



California Fair Political Practices Commission

May 17, 1989

David B. Cosgrove
Rutan and Tucker
Central Bank Tower, Suite 1400
South Coast Plaza Town Center
611 Anton Blvd.
P.O. Box 1950
Costa Mesa, CA 92628-1950

Re: Your Request for Informal Assistance
Our File No. I-89-178

Dear Mr. Cosgrove:

This is in response to your letter requesting advice on behalf of the City Council and Planning Commission of Signal Hill concerning their duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/}

On March 16, 1989, we provided you with specific advice concerning the ability of members of the city council and planning commission to participate in decisions concerning the tentative tract map and site plan for two proposed developments, and a change in the zoning definition of RL properties in the city. This letter responds to your questions about other decisions that may come before the city council and planning commission sometime in the future.

Because your questions in this letter deal with speculative decisions and we do not have sufficient information to provide formal advice, we are treating your request as one for informal assistance pursuant to Regulation 18329(c)(3) (copy enclosed).^{2/}

^{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/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

QUESTION

1. May city council and planning commission members participate in decisions concerning development of the hilltop area of the city which will directly and indirectly affect their real property interests?
2. May city council and planning commission members participate in a decision concerning a master park plan where the decision will indirectly affect their real property interests?
3. May city council and planning commission members participate in a decision concerning a developers' fee to finance the master park plan?
4. What guidelines must a city observe to avoid potential conflicts of interest in setting up an assessment district to finance a new water reservoir?

CONCLUSION

1. City council and planning commission members may not participate in decisions concerning development of the hilltop area of the city if the decisions will foreseeably and materially affect their real property interests.
2. City council and planning commission members may not participate in a decision concerning a master park plan where the decision will foreseeably and materially affect their real property interests.
3. City council and planning commission members who are not developers or doing business with developers may participate in a decision concerning a developers' fee to finance the master park plan.
4. City council and planning commission members may not participate in decisions concerning the establishment of an assessment district if the decisions will have a material financial effect on their real property interests.

FACTS

The City of Signal Hill has a five-member city council and a five-member planning commission. All the city councilmembers and planning commissioners are required to reside within the city limits. Signal Hill has a population of 8,423 people. Since the city lies in the middle of a major oil field, much of the land in the city is undeveloped.

The property interests of the city councilmembers and planning commissioners are as follows:

Official

Property Interest

City Council:

- | | |
|----------------------|--|
| 1. Sara Hanlon | Condominium |
| 2. Gerard Goehardt | Condominium |
| 3. Louie Dare | Single-family residence |
| 4. Jessie Blacksmith | Single-family residence |
| 5. Richard Ceccia | a) Apartment rental
(month-to-month)
b) One-half owner single-family residence |

Planning Commission:

- | | |
|--------------------|---|
| 1. Mike Noll | Condominium |
| 2. Jack McManus | Condominium |
| 3. Carol Churchill | Single-family residence |
| 4. Alan Ross | Condominium |
| 5. Richard Harris | Leasehold on one-half duplex (month-to-month) |

The planning commission and city council are currently considering or will be considering the following proposals:

1. Hilltop Specific Plan (the "hilltop"): The city council and planning commission anticipate development on the hilltop in the near future. The nature of any development agreement is speculative at this time. The hilltop covers approximately 30 acres and presently contains 450 residential units. It is zoned SP-2 and is controlled by a specific plan adopted for that area. There is no other SP-2 zoned property in the city.

Councilmember Hanlon owns real property in the hilltop area. Planning Commissioner Ross lives immediately adjacent to the hilltop. In addition, it appears from the map you provided, that Councilmembers Goehardt and Dare, and Planning Commissioners Noll and McManus own real property, and Councilmember Ceccia and Planning Commissioner Ross rent property between 300 and 2,500 feet of the hilltop.

2. Master Park Plan (the "park plan"): The park plan identifies various locations around the city as sites for new parks and for park improvements. The park plan will become part of Signal Hill's general plan. Each alternative park plan includes sites throughout the city. Some proposed new park sites and parks designated for improvements are closer to property interests owned by the various city council officials than others.

3. Fees on Developers: The city is considering financing the park plan through a fee levied on developers. The fee is speculative at this time and no proposals have yet been submitted regarding the amount of a fee. None of the city officials in question is a developer.

4. Water Reservoir Assessment District: Establishment of an assessment district is being contemplated to finance a new water

reservoir. The decision to create an assessment district is purely speculative at this time. The boundaries of any future assessment district, and amounts to be assessed are unknown.

You have informed us that all these decisions must be approved by both the planning commission and city council to take effect.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Section 87103 specifies that an official has a financial interest within the meaning of Section 87100 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 a 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).

Members of the city council and planning commission are public officials. (Section 82048.) Nine of the ten members of the city council and planning commission have a real property interest worth more than \$1,000. Thus, each of these nine members is required to disqualify himself or herself from making or participating in a decision which would have a foreseeable and material financial effect on his or her real property, that is distinguishable from the effect on the public generally.

Planning Commissioner Harris rents his residence on a month-to-month basis. An interest in real property does not include the interest of a tenant in a periodic tenancy of one month or less. (Regulation 18233, copy enclosed.) Thus, Planning Commissioner Harris does not have an interest in the real property for purposes of the Act. In addition to an ownership interest in real property, Councilmember Ceccia also has a month-to-month tenancy in the city. This too is not an economic interest under the Act. Accordingly, Planning Commissioner Harris and Councilmember Ceccia need not consider the potential effects of governmental decisions on property they rent.

The real property interests of the other public officials must be analyzed on a case-by-case basis to determine if a conflict of interest exists as to any decisions before them. The three basic elements of a conflict-of-interest analysis where a public official's interest in real property is involved are: (1) whether the financial effect of a decision on the property is foreseeable; (2) whether the financial effect is material; and (3)

whether the financial effect is distinguishable from the effect on the general public.

Foreseeability

Whether the financial consequences of a decision are reasonably foreseeable at the time a governmental decision is made depends on the facts of each particular case. An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (Downey Cares v. Downey Community Development Commission (1987) 196 Cal. App. 3d 938; In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Material Financial Effect

The Commission has adopted regulations which provide guidance concerning whether the foreseeable effects of a decision are material. (Regulation 18702, copy enclosed.) These regulations apply different standards depending on whether the decision will directly or indirectly affect the official's economic interest. If a decision will directly affect real property in which an official has an interest, then Regulation 18702.1(a)(3) (copy enclosed) applies. An effect on real property is direct where the real property is subject to the decision. Regulation 18702.1(a)(3) provides that the effect of a decision concerning real property is material if:

(A) The decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more, or a similar decision affecting such property;

(B) The decision involves the issuance, denial or revocation of a license, permit or other land use entitlement authorizing a specific use or uses of such property;

(C) The decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such property....

Where the real property is not directly affected by the decision, Regulation 18702.3 (copy enclosed) provides that the effect is still material where any of the following applies:

(1) 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.

(2) The decision involves construction of, or improvements to, streets, water, sewer, storm drainage or similar facilities, and the real property in which the official has an interest will receive new or substantially improved services.

(3) The real property in which the official has an interest is located outside a radius of 300 feet and any part of the real property is located within a radius of 2,500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the decision and 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.

(b) The reasonably foreseeable effect of a decision is not considered material as to real property in which an official has a direct, indirect or beneficial interest (not including a leasehold interest), if the real property in which the official has an interest is located entirely beyond a 2,500 foot radius of the boundaries (or the proposed boundaries) of the property which is the subject of the decision; 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(a) and (b).

Public Generally Exception

"A material financial effect of a governmental decision on an official's interests...is distinguishable from its 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 generally exception has been applied where a governmental decision involved the imposition of a rent control ordinance on owners of rental units (In re Ferraro (1978) 4 FPPC Ops. 62, owners of three or fewer units constituted significant segment, copy enclosed), and the adoption of a core area plan intended to benefit commercial business (In re Owen (1976) 2 FPPC Ops. 77, home owners constituted significant segment, copy enclosed).

In both these cases, the Commission found that a specific class of real property owners constituted a significant segment of the public. The rule of law, as enunciated in In re Ferraro, is that "in order to be considered a significant segment of the public... a group usually must be large in numbers and heterogeneous in quality." (In re Ferraro, supra.) Where such a group of persons is affected similarly by a decision, the public generally exception is applied.

The Hilltop Specific Plan

The city council and planning commission anticipate the development of the hilltop sometime in the near future. No plans are before them at this time. The specific elements of a development agreement will determine the nature of the hilltop development and its effect on nearby properties. For example, low density luxury homes with generous open space would likely increase the value of nearby properties. Higher density multi-family units could have the opposite effect. Thus, it is foreseeable that the decisions regarding the development plan will have a financial effect on neighboring properties.

Typically, the effects of a single development the size of Hilltop would not impact a significant segment of the public in substantially the same way. However, since the decision is speculative at this time, we have no information on the magnitude of the anticipated proposals. Thus, we are unable to reach a conclusion as to whether the public generally exception would apply to this situation.

The effect of the decisions regarding the development plan on real property owned by public officials will be material under a number of circumstances. First, property located within the proposed development area, such as Councilmember Hanlon's, could be directly affected by the decision. This would, of course depend on the nature of the decision. If the councilmember's property is rezoned or otherwise directly affected, as specified in Regulation 18702.1(a)(3), she may not participate in the decisions concerning the development of the hilltop.

Planning Commissioner Ross lives immediately adjacent to the hilltop. The indirect effect of a decision on the real property interests of a public official who is within 300 feet of the property subject to the decision is material unless the decision will have no financial effect upon the official's real property interests. (Regulation 18702.3(a)(1).) Thus, Planning Commissioner Ross is required to disqualify himself from participation in the decisions concerning the development of the hilltop, unless he can show that the decisions will have no financial effect upon his real property interests.^{3/} (Phelps Advice Letter, No. A-88-429, copy enclosed.)

In addition, it appears from the map you provided, that Councilmembers Goedhart and Dare, and Planning Commissioners Noll and McManus have real property interests between 300 and 2,500 feet of the hilltop. They must disqualify themselves when the decisions regarding the hilltop could foreseeably increase or decrease the fair market value of their real property by \$10,000. (Regulation 18702.3(a)(3)(A).)

Councilmembers Blacksmith and Ceccia, and Planning Commissioner Churchill own property that is more than 2,500 feet from the hilltop. Absent the special circumstances provided in Regulation 18702.3(b), these three officials may participate in decisions concerning the hilltop.

The Master Park Plan

The park plan identifies various locations around the city as sites for new parks and park improvements. None of the councilmembers or planning commissioners own property under

^{3/} Such a financial effect may take the form of new or substantially improved streets, water, sewer, storm drainage or similar facilities. (Regulation 18702.3(a)(2).)

consideration for a park site, so none is directly affected by the park plan. However, the decisions concerning the location of proposed parks could foreseeably affect the value of real property nearby. The financial effects of the decisions regarding minor improvements to existing parks located near officials' real property interests are less foreseeable.

You have not provided us with information regarding the proximity of the real property interests of the various public officials to the proposed park sites. Thus, we must leave these factual determinations of materiality to you within the guidelines provided by Regulation 18702.3.

You have also asked whether the decision on the master park plan will effect the public officials in a manner that is distinguishable from the effect on the public generally. For the public generally exception to apply, a decision must affect the official's interests in substantially the same manner as it would affect a significant segment of the public. (Regulation 18703; In re Legan, (1985) 9 FPCC Ops. 1, copy enclosed; In re Owen, supra; In re Ferraro, supra.)

The public generally exception would apply here if the decision about the park plan will affect a significant segment of the population of Signal Hill in substantially the same manner as it would affect the public officials whose real property interests are near the proposed park sites. Public officials with property interests within 300 feet of a proposed park site would have to show that the segment of the population living within a 300 foot radius of that park site would constitute a significant segment of the public generally, or that the effect on the remainder of the city will be substantially the same as the effect on property owners within 300 feet. (In re Legan, supra; Dowd Advice Letter, No. A-88-214; Burnham Advice Letter, No. A-86-210, copies enclosed.)

Where a public official owns property between 300 and 2,500 feet of a proposed park, the official may show that all properties that are roughly the same distance away from the proposed park are similarly effected and constitute a significant segment of the city, or that the effect on the remainder of the city will be substantially the same as the effect on his property.

Developers' Fees

The city council and planning commission are considering financing the park plan through a developers' fee enacted by ordinance. The ordinance will impose fees for future developments on the developers. The proceeds will go toward the cost of the parks and park improvements.

The developers' fee issue is not a decision concerning real property. The fees are imposed on developers seeking approval for future developments. So long as the decision regarding the park plan is presented to the city council and planning commission in a

manner that is separate and distinct from the decision on the developers' fee, the real property interests of public officials in question will not create a conflict of interest. (Miller Advice Letter, No. A-82-119, copy enclosed.)

You have told us that none of the city council members or planning commissioners are developers. We have no information regarding the occupations of these public officials, or if any of them do business with developers who would be directly affected by such a fee. If such a business relationship exists between any of the officials and developers in the city you should review the provisions of Section 87103(a), (c) and (d) to determine whether a conflict of interest exists.

Proposed Assessment District

Signal Hill will need a new water reservoir in the near future. It has been suggested the new reservoir be financed through creation of an assessment district. The boundaries of such a district and amounts to be assessed are currently unknown. You have asked for guidelines in setting up an assessment district to avoid potential conflicts of interest.

Absent more information, we are unable to offer anything more than the following general guidelines. Decisions concerning the boundaries and size of the district and the amount to be assessed will foreseeably have a material financial effects upon real property located in the proposed district. (Regulation 18702.1(a)(3)(C); In re Brown, 4 FPPC Ops. 19, copy enclosed.) Thus, if a public official owns real property in a proposed assessment district, the financial effect is deemed to be material and the public official may not participate in decisions regarding the assessment district.

I trust that this answers your questions. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

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February 14, 1989

IN REPLY PLEASE REFER TO

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Fair Political Practices Commission
P.O. Box 807
Sacramento, California 95814-0807

Attn: Mr. John Wallace, Esq.

Dear Mr. Wallace:

This letter is sent pursuant to Government Code Section 83114(b), to request advice and certain rulings on a number of pending situations which may present conflict of interest questions for councilmembers and planning commissioners in Signal Hill. I understand that under Government Code Section 83114(b), your advice will be rendered within 21 working days. The issue related below regarding the Spongberg Kirkland development project involves possible conflicts in connection with a developer's tentative tract map, whose application is already complete. The Planning Commission must act on this map at its next regular meeting on March 14, 1989, or the map will be deemed approved by operation of law. Your prompt response is therefore required to determine who may participate in reviewing this map, and will be most appreciated.

The issues here center on a new regulation specifying criteria for materiality of financial effects, particularly Title 2, Cal. Admin. Code Section 18702.3¹. That regulation sets certain distance classifications for determining materiality of financial effects on real property indirectly

¹

All references to the FPPC regulations appearing in Title 2 are cited simply as "Regulations" herein.

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affected by governmental decisions. It also provides value thresholds for determining materiality of effects on property up to 2,500 feet from the boundaries of the area which is the subject of the decision.

Application of these standards has caused certain frustration and confusion, particularly in this smaller, largely undeveloped community. As you may be aware, Signal Hill is a city only 2.25 square miles in area. It has an estimated total population of 8,423, and contains some 3,816 dwelling units, 3,594 of which are occupied.² Since the City lies in the middle of one of Southern California's oldest and best known oil fields, much of the land in the City is vacant, including most of the top of the "hill." During a two-year development moratorium the City formulated a new General Plan which significantly down-zoned much of the City. Now that the moratorium is expired, development pressure to in-fill is increasing, and will present the City with many significant development issues.

The City has a five-person City Council and a five-person Planning Commission, all of whose members are required to reside within city limits. The Planning Commission is required by local ordinance to give initial review approval to any proposed change in zoning, and only after its approval does the ordinance go to City Council. The Planning Commission has approval authority on discretionary land use entitlements such as tentative tract maps, site plans, etc. Site Plan approval involves discretionary review of the location of buildings, access ways, building elevations, signs, lighting, landscaping and other features of the project for construction of new industrial or commercial buildings, and residential projects of more than three dwelling units. All discretionary land use decisions can be appealed to the City Council, but if not appealed, Planning Commission decisions are final.

Questions have arisen in connection with zoning amendments and land use decisions where one or more, and sometimes all, of the members of the decision making body have a financial interest in property within 2,500 feet of the boundaries of land which is the subject of a decision. The regulation classifies impacts on those within 300 feet as automatically material, and treats those between 300 and

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2,500 feet uniformly for purposes of analysis. Does this represent an administrative interpretation that impacts are uniform within 300 feet, and between 300-2,500 feet? If so, are all the persons within those radii considered to be affected "in substantially the same manner" for purposes of a "significant segment" analysis under Regulations section 18703? Also, what is the group of "affected persons" on a decision, such as adoption of a master plan for parks, which is City-wide in effect, but by the location of specific facilities and open space areas, may impact some immediate areas more heavily than the City as a whole? We pose these broader issues in the hope that your response will be framed not only for our specific questions, but also be broad enough that we can avoid making repeated requests for advice as future issues arise.

Before identifying the specific questions, it is appropriate to discuss the interests in real property owned by the affected councilmembers and commissioners. Attached is a Signal Hill zoning map showing the locations of the officials' properties and the proposed developments. The officials' properties are their personal residences except for the property owned by Councilmember Ceccia at Junipero, which is income property, and the property of Councilmember Dare, who both resides and conducts his business from the Ohio property. The officials' properties are summarized as follows:

<u>Official</u>	<u>Address</u>	<u>Zoning</u>	<u>Use</u>	<u>No. Units In Project</u>	<u>No. Units Currently Permitted</u>
<u>City Council</u>					
Ms. Hanlon	2700 Panorama Drive	SP-2	Condominium	26	16
Mr. Goedhart	2051 Orizasa Avenue	RL	Condominium	22	6
Mr. Dare	3132 Ohio Avenue	RL	Single-Family; Nonconforming Business	1	2

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Ms. Black-smith	3240 California Avenue	RLM-2	Single Family	1	2
Mr. Ceccia	1815 Junipero Avenue	CG	Apartments- Rented as income property	4	0
Mr. Ceccia	2048 Stanley	RLM-1	Single-Family- Leasehold	1	1

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Mr. Noll	1995 Molino Avenue #301	RH	Condominium	9	5
Mr. McManus	2685 East 21st St.	RL	Condominium	4	1
Ms. Church- hill	1979 Ray- mond Ave.	RLM-2	Single-Family	1	2
Dr. Ross	2400 East 23d St.	RL	Condominium	9	2
Mr. Harris	2058 Terrace Dr.	RLM-1	Leasehold on half of Duplex	2	1

The RL Zone is residential, low density, allowing no more than 1 unit per 4,300 square feet. It comprises some 20 total acres, or 1.5% of the City's total area, and currently contains 150-200 dwelling units. The SP-2 is the Hilltop Specific Plan zone, controlled by the Specific Plan adopted for the area. It covers some 30 acres and has approximately 450 units. RLM-1 is residential, low to medium density, under which 1 unit per 6,000 square feet may be developed. RLM-2 is the same, but with a density allowance of 2 units per 5,000 square feet. RH zoning is for high density residential, and allows up to 1 unit per 2,100 square feet. The CG zone is for general commercial uses, and permits no residences.

One more point bears emphasis. The residential properties of Councilmembers Hanlon and Goedhart, and those of Planning Commissioners Noll, Ross and McManus are all

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nonconforming uses. Each of these officials has a financial interest in property developed at density allowances which have subsequently been reduced. Each of these officials' properties have more units than are permitted under current zoning. The residences are legal, nonconforming uses, but under local ordinance such uses cannot be modified, altered, or enlarged without loss of nonconforming status.

Councilmember Ceccia similarly owns an apartment complex in a zone now designated only for commercial uses, which he rents out for income purposes. This property is subject to the same nonconforming use ordinance, and its constraints. Finally, Councilmember Dare's residence property is also his business location, and is in an exclusively residential zone. This business is therefore nonconforming; the residence is not.

In sum, only the properties of Councilmember Dare, Commissioner Churchill and Councilmember Blacksmith (who lives in the north end of town and clearly has no financial interest) can be developed with increased residential densities.

Given these parameters, we would request your advice to the specific situations set out below:

(1) A developer, Kaufman and Broad, has proposed a 50 unit single family subdivision development in the City's RL zone. The project site is marked "K & B" on the enclosed map. The proposal involves only site improvements; no new or substantially improved services are likely to result to existing residents. In addition to Subdivision Map Act filings, the developer requests zoning changes in development standards to lessen required lot depths, and raise permissible building height from 26 to 28 feet. The zoning changes are limited to the RL zone.

The properties of two Councilmembers, Mr. Dare and Mr. Goedhart, are within 300 feet of the proposed development. Four of the five Planning Commissioners (Mr. Mike Noll, Dr. Alan Ross, Mr. Jack McManus, and Ms. Carol Churchill) own property within a radius between 300 and 2,500 feet from the project. The sole remaining Planning Commissioner (Mr. Richard Harris) leases property within this radius. In addition, two of the three remaining

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Councilmembers, Mayor Hanlon, and Mr. Richard Ceccia, own property within the 2,500 foot radius, and Mr. Ceccia has a leasehold interest in this area. However, only Councilmembers Goedhart and Dare and Commissioners McManus and Ross, are within the RL zone. These properties are charted on the map.

Two issues arise here:

(a) Must any of the above-named officials disqualify themselves from participating in tentative tract map, site plan, or their discretionary land use entitlement proceedings?

(b) Must any of the officials disqualify themselves from consideration of the requested amendment in RL zone development standards?

(2) A second developer, Spongberg Kirkland, has proposed a 55 unit single family residential project, also in the RL zone and designated "S & K" on the attached map. This project is located close to the Kaufman and Broad proposed site; the same officials listed above are also within 300 feet, or between 300 and 2,500 feet, of this project.³ No zoning change is requested. Must any of the officials disqualify themselves from participating in tentative tract map, site plan, or other discretionary land use entitlement proceedings? Is the analysis any different from that above and is there any importance to the fact that the projects are both being considered and cumulatively may have a more significant impact in the area?

(3) The City is preparing a Master Parks Plan, which identifies various locations around the City as sites for new parks or open space areas, or areas for park improvements. The Master Plan currently provides different alternatives as to levels of park improvements, depending on the amount of funding provided. The Master Plan will become a part of the General Plan and the desired alternative will be

³ Approximately 300-325 dwelling units are within 300 feet of both the Kaufman & Broad and Spongberg Kirkland projects. Approximately 675-725 dwelling units are within 2,500 feet.

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selected after a public hearing process. Although the plan is city-wide, some park facilities are planned in close proximity to officials' residences, as designated on the option diagrams enclosed.

To implement this plan, the City will consider a Quimby Act ordinance. That ordinance will set fees which developers must pay as conditions to development. The fees will be used for park acquisition and improvement. The ordinance will apply equally to every developer in the City, and the Master Parks Plan envisions an integrated, city-wide park system, but the parks to be established will be closer to some residents, and officials, than others. Must any officials who have interests in property within the specified distances to these planned parks disqualify themselves from considering the Parks Master Plan or Quimby Act ordinance?

(4) The City has designated a specific plan area, the Hilltop Specific Plan, zoned SP-2. One council member, Ms. Hanlon, lives within the area, and one Planning Commissioner, Dr. Ross, lives immediately adjacent. Other officials have financial interests in property in various degrees of proximity, as indicated on the enclosed map.

No specific plans for developing this area are pending. Still, it is possible that a development agreement will be proposed between a developer and the City for the hilltop, including the area zoned SP-2 and portions of the RL zone. The agreement would involve the City guaranteeing certain density or other entitlements in exchange for the developer financing various public improvements, including circulation improvements such as streets. Such an agreement would be comprehensive and control development of the entire hilltop area. Must any of the officials identified above disqualify themselves in considering such an agreement? Additionally, how does one determine when "new or substantially improved services" are "received" by property owners within, adjacent to, or somewhat removed from the designated area, and how does this differ from benefits "received" city-wide?

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(5) The City needs a new water reservoir, and one of the financing mechanisms for the improvement may be an assessment district. The boundaries of such a district are currently unknown, as are the amounts of any assessment. What guidelines must the City observe in determining which officials may have a disqualifying financial interest in property that may be affected if this financing alternative is chosen?

Each of these situations focus on the difficulty the regulations create in identifying indirect benefits to property tangentially affected by a decision, quantifying them, and then determining whether their effect is uniform throughout the area the regulation designates as subject to materiality tests. This uniformity question is critical for determining the group of persons affected in "substantially the same manner" to determine if the effect is shared by a "substantial segment" of the public generally. (Regulations Section 18703.)

Analysis of these situations starts with Government Code Section 87100, which prohibits any public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. All city Councilmembers and Planning Commission members are "public officials" by statutory definition. (Gov't Code § 82048.) Further, each of the situations described above poses a "governmental decision" as defined by Regulations Section 18700(b). Each of the officials has an investment in the residences in question which exceeds \$1,000.

For those officials who reside in the RL district (Councilmembers Goedhart and Dare, and Planning Commissioners McManus and Ross) the zoning decision originally requires analysis under Regulations Section 18702.1(a)(3)(A). The proposed changes here involve only reducing the minimum lot depth and increasing building heights by some two feet. Consequently, Subsection (E) of that same Regulation excludes such changes from the terms "zoning" and "rezoning" as used therein. The Regulations are silent as to whether this constitutes an administrative determination by the FPPC that such decisions simply do not create material financial effects. If so, the analysis need go no further. If not, focus would appear to shift to Regulations Section 18702.3.

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Two subsections of that regulation might pertain. As to officials within the RL zone, Subsection (c) relates to decisions for which the boundary distances provided in Subsections (a) and (b) cannot readily be calculated. Subsection (c) incorporates the monetary tests of Subsection (b), *i.e.*, fair market value increase or decrease of \$10,000, or rental value increase or decrease of \$1,000 annually. Because the changes are limited to the RL zone, officials whose residences are outside of the zone would not appear to be affected by the zoning changes, even if they are within 300, or 2,500, feet of the boundaries of the zone. The zone change would not appear to have any financial effect on such property, and therefore the officials have no apparent disqualifying interest under Regulations Section 18702.3(a)(1).

For officials within the RL zone, the question turns on the value impact of the proposed zone change. Each of these properties is already developed, such that decreases in minimum lot depth would have minimal impact. As to building height, the FPPC previously has determined that easing these standards can create a \$10,000 or more impact, because of the possibility of adding square footage to properties. (See Flynn Advice Letter, No. I-88-250, p. 7.) One may question whether a homeowner would make the investment required for major structural changes merely to raise a roof by two feet. Moreover, for those officials whose properties are currently nonconforming uses, such reconstruction is impossible. Nonconforming use constraints forbid any alteration or additions to nonconforming structures, and as such no financial benefit from that construction could inure to these properties.

Finally, the proposed zoning amendment will affect all RL properties within the City uniformly. It therefore must be determined whether this group is sufficiently large in numbers, and heterogeneous in quality, to constitute a "significant segment" of the public generally. (In re Ferraro (1978) 4 FPPC Ops. 62, 67.)

The discretionary land use approvals on both Kaufman and Broad and Spongberg Kirkland present similar questions. Notwithstanding the similarity of issues, however, each project is being processed separately, presenting the question whether the effects of each within the prescribed radii must be separately assessed.

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Under Government Code Section 87103(b), one must determine if the project will create a "reasonably foreseeable" effect which will be "material." Regulations Section 18702.3(d)(3) seems to combine these two, directing attention to whether the decision will result in a change of the character of the neighborhood, including effects on traffic, view, privacy, intensity of use, noise levels, etc. Here, each project will add approximately 50 more residences to the City's current total of 3,816. Foreseeable effects are probable on immediately adjacent landowners, such as Councilmember Goedhart. The foreseeability clouds significantly as one moves further away from the boundaries of the project, however.

If the FPPC determines that effects from the projects are foreseeable even 2,500 feet away, it must determine whether these effects are "material." This appears to be a valuation question, *i.e.*, whether the projects will increase or decrease rented properties by \$250 yearly (Regulations Section 18702.4) or the fair market value of owned residences by \$10,000, or rental value by \$1,000 yearly. (Regulations Section 18702.3.) Previous opinions have recognized effects on adjacent landowners, but all deal with larger areas targeted for commercial or other improvements. (See, *e.g.*, In re Owen (1976) 2 FPPC Ops. 77; In re Brown (1978) 4 FPPC Ops. 19.) The effects of commercial revitalization would appear to be stronger, and consequently more material, than those of residential subdivision development.

If the FPPC determines material effects are foreseeable, there remains the issue whether the officials are affected in the same way as a significant segment of the public generally. Regulations Section 18702.3 makes certain quasi-legislative judgments, treating those within a 300 foot radius one way, and those between 300 and 2,500 feet another. May one assume, therefore, that all affected parties within these radii may be considered equal in terms of their effect? The FPPC almost universally holds that the "public generally," against which a segment must be judged to determine if it is "significant," is the entire jurisdiction of the decisionmaking body, here to the entire City. (In re Owen (1976) 2 FPPC Ops. 77, 81.) With each of these projects, is the group compared to entire City all properties located within 300, or 2,500, feet of the project up for decision? Is it the entire group of residences at the same radius from the project as the public official whose interest is being examined for conflict? If a presumption of uniform

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effect throughout these distances is not permitted, what criteria are appropriate for distinguishing among those within the class?

The Master Parks Plan and Quimby ordinance issues center primarily on foreseeable effects and the significant segment analysis. Particularly, the question is whether one views the city-wide nature of the ordinance, and its uniform effect on all developers, or rather presumes the ultimate intention of the ordinance, to construct parks. If the former, any effect on any participating official would appear to be identical with that on city residents generally. (This assumes no official is in the development business, which is the case.) On the other hand, if adoption of the Master Parks Plan is deemed the functional equivalent of deciding actually to construct parks, there may be some financial effect on adjacent or nearby properties. The question then becomes whether a party adjacent to a city park is affected differently from the public generally. The FPPC has once ruled that a planning commissioner whose residence abutted a redevelopment "core area" was not affected differently from the general public, on a similar planning decision. (In re Owen, supra, 2 FPPC Ops. 77, 81.) Here, any increase in value to residences neighboring on parks would likely to be shared with other residential properties, and perhaps throughout the entire city, as was the finding in Owen.

The development agreement question raises issues under Regulations Section 18702.3(a)(2). The effects of such an agreement are at this time more difficult to assess, because they are speculative. We believe such a development agreement would have a significant impact in the hilltop and on land values both on the hilltop and in adjacent areas. In addition, we would appreciate what guidance you might offer as to how to determine when a particular improvement provides "new or substantially improved services" to any adjacent property.

Finally, it appears reasonably well established that a decision creating an assessment district, in which the official's property is directly assessed and shares in the benefits, creates a material financial interest. (In re Sankey (1976) 2 FPPC Ops. 157, 160; In re Brown (1978) 4 FPPC Ops. 19, 21.) If the improvement serves the entire city's water system, however, how is one to determine the foreseeability or materiality of a financial effect to properties within 300 or 2,500 feet of the boundaries

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established for the assessment districts? Similarly, questions as to whether one may presume a homogeneous effect on persons within those radii may possibly be determinative as to whether the effect on a given official is substantially similar to that on a significant segment of the public generally.

In connection with the foregoing, for any case in which you conclude that more than two members of the decision-making body are disqualified, please discuss the rule of necessity. An ordinance (i.e., a zoning amendment) requires three council votes to be adopted. If three members are disqualified, how should the third participant be selected. With regards to the Site Plan approval, the matter can be approved by a majority of a quorum. If three members are disqualified, would one participate only to constitute a quorum, but not participate in discussions or voting?

I hope this analysis proves helpful to you in determining the questions now presented for advice. If any of the facts are unclear, or if further information is required, please do not hesitate to contact me directly. Again, because of the press of Subdivision Map Act and other schedules, your prompt attention to this request will be most appreciated. Thank you for your time and consideration, and I look forward to hearing from you soon.

Very truly yours,

RUTAN & TUCKER



David B. Cosgrove

DBC:jl
Enclosure

8/159/065121-0001/006

RUTAN & TUCKER

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*A PROFESSIONAL CORPORATION

February 24, 1989

IN REPLY PLEASE REFER TO

Mr. John Wallace
California Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95814-0807

Dear Mr. Wallace:

This letter is written in response to your telephonic inquiries of February 24, 1989.

The references to the "tentative tract map" in our recent request for advice relate to California Subdivision Map Act, Government Code Section 66410 et seq. Generally, that body of law requires the submission of a "tentative tract map" for subdivisions of five parcels or more. See Government Code Section 66412.5. The tentative tract map is the subject of discretionary approval, by the Planning Commission. It also may be appealed to the City Council. Gov't Code § 66452.5. Items considered in this review are listed in Government Code Sections 66473 et seq.

Further, the City conducts a "Site Plan Review" which also is discretionary, and occurs at the Planning Commission level. Site Plan Reviews can also be appealed to the City Council. The findings which the approving agency must make in connection with site plan approval, and the criteria applied to same, are codified in Section 20.52.050 of the Signal Hill Municipal Code. A copy of this ordinance is attached.

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You have also requested information about the leasehold interest of Planning Commissioner Harris and Councilmember Ceccia. First, please be advised that Councilmember Ceccia is part owner of a single-family residence located on Stanley Avenue. This single family residence is rented out by Mr. Ceccia, and is income property. Mr. Ceccia's residence is located in one of the four apartment units at the Junipero address indicated in our previous letter. This should correct misstated information provided previously, although since both properties are within the 2,500 foot radius, I doubt that it will impact your analysis. Mr. Ceccia's leasehold in the apartment complex is month-to-month. Further, Mr. Richard Harris, who also leases property, has a month-to-month tenancy.

I hope this clears up any questions that you have with regard to our analysis. I appreciate your representation that you will make all efforts to have a response to us in time for the March 14, 1989 Planning Commission meeting. Thank you for your time and attention to this advice request.

Very truly yours,

RUTAN & TUCKER


David B. Cosgrove

DBC:jl

Enclosure

cc: City Manager

Honorable Mayor and Members of the City Council

Honorable Chairman and Members of the Planning
Commission

8/159/065121-0001/005

D. Appeals to Planning Commission. Except as otherwise provided in subsection B, the applicant or any aggrieved party may appeal to the planning commission a decision of the director of the department of planning and community development to deny or conditionally approve an application for site plan or design review by filing an appeal in writing with the director of the department of planning and community development within seven calendar days following the date of written notification to the applicant of the director's decision. If a timely appeal is not filed, the director's decision shall be final. The planning commission shall hear the matter at their next regularly scheduled meeting at which the matter can be heard. Notice of the hearing on the application for site plan or design review shall be given as provided in subsection F of this section. The planning commission may sustain, modify, or overrule the decision of the director. In so doing, the planning commission shall make the findings and apply the standard of review contained in Section 20.52.050. The determination of the planning commission shall be final unless an appeal to the city council is timely filed.

E. Appeals to City Council. The applicant or any aggrieved party may appeal to the city council any decision of the planning commission on an application for site plan and design review by filing an appeal in writing with the city clerk within seven calendar days of the planning commission meeting at which the decision on the application was made. The city council shall hear the matter at their next regularly scheduled meeting at which the matter can be heard. Notice of the hearing on the application for site plan or design review shall be given as provided in subsection F of this section. The city council may sustain, modify, or overrule any decision of the planning commission. In so doing, the city council shall make findings and apply the standard of review set forth in Section 20.52.050. The decision of the city council shall be final.

F. Whenever notice of a planning commission or city council hearing on a site plan or design review application is required by this section, such notice shall be sufficient if given in writing by first class mail, at least seven days prior to the date of the hearing, to the applicant and those property owners as shown on the last equalized assessment roll, whose property is within a one-hundred-foot radius of the boundary of the subject property. (Ord. 85-09-955 §6: Ord. 82-6-892 §1(part)).

20.52.050 Findings and standard of review. A. Findings. In approving or conditionally approving a site plan and design review application, the director, the planning commission or city council, as the case may be shall find that:

1. The proposed project is in conformance with the general plan, zoning ordinance, and other ordinances and regulations of the city;

2. The proposed project is in conformance with any redevelopment plan and regulations of the redevelopment agency and any executed owner's participation agreement or disposition and development agreement;

3. The following are so arranged as to avoid traffic congestion, to ensure the public health, safety, and general welfare, and to prevent adverse effects on surrounding properties:

- a. Facilities and improvements,
- b. Pedestrian and vehicular ingress, egress, and internal circulation,
- c. Setbacks,
- d. Height of buildings,
- e. Signs,
- f. Mechanical and utility service equipment,
- g. Landscaping,
- h. Grading,
- i. Lighting,
- j. Parking,
- k. Drainage;

4. The topography is suitable for the proposed site plan and the site plan, as proposed, is suitable for the use intended;

5. The proposed development provides for appropriate exterior building design and appearance consistent and complementary to present and proposed buildings and structures in the vicinity of the subject project while still providing for a variety of designs, forms and treatments.

B. Site Plan and Design Review Criteria. In reviewing any site plan or design review application pursuant to the requirements of this chapter, the director of the department of planning and community development, the planning commission, or the city council, as the case may be, shall utilize the following criteria:

1. The overall development plan achieves and integrates land and buildings relationships, architectural unity, and environmental harmony within the development and with surrounding properties;

2. Structures sited in hillside areas respect the topography, minimize alteration to natural land forms, and retain minimized interference with the privacy and views of surrounding property, retaining courtyard views whenever possible;

3. Exterior building treatments are restrained, not harsh or garish, and selected for durability, wear characteristics, ease of maintenance, and initial beauty. All exterior treatments are coordinated with regard to color, materials, architectural form and detailing to achieve design

20.52.050

harmony and continuity. Exposed metal flashing or trim should be anodized or painted to blend with the exterior colors of the building;

4. Rooflines on a building are compatible throughout the development and with surrounding development;

5. Buildings and related outdoor spaces are designed to avoid abrupt changes in building scale. The height and bulk of buildings are in scale with surrounding sites and do not visually dominate the site or call undue attention to buildings. Structures higher than two stories emphasize horizontal, as well as vertical appearance, e.g., by the use of projection or recession of stories, balconies, horizontal fenestration, changes in roof levels or planes, landscaping or outdoor structures or detailing, to convey a more personal scale;

6. The development protects the site and surrounding properties from noise, vibration, odor, and other factors which may have an adverse effect on the environment;

7. The design of buildings, driveways, loading facilities, parking areas, signs, landscaping, lighting and other site features shows proper consideration for both functional aspects of the site, such as automobile, pedestrian and bicycle circulation, and the visual effect of the development on other properties, from the view of the public street;

8. The design of accessory structures, fences and walls is harmonious with main buildings. Insofar as possible, the same building materials are used on all structures on the site;

9. Proposed signs, and the materials, size, color, lettering, location and arrangement thereof, are an integrated part of and complementary to the overall design of the entire development;

10. Landscaping, where required, is incorporated in such a way as to complement the overall development, enhance visual interest and appeal, and soften bolder architectural features. Landscaping materials and arrangements minimize maintenance and irrigation, and consist of a combination of trees, shrubs and groundcover;

11. Mechanical and utility service equipment is designed as part of the structure or is screened consistent with building design. Large vent stacks and similar features should be avoided, but if essential, are screened from view or painted to be nonreflective and compatible with building colors;

12. Natural space-heating, cooling, ventilation and day lighting are provided, to the extent possible, through siting, building design and landscaping. Deep eaves, overhangs, canopies and other architectural features that provide shelter and shade should be encouraged;

13. Proposed lighting enhances building design and landscaping, as well as security and safety, and does not create glare for occupants on adjoining properties;

14. Drainage is provided so as to avoid flow onto adjacent property;

15. On new development, all utility facilities are underground;

16. Adequate provisions are made for fire safety;

17. All zoning ordinance development standards are met. (Ord. 85-09-955 §7: Ord. 82-6-892 §1(part)).

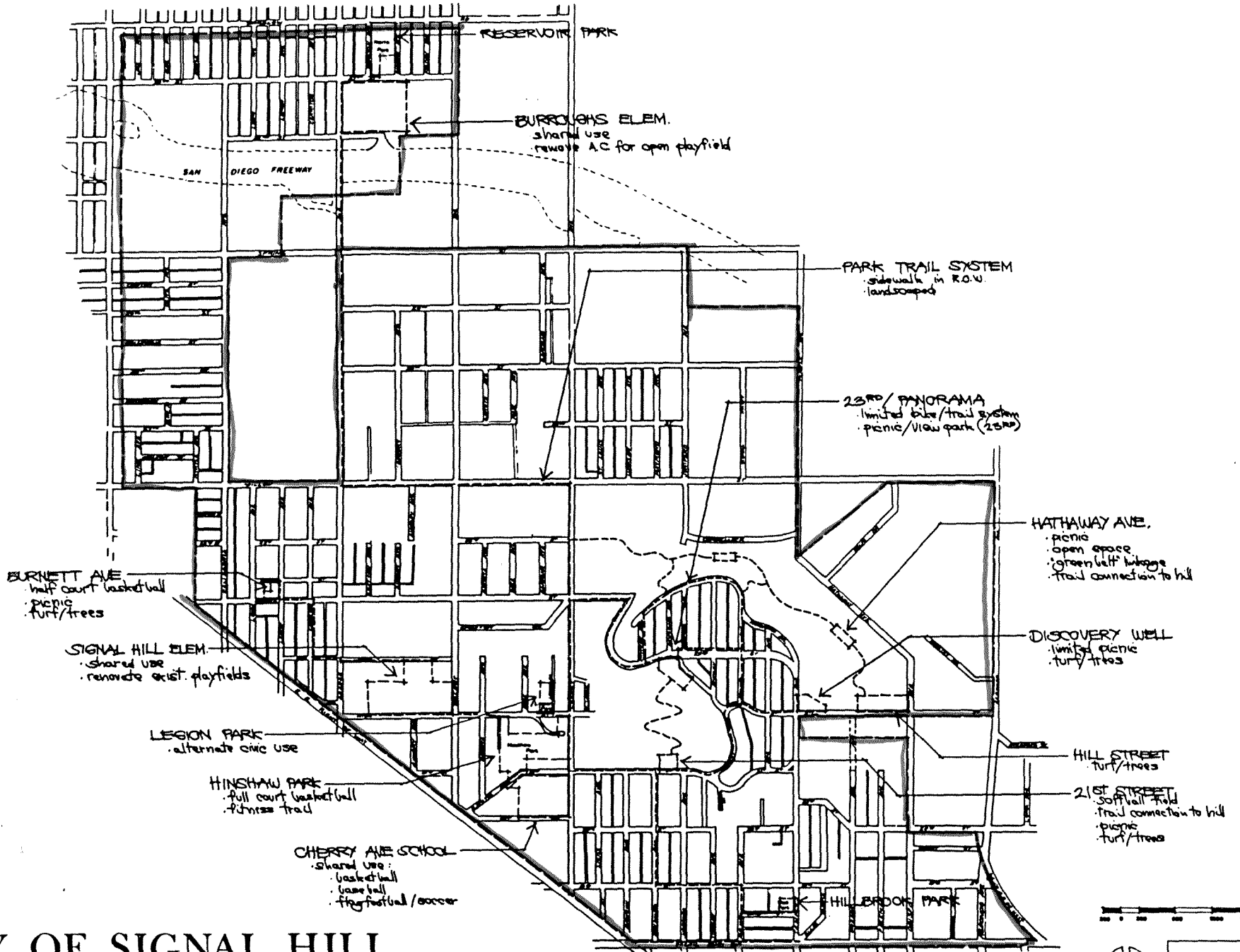
20.52.060 Expiration and revision. A. Following the completion of the review procedure set forth in Section 20.52.040, the approved site plan, with any conditions shown thereon or attached thereto, shall be dated and signed by the director of planning and community development with one copy mailed to the applicant. Construction of the improvements set forth in the approved site plan shall be commenced within one year from the date the approved site plan is signed by the director. Thereafter, the site plan and design review approval shall expire and become null and void.

B. Any changes or revisions to an approved site plan shall be subject to approval in accordance with this chapter. (Ord. 82-6-892 §1(part)).

20.52.070 Required dedications and improvements. A. If the director of the department of planning and community development, the planning commission, or the city council finds that the development of the property subject to site plan and design review will increase vehicular traffic in that area, the director of the department of planning and community development, the planning commission, or the city council may require as a condition to the approval of a site plan that an applicant provide the following street dedications and improvements reasonably in proportion to increased vehicular traffic which the director of the department of planning and community development, planning commission, or the city council determines is caused by development on the subject property:

1. When the development borders or is traversed by an existing street, the following may be required:

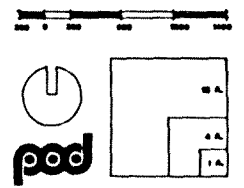
a. Minor Streets, Local Streets, and Culs-de-sac. Dedication of all necessary rights-of-way to widen the street to its ultimate width determined by the city in accordance with city ordinances and regulations; installation of curbs, gutters, sewers, drainage, street lighting, street trees, sidewalks, street signs, water mains, driveways approaches and required utilities; and grading and improving from curb to existing pavement;

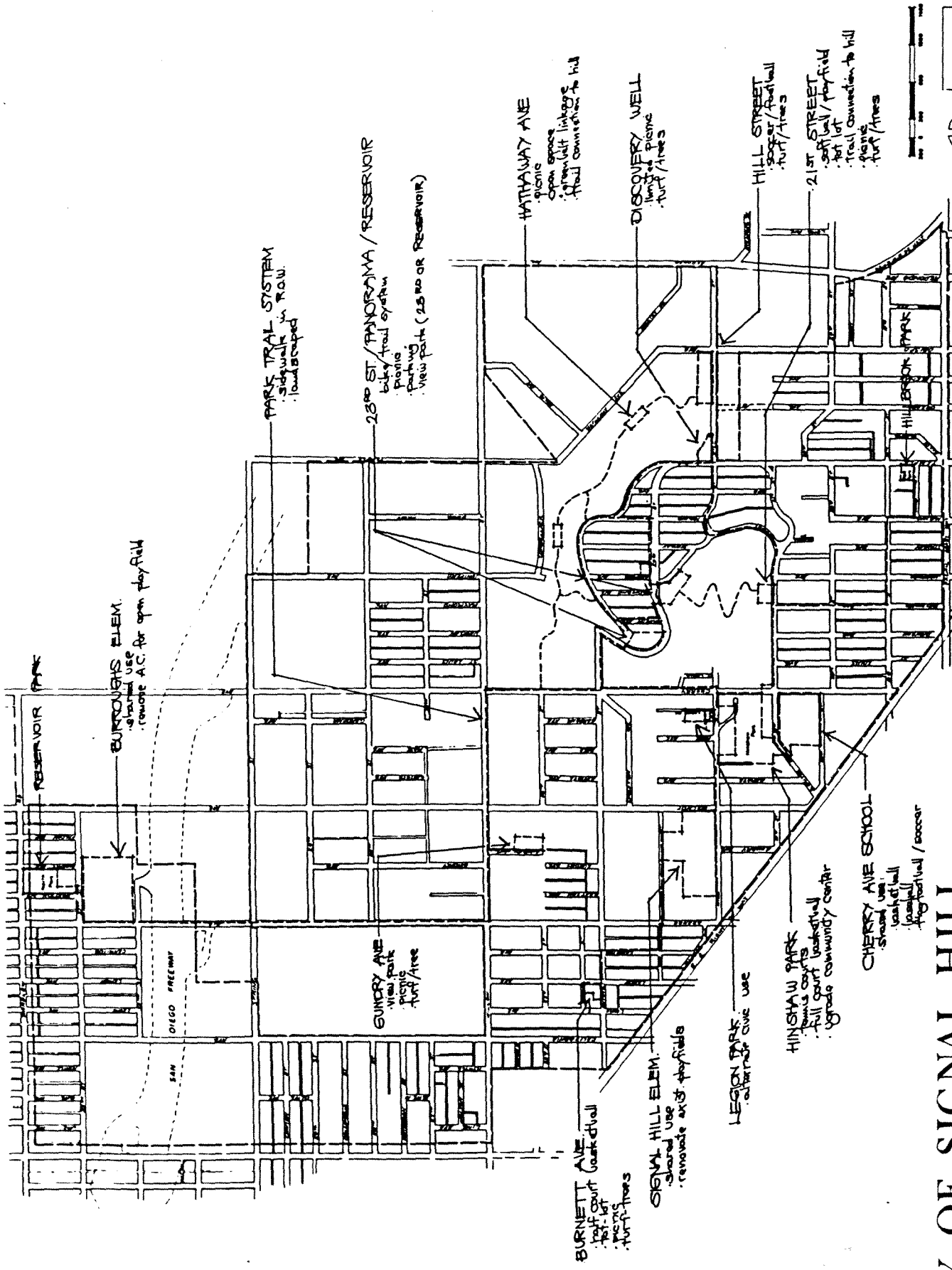


CITY OF SIGNAL HILL

PARKS & RECREATION MASTER PLAN

OPTION 3





BURNETTS ELEM.
 . shared use
 . remove A.C. for open play field

PARK TRAIL SYSTEM
 . sidewalk in R.O.W.
 . landscaped

25th ST / PANORAMA / RESERVOIR
 . bike / trail system
 . picnic
 . parking
 . view park (25th or Reservoir)

HATHAWAY AVE
 . picnic
 . open space
 . greenbelt linkages
 . trail connection to hill

DISCOVERY WELL
 . picnic
 . turf / trees

HILL STREET
 . soccer / football
 . turf / trees

21ST STREET
 . softball / playfield
 . turf
 . trail connection to hill
 . picnic
 . turf / trees

SUNDRY AVE
 . view park
 . picnic
 . turf / tree

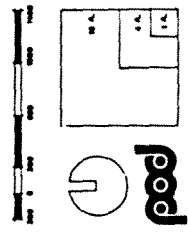
BURNETT AVE
 . half court basketball
 . turf / trees
 . picnic

SIGNAL HILL ELEM.
 . shared use
 . remove art's playfields

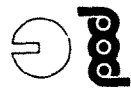
LEGION PARK
 . shared civic use

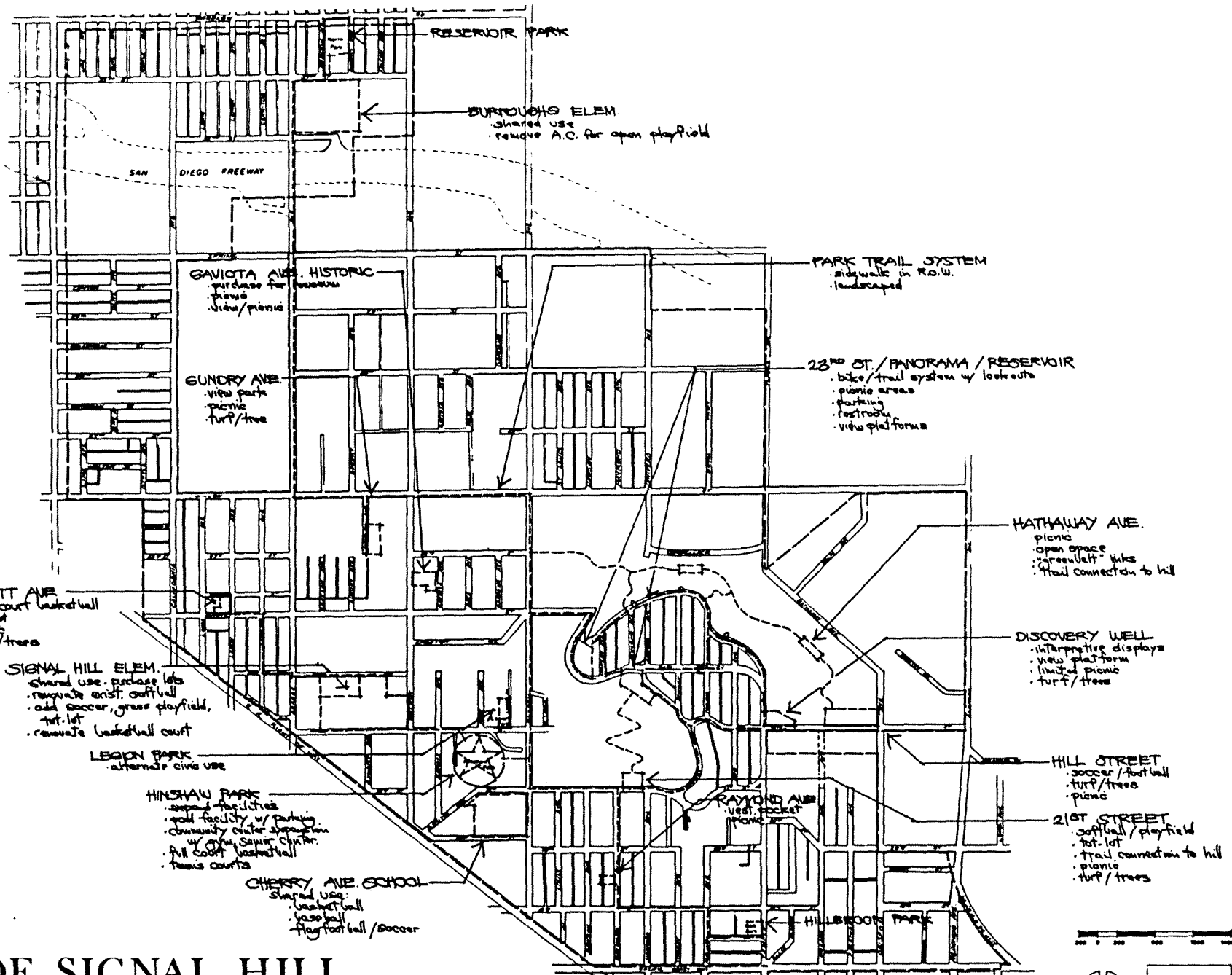
HINSHAW PARK
 . picnic courts
 . full court basketball
 . upgrade community center

CHERRY AVE SCHOOL
 . shared use
 . basketball
 . football
 . playground / soccer



CITY OF SIGNAL HILL PARKS & RECREATION MASTER PLAN OPTION 2

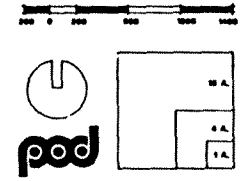




CITY OF SIGNAL HILL

PARKS & RECREATION MASTER PLAN

OPTION 1





California Fair Political Practices Commission

March 27, 1989

David B. Cosgrove
Rutan and Tucker
Central Bank Tower, Suite 1400
South Coast Plaza Town Center
611 Anton Blvd.
P.O. Box 1950
Costa Mesa, CA 92628-1950


Re: Letters No. 89-120 and 89-178

Dear Mr. Cosgrove:

This is a letter of confirmation regarding your request for advice, number A-89-120. As we discussed in our telephone conversation of March 24th, because your remaining questions deal with future speculative decisions, we do not have sufficient information to provide formal advice. Thus, we are treating your remaining questions as requests for informal assistance. Please be advised, however, that informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3), copy enclosed.)

The follow-up letter to number A-89-120 has been designated number I-89-178. If you have any questions about your advice request, please feel free to contact me at (916) 322-5901.

Sincerely,


John W. Wallace
Counsel, Legal Division