

significant effect on the environment.' The classes of projects identified by the Secretary of the Resources Agency appear in Guideline section 15300 et seq. and are sometimes referred to as 'categorical exemptions.'" (Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997) 52 Cal.App.4th 1165, 1191 (Azusa).)

"The agency decides whether a project is categorically exempt as a part of its preliminary review without reference to any mitigation measures. [Citation.] If the agency establishes the project is within an exempt class, the burden shifts to the party challenging the exemption to show that it falls into one of the exceptions. [Citation.] Generally, courts apply the substantial evidence test to the agency's factual determination that the exemption applies in the first instance; courts are divided on the question of whether the 'fair argument' standard (whether the record contains evidence of a fair argument that the project may have a significant effect on the environment) [citation], or the substantial evidence test applies to the second step of the analysis, namely [\*10] determination of whether an exception to the exemption exists.<sup>3</sup> We do not substitute our judgment for that of the state agency and must resolve reasonable doubts in favor of its decision. [Citation.]" (Committee to Save Hollywoodland, supra, 161 Cal.App.4th at pp. 1186-1187, fn. omitted.) When an agency relies on a categorical exemption, the exemption must be narrowly construed. (Azusa, supra, 52 Cal.App.4th at p. 1192.)

The City found the Amendment to be exempt from CEQA review. The exemption at issue here, a class 5 exemption, exempts projects that "consist[] of minor alterations in land use limitations in areas with an average slope of less than 20%, which do

not result in any changes in land use or density, including but not limited to: [¶] (a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel; [¶] (b) Issuance of minor encroachment permits; [¶] (c) Reversion to acreage in accordance with the Subdivision Map Act." (Cal. Code Regs., tit. 14, §§ 15000 et seq. (CEQA Guidelines), 15305, italics added.) The City found the Amendment exempt because its "proposed change reflects past and current practice and retains existing density maximum standards." The trial court agreed. We do not.

Because the Amendment does [\*11] not retain existing density minimum standards on its face, it apparently results in a change to land density. The City's argument to the contrary discounts minimum density standards on the ground that the General Plan qualifies that minimum number as "anticipated." Moreover, the City argues that the Amendment "did not alter any language in the Housing Element or any tables either in the Land Use Element or Housing Element"; that "[i]t did not alter estimates of housing stock with the Housing Element"; and "[t]he ranges of density were left alone in some places as they still remain useful in noting the minimums that can be anticipated and continue to give meaning to the General Plan's description of the lower threshold." In sum, the City's argument is that the Amendment did not result in a change to land density.

Notwithstanding the above, even if we accepted the City's argument and assumed the Amendment qualified as a class 5 exemption, we conclude that PFPP met its burden of showing that the Amendment falls into one of the exceptions to exemption. PFPP presented sufficient evidence supporting a fair argument that the Amendment will result in a significant impact on the environment due to its [\*12] across-the-board change in land use regulation that affects every residential area identified by the General Plan.

<sup>3</sup> We need not decide that issue here, however, as the result is the same under either test.

Moreover, the Amendment is capable of causing significant cumulative impacts on the City's stock of high-density, low and moderate income housing due to its elimination of the minimum density allowances. In order to evaluate how the Amendment will impact the environment, we begin with the EIR that was prepared in support of the 2007 General Plan (2007 EIR).

According to the 2007 EIR, residential land uses accounted for approximately 41 percent of the urban and developed land uses within the City, with only 3 percent of total acreage designated for high density. In support of the 2007 General Plan update, which set the anticipated range of density, the City identified the following policies and actions that were designed to reduce potential land use and planning impacts of future development. Regarding land use, the City sought to "[e]ncourage, where appropriate, high density projects to maximize the use of land." As for the housing element, the City wanted to encourage a broad range of housing opportunities, "[m]aintain a range of housing densities through general plan land use designations and zoning to facilitate and encourage [\*13] single-family homes, apartments and townhomes, mobile homes, and special needs housing," facilitate the development of affordable housing, and "[p]rohibit the encroachment of significant housing development into areas designated as open space, desert, or conservation areas without appropriate environmental review and approvals."

The 2007 EIR noted that the housing element of the General Plan update "provides a thorough discussion as well as goals and policies to address issues of housing affordability." Recognizing that Government Code section 65863 "restricts cities' ability to reduce the maximum allowable density in areas already designated or zoned for residential uses to a level below the density used by the [state] when determining whether a city's housing element complies with state law," the 2007 EIR noted that

the City could not permit the "reduction of density of any such residentially designated parcel unless the city finds the proposed reduction in density is consistent with the General Plan," and there are remaining sites adequate to accommodate the City's share of the regional housing needs. While the Amendment does not reduce the maximum allowable density for residential areas, its elimination of the minimum allowable density [\*14] changes the density range, effecting a lower average density for residential areas than that anticipated in the 2007 EIR. The City's claim that the Amendment is exempt from CEQA analysis begs the question: Is the City able to accommodate its share of the regional housing needs if there is no minimum (and a lower average) density for residential areas as originally identified and required in the General Plan?

According to the City, the minimum density identified in the General Plan is irrelevant because it was never really considered. It contends that the "'baseline' or existing environment" remains unchanged given the City's practice of never interpreting the General Plan as mandating minimum densities, and the Zoning Ordinance (under which all residential development is processed) as never mandating minimum densities. The City adds that this was the existing environment when the General Plan was adopted in 2007 and will remain so with the Amendment. The trial court agreed, finding the Amendment did not change the existing environmental baseline. We are not persuaded.

While we agree that the physical environmental conditions in the vicinity of the project normally constitute what is [\*15] known as the baseline (Cal. Code Regs., tit. 14, §§ 15000 et seq. (CEQA Guidelines), 15125, subd. (a)), we do not agree that such is the case here. Once the City adopted the General Plan in 2007, the General Plan itself provided the baseline for future projects. (Save Our Peninsula Committee v. Monterey County Bd. of

Supervisors (2001) 87 Cal.App.4th 99, 125-126

["[W]here the issue involves an impact on traffic levels, the EIR might necessarily take into account the normal increase in traffic over time. Since the environmental review process can take a number of years, traffic levels as of the time the project is approved may be a more accurate representation of the existing baseline against which to measure the impact of the project."] Here, the City is required to accommodate its share of the regional housing needs. The 2007 EIR identified closed density ranges that met this requirement. By eliminating the minimum density, the Amendment will impact the availability of high density, low and moderate income housing because high density designated parcels may now be considered for low-density development. Thus, the Amendment lowers the average density for residential areas and changes the land use regulation to the detriment of every parcel designated as residential by the General Plan, potentially causing significant cumulative[\*16] impacts on the City's stock of high density, low and moderate income housing. Moreover, permitting low density residential development in areas previously set aside for high density projects will necessarily reduce the range of housing types, prices and opportunities available in the City to the frustration of the General Plan's goal of facilitating a broad range of housing types. The City recognized that the Amendment embraces a trend towards low density, small lot single-family dwellings. Thus, arguably, the Amendment changes the diversity of residential densities established in General Plan. Given this change, it is unclear whether the City will be able to accommodate its share of the regional housing needs.

Further, we find the City's reliance on its zoning ordinance as providing guidance on "whether the [Amendment] ha[s] the potential to reduce residential densities" to be misplaced. As the City acknowledges, the zoning ordinance sets no minimums on residential density. However, the General Plan does. The General Plan is a

""constitution" for future development' [citation] located at the top of 'the hierarchy of local government law regulating land use' [citation]." (DeVita v. County of Napa (1995) 9 Cal.4th 763, 772-773.) "A zoning ordinance [\*17] is consistent with the city's general plan where, considering all of its aspects, the ordinance furthers the objectives and policies of the general plan and does not obstruct their attainment. [Citation.] . . . . [\*] . . . [\*] . . . 'A zoning ordinance that is inconsistent with the general plan is invalid when passed [citations] and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. [Citation.] The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform.' [Citation.] The same rule applies to this case." (City of Irvine v. Irvine Citizens Against Overdevelopment (1994) 25 Cal.App.4th 868, 879.)

Given the above, we conclude that the City may not rely on an exemption from CEQA, it must proceed to the next step of the analysis and conduct an initial threshold study to see if the proposed Amendment will have a significant impact upon the environment to determine whether a negative declaration may be issued. (See Committee to Save Hollywoodland, supra, 161 Cal.App.4th at p. 1187.)

III. DISPOSITION

The judgment is reversed. The trial court is directed to grant PFPP's petition for a writ of mandamus and require the City to vacate [\*18] both its issuance of an exemption under CEQA concerning the Amendment, and its September 4, 2013, Resolution No. 23415 certifying and approving the Amendment. PFPP is awarded its costs on appeal.

Ramirez, P. J., and Slough, J., concurred.

## EXEMPTIONS

The State Legislature has recognized that occasions arise which require the local jurisdiction to have some flexibility in amending the General Plan. As set forth in the California Government Code, the following are exempt from the General Plan amendment schedule:

- ◆ Amendments to optional elements.
- ◆ Amendments requested and necessary for affordable housing (Section 65358(c)).
- ◆ Any amendment necessary to comply with a court decision in a case involving the legal adequacy of the general plan (Section 65358(d)(1)).
- ◆ Amendments to bring a general plan into compliance with an airport land use plan (Section 65302.3).

## RELATIONSHIP TO OTHER PLANS AND PROGRAMS

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Although the General Plan serves as the primary means to help the City implement its vision, several other management and implementation tools are needed to ensure that the goals and policies identified here are fully realized.

## MUNICIPAL CODE AND ZONING ORDINANCE

The City's Municipal Code and Zoning Ordinance are the primary tools used to implement the goals and policies of the General Plan. The Zoning Ordinance provides more detailed direction related to development standards; permitted, conditionally permitted, and prohibited uses; and other regulations such as parking standards and sign regulations. The land uses specified in the Zoning Ordinance are based upon and should be consistent with the land use policies set forth in this element. Changes to the Zoning Ordinance may be necessary due to the adoption of provisions in this General Plan and could require changes to the zoning maps and development standards.

## SPECIFIC PLANS

While the General Plan provides overall guidance for the physical development of the City, specific plans are used to provide more detailed regulatory guidance for special areas or large developments within the City. Specific plans are generally comprised of a land use plan, circulation plan,

development standards, design guidelines, phasing plan, infrastructure plan (water, sewer, or drainage), and implementation plan pursuant to California Governmental Code Sections 65450 through 65457. They are typically implemented as customized zoning for a particular area of the City, and are generally used for large-scale projects that require a comprehensive approach to planning and infrastructure issues.

A limited number of specific plans have been approved within the City of Palm Springs for the following projects: Canyon Park, Canyon South (an amendment to the Canyon Park Specific Plan), and Section 14, which are shown on the Land Use Plan (Figures 2-2 and 2-3).

## **PLANNED DEVELOPMENT DISTRICTS**

Planned development districts are mechanisms to provide flexibility in the application of development standards that would yield a more desirable and attractive project than would otherwise be possible with strict application of the underlying zoning regulations. Planned development districts enable property owners to apply modified development standards (e.g., an increase in buildable area or building height or adjustments to setbacks) that are different than those identified in the Zoning Code, if the project can mitigate any impacts that would be generated by the modifications. All Planned Development Districts shall be consistent with the General Plan.

To implement the land use policies identified in this element, planned development districts are intended to:

- a. Provide a mechanism to allow the permitted building area, floor area ratios, and building heights to exceed provisions specified by land use policy.
- b. Provide a mechanism for allowing both on- and off-site density transfers.
- c. Provide a mechanism for the consolidation of adjoining commercially and residentially designated parcels into a single site, if they are designed as part of a unified development project.
- d. Provide a mechanism for determining the appropriate type, character, density/intensity, and standards of development for the reuse of sites currently used for public or private institutions.
- e. Provide a mechanism for creative, high quality projects that are evaluated as a whole, rather than against individual standards.

STATE OF CALIFORNIA

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# General Plan Guidelines

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required for signals, for the cost of paving adjacent arterials and for off-site improvements, all made necessary by the traffic resulting from new development. To offset development impacts on the local transit system, San Francisco charges a transit impact fee based on building square footage.

- Airspace leasing taps the value of public rights-of-way in urban areas. A governmental agency may capitalize on that value by leasing to the private sector unoccupied space over, under, or within the right-of-way. This has been used for a variety of purposes including parks, parking lots, cellular communications, office buildings, restaurants, and public facilities.
- “Public/private partnerships,” “development agreements,” and “cost-sharing” involve developing an agreement between the private and public sectors that splits responsibilities for the cost of infrastructure provision, operation and maintenance. This technique tends to be more flexible and less bound by legal constraints than other measures.
- Privatization may reduce or eliminate the need for public funds for transportation infrastructure if the prospect of profit exists. California’s first modern toll roads have been built in Orange County by private funds. Private provision of transit services is becoming more common as it is connected to specific developments. Individual developers and employers have designed and initiated such traffic mitigation programs such as traffic flow improvements, flexible work hours, and bicycle facilities. In addition, recent trends show groups of developers, employers and businesses banding together in transportation management associations to address mutual traffic concerns in a specific area and setting up programs such as those mentioned above. Measures have been established in the cities of El Segundo, Pleasanton, and Berkeley (in cooperation with the University of California).

### Consistency In Implementation

The general plan is largely implemented through zoning and subdivision decisions. In 1971, the Legislature made consistency with the general plan a determinative factor for subdivision approvals. Since that time, lawmakers have continued to add consistency requirements to California’s planning and land use laws. Other statutes, while not mandating consistency, require findings or a report on whether various local actions conform to the general plan. (Please refer to the chart on the

following pages.)

In order for zoning and other measures to comply with the consistency requirements, the general plan itself must first be complete and adequate – i.e., it must address all local relevant issues and it must be internally consistent. For example, in 1984, a court ruled that a finding of consistency based on an inadequate general plan was a legal impossibility (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184 (based on 58 Opps. Cal.Att’y.Gen 21, 24 (1975))). More recently, however, a court has ruled that a subordinate land use approval such as a subdivision map can only be challenged on the basis of an internal general plan in consistency when there is a “nexus” between the particular approval and the claimed inconsistency in the general plan (*Garat v. Riverside* (1991) 2 Cal.App.4<sup>th</sup> 259).

The California Attorney General has opined that “the term ‘consistent with’ is used interchangeably with ‘conformity with’” (58 Ops.Cal.Atty.Gen.21,25 (1975)). A general rule for consistency determinations can be stated as follows:

*An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.*

The city or county is responsible for determining whether an activity is consistent with the general plan. A city council’s finding of a project’s consistency with the plan would be reversed by a court if, based on the evidence before the council, a reasonable person could not have reached the same conclusion. (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223)

“[The] nature of the policy and the nature of the inconsistency are critical factors to consider” (*Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors* (1998) 62 Cal.App.4<sup>th</sup> 1332). A project is clearly inconsistent when it conflicts with one or more specific, fundamental, and mandatory policies of the general plan (*Families Unafraid*, supra). However, any given project need not be in perfect conformity with each and every policy of the general plan if those policies are not relevant or leave the city or county some room for interpretation (*Sequoayah Hills Homeowners Association v. City of Oakland*, (1998) 23 Cal.App 4<sup>th</sup> 704 (1993)).

Placer County’s “On-line General Plan” is one method to help ensure consistency. Upon receiving a development proposal or other entitlement request,

county staff enters distinguishing project features into the county's computer program. The program analyzes the proposal by checking for general plan and community plan consistency, identifying goals and policies by topic, and prepares a report of its results. The software can compare project characteristics to the goals and policies of the plan and each of its elements, providing a consistent and unbiased consistency analysis.

### Zoning Consistency

Counties, general law cities, and charter cities with a population of more than two million are required to maintain consistency between their zoning ordinance and their adopted general plan (§65860). Charter cities with populations under two million are not subject to this mandate, but may choose to enact their own code requirements for consistency (§65803 and 65860).

Where the consistency requirement applies, every zoning action, such as the adoption of new zoning ordinance text provisions or zoning ordinance map amendments, must be consistent with the plan. A zoning ordinance that is inconsistent with the general plan at the time it is enacted is "invalid when passed" (*Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698). By the same token, when a general plan amendment makes the zoning inconsistent, the zoning must be changed to reestablish consistency "within a reasonable time" (§65860(c)). According to the California Supreme Court, "[t]he Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog." (*Leshner Communications v. City of Walnut Creek*, *supra*).

State law does not prescribe what constitutes "a reasonable time" for reconciling the zoning ordinance with the general plan. OPR suggests that when possible, general plan amendments and necessary related zone changes be heard concurrently (§65862). When concurrent hearings are not feasible, OPR suggests the following time periods:

(1) for minor general plan amendments (i.e., those involving a relatively small area), six months.

(2) for extensive amendments to the general plan (such as a revision which results in the inconsistency of large areas), two years.

Zoning-related initiatives and referenda must also maintain general plan consistency. An initiative seeking to impose growth management regulations was invalidated when it was found to be inconsistent with the general plan (*Leshner Communications v. City of Walnut Creek*, *supra*). A referendum which sought to overturn a

rezoning approval was invalidated where the rezoning was necessary to maintain or achieve consistency with the general plan (*deBottari v. City of Norco* (1985) 171 Cal.App.3d 1204; *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4<sup>th</sup> 868).

### Assessing and Achieving Zoning Consistency

Zoning consistency can be broken down into three parts: (1) uses and standards, (2) spatial patterns, and (3) timing.

The local agency's general plan and zoning ordinance contain text and maps that specify development standards and the proposed location of uses for the community. The development standards and uses specified for all land use categories in the zoning ordinance – density, lot size, height, and the like – must be consistent with the development standards and uses specified in the general plan's text and diagram of proposed land use. This has several implications.

The zoning scheme, with its range of zoning districts and their associated development standards or regulations, must be broad enough to implement the general plan. For example, if a general plan contains three residential land use designations, each with its own residential intensity and density standard, then the zoning ordinance should have at least as many zoning districts with appropriate standards. Similarly, if the general plan identifies seismic hazard areas and calls for zoning measures to implement safety policies, the zoning ordinance must contain appropriate provisions such as a hazard overlay zone or specific development standards.

When a new element or major revision to a general plan is adopted, the zoning scheme should be thoroughly reviewed for consistency. It must be amended if necessary to ensure that it is adequate to carry out the new element or revisions.

When rezoning occurs, the newly adopted zoning must be appropriate and consistent with all elements of the general plan. This includes not only the land uses and development standards, but also the transportation, safety, open-space, and other objectives and policies contained in the plan.

Both the general plan diagram of proposed land use and the zoning map should set forth similar patterns of land use distribution. However, the maps need not be identical if the general plan text provides for flexibility of interpretation, or for future development (*Las Virgenes Homeowners v. County of Los Angeles* (1986) 177 Cal.App.3d 312). For example, a land use diagram may designate an area for residential development while the



zoning map may show the same area as predominantly residential, with a few pockets of commercial use. Despite the residential designation, the commercial zoning could be consistent with the general plan if the plan's policies and standards allow for neighborhood commercial development within residential areas. Likewise, more than one zoning classification may be consistent with any one of the general plan's land use categories. For example, both R-1 (residential) and PUD (planned unit development) may be consistent zoning for a low-density residential category in the plan.

The timing of development is closely linked to the question of consistency of spatial patterns. A general plan is long-term, while zoning responds to shorter-term needs and conditions. Therefore, in many cases zoning will only gradually fulfill the prescriptions of the general plan. Timing may be particularly important in rural areas designated for future urbanization. If the general plan contains policies regarding orderly development, adequate public services, and compact urban growth, rezoning a large area from a low-intensity use (i.e., agriculture) to a more intensive one (i.e., residential) before urban services are available would be inconsistent with the general plan. Conversely, an inconsistency may be created when general plan policies promote high-intensity development in an area, but the jurisdiction instead permits low-intensity uses.

Since timing can be a problem, general plans should provide clear guidance for the pace of future development, perhaps by using five-year increments or by establishing a set of conditions to be met before consistent zoning would be considered timely.

Local governments have devised a number of ways to evaluate and achieve zoning consistency. A fairly common approach is to employ a matrix comparing the general plan's land use categories and associated development standards with the zoning districts and their corresponding zoning ordinance development standards. To indicate the degree of zoning consistency with the plan, many matrices feature categories ranging from "highly compatible" to "clearly incompatible." An intermediate category, "conditionally compatible," could reflect zoning that by itself is not compatible, but could become compatible if measures such as a PUD overlay were imposed to reduce or eliminate potential conflicts.

The matrix approach however, has its limitations. By itself, a matrix cannot answer questions about the zoning's compatibility with the objectives, policies, and programs of the general plan, nor can it answer questions about timing. A number of local governments use a checklist to evaluate the consistency of individual zon-

ing proposals. The checklist repeats the major goals and policies of the general plan and rates the degree to which the proposed zoning conforms to each of them (i.e., "furthers," "deters," "no effect"). A point system which rates development projects by their level of consistency with the goals, objectives, and policies of the general plan is a similar approach.

The figure on page 128 illustrates a hypothetical matrix. It may be modified to match local conditions.

#### **Subdivision Consistency**

Before a city or county may approve a subdivision map (including parcel maps) and its provisions for design and improvement, the city or county must find that a proposed subdivision map is consistent with the general plan and any applicable specific plan (§66473.5). These findings can only be made when the local agency has officially adopted a general plan and the proposed subdivision is "compatible with the objectives, policies, general land uses and programs specified in such a plan."

Section 66474 and 66474.61 require a city or county to deny approval of a tentative map if it makes either of the following findings: (a) the proposed map is not consistent with applicable general and specific plans; or, (b) the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

The checklist on page 132 demonstrates one way to evaluate subdivision consistency.

#### **Enforcement and Remedies**

Any resident, property owner, or other aggrieved party, including a public agency, may sue to enforce the requirements for the adoption of an adequate general plan (58 Ops.Cal.Atty.Gen. 21 (1975)). The same is true for zoning consistency with the general plan (§65860(b)), and for subdivisions (§66499.33). As the state's chief law enforcement officer, the Attorney General may do the same (§12606 and California Constitution Article V, §13). Additionally, persons living outside a city have standing to sue if the city's zoning practices exclude them from residing in the city or raised their housing costs outside the city by adversely affecting the regional housing market (*Stocks v. City of Irvine* (1981) 114 Cal.App.3d 520).

The courts may impose various remedies for failure to have a complete and adequate general plan or for inconsistency of zoning and subdivision actions and public works projects (§65750, et seq.). One is a writ of mandate to compel a local government to adopt a legally

**Hypothetical General Plan/Zoning Compatibility Matrix**

General Plan Designations.....▶

		Residential (units per net acre)					Commercial				Industrial		Public			Parks and Open Space			Rural		
		0.1 – 2.0	2.1 – 8.0	8.1 – 15.0	15.1 – 25.0	25.1 – 35.0	Neighborhood Community	CBD	Highway	Heavy	Schools	Institutional	Government	Parks	Golf Course	Nat. Resource	Agriculture	Hillside			
◀..... Zoning District	Residential	R-1	▲																		
		R-2		▲																	
		R-3			▲																
		R-4				▲															
		Commercial	C-1				▲	▲	●												
			C-2					●	▲												
			C-3							▲	▲										
		Mixed Use	MRX			●	●	▲	▲	▲											
		Industrial	M-L							●	▲										
			M-H							●	▲										
		Public	P-F									▲	●	▲	▲	●	●			●	
		Open Space	O-S										●	▲	●	▲		▲			
		Flood Plain	F-P												▲	▲	▲		▲		
		Agriculture	A-G	▲													▲		▲	▲	
		New Zone Recommended		<b>N</b>					<b>N</b>	<b>N</b>										<b>N</b>	<b>N</b>

- ▲ Zones that are compatible with general plan designation
- Zones that the city could find compatible under specified circumstances, but that generally are not compatible
- N** Formulation of a new zoning district is recommended

### Sample Checklist For Subdivision Consistency With The General Plan

When the following questions can be answered in the affirmative, the subdivision will normally be consistent with the general plan.

- **Land Use**

Do land uses proposed in conjunction with the subdivision conform to the general plan's land use designations?

- **Density and Intensity**

Are the proposed lot sizes appropriate for the uses prescribed for the area by the general plan and consistent with the applicable general plan standards for population density and building intensity? This is more than consistency with the general plan diagram: the subdivision must also be consistent with the plan's written policies and standards regarding uses, density, and intensity.

- **On-Site Improvements**

Does the subdivision provide adequate on-site improvements consistent with the general plan, including street design, drainage and sanitary facilities, and easements?

- **Off-Site Improvements**

Does the subdivision include provisions for off-site improvements or the payment of fees for off-site improvements consistent with the general plan, including temporary school facilities, road and bridge improvements, parks, and sewers?

- **Circulation**

Does the map respond to projected traffic levels indicated in the circulation element? Does the design of the subdivision take into account thor-

oughfares identified in the circulation element, such as major arterials, expressways, collectors, etc.?

Does the subdivision design effectively correlate circulation element policies with those of the land use element, pursuant to the court's decision in *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90.

- **Environmentally Sensitive Areas**

Is the subdivision designed to accommodate and protect environmentally sensitive areas identified in the general plan? Environmentally sensitive areas are ones susceptible to flooding and to geologic or seismic hazards and fires, areas of special biological significance, areas of special cultural significance, such as archaeological sites, and the like.

- **Timing**

Does the subdivision conform to the schedule for growth or phasing set forth in the general plan?

- **Other General Plan Provisions**

Does the subdivision's design take into account noise attenuation standards set forth in the noise element?

Does the subdivision's design accommodate the recovery of important mineral resources?

Does the subdivision's design conform to the open-space element's policies and designations?

Is the subdivision consistent with all other general plan policies pertaining to subdivisions, possibly including policies for a mixture of housing types, lot orientation for solar heating, limitations on congestion of public facilities, and the like?

adequate general plan. The courts also have general authority to issue an injunction to limit approvals of additional subdivision and parcel maps, rezonings, public works projects, or (under limited circumstances) the issuance of building permits, pending adoption of a complete and adequate general plan (58 Ops.Cal.Atty.Gen. 21 (1975), *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, *Camp v. Mendocino* (1981) 123 Cal.App.3d 334). Where a court

finds that specific zoning or subdivision actions or public works projects are inconsistent with the general plan, it may set aside such actions or projects. Under certain circumstances, the court may impose any of these forms of relief prior to a judicial determination of a general plan's inadequacy (§65757). These provisions, however, do not limit the court's authority to impose other appropriate remedies.

### Other Consistency Provisions In State Law And Legal Precedents

#### Agricultural Preserves

- §51234: requires that agricultural preserves established under the Williamson Act be consistent with the general plan.
- §51282: requires a city or county, when approving a Williamson Act contract cancellation, to make a finding that the proposed alternate use is consistent with the general plan.

#### Capital Improvements

- §65401 and 65402: require planning agencies to review and report on the consistency with the applicable general plan of proposed city, county, and special district capital projects, including land acquisition and disposal.
- §65103(c): requires planning agencies to review annually their city or county capital improvement programs and other local agencies' public works projects for consistency with the general plan.
- *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988: Governmental capital facilities projects must be consistent with the general plan.
- §53090, et seq.: most public works projects undertaken by special districts, including school districts, must be consistent with local zoning, which in turn must be consistent with the general plan (a special district governing board may render the zoning ordinance inapplicable if it makes a finding after a public hearing that there is no feasible alternative to the project (§53096)). State entities are an exception (*Rapid Transit Advocates, Inc. v. Southern California Rapid Transit District* (1986) 185 Cal.App.3d 996).

#### Condominium Conversion

- §66427.2: when the general plan contains objectives and policies addressing the conversion of rental units to condominiums, the conversion must be consistent with those objectives and policies.

#### Development Agreements

- §65867.5: requires development agreements to be consistent with the general plan.

#### Housing Authority Projects

- Health and Safety Code §34326: declares that all housing projects undertaken by housing

authorities are subject to local planning and zoning laws.

#### Integrated Waste Management

- Public Resources Code §41701: If a county determines that the existing capacity of a solid waste facility will be exhausted within 15 years or if the county desires additional capacity, then the countywide siting element of the county's hazardous waste management plan must identify an area or areas, consistent with the applicable general plan, for the location of new solid waste transformation or disposal facilities or for the expansion of existing facilities.
- Public Resources Code §41702: An area is consistent with the city or county general plan if:
  - (1) The city or county has adopted a general plan.
  - (2) The area reserved for the new or expanded facility is located in, or coextensive with, a land use area designated or authorized by the applicable general plan for solid waste facilities.
  - (3) The adjacent or nearby land use authorized by the applicable general plan is compatible with the establishment or expansion of the solid waste facility.
- Public Resources Code §41703: Except as provided in subdivision (a) of §41710, any area or areas identified for the location of a new solid waste transformation or disposal facility shall be located in, coextensive with, or adjacent to a land use area authorized for a solid waste transformation or disposal facility in the applicable city or county general plan.
- Public Resources Code §41710(a): A county may tentatively reserve an area or areas for the location of a new or expanded solid waste transformation or disposal facility even though that reservation is inconsistent with the applicable city or county general plan. A reserved area is tentative until it is made consistent with the applicable general plan.
- Public Resources Code §41711: A tentatively reserved area shall be removed from the countywide siting element if a city or county fails or has failed to find that the area is consistent with the general plan.
- Public Resources Code §41720: The countywide siting element submitted to the California Integrated Waste Management Board

shall include a resolution from each affected city or the county stating that any areas identified for the location of a new or expanded solid waste transformation or disposal facility pursuant to §41701 is consistent with the applicable general plan.

**Interim Classroom Facilities**

- §65974(a)(5): specifies that when local governments obtain the dedication of land, the payment in-lieu thereof, or a combination of both, for interim elementary or high school classroom facilities, such facilities must be consistent with the general plan.

**Local Coastal Programs**

- Public Resource Code §30513: requires the zoning ordinances of the Local Coastal Program to conform to the certified coastal land use plan (a portion of the general plan).

**Low and Moderate Income Housing**

- §65589.5(d): A city or county may disapprove a low or moderate-income housing project if the jurisdiction finds that the development is inconsistent with the general plan land use designation, as specified in any element of the plan.

**Mineral Resources**

- Public Resources Code §2763: requires that city and county land use decisions affecting areas with minerals of regional or statewide significance be consistent with mineral resource management policies in the general plan. §2762: the general plan must establish mineral resource management policies if the State Geologist has identified resources of statewide or regional significance within the city or county.

**On-Site Wastewater Disposal Zones**

- Health and Safety Code §6965: requires a finding that the operation of an on-site wastewater disposal zone created under Health and Safety Code §6950 et seq. will not result in land uses that are inconsistent with the applicable general plan.

**Open-Space**

- §65566: requires that acquisition, disposal, restriction, or regulation of open-space land by a city or county be consistent with the open-space element of the general plan.
- §65567: prohibits the issuance of building

permits, approval of subdivision maps, and adoption of open-space zoning ordinances that are inconsistent with the open-space element of the general plan.

- §65910: specifies that every city and county must adopt an open-space zoning ordinance consistent with the open-space element of the general plan.
- §51084: requires cities and counties accepting or approving an open-space easement to make a finding that preservation of the open-space land is consistent with the general plan.

**Park Dedications**

- §66477: enables local governments to require as a condition of subdivision and parcel map approval the dedication of land or a payment of fees for parks and recreational purposes if the parks and recreational facilities are consistent with adopted general or specific plan policies and standards.

**Parking Authority Projects**

- Streets and Highway Code §32503: specifies that parking authorities, in planning and locating any parking facility, are "subject to the relationship of the facility to any officially adopted master plan or sections of such master plan for the development of the area in which the authority functions to the same extent as if it were a private entity."

**Planning Commission Recommendations**

- §65855: requires that the planning commission's written recommendation to the legislative body on the adoption or amendment of a zoning ordinance, include a report on the relationship of the proposed adoption or amendment to the general plan.

**Project Review Under CEQA**

- Title 14, California Code of Regulations, §15125(b) (Refer to the State CEQA Guidelines): requires examination of projects subject to the provisions of the California Environmental Quality Act for consistency with the general plan.
- Public Resources Code §21080.10 and 21080.14: exempt specified housing projects from the requirements of CEQA, but only when consistent with the general plan and meeting other criteria.

**Redevelopment Plans**

- Health and Safety Code §33331: requires every redevelopment plan to conform to the adopted general plan.

**Reservations of Land Within Subdivisions**

- §66479: specifies that reservations of land for parks, recreational facilities, fire stations, libraries, and other public uses within a subdivision must conform to the general plan.

**Special Housing Programs**

- Health and Safety Code §50689.5: specifies that housing and housing programs developed under Health and Safety Code §50680 et seq. for the developmentally disabled, mentally disordered, and physically disabled must be consistent with the housing element of the general plan.

**Specific Plans**

- §65359: requires that a specific plan be reviewed and amended as necessary to make it consistent with the applicable general plan.
- §65454: specifies that a specific plan may not be adopted or amended unless the proposed plan is consistent with the general plan.

**Street, Highway, and Service Easement Abandonments**

- Streets and Highways Code §8313: Specifies that prior to vacating a street, highway, or public

service easement, the legislative body must consider the applicable general plan.

**Transit Village Development Plan**

- §65460.8: A transit village plan prepared under the Transit Village Development Planning Act of 1994 must be consistent with the city or county general plan.

**Transmission Lines**

- Public Utilities Code §12808.5: requires cities and counties approving electrical transmission and distribution lines of municipal utility districts to make a finding concerning the consistency of the lines with the general plan.

**Use Permits**

- *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, provides that conditional use permits must be consistent with the local general plan. While state statutes do not expressly require such consistency, the court found an implicit requirement since use permits are struck from the mold of local zoning, and zoning must conform to the adopted general plan.

**Subdivision Map Act**  
**and**  
**CEQA Compliance:**

**The Subdivision Map Act**  
**(Gov. Code Sec. 66410, et seq.)**

Presented by:

**Gregory W. Sanders, Esq.**

Nossaman Guthner Knox & Elliott LLP

Phone: (949) 833-7800

[gsanders@nossaman.com](mailto:gsanders@nossaman.com)

**Subdivision Map Act  
Applies to Charter Cities**



# Approval and Denial

## Approval/Denial of Tentative Maps and Parcel Maps

1. Only ordinances, policies and standards in effect on the date map application was deemed complete shall apply to approval/denial consideration
2. Map must be denied if:
  - A. Inconsistent with General Plan or any applicable Specific Plan
  - B. Site is not physically suited for proposed type or density or development
  - C. Design or improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish, wildlife or their habitats or cause serious public health problems

SUBMITTED 11/3/16  
AT AD HOC PDD  
COMMITTEE MTG.

# JUDY DEERTRACK

## REPORT

**Prepared by:** Judy Deertrack  
**Committee:** Planned Development District (PDD) Study Committee, Palm Springs  
**Date:** November 3, 2016  
**Re:** PDD and the Palm Springs General Plan and Zoning Ordinance

The Planned Development District (Ordinance 94.03.00 – PD) is a permit type for processing major land use projects, both residential and commercial in nature. The mechanism of a PD allows "various types of land use to be combined in compatible relationship with each other" for flexibility in zoning. Often, with cities and counties in California, this mechanism is used for (1) increasing density for affordable housing; (2) mixed-use projects; and (3) large and complex projects where the underlying zoning is not easily adapted to the reasonable needs of a project.

I have previously submitted studies (1991) from the State of Texas by Frank Turner, AICP Planner, that show the rate of usage of PDD's within the top twenty cities by population in the State of Texas, with a finding that the average incident of use was seven percent (7%), and a notation that this was considered "prolific use" of the mechanism.

The primary concern is that in waiving underlying ordinance standards, the use of the PDD will be abused, and allow a jurisdiction to drift, over time, away from the primary purposes of its long-range vision. A secondary concern is that the lot characteristics and standards subject to waiver are deeply associated with public benefits, and their loss over time is essentially without compensation.

I have attached a preliminary look at approximately 32 PDD's that have been earmarked for their degree of variation from both the General Plan Standards (consistency), the Specific Plans (consistency), and the proper use of underlying ordinance standards. This graph is as yet incomplete, and will be refined and re-submitted in the next two weeks to include approximately 15 remaining PDDs.

What is surprising in the trends is the amount of time the PDD has been used to vary significantly from or actually violate the standards of the General Plan. The other major trend is the degree of use of the High-Rise Ordinance that conditions additional height by adding the important considerations of a 3:1 set back requirement and a 60% open space requirement. Instead of complying with the conditions of the High-Rise Ordinance, the City waives the "waiver."

What is most unusual for the City of Palm Springs is the incidence of use; which is running approximately 90-95% of the time. Upon inspection of the City applications, one will not find a Major Land Use Permit; but only the choices of Planned Development District, Conditional Use Permit, and Architectural Permit. This may be a large part of the over use phenomenon.

**CITY OF PALM SPRINGS – TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD) – PRELIMINARY DRAFT**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
131 Belardo	N <sup>1</sup>	X <sup>2</sup>									
290 Avalon	N <sup>3</sup>		Modification to PDD <sup>4</sup>	X		Measured Against Previous PDD			X		
311 Hard Rock			X			X	X	X	X		X
322 Palms Hotel	N		X	X		X	X	X	X		X
323 Smoke Tree	N		X	X				X	X	X	
324 Rael						X	X	X	X		
340 Olivera	N		X						X	X	
327 Nichols	N					X	X	X	X		
329 Art Colony						X	X		X		
341 Vivante	N	X							X		
342 Palm Mtn	N	X	X			X	X		X		X
343 Crosse Pt.						X	X		X		
347 Farrell Prof.									X		
346 SW Real Est.	NCC Denied										
348 Fuel Storage						X					
351 Time Share											

Compliance Issue – Measured against 17-acre SteinMart PDD Lot

Second Modification to PDD (Standards Reduced 2X – No Record of Changes)

<sup>1</sup> N = Inconsistent with General Plan, Specific Plan (PDD Amends Plan), or misuse of underlying Zone for Standard of Comparison.

<sup>2</sup> X = Waiver of Standard with the Use of Planned Development District Ordinance 94.03.00 (PD).

<sup>3</sup> Note: Determinations of General Plan or Specific Plan Consistency are Evaluative Only and may not conform to the findings of the City of Palm Springs

<sup>4</sup> Note: Modified PDD's are not assessed against the original General Plan or Zoning Standards, but measure only the difference from one waiver to the next.

**CITY OF PALM SPRINGS - TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT STAND.	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
354 Michael's Pl.			X		X				X		
357 PS Asst Liv.	N <sup>1</sup>	X Uptown Distr. - GPA from NCC to HDR				X	X	X	X		X
358 Michael's Pl	N	X	X						X	X	X
359 Michael's H			X		X			X			X
360 Arrive			X						X	X	X
362 Stonewall	N	X	X					X	X		
363 PS SOL***	N	X	X	X			Design Non-Conformance = Major	X	X	GP, SP, Zone Non-Conf	
365 Dakota II	N	X			X		X		X	X	
366 Serena Park	OS - VLDF			X	X	X	X		X		
368 Kaptur Court	TR to LDR			X	X				X		
370 Alvarado	N	X	X			X			X	X	
371 Linea	N (SP)		X		X		Low Density than allowed by Spec Plan		X		
372 Orchid Tree	N		X				Small Hotel allows 15 du/ac : Approved at 27 rooms per acre		X	Non-Conforming use Grandfathered	
373 Via Olivera	N	X	X	X	X	X	X	MU/MU: R-2 Incompatible		X	
374 750 Lofts	NC to MU					X	X	X	X		
376 Canyon Lofts				X				X	X	X	
379 Woodbridge	N	N		X			MU/MU with SFR		X	X	

<sup>1</sup> N = Inconsistent with General Plan, Specific Plan (PDD Amends Plan), or underlying Zone not used for Standards of Comparison | X = Waiver of Standards with use of PDD

## Flinn Fagg

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**From:** Judy Deertrack <judydeertrack@gmail.com>  
**Sent:** Friday, November 11, 2016 5:48 PM  
**To:** Flinn Fagg; David Ready; Douglas C. Holland; Babak Naficy; Frank Tysen; Robert Stone; Kathy Weremiuk; Scott Bigbie; Lyn Calerdine; Tracy Conrad; Jim Harlan; Michael Johnston; Marv Roos; Robert Moon; Christopher Mills; Geoff Kors; Jay Thompson  
**Subject:** ITEM 1H CITY COUNCIL AGENDA NOV 17 2016 / AD HOC PDD STUDY COMM  
**Attachments:** SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS DAKOTA II July 2014.pdf; 2016.11.16 CC AGENDA APPT AD HOC PDD STUDY COMMITTEE.pdf

Mr. Jay Thompson  
City Clerk  
City of Palm Springs, CA

Re: Agenda Item 1.H. for Wednesday, November 16, 2016 (City Council)

Dear Mr. Ready and Mr. Fagg,

Please place my comments on the Agenda for Item 1. H.

I note on the City Council Agenda for November 16, 2016, that the City Council is appointing An Ad Hoc Sub-Quorum Committee to study and make recommendations to the City Council on the use of the Planned Development District (PDD).

This Action is more than puzzling because the City has then created and peopled two Ad Hoc Committees with the same subject matter jurisdiction. Considering that the first Committee was created under the negotiated terms of a Settlement Agreement between the City, John Wessman, and People for Proper Planning, **in consideration of a General Release of Claims**, my question is whether this Agenda Item and proposed Action is in violation of that Agreement.

Important and binding provisions were negotiated in the Settlement; firstly, with the explicit language:

*"A seven-member ad hoc committee shall be formed to study the existing PDD process, and to make recommendations **to both the Planning Commission . . . . . ??** as to whether modifications should be made to the PDD process, and if so, what type of modifications." . . . . .  
. . . . [typo appeared to eliminated the words, "and City Council"] [ emphasis added]*

*"The Committee's recommendations shall be considered in good faith by the Planning Commission at a duly noticed regular or special meeting. The recommendations shall not be binding. **The recommendations of all members of the Committee will be presented, even if the recommendation is not adopted as the majority position of the members.** The Planning Commission will consider whether or not to make any or all of the recommendations to the City Council." [emphasis added]*

These SA provisions make it clear the Committee presents to the Planning Commission; not clear on whether that is a joint session; not clear on the ultimate obligation to present to City Council -- but members of the Transparency Committee have been urging in our recommendations all year that the City be very clear on the powers and obligations granted to Sub-Committees at their time of creation, particularly because their primary focus appears to be getting information back to City Council. So, that obligation should have been stated and made clear from the beginning.

But it is very clear this committee's purpose for meeting is to make recommendations to the City on the PDD process -- and one way or another, that information is to be considered by City Council. So what is happening here?

Ad Hoc Sub Quorum Committees are specifically created to allow two Council Members to study the topic, meet with required persons, prepare reports (when needed) and report back to the City Council. Isn't that what the Ad Hoc Committee is presently doing on the subject of PDD's? Would this Sub-Quorum Committee now come along and just ignore the ongoing work and efforts? It doesn't seem right that they would insert themselves into the middle of the process with no protocol. Their presence certainly was not planned for nor negotiated by the terms of the SA.

How is that to be done in a manner to respect and honor the ongoing work of the PDD Study Committee that has donated hundreds of hours of work over the last few months. Has that work product been preempted?

The City's current action to inexplicably now create a new committee with the same subject matter jurisdiction violates the Settlement Agreement, displaces and confuses the role and the work of the current committee, insults and undermines the public's volunteers and their contributions, returns the Committee work on PDD's to a private sub quorum committee, destroys the public's right to attend, and usurps the work schedule agreed upon between Mr. Fagg and the present Committee.

The Committee has made astounding progress, which is now at question. The proposed Action (1.H.) also challenges the considerable hours spent by PFPP in presenting data to the Committee, that work may be disrupted and undermined; and that is bad faith. We seem to have returned to the earlier point when PFPP had to challenge the City with a Cure and Correct Letter to even get a right to attend meetings. This is discouraging. Non-compliance and bad faith acts undermine future potential settlements, because who is going to trust that the City will honor its agreements.

The City Council created the Ad Hoc SubCommittee in 2015 and in 2016 appointed as the Base Committee: Kathy Weremiuk (Commissioner), Marv Roos (replacing Rich Meaney), and Jim Harlan (representative for PFPP). The Settlement Agreement (SA) specified further appointment of four additional public representatives with the following qualifications (per the Settlement Agreement, attached):

*"(1) a local contractor or engineer; (2) a person with expertise in the field of affordable housing (ignored); (3) a local architect; and (4) a person with expertise in the field of planning in the local area."*

Based upon the SA terms, the following four persons have been appointed and have served and contributed their time and efforts substantially throughout the year as follows: (1) Michael Johnston (designer); (2) Tracy Conrad (hotelier and businesswoman); (3) Scott Bigbie (urban planner);

(4) Lyn Calerdine (Commissioner - who actually doesn't meet the criteria of the study, but was accepted and has worked hard).

This Committee has met at least six times, with the Planning Director, Mr. Flinn Fagg, supplying extensive information to the members for review and comment. On November 3, 2016, the SubCommittee agreed with Mr. Fagg that they would meet on November 21st to hear the presentation and work product of PFPP, and would meet on December 5th to begin formulating recommendations for potential changes in four areas: Administrative, PDD, Zoning, and General Plan Language.

This November 3rd meeting, where the agreements were reached on timing and work output, were actually filmed or recorded through substantial parts by KESQ News, and the members were interviewed afterwards.

For the City to be suggesting the formation of a second Committee out of the blue right at this critical juncture is highly irregular, and potentially very obstructive of the Committee and its work. But even more problematic is the idea that to create a committee outside of the provisions of the Settlement Agreement -- actually breaches that Agreement.

For all of these reasons, I recommend that the City not move to create a Sub-Quorum Ad Hoc Committee to study the PDD process. If, after recommendations have been made by the Planning Commission, or -- after a joint session of the Planning Commission and City Council, the City still feels there is further work to do in this area, then **at that time**, after termination of the present Committee -- it might be timely and appropriate to continue study and discourse. It certainly does not appear to be presently appropriate.

By the way, it is possible from the obscurity of language on Item 1.H. that the City Council intends to appoint Council member Mills and Mayor Moon to the actual present and ongoing Subcommittee. Again, I would state that this was not anticipated in the Settlement Agreement, and is inappropriate and in breach of that agreement, and would disrupt the Committee's work midstream -- which has advanced to a stage where the Committee is close to formulating recommendations based upon much prior work.

Please let me make one point very clear. This Committee currently existing IS NOT a Sub-Quorum Committee and it falls under the Brown Act and requires public meetings. The City cannot be proposing to create a Sub-Quorum Committee that gets to come into the picture in some manner, meet with the Committee, and then go off privately and collect information outside of the Brown Act. Please do not obscure the law and the obligations under the law.

With regard,

Judy Deertrack

A6588

## SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

This SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS ("Agreement") is entered into as of this \_\_\_ day of July, 2014 (the "Effective Date"), by and between the City of Palm Springs, a California municipal corporation, and the Palm Springs City Council (collectively, "Palm Springs"), Wessman Holdings, LLC, a California limited liability company ("Developer"), Dakota PS, LLC, a California limited liability company ("Builder") and People for Proper Planning, a California ad hoc non-profit membership organization ("People") with respect to the facts set forth in the Recitals below. Palm Springs, Developer and People shall hereinafter be referred to, collectively, as the "Parties" and, each, a "Party."

### RECITALS

A. On February 19, 2014, Palm Springs approved a resolution approving a Mitigated Negative Declaration for a Planned Development District ("PDD") allowing 39 two-story detached single family homes and approving a Tentative Tract Map to subdivide 6.37 acres into 30 residential lots located at the base of the San Jacinto Mountains, fronting Belardo Road in the City of Palm Springs (the "Dakota Project" or the "Project"). On March 5, 2014, Palm Springs adopted Ordinance No. 1846, approving the PDD.

B. On or about March 21, 2014, People filed a Petition for Preemptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") against Palm Springs in the Riverside County Superior Court, Palm Springs Branch, entitled *People for Proper Planning v. City of Palm Springs, et al.*, Case No. PSC1401656 ("Action"). Developer was named in the Action as a Real-Party-In-Interest. People's Petition alleges that Palm Springs, as lead agency with respect to approval of the Dakota Project, violated the California Environmental Quality Act (Public Resources Code §§21000 et seq. - "CEQA") when it issued certain Approvals for the Project. The Petition further alleges that Palm Springs violated its Municipal Zoning Code and further violated the City General Plan in approving the Project. Palm Springs and Developer deny all of these claims, and contest People's allegations in the Petition.

C. The Parties, in their shared interest, to avoid any further litigation between them, and to settle and resolve, fairly, fully and finally, all matters in dispute between them, wish to compromise and settle the Action and the disputes between them regarding the Project (and certain proposed modifications thereto) on the terms and conditions set forth herein. Accordingly, this Agreement is a compromise of disputed claims, and the execution of this Agreement shall not be considered or treated at any time or for any purpose as an admission that the other side's positions had merit, or as an admission of liability, or wrongful conduct, by any of the Parties to this Agreement. No past or present wrongdoing on the part of any of the Parties shall be implied from the negotiation or the consummation of this Agreement.



## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement covenant and agree as follows:

1. Ad Hoc PDD Committee. A seven-member ad hoc committee ("Committee") shall be formed to study the existing PDD process, and to make recommendations to both the Planning Commission as to whether modifications should be made to the PDD process, and if so, what type of modifications. Margo Wheeler, the City's Director of Planning Services, will serve as staff to the Committee. If Ms. Wheeler no longer works for the City, the City Manager shall appoint an alternative staff member to serve as the staff to the Committee. The Committee membership and formation shall be as follows: The City, Builder/Developer, and People hereby form a three-person base committee ("Base Committee"). The City's Mayor Pro Tem shall appoint a member of Palm Springs Planning Commissioner as the City's representative on the Base Committee. Builder and Developer jointly appoint Rich Meaney as their representative on the Base Committee. People hereby appoint Jim Harlan as People's representative on the Base Committee. The Parties may replace their representatives on the Base Committee as necessary. The Base Committee shall be responsible for selecting up to four additional Committee members from the following categories: (1) a local contractor or engineer; (2) a person with expertise in the field of affordable housing; (3) a local architect; and (4) a person with expertise in the field of planning in the local area. The Base Committee will work cooperatively to fill positions (1) through (4) with persons who will bring local knowledge, expertise, and differing viewpoints to the Committee. Except as provided in the next sentence, the decisions shall be made by a majority of the Base Committee members. The Base Committee may by unanimous decision select members who do not fit within the criteria specified above. The persons selected shall have demonstrated the ability to work collaboratively. If the Base Committee is unable to fill one or more of the four positions, the Base Committee and any additional members selected by the Base Committee shall serve as the Committee. The Committee shall have its kickoff meeting within 45 days of the Effective Date. The Committee shall hold no fewer than three meetings. After receiving the information it deems appropriate, the Committee shall formulate its recommendations regarding the PDD process. The Committee shall complete the formulation of its recommendations within six month if the Effective Date unless the Committee votes to grant itself a reasonable extension of time to complete the process. The Committee's recommendations shall be considered in good faith by the Planning Commission at a duly noticed regular or special meeting. The recommendations shall not be binding. The recommendations of all members of the Committee will be presented, even if the recommendation is not adopted as the majority position of the members. The Planning Commission will consider whether or not to make any or all of the recommendations to the City Council.

2. Enhanced Notice of PDD Applications/Hearings Pending Completion of the Ad Hoc PDD Committee. Between the Effective Date and the date that the Ad Hoc

PDD Committee completes its task and delivers its recommendations to the City Council, the City will provide enhanced public notice relating to PDD applications and hearings as follows.

(a). Complete Applications. Counsel for People will prepare a listing of e-mail addresses of persons who wish to be notified of the filing of PDD applications. The list may be updated as desired by People. Once such applications are deemed complete, the City will provide a notice to the persons on the list that includes the name of the applicant, the location and type of project, a brief description of the project, and a description of any deviations in property development standards from the Palm Springs Municipal Code requested by the Applicant. Application documentations will be available for inspection at City Hall during normal business hours.

(b). Hearing Notices. On all public hearing notices related to projects involving a PDD application, the notice shall include a description of any deviations in property development standards from the Palm Springs Municipal Code requested by the Applicant.

3. Compromise of Claims and Dismissal of Action. The Parties hereby agree to compromise and settle People's claims arising from or related to the facts alleged in the Petition pursuant to the terms and conditions set forth herein, including the general release set forth below in Paragraph 5. Concurrently with the mutual execution of this Agreement, People shall execute and transmit to counsel for Palm Springs and Developer a fully executed Request for Dismissal of the Petition, with prejudice, in a form suitable for filing with the Court, which such Request for Dismissal shall be filed with the Court by counsel for Palm Springs or Developer. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own attorneys' fees and costs incurred in the Petition proceeding.

4. No Admission of Liability. The Parties enter this Agreement and release for the purpose of terminating the dispute between them. By entering into and carrying out this Agreement, no Party to this Agreement admits any liability to any other Party on any theory for any claim or cause of action. This Agreement shall not be used or construed as an admission of liability by any Party hereto for any purpose.

5. General Releases.

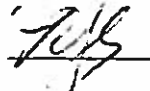
(a) This release is intended as a full and complete release by People in relation to the Petition, the Action and the Project. No part of this release shall release any rights or obligations of the Parties created by this Agreement. People, for itself, and on behalf of its members, associates, predecessors, successors, assigns, parents, subsidiaries, alter egos and affiliates (collectively, the "Releasing Parties"), fully release and discharge Palm Springs, the Builder, the Developer, the Developer's affiliated entities (including, without limitation, Wessman Holdings, LLC), and its respective present and former officers, directors, employees, partners, attorneys, independent contractors, agents, insurers, accountants, heirs, and successors and assigns

(collectively, the "Released Parties"), from all rights, claims, demands, actions or causes of action of every nature whatsoever which any of the Releasing Parties now has or may have against any of the Released Parties arising from or related to the above recited facts, the Petition, the Action and/or the Project (collectively, the "Released Claims"), except those rights and obligations arising out of this Agreement. People, on behalf of itself and each of the Releasing Parties, covenants not to threaten, bring, commence, initiate, institute, file, join, maintain, prosecute, support, or threaten any action(s) based in whole or part upon any of the Released Claims, except as necessary to enforce this Agreement and the obligations set forth herein. People understands and agrees that this Agreement may be pled as a full and complete defense and bar to, and may be used as the basis to dismiss with prejudice or enjoin, any action(s) based in whole or in part upon a Released Claim.

(b) This release is intended as a full and complete release and discharge of any and all Released Claims that the Releasing Parties may have arising from or related to the Project or proceedings on the Petition. In making this release, People, on behalf of itself and each of the Releasing Parties, intends to release the Released Parties from any liability of any nature whatsoever for any claim of damages or injury or for equitable or declaratory relief of any kind, whether the claim, or any facts on which such claim might be based, is known or unknown to the party possessing the claim. People has read and has otherwise been informed of the meaning of Section 1542 of the California Civil Code, and has consulted with its counsel, and understands the provisions of Section 1542. People, on behalf of itself and each of the Releasing Parties, expressly waives all rights under Section 1542 of the Civil Code of the State of California and any successor statute, which the Parties understand provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

People's Initials:



(c) People, on behalf of itself and each of the Releasing Parties, acknowledges that it may hereafter discover facts different from or in addition to those which they now believe to be true with respect to the Released Claims. People, on behalf of itself and each of the Releasing Parties, agrees that the foregoing releases shall be and remain effective in all respects notwithstanding such different or additional facts or any discovery thereof.

(d) No Released Party nor any related entities have made any statement or representation to any of the Releasing Parties regarding any fact relied upon in entering into this Agreement, and People, on behalf of itself and each of the Releasing Parties, expressly states it does not rely upon any statement, representation or promise of any Released Party or related entities in executing this Agreement, or in

making the settlement provided for herein, except as is expressly stated in this Agreement.

(e) Each Party to this Agreement has made such investigation of the facts pertaining to this settlement and this Agreement, and of all other matters pertaining thereto, as it deems necessary. In entering into this Agreement, each Party assumes the risk of any misrepresentation, concealment or mistake. If any Party should subsequently discover that any fact relied upon by the Party in entering into this Agreement was untrue, or that any fact was concealed from that Party, or that the Party's understanding of the facts or of the law was incorrect, such Party shall not be entitled to any relief in connection therewith, including without limitation upon the generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be, and is, final and binding among the Parties.

(f) If it is within the contemplation of the Parties to this Agreement that each of them may have claims for relief or causes of action for malicious prosecution or abuse of process or other claims in connection with the Petition proceeding described above, and matters undertaken in connection therewith, it is the intention of the Parties to this Agreement to fully, finally and forever release any and all such claims.

6. Representations, Warranties and Covenants. Each Party to this Agreement (each, the "Representing Party") hereby represents and warrants to the other Parties as follows:

(a) The Representing Party has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and no approvals or consents of any person or entity other than the Representing Party is necessary in connection with it. The execution and delivery of this Agreement and the documents related hereto by the Representing Party have been duly authorized by it, and this Agreement and the documents related hereto, when executed and delivered, shall constitute a legal, valid and binding obligation of the Representing Party enforceable against it in accordance with their terms.

(b) Each person executing this Agreement on behalf of an entity, other than an individual executing this Agreement on his or her own behalf, represents that he or she is authorized to execute this Agreement on behalf of said entity.

(c) The Representing Party has not assigned or transferred to any third party any of the rights, claims, causes of action or items to be released or transferred which it is obligated to transfer or to release as part of this Agreement. If a Representing Party breaches the foregoing representation and warranty, such Representing Party shall defend, indemnify and hold harmless the non-breaching Parties, of, from and against all liabilities, claims, demands, damages, costs, expenses, and attorneys' fees incurred by such non-breaching Parties as a result of any person or entity asserting any such assignment or transfer in violation of this paragraph's

representation and warranty. It is the intention of the Parties, and each of them, that this indemnity does not require payment as a condition precedent to recovery.

7. **Entire Agreement.** This Agreement contains the entire agreement of the Parties, and supersedes any prior written or oral agreements between them concerning the subject matter of this Agreement. This Agreement may only be waived, modified or amended by the written agreement of all Parties to this Agreement.

8. **Partial Invalidity.** In the event that any term, covenant, condition or provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or against public policy, the remaining provisions shall continue in full force and effect.

9. **No Waiver.** The waiver by one Party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered as a waiver by such Party of any other (or the enforcement for subsequent breaches or failures of the same) covenant, condition or promise. The delay in pursuing any remedy or in insisting upon full performance for any breach or failure of any covenant, condition or promise shall not prevent a Party from later pursuing remedies or insisting upon full performance for the same or similar breaches or failures.

10. **Headings.** The headings, subheadings and numbering of the different paragraphs of this Agreement are inserted for convenience and reference only and are not to be taken as part of this Agreement or to control or affect the meaning, construction or effect of the same.

11. **Governing Law.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

12. **Successors In Interest.** Subject to any restrictions against assignment contained herein, and to any legal limitations on the power of the signatories to bind non-signatories to this Agreement, this Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, agents and related entities of each of the Parties hereto.

13. **Time Is Of The Essence.** Time is of the essence in the performance of all obligations under this Agreement.

14. **Necessary Acts.** Each Party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

15. **Advice of Counsel.** Each Party hereto, by its due execution of this Agreement, represents to every other Party that it has reviewed each term of this Agreement with its counsel in the above-referenced litigation, and that hereafter no Party shall deny the validity of this Agreement on the ground that the Party did not have advice of counsel generally or advice of its counsel in the aforementioned litigation. Each Party has had the opportunity to receive independent legal advice with respect to

the advisability of making the compromise and settlement provided for herein, and with respect to the meaning of California Civil Code §1542.

16. Attorneys' Fees and Costs. Except as otherwise may be agreed to in a writing executed by the one or more of the Parties hereto, each Party shall bear its own attorneys' fees and costs in connection with the Action and the preparation and execution of the Agreement.

17. Construction. Each Party has cooperated in the drafting and preparation of this Agreement. In any construction to be made to this Agreement, or of any of its terms and provisions, the same shall not be construed against any Party.

18. Notices. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served shall be deemed so given or served if sent by United States mail, certified or registered mail, postage prepaid, with return receipt requested. Such notices or demands shall be effective upon the earlier of (a) three (3) business days after mailing, or (b) actual receipt as evidenced by the return receipt, and shall be addressed as follows:

To: People  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a Copy To: Law Office of Babak Naficy  
1504 Marsh Street  
San Luis Obispo, CA 93401

To: City of Palm Springs  
3200 East Tahquitz Canyon Way  
Palm Springs, California 92262

With a Copy To: Douglas C. Holland, Esq.  
Woodruff, Spradlin & Smart  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626

To: Wessman Holdings, LLC  
555 S. Sunrise Way, Suite 200  
Palm Springs, CA 92264

With a Copy To: Emily Hemphill, Esq.  
Post Office Box 1008  
Rancho Mirage, CA 92270

To: Rich Meaney  
Dakota Partners, LLC  
700 E. Tahquitz Canyon Way, Suite A  
Palm Springs, CA 92262

With a Copy To: M. Katherine Jenson, Esq.  
Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626

Either Party may change its address for service of notices by giving written notice to the other Party of the new address.


19. **No Third Parties Benefited.** This Agreement is made for the sole benefit and protection of Palm Springs, the Developer (and its successors, if any) and People. No other person shall have any right of action or right to rely thereon, and the Parties hereto hereby agree that nothing contained in this Agreement shall be construed to vest in any other person or entity any interest in or claim upon the funds that may be advanced pursuant to this Agreement or any rights under this Agreement.

20. **Execution.** This Agreement may be executed in counterparts and by facsimile signature; provided, however, that any Party executing this Agreement by facsimile signature shall provide the original of his signature to every other Party within one (1) business day. When each Party has signed and delivered at least one such counterpart to each Party's counsel, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. One fully executed original is to be delivered to counsel for each Party hereto.

*[Remainder of Page Intentionally Left Blank]*


IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**PEOPLE FOR PROPER PLANNING**


By:   
Name: ROBERT J. STONE  
Title: An Individual and on Behalf of  
People for Proper Planning

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: An Individual and on Behalf of  
People for Proper Planning


APPROVED AS TO FORM:

By:   
Name: Babak Naficy  
Title: Attorney for Petitioners


**CITY OF PALM SPRINGS; PALM SPRINGS CITY COUNCIL**

By:   
Name: David R. ...  
Title: CITY MANAGER

ATTESTED:

By:   
Name: JAMES THOMPSON  
Title: City Clerk, City of Palm Springs

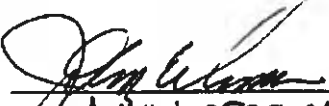
APPROVED AS TO FORM:

By:   
Name: Douglas Holland  
Title: City Attorney, City of Palm Springs

[Continued on Next Page]



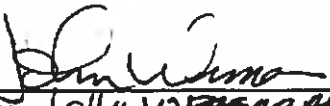
**WESSMAN HOLDINGS, LLC**

By:   
Name: JOHN WESSMAN  
Title: MGM PARTNER

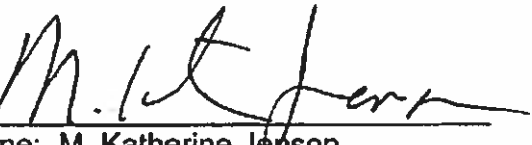
**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: Emily Hemphill  
Title: Attorney for Real-Parties-In-Interest

**DAKOTA PS, LLC**

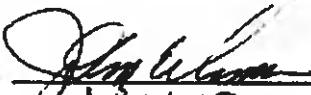
By:   
Name: JOHN WESSMAN  
Title: MGM PARTNER

**APPROVED AS TO FORM:**

By:   
Name: M. Katherine Jenson  
Title: Attorney for Dakota PS, LLC

*[Signature Page to Settlement Agreement and Mutual General Release]*

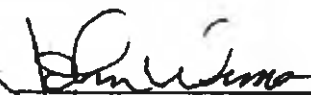
**WESSMAN HOLDINGS, LLC**

By:   
Name: JOHN W. WESSMAN  
Title: MAN PARTNER


**APPROVED AS TO FORM:**

By:   
Name: Emily Hemphill  
Title: Attorney for Real-Parties-In-Interest

**DAKOTA PS, LLC**

By:   
Name: JOHN W. WESSMAN  
Title: MAN PARTNER

**APPROVED AS TO FORM:**

By:   
Name: M. Katherine Jensen  
Title: Attorney for Dakota PS, LLC

*[Signature Page to Settlement Agreement and Mutual General Release]*

## *Event Calendar*

# **City Council Meeting Agenda and Staff Reports**

**November 16, 2016**

**Date:** 11/16/2016 6:00 PM  
**Location:** City Hall Council Chamber  
3200 E. Tahquitz Canyon Way  
Palm Springs, California 92262

**Introduction:**  
Upcoming City Council Meeting

**CITY COUNCIL  
AND AS SUCCESSOR AGENCY TO THE PALM SPRINGS COMMUNITY REDEVELOPMENT  
AGENCY**

**CITY OF PALM SPRINGS, CALIFORNIA**  
Council Chamber, 3200 East Tahquitz Canyon Way, Palm Springs, California 92262  
[www.palmspringsca.gov](http://www.palmspringsca.gov)

## **AGENDA**

**Robert Moon, Mayor**  
**Chris Mills, Mayor Pro Tem**  
**Ginny Foat, Councilmember**  
**Geoff Kors, Councilmember**  
**J.R. Roberts, Councilmember**

City of Palm Springs Mission Statement: Palm Springs is an inclusive world-class city dedicated to providing excellent and responsive public services to enhance the quality of life for current and future generations.

David H. Ready, Esq., Ph.D., City Manager  
James Thompson, Chief of Staff/City Clerk  
Marcus Fuller, Assistant City Manager/City Engineer  
Douglas C. Holland, City Attorney  
Geoffrey S. Kiehl, Director of Finance and Treasurer

Any person who wishes to provide public testimony for an Item on the Agenda MUST file a speaker card prior to the Public Testimony (Non-Public Hearing Agenda Items Only) prior to that portion of the meeting. Testimony for Public Hearings will be allowed only during the Public Hearing. [Two (2) minutes per speaker]

Testimony for Public Hearings will only be taken at the time of the hearing. Any person who wishes to speak at a Public Hearing must file a "Speaker Card" with the City Clerk BEFORE the Public Hearing is called. [Two (2) minutes per speaker]

Any person who wishes to speak on a topic not on the agenda within the City's jurisdiction during the "Public Comments" portion of the agenda must file a "Speaker Card" with the City Clerk BEFORE that portion of the agenda is called. [Two (2) minutes per speaker] Although the City Council values your comments, pursuant to the Brown Act, it generally cannot take any action on items not listed on the posted agenda.

Please note, any agenda item which has not been initiated by 11:00 P.M. may be continued to a subsequent meeting.

At approximately 10:00 P.M., the City Council will determine the number of speakers who wish to address the City Council during Public Comment for non-Agenda Items, and determine which agenda items will be considered before the 11:00 P.M. Adjournment time.

#### **4:30 P.M. CLOSED SESSION**

##### **CALL TO ORDER (Council Chamber):**

**PUBLIC COMMENT (Council Chamber):** This time has been set aside for members of the public to address the City Council on items contained only on the Closed Session Agenda.

**RECESS TO CLOSED SESSION (Small Conference Room):** See Closed Session Agenda.

#### **6:00 P.M. REGULAR MEETING**

##### **CALL TO ORDER:**

##### **ROLL CALL:**

##### **PRESENTATIONS:**

**CITY MANAGER'S REPORT:** This time is set aside for the City Manager to update the City Council on important items initiated by staff or previously requested by the City Council.

##### **REPORT OF CLOSED SESSION:**

**ACCEPTANCE OF THE AGENDA:** The City Council will discuss the order of the agenda, may amend the order, add urgency items, note abstentions or "no" votes on Consent Calendar items, and request Consent Calendar items be removed from the Consent Calendar for discussion. The City Council may also remove items from the Consent Calendar prior to that portion of the Agenda.

##### **PUBLIC TESTIMONY: (Non-Public Hearing Agenda Items ONLY)**

This time has been set aside for members of the public to address the City Council only on agenda items. Two (2) minutes will be assigned to each speaker. Testimony for Public Hearings will only be taken at the time of the hearing, and General Public Comments, non-agenda items, will be taken later in the meeting.

##### **1. CONSENT CALENDAR:**

The following routine matters may be acted upon by one motion. Individual items may be removed by the Council for separate discussion at this time or under Approval of the Agenda. The title is deemed to be read and further reading waived on any ordinance listed on the Consent Calendar for introduction or adoption.

##### **1.A. APPROVAL OF MINUTES:**

**RECOMMENDATION:** Approve the City Council Special Meeting Minutes of November 2, 2016, Regular Meeting Minutes of November 2, 2016, and Regular Meeting Minutes of October 19, 2016.

##### **1.B. STAFF AUTHORIZED AGREEMENTS AND PURCHASE ORDERS FOR THE MONTH OF OCTOBER 2016:**

**RECOMMENDATION:** Receive and file the report of Staff Authorized Agreements and Purchase Orders for the period of October 1 through October 31, 2016.

1.C. SECOND READING AND ADOPTION OF ORDINANCE NO. 1903 ESTABLISHING THE PALM SPRINGS SMALL HOTEL TOURISM BUSINESS IMPROVEMENT DISTRICT:

**RECOMMENDATION:** Waive the second reading of the ordinance text in its entirety and adopt Ordinance No. 1903, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, ADDING CHAPTER 5.83 TO THE PALM SPRINGS MUNICIPAL CODE, ESTABLISHING THE PALM SPRINGS SMALL HOTEL TOURISM BUSINESS IMPROVEMENT DISTRICT."

1.D. SECOND READING AND ADOPTION OF ORDINANCE NO. 1906 RELATING TO PERMITTING TRANSPORTATION NETWORK COMPANIES TO OPERATE AT THE PALM SPRINGS INTERNATIONAL AIRPORT:

**RECOMMENDATION:** Waive the second reading of the ordinance text in its entirety and adopt Ordinance No. 1906, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING SECTION 16.02.015(B) OF, AND ADDING CHAPTER 16.37 TO, THE PALM SPRINGS MUNICIPAL CODE RELATING TO PERMITTING TRANSPORTATION NETWORK COMPANIES TO OPERATE AT THE PALM SPRINGS INTERNATIONAL AIRPORT."

1.E. PALM SPRINGS PUBLIC LIBRARY BOARD OF TRUSTEES ANNUAL REPORT FOR FISCAL YEAR 2015-16:

**ACTION:** Receive and file the Palm Springs Board of Library Trustees Annual Report for Fiscal Year 2015-16.

1.F. PALM SPRINGS INNOVATION HUB AND ACCELERATOR CAMPUS QUARTERLY REPORT:

**RECOMMENDATION:** Receive and file the first quarterly report from the Coachella Valley Economic Partnership (CVEP) for the Palm Springs Innovation Hub (iHub) for the period of July 1 to September 30, 2016.

1.G. RATIFY AND APPOINT THE NOMINATION OF THE CITY OF CATHEDRAL CITY TO THE PALM SPRINGS INTERNATIONAL AIRPORT COMMISSION FOR THE TERM ENDING JUNE 30, 2018:

**RECOMMENDATION:** Appoint Mitchell Spike, as the City of Cathedral City representative, to the Palm Springs International Airport Commission for the term ending June 30, 2018.

1.H. APPOINT TWO MEMBERS OF THE CITY COUNCIL TO THE AD HOC SUBCOMMITTEE TO REVIEW THE PLANNED DEVELOPMENT DISTRICT PROCESS:

**RECOMMENDATION:** Appoint Mayor Pro Tem Mills and Mayor Moon to an ad hoc City Council Subcommittee for the review of the Planned Development District process with a sunset date of June 30, 2017.

1.I. PURCHASE AND INSTALLATION OF OUTFITTING EQUIPMENT FOR 11 NEW POLICE PATROL VEHICLES:

**RECOMMENDATION:** 1) In accordance with Palm Springs Municipal Code Section 7.05.040 "Brand Name Specifications", authorize the City Manager to utilize sole-source bidding with Federal Signal in the acquisition of light bars and sirens for standardization of the Police Department vehicles; 2) Award the outfitting of Police Department vehicles on an as-needed basis at fixed unit prices of \$13,413.65 for Patrol Utility Vehicles, \$7,075.10 for Admin/Undercover Vehicles, \$8,315.08 for Patrol Admin Utility Vehicles, and \$15,236.18 for K-9 Vehicles with fixed pricing valid through June 30, 2018, with two (2) additional one-year extensions through June 30, 2020, with fixed pricing subject to an annual CPI adjustment; 3) Authorize a Purchase Order in the amount of \$28,147.24 to Federal Signal Corporation for purchase of outfitting equipment (light and sirens) for 11 new Police Department Patrol Utility Vehicles; 4) Authorize a Purchase Order in the amount of \$147,550.15 with West Coast Lights & Sirens, Inc. for outfitting of 11 new Police Department Patrol Vehicles at a fixed price of \$13,413.65 each; and 5) Authorize the City Manager to execute

all necessary documents.

1.J. APPROVAL OF PAYROLL WARRANTS, CLAIMS AND DEMANDS:

**RECOMMENDATION:** 1) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING PAYMENT OF CLAIMS AND DEMANDS BY WARRANTS NUMBERED 1088146 THROUGH 1088259 TOTALING \$2,305,622.88, DRAWN ON BANK OF AMERICA;" 2) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING PAYMENT OF PAYROLL WARRANTS FOR THE PERIOD ENDED 10-08-2016 BY WARRANTS NUMBERED 419693 THROUGH 419704 TOTALING \$23,279.89, LIABILITY CHECKS NUMBERED 1088260 THROUGH 1088278 TOTALING \$84,533.63, FIVE WIRE TRANSFERS FOR \$66,940.91, AND THREE ELECTRONIC ACH DEBITS OF \$1,416,317.82 IN THE AGGREGATE AMOUNT OF \$1,591,072.25, DRAWN ON BANK OF AMERICA;" 3) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING PAYMENT OF CLAIMS AND DEMANDS BY WARRANTS NUMBERED 1088279 THROUGH 1088288 TOTALING \$152,802.72, DRAWN ON BANK OF AMERICA;" 4) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING PAYMENT OF CLAIMS AND DEMANDS BY WARRANTS NUMBERED 1088289 THROUGH 1088459 TOTALING \$1,591,141.87, DRAWN ON BANK OF AMERICA;" 5) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING PAYMENT OF PAYROLL WARRANTS FOR THE PERIOD ENDED 10-22-2016 BY WARRANTS NUMBERED 419705 THROUGH 419716 TOTALING \$20,212.96, LIABILITY CHECKS NUMBERED 1088460 THROUGH 1088479 TOTALING \$85,651.06, FIVE WIRE TRANSFERS FOR \$58,361.16, AND THREE ELECTRONIC ACH DEBITS OF \$1,372,791.61 IN THE AGGREGATE AMOUNT OF \$1,537,016.79, DRAWN ON BANK OF AMERICA;" and 6) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING PAYMENT OF CLAIMS AND DEMANDS BY WARRANTS NUMBERED 1088480 THROUGH 1088566 OF \$1,879,409.66, DRAWN ON BANK OF AMERICA."

1.K. ACCEPT THE FISCAL YEAR 2016-17 STATE HOMELAND SECURITY PROGRAM GRANT FROM FEDERAL EMERGENCY MANAGEMENT AGENCY VIA THE CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES AND THE RIVERSIDE COUNTY EMERGENCY MANAGEMENT DEPARTMENT IN THE AMOUNT OF \$7,067:

**RECOMMENDATION:** 1) Accept a grant from the California Governor's Office of Emergency Services through the Riverside County Office of Emergency Services in the amount of \$7,067; and 2) Authorize the City Manager to execute all necessary documents.

**EXCLUDED CONSENT CALENDAR:** Items removed from the Consent Calendar for separate discussion are considered at this time.

**2. PUBLIC HEARINGS:**

2.A. PROPOSED ORDINANCES ADOPTING AND AMENDING THE 2016 CALIFORNIA BUILDING STANDARDS CODE (TITLE 24) INCLUDING THE 2016 CALIFORNIA FIRE CODE, THE 2016 CALIFORNIA BUILDING CODE, THE 2016 CALIFORNIA RESIDENTIAL CODE, THE 2016 CALIFORNIA PLUMBING CODE, THE 2016 CALIFORNIA MECHANICAL CODE, THE 2016 CALIFORNIA ELECTRICAL CODE, THE 2016 CALIFORNIA GREEN BUILDING STANDARDS CODE, THE 2016 CALIFORNIA ENERGY CODE THE 2016 CALIFORNIA EXISTING BUILDING CODE, THE 2016 CALIFORNIA HISTORIC BUILDING CODE; ADOPTING AND AMENDING THE 2012 INTERNATIONAL PROPERTY MAINTENANCE CODE; ADOPTING THE CITY OF PALM SPRINGS BUILDING ADMINISTRATIVE

CODE, AND ADOPTING THE INTERNATIONAL FIRE CODE:

**RECOMMENDATION:** 1) Open the public hearing and receive public testimony; 2) Waive the second reading of the ordinance text in its entirety and adopt Ordinance No. 1904, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING AND RESTATING ARTICLE I OF CHAPTER 8.04 OF THE PALM SPRINGS MUNICIPAL CODE, ADOPTING BY REFERENCE, TOGETHER WITH CERTAIN ADDITIONS, AMENDMENTS AND DELETIONS THE 2016 CALIFORNIA BUILDING CODE INCLUDING APPENDICES C, I, AND J, THE 2016 CALIFORNIA RESIDENTIAL CODE, INCLUDING APPENDIX H, THE 2016 CALIFORNIA MECHANICAL CODE, THE 2016 CALIFORNIA PLUMBING CODE INCLUDING APPENDICES A, B, D, G, I AND K, THE 2012 INTERNATIONAL PROPERTY MAINTENANCE CODE INCLUDING ALL APPENDICES, THE 2016 CALIFORNIA EXISTING BUILDING CODE, THE 2016 CALIFORNIA HISTORIC BUILDING CODE INCLUDING APPENDIX A, THE 2016 CALIFORNIA ELECTRICAL CODE, INCLUDING ALL APPENDICES, THE 2016 CALIFORNIA ENERGY CODE INCLUDING ALL APPENDICES, AND THE 2016 GREEN BUILDING STANDARDS CODE INCLUDING ALL APPENDICES AND AMENDING AND RESTATING ARTICLE IV OF CHAPTER 8.04 OF THE PALM SPRINGS MUNICIPAL CODE ADOPTING THE CITY OF PALM SPRINGS BUILDING ADMINISTRATIVE CODE;" 3) Waive the second reading of the ordinance text in its entirety and adopt Ordinance No. 1905, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, AMENDING AND RESTATING ARTICLE VI OF CHAPTER 8.04 OF THE PALM SPRINGS MUNICIPAL CODE, ADOPTING BY REFERENCE, TOGETHER WITH CERTAIN ADDITIONS, AMENDMENTS AND DELETIONS, THE 2016 CALIFORNIA FIRE CODE INCLUDING APPENDIX CHAPTER 4 AND APPENDICES B, F, I, N, P AND Q, AND ADOPTING BY REFERENCE THE 2015 INTERNATIONAL FIRE CODE;" and 4) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, FINDING THAT CERTAIN LOCAL CONDITIONS REQUIRE AMENDMENTS, ADDITIONS, AND DELETIONS TO THE CALIFORNIA BUILDING CODE 2016 EDITION, THE CALIFORNIA RESIDENTIAL CODE 2016 EDITION, AND THE CALIFORNIA ELECTRICAL CODE 2016 EDITION, AND THE CALIFORNIA FIRE CODE 2016 EDITION."

2.B. MODERN DEVELOPMENT LLC FOR TENTATIVE TRACT MAP (TTM) 37039 FOR THE CONSTRUCTION OF AN EIGHT (8) UNIT CONDOMINIUM PROJECT LOCATED AT 155 WEST SAN RAFAEL DRIVE AND CEQA DETERMINATION:

**RECOMMENDATION:** 1) Open the public hearing and receive public testimony; and 2) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING TENTATIVE TRACT MAP 37039 CREATING ONE (1) LOT EQUALING 53,200-SQUARE FEET FOR THE PURPOSE OF AN EIGHT (8) UNIT CONDOMINIUM PROJECT CONSISTING OF FOUR (4) ATTACHED CONDOMINIUM UNITS IN TWO (2) BUILDINGS ON COMMON GROUND AND APPROVING A DETERMINATION THAT THE ACTION IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) ON PROPERTY LOCATED AT 155 WEST SAN RAFAEL ROAD, ZONE R-2, SECTION 4."

2.C. SUNIA INVESTMENTS LLC FOR TENTATIVE TRACT MAP (TTM) 37143 FOR THE CONSTRUCTION OF A 24 UNIT CONDOMINIUM PROJECT LOCATED AT 305 WEST SAN RAFAEL ROAD AND CEQA DETERMINATION:

**RECOMMENDATION:** 1) Open the public hearing and receive public testimony; and 2) Adopt Resolution No. \_\_\_\_\_, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING TENTATIVE TRACT MAP 37143 CREATING ONE (1) LOT EQUALING 4.05-ACRES FOR THE PURPOSE OF A 24 UNIT CONDOMINIUM PROJECT CONSISTING OF FOUR (4) ATTACHED CONDOMINIUM UNITS IN SIX (6) BUILDINGS ON COMMON GROUND, AND APPROVING A DETERMINATION THAT THE ACTION IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) ON PROPERTY LOCATED AT 305 WEST SAN RAFAEL ROAD, ZONE R-2, SECTION 4,

APN 504-103-001,-106.”

**3. LEGISLATIVE:** None.

**4. UNFINISHED BUSINESS:**

4.A. APPROVAL OF PLANS, SPECIFICATIONS AND ESTIMATE (PS&E) AND AUTHORIZATION TO BID THE CITY COUNCIL CHAMBER AUDIO/VISUAL SYSTEM UPGRADE (CP 15-06):

**RECOMMENDATION:** 1) Approve the plans, specifications, and estimate; and 2) Authorize staff to advertise and solicit bids for the City Council Chamber Audio/Visual System Upgrade (CP 15-06).

**5. NEW BUSINESS:**

5.A. APPOINT TWO MEMBERS OF THE CITY COUNCIL TO THE AD HOC SUBCOMMITTEE TO REVIEW THE JOINT POWERS AGREEMENT GOVERNING THE GREATER PALM SPRINGS CONVENTION & VISITORS BUREAU:

**RECOMMENDATION:** Appoint two members of the City Council to an ad hoc City Council Subcommittee to review the Greater Palm Springs Convention & Visitors Bureau’s Joint Powers Agreement with a sunset date of June 30, 2017.

**PUBLIC COMMENT:** (Non-Agenda Items) This time has been set aside for members of the public to address the City Council on items of general interest within the subject matter jurisdiction of the City. Although the City Council values your comments, pursuant to the Brown Act, it generally cannot take any action on items not listed on the posted agenda. Two (2) minutes will be assigned to each speaker. Testimony for Public Hearings will only be taken at the time of the hearing.

**UPCOMING AGENDA DEVELOPMENT:** This time is set aside for the City Council to prioritize and set future agenda items.

**COUNCILMEMBER COMMENTS, REQUESTS, AND REPORTS:** Additional general comments, reports, announcements, requests of staff and/or issues of concern to Councilmembers are briefly presented at this time.

**ADJOURNMENT:** The City Council will adjourn to an Adjourned Regular Meeting, Wednesday, November 30, 2016, in the Council Chamber, City Hall, 3200 East Tahquitz Canyon Way, Palm Springs.

The next regular City Council meeting will be Wednesday, December 7, 2016, at 6:00 P.M. Council Chamber, City Hall, preceded by Closed Session, Small Conference Room, City Hall, 3200 East Tahquitz Canyon Way, Palm Springs.

**Agenda:**

2016-11-16 Regular Meeting Agenda

*Return to full list >>*



## **Flinn Fagg**

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**From:** Judy Deertrack <judydeertrack@gmail.com>  
**Sent:** Monday, November 21, 2016 10:01 AM  
**To:** Flinn Fagg; Kathy Weremiuk; Frank Tysen; Robert Stone; Lyn Calerdine; Tracy Conrad; Michael Johnston; Marv Roos; Jim Harlan; Scott Bigbie; Robert Moon; Geoff Kors  
**Subject:** PDD STUDY GROUP / COMPLETED DATA TABLE AND WORKING SHEETS  
**Attachments:** PDD STUDY - TABLE OF ZONING WAIVERS (2006-2016).pdf; TABLE OF COMMERCIAL ZONES \_ PDD STUDY.pdf; TABLE OF RESIDENTIAL ZONES \_ PDD STUDY.pdf; TABLE OF GENERAL PLAN STANDARDS \_ PDD STUDY.pdf

Dear Folks,

I look forward to this afternoon, and Flinn-- it sounded like the power point only needs a flash drive from me with the pdf files, so I will have that for you. I have 49 documents, either in one group, or split in two, according to your capacity.....I can go through about twenty projects with graphics to get the spread of issues.

I have completed the data table of the cases that were approved and had adequate data for an assessment. I did not assess the Downtown Plan within this grouping, but will handle that separately.

I have three General Plan and/or Zoning Tables for you.

Thank you so much.

Judy Deertrack  
760 325 4290

**CITY OF PALM SPRINGS – TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 - 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBCKS	BLDG DISTANCE	PARKING
104 (750) Lofts 2015	GPA NCC-CBD	Historic GL	GPA FAR .35-1.0	GPA FAR 1.0	GPA FAR 1.0	X	X	X	X		X
131 Belardo 2016	N <sup>1</sup> Comment <sup>2</sup>	X <sup>3</sup>	No Standard	No Standard	No Standard	X	X	No Standard	No Standard		
232 Family Dev. 2014	N <sup>4</sup>		X	X	X	X	X	X	X	X	Tandem
287 Boulders 2007				X		X					
290 Avalon 2006 & 2016	Amend <sup>5</sup>				X				X		
294 Crescendo 2007 & 2016				X		X			X		
303 Matthew Pl 2006						X <sup>6</sup>				X	Tandem
307 Von's Retail 2006						X		X			
309 San Jacinto 2009	N <sup>7</sup>	X	X	X	X	X	X	X	X	X	X
313 Racquet Club 2006		X	X			X					
314 Mesquite 2006	N <sup>8</sup>	X		X	No data	X	X	X	X	No data	
316 803 Palm Cy 2006	2 <sup>nd</sup> Story Resid.										

"There is no specific zone or ordinance that addresses a combination of commercial and residential uses in the same building or the same lot. This results in a project being evaluated according to the portion of the zone in which it is located. A PDD is currently best available tool."

1 N = Inconsistent with General Plan, Specific Plan (PDD Amends Plan), or misuse of underlying Zone for Standard of Comparison.  
2 PD 131 Belardo used R-3 as an underlying zone within NCC Designation. NCC is compatible with C-D-N or C-S-C Zones, and prohibit hotel and residential. R-3 prohibits hotels with detached restaurants (Hacienda Cantina). Project boundaries were not established. The 17-acre boundary for SteinMart was used to calculate Density, Lot Area, Lot Coverage, Open Space and Setbacks.  
3 X = Waiver of Standard with the Use of Planned Development District Ordinance 94.03.00 (PD).  
4 PD 232 Family Development contains 72 SFR units, average lot size of 5,000 sf, arguably misusing underlying Zone for Comparison R-2 that require 20,000 sf min. lot size for SFR in MDR.  
5 Note: Modified PDD's are not assessed against the original General Plan or Zoning Standards, but only difference from last PDD. Could be problematic with incremental changes over time.  
6 PD 303 Matthew Place (2006). Tandem Parking (no ordinance authority); Waive Height Restrictions on adjacent R-1 (steep slopes); Distance between Bldgs (New Common Space Concept)  
7 PD 309 San Jacinto approved SFR and MFR and ignored the preferred mixture of industrial, residential (15-25%), and commercial established for MU/MU Indian and San Rafael.  
8 PD 314 Mesquite (SFR & MFR) is within Tourist Resort Commercial. Residential uses, if proposed, are secondary and ancillary to hotel uses. Not achieved. SFR is prohibited in TRC.  
November 21 2016  
Judy Deertrack, Consultant  
People for Proper Planning

**CITY OF PALM SPRINGS - TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 - 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLAN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBCKS	BLDG DISTANCE	PARKING
317 Eagle Cyn. 2006	N <sup>9</sup>		X	X	X	X	No data	No data	X	No data	
321 Morrison 2010	N <sup>10</sup>	X	X	X	X	X	X	X	X	X	No data
322 Palms Hotel 2006	N <sup>11</sup>		X	X	X	X	X	X	X		X
323 Smoke Tree 2006	N <sup>12</sup>		X	X				X	X	X	
324 Rael 2006, 11 & 15	Second Modification to PDD (Standards Reduced 3X)					X	X	X	X		
327 Nichols 2008	N <sup>13</sup>					X	X	X	X		
329 Art Colony 2007	First Modification to PDD (Standards Reduced 2X)				X	X	X		X		
339 Hard Rock 2008			X			X	X	X	X		X
340 Olivera 2008	N <sup>14</sup>		X						X	X	
341 Vivante 2012	N <sup>15</sup>	X							X		
342 Palm Mtn 2008	N <sup>16</sup>	X	X			X	X		X		X
343 Crosse Pt 2007						X	X		X		

9 PD 317 Eagle Canyon, 230 homes on 30 acres, density of 4 du/ac. General Plan Designation of Estate Residential (0-2 du/ac). Project was approved with a Density Transfer (Settlement Agreement) of 70 Units. No ordinance authority for Transfer of Density. The City uses state guidelines, but no local criteria exists for receiving lot.

10 PD 321 Morrison is 53 SFR at a density of 6.25 du/ac (inconsistent) on 5,000-8,000sf lots (inconsistent) in HDR (15-30) and MDR (SFR=10,000sf lot). R-G-A zone inconsistent with Gen Pl.

11 PD 322 Palms Hotel, may exceed the High-Density Residential Density Range (51 DU/AC) unless the City's Transfer of Density Rights from an adjacent hotel is an authorized act.

12 PD 323 Smoke Tree at a project density of 0.80 DU/AC is inconsistent with the General Plan Low-Density Residential (4-6 DU/AC) standard. Can second units be included in the count?

13 PD 327 Nichols, is mixed-use commercial and residential uses in the same building. The City admits it has no ordinance that creates standards of review. Ad Hoc process.

14 PD 340 Olivera Town Homes at a project density of 8 DU/AC (MDR), is inconsistent with the HDR General Plan Designation (15-30 DU/AC).

15 PD 341 Vivante, places Assisted Living Use in the Tourist Resort Commercial General Plan Land Use Designation where it is specifically prohibited.

16 PD 342 Palm Mountain, Use of R-3 (HDR) zoning standards after a General Plan Amendment to Central Business District (CBD) Designation. Underlying zoning is inconsistent.

November 21 2016  
Judy Deetrack, Consultant  
People for Proper Planning

**CITY OF PALM SPRINGS - TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 - 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBCKS	BLDG DISTANCE	PARKING
347 Farrell Prof. 2008									X		
346 SW Real Est. 2007	NCC Denied	City denied Gen Plan Amendment to Commercial on Sunrise; created vacant remainder parcel and built remaining residential									
348 Fuel Storage 2010						X					
351 Time Share 2008 & 2011	Second Modification to PDD (Standards Reduced 2X - No Record of Changes)										
354 Michael's Pl 2008			X		X				X		
357 PS Asst Liv. 2012	N17	X Uptown Distr. - GPA from NCC to HDR									
358 Michael's Pl 2011	N18	X	X					X	X	X	X
359 Michael's H. 2011			X		X			X		X	X
360 Arrive 2012			X						X	X	X
362 Stonewall 2013	N19	X	X					X	X		
363 PS Sol 2013	N20	X	X	X	Design Non-Conformance (Major)			X	X		
365 Dakota II 2014	N21	X			X		X		X	X	
366 Serena Park 2016	OS to VLDR			X	X	X		X	X		
368 Kaptur Court 2014	TR to LDR			X	X				X		

17 N = Inconsistent with General Plan, Specific Plan (PDD Amends Plan), or underlying Zone not used for Standards of Comparison | X = Waiver of Standards with use of PDD  
 18 PD 358 Michael's Place, the City admittedly has no standard for assisted living bed count, and uses the R-3 dwelling unit count as a substitute. Issues with calculating parking for same reason.  
 19 PD 362 Stonewall (See Footnote 18 Above for issues with calculating bed count on Assisted Living Projects.  
 20 PD 363 PS Sol, Project Density for the General Plan High-Density Residential (HDR) Designation is inconsistent at 6.5 DU/AC. Section 14 prohibits SFR in HDR by its terms.  
 21 PD 365 Dakota II, Project In HDR (15-30 du/ac) Designation. Density of 6.5 du/ac inconsistent with HDR. Fourth District Court of Appeal warned against eliminating minimum thresholds.  
 November 21 2016  
 Judy Deertrack, Consultant  
 People for Proper Planning

**CITY OF PALM SPRINGS - TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 - 2016**

WAIVER OF DEVELOPMENT STANDARDS											
PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
370 Alvarado 2015	N <sup>22</sup>	X	X			X			X	X	
371 Linea 2014			X		X				X		
372 Orchid Tree	Unkown <sup>23</sup>		X						X		
373 Via Olivera		X	X	X	X	X	X			X	
374 750 Lofts	NCC to MU/Mu					X	X	X	X		
376 Canyon Lofts					X			X	X	X	
379 Woodbridge	N <sup>24</sup>	N			X				X	X	

<sup>22</sup> PD 370 Alvarado in the Art Colony, used the PDD to modify the (R-1-C) required zone standards. (Staff Report page 3). Mixed-Use/Multi-Use Zone. Density is 9 DU/AC.

<sup>23</sup> PD 372 Orchid Tree, on the renovation the Owner grandfathered the non-conforming status, and only counted new rooms. City's ordinances specify to correct non-conforming use.

<sup>24</sup> PD 379 Woodbridge, Palm Canyon / Sunny Dunes Mixed-Use District has explicit standards on predominance of retail/office in the mixed-use district. PDD is mixture of MFR and SFR. November 21 2016

**TABLE OF COMMERCIAL ZONES – PALM SPRINGS**

Submitted by: Judy Deetrack to the PDD Study Group (November 2016)

<b>ZONE</b>	<b>PROHIBITED USE</b>	<b>LOT AREA</b>	<b>LOT DIMENSIONS</b>	<b>SETBACKS</b>	<b>OPEN SPACE</b>	<b>FLOOR AREA (FAR)</b>	<b>HEIGHT</b>	<b>GEN PLAN COMPATIBLE</b>
Professional 92.08.00	Professional Zone. The "P" zone is intended to provide for the development of a professional district with necessary related retail commercial uses and other compatible facilities.							
Professional 92.08.00	IND, RES. Most RETAIL	20,000 SF	130W 150D	See Standards	40%	Gen Plan Designation	24' / 2 stories High-Rise Ord.	<b>CBD, MU, REG. Sm. Hotel (C)</b>
C-B-D 92.09.00	<b>Central Business District Zone. A.</b> The C-B-D zone is intended for the central business district, primarily retail business in character, with related hotels, multiple-family dwellings, and service, office, cultural and institutional uses. The central business district is intended to be a compact, lively, active, intensively used area catering to the pedestrian. Planted walkways, covered walks and open plazas that provide for sitting, dining, conversing, gathering and window shopping are permitted and encouraged. <b>B.</b> Historic Village Center identified by sections. (Reference)							
C-B-D 92.09.03	SFR	9,600 SF	75W 128D	See Standards	30% C 45% R & H	1.0 FAR	30 FT High-Rise Ord.	<b>CBD</b>
C-D-N 92.10.00	<b>Designed Neighborhood Shopping Center Zone.</b> The C-D-N zone provides an opportunity for convenience commercial uses to be oriented directly to the residential neighborhood they serve by means of a planned commercial complex. The shopping centers established under this zone are intended to be an integrated element of the neighborhood and to promote a harmonious relationship between convenience services and the residential environment through compatibility of site design and architectural treatment of structures. The C-D-N zone will not be granted until a conditional use permit has been granted and all conditions complied with.							
C-D-N 92.10.03	Residential & Hotels	Between 10-30 Acres	450W 450D	See Standards	NA	Gen Plan Designation	30 FT No High-Rise	<b>NCC</b>
C-S-C 92.11.00	<b>Community Shopping Center Zone (Highway Frontage 500').</b> The C-S-C zone is designed to combine the general variety of community-level commercial services, in a planned shopping complex. The organization of services into a coordinated and interrelated complex is found to be a desirable alternative to scattered strip commercial development. Minimum 500' frontage on a major or secondary highway.							
C-S-C 92.11.03	Residential Not Otherwi Allowed	Between 15-60 Acres	500' Fronting Highway	See Standards	NA	Gen Plan Designation	30 FT High-Rise Ord.	<b>TRC, REG., MIXED USE</b>
C-1 Retail 92.12.00	<b>Retail Business Zone.</b> The C-1 zone is intended as a business district, primarily retail business in character, with related hotels, service, office, cultural and institutional uses.							
C-1 Ret./Hotel 92.12.03	SFR By Com Deter.	20,000 SF BLDG: 2,000	100 FT Frontage	See Standards	30% LSC	Gen Plan Designation	30 FT High-Rise Ord.	<b>TRC, HOTEL REG. &amp; MU</b>
C-1-AA 92.13.00	<b>Large-Scale Retail Commercial.</b> This C-1AA zone is designed to provide for the integration of large-scale retail commercial development with resort hotel complexes, hotels and multiple-family dwellings. MFR and Hotel allowed. SFR Prohibited							
C-1-AA 92.13.03	SFR By Com Deter.	2 Acres BLDG: 5,000	NA	See Standards	30% LSC	Gen Plan Designation	30 FT High-Rise Ord.	<b>REGIONAL MIXED-USE</b>
C-2 92.14.00	<b>General Commercial Zone.</b> The C-2 zone is intended for general commercial use.							
C-2 92.14.03	SFR By Com Deter.	20,000 SF BLDG: 2,000	Use C-1	See C-1 Standards	30% LSC	Gen Plan Designation	30 FT High-Rise Ord.	<b>REGIONAL MIXED-USE</b>

**TABLE OF RESIDENTIAL ZONES – PALM SPRINGS**

Submitted by: Judy Deertrack to the PDD Study Group (November 2016)

ZONE	PROHIBITED USE	DENSITY	LOT AREA MINIMUM	LOT COVERAGE	HEIGHT	LOT DIMENSIONS	DISTANCE BETWEEN BLDGS	GEN PLAN COMPATIBLE
G-R-5 (SFR) 92.00.00	Guest Ranch Zone: Resort hotels and guest ranches on large suitable sites; on flat or gently sloping land, with limited commercial uses							
G-R-5 (SFR) 92.00.03	MFR	4,000 SF Per Room	5 Acres	20%	15 FT 1 Story <sup>1</sup>	165W 165D	15 FT	EST. RES. (0-2 du/ac)
R-1 (SFR) 92.01.00	Five SFR zones have been established to provide a variety of low-density housing types and neighborhoods. Min. Lot Area (SF): R-1-AH (20,000); R-1-A (20,000); R-1-B (15,000) R-1-C (10,000); R-1-D (7,500)   Height: 12 FT, 35% Cover							Est Res (0-2) VLDR (2-4)
R-G-A (MFR) 92.02.00	Garden Apartment and Cluster Residential Zone: Two (2) R-G-A (R-G-A(6) and R-G-A(8)) zones are designed to provide for the development of low-density multiple-family residential uses.							
R-G-A (06) 92.02.03	SFR only with R-I-C (10,000)	7,000 SF pdu	2 Acres	50% LSC & 92.02.03(E)	15 FT <sup>2</sup>	165W 165D	15 FT (or adj Height)	LDR (4-6 du/ac)
R-G-A (08) 92.02.03	SFR only with R-I-C (10,000)	5,000 SF pdu	2 Acres	50% LSC & 92.02.03(E)	15 FT	165W 165D	15 FT (adj for Height)	MDR (6-15 du/ac)
R-2 (MDR) 92.03.00	Limited MFR Zone. The R-2 zone is intended to provide for the development of medium-density multiple-family residential uses. MDR (MFR) Homes and Hotels (No more than 10% with kitchens). Commercial prohibited. MHP prohibited. SFR (20,000 SF min lot size).							
R-2 (MDR) 92.03.03	SFR only with R-I-A (20,000)	3,000 SF pdu	20,000 SF	50% LSC 30% (18' +)	24 FT 2 Stories	130S 150D	See R-3 92.04.03(F)	MDR (6-15 du/ac)
R-3 (MFR) 92.04.00	The R-3 Zone is intended to provide for the development of high density apartments, hotels and similar permanent and resort housing and certain limited commercial uses directly related to the housing facilities. (20% limit on commercial w/in hotels) Restaurant w/in hotels							
R-3 (MFR) 92.04.03	SFR	Hotel 1,000 pdu MFR 2,000 pdu	20,000 SF	45% LSC	24 FT (HRO) <sup>3</sup> 2 Stories	130W 150-175D	15/30 FT (In No Case)	HDR (15-30 du/ac)
R-4 (MFR) 92.05.00	Large-scale hotel and multiple-family residential zone. The R-4 zone is designed to provide for the development of large-scale hotel complexes, hotels and multiple-family dwellings.							
R-4 (MFR) 92.05.03	SFR	Hotel 1,000 pdu MFR 1500 pdu	2 Acres	45% LSC	30 FT (HRO & HS)	130W 155D	15 FT	HDR (15-30 du/ac)
R-4-VP 92.06.00	The R-4-Vehicle Parking zone is designed to provide for the development of large scale hotel complexes, hotels and multiple-family dwellings; alternate off-street parking areas for C-1AA uses and limited extension of commercial uses constructed in the C-1AA zone.							

<sup>1</sup> Hillside Lots: Building Height Exceptions per 94.06.01

<sup>2</sup> Height of 15 feet except 24 feet allowed (2 stories), provided that limitations on coverage and setbacks are met.

<sup>3</sup> HRO = High Rise Ordinance. Exceptions for height where R-3 abuts R-1; limits to hotel heights; High Rise subject to 93.04.00 (HRO) and 94.02.00 (CUP).

**TABLE OF GENERAL PLAN STANDARDS – PALM SPRINGS, CA**

**Submitted by: Judy Deetrack to the PDD Study Group (November 2016)**

Estate Residential	Estate Residential (0-2.0 dwelling units per acre). The Estate Residential designation provides for the development of large-lot, single-family residences that are custom in design. This designation is predominantly located in areas adjacent to the City's hillsides, reflecting the natural and environmental constraints that must be addressed there. Minimum lot sizes are generally 20,000 square feet in this designation; guest ranches are permitted on parcel areas of five acres, with a minimum lot area of 4,000 square feet per guest ranch unit.
Very Low Density Residential	Very Low Density Residential (2.1-4.0 dwelling units per acre). The Very Low Density residential is the most prevalent land use designation within the City, representing typical single-family detached residential development. Lot sizes in this land use designation generally range from 16,500 to 8,500 square feet.
Low Density Residential	Low Density Residential (4.1-6.0 dwelling units per acre). Similar to the Very Low Density Residential designation, the Low Density Residential designation also represents "typical" single-family detached residential development. This designation accommodates typical lot sizes ranging from 10,000 to 8,000 square feet.
Medium Density Residential	Medium Density Residential (6.1-15.0 dwelling units per acre). This residential land use category accommodates a range of residential housing types, including single-family attached, single-family detached, patio homes, duplexes, townhomes, multiple-family, and mobilehome projects.
High Density Residential	High-Density Residential (15.1-30dwellingunitsperacre). Typical development in this category would include duplexes, townhomes, and apartments. Hotels and motels are also permitted up to 43 rooms per net acre (up to 86 rooms per net acre permitted on Indian Land) as long as they are consistent with the design and character of the surrounding neighborhoods and do not create significant design, parking, or traffic impacts to the surrounding residential neighborhood.
Tourist Resort Commercial	Tourist Resort Commercial (0.35 FAR for stand-alone commercial uses; 43 hotel rooms per net acre; 86 rooms per net acre on Indian Land). This land use designation provides for large-scale resort hotels and timeshares including a broad range of convenience, fitness, spa, retail, and entertainment uses principally serving resort clientele. Commercial recreation and entertainment facilities, such as convention centers, museums, indoor and outdoor theatres, and water parks are included in this designation, but should be designed to be compatible with neighboring development. Tourist Resort Commercial facilities are most appropriate in the Palm Canyon Drive and Tahquitz Canyon Drive corridors. It is intended that the primary use in any Tourist Resort Commercial area shall be hotel/tourist-related uses; if residential uses are proposed within the Tourist Commercial Designation (timeshares, condominiums, etc.) they shall be a secondary use ancillary to the proposed hotel uses and shall not exceed a maximum of 30 dwelling units per acre. Permanent residential uses and commercial activities are allowed subject to approval of a planned development district. <b>[bold print emphasis added]</b>
Small Resort Hotel Commercial	Small Hotel Resort Commercial (15 hotel rooms per net acre; 10 dwelling units per acre). This designation applies to areas with smaller-scale, boutique type hotels that are typically found in the Warm Sands and Tennis Club neighborhoods. It is intended that the tourist resort character of these neighborhoods be preserved; as a result, new residential uses or conversion of small hotels to residential uses are permitted as long as they comply with the conversion requirements outlined within the City's Zoning Code. Stand-alone retail and commercial uses are not permitted in this land use designation. Ancillary commercial uses such as a gift shop associated with a small hotel use are allowed. <b>[bold print emphasis added]</b>
Neighborhood Community Commercial	Neighborhood/Community Commercial (0.35 FAR). Areas designated as Neighborhood/Community Commercial provide an opportunity for convenience commercial uses that serve adjacent residential neighborhoods. The commercial opportunities created under this designation are intended to be an integrated element of the neighborhood, providing to nearby residents services such as dry cleaners, grocery stores, bakeries, bank and post office branches, bookstores, drugstores, and smaller-scale restaurants. Harmonious relationships between these commercial uses and adjacent residential uses shall be achieved through compatibility of site design, building scale, pathways and circulation design, and architectural treatment of structures. <b>[bold print emphasis added]</b>
Regional Commercial	Regional Commercial (0.50 FAR). Regional Commercial areas are intended to provide for large-scale commercial uses that serve an area larger than the City boundaries. Allowable uses include department stores, theatres, and restaurants. Uses such as automobile dealerships that have a regional draw are also included in this land use designation. These uses are generally located in areas that will benefit from a higher level of exposure to residents located outside of the City, such as properties located on Ramon Road adjacent to the City limits and selected properties adjacent to the I-10. <b>[bold print emphasis added]</b>
Central Business District Mixed-Use District	Central Business District (1.0 FAR; 21-30 dwelling units per acre). Bounded approximately by Ramon Road, Calle Encilla, Alejo Road and Belardo Road, the Central Business District designation allows for a mix of commercial, residential, and office uses at a higher concentration, density, and intensity than in other areas of the City. The CBD serves as the main activity center and cultural core of the community and, as such, theatres, museums, retail, and other entertainment venues are encouraged here. [portion of text deleted]. The Central Business District is subdivided into zones or areas that provide for diversity in development standards and land use intensities. These subareas are defined in Appendix A, <i>Downtown Urban Design Plan</i> . [portion of text deleted – see page 2-7 of Land Use Element for full text]. <b>[bold print emphasis added]</b>
Mixed-Use Multi-Use	Mixed-use/Multi-use (Maximum of 15 dwelling units per acre for residential uses and a maximum 0.50 FAR for nonresidential uses). Specific uses intended in these areas include community-serving retail commercial, professional offices, service businesses, restaurants, daycare centers, public and quasi-public uses. Residential development at a maximum density of 15 units per acre is permitted; planned development districts may allow residential densities up to 30 du/acre and also ensure that all proposed uses are properly integrated and allow the implementation of development standards that are customized to each site.



WOODBRIDGE PDD 379 | PALM CANYON / SUNNY DUNES MIXED-USE / MULTI-USE DISTRICT | APPROVED: 2016  
 57 DETACHED SINGLE-FAMILY RESIDENTIAL HOMES, 25 MULTI-FAMILY RESIDENTIAL HOMES, 1-2 STORIES, LOTS 5-8,000 SF | 12.5 AC |  
 ZONING: C-1 RETAIL (FRONTAGE) AND R-3 (HDR) – DENSITY (6.5 DU/AC) - NON-CONFORMING  
 PDD WAIVER: DENSITY, USE, LOT DIMENSIONS, SETBACKS, DISTANCE BETWEEN BUILDINGS



JUDY DEELTRACK 12/15/16  
 SUBMITTED AT AD Hoc  
 PDD COMMITTEE MTG.

**PALM CANYON - SUNNY DUNES MIXED-USE / MULTI-USE AREA (INCONSISTENT)**

"Different from the mixed/multi-use areas identified above, the Palm Canyon Drive and Sunny Dunes Road area is envisioned as a mixed-use area creating an office, retail, and residential node just south of Downtown. This mix of uses will complement the hotel uses along East Palm Canyon Drive by providing a concentrated commercial and office base in close proximity to visitor accommodations." Land Use Element at 2-33  
 "Preferred mix of uses: 30-50 percent commercial, 30-50 percent office; 15-20 percent residential"

"Mixed-use and multi-use developments allow for greater flexibility and a more varied environment than traditional single-use land use designations. Mixed/multi-use areas should consist of commercial, office, and residential uses in either vertical or horizontal proximity to each other." Comm. Design Element at 9-39

**PDD 379 WOODBRIDGE  
NON-COMPLIANCE WITH GENERAL PLAN AND COMMUNITY DESIGN  
WAIVER OF PDD STANDARDS (GRID)**

City Council Staff Report  
July 6, 2016 – Page 7

5.1378 PD-379 ZC, 3.3876 MAJ & TTM 36914 – Woodbridge Pacific Group

accessory living space, two-car garage and private yard space. A pool will provided as an option to homebuyers, according to the applicant.

The multi-family portion of the project fronts Palm Canyon Drive and includes five two-story buildings, each containing five dwelling units. The homes range in size from 1,650 square feet to 2,200 square feet, and a two-car garage is provided for all homes. Each unit is accessible from the garage and a separate entry around the perimeter of the building.

Common areas will include a variety of enhancements. A community pool space will be built within the project and have parking, landscape, fencing and restrooms for residents and their visitors. Internal pathways are proposed between the rear yards of homes for east-west pedestrian access through the site. The north side of the project abuts the Tahquitz Creek, and an on-site 12-ft landscape buffer will allow additional separation between adjacent homes and the Creek pathway.

**ANALYSIS:**

<b>Land Use Element</b>	<b>Request</b>	<b>Comply?</b>
MU / MU land use designation allows 0.50 FAR and 15 dwelling units per acre (or up to 30 d.u. per acre with PD approval). This designation is "envisioned as a mixed-use area creating an office, retail, and residential node just south of Downtown. This mix of uses will complement the hotel uses along East Palm Canyon Drive by providing a concentrated commercial and office base in close proximity to visitor accommodations. Preferred mix of uses: 30–50 percent commercial, 30–50 percent office; 15–20 percent residential"	<p>The project proposes two forms of residential uses. A total of 82 residences over 12.38 acres equates to 6.6 dwelling units per acre, which is less than the 15 units/acre permitted by the General Plan.</p> <p>The preferred mix of uses for this area exceeds anticipated residential uses of 20% (For the overall +/- 46-acre area designated MU/MU, 20% consists of 9.2-acres, which was exceeded by the Cameron project to the east).</p>	<p>Yes</p> <p>Not conforming to preferred mix</p>
<b>Community Design Element - Goals and Policies</b>	<b>Evaluation of Project's Conformance</b>	<b>Comply?</b>
CD14.4 – Prevent long and monotonous walls and fencing through undulation, modulation, surface articulation, and landscaping.	Long monotonous walls are avoided with the undulating walls on both street frontages, as well as along the Tahquitz Creek wash.	Yes
CD14.6 – Prohibit gated community entries and perimeter walls around entire neighborhoods. Instead, provide privacy through design features such as meandering streets, ample landscaping, and house placement that provides privacy and exclusivity.	The project is proposed to be gated at the primary vehicular entry.	No, suggest modifying project
CD19.7 – Design new development with the pedestrian in mind by including wide sidewalks, shade street trees, sitting areas, and clearly defined pedestrian routes.	As shown on the landscape plans, the project will include pedestrian amenities, such as walking paths that are landscaped with shade trees and clearly defined routes.	Yes

CD20.1 – Create a pedestrian-friendly environment along midblock corridor residential development through the use of landscaping, shade trees, special paving, pedestrian-scaled lighting, and small gathering spaces.	Pedestrian-friendly environment proposed between clusters of multi-family buildings with walking paths and shade trees.	Yes
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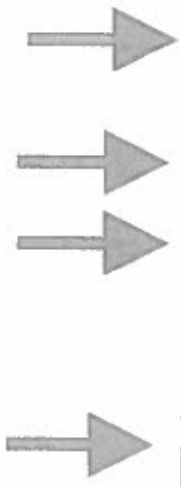
**Zoning**

Permitted Uses:

The project site is split-zoned with roughly 3.55-acres fronting Palm Canyon Drive zoned C-1 and the remaining 8.83-acres zoned R-3. Multi-family residential is permitted in the C-1 district and subject to the R-3 Zone development standards. Single-family residential units are prohibited in the R-3 and C-1 zones. Thus, the applicant has submitted a PD-in-lieu of zone change to change the entire site's zone to PD-379. In accordance with section 94.03.00(B)(1) of the Zoning Code, Planned Developments may specifically allow a multiplicity of housing types, such as single-family and multi-family dwellings within the same project site. Therefore, the proposed uses are consistent with the zoning code.

Development Standards:

	C-1 / R-3 Requirements	Proposed Project	Conform?
<b>Lot Standards</b>	Lot standards for C-1 and R-3 are noted.		
<b>Min. Area</b>	C-1 20,000 square feet (SF) R-3: 20,000 SF	Multi-Family (MFR): ~85,248 SF Single Family Residential (SFR): Lots vary between 5,000 SF and 7,700 SF	Yes No. PD proposes to set standard
<b>Min. Width</b>	C-1: 100ft R-3: 130ft (interior lot) 140ft (siding local st.)	MFR: 640ft min. SFR: 53ft min.	Yes No. PD proposes to set standard
<b>Min. Depth</b>	C-1: 150ft R-3: 150ft	MFR: 130ft. min. SFR: 95ft min.	No. PD proposes to set standard
<b>Building Height</b>	C-1: 30ft, except high-rise buildings R-3: 2 stories and 24ft, except high-rise buildings	MFR: 24ft. max. SFR: 15ft to 24 ft. max.	Yes Yes
<b>Density</b>	C-1: Same as R-3 R-3: 2,000 SF of lot area per unit.	6,576 SF of lot area per unit including both MFR and SFR dwellings	Yes
<b>Yard Setbacks</b>			
<b>Garage</b>	C-1: None R-3: 25ft	MFR: Garages accessed via motor court SFR: 18 ft. min.	No. PD proposes to set standard
<b>Front</b>	C-1: 5ft R-3: 30ft facing major thoroughfare	MFR: 30ft SFR: 10ft	Yes No. PD proposes to set standard



Side	C-1: None R-3: 10ft, except structures exceeding 12ft in height shall have setback equal to height of building 20ft side yard abutting street	MFR: 24ft required due to height. Proposed: 25ft from North P/L and 30ft from South P/L SFR: 7ft and 3ft for each lot	Yes  No, PD proposes to set standard
Rear	C-1: None R-3: 10ft, except structures exceeding 12ft in height shall have setback equal to height of building	MFR: 24ft require due to height. Proposed: 600ft+ from Belardo SFR: 5ft	Yes  No, PD proposes to set standard
Distance Between Bldgs.	C-1: None R-3: 15ft when bldgs. are substantially parallel, or 30ft when opposite court	MFR: 15ft separation, 28-40ft on interior motor court SFR: 10ft separation	No, PD proposes to set standard
Lot Coverage	C-1: None R-3: Min. of 45% of site area to be developed as usable landscape open space	48% of project is developed as open space (not including roof decks and balconies)	Yes
Trash Enclosure	Per PSZC 93.07.02	Proposed for MFR. Individual containers to be provided for SFR.	Yes
Off-street Parking	PSZC 93.06.00(D)(29), residential in PDs: 3 bedroom units require 2.25 spaces or 139.5 spaces for the 62, 3-bedroom units; and 2 bedroom units require 1.5 spaces or 30 spaces for the 20, 2-bedroom units. Additionally, guest parking is required at 1 space for every 4 units, or 20.5 spaces. <b>Total Required: 190 spaces</b>	SFR: 2 covered spaces are provided within each of the 57 units (114 spaces) + two driveway spaces for SFR's (114 spaces) = 228 spaces. Additional parking provided on private streets. MFR: 2 covered spaces are provided within each of the 25 units (50 spaces) + 25 spaces behind MFR units = 75 spaces. <b>Total Provided: 303 spaces</b> (excludes available parking on internal SFR streets)	Yes

Site Grading:

The existing natural topography will be graded to accommodate the proposed project. Currently, the site slopes downward from its northwest corner to the south, southeast and east portions of the property, and a ravine exists along the east side of Belardo Road. The proposed improvements will create a stepped pad design, consistent with the existing topography patterns, particularly in the east-west direction from Belardo Road to Palm Canyon Drive. The pads for the homes adjacent to Belardo are lower

**CANYON LOFTS PDD | SECTION 14 SPECIFIC PLAN | APPROVED: 2015  
CENTRAL BUSINESS DISTRICT (INCOMPATIBLE)  
32 MFR CONDOS AND 2 LIVE-WORK UNITS, 3 STORIES, 35 FEET**

**GENERAL PLAN CENTRAL BUSINESS DISTRICT (CBD) (15-30 DU/AC)  
R-4 MULTI-FAMILY RESIDENTIAL ZONE (30 FOOT HEIGHT REQUIREMENT)**

**NON-CONFORMING WITH CENTRAL BUSINESS DISTRICT STANDARDS  
WAIVERS: LOT AREA, DISTANCE BETWEEN BLDGS, SETBACKS  
OPEN SPACE (45% - 22%).**



**CENTRAL BUSINESS DISTRICT STANDARDS:  
“PRIMARYLY RETAIL BUSINESS IN CHARACTER, WITH RELATED HOTELS,  
MULTI-FAMILY RESIDENTIAL, AND SERVICE, OFFICE, CULTURAL AND INSTITUTIONAL USES.  
CBD INTENDED TO BE ACTIVE, INTENSIVELY USED AREA CATERING TO THE PEDESTRIAN,  
WITH WALKWAYS, OPEN PLAZAS, DINING, GATHERING AND WINDOW-SHOPPING**



PDD 357 I PALM SPRINGS ASSISTED LIVING (1.43 ACRES) I APPROVED: JANUARY 4, 2012  
108 BEDS I THREE STORIES I 40 FT HEIGHT I 75 UNDERGROUND PARKING, 3 ABOVE  
GEN PLAN AMEND. FROM NEIGHBORHOOD COMMERCIAL TO HIGH DENSITY RESIDENTIAL (UPTOWN DISTRICT)  
HIGH-RISE CONDITIONS FOR OPEN SPACE AND SETBACKS WERE WAIVED (SIGNIFICANT)  
SIGNIFICANT WAIVERS FOR: DENSITY (64 CONFORM), HEIGHT, OPEN SPACE, SETBACKS AND PARKING (113/106)



**PDD 357 PALM SPRINGS ASSISTED LIVING  
PDD WAIVERS (GRID)**

City Council Staff Report  
Case: 5.1237 GPA PDD 357 1000 North Palm Canyon Drive

January 4, 2012  
Page 8 of 16



- Building Height – The maximum height in the C-1 zone is 30 feet, but may be higher with a PDD subject to the high-rise ordinance development standards.
- The high-rise ordinance requires significant setbacks from which the project seeks relief.
- Increased Density - There are 91 units proposed on 1.43 acres (62,290sf) = roughly 685 sf net lot area per dwelling unit
- R-3 yard width along Indian Canyon Drive (30 feet required, roughly 14 feet proposed) with the first 15 feet landscaped (circular drive is proposed on Indian Canyon in the setback)
- R-3 side yard at 1 to 1 setback for heights greater than 12 feet (proposed at 0 setback on south side at ramp entrance and exit structures) (The C-1 zone has no side yard setback requirements)

Table 2 below, summarizes the development standards for the C-1 and R-3 zone and the standards proposed by the PDD.

**Table 2: Comparison of Development Standards by Zone & Proposed PDD**

	C-1 Zone	R-3 Zone	Proposed PD- 357
Lot Area	20,000	20,000 sf Minimum	1.43 acres 62,411 square feet - Conforms
Density	Building Coverage (FAR) = 1	2,000sf of net site area per dwelling unit (21.78 du/ac); Assisted Lvg Fac: 2.05 persons per household x 21.78 du/ac x 1.43 acres = 64 beds.	114 assisted living facility beds; Requires PDD and GPA to conform
Height	30 feet except high-rise; max 60 feet	30 feet except high rise bldgs. Max. 60 feet.	40 feet – Requires high-rise ordinance to conform.
Lot width	100 feet	130 feet	245 Conforms
Lot depth	150 feet	190 feet	255 Conforms
Front yard	Average 5 feet	30 feet. Hi-rise code: 3ft for ev 1 ft of height from opposite side of street ROW (135ft)	Varies from 9 feet to approximately 36 feet – Conforms to high-rise ord. Requires PDD to conform to zone.
Street Side/ Rear yard	Average 5 feet	30 Ft. Hi-rise code: 3ft for ev 1 ft of height from opposite side of street ROW (135 ft)	Varies from 2 feet to 22 feet – Conforms to high-rise ord. Requires PDD to conform to zone.
Int. side yard	None, 10 feet when C-1 abuts res. Zone at an alley.	10ft min, 1:1 for hts over 12 feet. Hi-rise code: 3ft for ev 1 ft of height (135 ft)	Varies from 0 to 30 ft– Does not conform to zone or high-rise ordinance; requires PDD
Open Space	None	45% per R-3 zone; Hi-rise code requires 60% open space	Roughly 48% open space including balconies, 36% at grade – Does not conform to high-rise ordinance; requires PDD to conform
Distance between bldgs	None	15 feet; 30 feet at a courtyard	60 feet at courtyard – conforms
Parking required	Per 93.06.00	Per 93.06.00, 113 spaces required	106 Provided – Does not conform – Requires PDD

PLANNED DEVELOPMENT DISTRICT



PDD 341 | VIVANTE | RETAIL 3 COMM. BLDGS / AMEND TO ELIMINATE TWO HOTELS / CONSTRUCT 132-UNIT ASSISTED LIVING  
PDD USED TO OVERRIDE GENERAL PLAN USE RESTRICTIONS - RESORT, ENTERTAINMENT, AND RECREATION (VISITOR-SERVING)  
GENERAL PLAN TOURIST RESORT COMMERCIAL (TRC): SECTION 14 REO | PROHIBIT ASSISTED LIVING



DECLARED DWELLING UNITS ARE ACTUALLY BEDS (54 BED COUNT) FOR FIVE ACRES (CITY COUNCIL FOUND CONSISTENT)  
NEITHER GENERAL PLAN OR SECTION 14 SPECIFIC PLAN DESIGNATION ALLOWS ASSISTED LIVING USE  
ISSUES OF CONCERN: PROXIMITY TO PRIME TOURISM NEXT TO CONVENTION CENTER

# VIVANTE - PDD AMENDS GENERAL PLAN

City Council Staff Report  
 November 7, 2012 – Page 6  
 Case No. 5.1160 PDD 341 & TPM 35989 AMND B – Vivante Palm Springs

PLANNED DEVELOPMENT DISTRICT

and gathering spaces include the courtyards where there is a bocce ball court, a putting green, a small dog park and other recreational and therapeutic amenities.

**General Plan:**

The General Plan land use designation for the site is Tourist Resort Commercial (0.35 FAR). From Page 2-6 of the 2007 General Plan, this land use designation is defined as follows:

*This land use designation provides for large-scale resort hotels and timeshares including a broad range of convenience, fitness, spa, retail, and entertainment uses principally serving resort clientele. Commercial recreation and entertainment facilities, such as convention centers, museums, indoor and outdoor theatres, and water parks are included in this designation, but should be designed to be compatible with neighboring development. Tourist Resort Commercial facilities are most appropriate in the Palm Canyon Drive and Tahquitz Canyon Drive corridors. It is intended that the primary use in any Tourist Resort Commercial area shall be hotel/tourist-related uses; if residential uses are proposed within the Tourist Commercial Designation (timeshares, condominiums, etc.) they shall be a secondary use ancillary to the proposed hotel uses and shall not exceed a maximum of 30 dwelling units per acre. Permanent residential uses and commercial activities are allowed subject to approval of a planned development district.*

The proposed project includes a mix of commercial and residential uses under a planned development district application. The commercial component will be located along Tahquitz Canyon Way, and the residential component will be set back approximately 300 feet from Tahquitz Canyon Way. It should be noted, however, that the proposed residential use does not implement the General Plan in terms of supporting and strengthening the City's efforts to encourage large-scale private hotel development on the few remaining large lots in close (walkable) proximity to the convention center. Approval of an assisted living facility at this location removes five acres from possible future development for tourist-hotel-entertainment-convention center-related uses.

The General Plan limits commercial development to a 0.35 floor area ratio (FAR) and residential development to 30 dwelling units per acre. The following table summarizes the project's conformance to these requirements:

Proposed Parcel (TPM 35989)	FAR		Density	
	Maximum	Proposed	Maximum	Proposed
1 (Assisted Living)	N/A		30 d.u. / ac.	26 d.u. / ac.
2 (Comm. Bldg. 3)	0.35	0.11	N/A	
3 (Comm. Bldg. 1 & 2)	0.35	0.23	N/A	

The project conforms to the General Plan's FAR and Land Use Density requirements.





*Section 14 Specific Plan*

The Section 14 Specific Plan Land Use classification for the subject site is "REO" (Specialty Retail, Entertainment Office). Permitted uses in the REO land use classifications are outlined in Section 6.1.1, of the Section 14 Specific Plan. While multi-family residential is permitted with the approval of a Conditional Use Permit, Assisted Living Facilities are not listed as a permitted use in this land use classification. Thus, with the PDD amendment, the applicant is seeking approval to add assisted living facilities to the list of permitted uses within the PDD.

Commercial uses are permitted within the REO classification, including the proposed office, retail and restaurant uses. All future restaurant uses and outdoor dining will require the approval of a Land Use Permit pursuant to the Specific Plan requirements.

*Planned Development District in lieu of Change of Zone:*

Pursuant to Section 94.03.00 (Planned Development District) and Section 94.07.00 (Zoning Map Amendment / Change of Zone) of the Zoning Code, *the Planned Development District is designed to provide various types of land use that can be combined in compatible relationship with each other as part of a totally planned development. It further states, "It is the intent of this district to insure compliance with the general plan and good zoning practices while allowing certain desirable departures from the strict provisions of specific zone classifications."*

The applicant is requesting approval to amend the PDD to a PDD in lieu of a Change of Zone. Required findings are outlined later in this staff report. The PDD is also seeking to deviate from the Specific Plan and Zoning Code development standards as follows:

1. Establish Assisted Living Facilities as a permitted use in the PDD.
2. Off-street parking screen wall from Tahquitz Canyon Way not provided.
3. Setback to accessory structures (carports) from street side yard (Hermosa Drive) and rear property line is ten feet; required setback is twenty feet for both cases.
4. Landscape treatment and sidewalk along Tahquitz Canyon Way not consistent with all Specific Plan requirements.

The table below compares the proposed project against the development standards of the Specific Plan and the Zoning Code.



**Proposed Zoning:**

The proposed zoning of the site is PD-366. Permitted uses will be single-family residential and accessory uses; generally, consistent with Section 92.01.01 R-1 of the Zoning Code.

**Development Standards:**

As compared to R-1 zoning:

	R-1-C Zone Standards	Proposed			Comply
		Detached 50'W Lots	Detached 80'W Lots	Attached 50' W Lots	
<b>Lot Standards</b>					
Min. Area	10,000 sq. ft. minimum	5,000 sq. ft. minimum	8,000 sq. ft. minimum	5,000 sq. ft. minimum	No, per PD
Min. Width	110 ft. minimum	50 ft. min.	80 ft. min.	50' min.	No, per PD
Min. Depth	100 ft. minimum	100 ft. min.	100 ft. min.	100 ft. min.	Yes
<b>Yard Setbacks</b>					
Garages	25 ft.	18 ft. min.	18 ft. min.	10 ft. min.	No, per PD
Front	25 ft.	12 ft. min.	12 ft. min.	5 ft. from street / 12 ft.	No, per PD
Interior Side	10 ft.	5' ft. / 30% @ 3 ft.	5 ft. / 30% @ 3 ft.	0 ft. and 10 ft.	No, per PD
Street Side	20 ft.	10 ft. min.	10 ft. min.	10 ft. min.	No, per PD
Rear	15 ft.	10 ft. min.	15 ft. min.	10 ft. min.	No, per PD
<b>Lot Coverage</b>	35% maximum	60% max.	40% max.	60% max.	No, per PD
<b>Dwelling Size</b>	Minimum 1,100 sq. ft. (excl. garage)	Undefined, but appears all proposed homes exceed minimum requirement			Yes
<b>Height</b>	Building Envelope. Buildings shall not exceed one (1) story and twelve (12) feet in height at the minimum setback. From the minimum setback, the height may be allowed to increase along a plane which has a slope of 4:12, until a building height of eighteen (18) feet is attained. Gable ends, dormers and front entrance treatments, not exceeding fifteen (15) feet in height, may encroach past the building envelope limits.	1 story (19')	1 story (18')	1 story (19')	No, per PD
<b>Off-street Parking</b>	2 covered parking spaces (each 10ft. by 20 ft.)	2 covered spaces	2 covered spaces	2 covered spaces	Yes
<b>Open Space</b>	Not Required	47%			N/A

**AAC Review:**

On June 9, 2014, the Architectural Advisory Committee reviewed and recommended approval of the project, subject to the following:

**CITY OF PALM SPRINGS – TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 - 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
104 (750) Lofts 2015	GPA NCC-CBD	Historic GL	GPA FAR .35-1.0	GPA FAR 1.0	GPA FAR 1.0	X	X	X	X		X
131 Belardo 2016	N <sup>1</sup> Comment <sup>2</sup>	X <sup>3</sup>	No Standard	No Standard	No Standard	X	X	No Standard	No Standard		
232 Family Dev. 2014	N <sup>4</sup>		X	X	X	X	X	X	X	X	Tandem
287 Boulders 2007				X		X					
290 Avalon 2006 & 2016	Amend <sup>5</sup>				X				X		
294 Crescendo 2007 & 2016				X		X			X		
303 Matthew Pl 2006						X <sup>6</sup>				X	Tandem
307 Von's Retail 2006						X		X			
309 San Jacinto 2009	N <sup>7</sup>	X		X	X	X	X	X	X	X	X
313 Racquet Club 2006		X	X			X					
314 Mesquite 2006	N <sup>8</sup>	X		X	No data	X	X	X	X	No data	
316 803 Palm Cy 2006	2 <sup>nd</sup> Story Resid.										

"There is no specific zone or ordinance that addresses a combination of commercial and residential uses in the same building or the same lot. This results in a project being evaluated according to the portion of the zone in which it is located. A PDD is currently best available tool."

<sup>1</sup> N = Inconsistent with General Plan, Specific Plan (PDD Amends Plan), or misuse of underlying Zone for Standard of Comparison.

<sup>2</sup> PD 131 Belardo used R-3 as an underlying zone within NCC Designation. NCC is compatible with C-D-N or C-S-C Zones, and prohibit hotel and residential. R-3 prohibits hotels with detached restaurants (Hacienda Cantina). Project boundaries were not established. The 17-acre boundary for SteinMart was used to calculate Density, Lot Area, Lot Coverage, Open Space and Setbacks.

<sup>3</sup> X = Waiver of Standard with the Use of Planned Development District Ordinance 94.03.00 (PD).

<sup>4</sup> PD 232 Family Development contains 72 SFR units, average lot size of 5,000 sf, arguably misusing underlying Zone for Comparison R-2 that require 20,000 sf min. lot size for SFR in MDR.

<sup>5</sup> Note: Modified PDD's are not assessed against the original General Plan or Zoning Standards, but only difference from last PDD. Could be problematic with incremental changes over time.

<sup>6</sup> PD 303 Matthew Place (2006). Tandem Parking (no ordinance authority); Waive Height Restrictions on adjacent R-1 (steep slopes); Distance between Bldgs (New Common Space Concept)

<sup>7</sup> PD 309 San Jacinto approved SFR and MFR and ignored the preferred mixture of industrial, residential (15-25%), and commercial established for MU/MU Indian and San Rafael.

<sup>8</sup> PD 314 Mesquite (SFR & MFR) is within Tourist Resort Commercial. Residential uses, if proposed, are secondary and ancillary to hotel uses. Not achieved. SFR is prohibited in TRC.

**CITY OF PALM SPRINGS – TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 - 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
317 Eagle Cyn. 2006	N <sup>9</sup>		X	X	X	X	No data	No data	X	No data	
321 Morrison 2010	N <sup>10</sup>	X	X	X	X	X	X	X	X	X	No data
322 Palms Hotel 2006	N <sup>11</sup>		X	X	X	X	X	X	X		No data
323 Smoke Tree 2006	N <sup>12</sup>		X	X				X	X	X	X
324 Rael 2006, 11 & 15	Second Modification to PDD (Standards Reduced 3X)										
327 Nichols 2008	N <sup>13</sup>					X	X	X	X		
329 Art Colony 2007	First Modification to PDD (Standards Reduced 2X)										
339 Hard Rock 2008			X			X	X	X	X		X
340 Olivera 2008	N <sup>14</sup>		X						X	X	
341 Vivante 2012	N <sup>15</sup>	X							X		
342 Palm Mtn 2008	N <sup>16</sup>	X	X			X	X		X		X
343 Crosse Pt. 2007						X	X		X		

<sup>9</sup> PD 317 Eagle Canyon, 230 homes on 30 acres, density of 4 du/ac. General Plan Designation of Estate Residential (0-2 du/ac). Project was approved with a Density Transfer (Settlement Agreement) of 70 Units. No ordinance authority for Transfer of Density. The City uses state guidelines, but no local criteria exists for receiving lot.

<sup>10</sup> PD 321 Morrison is 53 SFR at a density of 6.25 du/ac (inconsistent) on 5,000-8,000sf lots (inconsistent) in HDR (15-30) and MDR (SFR=10,000sf/lot). R-G-A zone inconsistent with Gen Pl.

<sup>11</sup> PD 322 Palms Hotel, may exceed the High-Density Residential Density Range (51 DU/AC) unless the City's Transfer of Density Rights from an adjacent hotel is an authorized act.

<sup>12</sup> PD 323 Smoke Tree at a project density of 0.80 DU/AC is inconsistent with the General Plan Low-Density Residential (4-6 DU/AC) standard. Can second units be included in the count?

<sup>13</sup> PD 327 Nichols, is mixed-use commercial and residential uses in the same building. The City admits it has no ordinance that creates standards of review. Ad Hoc process.

<sup>14</sup> PD 340 Olivera Town Homes at a project density of 8 DU/AC (MDR), is inconsistent with the HDR General Plan Designation (15-30 DU/AC).

<sup>15</sup> PD 341 Vivante, places Assisted Living Use in the Tourist Resort Commercial General Plan Land Use Designation where it is specifically prohibited.

<sup>16</sup> PD 342 Palm Mountain, Use of R-3 (HDR) zoning standards after a General Plan Amendment to Central Business District (CBD) Designation. Underlying zoning is inconsistent.

**CITY OF PALM SPRINGS – TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 - 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
347 Farrell Prof. 2008									X		
346 SW Real Est. 2007	NCC Denied	City denied Gen Plan Amendment to Commercial on Sunrise; created vacant remainder parcel and built remaining residential									
348 Fuel Storage 2010						X					
351 Time Share 2008 & 2011		Second Modification to PDD (Standards Reduced 2X – No Record of Changes)									
354 Michael's Pl 2008			X		X				X		
357 PS Asst Liv. 2012	N17	X Uptown Distr. – GPA from NCC to HDR				X	X	X	X		X
358 Michael's Pl 2011	N18	X	X						X	X	X
359 Michael's H. 2011			X		X			X			X
360 Arrive 2012			X						X	X	X
362 Stonewall 2013	N19	X	X					X	X		
363 PS Sol 2013	N20	X	X	X				X	X		
365 Dakota II 2014	N21	X			X		X		X	X	
366 Serena Park 2016	OS to VLDR			X	X	X	X		X		
368 Kaptur Court 2014	TR to LDR			X	X				X		

17 N = Inconsistent with General Plan, Specific Plan (PDD Amends Plan), or underlying Zone not used for Standards of Comparison | X = Waiver of Standards with use of PDD  
 18 PD 358 Michael's Place, the City admittedly has no standard for assisted living bed count, and uses the R-3 dwelling unit count as a substitute. Issues with calculating parking for same reason.  
 19 PD 362 Stonewall (See Footnote 18 Above for issues with calculating bed count on Assisted Living Projects).  
 20 PD 363 PS Sol, Project Density for the General Plan High-Density Residential (HDR) Designation is inconsistent at 6.5 DU/AC. Section 14 prohibits SFR in HDR by its terms.  
 21 PD 365 Dakota II, Project in HDR (15-30 du/ac) Designation. Density of 6.5 du/ac inconsistent with HDR. Fourth District Court of Appeal warned against eliminating minimum thresholds.



**CITY OF PALM SPRINGS – TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 - 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
370 Alvarado 2015	N <sup>22</sup>	X	X			X			X	X	
371 Linea 2014			X		X				X		
372 Orchid Tree	Unknown <sup>23</sup>		X						X		
373 Via Olivera		X	X	X	X	X	X			X	
374 750 Lofts	NCC to MU/Mu					X	X	X	X		
376 Canyon Lofts					X			X	X	X	
379 Woodbridge	N <sup>24</sup>	N			X				X	X	

<sup>22</sup> PD 370 Alvarado in the Art Colony, used the PDD to modify the (R-1-C) required zone standards. (Staff Report page 3). Mixed-Use/Multi-Use Zone. Density is 9 DU/AC.

<sup>23</sup> PD 372 Orchid Tree, on the renovation the Owner grandfathered the non-conforming status, and only counted new rooms. City's ordinances specify to correct non-conforming use.

<sup>24</sup> PD 379 Woodbridge, Palm Canyon / Sunny Dunes Mixed-Use District has explicit standards on predominance of retail/office in the mixed-use district. PDD is mixture of MFR and SFR.

**NON-COMPLIANCE WITH GENERAL PLAN AND COMMUNITY DESIGN  
WAIVER OF PDD STANDARDS (GRID)**

City Council Staff Report  
July 6, 2016 – Page 7  
5.1378 PD-379 ZC, 3.3876 MAJ & TTM 36914 – Woodbridge Pacific Group

accessory living space, two-car garage and private yard space. A pool will provided as an option to homebuyers, according to the applicant.

The multi-family portion of the project fronts Palm Canyon Drive and includes five two-story buildings, each containing five dwelling units. The homes range in size from 1,650 square feet to 2,200 square feet, and a two-car garage is provided for all homes. Each unit is accessible from the garage and a separate entry around the perimeter of the building.

Common areas will include a variety of enhancements. A community pool space will be built within the project and have parking, landscape, fencing and restrooms for residents and their visitors. Internal pathways are proposed between the rear yards of homes for east-west pedestrian access through the site. The north side of the project abuts the Tahquitz Creek, and an on-site 12-ft landscape buffer will allow additional separation between adjacent homes and the Creek pathway.

**ANALYSIS:**

Land Use Element	Request	Comply?
MU / MU land use designation allows 0.50 FAR and 15 dwelling units per acre (or up to 30 d.u. per acre with PD approval). This designation is "envisioned as a mixed-use area creating an office, retail, and residential node just south of Downtown. This mix of uses will complement the hotel uses along East Palm Canyon Drive by providing a concentrated commercial and office base in close proximity to visitor accommodations. Preferred mix of uses: 30–50 percent commercial, 30–50 percent office; 15–20 percent residential"	The project proposes two forms of residential uses. A total of 82 residences over 12.38 acres equates to 6.6 dwelling units per acre, which is less than the 15 units/acre permitted by the General Plan.  The preferred mix of uses for this area exceeds anticipated residential uses of 20% (For the overall +/- 46-acre area designated MU/MU, 20% consists of 9.2-acres, which was exceeded by the Cameron project to the east).	Yes  Not conforming to preferred mix
<b>Community Design Element - Goals and Policies</b>	<b>Evaluation of Project's Conformance</b>	<b>Comply?</b>
CD14.4 – Prevent long and monotonous walls and fencing through undulation, modulation, surface articulation, and landscaping.	Long monotonous walls are avoided with the undulating walls on both street frontages, as well as along the Tahquitz Creek wash.	Yes
CD14.6 – Prohibit gated community entries and perimeter walls around entire neighborhoods. Instead, provide privacy through design features such as meandering streets, ample landscaping, and house placement that provides privacy and exclusivity.	The project is proposed to be gated at the primary vehicular entry.	No, suggest modifying project
CD19.7 – Design new development with the pedestrian in mind by including wide sidewalks, shade street trees, sitting areas, and clearly defined pedestrian routes.	As shown on the landscape plans, the project will include pedestrian amenities, such as walking paths that are landscaped with shade trees and clearly defined routes.	Yes

CD20.1 – Create a pedestrian-friendly environment along midblock corridor residential development through the use of landscaping, shade trees, special paving, pedestrian-scaled lighting, and small gathering spaces.	Pedestrian-friendly environment proposed between clusters of multi-family buildings with walking paths and shade trees.	Yes
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**Zoning**

Permitted Uses:

The project site is split-zoned with roughly 3.55-acres fronting Palm Canyon Drive zoned C-1 and the remaining 8.83-acres zoned R-3. Multi-family residential is permitted in the C-1 district and subject to the R-3 Zone development standards. Single-family residential units are prohibited in the R-3 and C-1 zones. Thus, the applicant has submitted a PD-in-lieu of zone change to change the entire site's zone to PD-379. In accordance with section 94.03.00(B)(1) of the Zoning Code, Planned Developments may specifically allow a multiplicity of housing types, such as single-family and multi-family dwellings within the same project site. Therefore, the proposed uses are consistent with the zoning code.

Development Standards:

	C-1 / R-3 Requirements	Proposed Project	Conform?
<b>Lot Standards</b>	Lot standards for C-1 and R-3 are noted.		
Min. Area	C-1 20,000 square feet (SF) R-3: 20,000 SF	Multi-Family (MFR): ~85,248 SF Single Family Residential (SFR): Lots vary between 5,000 SF and 7,700 SF	Yes <input checked="" type="radio"/> No PD proposes to set standard
Min. Width	C-1: 100ft R-3: 130ft (interior lot) 140ft (siding local st.)	MFR: 640ft min. SFR: 53ft min.	Yes <input checked="" type="radio"/> No PD proposes to set standard
Min. Depth	C-1: 150ft R-3: 150ft	MFR: 130ft. min. SFR: 95ft min.	No. PD proposes to set standard
<b>Building Height</b>	C-1: 30ft, except high-rise buildings	MFR: 24ft. max.	Yes
	R-3: 2 stories and 24ft, except high-rise buildings	SFR: 15ft to 24 ft. max.	Yes
<b>Density</b>	C-1: Same as R-3 R-3: 2,000 SF of lot area per unit.	6,576 SF of lot area per unit including both MFR and SFR dwellings	Yes
<b>Yard Setbacks</b>			
Garage	C-1: None R-3: 25ft	MFR: Garages accessed via motor court SFR: 18 ft. min.	<input checked="" type="radio"/> No PD proposes to set standard
Front	C-1: 5ft R-3: 30ft facing major thoroughfare	MFR: 30ft SFR: 10ft	Yes <input checked="" type="radio"/> No PD proposes to set standard



Side	C-1: None R-3: 10ft, except structures exceeding 12ft in height shall have setback equal to height of building 20ft side yard abutting street	MFR: 24ft required due to height. Proposed: 25ft from North P/L and 30ft from South P/L SFR: 7ft and 3ft for each lot	Yes  No, PD proposes to set standard
Rear	C-1: None R-3: 10ft, except structures exceeding 12ft in height shall have setback equal to height of building	MFR: 24ft require due to height. Proposed: 600ft+ from Belardo SFR: 5ft	Yes  No, PD proposes to set standard
Distance Between Bldgs.	C-1: None R-3: 15ft when bldgs. are substantially parallel, or 30ft when opposite court	MFR: 15ft separation, 28-40ft on interior motor court SFR: 10ft separation	No, PD proposes to set standard
Lot Coverage	C-1: None R-3: Min. of 45% of site area to be developed as usable landscape open space	48% of project is developed as open space (not including roof decks and balconies)	Yes
Trash Enclosure	Per PSZC 93.07.02	Proposed for MFR. Individual containers to be provided for SFR.	Yes
Off-street Parking	PSZC 93.06.00(D)(29), residential in PDs: 3 bedroom units require 2.25 spaces or 139.5 spaces for the 62, 3-bedroom units; and 2 bedroom units require 1.5 spaces or 30 spaces for the 20, 2-bedroom units. Additionally, guest parking is required at 1 space for every 4 units, or 20.5 spaces. <b>Total Required: 190 spaces</b>	SFR: 2 covered spaces are provided within each of the 57 units (114 spaces) + two driveway spaces for SFR's (114 spaces) = 228 spaces. Additional parking provided on private streets. MFR: 2 covered spaces are provided within each of the 25 units (50 spaces) + 25 spaces behind MFR units = 75 spaces. <b>Total Provided: 303 spaces</b> (excludes available parking on internal SFR streets)	Yes

Site Grading:

The existing natural topography will be graded to accommodate the proposed project. Currently, the site slopes downward from its northwest corner to the south, southeast and east portions of the property, and a ravine exists along the east side of Belardo Road. The proposed improvements will create a stepped pad design, consistent with the existing topography patterns, particularly in the east-west direction from Belardo Road to Palm Canyon Drive. The pads for the homes adjacent to Belardo are lower

**PDD STUDY COMMITTEE  
FEBRUARY 13, 2017  
SUBMITTED BY: JUDY DEERTRACK**

**STATEMENT:** A CHARTER CITY HAS JURISDICTION TO WAIVE SOME OF THE ORDINANCE STANDARDS THAT APPLY TO THE PROJECT IN ORDER TO ACHIEVE EXCELLENCE OF DESIGN AND FLEXIBILITY; BUT GENERALLY AS A MINOR MODIFICATION. WHAT IS OFTEN FORGOTTEN THAT THIS FLEXIBILITY APPLIES TO ZONING AND DESIGN; BUT THE UNDERLYING **SUBDIVISION MAP APPROVAL** MUST ALWAYS COMPLY WITH THE GENERAL PLAN, AND CANNOT HAVE CHARACTERISTICS THAT FRUSTRATE OR IMPEDE THE GENERAL PLAN POLICIES, STANDARDS, AND PROGRAMS.

**STATEMENT:** CALIFORNIA LAW ENSURES THAT THE ULTIMATE TEST OF A PROJECT IS ITS COMPLIANCE WITH THE GENERAL WELFARE OF THE CITY AND ITS CITIZENS. THE DEVELOPER INTEREST IS SUBSIDIARY AND MUST FIRST DEMONSTRATE THAT THE PROJECT IS COMPATIBLE WITH COMMON GOOD. ECONOMIC INTERESTS ARE ONLY A PORTION OF THAT OUTCOME; THE GENERAL PLAN STANDARDS ARE MUCH MORE COMPREHENSIVE, AND COVER IDENTIFIED AREAS OF REVIEW – NAMELY, LAND USE COMPATIBILITY, NOISE, PUBLIC SERVICES, PUBLIC SAFETY, HOUSING, CIRCULATION, ETC.

**FINDINGS ARE THE CORE OF THE DECISION TO WAIVE ANY STANDARDS AND SHOULD HAVE EXPLICIT AND CLOSELY FOLLOWED CRITERIA. USE OF A PDD SHOULD NEVER BECOME A SUBSTITUTE FOR THE FAILURE TO ENACT A PROPER ORDINANCE, SUCH AS THE ABSENCE OF CLUSTER ZONING TO IMPLEMENT THE MIXED USE DISTRICT:**

**SUGGESTED FINDING:** THE PROJECT IS CONSISTENT WITH THE GENERAL PLAN AND ANY APPLICABLE SPECIFIC PLAN, AND FURTHERS THE OBJECTIVES, GOALS, POLICIES, STANDARDS, AND PROGRAMS OF THOSE PLANS.

**SUGGESTED FINDING:** ANY PDD VARIANCE FROM THOSE GOALS AND POLICIES RESULTS IN A MINOR MODIFICATION AND DOES NOT FRUSTRATE OR OBSTRUCT THE GOALS, ETC.

**SUGGESTED FINDING:** THE DEVELOPER HAS DEMONSTRATED A CLEAR NEED FOR THE WAIVER, AND WOULD BE PREJUDICED IN THE ABSENCE OF THE AVAILABILITY OF THE PDD.

**SUGGESTED FINDING:** THE FULL RANGE OF GENERAL WELFARE OBJECTIVES FOR THE CITY, NOT JUST SINGULARLY ECONOMIC INTEREST, HAVE BEEN APPLIED AND FOUND TO BE SATISFIED WHEN WAIVERS ARE GRANTED.

**SUGGESTED FINDING:** THAT THE WAIVERS RESULT IN A PUBLIC BENEFIT THAT IS EQUAL TO OR SUPERIOR TO THE DEVELOPER INTEREST IN THE WAIVERS; AND THAT IN NO INSTANCE HAS THE DEVELOPER INTEREST SUPERSEDED A CLEAR PUBLIC INTEREST. PUBLIC INTEREST INCLUDES THE SUBJECT MATTER OF THE WAIVER; INTEREST IN ADEQUATE OPEN SPACE, ADEQUATE PARKING, ADEQUATE AESTHETICS AND VIEW SHED PROTECTION, ETC.

## **AFFORDABLE HOUSING IMPACTS PDD AND VACATION RENTALS COMBINED**

**NOTE THE NUMBER OF CONVERSIONS OF R-3 AND R-4 ZONED AREAS FOR MULTI-FAMILY RESIDENTIAL THAT HAVE BEEN CONVERTED TO R-1 USES, OFTEN AT THE SACRIFICE OF COMPLIANCE WITH NEIGHBORHOOD COMPATIBILITY. TAKE DAKOTA FOR EXAMPLE, NEXT TO TAHQUITZ MESA VILLAS WHERE WE LOST THE 60% COMMON OPEN SPACE STANDARD.**

**NOW WE HAVE R-1 ZONING IMPOSED OVER R-3, WE HAVE SMALL LOT UNITS THAT RISE THREE STORIES, AND AN ABSENCE OF SETBACKS.**

**NOW, THESE HOMES WILL QUALIFY FOR VACATION RENTALS 32 PLUS 4 WEEKENDS OF THE YEAR, AND WE WILL HAVE CONCENTRATED PARTYING IN THE BACK YARD POOL AREAS THAT ARE CRUSHED UP SO CLOSE THEY ARE LITERALLY FEET AWAY FROM US!**

**THERE IS GOING TO BE FURTHER PRESSURE TO USE PDD'S TO CONVERT R-3 AND R-4 TO R-1, BECAUSE R-3 AND R-4 MULTI-FAMILY HOUSING CANNOT BE USED TO MAKE THE PROFITS WITH THE SHORT-TERM VACATION RENTALS, AND THE CITY DID NOT CEQA PROCESS ON THIS NEW ORDINANCE; EITHER THE ONE PASSED OR THE ONE PROPOSED FOR MODIFICATION TONIGHT AFTER NEGOTIATIONS WITH THE INDUSTRY THAT EXCLUDED THE NEIGHBORHOOD INTERESTS.**

## **Flinn Fagg**

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**From:** Judy Deertrack <judydeertrack@gmail.com>  
**Sent:** Monday, February 13, 2017 1:02 PM  
**To:** Flinn Fagg; Frank Tysen; Robert Stone; Tim Erkins  
**Subject:** ARTICLE FOR SUBMISSION IN TODAY'S PDD MEETING  
**Attachments:** ARTICLE 2017.02.10 LA TIMES, When developers want to build more.pdf

Dear Flinn,

Re: PDD Study Group / February 13 2017

I have attached an LA Times Article that I wish to distribute at today's meeting. I have printed seven copies for the membership. If you wish to make more than that, thank you.

Would you please forward this email and its attachment to the members of the PDD Study Group? Thank you.

Judy Deertrack  
760 325 4290

# When developers want to build more than zoning laws allow, L.A. planners almost always say yes, Times analysis finds

Dakota Smith | LOS ANGELES TIMES | FEBRUARY 10, 2017

The parcel at Jefferson and La Cienega boulevards might not seem like an obvious place to put an upscale 30-story residential tower. Zoned for industrial use, the West Adams intersection near the new Expo Line is surrounded by low-rise warehouses and businesses.

But when a developer proposed a high-rise tower and a shopping center at the site last year, Los Angeles planning commissioners — appointees of Mayor Eric Garcetti — approved the project even though it was 10 times taller than existing building rules allowed.

Such exceptions to zoning laws have become commonplace across L.A., a Times analysis of nearly 1,000 cases found. About 90% of requests for general plan amendments, zoning or height district changes heard before the city's Planning Commission and local planning commissions have been greenlighted since 2000, city documents show.

The high volume of these amendments has eroded the role of zoning regulations as a true guide to what development is allowed across Los Angeles, critics say. By frequently permitting larger and denser projects, the city has frustrated some residents who erroneously believed the established zoning rules dictated what could be built in their neighborhoods.

City officials and developers say the exceptions are essential to building more housing amid soaring rents and a shortage of apartments. They argue that the zoning rules are out of date for a city of nearly 4 million people and that



denser development will help meet rising demand.

The issue has taken on more urgency with Measure S, a March ballot measure that seeks to temporarily halt all projects for two years that require general plan amendments, zoning or height district changes — changes that are typically needed to build bigger projects than would otherwise be allowed. Supporters say the city has flouted its zoning rules by approving so many amendments.

But even opponents of Measure S, who believe the city needs denser development, said the current system doesn't work.

Former City Councilman Michael Woo, who served as a planning commissioner for six years, said that general plan amendments and zone changes should be the exception rather than routine, as they are now.

“The planning process in the city of L.A. has gotten out of balance,” said Woo, who opposes Measure S. “There shouldn't be so many requests for discretionary decisions moving through the system.”

Woo and others say the city needs to do a better job updating its planning rules. But they contend the measure goes too far and would worsen L.A.'s housing shortage and hurt the economy.

The Times review found that when planning commissioners raised objections to some projects, developers were able to secure approval by including more affordable housing or agreeing to add sidewalks, landscaping or other conditions.

Despite concern about building next to a freeway, the Planning Commission in November backed a zone and height district change for a 335-unit Woodland Hills apartment complex next to the 101 Freeway after the developer agreed to add more affordable housing units.

The Planning Commission votes to approve or reject condominiums, schools and other projects. The seven area planning commissions typically hear smaller developments. (The Planning Commission also routinely approves changes sought by the city itself when it puts forward new building and land use policies. Such cases represented about 5% of those analyzed by The Times.)

The commissions don't necessarily have the final say. Major projects and zoning changes typically go before the City Council's Planning and Land Use Management Committee and the full City Council.

City planners work with developers to give feedback on projects and suggest approval or denial to the commissioners, said Yeghig Keshishian, spokesman for the Planning Department.

"We work as citizen volunteers to do our best job in reviewing every policy and project that comes before us," said David Ambroz, the Planning Commission's president. "I listen, I do all my research and I make independent decisions based on all the materials, findings and testimony."

The Planning Commission also regularly votes to protect neighborhoods, Ambroz said, backing historic preservation zones and regulations to rein in the size of homes.

If cases come with a planning staff recommendation for approval, "the planners usually get it right," Ambroz said.

Developers say they're forced to apply for zone changes and other amendments because the city's community plans — land use instructions for each Los Angeles neighborhood — haven't been updated in years.

Land use consultant Craig Lawson said his developer clients want certainty but often enter Planning Commission meetings unsure of the outcome.

“They don’t know what the conditions [put on the project] will be,” Lawson said. “They don’t know if there will be an appeal, and they don’t know if they will be sued.”

The City Council voted this week to back an effort to update community plans more frequently. Councilman Jose Huizar, who chairs the planning and land use committee, said through a spokesman that the city’s current planning guidelines don’t reflect neighborhood needs and that “zone changes will dramatically decrease once our community plans are updated.”

Seeking changes is so routine for developers that the Planning Department offers an illustrated pamphlet that provides step-by-step instructions on how to file requests.

The flier, available at department counters, depicts a cartoon figure walking down a flight of stairs, each representing a month of the process from application to mayoral approval.

Cities vary in their approach to allowing general plan amendments or other changes, said John Terrell, vice president for policy and legislation for the California chapter for the American Planning Assn.

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The Times analysis of cases in which rules changes were sought shows approvals are on the high side, Terrell said, but acceptable in his view. Compared with other California cities, “exemptions are much more common in Los Angeles,” he said. “They have these big projects.”

In cases where the citywide and local commissions reject a request, the city can overturn those decisions.

The Times review of cases that have gone before the commissions since 2000 found at least a dozen denials by commissioners that were reversed by elected

officials.

One of those cases was the Sea Breeze apartment project in the Harbor Gateway neighborhood, where a developer sought a zone change to build a 352-unit apartment complex in an area zoned for industrial use. The Planning Commission rejected the proposal, but it later was approved by the City Council and Garcetti.

The project was the subject of a [Times investigation](#) last year that found donors with direct or indirect ties to real estate developer Samuel Leung gave more than \$600,000 to support L.A.-area politicians as the project was being reviewed.

In the case of the West Adams tower — called the Cumulus project — the Planning Commission sought to add 55 units of workforce housing in the 1,200-unit residential building. When the tower went to the Planning and Land Use Management Committee, council members eased that recommendation after the developer said the community wanted other perks.

A group associated with Measure S was part of a lawsuit against the city last summer over the project, saying the City Council approval violated state and local laws.

Jill Stewart, campaign director for Measure S, said the planning commissions' approval rate is a result of the city's "broken system" for reviewing land use changes that often favors more growth.

"Sometimes they stop really outrageous projects that the local neighborhood can't absorb, but way too often they rubber-stamp," Stewart said.

Ambroz, the Planning Commission president, declined to respond to those criticisms.

Garcetti spokesman George Kivork said in a statement, "All development projects proposed in Los Angeles are considered carefully on their merits, and

they are put through a rigorous, multi-layered approval process that prioritizes feedback from the public.”

Kivork said the mayor’s budget this year includes funding for community plan updates, and Garcetti supports efforts to speed the process.

West L.A. resident Barbara Broide testified against Casden West L.A. apartment complex when it came before the Planning Commission in 2013.

The commission granted a general plan amendment for the project, which ultimately was the target of a lawsuit by Broide’s homeowners association.

Today, she continues to speak at Planning Commission hearings. Her comments and other opponents’ remarks are considered part of a public record and can be cited in case a lawsuit is brought, she said.

She also testifies in the hope a commissioner will hear her criticisms about the next office tower or condominium complex, but she’s realistic about the outcome.

“It isn’t always clear it makes a difference,” Broide said.

***Times staff writer Andrew Khouri contributed to this report.***

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**MATERIALS SUBMITTED  
BY JUDY DEERTRACK  
04/06/17**

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## USE OF THE PLANNED DEVELOPMENT DISTRICT IN THE CITY OF PALM SPRINGS (A STUDY OF THE YEARS 2006 – 2016)

*The Obligation to Create  
Planning for the General Welfare*

*(Submitted by: People for Proper Planning)*

### INTRODUCTION

#### SECTION I:

When I see a Planned Development District (PDD) permit on the agenda what should I expect to happen? Is this good news to the citizen of Palm Springs, or bad news? As the permits proliferate, will the public see enhanced design, better environmental stewardship, or – will the public see intensified development at the sacrifice of public values? If I might share what I have found from a ten-year review of Planned Development District (PDD) Permits from 2006 to the present, I would say to the public, Beware! I have concluded that rarely is the PDD used for public value; instead its use has been directed almost exclusively in the last decade in Palm Springs, to developer accommodation, and maximizing the use of the lot.

I would first like to share that a Planned Development District is simply a permit to develop the land, subject to review along the way by three possible bodies; the Architectural Board for design, the Planning Commission for more design, and the City Council for the fine re-tooling and final decision – and hopefully, somewhere along the line someone attends to legal compliance – because the obligation of development is to follow the standards and directives of the General Plan and its implementing tools.

Secondly, I would like to share that a PDD is also a rezone of the underlying land – it is a change of zone that permanently changes the land status. Lest City Hall worry that there is no discretion and a threat of liability if a PDD applicant is turned away, I might add that referencing *Arnel Development v. City of Costa Mesa*, the California Supreme Court opined that any rezone application gave broad legislative discretion to cities and counties to *refuse the rezone*. The City has virtually unquestioned discretion not to rezone land. In the inverse direction, should the City choose to ignore its general plan and make significant and

incremental changes to zoning patterns outside the long-term planning objectives, or should it neglect community imperatives, the court will decidedly intervene in the General Welfare.<sup>1</sup>

When I see PDD's on the agenda (and that is often), I question why the City is processing the Project as a PDD rather than using its routine, underlying ordinance – the ordinance that was actually designed for results. After all, a PDD waives development standards, and those uniform standards say, "This is too little, this is too much! – too much height, too little open space, more parking, greater setbacks, less density, more aesthetics, increased landscaping, greater distance between buildings, better design, greater compatibility!"

Development standards stand as our "friend and representative" in the land of planning. The public should judge not by the professed purpose of a PDD ordinance to improve aesthetics and flexibility, but by results. To gauge the result, we need only look at the face of our community, and perhaps we can start with the Downtown Plan, which is the poster child for PDD use "run amok" as the standards not only relaxed, but disappeared.

My advice is to stick with the protections of the zoning ordinance, and its in-built protections, unless there is a clear demonstration something better exists. I have not yet seen anything better, and I have been an Urban Planner for 25 years. I also believe that planning professionals and planning scholars would agree with me; because my sentiments echo in the writings.

My reason for adding the appendices to this article is to buttress that the "voice of planning" is a voice that concentrates upon the public good, and bends the will of a developer to a larger vision, relentlessly. I also appreciate that courageous "lay people" graciously volunteer for boards and commissions. For lack of the PhD, or years of experience – it is the planning templates incorporated into General Plans and Ordinances that keeps communities from going adrift into Ad Hoc Planning, into the depths of technicality – a rowboat journey without an oar, until one considers the Plan.

Mr. Frank Turner, a distinguished AICP Planner from the State of Texas, released a study in the late 1980's that studied the incidence in which Texas cities used a PDD. His conclusion was that use of the PDD was "prolific" throughout Texas in a manner that shocked him; and he was documenting a 7% use of the PDD considering all planning actions.<sup>2</sup> My count in Palm Springs on the use of a PDD is closer to 90%. What I see from studying ten years worth of PDD permits is that the PDD has usurped the role of a General Plan, and from its inferior position as a "development permit" has become

The City's General Plan and its implementing zoning code is in truth *The Voice of the People* – it is our power, our democracy, our bargained-for-exchange with Developers that tempers the harshness of land for profit! Development, regardless of property rights, is never at the expense of the Community. Any zoning ordinance, PDD or otherwise, ultimately answers to the General Welfare Clause embedded within the City's General Plan. We often forget that land value arises from the amenities and improvements that surround the lot; therefore, lot development must remain accountable to its surroundings.

What qualifies a project for PDD exemptions and waivers? After all, despite the PDD "purpose statement" that public benefits are the justification, rarely has the City created significant public benefits to offset the loss of public amenities, and in fact, the standard justification clause has been, "*The Project is the Public Benefit.*" Keep in mind the constitutional challenge is to create "uniformity of treatment" throughout

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<sup>1</sup> For the academic reader and the brave-at-heart, I have included Appendix C that traces the historical origins of "general welfare powers" and Appendix D that shows California's commitment to leading the nation on environmental protection and adequate provision of public services – all enforceable at the local level!

<sup>2</sup> Introduction to Planned Development Zoning, Frank F. Turner, AICP, Texas, 1983.



zoned districts so that no owner of property gets unfair economic advantage through inappropriate changes in zoning use or increases in density.

What explains the abandonment of plans and ordinances in the City of Palm Springs? Has the Developer or the City ever come forward with information that lends us to believe a district classification is outmoded, that district characteristics are no longer workable; that lot sizes are no longer economically viable; that the market can no longer support district constraints. If the tools are unworkable, the solution is to amend those tools rather than drift into ad hoc, case-by-case decisions where standards are never properly identified. If this be the case, then call for public meetings, and amend the plan.

What has become uniform practice is for Developers to approach the City with a sense of entitlement; a presumption, well-founded expectations through past history, that suggests zoning, and often even General Plan Classifications, can be set aside lightly, moderately, or in its whole fabric – for the economic needs of the Project. If district changes were legitimately needed to cause abandonment of ordinances, this would, could, should, and must happen at the level of legislative change – not as a result “bartered to conclusion” between an applicant and a Planner (albeit competent and dedicated) working behind the scenes, outside the legislative context, and off the record!

I have observed that when the City does encounter a gap in its ordinance pattern -- such as the absence of a small-lot residential district where intensity is appropriate; or the need for cluster zoning; or transfer of density rights from environmentally sensitive lands; or the need to combine residential and commercial within the same building – the tendency is to “grab a PDD” as a go-to position, rather than use planning tools in their intended format.

The general plan has excellent guidance on the intended use of a PDD. I notice that the limitations of that discussion are not reflected in City practice; but a tendency for the City to drift alarmingly into copious use of a tool that should be used sparingly.

The Palm Springs General Plan Administrative Element adopts PDD usage where (1) flexible standards can be offset by adequate mitigation (and have an independent reason for use); (2) where the PDD supports transfer of density rights from environmentally sensitive lands; where the PDD supports increased housing density for affordability; or for lot consolidation and mixed-use. Beyond these explicit areas, I would urge the City not to use a PDD otherwise; and where it is used, to use it sparingly, always with the public interest foremost in mind.

I also encourage any and all to read the General Plan. It has fascinating chapters on land use; building districts; housing standards; design, that tells us a great deal about our City. A bit of scholarship goes with the responsibility of planning. Appendix C contains a series of worksheets that make the responsibility and journey less confusing and burdensome, hopefully, for with planning – the devil is in the detail.

## **SECTION II:**

People for Proper Planning (PFPP) has sponsored this survey, as a result of a litigation Settlement reached between PFPP and Mr. John Wessman, developer of the Dakota II Project. The study was designed to be conducted independently by PFPP, discussed in joint session with an Ad Hoc PDD Study Group of seven members, and ultimately review by the Palm Springs Planning Commission and City Council.

Over the last year and a half, I have committed hundreds of hours tracking PDD permits in a system that currently has no record keeping of such events, or no tracking system. The time limit of the study

receded to 2006, as far back as the city's electronic records, only retrieved by pouring through Agendas and Minutes. The scope of my work was to pull any PDD action for review and eliminate it for consideration if (1) record of the decision was missing; (2) if the project was not approved. I have reported on projects that were approved, but not built from a decade since, but I have included them because the import of this study is to look at a mode of decision-making over time, not on the current status of the project.

In Appendix A, I have compiled data. I reviewed close to 85 PDD's and 43 qualified for study because of the excellence of data. I have ranked them by PDD number on a chart in Appendix A, and based upon a reading of the staff report analysis and the city's "waiver grid" I have compiled data to address; (1) Failure to comply with legal mandates from the city's general plan or specific plans; (2) waivers of use, density, lot area, lot coverage, height, use of the high-rise ordinance, open space, setbacks, distance between buildings and parking.

My findings are nothing less than shocking. Approximately 80% of the 43 PDD planning actions over ten years, the city has acted expressly against a standard in its general plan that should control the outcome; or against a specific plan mandate or both; or the city has violated a standard in its underlying ordinance that is not subject to waiver with a PDD Permit. In virtually every occasion, the use of the PDD resulted in findings that "public benefit" was the "value of the project itself."

Approximately 45% of the time, the city violates its density obligation. With affordable housing impacts, this would be a decrease in density; with commercial, it would be an increase, or overuse of the lot.

Approximately 56% of the time, the city adds significant height to the project beyond minimum thresholds, and where the height exceeds 35 feet, almost uniformly the City fails to properly use its high-rise ordinance that has designed a built-in tradeoff – more height for more open space and setbacks. The City uniformly "waives" the "waiver" on height.

Approximately 40% of the time (actually 37%), the city substantially reduces open space. To add to the confusion, the City has been unnecessarily vague on the definition of open space, and rather that includes balconies, private open space, and non-public features – or whether the regulation is directed to preservation of "public space."

The most prolific classification is setbacks (with substantial reductions) approximately 80% of the time on its PDD usage, and particularly with the recent trend toward small lot development.

The waivers are moderate to severe, and in 18% of cases, the city waived either the entire range of development protections or something close. Recall, these standards are "public welfare standards." Height, density, and open space provisions protect access to the aesthetics, light, air, view shed, or natural features of a community.

The grid conclusions are not set in stone. They are indicators. In my methodology, however, I checked the "development grid" in the staff report where staff concluded that the waiver had occurred; these are not subjective assessments. Only one category was subject to interpretation, and that was compliance with the General Plan or Specific Plan, or violation of an ordinance. In that instance, I have footnoted the basis of my thinking on the grid so the reader can "respectfully disagree" or not.

### SECTION III:

The study of PDD usage shows broad patterns of accommodation that add up incrementally to what I would consider “planning abuse.” I have added some case studies for particular attention, and the locational maps of these and other PDD’s that show the detail are contained in Appendix B.

The statements that follow are peppered more than a little with my own conclusions; this was not the section for impartiality. If one wants impartiality, read Appendix D or E on history or law. But on the impacts of PDD usage, I use my own sense of design, of outcome, but also professional expertise – for I have also been trained on what to expect when planning laws are applied, and there are serious deficiencies; and truly, the cause and the remedy are in the technical details of this art form one calls planning.

**PDD 131 Belardo Hotel** was approved in 2016, and is sited at the SteinMart Shopping Center in a Neighborhood Commercial General Plan Area. The Belardo Hotel is a 66-room, three-story hotel immediately adjacent to the Hacienda Cantina, and will use portions of the restaurant as its reception area. The NCC designation prohibits hotel use, because NCC “serve adjacent residential neighborhoods,” such as dry cleaners, bakeries, post offices, local book stores, etc. The other inconsistency in the permit arose from the requirement that restaurants associated with a hotel in the R-3 zone actually be situated within the hotel itself.

**PDD 290 Avalon**, was approved in 2016. Avalon is sited between Highway 111 and Indian Avenue, at the northern crest of Palm Springs. The city permitted 1,150 new single-family and multi-family residences, built as infill to an outmoded golf course. Three outcomes of the city’s review were bothersome; the project got little or no environmental review despite its size; there were a lack of community-wide meetings; and 49 acres of producing row crops were placed within Open Space: Recreation.

**PDD 232 Family Development**, was approved in 2014 for 183 residences at Tahquitz Way and Farrell Drive. The R-2 standards mandate a 20,000 square foot minimum lot, but the lots were reduced to 5,000 square feet, with tandem parking (which is not authorized by ordinance), and a reduction in open space, setbacks, distance between buildings, and street width, while the height increased. I have labeled the phenomenon the “lot squeeze.”

**PDD 287 Boulders** was approved in 2007, is not built, and has approximately seven extensions of time, all in the absence of “good cause.” Boulders approved 45 single-story homes in the sensitive area surrounding Chino Cone. The City’s Hillside Ordinance was used by the developer to achieve a 10% height bonus but “new construction” should not have qualified.

**PDD 303 Matthew Place** was approved in 2006 but never built. The lot is next to Von’s on Palm Canyon Drive. The PDD was used to waive height protection for neighbors within 150 feet of the residences using the PDD waiver clause.

**PDD 309 Vista San Jacinto** was approved in 2009, with partial build-out but no buyers. The project consisted exclusively homes placed in a Mixed-Use/Multi-Use District that anticipates combinations of community-serving retail, professional, and service businesses, restaurants, and public uses – to stimulate jobs, and healthy neighborhood activity. The pattern of converting mixed uses to singular residential has been prominent over the last ten years.

**PDD 314 Mesquite Village** was approved in 2006, and may be in another phase of approval or sale at this point. This project is sited on the corner of Palm Canyon Drive and Mesquite on the easterly side of the road. The land is designated Tourism Resort Commercial, as a node between Downtown and lighter commercial areas. The location anticipated community-serving retail commercial, professional offices, service, restaurants, public uses. The City used the PDD to permit 106 SFR homes, and waived open space, setbacks, height, and lot size.

**PDD 341 Vivante** is a 132-unit assisted living complex that was approved in 2012 with the use of a PDD, immediately to the east of the Palm Springs Convention Center, in an area that prohibits assisted living, because

the area has been reserved for Tourist Resort Commercial Designation in activities supportive of the Convention Center.

**PDD 354 Michael's Place** is an assisted living center approved in 2008 next to Toucan's with a Bed Count that was restricted to sixteen beds for the size of the lot and parking, and was expanded to 28 beds with the use of a PDD. There have been approximately five other assisted living centers with similar results, on relatively crowded lots.

**PDD 357 Palm Springs Assisted Living** is also an assisted living center approved in 2012, using the PDD to waive Bed Counts to allow 108 beds where restricted by ordinance to 64. To accommodate the squeeze, the PDD waived height, setbacks, open space, and parking.

**PDD 363 Sol Palm Springs** approved 46 single-family residential small lot homes sited next to the Convention Center and was approved in 2013. The Section 14 Specific Plan anticipates High Density Residential (15-30 dwelling units per acre) and Hotel Uses and expressly prohibits single-family homes. The PDD waived General Plan and Specific Plan standards to create a lowered density of six units per acre, changing the housing type, intensity, and residential character of the area. The PDD also lowered lot size, setbacks, open space, and failed to address affordable housing impacts.

**PDD 365 Dakota II** approved 39 single-family residential homes with pools on small lots behind SteinMart in 2014, with severely reduced setbacks, lowered street widths, no common space, and towering 3-story heights. The General Plan prohibits single-family residential at this location, providing for affordable units, with 60% common open space. The developer excavated to 25 feet or more for the pools, directing high-intensity streams of water at the mountain base for weeks in order to remove boulders. No environmental review was done on grading, infill, transport, or noise. Adjoining renters face high canyon-type walls five feet from the property line instead of mountain views.

**PDD 366 Serena Park** was approved in 2016 and permitted 429 single-family homes, 42 acres of private open space, and a five-acre public park at the northern "sand" area of Palm Springs. The R-1-C zoning lot limitation of 10,000 square foot lot was waived with the use of a PDD, and 5,000 square foot small lot development was substituted. The project is spread across 126 acres. The conversion of major open space areas occurred without public discussion, other than local community meetings.

**PDD 750 Lofts** was approved in 2015, despite litigation. The site lies between Palm Canyon and Indian Canyon in the Las Palmas Historic District, where surrounding historic structures are one or two stories. The city permitted a 50foot, four-story hotel, at a floor-area ratio of 1.3 and changed to Central Business District, which introduces FAR ratios of 3.5 into the District. The City ignored the Las Palmas Design Guidelines.

**PDD 376 Canyon Lofts** was approved in 2015, remains un-built, and permits 34 condominiums and live-work units within the Central Business District (CBD) along Indian Canyon, sacrificing the required mix of professional, office, hotel, and residential. The units are three-story, 35 feet, small lot development, with waivers of open space (reduced from 45% to 22%), setbacks (zero), lot coverage, distance between buildings, and landscaping. The design evokes a "row-house" feeling.

**PDD 379 Woodbridge** was recently approved (2016) and is sited at the Magruder site at the corner of Mesquite and Palm Canyon Drive. The General Plan Designation is Mixed-Use/Multi-Use, the receiving lot for the CV Link Bicycle route. The Node anticipated light tourism, public plazas, and visitor-accommodation. Instead, 82 residential units are isolated on 5,000 sf lots, with PDD waivers of density, lot dimensions, setbacks, open space, and distance between buildings.

These are a small section of the ninety-odd PDD's that were permitted in the years between 2006 and 2017; and without exception, the waivers reduce the amenities of traffic flow, open space, air, light, and buffering – with little or no quid-pro-quo other than a statement that "the project itself is the public benefit." We deserve better, and better will come if the general public and our public representatives choose to concentrate upon that magical expression of the public will – the General Plan.

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# **APPENDIX A**

**GRID OF PDD APPROVALS  
SHOWING WAIVER CLAUSES  
AND INCONSISTENCIES**

**CITY OF PALM SPRINGS  
TAKEN FROM THE YEARS  
2006 - 2016**

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**CITY OF PALM SPRINGS – TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 – 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
131 Belardo 2016	N <sup>1</sup> Comment <sup>2</sup>	X <sup>3</sup>	No Project Boundary	No Project Boundary	No Project Boundary	OK - (34') 3-story		No Project Boundary	No Project Boundary		
232 Family Dev. 2014	N <sup>4</sup>		X	X	X	X	X	X	X	X	Tandem
287 Boulders 2007	N <sup>5</sup> Zone*			X		X	Hillside				
290 Avalon 2006 & 2016	N <sup>6</sup> Amend <sup>7</sup>				X				X		
294 Crescendo 2007 & 2016	N <sup>8</sup> Zone			X		X	Hillside		X		
303 Matthew Pl 2006						X <sup>9</sup>				X	Tandem
307 Von's Retail 2006						X		X			
309 San Jacinto 2009	N <sup>10</sup>	X	X	X	X	X	X	X	X	X	X
313 Racquet Club 2006	N <sup>11</sup>	X	X			X			X		
314 Mesquite 2006	N <sup>12</sup>	X		X	No data	X		X	X	No data	

<sup>1</sup> N = For Table Reference Purposes, the Symbol N means "Inconsistent with General Plan, Specific Plan (PDD Amends Plan), or misuse of Zone Standards."

<sup>2</sup> PD 131 Belardo used R-3 as an underlying zone within NCC Designation. NCC is compatible with C-D-N or C-S-C Zones, and prohibit hotel and residential. R-3 prohibits hotels with detached restaurants (Hacienda Cantina). Project boundaries were not established. The 17-acre boundary for Plaza del Sol was used to calculate Density, Lot Area, Lot Coverage, Open Space and Setbacks.

<sup>3</sup> X = For Table Reference Purposes, the Symbol X means "Waiver of Standard with the Use of Planned Development District Ordinance 94.03.00 (PD)."

<sup>4</sup> PD 232 Family Development contains 72 SFR units, average lot size of 5,000 sf, arguably misusing underlying zone for Comparison R-2 that require 20,000 sf min. lot size for SFR in MDR.

<sup>5</sup> PD 287 Boulders has a Zoning Inconsistency because it waived the R-1-A Height Restriction (18'-25') using Hillside Ord. 93.13.00, which does not allow height modification w/ new construction.

<sup>6</sup> PD 290 Avalon is inconsistent with the General Plan because of conversion of Open Space: Parks and Recreation (49 acres) to actively producing agriculture, which has no Gen Plan Designation.

<sup>7</sup> Note: Modified PDD's are not assessed against the original General Plan or Zoning Standards, but only difference from last PDD. Could be problematic with incremental changes over time.

<sup>8</sup> PD 294 Crescendo has zone inconsistency, because lots at 15,000sf do not conform to the R-1-A 20,000 min. The PDD can't change the zone classification, itself. The PDD also waived the R-1-A Height Restriction (18'-26') using Hillside Ord. 93.13.00, which does not allow height modification w/ new construction.

<sup>9</sup> PD 303 Matthew Place (2006). Tandem Parking (no ordinance authority); Waive Height Restrictions on adjacent R-1 (steep slopes); Distance between Bldgs (New Common Space Concept)

<sup>10</sup> PD 309 San Jacinto approved SFR and MFR and ignored the preferred mixture of industrial, residential (15-25%), and commercial established for MU/MU Indian and San Rafael.

<sup>11</sup> P 313 Racquet Club at 7.6 DU/AC is inconsistent with General Plan M-15 (15-30 DU/AC), and waives use to allow a restaurant (PDD does not allow use waivers)

<sup>12</sup> PD 314 Mesquite (SFR & MFR) is inconsistent with Tourist Resort because SFR prohibited and no mixture of retail uses. MFR is supplemental to retail in TRC.

**CITY OF PALM SPRINGS – TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 – 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
316 803 Palm Cy 2006	2 <sup>nd</sup> Story Residential										
317 Eagle Cyn. 2006	N <sup>13</sup>		X	X	X	X	X <sup>14</sup>	No data	X	No data	
321 Morrison 2010	N <sup>15</sup>	X	X	X	X	X		X	X	X	No data
322 Palms Hotel 2006	N <sup>16</sup>		X	X	X	X	X	X	X		X
323 Smoke Tree 2006	N <sup>17</sup>		X	X				X	X	X	
324 Rael 2006, 11 & 15	Second Modification to PDD (Standards Reduced 3X)										
327 Nichols 2008	N <sup>18</sup>					X		X	X		
329 Art Colony 2007	N <sup>19</sup>	X			X	X			X		
339 Hard Rock 2008					X	X	X	X	X		X
340 Olivera 2008	N <sup>20</sup>		X						X	X	
341 Vivante 2012	N <sup>21</sup>	X							X		
342 Palm Mtn 2008	N <sup>22</sup>					X	X		X		

<sup>13</sup> PD 317 Eagle Canyon, 230 homes on 30 acres, density of 4 du/ac. General Plan Designation of Estate Residential (0-2 du/ac). Project was approved with a Density Transfer (Settlement Agreement) of 70 Units. No ordinance authority for Transfer of Density. The City uses state guidelines, but no local criteria exists for receiving lot.

<sup>14</sup> PD 317 waived the height limitation (18' R-1-A - 30' Specific Plan - 25' as approved). The Specific Plan allowed a height to 30', but the R-1-A had an 18' limitation.

<sup>15</sup> PD 321 Morrison is 53 SFR at a density of 6.25 du/ac (inconsistent) on 5,000-8,000sf lots (inconsistent) in HDR (15-30) and MDR (SFR=10,000sf lot). R-G-A zone inconsistent with Gen Pl.

<sup>16</sup> PD 322 Palms Hotel may not exceed the High-Density Range (15-30 DU/AC -- 51 DU/AC) without the use of a Transfer of Density Rights (which was not used).

<sup>17</sup> PD 323 Smoke Tree at a project density of 0.80 DU/AC is inconsistent with the General Plan Low-Density Residential (4-6 DU/AC) standard.

<sup>18</sup> PD 327 Nichols, is mixed-use commercial and residential uses in the same building. The City admits it has no ordinance that creates standards of review. Ad Hoc process.

<sup>19</sup> PD 329 Art Colony is General Commercial (M-15). The General Plan Designation MDR does not allow commercial, but allows mixtures of housing. Was GC (M-15) an earlier designation?

<sup>20</sup> PD 340 Olivera Town Homes at a project density of 8 DU/AC (MDR), is inconsistent with Gen Plan Mixed-Use/Multi-Use (15-30 DU/AC). R-2 (MDR) zone inconsistent with MU/MU.

<sup>21</sup> PD 341 Vivante, places Assisted Living Use in the Tourist Resort Commercial General Plan Land Use Designation where it is specifically prohibited.

<sup>22</sup> PD 342 Palm Mountain, Use of R-3 (HDR) zoning standards after a General Plan Amendment to Central Business District (CBD) Designation. Underlying zoning is inconsistent.

**CITY OF PALM SPRINGS – TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 – 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
343 Crosse Pt. 2007						X	X		X		
347 Farrell Prof. 2008									X		
346 SW Real Est. 2007	NCC Denied										
City denied Gen Plan Amendment to Commercial on Sunrise; created vacant remainder parcel and built remaining residential											
348 Fuel Storage 2010						X					
354 Michael's Tr. 2008	N <sup>23</sup> CUP	X	X		X				X		
357 PS Asst Liv. 2012	N <sup>24</sup>	Gen. Plan Amend.	NCC to HDR / Density Waiver			X	X	X	X		X
358 Michael's Pl 2011	N <sup>25</sup>		X						X	X	X
359 Michael's H. 2011	N <sup>26</sup> CUP	X	X		X			X			X
360 Arrive 2012	N <sup>27</sup>		X								Parking Study
362 Stonewall 2013	N <sup>28</sup>	X	X					X	X		
363 PS Sol 2013	N <sup>29</sup>	X	X	X	Design Non-Conformance (Major)			X	X		
365 Dakota II 2014	N <sup>30</sup>	X	X		X				X	X	
366 Serena Park 2016	OS to VLDR			X	X	X			X		

<sup>23</sup> PD 354 Michael's Treatment waived density on a Bed Count limitation of 16 beds; approved at 28 beds. Table 3-15 Housing Element disallows density waivers. CUP requirement.  
<sup>24</sup> PD 357 Palm Springs Assisted Living waived density on a Bed Count limitation of 60 beds; approved at 108 beds. Table 3-15 Housing Element disallows density waivers. The change to High-Density Residential from Neighborhood Commercial does not fit the classification of the remaining corridor between Indian Canyon and Palm Canyon at that location. No CUP for R-3.  
<sup>25</sup> PD 358 Michael's Place, waived density on a Bed Count limitation of 26 beds; approved at 30 beds. Issues with Bed Count and Parking Calculations (need for ordinance) No CUP for R-3.  
<sup>26</sup> PD 359 Michael's Place, waived density on a Bed Count limitation of 37 beds; approved at 60 beds. Table 3-15 Housing Element disallows density waivers. CUP requirement in R-2 Zone.  
<sup>27</sup> PD 360 Arrive Hotel High-Density Residential (HDR) zone, waived density at 32 units, limitation 30. Table 3-15 Housing Element disallows density waivers.  
<sup>28</sup> PD 362 Stonewall, Bed Count used for density. C-1 zone does not allow assisted living; Mixed-Use General Plan Designation requires R-3 (High-Density), inconsistent with R-2 (Medium Density)  
<sup>29</sup> PD 363 PS Sol, Project Density for the General Plan High-Density Residential (HDR) Designation is inconsistent at 6.5 DU/AC. Section 14 prohibits SFR in HDR by its terms.  
<sup>30</sup> PD 365 Dakota II, Project in HDR (15-30 du/ac) Designation. Density of 6.5 du/ac inconsistent with HDR. Court of appeal overturned city ordinance eliminating minimum thresholds.



**CITY OF PALM SPRINGS – TABLE OF PLANNED DEVELOPMENT DISTRICTS (PDD)  
ACTED UPON FROM 2006 – 2016**

**WAIVER OF DEVELOPMENT STANDARDS**

PDD	GEN PLAN SPEC PLN	USE	DENSITY	LOT AREA	LOT COVERAGE	HEIGHT	HIGH RISE ORD.	OPEN SPACE	SETBACKS STEPBACKS	BLDG DISTANCE	PARKING
368 Kaptur Court 2014	N <sup>31</sup>			X	X				X		
370 Alvarado 2015	N <sup>32</sup>	X	X		X	X			X	X	
371 Linea 2014	N <sup>33</sup>				X Specific Plan				X Specific Plan		
372 Orchid Tree 2015	N <sup>34</sup>		X			X	X	X	X		
373 Via Olivera 2014	N <sup>35</sup>	X	X	X	X	X	X			X	
374 750 Lofts 2015	N <sup>36</sup>		Historic GL Issue			X	X	X	X		X
376 Canyon Lofts 2015	N <sup>37</sup>			X	X			X	X	X	
379 Woodbridge 2016	N <sup>38</sup>	X	X						X	X	

<sup>31</sup> PD 368 Kaptur Court is a rezone from Tourist Resort (prohibition of SFR) to Low Density Residential, with underlying R-3 zoning (High-Density). The inconsistency between the General Plan and Zone is ignored; R-3 standards are used, despite R-3 zoning being high-density residential, and the PDD is used as a Change of Zone. The underlying zone should be R-1-C.

<sup>32</sup> PD 370 Alvarado is consistent with General Plan Mixed/Multi Use (up to 15 DU/AC), but inconsistent with use and zoning of R-3 (HDR) and RGA (6).

<sup>33</sup> PD 371 Linea uses the PDD to waive the Canyon South Specific Plan standards for lot size and setbacks. A PDD cannot amend a Specific Plan.

<sup>34</sup> PD 372 Orchid Tree lies within Small Resort Hotel General Plan Designation with 15 rooms per acre. The project attempted to grandfather non-conforming uses (renovation) to 27 rooms.

<sup>35</sup> PD 373 Via Olivera uses the PDD to waive the single-family lot requirement that R-2 (MDR) zones that incorporate SFR homes do so with a minimum lot size of 20,000. This is a zoning inconsistency.

<sup>36</sup> PD 374, 750 Lofts amended the general plan to Central Business District (CBD) from Neighborhood Commercial (NCC). It is arguable that with 50' height and bulk, the Las Palmas Historic Guidelines were not complied with.

<sup>37</sup> PD 376 Canyon Lofts, Exclusive single-family residential conflicts with the General Plan Designation, Central Business District (CBD), which requires primarily retail with related hotels and multi-family residential.

<sup>38</sup> PD 379 Woodbridge, Palm Canyon / Sunny Dunes Mixed-Use District has explicit standards on predominance of retail/office in the mixed-use district. Woodbridge is exclusive housing.

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# **APPENDIX B**

**AERIAL MAPS  
SHOWING PALM SPRINGS  
PDD APPROVALS**

**TAKEN FROM THE YEARS  
2006 - 2016**

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PLAZA DEL SOL SHOPPING CENTER | PDD 131 AMND | BELARDO HOTEL | 17 ACRE PDD SITE | APPROVED: 2016  
ADDITION OF A 34-FOOT, 66-ROOM, 30,000 SF HOTEL (10,000 SF PAD) WITH HACIENDA CANTINA SERVING AS THE LOBBY  
BUILT AT THE SITE OF THE PREVIOUS BOCCO COURT RECREATIONAL AREA FOR HACIENDA CANTINA  
GENERAL PLAN: NEIGHBORHOOD COMMERCIAL CENTER (NCC): UNDERLYING PDD (C-1 AND R-3 ZONE STANDARDS)



**ISSUES OF CONCERN:**

**GENERAL PLAN INCONSISTENCY:** NEIGHBORHOOD COMMERCIAL (NCC) DOES NOT ALLOW HOTEL USE (R-3 STANDARDS USED) NCC IS COMPATIBLE WITH C-D-N ZONE (DESIGNED NEIGHBORHOOD SHOPPING), BUT NOT C-1 (BUSINESS RETAIL) OR R-3 (HDR)  
**ZONING INCONSISTENCY:** THE R-3 UNDERLYING ZONE STANDARDS REQUIRE RESTAURANTS TO BE LOCATED WITHIN THE HOTEL BUILDING  
**NO WAIVERS REQUIRED BECAUSE THE 17-ACRE BOUNDARY WAS USED TO CALCULATE LOT SIZE, ROOM RATIO, SETBACKS, HEIGHT (HIGH-RISE BOUNDARIES) CALCULATIONS COMBINED OPEN SPACE USAGE FOR ALL BUILT AND POTENTIAL PROJECTS ON THE 17-ACRE PDD**

**PDD 232 | FAMILY DEVELOPMENT | APPROVED: SEPT 2014  
183 SINGLE-FAMILY AND MULTI-FAMILY RESIDENTIAL UNITS ON 24 ACRES**

**CONSISTENT GENERAL PLAN: MEDIUM DENSITY RESIDENTIAL (MDR) IS 6-15 DU/AC  
8 DU/AC / 2-3 STORIES / HEIGHT NOT GIVEN  
AVERAGE LOT SIZE FOR SINGLE-FAMILY = 5,000 SF (4,640 - 8355 SF)**

**INCONSISTENT ZONING: R-2 (20,000 SF MIN LOT SIZE FOR SINGLE-FAMILY RESIDENTIAL)  
SFR ALLOWED ONLY UNDER R-1-A STANDARDS (20,000 SF MIN LOT SIZE)\***



Source: RGA Landscape Architects, Inc. 12.09.2013

**J&I Residential Development Project  
Project Site Plan  
Palm Springs, California**



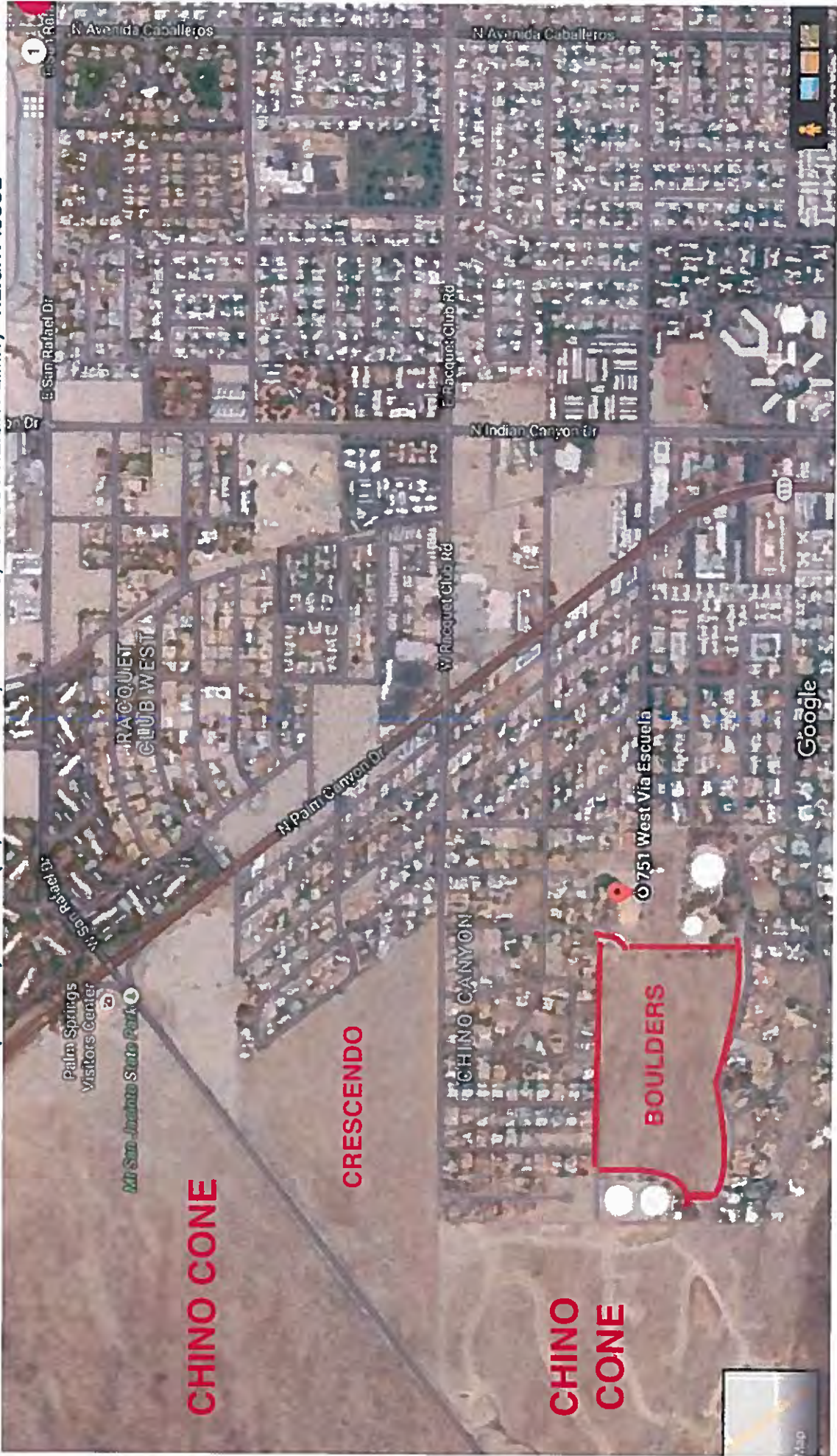
Exhibit

4

**ISSUES OF CONCERN:**

**SFR LOTS OF 5,000 SF INCONSISTENT WITH MDR: R-2 STANDARDS (REQ 20,000 SF MIN LOT (R-1-A)  
GEN PLAN HOUSING ELEMENT TABLE 3-15 & 94.03.00 B.1. (PDD CANNOT MODIFY DENSITY)  
SUBSTANTIAL PDD WAIVERS: SFR LOT SIZE; LOT DIMEN, LOT COVER., BLDG HEIGHT,  
OPEN SPACE, SETBACKS, DISTANCE BETWEEN BLDGS, PARKING (TANDEM), STREET WIDTH (24')**

PDD 287 | BOULDERS | GENERAL PLAN: ESTATE DENSITY RESIDENTIAL (0-2 DU/AC) | COMPATIBLE W. R-1-A ZONE | APPROVED OCT 2007  
45 SFR 2-STORY HOMES (20,000 - 37,000 SF LOTS), AT 25 FEET, ON 30.5 ACRES (1.5 DU/AC DENSITY) - DENSITY CONFORMS  
CLASSIFIED BY CITY AS LOW DENSITY RESIDENTIAL (LDR) = (4-6 DU/AC)  
INCONSISTENT ZONING (HEIGHT) - R-1-A (20,000 SF MIN LOT, 0-2 DU/AC, 18 FOOT HEIGHT LIMIT) - HEIGHT ISSUE\*\*



PDD WAIVERS: LOT DIMENSIONS (WIDTH AND DEPTH OF LOT)  
APPROVED PROJECT HEIGHT = 2-STORY, 25 FEET (R-1-A STANDARDS = 18' MAX.) | HIGH-RISE ORDINANCE WAS NOT INVOKED FOR HEIGHT INCREASE  
HILLSIDE ORDINANCE 93.13.00 INVOKED, ALLOWS HEIGHT INCREASE ON GRADES OF 10% OR MORE ONLY ON A REMODEL OR MINOR MODIFICATION OF EXISTING BLDG  
93.13.00 DOES NOT COVER NEW CONSTRUCTION | THE 10% SLOPE REQUIREMENT SHOULD APPLY TO THE CONSTRUCTION PAD, NOT PROJECT'S AVERAGE SLOPE

AVALON | PDD 290 AMEND (2004-2016) | 752 SFR HOMES AND 398 MFR HOMES ON 310 ACRES | SETTLEMENT AGRMT REDUCED TO 1,150 HOMES  
INCONSISTENT GEN PLAN OPEN SPACE: 49 ACRES OF PARKS & RECREATION CHANGED TO ACTIVE AGRICULTURE (INFILL) | OLIVE ORCHARD & TRAILS  
PHASE 1 STREETS INSTALLED AND PHASE 1 LOT PADS GRADED IN 2007

PDD WAIVERS: MINOR FROM PREVIOUS ITERATION (FINAL TRACT MAP FILED) - ADJUST UNIT SIZES, SETBACKS, DECREASE MINIMUM DWELLING SIZE, LOT COVERAGE



**ISSUES OF CONCERN:**

STANDARD OF REVIEW USED BASELINE BEFORE-AND-AFTER PREVIOUS PDD RATHER THAN CHANGE IN PHYSICAL CONDITION

IMPACTS: INCREASE IN POPULATION AND HOUSING / CHANGE OF OPEN SPACE: RECREATION TO ACTIVE OLIVE GROVE PRODUCTION / NO GEN PLAN DESIGN. FOR AGRICULTURE  
EXTENSIONS OF TIME 12-YEAR GAP | GOOD CAUSE CRITERIA | PREVIOUS PDD ELIMINATES STANDARDS OF REVIEW (NO ZONING CLASSIFICATION) - PASSAGE OF TIME

CRESCENDO | PDD 294 | 79 SFR UNITS | DENSITY: 1.9 DU/AC | HEIGHT: 26 FT (2-STORY) | APPROVED 2007  
CONSISTENT GENERAL PLAN: ESTATE RESIDENTIAL (0-2 DU/AC) – DESCRIBED AS LDR  
INCONSISTENT ZONING: R-1-A (20,000 SF MIN LOT SIZE / 0-2 DU/AC / MIN. DWELLING SIZE (1500 FT) | 15,000 - 54,500 LOT SIZE  
R-1-A HEIGHT = 18 FT MAX. | 18'-26' | (HILLSIDE ORD. DOES NOT ALLOW HEIGHT MODIFICATION FOR NEW CONSTRUCTION  
PDD WAIVERS: LOT SIZE, LOT DIMENSIONS, SETBACKS, HEIGHT (NO HIGH-RISE ORDINANCE ASSESSMENT, USED HILLSIDE ORD.)



EXTENSION OF TIME ON PDD DENIED OCTOBER 2016  
SUBDIVISION MAP BY SETTLEMENT AGREEMENT EXTENDED TO 2018  
SUBDIVISION MAP MUST COMPLY WITH GENERAL PLAN STANDARDS (R-1-A ZONE ISSUE?) | LITIGATION PENDING

**MATTHEW PLACE I PDD 303 I GEN PLAN: MDR (R-M15), R-2 ZONING (6-15 DU/AC) I PROJECT IS 5.8 DU/AC PLUS MIN LOT OF 3,000 SF PER UNIT (CONFORMS)  
58 TWO-STORY CONDOS (24 FT) ON 10 ACRES (ONE-LOT SUBDIVISION MAP) WITH FLOOD CONTROL AND 3 ACRES HILLSIDE (OS)  
GENERAL PLAN AND ZONING CONSISTENCY: WAIVE THE HEIGHT RESTRICTIONS WITHIN 150 FEET OF R-1 RESIDENTIAL (STEEP SLOPES)  
TANDEN PARKING COMBINATIONS — NO ORDINANCE AUTHORITY (2-IN-ONE PARKING)  
BUILDING SEPARATIONS & DISTANCE BETWEEN BLDGS (NEW PATTERNS TO ALLOW COMMON SPACE BETWEEN UNITS)  
BIO & FLOOD CONTROL (ENVIRON) - RCFC, CFWL, USFWL, US CORPS, RWQCCB**





PDD 307 VON' RETAIL CENTER | SECTION 14 SPECIFIC PLAN | APPROVED: 2006 | UNBUILT  
 EIGHT ACRE PARCEL WITH 93,658 SF OF RETAIL | NO HOTEL USES | CONSISTENT WITH GEN PLAN AND ZONE  
 GENERAL PLAN TOURISM RESORT: SPECIFIC PLAN ZONE: RC RESORT COMMERCIAL AND NCC NEIGHBORHOOD CONVENIENCE CENTER



SECTION 18 ZONE: RA- RESORT ATTRACTION (LARGE SCALE HOTEL AND MAJOR RECREATION INTEGRATED WITH RETAIL AND ENTERTAINMENT)  
 SPECIALTY GROCERY STORES AS PART OF HOTEL BY CUP (FOUND AS "OTHER COMPATIBLE USE WITH RA BY ORD")  
 WAIVER: HEIGHT (30FT / 37.5 FT), OPEN SPACE (30 / 18%) | APPROVAL APPEARS TO COMPLY WITH LAW

PDD 309 AMENDED VISTA SAN JACINTO APTS (NOT BUILT) | APPROVED 2009  
ORIGINAL APPROVAL: 2005 (32 SFR UNITS ON SIX ACRES - DENSITY = 5.3 DU/AC (4 HOMES CONSTRUCTED AND UNSOLD)  
2009 AMEND. APPROVAL: 5 SFR AND 73 MFR (11 BUILDINGS - ONE AND TWO STORY) ON SIX ACRES = 13 DU/AC (DENSITY  
INCONSISTENT WITH GENERAL PLAN: IGNORES THE MU/MU PREFERRED MIX OF INDUSTRIAL / COMMERCIAL (85%) | COMPREHENSIVE WAIVERS



GENERAL PLAN: MIXED USE (MU/MU) MAX 15 (15-30 DU/AC WITH PDD) - SAN RAFAEL - NORTH INDIAN CANYON R-2 ZONE (6-15 DU/AC)  
PREVIOUS APPROVAL WAIVED: LOT SIZE, SET BACKS, LOT COVERAGE, BUILDING HEIGHT, LOT DIMENSIONS  
CURRENT APPROVAL WAIVES: DENSITY, PARKING, OPEN SPACE, LOT SIZE (SFR 20,000) - PROPOSED AT 5600-6700





PDD 316 | 803 NORTH PALM CANYON | GALLERY DISTRICT | 3500 SF COMMERCIAL W/ SECOND STORY RESID. (12 CONDOS)  
APPROVED: MARCH 2006 | TOURIST RESORT COMMERCIAL (C-1 AND R-2 AND R-3 ZONE)  
NO APPROPRIATE ORDINANCES TO MIX COMMERCIAL AND HOUSING WITHIN THE SAME BUILDING (USE OF PDD)



PDD 317 | EAGLE CANYON | OSWIT CANYON AREA | CANYON SOUTH SPECIFIC PLAN | 2006 APPROVAL AT 4 DWELLINGS PER ACRE  
 CANYON SOUTH SPECIFIC PLAN = 117 ACRES | EAGLE CANYON PORTION = 60 ACRES | 230 RESIDENCES APPROVED AND UNBUILT (EC)  
 SIERRA CLUB SETTLEMENT IN 2007 ALLOWED A DENSITY TRANSFER (70 UNITS) ONTO EAGLE CANYON FROM CONSERVATION LANDS)  
 35.6 ACRES CONSERVED LANDS | 16.6 ACRES PLACED IN FLOOD CONTROL  
 (APPROVED PROJECT NOW VOID) - DEVELOPER INTENDS TO RE-FILE



**EAGLE CANYON**  
 60 Acres Residential  
 Density Transfer = 70 units  
 Site is westerly of Palm Canyon

INCONSISTENT WITH GEN PLAN ESTATE RESIDENTIAL (0-2 DWELLINGS PER ACRE ALLOWED) AND SPECIFIC PLAN LDR (2 DU/AC) | APPROVED AT 4 DU/AC  
 DENSITY TRANSFER OF 70 UNITS (EXCEEDS GENERAL PLAN DENSITY REQUIREMENT OF 2 DU/AC)  
 NO ORDINANCE TO ESTABLISH THE RECEIVING LOTS FOR DENSITY TRANSFERS (CHARACTERISTICS AND LIMITATIONS)  
 THE BALLOT INITIATIVE FOR ENVIRON SENSITIVE LANDS WILL REQUIRE A GENERAL PLAN AMENDMENT TO OPEN SPACE MOUNTAIN (1 DU PER 40 AC)

MORRISON | PDD 321 | APPROVED: APRIL 2010 | SECTION 14 SPECIFIC PLAN | 6.25 DU/AC DENSITY (5-8,000 SF LOTS)  
 AMENDMENT TO PREVIOUSLY APPROVED PDD (CONVERTED FROM MFR COMMON GROUNDS TO 53 SFR DWELLINGS) - HEIGHT = 20 FT (2-STORY)  
 GEN PLAN (SOUTH PORTION) = (HIGH-DENSITY RESIDENTIAL MULTI-FAMILY (15-30) - INCONSISTENT DENSITY  
 GEN PLAN (NORTH PORTION) = MDR (6-15 DU/AC) REQUIRES 10,000 SF LOT FOR SINGLE-FAMILY RESIDENTIAL - INCONSISTENT  
 SECTION 14 SPECIFIC PLAN (MEDIUM DENSITY RESID. BUFFER - 8 DU/AC) - MULTI-FAMILY BUFFERS BETWEEN HDR AND ESTATE RESIDENTIAL - INCONS.



**AMENDS SP (SFR), DENSITY, OPEN SPACE, LOT SIZE, LOT COVERAGE, DISTANCE BETW. BLDGS, HEIGHT, HIGH-RISE ORD, SETBACKS  
 ELIMINATE LANDSCAPE MEDIAN (AVENIDA CABALLEROS) – TRANSPORTATION REQ. OF SPECIFIC PLAN**

**WAIVERS:**

PDD 322 PALMS HOTEL | WESSMAN | 51 HOTEL RMS (42 DU/AC) | 44 FT (FOUR STORIES) | 1.3 ACRES | GEN PLAN INCONSISTENCY - HDR DENSITY AND HEIGHT WAIVERS: DENSITY (30 MAX), HEIGHT (MAX 30'), HIGH-RISE (HRO), OPEN SPACE, SETBACKS, PARKING, LOT COVERAGE 30' / 40', LOT SIZE (1,000 PER ROOM) CLASSIFIED AS CATEGORICALLY EXEMPT DESPITE THE GENERAL PLAN NON-COMPLIANCE AND WAIVERS  
TRANSFER OF DENSITY BONUS PER DEVELOPMENT AGREEMENT (ADJOINING LOT) APPROVED: 2006 (NOT BUILT)



ISSUE OF CONCERN:  
DENSITY AND HEIGHT CAN BE WAIVED WITH PDD, BUT NOT WHEN INTEGRAL TO THE GENERAL PLAN DESIGNATION ITSELF  
HDR (15-30 DU/AC) CAN BE EXCEEDED WITH TRANSFER OF DENSITY RIGHTS, WHICH DID NOT OCCUR HERE





PDD 324 RAEL | 4 ACRES | 150 ROOM HOTEL | 27,000sf RETAIL | 1ST FLOOR PARKING | RESTAURANT | 4 STORIES  
 ITERATION OF ENVIRONMENTAL BASELINE FROM ONE MODIFICATION TO THE NEXT | LOSS OF DISTRICT STANDARDS OVER TIME  
 ORIGINAL APPROVAL IN 2006, MODIFICATION IN 2011, MODIFICATION 2015 | DENSITY = 29 UNITS / ACRE  
 118 CONDOS & 25,000 SF COMMERCIAL (2006) | 175 ROOM HOTEL & 30,000 SF RETAIL (2011) | 150 ROOM HOTEL & 27,000 COMM (2015)



DOWNTOWN DESIGN PLAN (GATEWAY ZONE): 30 FT LIMIT ON STREET TO 60 STEPBACK (NON-CONFORMING)  
 HIGH-RISE ORDINANCE STANDARDS WAIVED ON SETBACKS AND OPEN SPACE (60% REQUIRED : PROJECT AT 18% OPEN SPACE)  
 ZERO LOT LINE ON PALM CANYON | BUILDING MASS PROTECTS HOTEL GUESTS IN INTERIOR  
 FROM 2011 PDD: HEIGHT INCREASE 51/59' | LOT COVERAGE 41/49% / CONDOS TO HOTEL ROOMS  
 PDD WAIVER: HEIGHT, SETBACKS, STEPBACKS, HIGH-RISE STANDARDS, & OPEN SPACE

PD 327 NICHOLS PROPERTY | 0.55 ACRES | TWO-STORIES | 124 FT / 30' APPURT | APPROVED: 2008 (BUILT)  
PDD CREATED MIXED-USE BUILDING / 1ST STORY (4 RETAIL OFFICES / 2ND STORY (1 RETAIL & 3 RESIDENCES - CONDOS)  
NEIGHBORHOOD COMMERCIAL: C-1 ZONE / R-3 ZONE STANDARDS USED (INCONSISTENT ZONE)  
PDD USED TO CONFORM NCC STANDARDS TO MIXED-USE CRITERIA (UPTOWN DISTRICT) / FAR .27 (.35 ALLOWED)  
PLAN WAS THEN EVALUATED UNDER C-1 AND R-3 THOUGH BOTH PROHIBIT RESIDENTIAL  
PDD WAIVERS: HEIGHT (30') | OPEN SPACE (45% REQ / 25% APPR) | SETBACKS



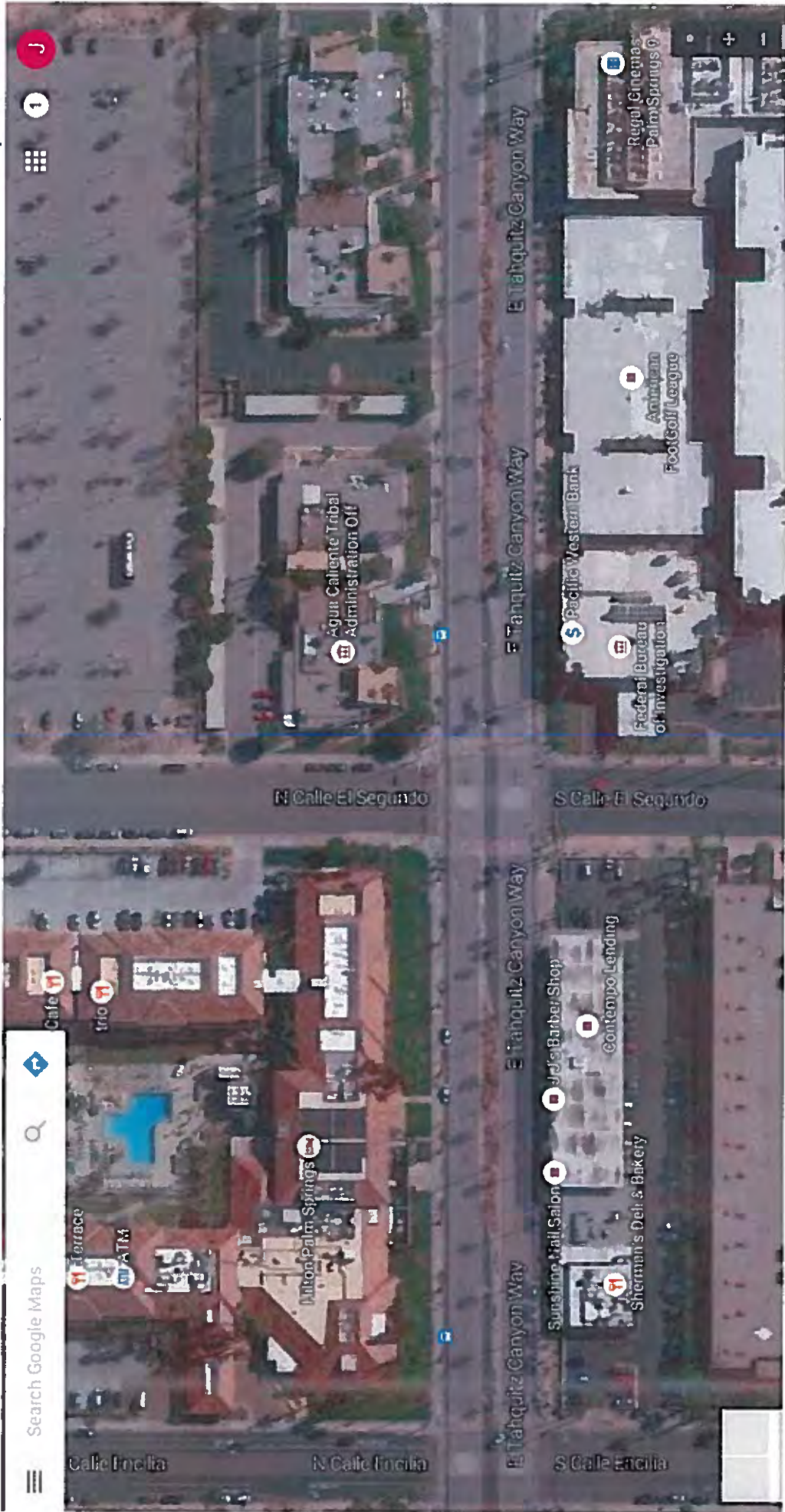
**ISSUES OF CONCERN:**  
**NEIGHBORHOOD COMMERCIAL IS NOT COMPATIBLE WITH C-1 OR R-3 ZONING**  
**C-1 ZONING DOES NOT ALLOW SFR**  
**NO ORDINANCES IMPLEMENT MIXED-USE COMMERCIAL AND RESIDENTIAL W/IN A BLDG**  
**DAVIS-STERLING PROHIBITS PDD USAGE FOR A CONDO (AIRSPACE RIGHTS ALONE)**  
**NO OPEN SPACE DEFINITION FOR BALCONIES (CALCULATION ISSUE)**

PD 327 NICHOLS PROPERTY | 0.55 ACRES | TWO-STORIES | 24 FT / 30' APPURT | APPROVED: 2008 (BUILT)  
PDD CREATED MIXED-USE BUILDING / 1ST STORY (4 RETAIL OFFICES / 2ND STORY (1 RETAIL & 3 RESIDENCES - CONDOS)  
NEIGHBORHOOD COMMERCIAL: C-1 ZONE / R-3 ZONE STANDARDS USED (INCONSISTENT ZONE)  
PDD USED TO CONFORM NCC STANDARDS TO MIXED-USE CRITERIA (UPTOWN DISTRICT) / FAR .27 (.35 ALLOWED)  
PLAN WAS THEN EVALUATED UNDER C-1 AND R-3 THOUGH BOTH PROHIBIT RESIDENTIAL  
PDD WAIVERS: HEIGHT (30') | OPEN SPACE (45% REQ / 25% APPR) | SETBACKS



**ISSUES OF CONCERN:**  
**NEIGHBORHOOD COMMERCIAL IS NOT COMPATIBLE WITH C-1 OR R-3 ZONING**  
**C-1 ZONING DOES NOT ALLOW SFR**  
**NO ORDINANCES IMPLEMENT MIXED-USE COMMERCIAL AND RESIDENTIAL W/IN A BLDG**  
**DAVIS-STERLING PROHIBITS PDD USAGE FOR A CONDO (AIRSPACE RIGHTS ALONE)**  
**NO OPEN SPACE DEFINITION FOR BALCONIES (CALCULATION ISSUE)**

**PDD 339 I HARD ROCK HOTEL I PRAIRIE SCHOONER CITY PARKING LOT I APPROVED: OCTOBER 2008**  
**SECTION 14 I TOURIST RESORT COMMERCIAL LAND USE I RA-REO ZONE**  
**10 ACRES / 499 ROOM CONDOS / DENSITY: 51 UNITS PER ACRE (CONFORMS)**  
**WAIVERS: FAR (0.38 REQ / 1.65 APPR), SETBACKS, HEIGHT (100' / 120'), HIGH-RISE, OPEN SPACE (60%/42%), PARKING (650/517)**  
**ISSUE OF CONCERN: ARE CONDOS ALLOWED WITH A PDD UNDER DAVIS-STERLING (AIRSPACE RIGHTS ONLY)**



PDD 340 | VIA OLIVERA TOWNHOMES | 5-UNIT CONDO ON 0.53 ACRES (INFILL) | 8 DU/AC

ISSUE: CAN CONDOS BE PERMITTED WITH A PDD? (DAVIS-STERLING) / WHAT ZONE FOR MUMU?

INCONSISTENT WITH GEN PLAN MIXED-USE/MULTI-USE 15/30 DU/AC | R-2 ZONE INCONSISTENT WITH MUMU

PROJECT DENSITY = 7.7 DU/AC (CONFORMS TO ZONING, BUT NOT GEN PLAN | WAIVERS: DENSITY, SETBACKS, DISTANCE BETWEEN BLDGS



PDD 341 I VIVANTE I RETAIL 3 COMM. BLDGS / AMEND TO ELIMINATE TWO HOTELS / CONSTRUCT 132-UNIT ASSISTED LIVING  
PDD USED TO OVERRIDE GENERAL PLAN USE RESTRICTIONS - RESORT, ENTERTAINMENT, AND RECREATION (VISITOR-SERVING)  
GENERAL PLAN TOURIST RESORT COMMERCIAL (TRC): SECTION 14 REO I PROHIBIT ASSISTED LIVING  
PD WAIVERS: USE (ASST LIVING), SETBACKS



DECLARED DWELLING UNITS ARE ACTUALLY BEDS (54 BED COUNT) FOR FIVE ACRES (CITY COUNCIL FOUND CONSISTENT)  
NEITHER GENERAL PLAN OR SECTION 14 SPECIFIC PLAN DESIGNATION ALLOWS ASSISTED LIVING USE  
ISSUES OF CONCERN: PROXIMITY TO PRIME TOURISM NEXT TO CONVENTION CENTER  
HOW DO YOU RUN PARKING CALCULATIONS FOR ASSISTED LIVING BEDS IN WRONG ZONE?

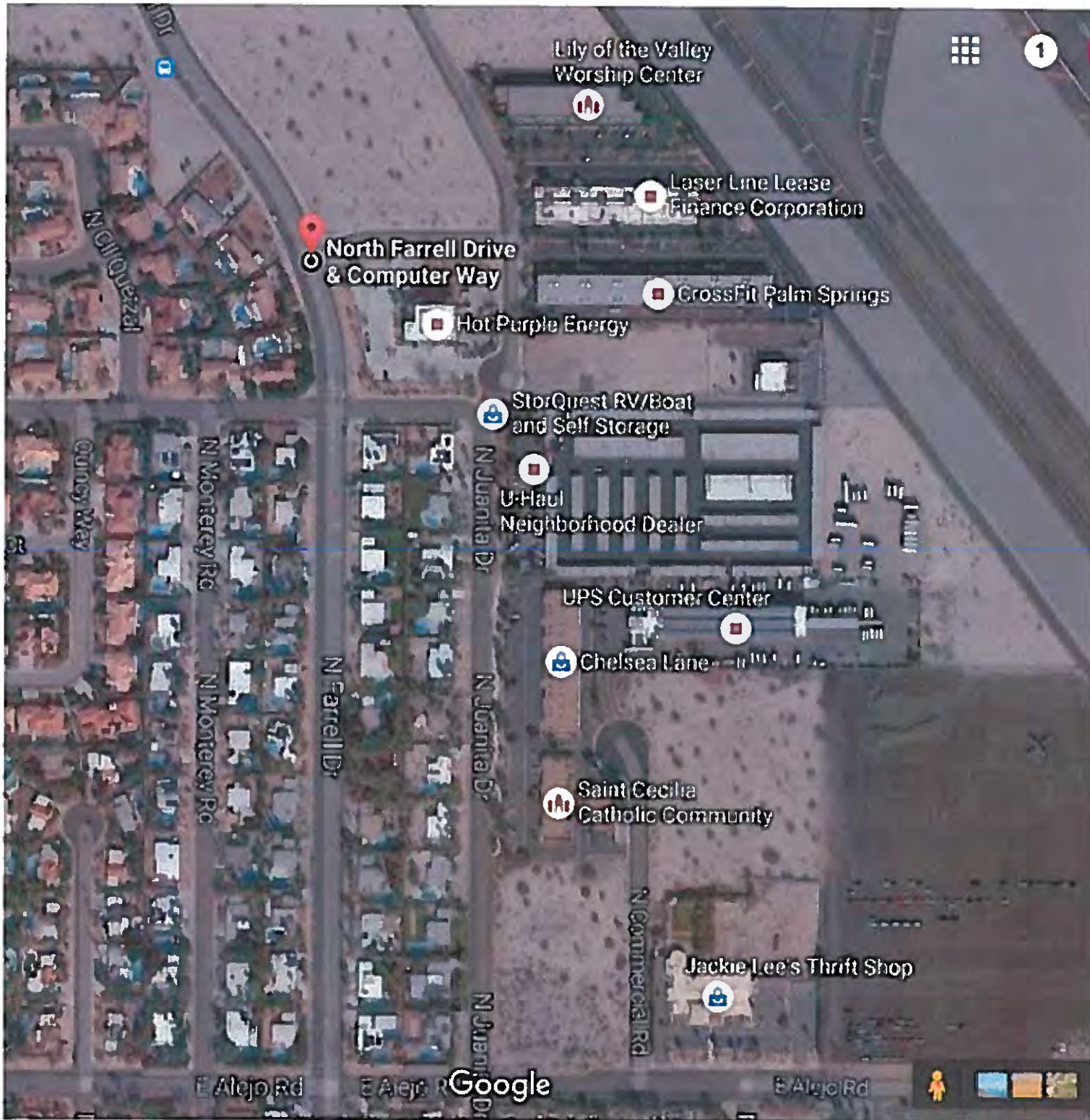




PDD 3431 CROSSE POINT I JOHN WESSMAN I APPROVED: OCTOBER 3 2007  
LAST EXTENSION OF TIME WITH ONE YEAR WARNING: JULY 2015  
INDUSTRIAL: M-1 ZONE (40' ALLOWED) - COMPATIBLE WITH SETBACK WAIVERS, OVER 30 FT)  
MIXED-USE WITH THREE ONE-STORY BLDGS AND ONE TWO-STORY BUILDING  
40,000 SF RETAIL / 14,500 SF OFFICE ON 3.8 ACRES  
BUILDING HEIGHT: 24- 40 FT WITH SETBACK WAIVERS (NOT SUBSTANTIAL)



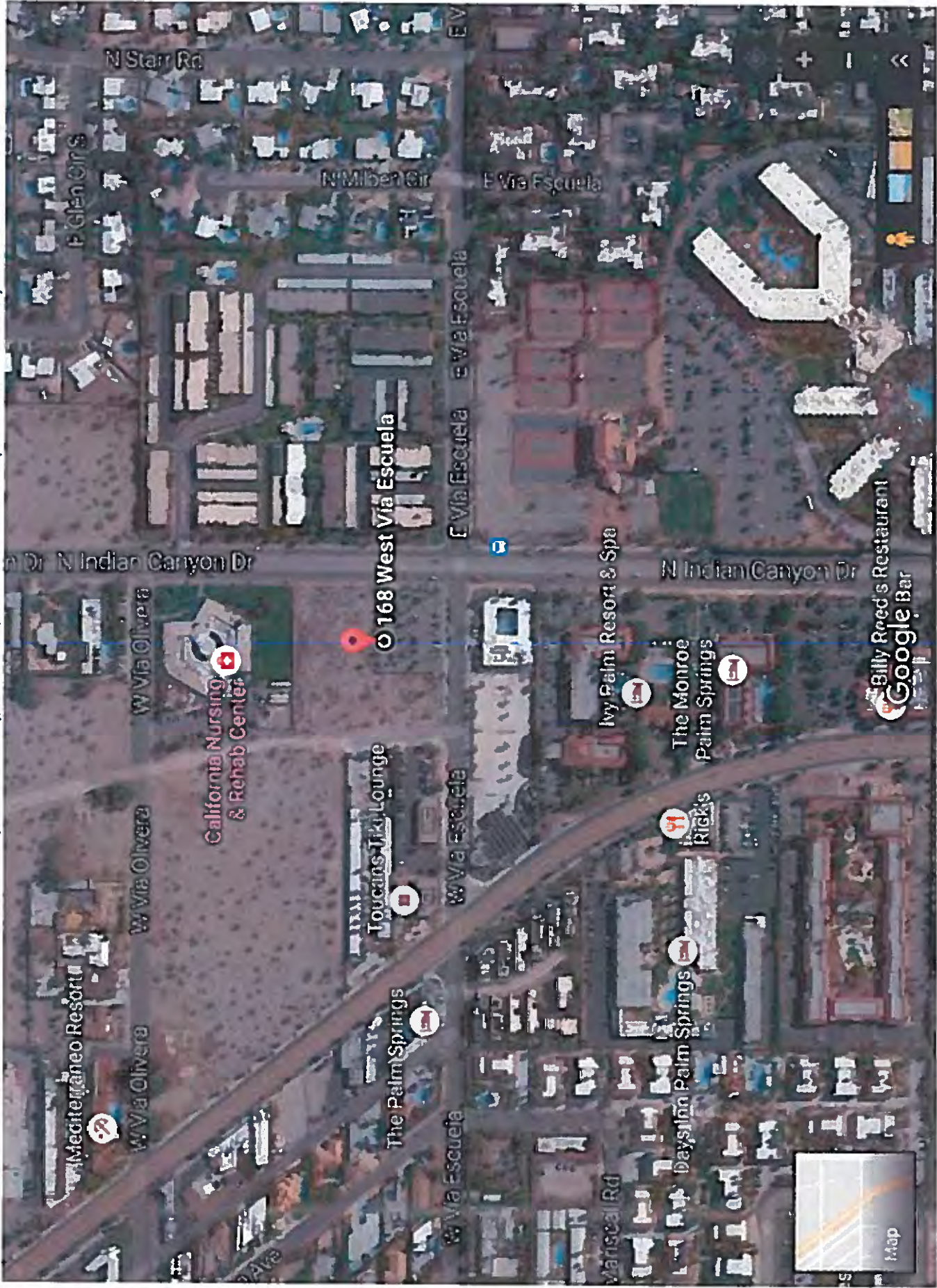
PD 347 | FARRELL PROF. VILLAGE | OFFICE AND MEDICAL (5 BLDGS) | 3 ACRES | AIRPORT  
5 BLDGS (SS) | @25,000SF:118,000SF (0.21% / 0.50% FAR) | HEIGHT: 25'/30' ALLOWED  
INDUSTRIAL: M-I-P / USE ANCILLARY TO INDUSTRIAL / ISSUE: NOT AN ENUMERATED USE / SIMILAR?  
\*\*PDD SETBACK WAIVER: 25':100' FARRELL / 5:20' INTERIOR



**PDD 348 | BP WEST COAST PRODUCTS | FUEL STORAGE TERMINAL AND DISTRIBUTION FACILITY**  
**SIX ABOVE-GROUND FUEL STORAGE TANKS AND RELATED FACILITIES**  
**GENERAL PLAN AND ZONING: ENERGY INDUSTRIAL ZONE (E-I/E-I)**  
**PDD: WAIVER OF HEIGHT FROM 30 FT TO 35 FT (HIGH-RISE ORDINANCE)**  
**ADEQUATE OPEN SPACE AND SETBACKS**



PDD 354 | MICHAEL'S PLACE | 0.90 ACRES | APPROVED: 2008 | ASSISTED LIVING IN R-2 REQUIRES CONDITIONAL USE PERMIT (CUP)  
GENERAL PLAN - MEDIUM DENSITY RESIDENTIAL (MDR: 6-15 DU/AC) : MEDIUM DENSITY RESIDENTIAL ZONE R-2 (MDR: 6-15 DU/AC)  
BED COUNT WAS 14 ROOMS = 28 BEDS / (16 BEDS ALLOWED - 28 BEDS APPROVED) / CITY USED ROOM COUNT AS "DWELLING UNITS" (14 DU/AC)  
WAIVERS OF DENSITY (NOT ALLOWED), SETBACKS, AND LOT COVERAGE (30% / 40% APPROVED)



PDD 357 I PALM SPRINGS ASSISTED LIVING (1.43 ACRES) I APPROVED: 2012  
108 BEDS I THREE STORIES I 40 FT HEIGHT I 75 UNDERGROUND PARKING, 3 ABOVE  
GEN PLAN AMEND. FROM NEIGHBORHOOD COMMERCIAL TO HIGH DENSITY RESIDENTIAL (UPTOWN DISTRICT)  
WAIVERS FOR: BED COUNT DENSITY (64 REQ / 108 APPR), HEIGHT, HIGH-RISE ORD, OPEN SPACE, SETBACKS AND PARKING (113/106)  
DENSITY WAIVERS ARE NOT ALLOWED BY PDD UNDER TABLE 3-15 HOUSING ELEMENT



PD 358 MICHAEL'S PLACE | 430 S. CAHUILLA ROAD (NEXT TO MELVYN'S) | .88 ACRES | TWO STORY | 22 FT / 24 FT ALLOWED  
GENERAL PLAN: SMALL RESORT HOTEL / R-3 ZONE (15-30 DU/AC) / COMPATIBLE (ALLOWS ASSISTED LIVING)

26 BED LIMIT (APPROVED 30 BEDS)

PDD WAIVERS FOR: DENSITY, SETBACKS, PARKING, DISTANCE BETWEEN BUILDINGS





**PDD 360 | THE ARRIVE HOTEL | CHRIS PARDO | APPROVED: 2012**  
**Mixed Use/ Multi-Use General Plan : C-1(East) & R-3 High-Density Residential Zone, 15-30 DU/AC (West)**  
**Allowed: Hotels at 1,000 sf per room (32 rooms on 1.27 acres) - COMPLIES**  
**DENSITY WAIVER: General Plan allows 30 du/ac; 32 approved - NON-COMPLIANCE**  
**Shared Parking Study: 47 spaces; 74 required / Setback Waivers (Minimal)**





**STONEWALL ASSISTED LIVING / PDD 362 / ONE ACRE / APPROVED: 2013**  
**GENERAL PLAN MIXED-USE (ARTIST COLONY) 15-30 DU/AC WITH PDD**  
**COMBINED ZONING: COMMERCIAL (C-1) AND MEDIUM DENSITY RESIDENTIAL (R-2)**  
**CONDITIONAL USE PERMIT REQUIRED FOR ASSISTED LIVING**  
**40 BEDS CALCULATED FOR DENSITY INSTEAD OF DWELLINGS (ORD.PROBLEM)**  
**MEDIUM DENSITY RESIDENTIAL (6-15 DU/AC) IS NOT CONSISTENT**  
**COMMERCIAL C-1 PROHIBITS ASSISTED LIVING / PDD WAIVERS: SETBACKS**



PD 363 | SOL PALM SPRINGS | Next to Convention Center | Approved: 2013

46 two and three-story Single-Family Residential Homes | Env. Study: No Land Use Impacts

General Plan and Section 14: High-Density Residential (15-30 DU/AC) | PDD AMENDED the General Plan and Section 14 Specific Plan

PROJECT DENSITY: 6.5 DU/AC (Inconsistent with General Plan and Specific Plan HDR and Multi-Family Designation)

SPECIFIC PLAN: Density Requirement is 500 SF lot area per dwelling area for Hotels | Convention Center Area



**PDD Waiver: High-Density Housing / Density cannot be waived by PDD / Section 14 Prohibits Single-Family Lot Size, Setbacks, Open Space, and Design, Affordable Housing Impacts**

PDD 365 DAKOTA II I APPROVED 2014  
39 SINGLE-FAMILY RESIDENTIAL (SFR) HOMES AT 2-STORIES, AND A HEIGHT OF 24 FEET  
LOT SIZE = 4,650 SF AVERAGE  
GENERAL PLAN: HDR (15-30 DU/AC) I PROJECT DENSITY 6.5 DU/AC (INCONSISTENT)  
PROJECT USE: SFR (PROHIBITED) PDD AMENDED GEN PLAN STANDARD



**DAKOTA II  
PROJECT SITE**

CITYWIDE GEN PLAN AMENDMENT TO ELIMINATE MINIMUM THRESHOLD FOR ALL RESIDENTIAL - CT. OF APPEALS OVERTURNED  
PDD WAIVERS: USE, DENSITY, LOT DIMENSIONS, SETBACKS, DISTANCE BETWEEN BLDGS, MFR COMMON SPACE  
DOES NOT CONFORM TO THE CHARACTERISTICS OF THE MFR BUILT DISTRICT (APARTMENTS, MOBILE HOMES, RV PARK NORTHERLY)  
PDD 131 STEINMART IS NEIGHBORHOOD SERVING (NCC) - COMPATIBLE WITH MULTI-FAMILY RESIDENTIAL

SERENA PARK / PDD 366 / 126 ACRES / APPROVED: 2016  
429 SINGLE-FAMILY HOMES / 42 ACRES PRIVATE OPEN SPACE / 5 ACRE PUBLIC PARK  
GENERAL PLAN AMENDMENT: OPEN SPACE (RECREATION) TO VERY LOW DENSITY RESIDENTIAL (VLDL) - (2-4 DU/AC)  
ZONING: SFR (R-1-C) - 10,000 SF LOT REQUIREMENT (5,000 SF LOTS) / DENSITY: 3 DU/AC - INCONSISTENT LOT SIZE  
PDD WAIVERS: LOT SIZE, LOT COVERAGE, SETBACKS, HEIGHT (12' REQ. / 19' APPR)



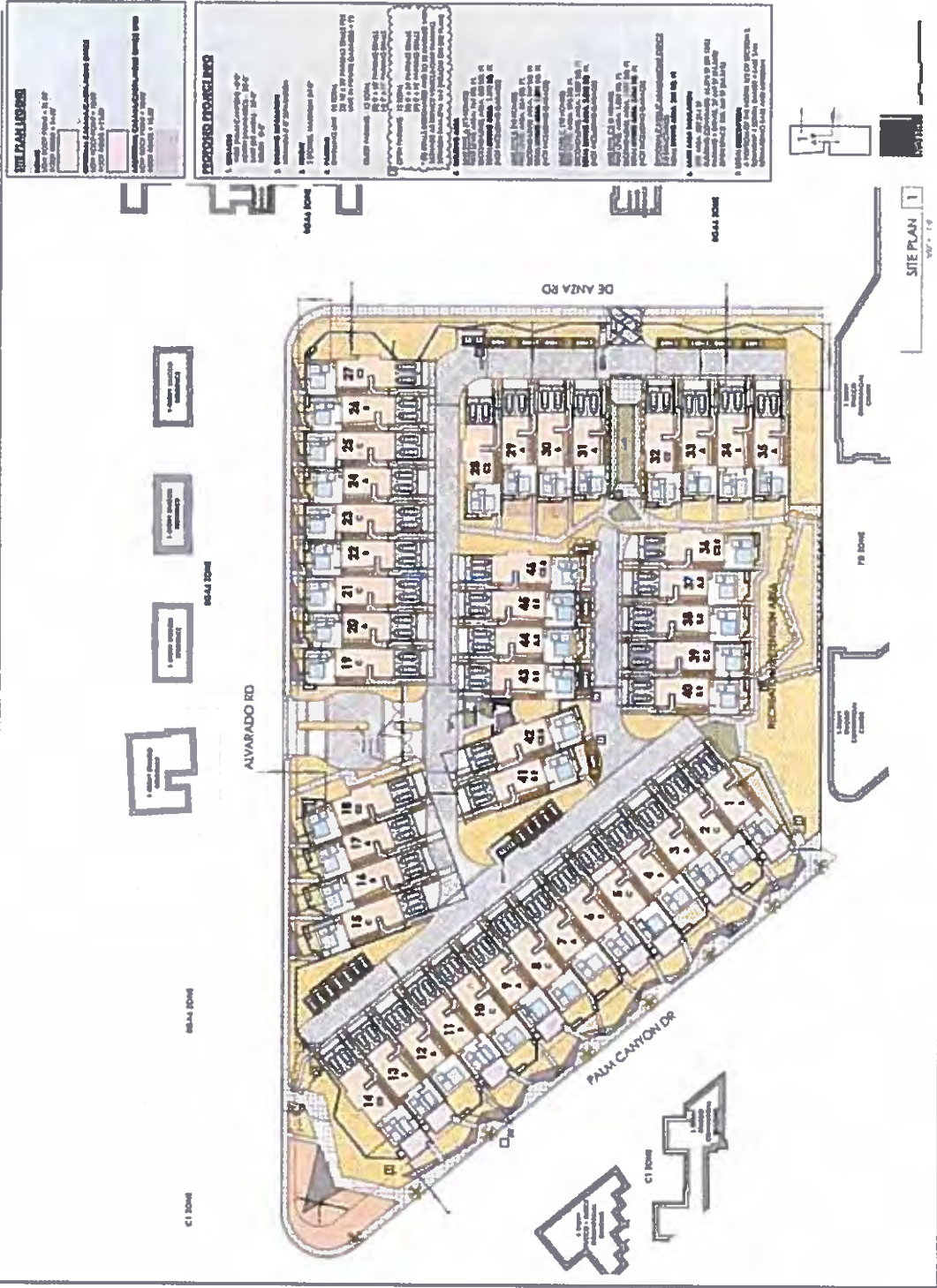
**ISSUE OF CONCERN:**  
**LACK OF ENVIRONMENTAL ON MAJOR PROJECTS**  
**R-1-C LOT SIZE STANDARD (10,000SF MIN) SHOULD NOT BE SUBJECT TO PDD WAIVER**  
**(ZONING INCOMPATIBILITY) BECAUSE IT IS THE ESSENCE OF THE ZONE REQUIREMENT**



PDD 370 | ALVARADO ART COLONY I APPROVED: 2015  
 46 SINGLE-FAMILY RESIDENTIAL CONDOMINIUMS / 5.3 ACRES / 9 DU/AC / MIN. LOT = 3,000 SF / 2-STORY (24 FT)  
 GENERAL PLAN MIXED-USE/MULTI-USE (UP TO 15 DU/AC)

ZONING: R-3 (HDR) / CLUSTER RESIDENTIAL (RGA (6) - BOTH INCONSISTENT  
 THE CITY USED R-3 (HIGH-DENSITY) STANDARDS EVEN THOUGH INAPPROPRIATE

PDD WAIVERS: DENSITY (NOT ALLOWED); HEIGHT, SETBACKS, LOT COVERAGE, DISTANCE BETWEEN BLDGS



**SETBACKS**

Front	10' (15' for units 1-10)
Side	5' (10' for units 1-10)
Rear	10'
Corner	10'

**CONDOMINIUM UNITS**

1. Units 1-10: 10 units, 10' front setback, 5' side setback, 10' rear setback, 10' corner setback.
2. Units 11-20: 10 units, 10' front setback, 5' side setback, 10' rear setback, 10' corner setback.
3. Units 21-30: 10 units, 10' front setback, 5' side setback, 10' rear setback, 10' corner setback.
4. Units 31-40: 10 units, 10' front setback, 5' side setback, 10' rear setback, 10' corner setback.
5. Units 41-46: 6 units, 10' front setback, 5' side setback, 10' rear setback, 10' corner setback.



SITE PLAN 1  
 10/1/15

**STONEWALL ASSISTED LIVING / PDD 362 / ONE ACRE / APPROVED: 2013**  
**GENERAL PLAN MIXED-USE (ARTIST COLONY) 15-30 DU/AC WITH PDD**  
**COMBINED ZONING: COMMERCIAL (C-1) AND MEDIUM DENSITY RESIDENTIAL (R-2)**  
**CONDITIONAL USE PERMIT REQUIRED FOR ASSISTED LIVING**  
**40 BEDS CALCULATED FOR DENSITY INSTEAD OF DWELLINGS (ORD.PROBLEM)**  
**MEDIUM DENSITY RESIDENTIAL (6-15 DU/AC) IS NOT CONSISTENT**  
**COMMERCIAL C-1 PROHIBITS ASSISTED LIVING / PDD WAIVERS: SETBACKS**







PDD 365 DAKOTA II | APPROVED 2014  
39 SINGLE-FAMILY RESIDENTIAL (SFR) HOMES AT 2-STORIES, AND A HEIGHT OF 24 FEET  
LOT SIZE = 4,650 SF AVERAGE  
GENERAL PLAN: HDR (15-30 DU/AC) | PROJECT DENSITY 6.5 DU/AC (INCONSISTENT)  
PROJECT USE: SFR (PROHIBITED) PDD AMENDED GEN PLAN STANDARD



**DAKOTA II  
PROJECT SITE**

CITYWIDE GEN PLAN AMENDMENT TO ELIMINATE MINIMUM THRESHOLD FOR ALL RESIDENTIAL - CT. OF APPEALS OVERTURNED  
PDD WAIVERS: USE, DENSITY, LOT DIMENSIONS, SETBACKS, DISTANCE BETWEEN BLDGS, MFR COMMON SPACE  
DOES NOT CONFORM TO THE CHARACTERISTICS OF THE MFR BUILT DISTRICT (APARTMENTS, MOBILE HOMES, RV PARK NORTHERLY)  
PDD 131 STEINMART IS NEIGHBORHOOD SERVING (NCC) - COMPATIBLE WITH MULTI-FAMILY RESIDENTIAL

SERENA PARK / PDD 366 / 126 ACRES / APPROVED: 2016  
429 SINGLE-FAMILY HOMES / 42 ACRES PRIVATE OPEN SPACE / 5 ACRE PUBLIC PARK  
GENERAL PLAN AMENDMENT: OPEN SPACE (RECREATION) TO VERY LOW DENSITY RESIDENTIAL (VLDR) - (2-4 DU/AC)  
ZONING: SFR (R-1-C) - 10,000 SF LOT REQUIREMENT (5,000 SF LOTS) / DENSITY: 3 DU/AC - INCONSISTENT LOT SIZE  
PDD WAIVERS: LOT SIZE, LOT COVERAGE, SETBACKS, HEIGHT (12' REQ. / 19' APPR)



**ISSUE OF CONCERN:**  
**LACK OF ENVIRONMENTAL ON MAJOR PROJECTS**  
**R-1-C LOT SIZE STANDARD (10,000SF MIN) SHOULD NOT BE SUBJECT TO PDD WAIVER**  
**(ZONING INCOMPATIBILITY) BECAUSE IT IS THE ESSENCE OF THE ZONE REQUIREMENT**





LINEA / PDD 371 / CANYON PARK SPECIFIC PLAN (L2 - LOW DENSITY RESIDENTIAL) / APPROVED: 2014  
 GENERAL PLAN: ESTATE RESIDENTIAL (0-2 DU/AC) / GUEST RANCH GR-5 ZONE (0-2 DU/AC)  
 14 SINGLE-FAMILY HOMES ON 7 ACRES / 4,500 SF LOTS / HEIGHT: 19' / 24' ALLOWED / PROJECT DENSITY: 2 DU/AC  
 SINGLE-FAMILY ZONING (R-1-B 15,000sf MIN) / 4,500 SF HOMES / LOT SIZE = 15,000 (CONFORMS)

PDD WAIVERS: LOT SIZE AND SETBACKS WAIVED WITH PDD, EXCEPT THEY REPRESENT  
 SPECIFIC PLAN REQUIREMENTS!! (PDD CANNOT AMEND THE SP STANDARDS)



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**SITE CONDITIONS**

Environmental Impact Report for  
 Tentative Tract Map No. 36723

Figure 2.3

Page 2.8

PD 372 | ORCHID TREE INN | DEMO & RENOVATE 52 ROOMS | 2 ACRES | APPROVED: 2015  
GENERAL PLAN: SMALL RESORT HOTEL / STAND-ALONE RETAIL & COMMERCIAL PROHIBITED  
ZONING: R-3 (HIGH DENSITY RESIDENTIAL)

DENSITY CALCULATION: 27 ROOMS PER ACRE | SMALL HOTEL ALLOWS ONLY 15 PER ACRE (INCONSISTENT)  
THE CITY GRANDFATHERED THE NON-CONFORMING ROOM COUNT TO FIND CONSISTENCY (NOT ALLOWED)

PDD WAIVERS: DENSITY (15 ROOMS REQ / 27 APPR) / HEIGHT (30/33), HIGH RISE ORD., OPEN SPACE (30/45), SETBACKS, HEIGHT STEP BACKS



PDD 373 / VIA OLIVERA / FIVE SINGLE-FAMILY LOTS (4500-5000sf) / 0.50 ACRES / DENSITY: 10 DU/AC / APPROVED: 2014  
GENERAL PLAN = MIXED/MULTI-USE / ZONING: MEDIUM DENSITY RESIDENTIAL (R-2, 6-15 DU/AC) R-1-A STANDARDS (20,000sf min lot)  
PDD WAIVER: DENSITY 20,000sf / LOT AREA, HEIGHT, SETBACKS, LOT COVERAGE, DISTANCE BLDGS  
A PDD CANNOT WAIVE DENSITY REQUIREMENTS (TABLE 3-15 HOUSING ELEMENT)



**PDD 104 | 750 LOFTS | APPROVED: 2015**

**APPLICATION FOR: 39 ROOM HOTEL ON 1.3 ACRES, FOUR STORIES, HEIGHT= 50 FT, FLOOR AREA RATIO = 1.3**

**LAS PALMAS HISTORIC DISTRICT (GENERALLY 1-2 STORY BUILDINGS)**

**GENERAL PLAN AMENDMENT FROM NCC (NEIGHBORHOOD SERVING .35 FAR) TO CBD (CENTRAL BUS. DISTR 3.5 FAR)**

**CBD CHANGE OF FLOOR AREA RATIO (FAR) FROM 0.35 TO 3.5 (APPROVED AT 1.3 FAR)**

**CONCEPT OF GENERAL PLAN AMENDMENT AND DENSITY INCREASE: THIS LOT IS WITHIN A TRANSITION ZONE**



Las Palmas Historic Business District Guidelines are as follows:  
1-2 story buildings / Low Mass / Height Conformity / View Shed Retention / Align Facades & Rooftops / Setbacks & Design Conformity

GPA (amendment) to CBD in a Built-Out NCC District violates Historic Character for Lot Coverage, Open Space, Intensity of Use, View Shed and incorporates an inappropriate zoning scheme (CBD Zone) as a Precedent for future decisions in the District  
PDD used to Waive: Historic Guidelines, District Compatibility, Building Height, High-Rise Protections, Setbacks, Parking (From 96 to 74 spaces)



**CANYON LOFTS PDD | SECTION 14 SPECIFIC PLAN | APPROVED: 2015  
CENTRAL BUSINESS DISTRICT (INCOMPATIBLE)  
32 MFR CONDOS AND 2 LIVE-WORK UNITS, 3 STORIES, 35 FEET**

**GENERAL PLAN CENTRAL BUSINESS DISTRICT (CBD) (15-30 DU/AC)  
R-4 MULTI-FAMILY RESIDENTIAL ZONE (30 FOOT HEIGHT REQUIREMENT)**

**NON-CONFORMING WITH CENTRAL BUSINESS DISTRICT STANDARDS  
WAIVERS: LOT AREA, DISTANCE BETWEEN BLDGS, SETBACKS  
OPEN SPACE (45% - 22%).**



**CENTRAL BUSINESS DISTRICT STANDARDS:  
“PRIMARILY RETAIL BUSINESS IN CHARACTER, WITH RELATED HOTELS,  
MULTI-FAMILY RESIDENTIAL, AND SERVICE, OFFICE, CULTURAL AND INSTITUTIONAL USES.  
CBD INTENDED TO BE ACTIVE, INTENSIVELY USED AREA CATERING TO THE PEDESTRIAN,  
WITH WALKWAYS, OPEN PLAZAS, DINING, GATHERING AND WINDOW-SHOPPING**

WOODBRIDGE PDD 379 | PALM CANYON / SUNNY DUNES MIXED-USE / MULTI-USE DISTRICT | APPROVED: 2016  
 57 DETACHED SINGLE-FAMILY RESIDENTIAL HOMES, 25 MULTI-FAMILY RESIDENTIAL HOMES, 1-2 STORIES, LOTS 5-8,000 SF | 12.5 AC |  
 ZONING: C-1 RETAIL (FRONTAGE) AND R-3 (HDR) – DENSITY (6.5 DU/AC) - NON-CONFORMING  
 PDD WAIVER: DENSITY, USE, LOT DIMENSIONS, SETBACKS, DISTANCE BETWEEN BUILDINGS



**PALM CANYON - SUNNY DUNES MIXED-USE / MULTI-USE AREA (INCONSISTENT)**

“Different from the mixed/multi-use areas identified above, the Palm Canyon Drive and Sunny Dunes Road area is envisioned as a mixed-use area creating an office, retail, and residential node just south of Downtown. This mix of uses will complement the hotel uses along East Palm Canyon Drive by providing a concentrated commercial and office base in close proximity to visitor accommodations.” Land Use Element at 2-33

“Preferred mix of uses: 30–50 percent commercial, 30–50 percent office; 15–20 percent residential”

“Mixed-use and multi-use developments allow for greater flexibility and a more varied environment than traditional single-use land use designations. Mixed/multi-use areas should consist of commercial, office, and residential uses in either vertical or horizontal proximity to each other.” Comm. Design Element at 9-39

# **APPENDIX C**

## **REFERENCE GRIDS TO THE PALM SPRINGS GENERAL PLAN AND ZONING ORDINANCES**

**TABLE OF GENERAL PLAN STANDARDS – PALM SPRINGS, CA**

**Submitted by: Judy Deertrack to the PDD Study Group (November 2016)**

Estate Residential	<p><b>Estate Residential (0–2.0 dwelling units per acre).</b> The Estate Residential designation provides for the development of large-lot, single-family residences that are custom in design. This designation is predominantly located in areas adjacent to the City's hillsides, reflecting the natural and environmental constraints that must be addressed there. Minimum lot sizes are generally 20,000 square feet in this designation; guest ranches are permitted on parcel areas of five acres, with a minimum lot area of 4,000 square feet per guest ranch unit.</p>
Very Low Density Residential	<p><b>Very Low Density Residential (2.1–4.0 dwelling units per acre).</b> The Very Low Density residential is the most prevalent land use designation within the City, representing typical single-family detached residential development. Lot sizes in this land use designation generally range from 16,500 to 8,500 square feet.</p>
Low Density Residential	<p><b>Low Density Residential (4.1–6.0 dwelling units per acre).</b> Similar to the Very Low Density Residential designation, the Low Density Residential designation also represents "typical" single-family detached residential development. This designation accommodates typical lot sizes ranging from 10,000 to 8,000 square feet.</p>
Medium Density Residential	<p><b>Medium Density Residential (6.1–15.0 dwelling units per acre).</b> This residential land use category accommodates a range of residential housing types, including single-family attached, single-family detached, patio homes, duplexes, townhomes, multiple-family, and mobilehome projects.</p>
High Density Residential	<p><b>High-Density Residential (15.1–30dwellingunitsperacre).</b> Typical development in this category would include duplexes, townhomes, and apartments. Hotels and motels are also permitted up to 43 rooms per net acre (up to 86 rooms per net acre permitted on Indian Land) as long as they are consistent with the design and character of the surrounding neighborhoods and do not create significant design, parking, or traffic impacts to the surrounding residential neighborhood.</p>
Tourist Resort Commercial	<p><b>Tourist Resort Commercial (0.35 FAR for stand-alone commercial uses; 43 hotel rooms per net acre; 86 rooms per net acre on Indian Land).</b> This land use designation provides for large-scale resort hotels and timeshares including a broad range of convenience, fitness, spa, retail, and entertainment uses <b>principally serving resort clientele</b>. Commercial recreation and entertainment facilities, such as convention centers, museums, indoor and outdoor theatres, and water parks are included in this designation, but should be designed to be compatible with neighboring development. Tourist Resort Commercial facilities are most appropriate in the Palm Canyon Drive and Tahquitz Canyon Drive corridors. <b>It is intended that the primary use in any Tourist Resort Commercial area shall be hotel/tourist-related uses; if residential uses are proposed within the Tourist Commercial Designation (timeshares, condominiums, etc.) they shall be a secondary use ancillary to the proposed hotel uses and shall not exceed a maximum of 30 dwelling units per acre.</b> Permanent residential uses and commercial activities are allowed subject to approval of a planned development district. [bold print emphasis added]</p>
Small Resort Hotel Commercial	<p><b>Small Hotel Resort Commercial (15 hotel rooms per net acre; 10 dwelling units per acre).</b> This designation applies to <b>areas with smaller-scale, boutique type hotels</b> that are typically found in the Warm Sands and Tennis Club neighborhoods. It is intended that the tourist resort character of these neighborhoods be preserved; as a result, <b>new residential uses or conversion of small hotels to residential uses are permitted</b> as long as they comply with the conversion requirements outlined within the City's Zoning Code. <b>Stand-alone retail and commercial uses are not permitted in this land use designation.</b> Ancillary commercial uses such as a gift shop associated with a small hotel use are allowed. [bold print emphasis added]</p>
Neighborhood Community Commercial	<p><b>Neighborhood/Community Commercial (0.35 FAR).</b> Areas designated as Neighborhood/Community Commercial provide an opportunity for convenience commercial uses that serve adjacent residential neighborhoods. The commercial opportunities created under this designation are intended to be an integrated element of the neighborhood, providing to nearby residents services such as dry cleaners, grocery stores, bakeries, bank and post office branches, bookstores, drugstores, and smaller-scale restaurants. Harmonious relationships between these commercial uses and adjacent residential uses shall be achieved through compatibility of site design, building scale, pathways and circulation design, and architectural treatment of structures. [bold print emphasis added]</p>
Regional Commercial	<p><b>Regional Commercial (0.50 FAR).</b> Regional Commercial areas are intended to provide for large-scale commercial uses that serve an area larger than the City boundaries. Allowable uses include department stores, theatres, and restaurants. Uses such as automobile dealerships that have a regional draw are also included in this land use designation. These uses are generally located in areas that will benefit from a higher level of exposure to residents located outside of the City, such as properties located on Ramon Road adjacent to the City limits and selected properties adjacent to the I-10. [bold print emphasis added]</p>
Central Business District Mixed-Use District	<p><b>Central Business District (1.0 FAR; 21–30 dwelling units per acre).</b> Bounded approximately by Ramon Road, Calle Encilia, Alejo Road and Belardo Road, the Central Business District designation allows for a mix of commercial, residential, and office uses at a higher concentration, density, and intensity than in other areas of the City. The CBD serves as the main activity center and cultural core of the community and, as such, theatres, museums, retail, and other entertainment venues are encouraged here. [portion of text deleted]. The Central Business District is subdivided into zones or areas that provide for diversity in development standards and land use intensities. These subareas are defined in Appendix A, <i>Downtown Urban Design Plan</i>. [portion of text deleted – see page 2-7 of Land Use Element for full text.] [bold print emphasis added]</p>
Mixed-Use Multi-Use	<p><b>Mixed-use/Multi-use (Maximum of 15 dwelling units per acre for residential uses and a maximum 0.50 FAR for nonresidential uses).</b> Specific uses intended in these areas include community-serving retail commercial, professional offices, service businesses, restaurants, daycare centers, public and quasi-public uses. <b>Residential development at a maximum density of 15 units per acre is permitted; planned development districts may allow residential densities up to 30 du/acre</b> and also ensure that all proposed uses are properly integrated and allow the implementation of development standards that are customized to each site.</p>

**TABLE OF RESIDENTIAL ZONES – PALM SPRINGS**

Submitted by: Judy Deertrack to the PDD Study Group (November 2016)

ZONE	PROHIBITED USE	DENSITY	LOT AREA MINIMUM	LOT COVERAGE	HEIGHT	LOT DIMENSIONS	DISTANCE BETWEEN BLDGS	GEN PLAN COMPATIBLE
G-R-5 (SFR) 92.00.00								
G-R-5 (SFR) 92.00.03	MFR	4,000 SF Per Room	5 Acres	20%	15 FT 1 Story <sup>1</sup>	165W 165D	15 FT	EST. RES. (0-2 du/ac)
R-1 (SFR) 92.01.00								EST. Res (0-2)
R-G-A (MFR) 92.02.00								VLDR (2-4)
R-G-A (06) 92.02.03	SFR only with R-I-C (10,000)	7,000 SF pdu	2 Acres	50% LSC & 92.02.03(E)	15 FT <sup>2</sup>	165W 165D	15 FT (or adj Height)	LDR (4-6 du/ac)
R-G-A (08) 92.02.03	SFR only with R-I-C (10,000)	5,000 SF pdu	2 Acres	50% LSC & 92.02.03(E)	15 FT	165W 165D	15 FT (adj for Height)	MDR (6-15 du/ac)
R-2 (MDR) 92.03.00	Limited MFR Zone. The R-2 zone is intended to provide for the development of medium-density multiple-family residential uses. MDR (MFR) Homes and Hotels (No more than 10% with kitchens). Commercial prohibited. MHP prohibited. SFR (20,000 SF min lot size).							
R-2 (MDR) 92.03.03	SFR only with R-I-A (20,000)	3,000 SF pdu	20,000 SF	50% LSC 30% (18' +)	24 FT 2 Stories	130S 150D	See R-3 92.04.03(F)	MDR (6-15 du/ac)
R-3 (MFR) 92.04.00	The R-3 Zone is intended to provide for the development of high density apartments, hotels and similar permanent and resort housing and certain limited commercial uses directly related to the housing facilities. (20% limit on commercial w/in hotels) Restaurant w/in hotels							
R-3 (MFR) 92.04.03	SFR	Hotel 1,000 pdu MFR 2,000 pdu	20,000 SF	45% LSC	24 FT (HRO) <sup>3</sup> 2 Stories	130W 150-175D	15/30 FT (In No Case)	HDR (15-30 du/ac)
R-4 (MFR) 92.05.00	Large-scale hotel and multiple-family residential zone. The R-4 zone is designed to provide for the development of large-scale hotel complexes, hotels and multiple-family dwellings.							
R-4 (MFR) 92.05.03	SFR See 92.04.02	Hotel 1,000 pdu MFR 1500 pdu	2 Acres	45% LSC	30 FT (HRO & HS)	130W 155D	15 FT	HDR (15-30 du/ac)
R-4-VP 92.06.00	The R-4-Vehicle Parking zone is designed to provide for the development of large scale hotel complexes, hotels and multiple-family dwellings; alternate off-street parking areas for C-1AA uses and limited extension of commercial uses constructed in the C-1AA zone.							

Guest Ranch Zone: Resort hotels and guest ranches on large suitable sites; on flat or gently sloping land, with limited commercial uses

Five SFR zones have been established to provide a variety of low-density housing types and neighborhoods. Min. Lot Area (SF): R-1-AH (20,000); R-1-A (20,000); R-1-B (15,000) R-1-C (10,000); R-1-D (7,500) | Height: 12 FT, 35% Cover

Garden Apartment and Cluster Residential Zone: Two (2) R-G-A (R-G-A(6) and R-G-A(8)) zones are designed to provide for the development of low-density multiple-family residential uses.

<sup>1</sup> Hillside Lots: Building Height Exceptions per 94.06.01

<sup>2</sup> Height of 15 feet except 24 feet allowed (2 stories), provided that limitations on coverage and setbacks are met.

<sup>3</sup> HRO = High Rise Ordinance. Exceptions for height where R-3 abuts R-1; limits to hotel heights; High Rise subject to 93.04.00 (HRO) and 94.02.00 (CUP).

**TABLE OF COMMERCIAL ZONES – PALM SPRINGS**

Submitted by: Judy Deertrack to the PDD Study Group (November 2016)

ZONE	PROHIBITED USE	LOT AREA	LOT DIMENSIONS	SETBACKS	OPEN SPACE	FLOOR AREA (FAR)	HEIGHT	GEN PLAN COMPATIBLE
Professional 92.08.00	Professional Zone. The "P" zone is intended to provide for the development of a professional district with necessary related retail commercial uses and other compatible facilities.							
Professional 92.08.00	IND, RES. Most RETAIL	20,000 SF	130W 150D	See Standards	40%	Gen Plan Designation	24' / 2 stories High-Rise Ord.	CBD, MU, REG. Sm. Hotel (C)
C-B-D 92.09.00	<b>Central Business District Zone.</b> A. The C-B-D zone is intended for the central business district, primarily retail business in character, with related hotels, multiple-family dwellings, and service, office, cultural and institutional uses. The central business district is intended to be a compact, lively, active, intensively used area catering to the pedestrian. Planted walkways, covered walks and open plazas that provide for sitting, dining, conversing, gathering and window shopping are permitted and encouraged. B. Historic Village Center identified by sections. (Reference)							
C-B-D 92.09.03	SFR	9,600 SF	75W 128D	See Standards	30%C 45% R & H	1.0 FAR	30 FT High-Rise Ord.	<b>CBD</b>
C-D-N 92.10.00	<b>Designed Neighborhood Shopping Center Zone.</b> The C-D-N zone provides an opportunity for convenience commercial uses to be oriented directly to the residential neighborhood they serve by means of a planned commercial complex. The shopping centers established under this zone are intended to be an integrated element of the neighborhood and to promote a harmonious relationship between convenience services and the residential environment through compatibility of site design and architectural treatment of structures. The C-D-N zone will not be granted until a conditional use permit has been granted and all conditions complied with.							
C-D-N 92.10.03	Residential & Hotels	Between 10-30 Acres	450W 450D	See Standards	NA	Gen Plan Designation	30 FT No High-Rise	<b>NCC</b>
C-S-C 92.11.00	<b>Community Shopping Center Zone (Highway Frontage 500').</b> The C-S-C zone is designed to combine the general variety of community-level commercial services, in a planned shopping complex. The organization of services into a coordinated and interrelated complex is found to be a desirable alternative to scattered strip commercial development. Minimum 500' frontage on a major or secondary highway.							
C-S-C 92.11.03	Residential Not Otherwi Allowed	Between 15-60 Acres	500' Fronting Highway	See Standards	NA	Gen Plan Designation	30 FT High-Rise Ord.	<b>TRC, REG., MIXED USE</b>
C-1 Retail 92.12.00	<b>Retail Business Zone.</b> The C-1 zone is intended as a business district, primarily retail business in character, with related hotels, service, office, cultural and institutional uses.							
C-1 Ret./Hotel 92.12.03	SFR By Com Deter.	20,000 SF BLDG: 2,000	100 FT Frontage	See Standards	30% LSC	Gen Plan Designation	30 FT High-Rise Ord.	<b>TRC, HOTEL REG. &amp; MU</b>
C-1-AA 92.13.00	<b>Large-Scale Retail Commercial.</b> This C-1AA zone is designed to provide for the integration of large-scale retail commercial development with resort hotel complexes, hotels and multiple-family dwellings. MFR and Hotel allowed. SFR Prohibited							
C-1-AA 92.13.03	SFR By Com Deter.	2 Acres BLDG: 5,000	NA	See Standards	30% LSC	Gen Plan Designation	30 FT High-Rise Ord.	<b>REGIONAL MIXED-USE</b>
C-2 92.14.00	<b>General Commercial Zone.</b> The C-2 zone is intended for general commercial use.							
C-2 92.14.03	SFR By Com Deter.	20,000 SF BLDG: 2,000	Use C-1	See C-1 Standards	30% LSC	Gen Plan Designation	30 FT High-Rise Ord.	<b>REGIONAL MIXED-USE</b>

**PALM SPRINGS GENERAL PLAN PROVISIONS  
FOR UTILIZING THE PLANNED DEVELOPMENT DISTRICT (PDD)**

"Planned development districts are mechanisms to provide flexibility in the application of development standards that would yield a more desirable and attractive project than would otherwise be possible with strict application of the underlying zoning regulations." (FLEXIBILITY FOR AESTHETICS AND DESIGN)

"Planned development districts enable property owners to apply modified development standards (e.g., an increase in buildable area or building height or adjustments to setbacks) that are different than those identified in the Zoning Code, if the project can mitigate any impacts that would be generated by the modifications." (MITIGATION REQUIRED)

"All Planned Development Districts shall be consistent with the General Plan." (GEN PLAN CONSISTENCY REQ.)

a. Provide a mechanism to allow the permitted building area, floor area ratios, and building heights to exceed provisions specified by land use policy.

b. Provide a mechanism for allowing both on- and off-site density transfers.

c. Provide a mechanism for the consolidation of adjoining commercially and residentially designated parcels into a single site, if they are designed as part of a unified development project.

d. Provide a mechanism for determining the appropriate type, character, density/intensity, and standards of development for the reuse of sites currently used for public or private institutions.

e. Provide a mechanism for creative, high quality projects that are evaluated as a whole, rather than against individual standards.

**Central Business District (1.0 FAR; 21–30 dwelling units per acre).**

"If projects in these areas [Appendix A, Downtown Urban Design Plan] provide substantial public spaces or plazas, a FAR of up to 4.0 may be developed upon approval of a Planned Development District or Specific Plan. The Downtown Central Core may also accommodate up to 70 dwelling units per acre for residential or hotel uses if a Planned Development District or Specific Plan is prepared and approved."

GP ELEMENT  
AND PAGE #

RELATIONSHIP  
TO OTHER  
PLANS AND  
PROGRAMS –

Planned  
Development  
Districts

Admin Element  
Page 1-18

MIXED-USE  
DISTRICT  
C-B-D

Land Use  
Element  
Page 2-7

**GENERAL PLAN POLICIES / ANALYSIS GRID FOR PDD ORDINANC 94.03.00  
SECOND PAGE**

<p>MIXED-USE MULTI-USE DISTRICT</p> <p>Land Use Element Page 2-7</p>	<p><b>Mixed-use/Multi-use (Maximum of 15 dwelling units per acre for residential uses and a maximum 0.50 FAR for nonresidential uses).</b>                      *Residential development at a maximum density of 15 units per acre is permitted; planned development districts may allow residential densities up to 30 du/acre and also ensure that all proposed uses are properly integrated and allow the implementation of development standards that are customized to each site."                      *Additional information related to the location and desired mix of uses can be found at page 2-30 of the Land Use Element.</p>								
<p>Housing Element Page 3-31</p>	<p><b>Table 3-13: Zoning and Residential Land Use Designations and Associated Regulatory Processes.</b>                      *All housing types can be allowed in any designation, with approval of a Planned Development Permit in lieu of a zone change. (Asterisk statement at bottom of Table)</p>								
<p>Housing Element Page 3-38</p>	<p><b>Planned Development (PD).</b> "The Zoning Code allows PD districts to foster and encourage innovative design, variety, and flexibility in land use and housing types that would not otherwise be allowed in zoning districts."                       "Density under the PD district is allowed by zoning and the General Plan, but may be increased if the district assists the City in meeting its housing goals as set forth in the Housing Element."</p>								
<p>Table 3-15 Housing Regulatory Incentives HE Page 3-38</p>	<p>"The form and type of development on the site must be compatible with the existing or planned development of the neighborhood. The PD requires approval by the Planning Commission and City Council."</p> <table border="1" data-bbox="1141 206 1300 1899"> <thead> <tr> <th data-bbox="1141 1400 1204 1899">Density</th> <th data-bbox="1141 974 1204 1400">Open Space</th> <th data-bbox="1141 593 1204 974">Lot Area</th> <th data-bbox="1141 206 1204 593">Parking</th> </tr> </thead> <tbody> <tr> <td data-bbox="1204 1400 1300 1899">PDD - Limited by General Plan</td> <td data-bbox="1204 974 1300 1400">PDD - No Limit</td> <td data-bbox="1204 593 1300 974">PDD - No Limit</td> <td data-bbox="1204 206 1300 593">PDD - No Limit</td> </tr> </tbody> </table>	Density	Open Space	Lot Area	Parking	PDD - Limited by General Plan	PDD - No Limit	PDD - No Limit	PDD - No Limit
Density	Open Space	Lot Area	Parking						
PDD - Limited by General Plan	PDD - No Limit	PDD - No Limit	PDD - No Limit						



**ORDINANCE LANGUAGE (CITY OF PALM SPRINGS ORDINANCE 94.03.00 (PD))**

**ANALYSIS GRID FOR PDD  
ORDINANCE 94.03.00**

Purpose, Function, and Parameters of Use when Altering Development Standards

PURPOSE STATEMENT	Various Types of Land Use	<p><b>Purpose.</b> The planned development district is designed to provide various types of land use which can be combined in compatible relationship with each other as part of a totally planned development.</p>
INTENT OF THE DISTRICT	General Plan Compliance	<p><b>Purpose.</b> It is the intent of this district to insure compliance with the general plan and good zoning practices while allowing certain desirable departures from the strict provisions of specific zone classifications.</p>
CONFORMITY FINDINGS	CONFORMITY WITH GENERAL PLAN	<p><b>B. Uses Permitted.</b> The planning commission and city council shall find that the proposed uses as shown on the preliminary development plan for the PD are in conformity with the required findings and conditions as set forth in Section 94.02.00 (Conditional use permit), the general plan and sound community development.</p>
MULTIPLE HOUSING TYPES	DENSITY DOES NOT EXCEED GEN PLAN	<p><b>B.1. Planned residential development districts may include a multiplicity of housing types; provided, the density does not exceed the general plan requirements.</b></p>
INCREASE IN HOUSING DENSITY	HOUSING GOALS	<p><b>B.1. Housing density may be increased in conformance with state and local regulations if the district assists the city in meeting its housing goals as set forth in the housing element of the general plan.</b></p>
DEVELOP. FORM & TYPE	COMPATIBLE SURROUND.	<p><b>B.1. The form and type of development on the PD site boundary shall be compatible with the existing or potential development of the surrounding neighborhoods.</b></p>
MULTIPLICITY OF USES	USES CONFORM TO GEN PLAN & SUBJECT ZONING	<p><b>B.5. Planned development districts may include a multiplicity of uses; providing, the proposed uses are permitted by the subject zoning and/or general plan regulations.</b></p>

DEVELOP. FORM & TYPE	COMPATIBLE SURROUND.	B.5. The form and type of development on the site boundary shall be compatible with the existing or potential development of the surrounding neighborhoods.
DEVELOP. STANDARDS FULL RANGE	PLAN COMM & CITY COUNCIL	C. Property Development Standards. The planning commission and the city council shall establish a full range of development standards appropriate to the orderly development of the site which shall include the following:
DEVELOP. STANDARDS	HEIGHT	C.1. Building heights shall conform to the requirements of the underlying zoning district. Structures which exceed permitted heights shall be subject to the requirements of Sections 93.03.00 and 93.04.00.
DEVELOP. STANDARDS	PARKING	C.2. Parking and loading requirements shall be subject to the requirements of Sections 93.06.00 and 93.07.00, respectively. The planning commission and the city council may modify such requirements based upon the submittal of a specific parking plan.
DEVELOP. STANDARDS	SETBACKS (Front Yard)	C.3. Front yard setbacks compatible with the existing or potential development adjacent and/or opposite from existing development shall be required to provide for an orderly and uniform transition along the streetscape to preserve, protect and enhance the properties adjacent to the proposed PD.
DEVELOP. STANDARDS	MINIMUM LOT FRONTAGE	C.4. Minimum lot frontage not less than that of existing lots adjacent and/or opposite from existing developments shall be required to provide for an orderly and uniform transition along the streetscape to preserve, protect and enhance the properties adjacent to a proposed PD.
DEVELOP. STANDARDS	OPEN SPACE (Equal to or Greater Than)	C.5. Open space for planned districts shall be equal to or greater than the minimum open space requirement for the zone in which the planned district is located, unless otherwise approved by the planning commission and city council. Recreational areas, drainage facilities and other man-made structures may be considered to meet a part of the open space requirements.
DEVELOP. STANDARDS	ENVIRON.	C.5.a. Protection of natural landscape features such as watercourses, hillsides, sensitive land area, existing vegetation, wildlife, unique topographical features, and views shall be encouraged. Open spaces shall be integrated into the overall design of the project.
DEVELOP. STANDARDS	OPEN SPACE Co / In / MU	C.5.b. Open space for commercial, industrial and mixed uses shall be determined by the development plan approved by the planning commission and city council.

**ANALYSIS GRID FOR VERY LOW DENSITY RESIDENTIAL**

GP ELEMENT AND PAGE #	ZONE	DENSITY RANGE	LOT SIZE	LOT AREA COVERAGE	OPEN SPACE	MAXIMUM HEIGHT	HOUSING TYPE
LUE VLDR 2-5		2-4 du/ac	8,500-16,500 sf				SFR Detached
APPE BRIDGE E-1 & 2 VL RESIDENTIAL					VLDR= 70% OS On-Site Recreation Area	Max. 26 feet Setbacks=Height	SFR= Primary LU 1/2DU per lot Limit Commercial
APPE BRIDGE E-10 & 11 Density/Intensity L 1 / 2 VL Density		1-2 du/ac				Max. 26 feet Hillside 30 feet	
HOUSING 3-29 TABLE 3-12 Primary Res. LU Designations	R-1	2 - 4 du/ac					SFR on large lots 1/2 acre or larger ----- All housing types allowed with PDD
HOUSING 3-34 Development Standards	VLDR SFR allowed in G-R-5 and R-1		7,000-20,000 sf				SFR
HOUSING 3-35 TABLE 3-14 Primary Res. Dev. Standards	R-1	4 du/ac Max. Density determined by Gen Plan LUD	7,500-20,000 sf		No Open Space Development Standards	One-story (18')	
HOUSING 3-38 TABLE 3-15 Waiver Provisions For PDD's		Density Limited by General Plan		No Limit to Reduction in Standards with PDD	No Limit to Reduction in Standards with PDD		

**ORDINANCE LANGUAGE (CITY OF PALM SPRINGS ORDINANCE 94.03.00 (PD))**

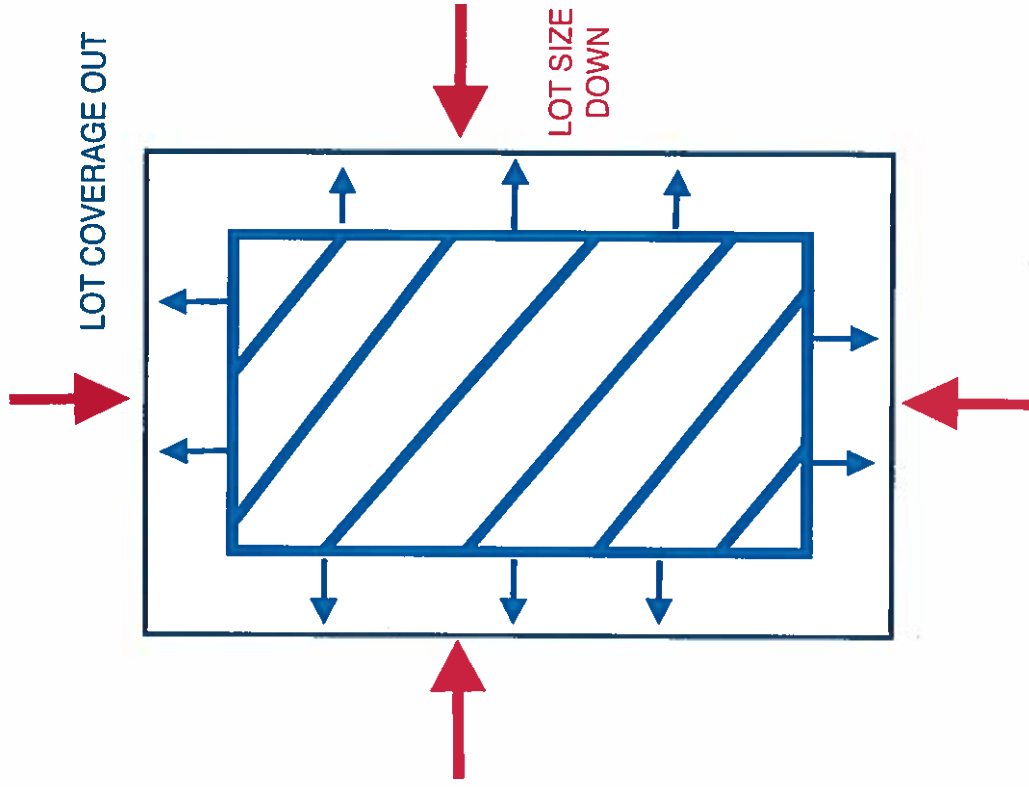
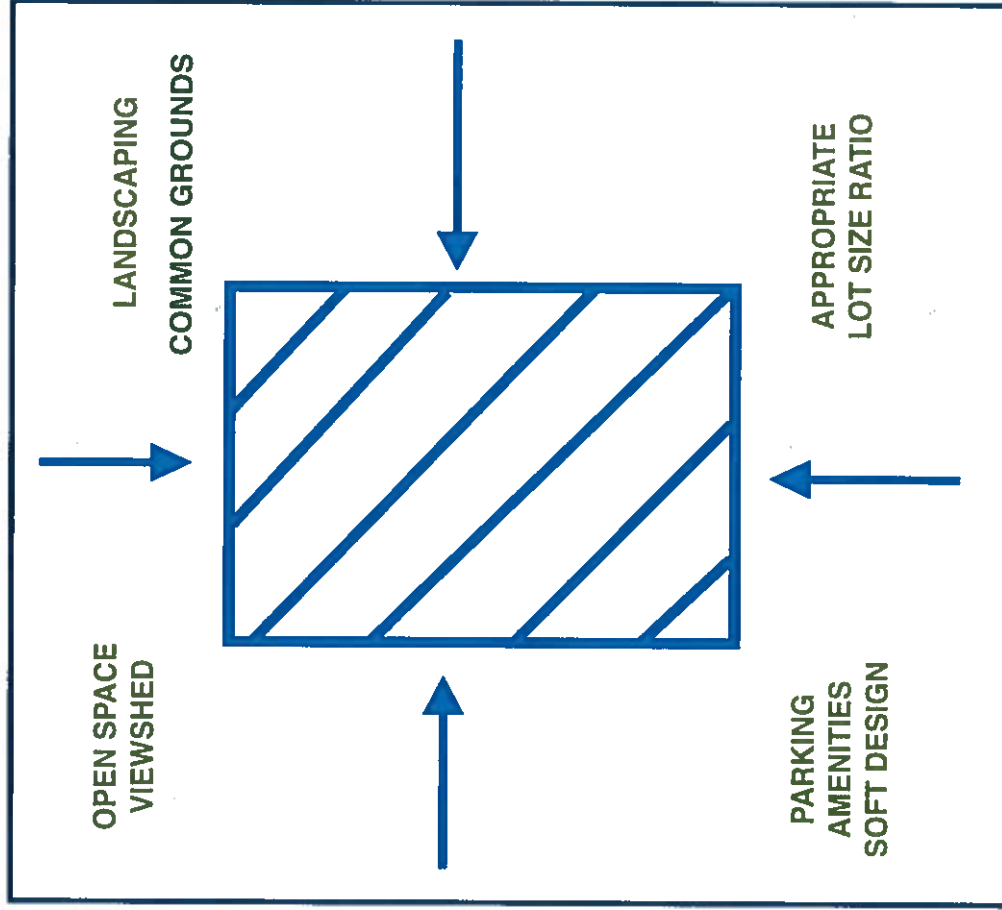
**ANALYSIS GRID  
ORDINANCE 94.03.00 (PD)  
PROVISIONS FOR EXTENSIONS OF TIME**

Extensions of Time

EXTENSIONS OF TIME	2 Years to File Final Plan Null and Void	H. If, within two (2) years after the date of approval by the city council of the preliminary development plan, the final development plan, as indicated in Section 94.03.00(I), has not been approved by the planning commission, the procedures and actions which have taken place up to that time shall be null and void and the planned development district shall expire. (continued – Good Cause)
EXTENSIONS OF TIME	Good Cause Extension (Final Plan)	H. Extensions of time may be allowed for good cause.
EXTENSIONS OF TIME	Six Months Substantial Construction Null and Void	I. Termination of Planned Development District. 1. If the owner or owners of property in the planned development district have not commenced substantial construction within six (6) months from the date of the final development plan as approved by the planning commission or within the time set by planning commission or city council approval, the planned development district shall become null and void. (continued – Good Cause)
EXTENSIONS OF TIME	Good Cause Extension -- Construction	I. Termination of Planned Development District. 1. For good cause shown by the property owner, the planning commission may extend the six (6) month period required for commencing construction.
EXTENSIONS OF TIME	Termination -- Cessation of Development (2 years)	I. Termination of Planned Development District. 2. For any phased planned development, cessation of development for a period of two (2) years or more shall require planning commission review and approval prior to further development of the district unless part of an approved development agreement.
EXTENSIONS OF TIME	No Termination -- DDA Substantial Construction	I. Termination of Planned Development District. 3. Planned development districts which are approved in conjunction with an approved disposition and development agreement (DDA) and/or subdivision map shall not terminate if substantial construction has commenced prior to the termination of the DDA and/or subdivision map.
EXTENSIONS OF TIME	Reversion to Prior Zoning	L. Reversion to Previous Zoning. Any PD which has not started construction within the time constraints of this Zoning Code shall revert to the original zoning designation and the designation shall be removed from the zoning map.

# DOWN AND OUT AND UP

THE SPATIAL ORIENTATION OF LOT RATIO



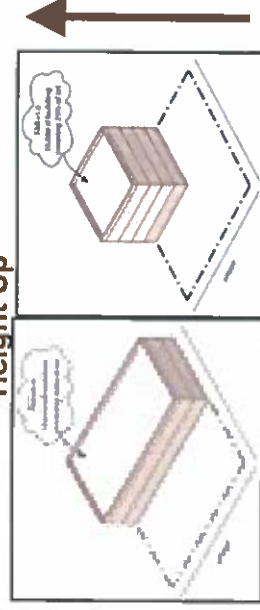
"THE LOT SQUEEZE"

LOT SIZE DOWN  
BUILDING COVERAGE OUT  
HEIGHT UP

THE "SQUEEZE" REDUCES RESIDENTIAL DENSITY BECAUSE IT IS USED FOR SMALL LOT SFR IN PLACE OF MFR

THE ABSENCE OF TRADITIONAL ZONING PROTECTIONS LOT RATIOS / TRADE-OFFS BETWEEN HEIGHT & OPEN SPACE

Height Up



## APPENDIX D

### THE GENERAL PLAN PLANNING FOR THE GENERAL WELFARE

#### THE OBLIGATION TO PLAN FOR THE GENERAL WELFARE

It is fair to say most of the general public are not familiar with the mechanics underlying local land use authority. The question is to what extent communities act in a relatively unconscious manner toward the prominent issues they face on a daily basis. How does planning make its decisions, and what factors drive the balance between competing interests? What bounds have been placed upon the exercise of these powers?

To know that cities operate through zoning, variances, conditional use permits, and general plan hierarchies is not the same as understanding how to achieve the delicate balance between nature and built environments; or how to blend aesthetic and utilitarian ends toward a community harmony; or how to serve rich and poor and build upon a sense of community equity. These questions involve the deep ethics of planning. They make the trade an art form if that is a community's state of mind and mission.

At some point planning broke from the restrictive role of *community guardian in the allocation of land permits*—admittedly to pursue a greater calling. That “calling” concentrates upon regulatory powers granted to the planning profession that set reasonable constraints upon development, and bend its design and function to a community end.

What may not be appreciated is how historically rooted those limitations are, stretching back to the Constitution and delimited by social ideas that travel in seemingly contradictory directions: what guidelines help a municipality identify undue government interference with *private property rights*; what guidelines help us understand the *municipal planning obligations* that restrict the unlimited exercise of property rights?

The general welfare clause underlying the police power assumes that as much as the general public needs protection from undue regulation, communities need the administrative structure of government, with its organizational capacity, its pooled talent, its resources, and legal mandates in order to function as a viable society.

Implicit in this regulation and constraint upon private rights is the idea that market forces are in no way equipped to create urban function, and that, in point of fact, market driven development has led the country into an urban crisis which planning is now called upon to alleviate and to re-form with a new idea of the built environment. The challenge is to reshape the idea of city form to a model which encompasses both ends on the scale of justice—that of individual freedom, while maintaining municipal responsibility.

#### THE EVOLUTION OF PLANNING

The structure of planning has gone through two distinct evolutions (or perhaps better said, revolutions) within the Twentieth Century. The first commenced with the enactment of the Standard Zoning Enabling Act in New York City in 1916, and the consequent growth of city and county planning departments throughout the United States.

The second evolution became public by the 1960's, and took legislative form by the 1970's with the later introduction of the Standard Planning Enabling Act (SPEA), in which planning evolved over decades from a basic zoning approach to a change of status in the general plan from advisory document to constitutional framework. As the data will show later in this report, a small series of states (including California) liberalized their planning laws to become leaders in Smart Growth.<sup>1</sup> This second development formalized general plan objectives into legally enforceable public responsibilities.

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<sup>1</sup> “Smart growth is an approach to development that encourages a mix of building types and uses, diverse housing and transportation options, development within existing neighborhoods [infill] and community engagement.” The movement has incorporated ten principles considered to be the foundation of a smart growth approach. See: [www.smartgrowthamerica.com](http://www.smartgrowthamerica.com)

The planning process itself is now subject to administrative review by higher courts, with all of the consequent evidentiary, procedural, and informational due process requirements that attend legislative/quasi-judicial functions.

## THE INCEPTION OF ZONING

Prior to 1916, city developers were relatively unconstrained in their choices, except for standardized health and safety codes that addressed issues such as fire hazards, building safety, light, air, and basic principles of hygiene that arose from public outcry to urban blight. Beyond these limited powers, government had little authority to interfere in land issues or the development of city form. It was left almost entirely to private market forces.

The first attempt to systematically regulate land use was in 1916 when New York passed its Standard Zoning Enabling Laws. The zoning model caught on quickly across the United States, and was enacted through state governments in a majority of states within the decade. Authority to regulate land use and create zoning classifications was delegated to local governments, with broad discretionary powers. State government powers were limited by practice to the enabling acts themselves, and the states found little reason early in the twentieth century to intervene in local government regulation.<sup>2</sup>

This delegation occurred through a construction of the police powers granted to municipalities to govern for the health, safety, and general welfare of their respective communities. District, city-wide, and regional authority over land use was rarely created under the zoning approach.

The grant of constitutional authority is circumscribed in the *State Zoning Enabling Act* to the legitimate zoning purposes recognized by government. Municipalities are granted the regulatory power to meet capital facility requirements and provide other public requirements incidental to municipal governance, such as adequate provision for roads, water, sewage, schools, parks, and other public requirements. The state enabling laws are subject to litigation under constitutional guidelines and due process notions of equity and fairness.

Later, the purposes and ends of regulation were broadened under *State Planning Enabling Act*, which responded to the municipal objectives that could not be addressed through zoning. This additional grant of authority assisted communities in strengthening the *general welfare* objectives.

Their ultimate form today is expressed in the general plan and covers an array of subject matter incidental to land use authority, including standards on regional housing needs, regional transportation, environmental protection, community aesthetics and design, and growth management, to name a few. Planning municipalities currently exercise their powers under four broad headings: regulation, land purchase, eminent domain, and taxation.

The real import to planning remains in the educational adjustment needed to enter this relatively new administrative system. In every important planning action, the planner must be aware that the decision, in order to be viable as a proper exercise of authority, must relate back to the enabling statutes and their constitutional framework as identified by the courts. This framework should be as familiar to us as the planning tools we use, because those tools have been drafted from, and must conform to, the broader requirements of the law.

## A LOOK AT EARLY ZONING

Zoning was originally restricted to a "two-dimensional system" (type and intensity of use) that is commonly referred to as Euclidean Zoning, a term derived from the 1926 Supreme Court decision, *Euclid v. Ambler Realty Company*.<sup>3</sup> The components of Euclidean zoning are strict segregation of land use in four typical categories; namely, agricultural, residential, commercial, and industrial.

The primary characteristics that divide these categories refer back to the two dimensions of zoning--*type and intensity of land use*. Implied within the choice to segregate land uses is the notion of their inherent

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<sup>2</sup> See: *150 Years of Land Use: A Brief History of Land Use Regulation, California Sesquicentennial 1850 - 2000*. James Longtin, (1999) for a general description of this process.

<sup>3</sup> *Euclid v. Ambler Realty Company* 272 US 365 (NY Ct App 1926).

incompatibility. Under traditional property concepts, this would be the law of private or public nuisance--or the intrusion and trespass at the neighborhood level of one use of property upon the other in a noxious or unacceptable manner.

As simplistic as this early system may seem to us now, zoning powers were revolutionary for their time. Developer control over the built environment went relatively unchallenged until public outcry over neglected municipal responsibilities led to reform.

Early planning practice and legal standards concentrated almost exclusively upon zoning compliance (or the "fit" within exclusive and tiered districts), with a scarcity, if not a complete absence, of planning controls over district and neighborhood characteristics, infrastructure readiness, environmental impact, public service provision, and design. The "planning toolbox" allowing innovation, the scope of municipal power to prioritize district plans, the judicial standards needed to enforce the general welfare – none of this existed in planning practice or law until the planning revolution of the late 1960's.

Two events, the publication of the *Douglas Commission Report* on urban blight in 1969,<sup>4</sup> and the United States Supreme Court decision, *Golden v. Ramapo*<sup>5</sup>, turned the tide against conventional zoning and planning.

## THE LIMITATIONS OF ZONING

### MUNICIPAL V. REGIONAL CONTROL

For a span of almost fifty years after introduction of the Standard Planning Enabling Act (SPEA) in 1928, planning decisions remained virtually unexamined by the appellate courts. In the interim, symptoms of land waste and inner urban decay were beginning to show in a pattern of *urban blight*. One of the first broadly published descriptions of this ill came from the release of a comprehensive government report issued by the Douglas Commission in 1969.<sup>6</sup>

The Douglas Commission Report highlighted a number of problems with planning that had contributed to urban decay.<sup>7</sup> The Report had a national impact, because it was the first time the general public had full access to a documented description of the urban ills they struggled with. The Douglas Commission addressed the jurisdictional problems with planning, and the difficulty of establishing regional control over land resources:

*"Today a basic problem results because of the delegation of the zoning power from the States to local government of any size. This often results in a type of Balkanization, which is intolerable in large urban areas where local government boundaries rarely reflect the true economic and social watersheds.*

*The present indiscriminate distribution of zoning authority leads to incompatible uses along municipal borders, duplication of public facilities, and attempted exclusion of regional facilities."*<sup>8</sup>

### PLANNING AT THE LEVEL OF THE NEIGHBORHOOD LOT: THE GAP HYPOTHESIS

Daniel Mandelker<sup>9</sup> wrote prolifically on the zoning problems during the time planning made its change from Euclidean zoning to modern day planning. Mandelker concentrated upon two components of zoning that restrict its regional character: *the first is its geographic orientation*. Because zoning is historically linked to the development of nuisance law, (which focuses upon the neighborhood as the spatial unit) it had been difficult for zoning to develop a district, city-wide, or regional orientation.

<sup>4</sup> *Douglas Commission, Report of the National Commission on Urban Problems, Building the American City* (1969).

<sup>5</sup> *Golden v. Planning Board of the Town of Ramapo* 285 N.E.2d 291 (NY Ct App) 1972

<sup>6</sup> *Douglas Commission, Building the American City, supra.*

<sup>7</sup> *From Sprawl to Smart Growth*, Robert H. Freilich, American Bar Association (ABA), 1999, p. 3.

<sup>8</sup> *Douglas Commission, Building the American City, supra, p. 19.*

<sup>9</sup> Daniel Mandelker is a Howard A. Stamper Professor of Law at Washington University, lectures throughout the world, publishes prominent national land use treatises, and is one of the country's foremost scholars in land use and environmental law. Mandelker's scholarship was particularly powerful during the 1960's and 1970's. [www.law.wustl.edu](http://www.law.wustl.edu)



Mandelker addressed this as the inherent *conflict* between zoning and the general plan. His emphasis shifted somewhat from the Douglas Commission. The Commission had concentrated upon the municipality as it related to regional concerns. Mandelker addressed an even smaller land use unit—the lot at the neighborhood level, and its relation to the municipality:

*"The land use map of the comprehensive plan is a generalized indication of future land uses and densities. The zoning map is a detailed indication of legally permitted land uses at the scale of the individual ownership."<sup>10</sup> . . . .*

*"We saw that planning and zoning took on an entirely different character when it dropped the unit of legal ownership—the lot—as the basis of planning and zoning control, and moved to the community level as the area of concern within which the exercise of planning and zoning powers was to be justified." [emphasis added]<sup>11</sup> . . .*

Although zoning contained the *legislative allocation of land uses on a community scale*, implementation was largely left to private initiative. Implementation of the ordinance depended upon the "appropriate private market response, both at the right place and at the right time."<sup>12</sup>

Mandelker described this form of planning as "*watchful waiting*," in place of directed land management. Thus, the exercise of the zoning function was predicated on a *gap hypothesis*, or "the gap between the adoption of the zoning framework and its execution in the marketplace."<sup>13</sup>

*"The plan attempted to deal with this problem [gap] by delineating a model for physical development at the neighborhood scale, but it did not provide the necessary policy linkages between the neighborhood model and the community-wide planning framework. . . . [emphasis added]*

*This omission created an ambiguity and tension in the zoning system, which found itself caught between the more specific development criteria for limited neighborhoods, and the broader developmental framework that was projected for the entire county."<sup>14</sup>*

#### THE TIMING MECHANISM AND END-STATE PLANS

Mandelker then related the geographical context of zoning to its secondary component—*timing*, and the inability to get "from here to there"—the difficulties of reconciling present versus future-based land use allocations:

*"The problem is not helped . . . by the tendency of comprehensive plans to project a fixed 'end state' as much as twenty to thirty years forward in time, with no attempt to indicate what zoning steps should be taken intermediate to the achievement of the goals ultimately projected." . . .*

*". . . . Adoption of this kind of planning strategy would have important consequences for a planning technique which has emphasized static land use proposals, with little concentration on the problem of how to get from here to there." [emphasis added] . . . .*

*"Unfortunately, the policy of watchful waiting which has especially been pursued in undeveloped and urbanizing areas has seriously qualified the use of advanced zoning techniques, and has put the emphasis on zoning change in response to private development proposals as the dominant zoning mode." [emphasis added]<sup>15</sup>*

<sup>10</sup> *The Zoning Dilemma*, Daniel R. Mandelker, Bobbs-Merrill, 1971, pg. 60.

<sup>11</sup> *Zoning Dilemma*, p. 41.

<sup>12</sup> *Zoning Dilemma*, p. 27.

<sup>13</sup> *Zoning Dilemma*, p. 27.

<sup>14</sup> *Zoning Dilemma*, p. 136.

<sup>15</sup> *Zoning Dilemma*, p. 61.

## THE CONTRIBUTION OF ROBERT FREILICH

Dr. Robert Freilich became a prominent influence in planning by the mid-1960's. By an early age, Freilich had attained five advanced degrees in planning and related fields.<sup>16</sup> Given the breadth of his education and work in planning, it is not surprising that, as the "founding father" of modern day growth-management, the field has developed such a broad regulatory scope.<sup>17</sup>

Most prominently, he is known as the author of the growth management approach that received appellate review in the lead decision, *Golden v. Planning Board of the Town of Ramapo*<sup>18</sup>, a 1972 decision credited as second only to *Euclid v. Ambler* in its implications for planning:

*"The Ramapo decision shifted the balance of power from the developer to public land use agencies. The developer no longer has an absolute right to proceed with development, irrespective of whether public facilities can reasonably accommodate the development. Instead, the developer can be made to wait a reasonable period to allow public facilities to catch up or be forced to expend funds to ripen the land for development.*

*The Ramapo decision and rationale also permanently altered the court's perception of the land use regulatory process and paved the way for subsequent decisions that have favored public regulation over the developer or landowner's immediate right to develop property (irrespective of the harm such development might inflict upon the public good)."*<sup>19</sup>

The *Ramapo* Master Plan under scrutiny by the court was heavily documented with demographics, land use trends, economic analysis, and long-range community planning. It was comprehensive in its approach, and covered four volumes. The Master Plan was under judicial scrutiny for a takings violation because it deferred development rights for an eighteen-year period of time until the municipality could correct the serious, long-term infrastructure deficiencies that had resulted from a development boom.

The Master Plan survived the takings challenge because the Town demonstrated the plan was a necessary response to the infrastructure problem. The connection of planning to capital infrastructure is the essential and primary contribution of Robert Freilich. The *Ramapo* Master Plan had several features that are now used to focus attention on the geographical and time-binding nature of the general plan, to justify its use as a "constitutional for future development."<sup>20</sup>

(1) The plan made generous provision for affordable housing; (2) it phased and timed capital improvements to meet growth projections; (3) it had rational timelines; (4) developers could opt to pay for infrastructure; (5) its innovative strategies were expected to increase the economic strength of the overall area.<sup>21</sup>

The significance of *Golden v. Ramapo* is the rare imprimatur the concept of planned development received from the United States Supreme Court, signaling the end of zoning review in isolation from the guiding mechanism of a general plan.

<sup>16</sup> By age 21, Dr. Freilich had a BA Degree in urban affairs from the University of Chicago, a JurisDoctor from Yale, and a Master's in International Affairs from Columbia University. He later received LL.M. and J.S.D. degrees from Columbia. Dr. Freilich was the long-time editor of *The Urban Lawyer*, the national journal on local government law. He specializes in revitalization of cities and by 1999 had represented more than 200 cities, counties, and states, and appeared in over 80 briefs and oral arguments before the courts on land use issues, thereby infusing the principles of "planned growth" throughout the Country. *From Sprawl to Smart Growth* (1999), Robert H. Freilich, Bibliography.

<sup>17</sup> "In 1969, the [Ramapo] town board adopted a number of land use strategies that became known as a growth management program [Ramapo at 294]. Its inventions were sophisticated, controversial, and legally dubious. Ramapo's land use devices and the courts' sanction of them are credited with accelerating the incipient growth management movement and setting the stage for smart growth." *Golden and Its Emanations: The Surprising Origins of Smart Growth*, Smart Growth Symposium (2002), Professor John R. Nolan.

<sup>18</sup> *Golden v. Planning Board of the Town of Ramapo* 285 N.E.2d 291 (NY Ct App) 1972

<sup>19</sup> *From Sprawl to Smart Growth*, supra, p. 63.

<sup>20</sup> The State of New York (Town of Ramapo) operated under a legislated "Planning Factor" approach, wherein the Master Plan was one of a combination of "factors" used in the planning deliberation.

<sup>21</sup> *From Sprawl to Smart Growth*, supra, p. 59.

## THIRTY YEARS AFTER RAMAPO - THE 2002 NATIONAL CONFERENCE

In 2002, industry figures came together in an historic symposium to celebrate the lifetime contributions of Dr. Freilich in a Tribute to the 30<sup>th</sup> Anniversary of *Golden v. Ramapo*. I have chronicled an introductory statement advanced by Professor John Nolan to give a sense of the breadth and historic character of the occasion and certainly the *Ramapo* decision itself:

*In November, 2002, the Land Use Law Center of Pace University Law School, the Government Law Center of Albany Law School, the Urban Lawyer, the National Law Journal, and the American Bar Association Section of Local and State Government Law hosted a national conference on the [Ramapo] case and its extraordinary contemporary relevance. . . .*

*The conference was a retrospective for practitioners who reflected on the debt owed the Ramapo Case for jump-starting local smart growth strategies, . . . . \*\*\*\**

*The 1972 opinion of the New York Court of Appeals was nothing short of prescient. It has been sustained by thirty years of extensive land use and regulatory takings litigation, including several recent decisions of the U.S. Supreme Court. . . . In New York, the cases that rely on *Golden v. Ramapo* are among the most influential land use cases decided by its appellate courts. \*\*\*\**

*The planning literature of the time was full of excitement about growth management, but there was little evidence on the ground of its legal adoption. . . . As a more basic matter, *Ramapo's* investment in comprehensive planning put it solidly on the 'pro-adoption' side of a debate emerging in the 1960's about the wisdom of adopting master plans in the majority of states where local governments have the option of doing so.<sup>22</sup>*

## THE INFLUENCE OF CHARLES HAAR

Professor Charles Haar wrote extensively in the 1950's and 1960's and deeply influenced the work that led to the United States Supreme Court decision, *Golden v. Ramapo*. Haar's recommendation that the general plan be legislatively adopted received serious judicial attention. A tally of modifications to state legislation conducted by the American Planning Association (APA) in 2002 show that Haar's theories of the general plan now comprise the national trend.<sup>23</sup> His work was first cited in prominent appellate court opinions in the 1960's.<sup>24</sup>

Professor Haar looked closely at the information-gathering function of the general plan as the repository of facts, analysis, and community input that would justify the broad exercise of municipal police powers. Laying a proper evidentiary foundation became critical when developers challenged delays in construction from the timing mechanism of capital facilities planning, or responded to downzoning that reduced the economic value of their property. These private property outcomes resulted from the redistribution of benefits and burdens incidental to implementing the plan.

In order to justify the property impacts, the general plan had to operate from a constitutional *hierarchy*.<sup>25</sup> In other words, planning had to be on top of the legal pyramid. Secondly, its enabling statute had to be broad enough to encompass the long-term objectives of the general plan.

The master plan, in Haar's view, "symbolized a change in the organization of the land market. Its primary justification is an assumption that the interdependence of land uses in an industrialized society makes necessary municipal controls over private property."<sup>26</sup>

<sup>22</sup> *Golden and Its Emanations: The Surprising Origin of Smart Growth*, John R. Nolan, *The Urban Lawyer*, Vol. 35, No. 1, Winter 2003.

<sup>23</sup> Discussion follows in subsequent sections.

<sup>24</sup> See: *O'Loane v. O'Rourke* 231 CA2d 774 (1965), *infra*, Section on Haar – Incorporating the Concept Into California Law. The O'Loane standards were ultimately codified in California's Government Code in 1972.

<sup>25</sup> It is noteworthy that no author, including Haar, ever explained why he used the term, "constitutional framework," to describe the general plan. The phrase may relate to the nature of the Constitution as the ultimate expression of authority to which all other laws must conform—thus, the hierarchy in planning was created.

## CHARLES HAAR – “IN ACCORDANCE WITH A COMPREHENSIVE PLAN”

The Standard Planning Enabling Act (SPEA) was drafted by the Department of Commerce in 1928. The Act provided for a Planning Commission who was empowered to formulate a “master plan” for the community. The master plan was to incorporate a zone plan to the “control of height, area, bulk, location, and use of buildings and premises.”<sup>27</sup>

This directive was somewhat incongruent, because the Standard Zoning Enabling Act (SZEa) was actually enacted prior to the planning laws. However, the language implied that zoning functions would implement the comprehensive community vision – as it related to use, height, bulk, location, and density of built structures, and only that.

Problems arose because neither the SPEA or SZEa delineated how the plan related to zoning provisions. Accordingly, courts of law had a paucity of information on how to create a constitutional basis for review. This gap affected interpretations of the balance between public welfare and private rights from state to state, and split the states on their approach to the planning decision.

Section 3 of the SZEa provided that ordinances would be drawn “*in accordance with a comprehensive plan.*” The significance of this phrase plagued the courts for years and fueled great controversy in judicial constructions. Courts could not determine whether the legislature had meant for the zoning ordinance to be a self-contained regulatory mechanism<sup>28</sup>, or subject to the independent guidance of a plan:

*“The reasoning seems to be that a comprehensive ordinance, one which blankets the entire area and is internally consistent, is automatically ‘in accordance with a comprehensive plan.’ The plan is the ordinance, and the ordinance the plan, and there is to be no nonsense about a different plan altogether—a master plan—upon which the ordinance must be formulated.”*<sup>29</sup>

Charles Haar argued forcefully for the plan to be separate and distinct from its implementing ordinances. In fact, Haar felt so strongly about the corrective role of judicial review to safeguard constitutional property rights, he could not conceive of zoning outside the context of a larger planning process, and felt the courts should prohibit zoning absent the plan:

*“It might even be argued that any zoning done before a formal master plan has been considered and promulgated is per se unreasonable, because of failure to consider as a whole the complex relationships between the various controls which a municipality may seek to exercise over its inhabitants in furtherance of the general welfare.”* (Haar at 1174)

*“[The plan] will give the courts a standard of review more sharply defined than the reasonable in vacuo test upon which they now are forced so largely to rely.”* (Haar at 1174)

## HAAR – INCORPORATING THE CONCEPT INTO CALIFORNIA LAW

Charles Haar was one of the first treatise writers to clearly articulate the function of the modern-day general plan in great detail, and particularly its legislative-judicial function. The “master plan” hierarchy was so effectively described in 1955, the basic structure of planning as he foresaw it echoes today through the language of most modern appellate decisions and state enabling clauses.

A statement of Haar’s contribution toward the evolution of the general plan can be found in the 1965 opinion, *O’Loane v. O’Rourke*,<sup>30</sup> a decision that today still stands as the leading legal statement in California on the

<sup>26</sup> *In Accordance with a Comprehensive Plan*, Charles M. Haar, 68 Harv. Law Rev. 1154 (1955), cited in *O’Loane v. O’Rourke* in full.

<sup>27</sup> *In Accordance with a Comprehensive Plan*, Charles M. Haar, 68 Harvard Law Rev. 1154, (1955) p. 1155. The history of the Standard Planning Enabling Act (SPEA) and its relationship to the Standard Zoning Enabling Act (SZEa) is thoroughly covered in this early landmark article of Charles Haar.

<sup>28</sup> Of 1,347 cities with populations exceeding 10,000 that responded to a 1953 survey, 791 had enacted comprehensive zoning ordinances, yet only 434 had adopted master plans. Haar, p. 1157, footnote 14.

<sup>29</sup> Haar, *supra*, at page 1167.

<sup>30</sup> *O’Loane v. O’Rourke* 231 CA2d 774 (1965).

function and nature of the general plan. The *O'Loane* decision was a precursor to the 1972 legislative changes in California that now require municipalities to have a legally adequate general plan in effect.

Appellants argued in *O'Loane v. O'Rourke* that the general plan was not subject to referendum<sup>31</sup> because it had no *legislative effect*. The court disagreed. The *O'Loane* decision focused the court on the legislative function of the general plan, and its ability to implement the general welfare purposes underlying the police power:

*“ . . . While municipal planning embraces zoning, the converse does not hold true. They are not convertible terms. Zoning is not devoid of planning, but it does not include the whole of planning.*

*Zoning is a separation of the municipality into districts, and the regulation of buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land. This is the constitutional sense of the term. . . .*

*Planning has a much broader connotation. It has in view, as we have seen, the physical development of the community and its environs in relation to its social and economic well-being for the fulfillment of the rightful common destiny, according to a 'master plan' based on 'careful and comprehensive surveys and studies of present conditions and the prospects of future growth of the municipality,' and embodying scientific teaching and creative experience.*

*In a word, this is an exercise of the State's inherent authority, antedating the Constitution itself, to have recourse to such measures as may serve the basic common moral and material needs. Planning to this end is as old as government itself -- of the very essence of an ordered and civilized society.*

*Professor Haar in the article above cited (68 Harv. L. Rev. 1175) further states that if the master plan is to have “ . . . a directly controlling influence on zoning regulation, it would appear necessary to have it legislatively adopted, rather than merely stated by the planning authorities and functioning as an interesting study without much direct relevance to day-to-day activity.”<sup>32</sup>*

*“The master plan symbolizes a change in the organization of the land market. Its primary justification is an assumption that the interdependence of land uses in an industrialized society makes necessary municipal controls over private property.”*

## **EDWARD SULLIVAN: THE CHANGING ROLE OF THE PLAN**

Edward Sullivan is a prominent land use practitioner residing and working in Portland Oregon.<sup>33</sup> He has authored several amicus curiae briefs for the American Planning Association on topics involving the Standard Enabling Clauses and the function of the general plan. He borrows heavily from the original thinking of Charles Haar.

The publication of “*Ramapo Plus Thirty, The Changing Role of the Plan in Land Use Regulation*”<sup>34</sup> by Mr. Sullivan was another fruitful outgrowth from the 30-Year Anniversary of Ramapo and Tribute to Robert H. Freilich. His article begins with a personal tribute to Dr. Freilich:

*“...the primary importance for this article is the Town of Ramapo's ingenuity in using sequential infrastructure development to draft a comprehensive plan that linked growth planning to land use regulations.*

<sup>31</sup> The California Constitution defines the referendum as “the power of the electors to approve or reject statutes or parts of statutes...” Cal. Const. Art. II, 9 (a). The referendum applies to *newly enacted legislation*.

<sup>32</sup> *O'Loane*, supra, p. 780.

<sup>33</sup> Mr. Sullivan is the owner of Garvey Schubert Barer, and has an M.A. (Political Thought), University of Durham, 1998; Diploma in Law, University College (Oxford), 1984; LLM University College (London), 1978; Urban Studies Certificate, Portland State University 1974; M.A. (History) Portland State University, 1972; J.D. Willamette University, 1969; B.A. St. John's University (NY) 1966.

<sup>34</sup> *Ramapo Plus Thirty, The Changing Role of the Plan in Land Use Regulation*, Edward J. Sullivan and Matthew J. Michel, *The Urban Lawyer*, Vol. 35, No. 1 (Winter 2003)

*Before Ramapo, New York law was based on the SZEA/SPEA models: expressly allowing population density regulations to limit development but not planning based on the 'sequence' or 'timing' of accompanying public infrastructure.*

*Up to this point, the New York courts had been applying a Unitary approach<sup>35</sup> to evaluate a land use action, placing very little weight on any planning standards found in local regulations as a basis for the local action.*

*However, the New York Court of Appeals decision in Ramapo elevated land use planning above mere regulations to a separate and independent factor by which to measure and evaluate land use regulations.<sup>36</sup>*

The Sullivan article provides a unique and provocative examination of the evolving comprehensive plan and its relationship to state enabling clauses (SZEA/SPEA). More importantly, Sullivan's statistical tables draw a noteworthy correlation between a liberalizing trend in planning laws and the incipient Smart Growth movement—the statement being, as powers expand, governments are increasingly equipped to experiment with general welfare objectives—and reach the Smart Growth Vision.

Mr. Sullivan presents three ranking state views of the comprehensive plan:

#### **UNITARY APPROACH**

*"In state courts, the most common 'comprehensive plan' definition is a functional one: courts apply the existing zoning regulations as the comprehensive land use policy statement. As such, land use regulation is not arbitrary or capricious if the proposed regulations comply with the general zoning scheme." (Sullivan at 82)*

In Unitary Approach states, zoning entitlements may vest in a landowner, making it difficult to amend the zoning ordinance over time and adapt to change. A fuller treatment of this issue is presented below in discussion on the Unitary Approach and its potential rigidity.

#### **PLANNING FACTOR**

Professor Daniel Mandelker promoted a hybrid variation of Charles Haar's insistence on the general plan mandate requirement. This view now represents a rapidly evolving trend in the United States:

*"A community land use policy statement would be one of several consistency factors to test the validity of a land use decision.<sup>37</sup> This 'Planning Factor' approach gives some, but not dispositive, weight to a land use plan." (Sullivan at 85)*

#### **PLANNING MANDATE**

The third and least-used model is that used by California and five other states, and represents the plan as a legislated expression of intent:<sup>38</sup>

*"Some states have reconceived completely the relationship between planning and zoning in their enabling legislation, treating the zoning process as a quasi-judicial process responsible to the legislative planning process.*

*This third approach uses a separate comprehensive plan as a substantive legal requirement for compliance with the plan in all land use decisions. Under this Planning Mandate approach, a proposed zone change may be denied solely on the basis of noncompliance with the comprehensive plan." (Sullivan at 85)*

<sup>35</sup> The Unitary Approach is a judicial orientation that disregards the plan and concentrates on the zoning ordinance as a complete expression of regulatory intent.

<sup>36</sup> *Ramapo Plus Thirty*, supra, p. 79

<sup>37</sup> *The Role of the Local Comprehensive Plan in Land Use Regulation*, Daniel Mandelker, 74 Mich.Law Review, 900 (1976) at 903-909.

<sup>38</sup> The five remaining states are Florida, Oregon, Washington, Delaware, and Wisconsin. All five states have developed smart growth infrastructure planning, and Florida, Oregon, and Washington are arguably growth management leaders, a point reflected in the caliber of judicial decisions from those states.

### **THE UNITARY APPROACH AS A RIGID, FIXED-END STATE**

*"A town's zoning map that accompanied general descriptions of zoning districts was comprehensive if it reflected the current condition of the land at issue." (Sullivan at 87)*

*"...treating the existing zoning regulations as a comprehensive plan in toto makes for a single, and elliptic, standard of proof for a municipality's compliance with its comprehensive plan, to wit: a proposed zoning regulation is valid if it complies with the existing zoning scheme. This deferential standard puts zoning ahead of planning because local land use decisions need only comply with existing zoning regulations, virtually eliminating the need or rationale for any long-term planning requirement." Sullivan at 83*

*"Prior to Ramapo's plan, a town typically revised zoning ordinances every five years to conform to interim growth. Ramapo turned that traditionally passive planning update on its ear by implementing a progressive planning statement based on an eighteen-year capital improvement program...." Sullivan at 87*

In jurisdictions where the general plan policy standards are not law or are not a serious planning factor, policy competes with the force and effect of the zoning ordinance – and by extension competes with property entitlements created by a court's myopic concern with "zoning consistency". The decision defaults to the expression of the zoning ordinance, leaving the larger public interest poorly represented and devoid of adequate judicial protection.

Policy is the visionary statement that conditions a locality into its future growth plan. If property entitlements vest in current zoning, localities lose the better part of their police powers, divesting them of control over infrastructure, resource conservation, cost factors, land patterns, and development of the market economy. Ultimately, in Unitary Approach states, jurisdictions are constrained from future, long-range planning, because judicial review is tied to the map as a current expression of land use rights.

In contrast, states that have broadened their enabling clauses to Smart Growth commonly either completely revise the original SPEA, or add state statutory requirements that range from land use, housing, agriculture, open space preservation, transportation, community facilities, implementation guidance, and general planning policy statements. (Sullivan at 96)<sup>39</sup>

### **THE APA / SULLIVAN DATA**

Edward Sullivan referenced data from the American Planning Association's Growing Smart Legislative Guidebook<sup>40</sup> to provide a "nationwide snapshot of each state's legislative amendments to the original enabling language in the SPEA."

The Guidebook ranks state amendments of the SPEA into four categories, (1) Original SPEA; (2) Moderate, Significant Changes; (3) Many, Significant Changes; (4) Total SPEA Revision.

Mr. Sullivan took this data and correlated it with his own studies on how courts were handling the "comprehensive plan" requirements. His conclusions are fascinating, and are represented in the statistical table which follows.

The study verified a national trend toward using a legislated master plan in making the land use decision.<sup>41</sup> It also verified the Unitary approach decreases as states amend and revise their planning laws.<sup>42</sup> Thirdly, Sullivan found a strong correlation between liberal enabling clauses and Smart Growth experimentation:

*"Legislative changes to the original SPEA language generally come under the planning rubric of Smart Growth initiatives developed in response to suburban sprawl, diminishing farmland, and affordable housing." (Sullivan at 96)*

<sup>39</sup> Taken from *Smart Growth Legislative Guidebook*, Stuart Meck, Model Statutes for Planning and the Management of Change (ed. 2002) [www.planning.org/Guidebook/View.asp](http://www.planning.org/Guidebook/View.asp) Table 7-5.

<sup>40</sup> *Growing Smart Legislative Guidebook: Model Statutes for Planning and the Management of Change* (Stuart Meck, ed., 2002) [www.planning.org/Guidebook/View.asp](http://www.planning.org/Guidebook/View.asp)

<sup>41</sup> *Ramapo Plus Thirty*, supra, p. 90.

<sup>42</sup> *Ramapo Plus Thirty*, supra, p. 90.

Sullivan typified New York as a Planning Factor state, and described the impact of *Ramapo*:

*"The Ramapo court applied a Planning Factor approach by looking to the master plan for legal justification of land use restriction. (Ramapo at 296). New York's ...master plan occupied an existing legal standard lost in the confusion of how a proper comprehensive plan would operate. Prior attempts at planning used comprehensive plans to forestall growth.*

*The Ramapo plan resolved the confusion by showing that a plan manages growth according to reasonable infrastructure development. The Ramapo plan gave new life to the statutory "well-considered" comprehensive plan requirement by articulating a reasonable basis for land restrictions." (Sullivan at 88)<sup>43</sup>*

The analysis of the general plan and how it relates back to the state enabling statutes reminds us that as much as localities appear to be exercising home rule and autonomy, the success and breadth of planning is inextricably linked to expressions of state jurisdiction and judicial review of constitutional parameters.

**TABLE 1: SULLIVAN GENERAL PLAN ANALYSIS**

LEGAL AND STATUTORY SIGNIFICANCE OF COMPREHENSIVE PLANS <sup>44</sup>				
Enabling Acts	SPEA	Moderate, Significant Change	Many, Significant Changes	Total Revision
Planning Mandate			CA, WI	DE, FL, OR, WA
Planning Factor	AK, CO, IA, IL, KS, MT, NC, NE, SD, VA, WY	NV, NY, MN	ID, KY, MA, PA, SC	GA, HI, ME, MD, NJ, RI, VT
Unitary	AL, IN, LA, MO, ND, NM, OH, OK, TX, WV	AR, CT, MS, MI, UT	AZ, NH	TN
<p>Sullivan Conclusions (paraphrased):            Reading the table horizontally illustrates that the Unitary approach decreases as states amend and revise their planning laws. Conversely, amending the state planning laws trends toward a more significant role as the plan as law.            Vertically bisecting the Table illustrates that states in the two left vertical columns have little if any SPEA changes and fall within Unitary or Planning Factor classifications. States in the two right vertical columns have greater SPEA changes and fall within Planning Factor to Planning Mandate class; trends showing the revisions lead to greater accountability to the plan.</p>				

<sup>43</sup> It is arguable, and even probable, that *Ramapo* catalyzed the entire movement toward the liberalization of enabling laws, which then directly and powerfully ties *Ramapo* to the earliest judicial expression of Smart Growth.

<sup>44</sup> Revised in format only, and abstracted from *Ramapo Plus Thirty*, Edward Sullivan, Table 1, p. 90.



## A FINAL COMMENT ON ZONING

The approach of the courts and planning scholars is deeply accountable to constitutional principles. Judicial and scholarly articles repeatedly emphasize baseline principles that cannot be violated in order to have good planning.

First is the principle that development, in order to be legal, must be accountable to municipal planning obligations. Those obligations are sited in the State Enabling Acts, and refer to the responsibility to provide for the general welfare. On land use issues, general welfare provisions translate into adequate roads, water, sewage, and other public facilities.

Second is the principle that land use regulation (municipal governance),<sup>45</sup> in order to be legitimate, must *demonstrate* that it is in furtherance of the public welfare. This implies the responsibility to set a proper record of the planning decision.

Third is the principle (implicit in due process) that the benefits and burdens of development must fall equitably upon the population. This principle entails a decision of who bears the cost of development.

Fourth is the principle that municipal government is accountable to regional and state interests under an extension of general welfare provisions.

All of these principles operate to create the context of planning. Prior to the 1970's, the zoning ordinance was the sole legal mechanism used to enforce land use decisions. It became apparent that a whole new structure of planning would be required to implement general welfare requirements and meet the public obligation.

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<sup>45</sup> Municipal governance relates back to a proper exercise of the *police power*, or power to act for the general welfare. All regulatory actions instituted by government are measured by their adherence to general welfare principles.

## APPENDIX E

### THE CALIFORNIA GENERAL PLAN AS LAND USE CONSTITUTION

#### Elements of the Modern General Plan And Judicial Review

##### CALIFORNIA'S STANDARD PLEADING CLAUSE

By 1971, California had codified the provisions of general plan law to become a Planning Mandate state, creating its present hierarchy— zoning ordinances and subdivision approval must conform to the general plan.<sup>1</sup> In 1990, the California Supreme Court extended the requirement, finding that the general plan was the “constitution for all future development” within the city or county “to which any local decision affecting land use and development must conform.”<sup>2</sup> Accordingly, the level of judicial review extended into adjudicative actions and land use permits under a more relaxed ‘standard of review’ that gave greater credence to both citizen rights of information and justification for the decision.

Conformity review became known as the “consistency doctrine,” and applies to a large range of actions; namely, specific plans, program actions, budgets, capital improvement plans, change of zones, rezone actions (PDD’s and variances); development permits, development agreements, essentially any approved “project.” In fact, under the California Environmental Policy Act (CEQA), general plan standards are evidence of an intended ‘minimum’ environmental threshold. Development actions now required administrative “findings” that the decision comports with the General Plan and basic due process.

The California FUTURE decision contains an example of the standard pleading clause found in any appellate decision raising questions on the adequacy of a General Plan and its municipal function. The courts use this language as a basis for judicial review of planning actions<sup>3</sup>:

*“Every county and city must adopt a ‘comprehensive, long-term general plan for the physical development of the county or city....’ (Gov. Code 65300.) ‘The general plan has been aptly described as the “constitution for all future developments’ within the city or county....*

*[T]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements’ [statutorily required elements include land use, circulation housing, conservation, open space and noise]. [citations omitted]. Gov. Code 65302).*

*‘The consistency doctrine has been described as “the linchpin of California’s land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law.” . . .’ [citation omitted]*

*A project is consistent with the general plan “ if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.” ‘ [citation omitted].*

*A given project need not be in perfect conformity with each and every general plan policy. [citation omitted]. To be consistent, a [subdivision] development must be ‘compatible with’ the objectives, policies, general land uses and programs specified in the general plan.”*

<sup>1</sup> Curtin’s California Land Use and Planning Law, Daniel Curtin, 2000 Edition, p.8.

<sup>2</sup> Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 531, p.750 (Neighborhood Action, infra, 1984, was a precursor to Goleta)

<sup>3</sup> Families Unafraid to Uphold Rural El Dorado County (FUTURE) v. Board of Supervisors of El Dorado County, 62 CA 4<sup>th</sup> 1332, at 1336 (1998). FUTURE is a leading case on the consistency doctrine in California.

The State of California regulates planning through the backbone of its *Planning, Zoning & Development Laws* (Government Code 65000, et seq), *State Planning Enabling Act*, *State Zoning Enabling Act*, and *Declaration of State Planning Policy*. The state enactments would be "provincial legislative curiosities" if California hadn't changed to "legislated policy" as the environment for due process and fairness. As it is, not only do these state policy directives guide state planning legislation, but the framework is delegated to communities through "police powers." State Planning Policy also guides courts of law on adequacy of legislation, due process, and fairness of the development decision. These concepts are frequently cited in court land use decisions, and should be the focal point of local review by Planning Commissions and City Councils. The policies are basic to an understanding of how to properly exercise planning controls at the municipal level, and should remain the focus at all times:

### 1.11 STATE PLANNING [CALIFORNIA]

The participation of California state government in the planning process is not regulatory in nature. Rather, the state role is to develop long-range policies to assist local government in meeting problems of growth and development in urban areas; to provide planning assistance to local agencies; and to develop and adopt guidelines for the preparation of city and county general plans. . . .

**1.11[1] Declaration of State Planning Policy [California].** The state legislature, in developing statewide planning policy and establishing the Office of Planning and Research, has made certain findings, including a determination that **California's land is an exhaustive resource, not just a commodity**, and is essential to the economy, environment, and general well-being of the people of California; and it is the policy of the state to protect California's land resource to ensure its preservation and use in ways which are economically and socially desirable in an attempt to improve the quality of life in California. *Gov C 65030*. [emphasis added]

The legislature has further determined that **decisions** involving the future growth of the state, most of which are made and will continue to be made **at the local level, should be guided by an effective planning process**, including the local general plan, and should proceed within the framework of officially approved statewide goals and policies directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social and economic development factors. *GovC 65030.1*. [emphasis added]

The legislature has further determined that it is the policy of the state that **land use decisions shall be made with full knowledge** of their economic and fiscal implications, giving consideration to short-term costs and benefits, and their relationship to long-term environmental impact as well as long-term **costs and benefits**. *GovC 65030.2*. [emphasis added]

The legislature has recognized **the importance of public participation at every level** of the planning process and has determined that all state, regional, and local agencies concerned in the planning process should involve the public through **public hearings, informative meetings, publicity** and other means available to them, and that at such hearing and other public forums, **the public be afforded the opportunity to respond to clearly defined alternative objectives, policies, and actions**. [emphasis added]

The legislature has further found that the state planning process should be designed to influence legislative policy and actions and therefore should specifically include provisions for regular review and positive action by the legislature on **statewide environmental goals** and clear identification of legislative actions required to carry out statewide environmental goals. Government Code 65034." <sup>4</sup> [emphasis added]

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<sup>4</sup> Longtin's *California Land Use*, Second Edition, Volume 1, Section 1.11[1]

## DEVITA V. COUNTY OF NAPA

There are no better statements of the California foundational requirements of land use and planning than appear in *DeVita v. County of Napa*.<sup>5</sup> The case articulated the broad views of the California Supreme Court on the function and legislative nature of the general plan in response to a challenge to the power of initiative.

I have isolated two aspects of *DeVita* that interweave the majority of planning principles that now form the backbone of California's judicial response to general plan challenges. They are respectively: (1) state land policy and the regional context of planning; (2) the California response to urban sprawl and haphazard zoning:

### State Land Policy and Regionalism

*"That land-use planning in general, and the formulation and implementation of the general plan in particular, constitute matters of manifest statewide importance, becomes evident from an examination of the text and the purposes of the planning law as a whole.*

*Although the law ensures that most land-use decisions remain within local control, it also recognizes that those decisions may have profound ramifications for neighboring entities, the region and the state, and therefore requires that each planning agency be guided by and implement certain fundamental state policies and goals.*

*In a prefatory statement of policy and intent, the Legislature has broadly identified those critical state concerns as follows: 'The Legislature finds and declares that California's land is an exhaustible resource, not just a commodity, and is essential to the economy, environment and general well-being of the people of California.*

*It is the policy of the state and the intent of the Legislature to protect California's land resource, to insure its preservation and use in ways which are economically and socially desirable in an attempt to improve the quality of life in California." (§65030).*

*The Legislature has further declared that land-use planning, and the general plan in particular, represent the basic means of ensuring orderly growth throughout the state. Thus, the Legislature has decreed that all 'decisions involving the future growth of the state,' while generally subject to local control, must be 'guided by an effective planning process, including the local general plan, and should proceed within the framework of officially approved statewide goals and policies directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical social and economic development factors.' (Government Code § 65030.1).<sup>6</sup>*

### Reversal of Ad Hoc Zoning

*". . . . One survey of California city and county planning departments shows that approximately 75 percent of proposed planning and zoning amendments are privately initiated in conjunction with development applications, and that approximately 66 to 75 percent of these amendments are ultimately approved. (Dalton, Limits of Regulation: Evidence from Local Plan Implementation in California (1989) 55 J. Am. Planning Assn., 151, 156, 159. [emphasis added])*

*As the author of that survey has concluded, the planning and zoning amendment process has become in many communities one of "piecemeal adjustment" by local planners and local legislators in response to development pressures. (Limits of Regulation, supra, 55 J. Am. Planning Assn. at pp. 151, 159.) [emphasis added]*

*This conclusion comports with the well-known phenomenon commonly referred to as the "fiscalization of land use," whereby planning decisions are frequently driven by the*

<sup>5</sup> *DeVita v. County of Napa* 9 Cal 4<sup>th</sup> 763 (California Supreme Court 1995)

<sup>6</sup> *DeVita*, supra, p. 816

*desire of local governments to approve development that will compensate for their diminished tax base in the post-Proposition 13 era. (See Fulton, Guide to California Planning, supra, at pp. 15-17, 208-213.) [emphasis added]*

*It was presumably to curb an excessively ad hoc planning process that the Legislature limited in 1984 the number of amendments to any mandatory element of the general plan to four per year. (Gov. Code, § 65358, subd. (b).) **General plans that change too frequently to make room for new development will obviously not be effective in curbing "haphazard community growth."**( Selby Realty Co. v. City of San Buenaventura, supra)<sup>7</sup> [emphasis added]*

## **CALIFORNIA'S JUDICIAL TEST FOR PLANNING**

These doctrines are a good working environment to show the sensitive interplay between state law imperatives, implementation of general plans, and judicial construction of fairness. A number of California's working doctrines are seated in provisions of the Government Code, and create the parameters of judicial review.

### **THE CONSTITUTIONAL FOUNDATION FOR MUNICIPAL GOVERNANCE**

*Although in the past, some courts have held that cities and counties acquired the land use regulatory power from the legislature, it is now generally recognized that such power is derived from the broad police powers conferred upon them by the State Constitution (Article XI, §7) and it is not a power bestowed by the legislature. . . . [emphasis added]*

*Such primary authority comes from the Constitution. However, in exercising its land use regulatory power, a city and county must act within the statutory law so there will be no conflict with general laws as provided in Art. XI, 7.<sup>8</sup> [emphasis added]*

An exercise of power over a legislative determination by an appellate court is always circumscribed by the rule that the court will not interfere with the substantive right of municipalities to determine their own laws. The court will not second-guess the appropriateness of policy:

*"Judicial Test for Validity of Legislative Actions:*

*'If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control. The test of the validity of comprehensive zoning regulations has consistently been applied and followed by this court, so that whenever we have found that reasonable minds might differ as to the necessity or propriety of particular regulations or classifications, we have bowed to the legislative determination and sustained the regulation.'<sup>9</sup>*

*". . . courts will overturn an agency's legislative decision only if it is arbitrary, capricious, wholly lacking in evidentiary support, or fails to conform to the procedures required by law...."<sup>10</sup>*

*"A restrictive zoning regulation pursuant to a municipality's comprehensive plan of community development, when reasonable in object and not arbitrary in operation, will be sustained as within the legitimate exercise of the police power." Hill v. City of Manhattan Beach (1971) 6 C3d 279.*

*In other words, the ordinance will not be declared invalid unless there is no reasonable relation between the regulation and the exercise of the police power. . . . . If the question is debatable, the legislative judgment will prevail...."<sup>11</sup>*

<sup>7</sup> DeVita, supra, pp. 789-790.

<sup>8</sup> Longtin's California Land Use, Second Edition, James Longtin, Volume 1, Section 1.22[1]

<sup>9</sup> Longtin's Land Use, supra, Vol. I, Section 1.21, p. 46.

<sup>10</sup> California Land Use, Daniel Curtin, (2000) p. 322.

<sup>11</sup> Longtin, supra, Vol I, Section 1.21[2], p. 47.

## **JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS**

The law creates a sharp demarcation between the power of municipalities to legislate for the general welfare, and the exercise of regulatory powers where it affects a particular land parcel. The judicial deference granted to legislative acts does not apply to an administrative action.

Judicial review originally related primarily to zoning requirements. Now, California has enacted the general plan as law and implemented the consistency doctrine under its Government Code (Section 65300.5), and the review mechanism has shifted to a policy approach.

The general plan is designed with implementing mechanisms, such as the zoning ordinance or capital improvement plan, which must remain in alignment with the general plan over time. The consistency doctrine is the judicial mechanism that triggers court review of administrative decisions in planning. ".....it is the principle which infuses the concept of planned growth with the force of law."<sup>12</sup>

In other words, development decisions are now measured against policy, and informational requirements necessary to implement policy. Projects must now remain consistent with policies that address land use, circulation, housing, conservation, open space, noise, and safety.

## **ADMINISTRATIVE MANDAMUS**

The sole legal mechanism for review of an administrative decision<sup>13</sup> is the writ of mandamus. Administrative mandamus involves judicial review of the planning decision. Daniel Curtin, a prominent treatise writer on land use and planning,<sup>14</sup> has supplied a succinct orientation to the function of administrative mandamus. Administrative mandamus is exercised under Code of Civil Procedure Section 1094.5 and applies only when there is a challenge to:

" . . . any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer. . . ."<sup>15</sup>

The judicial inquiry extends to: (1) Whether the respondent has proceeded without, or in excess of jurisdiction; (2) Whether there was a fair hearing; and (3) Whether there was any prejudicial abuse of discretion. It further provides that 'abuse of discretion' is established when; (1) The respondent has not proceeded in the manner required by law; (2) The order or decision is not supported by the findings; or (3) The findings are not supported by the evidence. *Code of Civil Procedure* §§ 1094.5(b).<sup>16</sup>

## **THE TOPANGA REQUIREMENTS**

In order to avoid a charge of abuse of discretion, localities must carefully set a proper administrative record of decision that shows the line of their thinking from policy to action. This requirement protects both landowners and citizens from falsified findings that don't properly reflect general plan priorities. Findings are written into staff reports, reviewed by administrative bodies, and (if approved) are incorporated into Resolutions that reflect the decisions made.

The cornerstone for findings requirements has been set by the landmark *Topanga* decision. Findings are now such a critical element of a land use decision that the Governor's Office of Planning and Research (OPR) has published guidelines for cities and counties. The judicial rule is expressed as follows:

*"The Topanga court defined findings as legally relevant sub-conclusions which expose*

<sup>12</sup> *FUTURE*, supra, p. 1336.

<sup>13</sup> Notation: An administrative decision relates to the application of law or policy to an individual decision, distinguished from exercise of legislative powers, which sets a general rule of application to the whole.

<sup>14</sup> *California Land Use*, Daniel Curtin, 2000 Edition

<sup>15</sup> *Curtin*, supra, p. 320.

<sup>16</sup> *Curtin*, supra, p. 325.

*the agency's mode of analysis of facts, regulations, and policies, and which bridge the analytical gap between raw data and ultimate decision. (Topanga<sup>17</sup>, supra, at pp. 515 and 516.)*

*In other words, findings are the legal footprints local administrators and officials leave to explain how they progressed from the facts through established policies to the decision."<sup>18</sup>*

## **THE CONSISTENCY DOCTRINE AND ITS RELATION TO STATE REQUIREMENTS**

The California Governor's Office of Planning and Research (OPR) publishes guidelines for cities and counties to guide the development and implementation of their plans. These guidelines ensure that zoning ordinances remain an implementing tool rather than a driving force.

Regulating the spatial and timing relationships of incremental planning decisions becomes crucial to ordered development. The state as a regulating entity to local government clearly has a regional interest in the outcome.

The following sections from the OPR Guidelines show an example of the state requirements. These requirements also demonstrate the hierarchy and close knit between land use classifications and zoning designations, and how one must follow the other:

### *Assessing and Achieving Zoning Consistency:*

*Zoning consistency can be broken down into three parts: (1) uses and standards, (2) spatial patterns, and (3) timing.*

*The local agency's general plan and zoning ordinance contain text and maps that specify development standards and the proposed location of uses for the community.*

*The development standards and uses specified for all land use categories in the zoning ordinance--density, lot size, height, and the like -- must be consistent with the development standards and uses specified in the general plan's text and diagram of proposed land use. [emphasis added] This has several implications.*

*The zoning scheme, with its range of zoning districts and their associated development standards of regulations, must be broad enough to implement the general plan.*

*For example, if a general plan contains three residential land use designations, each with its own residential intensity and density standard, then the zoning ordinance should have at least as many zoning districts with appropriate standards.*

*Similarly, if the general plan identifies seismic hazard areas and calls for zoning measures to implement safety policies, the zoning ordinance must contain appropriate provisions such as a hazard overlay zone or specific development standards."<sup>19</sup>*

One of the most powerful components of the consistency doctrine is its focus upon policy. By operation of law, it forces municipalities to review how the planning decision relates to general plan policy. The plan must be inspected to determine what policies are fundamental to the planning decision under review.

## **NEIGHBORHOOD ACTION V. COUNTY OF CALAVERAS**

*Neighborhood Action v. County of Calaveras* is where it all came home, judicially speaking. Calaveras County issued a conditional use permit to a mining operation to move tailings from the construction site through a

<sup>17</sup> *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal 3d 506.

<sup>18</sup> *Bridging the Gap: Using Findings in Local Land Use Decisions*, Second Edition (1989) California Governor's Office of Planning and Research ("OPR Guidelines")

<sup>19</sup> *California State Planning Guidelines*, Governor's Office of Planning and Research, p.129.

series of neighborhoods. The movement of tailings generated noise, dust, debris, and affected the roadways, creating what the community characterized as a safety hazard.

*Neighborhood Action* complained that the issuance of the conditional use permit was *ultra vires*, or without authority, because the county had failed to develop a noise element containing state-required standards for noise abatement and transport of hazardous materials.

*"The remedies applicable to the challenge of a zoning ordinance are, in part, specifically addressed by statute. The zoning ordinance is in the chain of authority by which the requirements of state planning law are transformed by quasi-legislative action into criteria for the issuance of conditional use permits. [emphasis added]*

*The legality of a zoning ordinance is thereby impliedly called into question when a permit is challenged on the ground the general plan is not in conformity with state law. Accordingly, our inquiry must encompass the statutory remedies which may apply to such an implied challenge to a zoning ordinance.*

*That brings us to section 65860, subdivision (b). It authorizes a resident or property owner to bring an action 'to enforce compliance' with the provisions of section 65860, subdivision (a), which mandates that the zoning ordinance 'shall be consistent with [the adopted] general plan.'*<sup>20</sup>

*Neighborhood Action* effectively challenged the deficiency of the county in not maintaining the proper noise element. The conditional use permit was invalidated, and could not be issued until the county had brought its general plan into compliance with state law.

#### *The Planning Hierarchy and Nature of Judicial Review:*

*"Although use permits are not explicitly made subject to a general plan meeting the requirements of state law, that condition is necessarily to be implied from the hierarchical relationship of land use laws.*

*To view them in order: a use permit is struck from the mold of the zoning law (GC § 65901); the zoning law must comply with the adopted general plan (GC § 65860); the adopted general plan must conform with state law (§§ 65300, 65302). [emphasis added – the 'tight fit']*

*The validity of the permit process derives from compliance with this hierarchy of planning laws. These laws delimit the authority of the permit issuing agency to act and establish the measure of a valid permit.*

*'Since consistency with the general plan is required, absence of a valid general plan, or valid relevant elements or components thereof, precludes enactment of zoning ordinances, and the like. (Resource Defense Fund v. County of Santa Cruz, supra, et seq.*

*This is a specific application of the general rule: '[There] is no agency discretion to promulgate a regulation which is inconsistent with the governing statute.' [citation omitted]*<sup>21</sup>

<sup>20</sup> *Neighborhood Action Group for the Fifth District v. County of Calaveras* (1984) 156 Cal. App. 3d 1176 at 1187.

<sup>21</sup> *Neighborhood Action*, supra, at page 1184.



## CONCLUDING REMARKS ON JUDICIAL REVIEW

Given that land value does not exist in isolation, it is predictable that constructions of ownership and entitlements would reflect the dichotomy of private-public interest.

*"Ownership, to push legal definitions, is divided, with legal title in the private owner and 'ownership' of the use in government to the extent that government regulation affects what may and what may not be done with the property.*

*This division in ownership, as we see it, is reflected in judicial recognition of the owner's developmental interest in land which is entitled to constitutional protection. Public restriction of this interest must be justified....[w]e...find this justification on reliance of the general welfare, or 'public interest.'"<sup>22</sup>*

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<sup>22</sup> *The Zoning Dilemma, A Legal Strategy for Urban Change*, Daniel R. Mandelker, Bobbs-Merrill Company, Inc., (1971) p. 14



## APPENDIX F

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### Personal Profile:

My name is Judy Deertrack. I am a Land and Government Affairs Consultant, and legal specialist in Land Use Law. I provide consultation to private and corporate clients whose land projects intersect with government programs and requirements; including land use entitlements, feasibility analysis, due diligence reports, compliance review (ordinances and laws), permit assistance, community plan development, demographic studies, and business sector planning.

I am a resident of Palm Springs, and have lived in the Coachella Valley since 2004, primarily in Palm Springs. My career is built around a passion for land and community issues, an interest that led me to an urban planning career. I completed Master's work in City and Regional Planning at San Luis Obispo, Cal Poly in the year 2000.

At the beginning of my career, I obtained a law degree from San Joaquin College of Law, Fresno, CA, and practiced corporate and family law. In 1987, I married a member of Taos Pueblo Tribal Government and worked as a consultant for thirteen years with Taos Pueblo, Office of the WarChief, New Mexico, on cultural protection and land issues in a tri-cultural environment, including acting as a primary advisor on the World Heritage Designation for Taos Pueblo through UNESCO (United Nations), and a series of later related projects.

After completing my graduate work, I served as Deputy City Attorney for the City of Desert Hot Springs and managed the General Plan Update, including co-production of a Growth Management Element designed by Dr. Robert Freilich, one of the industry's foremost Smart Growth experts, also considered the founder of modern growth management.

I later co-prepared Community and Specific Plans that were adopted within the cities of Ventura, Saticoy and Wells, and Benicia, designed to achieve view shed protection, preserve historic military districts, create artist live/work space, and incorporate trails systems. I began employment with Riverside County Land and Transportation Agency (RCTLMA) as a Planner IV in 2007, and worked for four years until the Desert Planning Office closed. I consult currently with private clients and non-governmental organizations in land use.

Within RCTLMA, I was the only full time planner to review and process land development permits in the unincorporated area of the Coachella Valley. This gave me a wide range of experience – processing subdivisions, mobile home parks, racetracks, school campuses, commercial centers, equestrian operations, affordable housing, golf courses, and successfully presenting those land projects for review and adoption by the Planning Commission / Board of Supervisors. Presently I work as a private consultant in planning and urban affairs.