



# California Fair Political Practices Commission

May 19, 1989

Ronald R. Ball  
Assistant City Attorney  
City of Carlsbad  
1200 Carlsbad Village Drive  
Carlsbad, CA 92008-1989

Re: Your Request for Advice  
Our File No. A-89-250

Dear Mr. Ball:

This is in response to your letter requesting advice on behalf of Mayor Pro Tem Ann Kulchin concerning her duties under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

May Mayor Pro Tem Kulchin participate in a decision to purchase property for the construction of a library and to construct the library on property within six hundred and fifty feet of real property she owns?

## CONCLUSION

Mayor Pro Tem Kulchin may participate in the decisions concerning the library. Based on the facts provided, these decisions will not have a reasonably foreseeable financial effect of \$10,000 or more on the fair market value, or \$1,000 or more on the rental value in a 12-month period, on her real property interest.

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<sup>1/</sup> 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.

### FACTS

The City of Carlsbad has been studying potential sites for the construction of a new public library. City staff is recommending that the city purchase a site in a commercial shopping complex in the southern end of the city. The shopping complex has been approved by the city council, but has yet to be constructed.

Mayor Pro Tem Kulchin's real property interest is located within 650 feet of the proposed library site. The mayor pro tem owns a condominium in which her daughter resides. The condominium has been valued at between \$10,000 to \$100,000. You stated in your letter that although the availability of library services may have a positive influence on real property values in the neighborhood, the city possesses no data which would indicate any specific increase in fair market or rental value of the official's real property interest.

### ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his 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 (\$1000) or more.

Section 87103(b).

You stated that the value of the condominium was reported on the mayor pro tem's statement of economic interest as between \$10,000 and \$100,000. Consequently, Mayor Pro Tem Kulchin is prohibited from making or in any way participating in decisions which would have a foreseeable material financial effect on her property that is distinguishable from the effect on the public generally.

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. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed.)

Regulation 18702.3 (copy enclosed) provides that the effect of a decision on real property in which an official has an economic interest is material if:

(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.

Mayor Pro Tem Kulchin's real property is within 650 feet of the proposed library site. Consequently, she must disqualify herself from participating in any decision regarding the library that could foreseeably increase or decrease the fair market value of her real property by \$10,000 or more or the rental value of her property by at least \$1,000 in a 12-month period. (Regulation 18702.3(a)(3)(A).)

You stated in your letter that although the availability of library services may have a positive influence on real property values in the neighborhood, the city possesses no data which would indicate any specific increase in fair market or rental value of the official's real property interest. We emphasize, however, that it is also necessary to consider potential decreases in the value of the property. For example, the decisions concerning the proposed library could foreseeably have a negative effect on the property values of nearby property by changing traffic and noise levels. (Haight Advice Letter, No. A-88-432, copy enclosed.)

Regulation 18702.3(d) sets forth factors that must be considered in determining whether a decision will have a material financial effect on the mayor pro tem's real property.<sup>2/</sup>

1. The proximity of the property which is the subject of the decision and the magnitude of the proposed project or change in use in relationship to the property in which the official has an interest;

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<sup>2/</sup> The factors to be considered are not limited to the factors specified in Regulation 18702.3(d).

2. Whether it is reasonably foreseeable that the decision will affect the development potential or income producing potential of the property;

3. ...whether it is reasonably foreseeable that the decision will result in a change to the character of the neighborhood including, but not limited to, the effect on traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood.

While the new library site is within 650 feet of the mayor pro tem's property, the magnitude of the project is small. You have told us that a shopping center has already been approved for the site, and the library would simply be built in one of the available locations in the mall. Thus, the impact of adding the library instead of some other commercial business would be negligible.

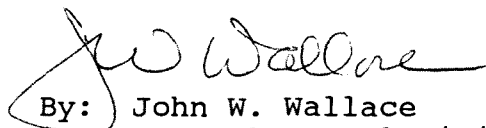
Moreover, any effect on the development or income producing potential of the mayor pro tem's property, or on the character of the neighborhood in regard to traffic, view, privacy, intensity of use, noise levels, air emissions, or similar traits of the neighborhood would be indistinguishable from the effects caused by the proposed mall.

Therefore, based on the facts you have provided, we conclude that the decision concerning the proposed library will not have a foreseeable, material financial effect on the mayor pro tem's property interest. Thus, she may participate in the library decision. 3/

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

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: John W. Wallace

Counsel, Legal Division

DMG:JWW:plh

Enclosures

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3/ Since we have concluded that the mayor pro tem may participate in the decision, discussion of the "public generally" exception is unnecessary and has been omitted.

# CITY OF CARLSBAD

1200 CARLSBAD VILLAGE DRIVE  
CARLSBAD, CALIFORNIA 92008-1989  
(619) 434-2891

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VINCENT F. BIONDO, JR.  
CITY ATTORNEY

RONALD R. BALL  
ASSISTANT CITY ATTORNEY

April 21, 1989

Fair Political Practices Commission  
P. O. Box 807  
Sacramento, California 95804

RE: REQUEST FOR FORMAL ADVICE PURSUANT TO GOVERNMENT CODE SECTION  
83114(b) AND 2 CAC SECTION 18329(b)

Dear Commission:

This office requests formal written advice on behalf of Ann Kulchin, Mayor Pro Tem of the City of Carlsbad, as to whether or not she is qualified to vote on the upcoming City decision to purchase and construct a public library within its City limits and within 650 feet of her interest in real property located at 6921 Quail Place, Carlsbad, California 92009. Her mailing address is 3014 Garboso Street, Carlsbad, California 92009.

The ownership interest in real property consists of a single condominium unit in the West Bluff Hills condominium development consisting of 80 units as shown on the attached San Diego County Assessor's map. The condominium unit is valued at between \$10 and \$100,000 according to the official's economic statement of interest forms. It was purchased in February 1988 for occupancy by the Mayor Pro Tem's daughter who is attending San Diego State University.

The facts upon which this request is based can be briefly stated as follows. Under the City's planning and zoning laws it determined there was a public need for additional library space in excess of its existing main library and branch library. The City has a main library located at its city hall complex located in the northern portion of the City and a temporary branch library located in a commercial shopping center approximately one mile south of the proposed site located in the southern part of the City. The southern part of the City has been experiencing substantial growth and development and its library needs have exceeded the capacity of that location.

The City located several potential sites for a permanent library in the southern section of the City and its staff has determined

to recommend the acquisition and development of a site within a proposed commercial shopping complex to be developed at the northwest intersection of El Camino Real and Alga Road. The branch library site would be relocated to the permanent site. The proposed commercial shopping center would house the permanent library, a post office, commercial retail buildings, including a restaurant and movie theater. The interest in real property of the mayor pro tem is located approximately 650 feet from the closest boundary of the proposed library site as shown on the enclosed diagram.

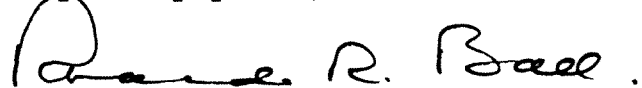
The estimated cost of the proposed library is approximately \$8 million and will be located on a 6.4 acre parcel to be purchased by the City within the overall commercial project which consists of 26.28 acres.

The City's staff recommendation as to where to locate this public library was based on such factors as topographic and geographic suitability and demographic need. Although the availability of library services may have a positive influence on real property values in the neighborhood, the City possesses no data which would indicate any specific increase in fair market value or rental value of the official's real property interest or any other real property in the neighborhood.

In accordance with 2 CAC Section 18329(b)(2)(A), the mayor pro tem has authorized this office to obtain formal written advice on her behalf. Specifically, we would appreciate advice on the question as to whether or not the Mayor Pro Tem is entitled to the "public generally exception" of Section 18702(c) of Title 2 of the California Administrative Code or, if not, whether the provisions of Section 18702.3 prohibit her participation in the vote regarding the purchase and construction of the library.

I appreciate your prompt attention to this request and, should you need additional information regarding it, please do not hesitate to contact me.

Very truly yours,



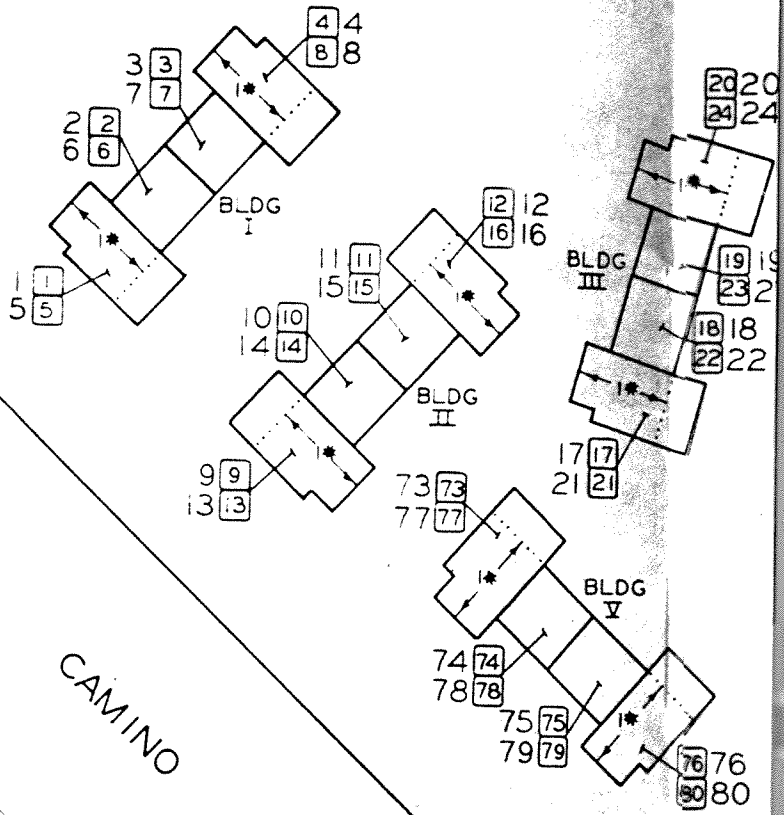
RONALD R. BALL  
Assistant City Attorney

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c: Mayor Pro Tem  
City Manager

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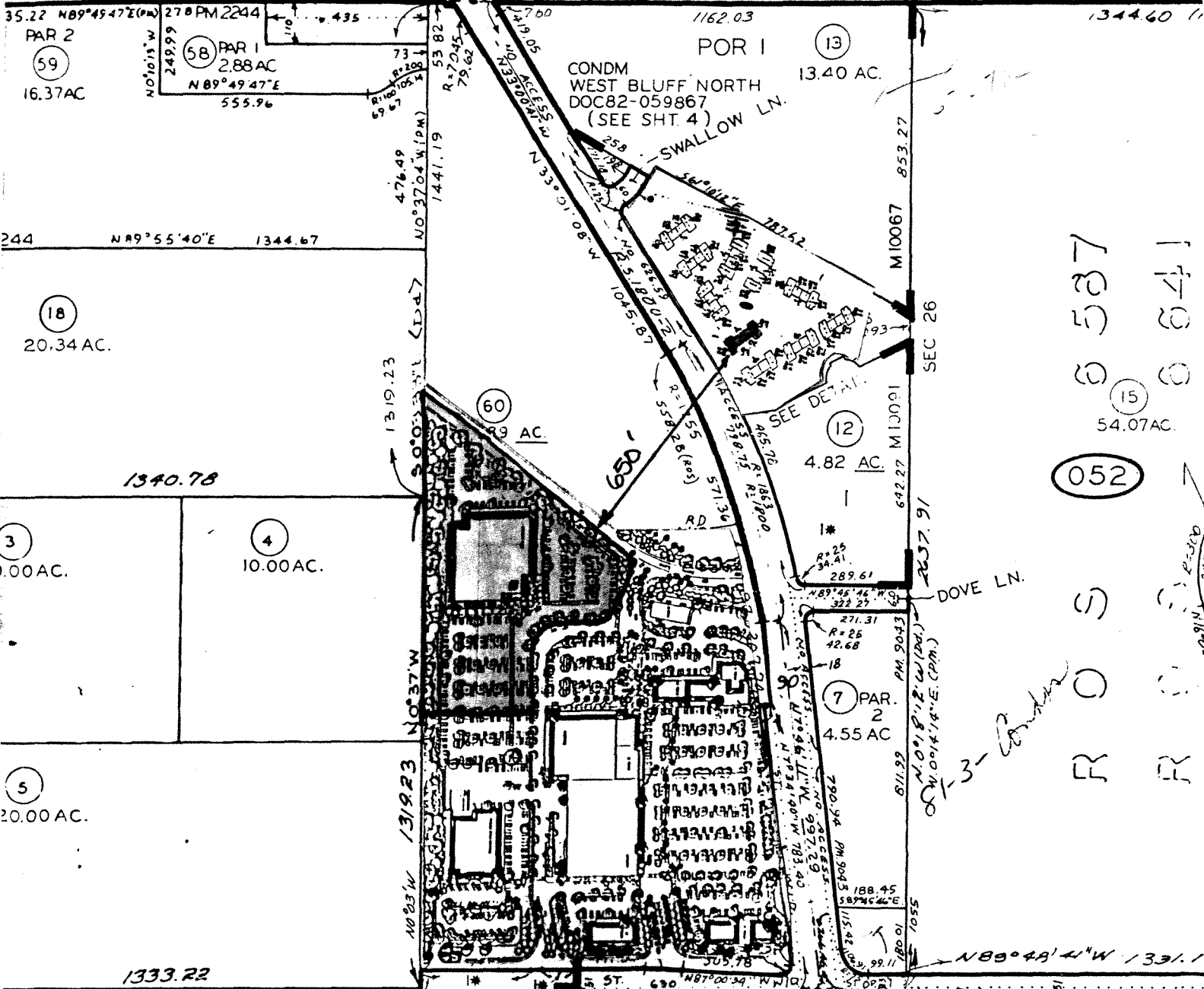
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SHT 1  
 SHT 2

\*NO ACCESS

MAP 10230 -  
 MAP 10091 -  
 MAP 10067 -  
 SEC 26 - T12  
 IS 484 - RNS

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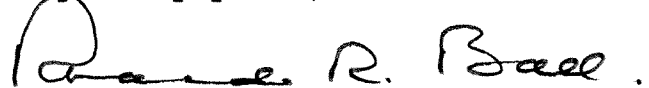
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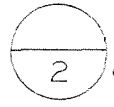
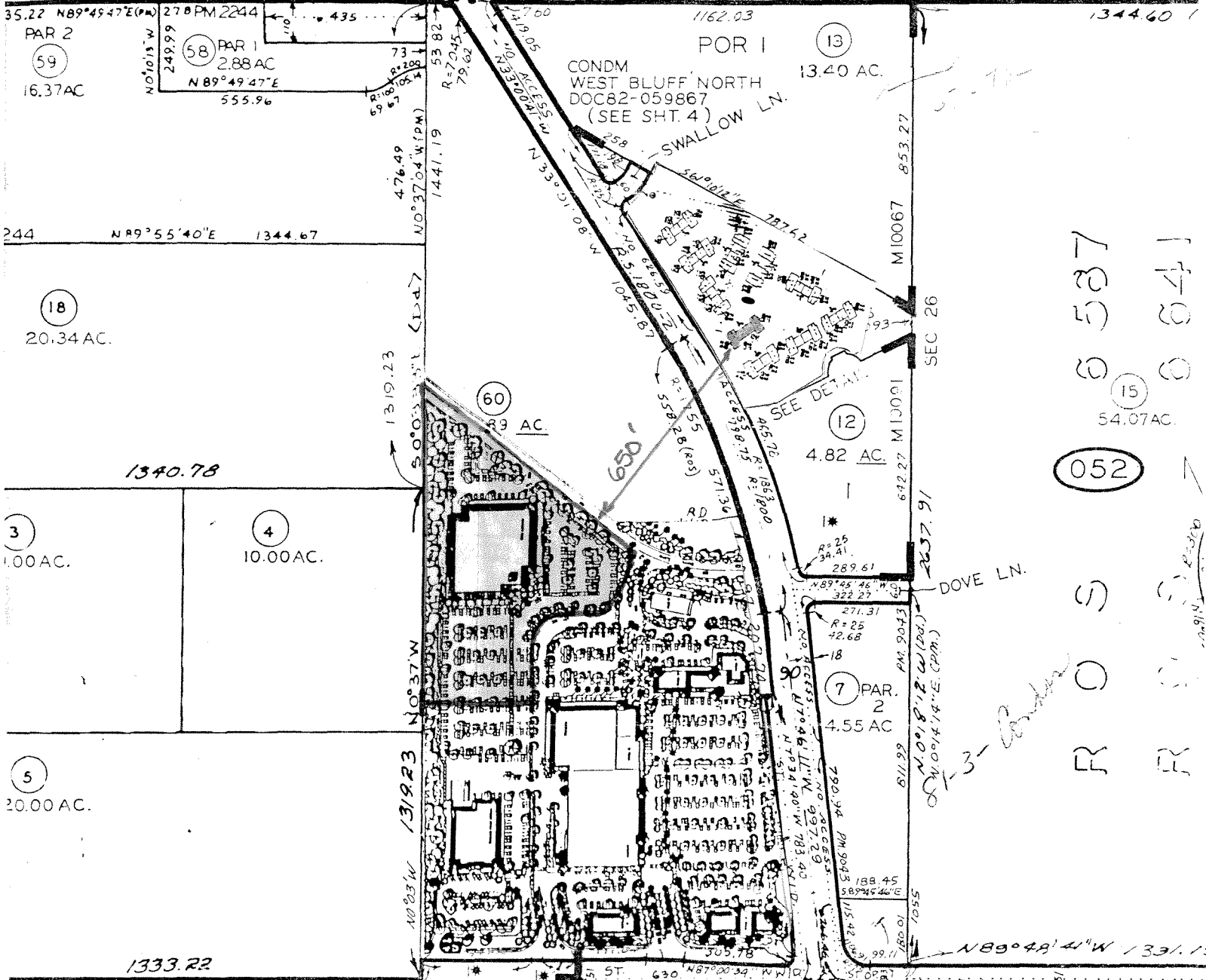
c: Mayor Pro Tem  
City Manager

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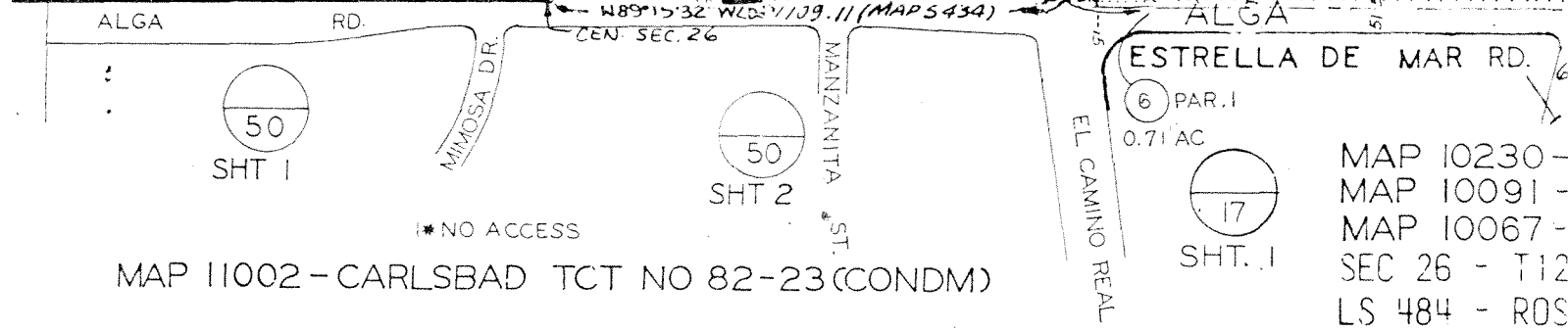
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MAP 10091 -  
MAP 10067 -  
SEC 26 - T12  
LS 484 - ROS