

To: City Attorney's Office; Att: Keith G. Bauerle  
From: Leo Wilson, CPC Chair  
Subject: Community Planning Group Review of CEQA Documents  
Dated: 17 Jan 2010

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## 1. Introduction:

On October 27, 2009, the City Attorney's Office issued a memo entitled "Community Planning Groups Review of CEQA Documents." The memo was subsequently reviewed by members of the Community Planners Committee ("CPC") – which consist of the chairs/ representatives from the City of San Diego's approximately 40 community planning groups ("CPGs").

Several CPC members indicated they had issues or questions regarding the memo, and the City Attorney's Office agreed to send a representative to the January 26, 2010 CPC meeting to address these concerns. Prior to the meeting, it was agreed the CPC would present the City Attorney a summary of the likely issues and questions that would be raised at the January 26<sup>th</sup> meeting.

## 2. Summary of Issues:

The concerns raised by CPC members involve the discussion in the memo regarding the CPGs role in reviewing development projects. The memo differs from the understanding that CPC has of the role of CPGs in relation to CEQA, based on the applicable City Council Policy, Administrative Guidelines and the long-established present review process.

The CPC concerns fall under two broad categories of questions:

### A. **What is the role of CPGs in development project review?**

The City Attorney's memo states the development project review function is not a primary purpose of the of the community planning groups, and only takes place "as requested by the city." (p. 2).

It bases this conclusion on Council Policy 600-24, where it states that CPG have been formed and recognized by the City Council to make recommendations:

" . . . concerning the preparation of, adoption of, implementation of, or amendment to, the General Plan or land use plan when a plan relates to each recognized community planning group's planning area boundaries. Planning groups also advise on other land use matters as requested by the City or other governmental agencies.(emphasize added.)"

This first question focuses on the definition of "implementation" in Council Policy 600-24. CPGs spend a substantial majority of their time doing development project review. It seems obvious that this is being done as an implementation function pursuant to City Council Policy 600-24. What else could it mean?

CPGs only review projects that are discretionary in nature (process 2 through 4). Development projects that meet all the requirements of a community plan and applicable land use regulations are processed as ministerial (process 1), and not subject to CPG review. The function of CPG discretionary review is to determine if a specific project complies with the general and community plan, and applicable land-use regulations. This should fall under the primary purpose definition of "assisting the City with community plans and planning activities" in Council Policy 600-24.

It should be noted that CPGs advisory recommendations are consistently placed in planning staff reports under the separate heading: "Community Plan Group Recommendation", and a CPGs advisory recommendation is considered a prerequisite for the project being considered by the decision-making entity – whether it is the City Council, the Planning Commission or a hearing officer. Not discussed at all in the City Attorney's memo is the fact that the City has also effectively and consistently requested the assistance and advice of CPGs on land use matters. Council Policy 600-24 does not require the City to make a specific request every time it desires the benefit of CPGs review, especially since it has made what is in effect a "standing request."

This dual role of CPG is recognized in the Administrative Guidelines which interpret Council Policy 600-24: Article II, of the Administrative Guidelines for City Council Policy 600-24, entitled: "Purpose of Community Planning Group and General Provisions" states:

"Section 1.

Recognized community planning groups have been formed and recognized by the City Council to make recommendations to the City Council, Planning Commission, City staff and other governmental agencies on land use matters, specifically, concerning the preparation of, adoption of, implementation of, or amendment to, the General Plan or a land use plan when the plan relates to each planning group's planning area boundaries. Planning groups also advise on other land use matters as requested by the City or other governmental agencies.

Section 2.

A recognized community planning group reviewing individual development projects should focus such review on conformity with the adopted Community Plan and/or the General Plan. Preliminary comments on projects may be submitted to the City during the project review process. Whenever possible, a formal planning group recommendation should be submitted no later than the end of the public review period offered by the environmental review process. Substantial changes in projects subsequent to completion of the environmental review process will sanction further evaluation by the planning group. This will provide staff and the project applicant the opportunity to respond to the comments and concerns and potentially resolve possible conflicts before the project is noticed for discretionary action."

Of course, one of the primary purposes of CEQA documentation is to assure that community plans and the General Plan requirements are specifically addressed. It is clear from the above language, which was included in the standard bylaws "shell" almost verbatim that each CPG adopted in 2009 pursuant a City Council motion, that development project review is as much a primary purpose of CPGs as making recommendations about planning and land use matters.

In fact, Section 6 of Article II, speaks of both functions within the same section:

"Section 6.

"Pursuant to the provisions of City Council Policy 66-5, a recognized community planning group's consistent failure to respond to the City's request for planning group input on the preparation of, adoption of, implementation of, or amendment to, the General Plan or a community, precise, or specific plan, or failure to review and reply to the City in a timely manner on development projects shall result in the forfeiture of rights to represent its community for these purposes. (emphasis added)."

Given the above, it appears CPGs have as their primary function both (i.) making recommendations regarding planning and land use matters and (ii.) conducting development

project review. Both functions are intertwined, as interpreting and applying (i.e. implementing) a community plan/general plan is an ongoing, organic function.

### **B. Should CPGs review CEQA documents prior to making their formal advisory recommendations?**

The second category of questions are policy oriented: The essential issue is, even if there is no express requirement that CPGs review CEQA documents prior to making their formal advisory recommendations, should CPGs be actively encouraged to do so, in the prudent discharge of their responsibilities to the City under Council Policy 600-24? In other words, should CPG members be categorically required to turn a blind eye to information necessary to diligently perform the duties imposed on them when they undertake their civic responsibilities?

As indicated above, Title II, Section 2, of the Administrative Guidelines provide that: "Whenever possible, a formal planning group recommendation should be submitted no later than the end of the public review period offered by the environmental review process. (emphasis added)" There procedure is specific procedure which allows a CPG to again review a project after the appropriate environmental document has been issued. How can CPG members advise on implementation of their community plans if they are screened off from access to relevant CEQA documentation?

The CPG advisory recommendations are often relied on by a decision-making body reviewing a development project as a general rule – whether it is City Council, the Planning Commission or a hearing officer. At the same time, the decision-maker is also required to make a contemporaneous decision on CEQA compliance based the review of the appropriate environmental document – be it an Environmental Impact Report, a Negative Mitigated Declaration or any other evidence of CEQA review (including whether the CEQA document adequately address the General Plan and applicable community plan).

As a matter of consistency, a CPG recommendation a decision-maker may rely on to make a decision on a development project should only be made after the reviewing all relevant documentation, including the appropriate environmental documents. In many instances, an environmental document will discuss issues that are central to the approval of a project, but which may not have been previously considered. Precluding CPG review of any category of relevant information would, effectively, render a CPG recommendation made prior to the issuance of the environmental document meaningless.

Despite the strained legal interpretation of City Council Policy 600-24 contained in the City Attorney's memo, as a matter of policy, the City should encourage CPGs to make their formal advisory recommendation only after the review of the applicable environmental documentation in all instances. Prior to that time, the CPGs could still hear the development project as an informational item and perhaps made initial comments – this appears to be the present practice of the Planning Commission on many major land-use matters.

### **3. Conclusion:**

As indicated above, there are significant issues regarding whether or not San Diego's CPGs should be precluded from consideration of CEQA documentation in the proper discharge of their advisory responsibilities. The CPC appreciate the opportunity to discuss these issues with the City Attorney's Office on January 26<sup>th</sup>.

Respectfully yours,

Leo Wilson  
Chair  
Community Chairs Committee

cc. Don Liddell, Rules Committee Chair, Uptown Planners  
CPC Chairs & Representatives  
Mary Wright, Asst. Director, City Planning Department  
Bill Anderson, Director, City Planning Department