Council is a condition of the Anderson-Rowe Ranch Master Plan. Please refer to the Planning Commission staff report and minutes for a full discussion of the issues.

Listing of Attachments:

1. Council ordinance approving the Anderson-Rowe Ranch Master Plan Amendment
2. Council resolution approving the Hillside Park Unit 4 Precise Development Plan
3. Planning Commission minutes, 3/13/89
4. Planning Commission project materials which include the following:
 - A. Planning Commission staff report, 3/13/89
 - B. Planning Commission resolution recommending approval of the Anderson-Rowe Ranch Master Plan Amendment, 3/13/89
 - C. Planning Commission resolution recommending approval of the Hillside Park Unit 4 Precise Development Plan, 3/13/89
 - D. Anderson-Rowe Ranch Master Plan Ordinance No. 762 and excerpt from the master plan development standards for Cluster E
 - E. Letter from applicants requesting master plan amendment, 2/9/89
 - F. Precise development plan text, 2/10/89
 - G. Impact overview and project plan from the Anderson-Rowe Ranch EIR
 - H. Design Review minutes of 2/1/89 and 2/15/89
 - I. Responses from agencies
 - J. Plan for public park site, 2/10/89
 - K. Anderson-Rowe Ranch Master Plan Map
 - L. Hillside Park Unit 4 Precise Development Plan Map, 2/10/89, and associated drawings

Recommended Action:

NOVATO CITY COUNCIL
AGENDA SUMMARY
DATE 4/4/89
FILE NO. _____

J/1672
03/31/89

The Planning Commission recommends that the City Council:

1. Introduce and waive further reading of the ordinance approving the master plan amendment.
2. Adopt the resolution approving the precise development plan.

CITY ATTORNEY: (20 minutes/8:25-8:45)

- I-1 CONSIDER PLANNING COMMISSION RECOMMENDATIONS THAT A REVIEW OF THE ANDERSON-ROWE RANCH MASTER PLAN BE REQUIRED (This item may be continued)

Discussion of Issue:

On March 13, 1989, the Planning Commission adopted resolutions recommending approval of an amendment to the Anderson-Rowe Master Plan and a precise development plan (Hillside Park Unit 4) for a 68-unit single-family development. In addition to those resolutions the Commission recommended that the Council require a review of the Anderson-Rowe Master Plan. The Commission was specifically concerned about the BMR provisions and grading aspects of the master plan which was adopted in 1977.

This issue, older approved master plans and their possible inconsistency with the current General Plan, is a Citywide issue that is present in many partially developed areas such as Bahia, San Marin, Loma Verde/Country Club, and the Scottsdale Marsh (Redwood-Rowland Master Plan). Precise plan approvals must be consistent with the current General Plan, even if this is more restrictive than the approved master plan. Since the City does not have the staff resources to revise the older master plans and bring them up to date, sometimes developers receive a shock when such problems are pointed out to them.

Ecumenical Association for Housing will address the Council relative to the impact a master plan review may have on their preliminary plans for a 50-unit low-income senior project proposed for the Anderson-Rowe Ranch (HUD funding).

Listing of Attachments:

1. Planning Commission minutes, 3/13/89

Recommended Action:

Staff recommends that the Council direct staff to inform property owners, developers and other interested persons that all development approvals must be consistent with the current General Plan and, therefore, any application for precise development plan approval under a master plan which is over three years old must be accompanied by an application for master plan review (and possible revision) to ensure General Plan consistency.

C. UNFINISHED BUSINESS:

- D. NON-AGENDA NEW BUSINESS: (10 minutes/8:45-8:55)



California Fair Political Practices Commission

April 27, 1989

Natalie E. West
City Attorney
City of Novato
Meyers, Nave, Riback & West
Gateway Plaza
777 Davis Street, Suite 1300
San Leandro, CA 94577

Re: Letter No. 89-243

Dear Ms. West:

Your letter requesting advice under the Political Reform Act was received on April 24, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh

4-26-89

LAW OFFICES
OF
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April 26, 1989

Diane Griffiths
General Counsel
California Fair Political
Practices Commission
428 "J" Street, Suite 500
P. O. Box 807
Sacramento, CA 95804-0807

RECEIVED
APR 27 1989
CITY OF NOVATO

Re: City of Novato: Request for Advice from Natalie West

Dear Ms. Griffiths:

This letter concerns the request for advice directed to your office under letter of April 21, 1989 from Natalie West, attorney for the City of Novato.

We represent Pacific Consolidated Properties, Inc. ("Pacific") which is the subdivider of Hillside Park, Unit 4, for which precise plan approval has been requested from the City of Novato. The purpose of this letter is to supplement Ms. West's request for advice with certain observations from Pacific's point of view.

As noted in Ms. West's letter the City Council has before it two issues which have raised concerns about potential conflicts. The first is Pacific's request for precise plan approval for Hillside Park, Unit 4, a proposed 68 lot single family home subdivision. The second is the City Planning Commission recommendations for adoption of a policy regarding review of master plans more than three years old including the Anderson-Rowe Ranch master plan. Although the second issue is of interest to Pacific since its project is located within the Anderson-Rowe Ranch master planned district, Pacific's direct interest concerns action on the precise plan approval which has been delayed pending receipt of F.P.P.C. advice.

We believe that under the facts presented there is no basis to disqualify Mayor Knight or Councilmember Cope from participating in the vote on Pacific's precise plan application. Both officials own residences which are within 300 to 400 feet from the boundary of the master planned district, but their residences are 1500 and

Diane Griffiths
April 26, 1989
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1600 feet away from the proposed Hillside Park, Unit 4 property. The entire area is predominantly residential. The officials are but two homeowners among many in the general vicinity of the project. The project involves no significant offsite improvements, no new offsite roads, traffic controls or other developments which might benefit existing homes.

In Consumers Union v Cal. Milk Producers, (1978) 82 Cal. App. 3d 433 at p. 444, the California Court of Appeals interpreted relevant sections of the Conflict of Interest chapter of the Act. An official is disqualified to act only when four required factors exist: (1) the official has a financial interest of the type described in the Act; (2) the effect of the governmental action on the official's financial interest must be reasonably foreseeable; (3) the foreseeable effect of the governmental decision on the financial interest must be material; and (4) the foreseeable effect of the governmental decision on the official's financial interest must be distinguishable from its effect on the public generally.

With respect to requirements (2) and (3), the FPPC regulations Section 18702.3 provide guidelines for defining material financial effect on real property. Subpart (a)(3) of that section states that in order for an economic effect to be considered material where the official owns real property between 300 and 2,500 feet from the property subject to the decision, the decision must have a reasonably foreseeable financial effect exceeding \$10,000. Approval or disapproval of Pacific's precise plan application cannot be said to have a reasonably foreseeable financial effect of such magnitude on the existing single family homes of the two officials involved given the distance, topographical considerations and residential character of the surrounding area in general. Indeed whether there would be any financial effect on homes in the vicinity is clearly a matter of speculation.

The fourth requirement, financial effect distinguishable from effects on the public generally, is also clearly not met here. The California Court of Appeal noted in Metropolitan Water District of So. Cal v F.P.P.C., (1977) 73 Cal. App. 3d 650, p. 658, that even if a material financial effect would result from the official's decision, disqualification is not required where that effect is not distinguishable from the effects of the decision on the public generally.

Your Commission applied these rules in The Matter of Opinion Requested by William L. Owen, City Attorney, City of Davis, No 76-005, June 2, 1976. In that matter a Davis City Councilmember owned a home across the street from the boundary of the Davis "core area" which was under consideration for adoption of a specific land use plan. The Commission determined that the foreseeable effects on

Diane Griffiths
April 26, 1989
Page 3

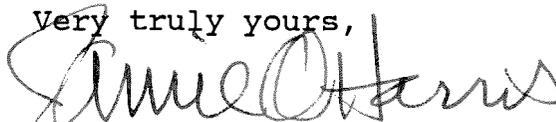
the councilmember's residential property would be "substantially similar" to the likely effects on a substantial number of other similarly situated residential property owners. The Commission also observed that the precise nature of the effects on the home owners was a matter of speculation. The Commission concluded that the councilmember in question was therefore not disqualified from voting on the plan.

The same analysis applies in this matter since the effects, if any, on the two officials' homes are wholly speculative and will not be distinguishable from the effects on the many other private homes in the area. Moreover, the officials in this case live farther from the property under consideration than did the councilmember in Davis and the Davis decision could have resulted in substantial change in the land use of property in the "core area" proximate to the official's property whereas in the present matter the decision involves further residential development in a residential area and no significant change of permitted uses.

Based on the foregoing considerations, Pacific requests that you advise the City of Novato promptly that Mayor Knight and Councilmember Cope are not disqualified from voting on the precise plan application for Hillside Park, Unit 4.

Thank-you for your consideration of this matter.

Very truly yours,



Jamie O. Harris

cc: Pacific Consolidated Properties
Natalie West
Mayor Christine Knight
Councilmember Bill Cope

JOH\100PCPHILL4

81-3-13

MEYERS, NAVE, RIBACK & WEST

MICHAEL R. NAVE
STEVEN R. MEYERS
NATALIE E. WEST
ELIZABETH H. SILVER
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OF COUNSEL
THOMAS F. BERTRAND

REPLY TO:

Date: June 1, 1989

To: Jeevan Ahuja, Esq.
California Fair Political
Practices Commission
428 "J" Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

From: Natalie E. West

Re: City of Novato

Comment:

Attached please find information concerning the residences of remaining three Novato Councilmembers.

If you have any questions, please feel free to contact me at your earliest convenience.

JUN 5 8 17 AM '89

Very truly yours,

MEYERS, NAVE, RIBACK & WEST



Natalie E. West

NEW/dks

Enclosure

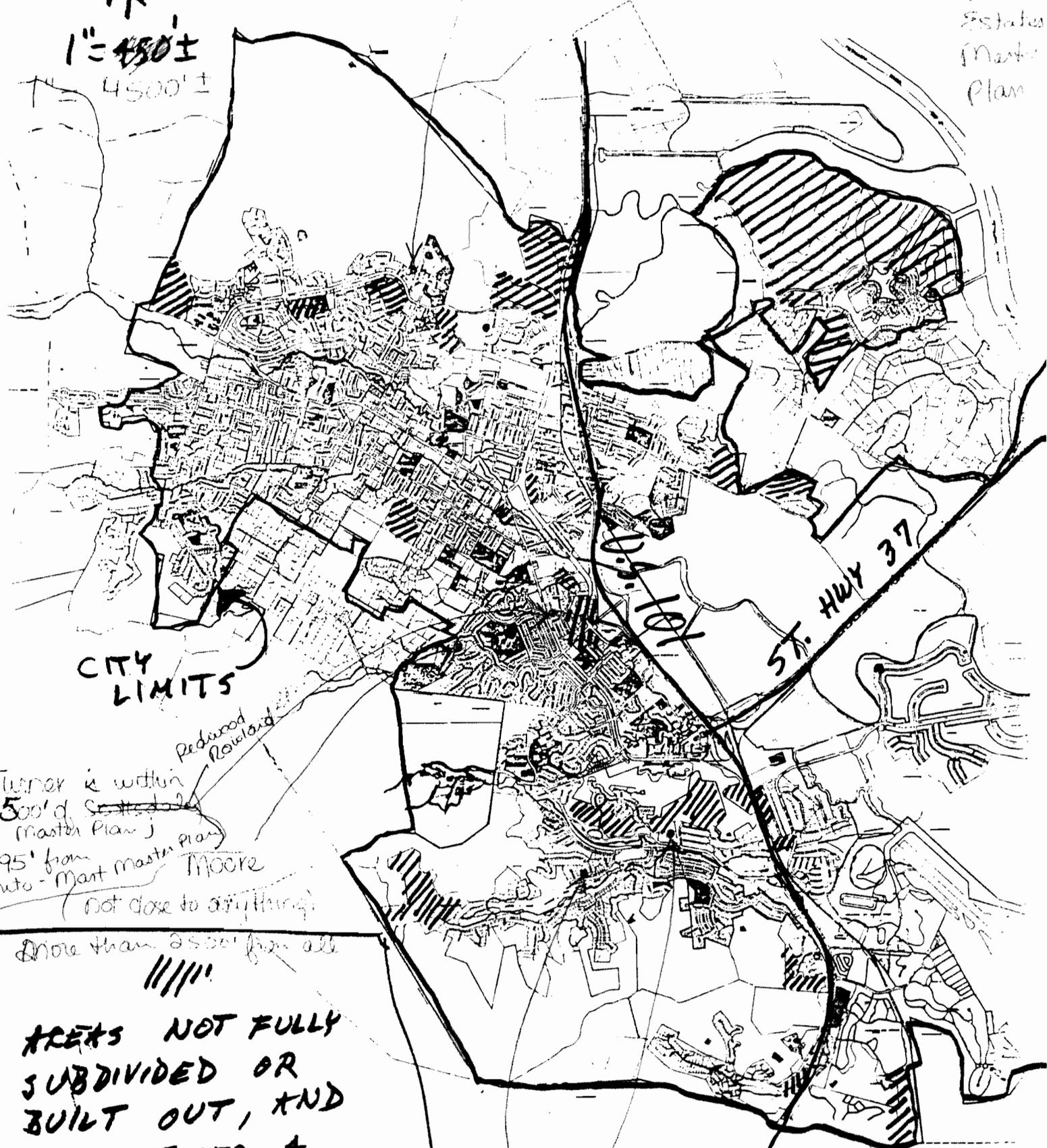
"Old" (more that 3 yrs. old)



1" = 450' ±
4500' ±

close to an undeveloped portion of
San Marin Master Plan
600' from " , 1400' from San
Marin ~~Master~~
Estates
Master
Plan

gray



CITY LIMITS

Redwood Rowland

Turner is within
(500' of ~~Scattered~~
Master Plan)

295' from
Auto-Mat master plan
Moore
(not close to anything)

More than 2500' from all
//////

AREAS NOT FULLY
SUBDIVIDED OR
BUILT OUT, AND
SUBJECT TO A
MURDER PLAN OVER

Knight

Cope