

January 27, 1995
REPORT TO PLANNING COMMISSION

NORTH CITY FUTURE URBANIZING AREA -
PROPOSED AUTHORIZATION TO USE SPECIFIC PLAN

At the December 8, 1994, Planning Commission meeting, the Commission reviewed a proposed amendment to the North City Future Urbanizing Area ("NCFUA") framework plan. The amendment would add the option of preparing a "specific plan" as an alternative to preparing a "subarea plan."

After some discussion, the Commission requested the City Attorney to report back as to whether specific plans can be used in the Future Urbanizing Area ("FUA") without violating the terms of Proposition A, a 1985 initiative, which basically limits development in the FUA. The Commission also requested our comments as to whether making the specific plan option available in only one portion of the FUA would violate the legal concept of "equal protection."

Our conclusions, as noted below, are that specific plans can be used in the FUA without violating Proposition A; and that the use of specific plans can be limited to one or more parts of the FUA without violating the right of equal protection.

"Specific plans" are authorized under California Government Code section 65450 et seq..

Under Proposition A, a specific plan could be implemented without voter approval only if the uses and density do not exceed the authorized uses and density which existed in 1984, the Proposition A date. Proposition A basically froze uses and density in the future urbanizing area and requires a majority vote of the electorate to increase uses and density.

Under the Government Code, a specific plan must include text and diagrams which specify all of the following in detail:

1. The distribution, location, and extent of the uses of land, including open space, within the area covered by the plan.
2. The proposed distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located

within the area covered by the plan and needed to support the land uses described in the plan.

3. Standards and criteria by which development will proceed, and standards for the conservation, development, and utilization of natural resources, where applicable.

4. A program of implementation measures including regulations, programs, public works projects, and financing measures necessary to carry out paragraphs (1), (2) and (3) above.

The specific plan must include a statement of the relationship of the specific plan to the general plan. Government Code section 65451.

The specific plan may address any other subjects which, in the judgment of the planning agency, are necessary or desirable for implementation of the general plan. Government Code section 65452.

The basic legal issue is whether a specific plan process is allowed under the terms of Proposition A. Proposition A, as noted above, basically froze density at the 1984 level. A copy of Proposition A is attached for reference as Attachment 1.

Section 1 of Proposition A prevents changing the land designation in the general plan from future urbanizing to planned urbanizing without a majority vote of the electorate, and further prohibits amending zoning restrictions to make them less restrictive without a majority vote of the electorate.

Section 3 provides for implementation and requires the City to take actions necessary to carry out the intent of the initiative.

Section 4 is the key section for the purpose of this report.

Section 4 reads as follows:

Section 4. Guidelines. "The City Council may adopt reasonable guidelines to implement this initiative measure following notice and public hearing, provided that any such guidelines shall be consistent with the intent and purpose of this measure."

The City Council in 1992, by adopting the framework plan, created guidelines to implement the initiative. The proposal before you, to allow a specific plan to be proposed, is merely a further modification of the guidelines to implement the initiative.

Government Code provisions relating to specific plans have been in effect since prior to 1984 and were, therefore, part of the total regulations applicable to the NCFUA property at the time the initiative was passed. My conclusion is, therefore, that the specific plan concept is not legally inappropriate and is not inconsistent with the provisions

of Proposition A.

Another issue which arose at the December 8, 1994, commission hearing is the City Manager's proposal to limit the availability of the specific plan process to less than all of the subareas in the NCFUA. A legal representative of one property owner indicated that he felt that limiting the availability of the precise plan tool to one subarea would violate the legal doctrine of "equal protection." I do not agree. The City Council does not have to officially approve the use of specific plans in all areas of the City, or all parts of the NCFUA, if it determines to allow the utilization in one area of the City. In addition, it is my understanding that there are in fact significant distinctions between subarea 5, which the Manager has now proposed be the sole subarea presently allowed to utilize the precise plan process, and the adjacent subareas.

However, it does seem important, from a legal standpoint, to make it clear in the framework plan amendment, that the limitation regarding precise plans to one or more specific areas is subject to change at any time and is merely a "guideline." Owners of property in other subareas will continue to have the right to request additional amendments to the guideline to allow potential future use of precise plans in other subareas.

In summary, since specific plans could have been utilized with regard to development of the future urbanizing area at and prior to the effective date of Proposition A, the City Council may continue to utilize specific plans in the area. With regard to "equal protection," it is legally permissible for the City Council to indicate a willingness to consider specific plans in one or more portions of the City or in one or more portions of the FUA. Such action would not violate the legal concept of "equal protection."

Respectfully submitted,
JOHN W. WITT
City Attorney

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Attachment
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