

DATE: May 15, 1986

TO: Deputy Mayor and City Council
FROM: City Attorney
SUBJECT: Correction of Community Plan Map for
Penasquitos East - Applicability of
Proposition A

During consideration of this matter by the City Council on May 5, 1986, this office was asked to advise the City Council concerning the legal authority for the City Council to approve the revised community plan map.

The City Council has the unquestionable authority to adopt community plans and to amend those plans. Council Policies 600-5 and 600-6 have been adopted by the City Council to provide the framework for implementing the community planning process. Community plans and amendments thereto are adopted by the City Council by resolution.

If, following adoption of a community plan or amendment, it is discovered or contended that the text or map that was prepared to reflect the actions taken by the City Council is not in fact consistent with the directions of the City Council, the City Council has the authority to direct that the earlier oversight or error be corrected. Such action does not constitute an amendment of the previously approved plan but instead represents a reaffirmation of the previous action. Whether there was an oversight or error in the mapping of the Penasquitos East Community Plan is a factual question. If, upon examination of the material and testimony presented to the City Council at the time of a hearing on a plan amendment, the City Council is satisfied that an error or oversight has occurred, the City Council may adopt a resolution directing that the error or oversight be corrected. In the absence of such facts, there would not appear to be a legal basis for approving such an adjustment without first considering a community plan amendment and submission of the question to the voters if the land is in the future urbanizing area.

The situation described above and our response may be applicable to other community plans which border on future urbanizing areas. Public hearings before the Planning Commission and City Council will provide the opportunity to deal with these areas. In addition to considering rectifying errors or omissions relating to community plan boundaries, there is a need to review all community plans which share a boundary with the future urbanizing area. This program is underway and will result in

public hearings before the Planning Commission and City Council. The fundamental purpose of this review process is to identify the community plan boundaries and portray those boundaries on maps of a scale that will enable all affected property owners and interested citizens to identify those areas which are subject to the mandate of Proposition A.

Section 1 of Proposition A provides that no property shall be changed from the "future urbanizing" land use designation in the Progress Guide and General Plan to any other land use designation and the provisions restricting development in the future urbanizing area shall not be amended except by majority vote of the people voting on the change or amendment at a City-wide election thereon.

Section 2(a) of Proposition A provides:

Progress Guide and General Plan shall mean the Progress Guide and General Plan of the City of San Diego, including text and maps, as the same existed on August 1, 1984.

The General Plan map identifies community plan areas but the General Plan map is not intended to be used to establish precise boundaries. The General Plan map contains the following notation:

The General Plan indicates those areas which are master planned; however, the timing and sequencing of special parts of these master planned communities, and questions of detailed land use, may be found in the specific community plans.

Open spaces are located throughout the urbanized planned urbanizing, and future

urbanizing areas. Open space that is not publicly owned will be preserved through regulatory devices and these areas will be permitted to develop in a manner consistent with the zoning that is applied to them.

This map is a generalized graphic portrayal and is not intended for use in determining precise locations, boundaries, and alignments.

In addition, the General Plan provides at page 6:

The General Plan reflects the major proposals contained within community or subarea plans adopted by the City Council. However, the

General Plan should in no way be considered as a replacement for previously adopted and future community plans. Such plans must remain as official guidelines for the development of communities and subareas and act as supplements to the General Plan with regard to the more specific proposals and programs normally associated with community plans.

At page 203 of the General Plan, it states:

The General Plan Map is the Land Use Element of the Progress Guide and General Plan. It illustrates the location of residential areas, commercial activity, industrial development, public facilities, the alignment of the transportation network and the open space/park system. It is intended to indicate only those land uses of regional or City-wide significance and its locational designations should be considered advisory only. The fine detail so often seen on planning maps is included not on the General Plan, but on the many community plans which have been developed throughout the San Diego area. Reference must be made to these plans and the maps and descriptions contained within them in order to determine the land-use designation of any particular property. *Emphasis added.*

With these provisions in mind, the individual community plans will be reviewed. To the extent that development has occurred or

was approved prior to August 1, 1984, the community plan boundaries should be adjusted accordingly, if necessary. In those areas where the community plan anticipates development which has not yet been approved, boundary adjustments may be considered in order to accommodate topographic features, to provide a logical development pattern or to provide for utilization of facilities that have been installed in anticipation of development. This determination must be made on a case-by-case basis. The need to undertake this kind of review appears to have been anticipated by Proposition A which provides in Section 3:

The City Council, City Planning Commission, and City staff are hereby directed to take any and all actions necessary under this initiative measure, including but not limited

to adoption and implementation on any amendments to the General Plan and zoning ordinance or City Code, reasonably necessary to carry out the intent and purpose of this initiative measure. Said actions shall be carried forthwith.

While it is obvious that the community plan maps contain details that cannot be presented on the General Plan map, the community plan map's boundaries are usually not susceptible to certain identification except when the boundary coincides with man-made features unless reference is made to the larger or more detailed base maps from which the community plan was developed. The review process which has been initiated will provide the opportunity to clarify boundaries if ambiguity exists or to establish the boundaries with certainty if detailed evaluation was not undertaken at the time of adoption of the community plan. However, it must be recognized that this process cannot be used to frustrate the provisions of Proposition A and, consequently, any boundary adjustment to include land within a community plan area or exclude land from a community plan area must be minor in nature. An adjustment to accommodate ownership lines would not appear to be justified in the absence of other factors.

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By

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ML-86-59