

# CITIZENS' OVERSIGHT PROJECTS

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April 17, 2007

Jeff Murphy, Chief  
Regulatory Planning  
Department of Planning and Land Use  
5201 Ruffin Road, Suite B  
San Diego, CA 92123

REF: PPG-001

THIS DOCUMENT: PPG-001A

Dear Mr. Murphy:

I thank you very kindly for your letter dated April 10, 2007 in response to our *COPs Suggestion Report, Document PPG-001*. I would appreciate your further review of these points. The original document was sent primarily to the Potrero Planning Group, as we have observed the operation of the group, and intended to assist the chair and members of that group to be more responsive to the community. I would assert that since we were at the meeting and you were not, that our suggestions should best be processed by the body to which it was sent. However, since you did me the kindness of a thorough reply, I am responding directly to your letter of April 10. I will use the numbering of my original document and I would request that you do the same so that it may be possible to put some issues to bed.

## **0. Not Officials?**

It is clear that the Planning Groups operate in an advisory capacity only, are not employees of the county, are not paid public servants, and the boundaries of their areas are set by the Board of Supervisors. And, it is stated that they are not county officials. Yet, regardless of this terminology, they are elected by the public and serve in our democracy to represent the concerns of the citizens in their service area. The statement that they are not county officials is splitting hairs. These elected officials are subject to county policy I-1, and therefore, they are operating under the authority of the county. They are elected, and are therefore public officials for the county.

Since these individuals are elected by the citizens in their area (i.e. planning group), then it can be argued that they qualify as public officials more than rank and file career employees of the county, or someone like yourself, who is not directly accountable to the voters. So, in the end, it seems quite immaterial to state that they are not county officials while still asserting that they operate according to county policy, and indeed, other laws of the State of California.

Furthermore, in policy I-1, Article VI, Section V, it details "Official Positions" or "Official Actions" of the group. How can the group have any official positions or actions if they have no official authority to do so? It makes no sense, and therefore, we will ignore that terminology issue in our correspondence.

## 1. Arrangement of the Room

This is simply a suggestion to the chair from the point of view of the citizens attending. Unless you have any reason to suggest otherwise, our suggestion stands as stated. Indeed, many of our suggestions are related to the detailed operation of the planning group, and as such are perhaps not something dictated by Policy I-1 or your office. However, if these items are not in your training program, then perhaps the training can be enhanced to include some of these suggestions to improve the accessibility of the planning group to the public. Also, if you attend the meeting and have a different opinion than ours, we would like to hear your opinion on the matter.

## 2. Public Comment Period

Even if not explicitly stated, these bodies are subject to the Brown Act. I quote from that Act:

### **Definition: "Legislative Body"**

54952. As used in this chapter, "legislative body" means:

(a) The governing body of a [local agency](#) or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a [local agency](#), whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

These planning groups are indeed advisory in nature and formed from the local agency of the County of San Diego. Therefore, even if not explicitly stated in Policy I-1, the planning groups are subject to the Brown Act.

Again, Policy I-1, Article VI, Section V says that "Any action not made in accordance with Policies I-1, I-1A, or the Brown Act shall not constitute an official action or the group and shall not be considered by the appropriate hearing body as an official vote." Here, compliance with the Brown Act is implied.

Therefore, with that question settled, we can turn to the Brown Act regarding the comment period and admit that the planning groups do not have the liberty to violate that act by deriving their own guidelines in this regard. So, your comment in that regard in your response is incorrect.

Therefore, our comment regarding the Comment Period stands as originally suggested.

## 3. Anonymous Speakers

Given the compliance with the Brown Act, it is still unclear whether anonymous speakers are allowed. Indeed, in that act, it states that

### **Spectators' Right to Anonymity**

54953.3. A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide

other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

And it also states:

**Spectators' Opportunity to Address the Body**

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

However, it does not explicitly state that the spectators may address the body and also remain anonymous, yet this is a reasonable and completely logical conclusion. However, since it is not stated explicitly, *COPs* requested that the State Attorney General's office render an official opinion on this matter. Mr. Ted Prim of that office stated that his office has informally advised that members of the public need not identify themselves or provide their address, but it is suggested that the body may ask them whether they live in the service area of the body in question.

However, we must additionally note that according to Policy I-1, Article III, "DUTIES", Section II, "The group solicits comments from all citizens regarding all aspects of their planning duties." This does not state that the comments are restricted to citizens from their service area. Furthermore, the comments made in our original document (PPG-001) and this document (PPG-001A) are included in the terminology of "all aspects of their planning duties," and therefore, we will continue to assert that

we get a response from the planning group.

We are continuing to pursue the matter of anonymity to gain an official written opinion from the Attorney General's office of the State of California. In the meantime, it is our request that the planning groups, the DPLU, and all other bodies comply with the verbal opinion of the State Attorney General's office, as provided by Mr. Prim. If you know of other groups, board, councils, or other bodies that are not in compliance with this logical conclusion, perhaps you can assist us by promulgating this information to aide in their compliance with the law.

#### **4. Conflict of Interest**

We appreciate your concurrence with our opinion regarding the conflict of interest. We hope the planning group will take this information to heart to improve their operation.

#### **5. Meeting Notices, Agendas**

Again, we thank you for your concurrence on this item, and we would hope you would clearly direct the Potrero Planning Group to more fully disseminate the agendas and notices for their meetings using a newspaper of general circulation, as we suggested. Our comment is further buttressed by Policy I-1, Article III, Section II, as quoted above, referencing all citizens. It is not appropriate for the planning group, therefore, to publish it's meetings in the local "Potrero Hotline" only.

#### **6. Display of Plans**

This item is in fact one that has been a continuing problem, as those plot plans were not available over the counter at the DPLU office when I visited on April 12. The availability of this information is subject to the Brown Act as well as the California Public Records Act.

##### **Access to Records Concerning Open Meeting Topics**

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at a public meeting of the body, are disclosable public records under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.7, or 6254.22.

(b) Writings that are public records under subdivision (a) and that are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the local agency or a member of its legislative body, or after the meeting if prepared by some other person.

Therefore, these plot plans are public information and must be disclosed per the CPRA. To make it easy for the public to review these, it is common practice at other community planning groups to make those plans available for inspection by posting in the room. Again, our suggestion stands as stated.

#### **7. Chair Representing the Project**

This item continues to be a concern with this planning group, and may imply a conflict of interest by the members, as outlined by Policy I-1 (page 7-8). Since the Chair, Gordon Hammers, is owner of the

local Internet Service Provider and an important member of the Potrero community, it is likely that he will experience some financial benefit from the Blackwater Project. That project is such a large decision, it is almost inconceivable that the members of the small Potrero community will not be materially impacted, and points out a difficulty when the communities are small and the projects are large within that community. It may be necessary to assume that the planning group cannot make a valid decision on such a large project, unless they are unusually disassociated with their own community.

### **8. Approval of a Moving Target**

We agree with your assessment of this item. However, the Potrero Planning Group only reached a preliminary decision, and yet in the news media, it is promulgated as final. The training camp is a large and complex project, with significant changes discussed only verbally. Since you have no authority to dictate to the planning group on this item, our suggestion will stand.

### **9. Lengthy Deferral of requests to address the body.**

This item is exacerbated by the fact that the April meeting was canceled, despite an agenda that was apparently so full that a speaker who would provide a critical view of the project was deferred for several months. The cancelation of the April meeting should be viewed by the public as dereliction of duty by those officials. I would suggest that perhaps this is a deficiency in the training program, such that they are not aware that it is expected that they fulfill their duties as outlined by Policy I-1, including conducting their business in open meetings as required by the Brown Act.

### **10. No Public Comment on some agenda items**

Again, per the Brown Act, this is required. By your comments, you apparently agree to our suggestion to comply with the Brown Act, and provide such a comment period. We hope, again, that the Potrero Planning group will embrace the Brown Act, and provide such a comment period.

Thank you again for your attention. I would appreciate a more explicit note of agreement or disagreement with our points, as we consider them all to be valid, and will continue to push for adoption by the planning groups, the DPLU, and other bodies within the county.

Our activities are followed by a great many people who are interested in improved public access to public bodies and our democracy in general, and we regularly post all correspondence on the Internet for their review.

Regards,

Raymond Lutz

Corrdinator,

Citizens' Oversight Projects.

cc: Gordon Hammers, PO Box 071, Potrero, CA 91963-0071