MEMORANDUM OF LAW

DATE: August 21, 1986

TO: Diana Dugan, Deputy Director, Planning Department

FROM: City Attorney

SUBJECT: Jurisdictional Authority of the 22nd District Agricultural Association

By memorandum to this office dated July 29, 1986, you asked if we concurred with a conclusion presumably reached by the 22nd District Agricultural Association (the "Association"), that as a state agency it is exempt from local land use approvals. You indicated that this statement is contained in the draft supplemental environmental impact report for the proposed 1985 updated master plan for the Del Mar Fairground and Racetrack (the "Fairgrounds") which the Association owns and operates.

The reason you asked us to render an opinion respecting this question relates to a proposal by the Association to construct an overflow parking lot for the Fairgrounds within a floodplain in the City of San Diego. You indicated that projects of this type within a floodplain would ordinarily require a conditional use permit, floodplain fringe review, and possibly a land development permit. Given the environmentally sensitive nature of this project, it is obvious to us that you felt compelled to obtain legal advice from this office to determine the accuracy of the statement in the draft supplemental environmental impact report which indicates that the Association is exempt from local land use approvals.

We have researched the law respecting your question and at the present time must conclude that a district agricultural association, as a state agency, is not subject to the building and zoning ordinances of a city when making improvements to the district agricultural association's real property. We base this conclusion, in part, upon a like opinion of the California

Attorney General, 56 Ops.Cal.Atty.Gen. 210 (1973), which analyzed this very same question.1

The City of San Diego still retains some measure of control over this particular development because the proposed overflow parking lot is undoubtedly in the coastal zone and, therefore, must conform to The City of San Diego's Local Coastal Program. The California Attorney General has concluded in 65 Ops.Cal.Atty.

Gen. 88 (1982) that:

> . . . counties and the state are required to obtain a coastal development permit from a city in order to develop public property located within that portion of the coastal zone under this city's jurisdiction, where the city's local coastal program has been certified pursuant to the California Coastal Act of 1976.

Therefore, the Association would be required to obtain a coastal development permit for construction of their proposed overflow parking lot. Because the permit issuing responsibility

1A more compelling reason to support our conclusion, however, is a recent unpublished Court of Appeal decision originating in the Fourth Appellate District entitled, Ned West Inc. v. City of Costa Mesa, which favorably adopts the opinion of the attorney general respecting the inapplicability of city regulations to district agricultural association improvements.

We would be remiss in not pointing out to you that unpublished opinions are prohibited by Rule No. 977 of the California Rules of Court from being cited or relied upon by a court or a party in any other action or proceeding. Therefore, the Ned West Inc. case could not be cited to a court as authority to support the attorney general's position.

There is, however, a petition for a review pending before the California Supreme Court regarding the Ned West Inc. decision. The City of Costa Mesa is requesting the Supreme Court to grant their request and review the decision made in the Ned West Inc. case. Moreover, The City of San Diego has joined the City of Costa Mesa in requesting the Supreme Court to grant such a review. Therefore, there is the potential that the opinion we have expressed herein could change, provided the Supreme Court grants a hearing and modifies or reverses Ned West Inc. However, this judicial process could take several months before a final decision is reached.

for coastal development permits is still vested with the Coastal Commission, they would review the request for a permit in this geographic area. But, such construction would still be required to be consistent with The City of San Diego's certified Local Coastal Program.

Respecting your other question, the power of eminent domain has been granted to district agricultural associations to the limited extent stated in Section 4054 of the Food and Agricultural Code. Section 4054 of the Food and Agricultural Code provides in part as follows:

> If the board of an association, by resolution

adopted by vote of two-thirds of all its members, finds and determines that the public interest and necessity require the acquisition of any building or improvement which is situated on property that is owned by the association, in trust or otherwise, or of any outstanding rights to such property, with the approval of the department and the association, such building, improvement, or outstanding rights may be acquired by eminent domain pursuant to the Property Acquisition Law, Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code.

Finally, you asked if the Association has legal jurisdic-tional borders. The answer to this question is yes. The boundaries of the Association are coterminous with the boundaries of the County of San Diego. Section 3873 of the Food and Agricultural Code succinctly states, "District 22 is the County of San Diego." Therefore, in response to your related concern respecting expansion, the Association could expand and include land in its Fairgrounds well beyond its present location.

In conclusion, this office will closely monitor the Ned West Inc. case and advise you of its status periodically. Should you have any other questions regarding this matter, please do not hesitate to contact me.

JOHN W. WITT, City Attorney
By
Thomas F. Steinke
Deputy City Attorney

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