



City of Huntington Beach Planning & Building Department
STUDY SESSION REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning & Building
BY: Jennifer Villasenor, Senior Planner *JV*
DATE: January 10, 2012

SUBJECT: **SUBSEQUENT ENVIRONMENTAL IMPACT REPORT NO. 07-002/ GENERAL PLAN AMENDMENT NO. 11-004/ CONDITIONAL USE PERMIT NO. 07-039(R) (HUNTINGTON BEACH SENIOR CENTER)**

**APPLICANT/
PROPERTY**

OWNER: City of Huntington Beach, 2000 Main Street, Huntington Beach, CA 92648

LOCATION: 18041 Goldenwest Street, Huntington Beach, CA 92648 (5-acre site southwest of the intersection of Goldenwest Street and Talbert Avenue)

PROJECT REQUEST AND SPECIAL CONSIDERATIONS

Subsequent Environmental Impact Report (EIR) No 07-002 analyzes the potential adverse environmental impacts associated with the senior center project in accordance with the California Environmental Quality Act (CEQA) (Attachment No. 5).

General Plan Amendment (GPA) No. 11-004 involves incorporating the Central Park Master Plan into the Recreation and Community Services Element of the General Plan and updating the Central Park Master Plan of Uses to change the 5-acre senior center site from a low intensity to high intensity recreation area (Attachment No. 3).

Conditional Use Permit (CUP) No. 07-039(R) represents a request to construct and operate up to a 45,000 square foot one-story senior recreation facility on a site with a grade difference greater than 3 feet (Attachment No. 2). The 5-acre project site is located within the 343-acre Huntington Central Park and generally located southwest of the intersection of Goldenwest Street and Talbert Avenue, between the disc golf course, which is at a higher elevation, and the Shipley Nature Center.

EIR No. 07-002 and CUP No. 07-039 were initially approved by the City Council in 2008, but subsequent legal challenges invalidated the approvals necessitating a new approval process. General Plan Amendment No. 11-004 is necessary to comply with the court ruling on the previous senior center CUP and EIR approvals. The following is a timeline of the senior center project:

DATE

EVENT

October, 2006

City entered into an agreement with the developer of Pacific City (a 30-acre mixed use development approved in the Downtown Specific Plan area) to construct a new senior center with fees assessed for parks/recreation pursuant to the Quimby Act and

Chapter 254 of the HBZSO.

November 7, 2006

Measure T was passed by Huntington Beach voters approving construction of a senior center on five acres in Huntington Central Park, following approval of all entitlements and environmental review.

March – April, 2007

Staff conducted an initial study and determined that an EIR would be required. A Public Scoping Meeting was held to solicit comments and issue areas to be studied in the EIR.

September – October, 2007

Draft EIR available made for public review and comment for forty-five days. A Public Comment Meeting was held to solicit comments on the adequacy of the Draft EIR.

November 28, 2007

Final EIR (including Responses to Comments on Draft EIR, Text Changes to Draft EIR, Technical Appendix and Comments) made available for public information and sent to Responsible Agencies.

December 11, 2007

Public hearing before Planning Commission to Certify EIR No. 07-002 and approve CUP No. 07-039.

February 4, 2008

Public hearing before the City Council to consider appeal of the Planning Commission approvals and Certify EIR No. 07-002 and approve CUP No. 07-039.

March 4, 2008

Parks Legal Defense Fund filed a lawsuit against the City challenging the validity of the use of Quimby funds for the senior center, the approval of the CUP, the adequacy of the EIR and the Measure T vote.

December 15, 2009

Superior Court ruled in favor of the *Parks Legal Defense Fund* on three causes of action ruling that the Petitioner's challenge of the Measure T vote was time-barred. The City subsequently filed an appeal of the ruling.

December 13, 2010

Court of Appeals ruled in favor of the City with respect to use of the Quimby fees and agreed with the trial court that the Measure T challenge was time-barred. However, the trial court ruling on the adequacy of the EIR and validity of the CUP approval were upheld.

July 5, 2011

Pursuant to the court ruling, the City Council voted to set-aside the CUP and EIR approvals so that a Subsequent EIR could be prepared and a GPA and new CUP approved in accordance with the court's decision (Attachment No. 4).

There is no change to the CUP request. The 5-acre senior center site would comprise up to a 45,000 square foot senior center facility, a 227-space parking lot with spaces for City vehicles and shuttle buses, and an outdoor open space area. The interior of the facility would consist of a community hall/dining room, group exercise, fitness and dance rooms, multi-use classrooms, a kitchen, a social lounge, and administrative offices. The outdoor open area includes a patio with a decorative trellis, an expansive lawn, a garden, a fountain, benches, and a natural meadow. Landscaping would be provided throughout the site and consists of a mix of California native and non-native, drought-tolerant vegetation. No changes to the previously approved facility are proposed with respect to site layout, floor plan or architectural design.

Ingress and egress to and from the site are proposed via a planned access driveway with entry gate at the existing Goldenwest Street/ Talbert Avenue intersection. An existing traffic signal at this location would be modified for traffic to enter and exit the project site.

CURRENT LAND USE, HISTORY OF SITE, ZONING AND GENERAL PLAN DESIGNATIONS

LOCATION	GENERAL PLAN	ZONING	LAND USE
Subject Site:	OS-P (Open Space – Parks)	OS-PR (Open Space – Parks & Recreation)	Undeveloped, vacant
North of Subject Site (across earthen berm)	OS-P	OS-PR	Undeveloped area; Shipley Nature center and parking lot
East of Subject Site: (across Goldenwest St.)	OS-P	OS-PR	Sports Complex; Central Library
South of Subject Site:	OS-P	OS-PR	Disc golf course; equestrian center
West of Subject Site:	OS-P	OS-PR	Passive parkland

The project site was developed with a farm house as early as the 1930s. Sometime in the 1960s, the house was demolished and the land was excavated so that dirt from the site could be used for construction of the 405 freeway. In 1974, the City acquired the land for Central Park and it has remained in its current undeveloped state. Although there are no developed structures or programmed uses of the site, the site is used informally for recreation and for traversing to get to other areas of the park.

APPLICATION PROCESS AND TIMELINES

DATE OF COMPLETE APPLICATION:

- September 15, 2011

MANDATORY PROCESSING DATE(S):

- Within 1 year of complete application: September 15, 2012

CEQA ANALYSIS/REVIEW

CEQA Guidelines Section 15162 requires a Subsequent EIR when changes to a project or its circumstances occur or if new information becomes available that would necessitate substantial revisions to the previously approved EIR. As briefly discussed in the timeline, a lawsuit challenged the City’s approval of the project and adequacy of the EIR. Specifically, the Court ruled that the City violated its General Plan by failing to modify the General Plan to accommodate the senior center project. The Court also determined that the City violated CEQA by failing to consider a reasonable range of alternatives, including closed school sites that became available after the Draft EIR was prepared but before the Final

EIR was certified. The Court required the City to set aside the project approvals (EIR and CUP) and process a General Plan Amendment, as described, and conduct further environmental analysis. The Subsequent EIR includes analysis of the proposed General Plan Amendment and four additional alternative sites as well as additional analysis of potential impacts due to loss of open space Citywide as a result of utilizing all Quimby fees from the Pacific City project for the proposed senior center project. The 2007 EIR has also been updated where appropriate to reflect current existing conditions.

Scope of Subsequent EIR Analysis

As discussed, the Subsequent EIR includes analysis of the proposed General Plan Amendment and four additional alternative sites as well as additional analysis with respect to potential impacts due to loss of open space as a result of utilizing Quimby fees for the proposed senior center project. The Subsequent EIR also updates baseline conditions and includes a new greenhouse gas emissions section since it was not required in the 2007 EIR.

Subsequent EIR No. 07-002 analyzed 14 impact areas listed below.

- **Air Quality**
- **Biological Resources**
- **Geology and Soils**
- **Greenhouse Gas Emissions**
- **Hydrology and Water Quality**
- **Recreation**
- **Traffic**
- **Aesthetics**
- **Cultural Resources**
- **Hazards and Hazardous Materials**
- **Land Use and Planning**
- **Noise**
- **Public Services**
- **Utilities & Service Systems**

Although each impact area was updated from the 2007 EIR as necessary, several impact areas and sections required more extensive revisions to address the issues raised in the court ruling. The most substantial changes from the previous (2007) EIR to the Subsequent EIR were in the following areas:

- **Project Description:** added General Plan Amendment description, update of project objectives, discussion on court ruling, description of four new alternative sites (described in more detail below)
- **Land Use and Planning:** General Plan Amendment analysis
- **Recreation:** analysis of Citywide impacts to parkland due to use of Quimby fees from the Pacific City project for the senior center project and not acquisition of parkland
- **Alternatives:** analysis of four new alternative sites
- **Greenhouse Gas Emissions:** new analysis not included in 2007 EIR

No impacts in the areas of Agricultural Resources, Mineral Resources and Population and Housing were determined during the scoping process for the 2007 EIR. None of the changes in the project description, alternative sites, or baseline conditions would result in a change to this determination; as such, no analysis is provided in the Subsequent EIR in these impact areas.

Project Impacts

Similar to the 2007 EIR, all project impacts would result in less than significant impacts or less than significant impacts with implementation of code requirements and mitigation measures. The Subsequent EIR determined one significant and unavoidable cumulative impact would occur in the area of aesthetics as a result of the project. This significant and unavoidable cumulative aesthetic impact was also identified in the 2007 EIR.

Alternatives

CEQA Guidelines Section 15126.6 requires a reasonable range of alternatives to be evaluated that would attain most of the project objectives while avoiding or substantially reducing any of the significant environmental impacts caused by the project. The City selected potential project alternatives based on the CEQA Guidelines and the language of the court ruling. Seven alternatives were evaluated in the Subsequent EIR. The seven alternatives included the three alternatives analyzed in the 2007 EIR as described below:

- **No Project/Continuation of Uses Allowed By Existing General Plan and Master Plan** – Analyzes development on the site as a “low intensity recreation area” with the access driveway, parking lot, restrooms, tot lot and open space.
- **Reduced Project/Alternative Configuration** – Analyzes a reduction in the size of the development with a 30,000 square foot building re-oriented to the southeast corner of the site.
- **Alternative Central Park Site** – Analyzes the alternative site location of the northwest corner of Ellis Avenue and Goldenwest Street.

Additionally, in response to the court ruling, four additional alternatives were selected for evaluation in the Subsequent EIR including:

- **Kettler School Site** – Analyzes use of an existing 38,418 square foot school building at the closed Kettler School site located at 8750 Doresett Drive, west of Magnolia Street between Atlanta and Hamilton Avenues.
- **Park View School Site** – Analyzes use of 45,000 square feet of an existing 56,837 square foot school building at the closed Park View School site located at 16666 Tunstall Lane, east of Goldenwest Street between Heil Avenue and the East Garden Grove Wintersburg Flood Control Channel.
- **Magnolia Tank Farm Site** – Analyzes demolition of the existing empty oil storage tanks and ancillary site improvements and construction of a 45,000 square foot senior center on a portion of the existing 27-acre former Magnolia Oil Tank Farm located on the west side of Magnolia Street at Banning Avenue.
- **The Cove Site** – Analyzes construction of a 45,000 square foot senior center on a portion of the 9.9-acre undeveloped site located at the northeast corner of Gothard Street and Garfield Avenue.

Other alternatives such as upgrading the existing Rodgers Senior Center, using vacant commercial buildings, other closed school sites, and multiple small satellite senior centers were considered but rejected as infeasible. The Alternatives analysis concluded that Alternative 3: Alternative Central Park site would be considered the environmentally superior alternative.

COMMENTS FROM CITY DEPARTMENTS AND OTHER PUBLIC AGENCIES

The planning, design and site layout of the proposed senior center project reflect the recommendations of the Planning and Building, Public Works, Community Services, Police and Fire Departments. The analysis and conclusions included in Subsequent EIR No. 07-002 reflect and are based in part on consultation with the Building Division in addition to the Departments of Community Services, Economic Development, Fire, Police, Public Works and the City Attorney’s Office.

PUBLIC MEETINGS, COMMENTS AND CONCERNS

Prior to the lawsuit, during the initial approval process for the Senior Center project, several public meetings were held. These meetings included two comment meetings on the EIR and public hearings before the Planning Commission and City Council. In addition, the project was reviewed by the Design Review Board twice as well as the Community Services Commission during public meetings. Subsequent to City Council approval, the project went back to the Planning Commission for review and approval of the final project design and landscape plans. Council's action to set aside the EIR and CUP approvals was done during a regularly scheduled public City Council meeting.

During the Subsequent EIR process, a public comment meeting was held on October 12, 2011 during the 45-day public review period to collect comments on the adequacy of the draft Subsequent EIR. The meeting was advertised in the Huntington Beach Independent, and notices were sent to responsible agencies, interested parties and property owners and tenants within a 2000-foot radius of the project site. Approximately 25 people attended the comment meeting and raised issues and asked questions related to project funding and timing, the alternatives analysis, noise impacts, facility operations, and alternatives sites selection. Comments from the meeting were recorded and responded to in the Final Subsequent EIR (Attachment No. 5).

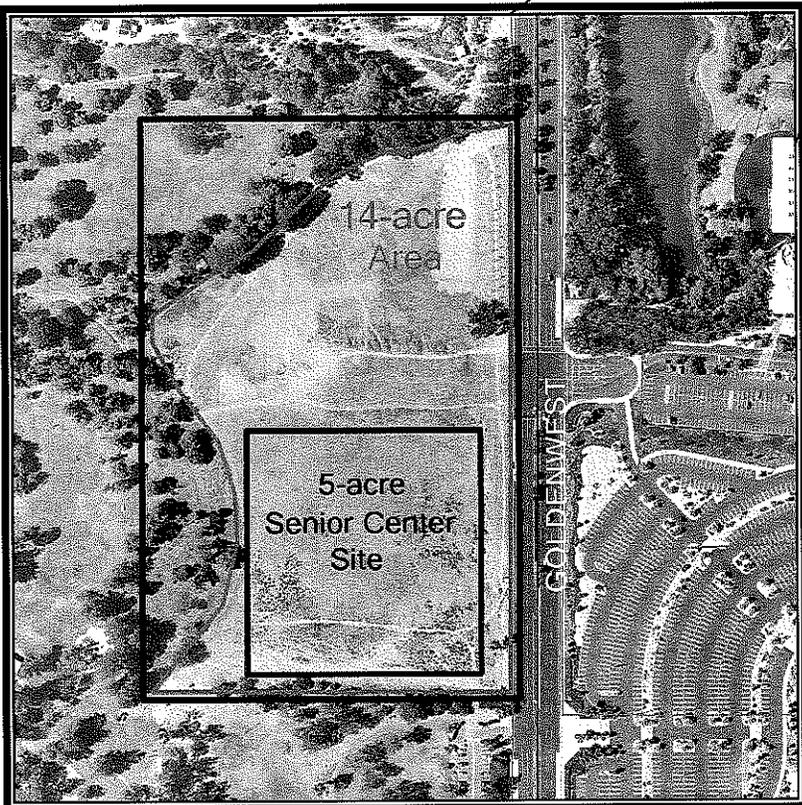
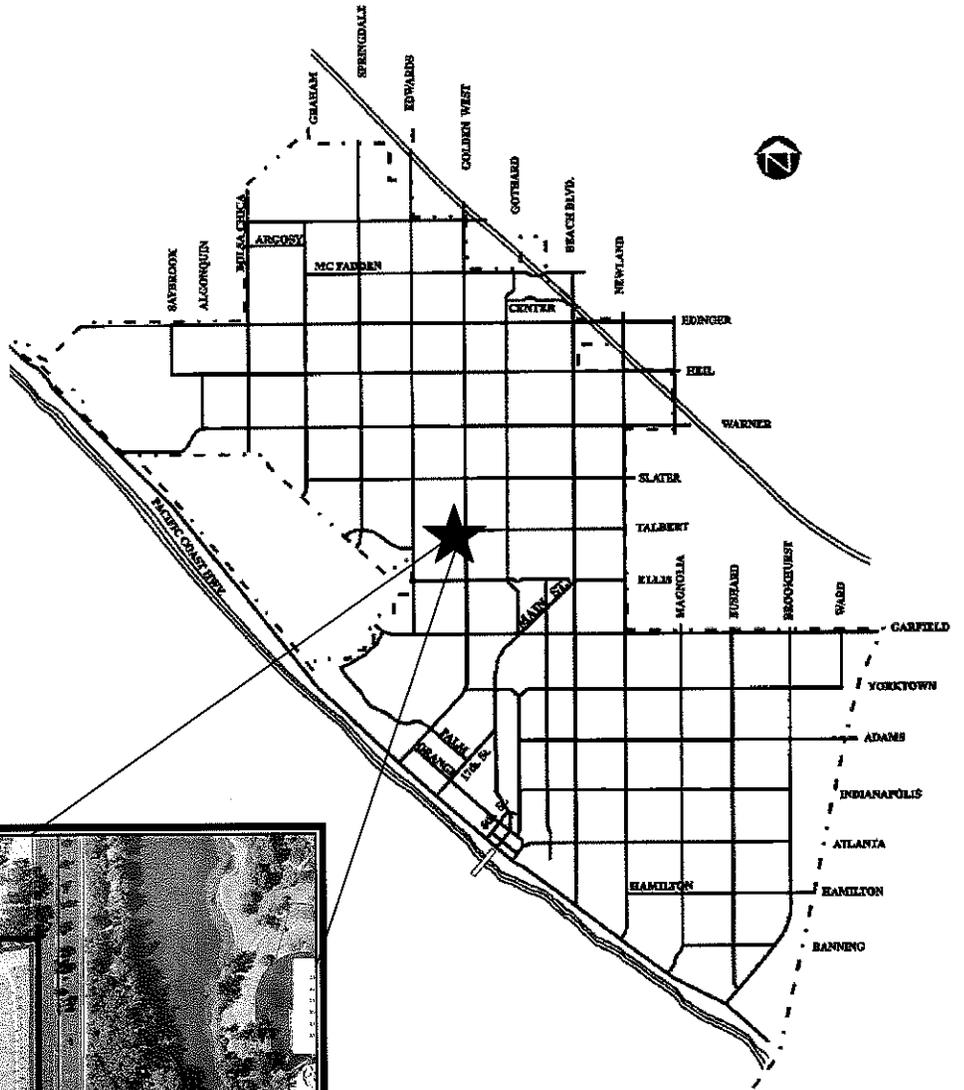
PLANNING ISSUES

The primary issues for the Planning Commission to consider are as follows:

- The adequacy of the EIR in accordance with the California Environmental Quality Act (CEQA) guidelines;
- Compliance of the General Plan Amendment and Subsequent EIR with the California Court of Appeals ruling;
- Compatibility of the proposed project with surrounding land uses and the loss of undeveloped open space in Central Park; and
- The project's overall conformance to the goals, objectives, and policies of the General Plan.

ATTACHMENTS:

1. Vicinity Map
2. Project Plans
3. Proposed Figure RCS-2 for General Plan Amendment No. 11-001
4. City Council RCA, dated July 5, 2011, Setting aside previous approvals for the Senior Center Project (CUP 07-039 and EIR 07-002)
5. Final Subsequent EIR No. 07-002 – Not Attached – Available for review at the Planning and Zoning Counter – 3rd Floor, City Hall and on the website at the following link:
http://www.huntingtonbeachca.gov/Government/Departments/Planning/major/senior_center.cfm



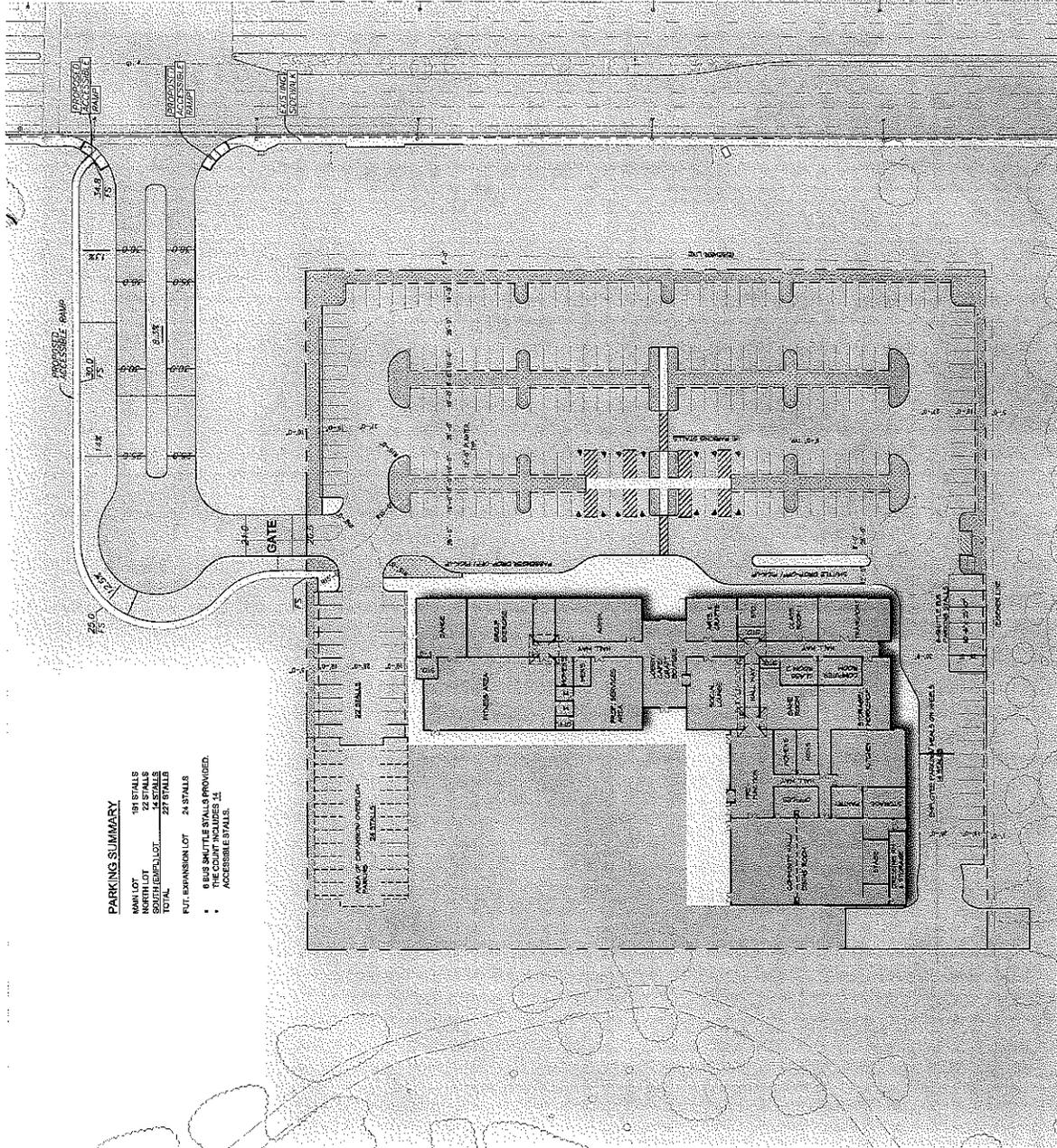
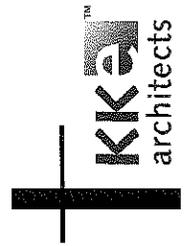
VICINITY MAP

CONDITIONAL USE PERMIT NO. 07-039(R)/GENERAL PLAN AMENDMENT NO. 11-004/
 SUBSEQUENT ENVIRONMENTAL IMPACT REPORT NO. 07-002
 (SENIOR CENTER IN HUNTINGTON CENTRAL PARK) ATTACHMENT NO. 1

PROJECT FOR:



4100 MACARTHUR BLVD.
SUITE 200
HUNTINGTON BEACH,
CA 92640
T: 949.255.1100
F: 949.255.1128



PARKING SUMMARY

MAIN LOT	58 STALLS
SOUTH EXPAN LOT	14 STALLS
TOTAL	72 STALLS
RPT. EXPANSION LOT	24 STALLS

- 14 BUS SHUTTLE STALLS PROVIDED.
- THE COUNT INCLUDES 11 ACCESSIBLE STALLS.

ATTACHMENT NO. 2.1



SITE PLAN
JULY 9, 2007

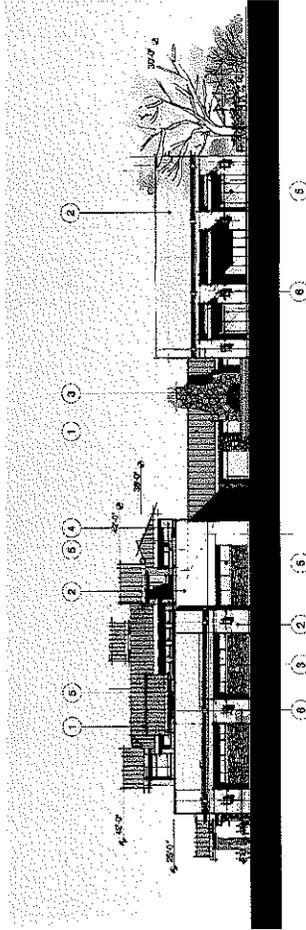
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PROJECT FOR:

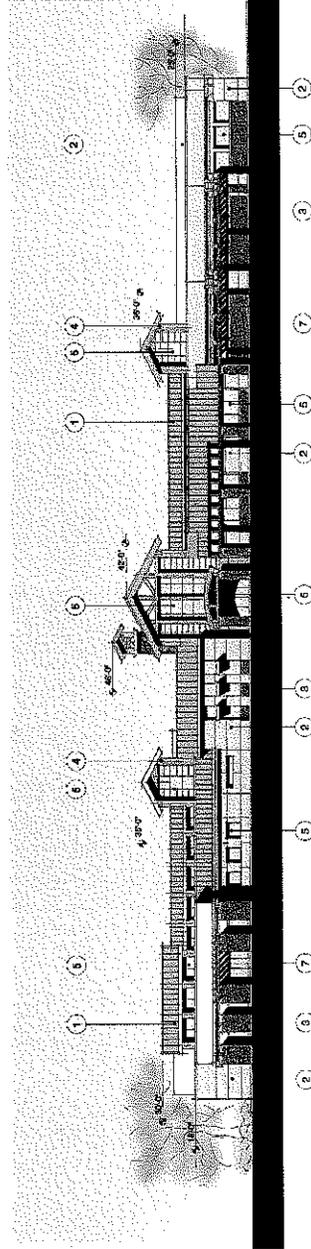


4100 MACARTHUR BLVD.
SUITE 200 BEACH, CA 92640

T: 949.255.1100
F: 949.255.1128



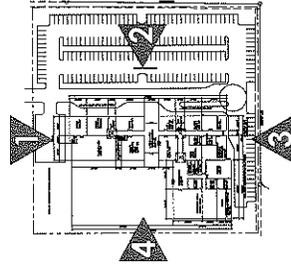
1. NORTH ELEVATION



2. EAST ELEVATION

MATERIALS

- 1. STANDING METAL LEAF ROOF
- 2. STUCCO
- 3. BRICK
- 4. WOOD/METAL BAYERS
- 5. GLAZING
- 6. LIGHT FIXTURE
- 7. WOOD TRUSS



ELEVATIONS

JULY 17, 2007

NOTE: THE INCORPORATED MATERIALS LIST AND SUBJECT TO ADJUSTING PENDING FUTURE VENDOR AND CREDIT TITLES AND OTHER GUARANTEES OF ANY KIND ARE GIVEN OR IMPLIED BY THE ARCHITECT.

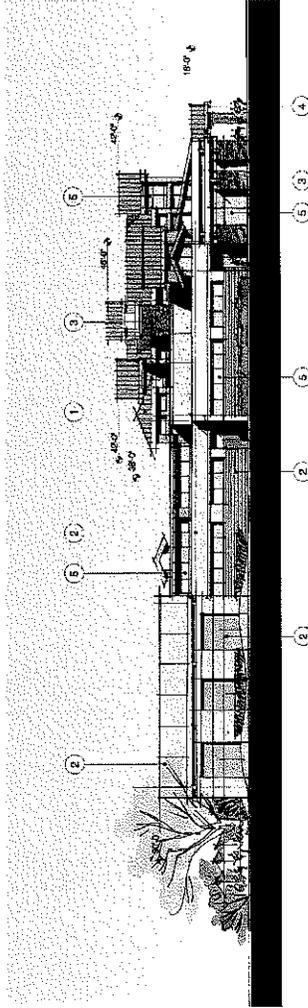
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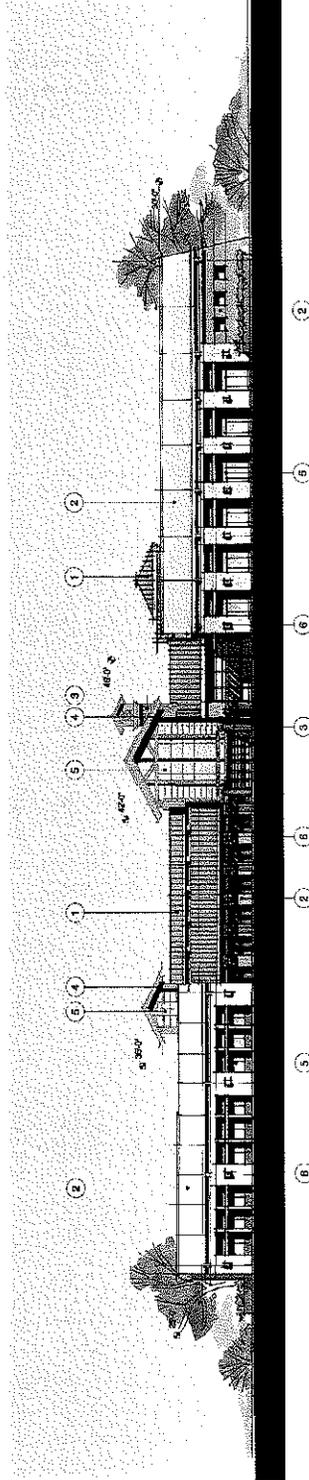
PROJECT FOR:

M A K A R
4100 MACARTHUR BLVD.
SUITE 200 BEACH,
CA 92660

T: 949.255.1100
F: 949.255.1128



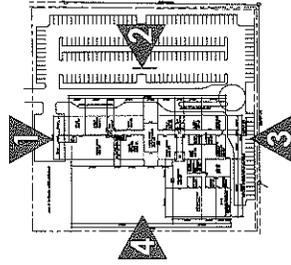
3. SOUTH ELEVATION



4. WEST ELEVATION

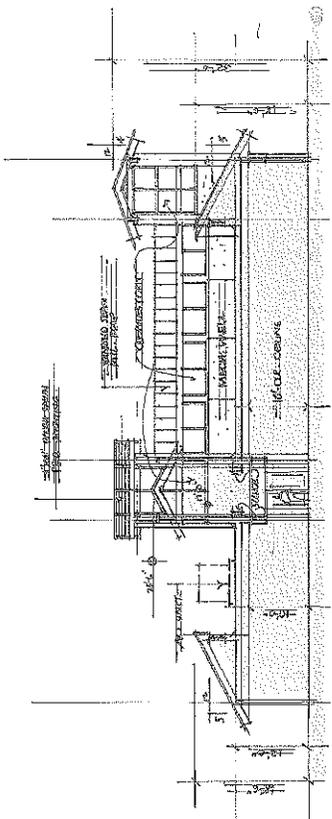
MATERIALS

- 1. STANDING METAL SEAM ROOF
- 2. STUCCO
- 3. STONE
- 4. WOOD/METAL BATES
- 5. GLAZING
- 6. CASITRIFE
- 7. WOOD TRILLS

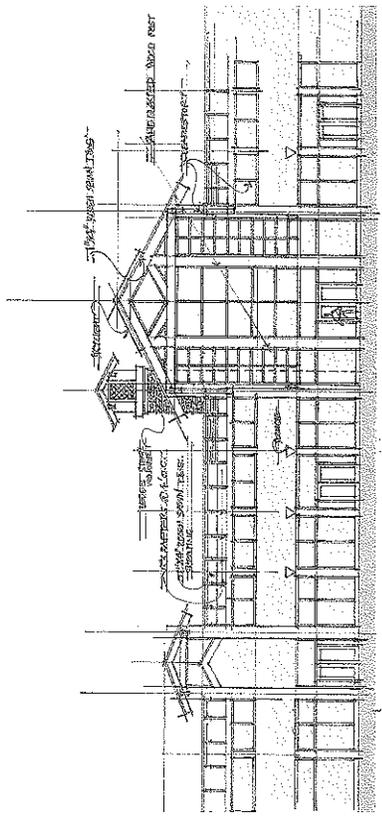


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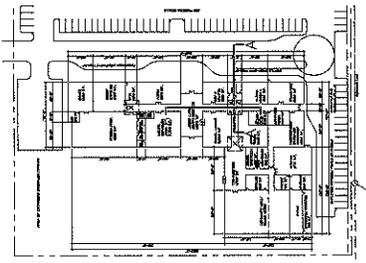
M A K A R
4100 MACARTHUR BLVD.
SUITE 200
NEWPORT BEACH,
CA 92660
T: 949.265.1100
F: 949.265.1128



SECTION A



SECTION B



ATTACHMENT NO. 2.4

SECTIONS
JULY 9, 2007

NOTE: THIS INFORMATION IS CONFIDENTIAL IN NATURE AND IS SUBJECT TO ADJUSTING PERIODS FOR THE ARCHITECT'S LIABILITY INSURANCE POLICY. THE ARCHITECT'S LIABILITY INSURANCE POLICY DOES NOT COVER DAMAGES OR COMPENSATION OF ANY KIND ARE GIVEN OR PAID BY THE ARCHITECT.

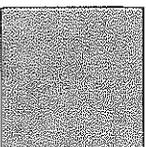


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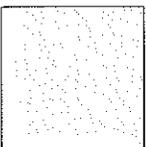


COLOR LEGEND

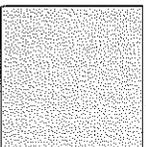
- A. DUNN EDWARDS
DE 5207 Pecan Veneer
- B. DUNN EDWARDS
DEC 769 Ranier White
- C. DUNN EDWARDS
DE 5436 Tortilla



A



B



C

SITE FURNITURE

- A. BENCH
MFG: Keystone Ridge Designs
Style: The Reading Series
6' Bench with Back
Color: Bronze
- B. LITTER RECEPTACLE
MFG: Keystone Ridge Designs
Style: The Reading Series
32 gallon
Color: Bronze
- C. BICYCLE RACKS
MFG: Keystone Ridge Designs
Style: The Reading Series
2 sided-8 bike capacity
Color: Bronze



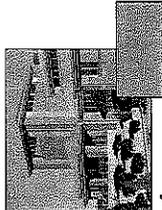
A



B



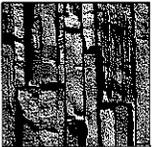
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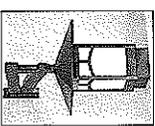
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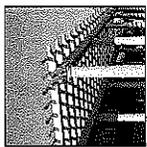
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3



6



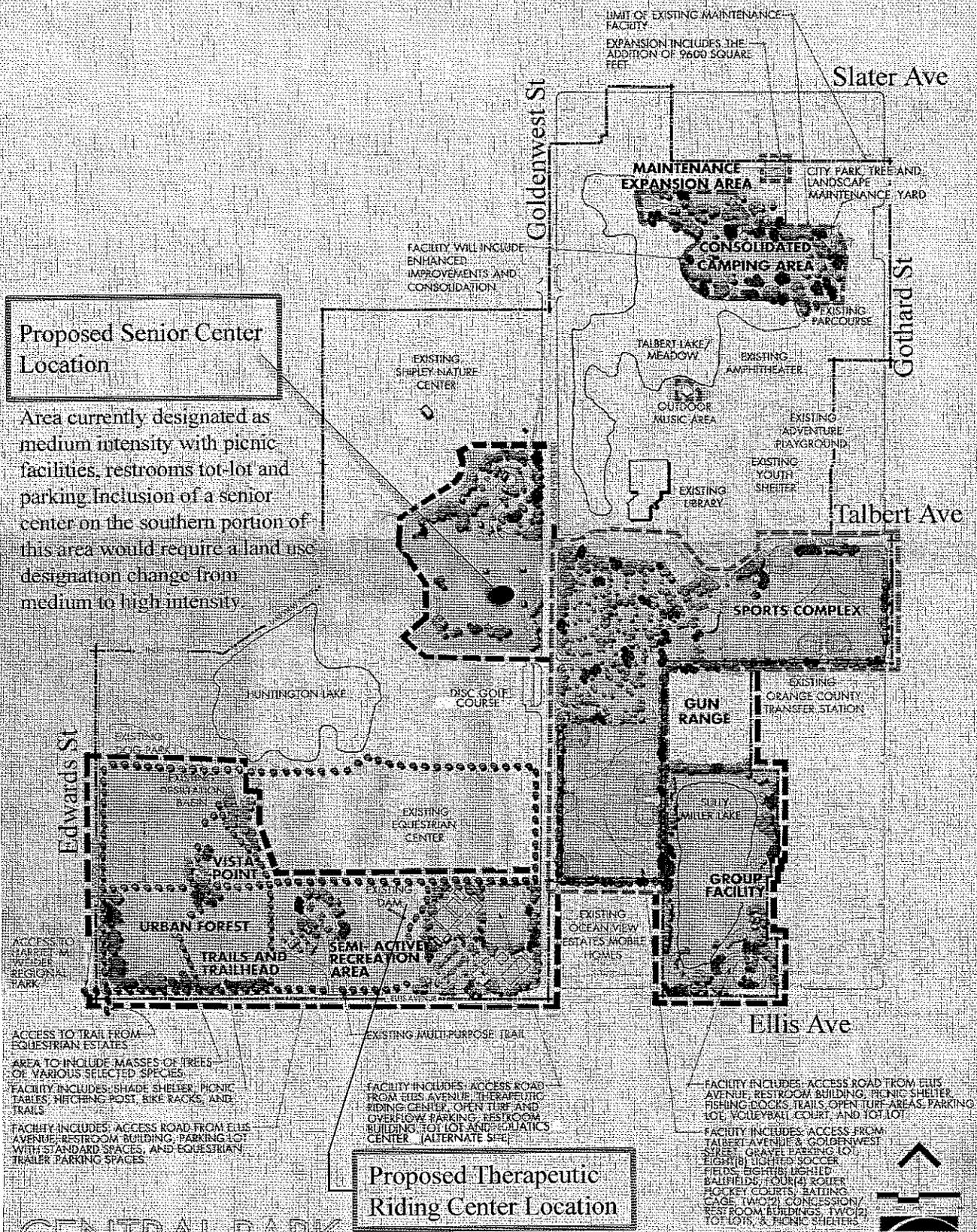
7

MATERIAL LEGEND

- 1. Metal Roof
MFG: AEP Span
Style: Standing Seam
Color: Hemlock Green
- 2. Stucco Finish
MFG: La Habra
Finish: Fine Sand
- 3. Stone Veneer
MFG: Coronado
Style: Desert Ridge
Color: Chablis
- 4. Wood/Metal Rafters
- 5. Glazing
- 6. Light Fixture
MFG: Sternberg
Style: Tinley 1220
Color: Dark Bronze
- 7. Metal Trellis



CENTRAL PARK MASTER PLAN OF USES



Proposed Senior Center Location

Area currently designated as medium intensity with picnic facilities, restrooms tot-lot and parking. Inclusion of a senior center on the southern portion of this area would require a land use designation change from medium to high intensity.

Proposed Therapeutic Riding Center Location

ACCESS TO TRAIL FROM EQUESTRIAN ESTATES

AREA TO INCLUDE MASSES OF TREES OF VARIOUS SELECTED SPECIES

FACILITY INCLUDES: SHADE SHELTER, PICNIC TABLES, NITCHING POST, BIKE RACKS, AND TRAILS

FACILITY INCLUDES: ACCESS ROAD FROM ELLIS AVENUE, RESTROOM BUILDING, PARKING LOT WITH STANDARD SPACES, AND EQUESTRIAN TRAILER PARKING SPACES

FACILITY INCLUDES: ACCESS ROAD FROM ELLIS AVENUE, THERAPEUTIC RIDING CENTER, OPEN TURF AND OVERFLOW PARKING, RESTROOM BUILDING, TOT LOT AND EQUESTRIANS CENTER (ALTERNATE SITE)

FACILITY INCLUDES: ACCESS ROAD FROM TALBERT AVENUE & GOLDENWEST STREETS, GRAYLE PARKING LOT, EIGHT (8) LIGHTED SOCCER FIELDS, EIGHT (8) LIGHTED BALLFIELDS, FOUR (4) ROTARY FLOCKEY COURTS, BAITING CAGE, TWO (2) CONCESSION/REST ROOM BUILDINGS, TWO (2) TOT LOTS, & PICNIC SHELTERS

CENTRAL PARK
CITY OF HUNTINGTON BEACH, CALIFORNIA

Council/Agency Meeting Held: _____ Deferred/Continued to: _____ <input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	_____ City Clerk's Signature
Council Meeting Date: July 5, 2011	Department ID Number: CA 11-005

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Jennifer McGrath, City Attorney

PREPARED BY: Jennifer McGrath, City Attorney

SUBJECT: Set aside the City Council's certification of the Senior Center Environmental Impact Report ("EIR") No. 07-002 and issuance of the Conditional Use Permit ("CUP") No. 07-039 regarding the Senior Center in Central Park

Statement of Issue: On March 4, 2008, Parks Legal Defense Fund and a number of individuals (collectively "Parks") filed a lawsuit challenging the City's decision to build a Senior Center in Central Park. Parks' lawsuit contained the following four claims: first claim under the California Environmental Quality Act ("CEQA") asserting that the EIR failed to consider a reasonable range of alternatives to the project; second claim asserting that the November 2006 election violated CEQA and the City's Charter Section 612; third claim asserting a violation of the City's General Plan; and fourth claim asserting that the use of the Pacific City project's park in-lieu fees for funding the construction of the Senior Center violated the Quimby Act.

On February 10, 2009, in a separate trial, the trial court denied Parks' Charter Section 612 claim. On December 15, 2009, after a second trial, the trial court entered a judgment in Parks' favor on the remaining claims. The City appealed and Parks filed a cross appeal on the Charter Section 612 claim. On December 13, 2010, the Court of Appeal issued its opinion, ruling in the City's favor on the Charter Section 612 and Quimby Act claims, but ruling in Parks' favor on the EIR and General Plan claims.

Financial Impact: Not Applicable.

Recommended Action: Motion to:

Set aside the City Council's certification of EIR No. 07-002 so that a subsequent EIR may be prepared and set aside the issuance of CUP No. 07-039 regarding the Senior Center in Central Park so that a General Plan Amendment may be processed.

Alternative Action(s): Do not set aside the City Council's certification of EIR No. 07-002 and issuance of CUP No. 07-039 regarding the Senior Center in Central Park, and direct City staff accordingly.

REQUEST FOR COUNCIL ACTION

MEETING DATE: 7/5/2011

DEPARTMENT ID NUMBER: CA 11-005

Analysis: On March 4, 2008, Parks filed a lawsuit, challenging the City's decision to build a Senior Center in Central Park based on CEQA, Charter Section 612, the General Plan, and the Quimby Act. In a February 10, 2009, separate trial, the trial court denied Parks relief on its Charter Section 612 claim. A trial on the remaining claims took place on August 6, 2009. On December 15, 2009, the trial court entered a judgment and a writ of mandate in Parks' favor on the remaining claims. The City appealed and Parks filed a cross appeal on the Charter Section 612 claim.

On December 13, 2010, the Court of Appeal issued its opinion. The Court of Appeal ruled in the City's favor on the Charter Section 612 and Quimby Act claims. The Court of Appeal ruled in Parks' favor on the CEQA claim challenging the sufficiency of the EIR and the General Plan claim. Regarding the EIR, the Court of Appeal held that the EIR failed "to discuss the Kettler [School] site, as well as the other closed school sites that may have been available as alternative locations." (**Attachment 1** [Court of Appeal Opinion, page 11].) The Court of Appeal also held that the EIR failed to address "whether use of all the [Quimby Act] in-lieu fees from the Pacific City project (\$20 to \$25 million) as funding for the [S]enior [C]enter was likely to affect the City's ability to acquire open land to replace the acreage lost by building the [S]enior [C]enter." (**Attachment 1** [Court of Appeal Opinion, pages 12-13].) Regarding the CUP, the Court of Appeal held that the CUP violated the City's General Plan because the City's General Plan incorporated the Central Park Master Plan which "designated the land where the [S]enior [C]enter is proposed to be built as a low intensity recreation area." (**Attachment 1** [Court of Appeal Opinion, page 15].) Thus, the Court of Appeal ordered that the "[t]he certification of the EIR must be set aside" and "[t]he CUP must be set aside." (**Attachment 1** [Court of Appeal Opinion, page 20].) On February 16, 2011, the Court of Appeal sent the case back to the trial court.

On May 20, 2011, the trial court stated that it would not relinquish its jurisdiction until the City Council complied with the Court of Appeal's opinion to set aside the certification of the EIR and issuance of the CUP. The trial court set a hearing date of July 12, 2011, for the City Council to take these actions. If the City Council sets aside the certification of the EIR and issuance of the CUP, the trial court will relinquish its jurisdiction of this lawsuit. If the City Council fails to set aside the certification of the EIR and issuance of the CUP by the July 12, 2011, hearing the trial court will continue to maintain its jurisdiction of this lawsuit and most likely restrain the City from taking any action on the EIR and the CUP.

Environmental Status: City staff anticipates presenting a subsequent EIR and General Plan Amendment to the Planning Commission at the end of the year and to the City Council early next year.

Strategic Plan Goal: Improve Internal and External Communication

Attachment(s):

No.	Description
1.	Court of Appeal Opinion, dated December 13, 2010

ATTACHMENT NO. 4.2

ATTACHMENT #1

ATTACHMENT NO. 4.3

COPY

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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

COURT OF APPEAL-4TH DIST DIV 3
FILED

DIVISION THREE

DEC 13 2010

PARKS LEGAL DEFENSE FUND et al.,

Plaintiffs and Appellants,

v.

THE CITY OF HUNTINGTON BEACH
et al.,

Defendants and Appellants.

Deputy Clerk _____

G043109

(Super. Ct. No. 30-2008-00051261)

OPINION

Appeals from a judgment of the Superior Court of Orange County, David C. Velasquez, Judge. Affirmed in part, reversed in part.

Jennifer McGrath, City Attorney, Scott F. Field, Assistant City Attorney and John M. Fujii, Deputy City Attorney; Greines, Martin, Stein & Richland and Alison M. Turner for Defendants and Appellants.

Poole & Shaffery, Law Office of Mark J. Skapik, Mark C. Allen III and Geralyn L. Skapik for Plaintiffs and Appellants.

* * *

ATTACHMENT NO. 4.4

Parks Legal Defense Fund and a number of individuals (collectively Parks) filed a petition for a writ of mandate (petition) seeking injunctive and declaratory relief challenging the City of Huntington Beach's (the City) decision to build a senior center on open land in Central Park. The petition contained four causes of action. As to the second cause of action, the superior court denied petitioner's request to require the voters to approve the project a second time, as time-barred. The court granted Parks' request for relief on the remaining causes of action. Parks and the City each appeal from the part(s) of the judgment adverse to their position.

I.

FACTS

In June 2005, the City hired an architectural firm to study the feasibility of constructing and operating a new senior center based upon the growth of the City's senior population. The City anticipated a 64 percent increase in the senior population to over 50,000 by 2010. The March 2006 feasibility study concluded a building in excess of 45,000 square feet would be required to meet the needs of the senior community. The preferred site for the senior center is in the City's Central Park.

Before the City may construct in a city park any building in excess of 3,000 square feet or at a cost of more than \$100,000, the City Charter requires an "affirmative vote of at least a majority of the electors voting on such proposition at a general or special election at which such proposition is submitted." (H.B. Charter, § 612(b).) On July 17, 2006, the City ordered Measure T placed on the ballot. The ballot measure read: "Shall a centrally located senior center building, not to exceed 47,000 square feet, be placed on a maximum of five acres of an undeveloped 14-acre parcel in the 356-acre Huntington Beach Central Park, generally located west of the intersection of Goldenwest Street and Talbert Avenue, between the disc golf course and Shipley Nature Center, following City Council approval of all entitlements and environmental review?" (Italics

omitted.) The Huntington Beach voters passed the measure on November 7, 2006. The City subsequently began its environmental impact study.

Earlier that year, on October 16, 2006, the City entered into an agreement with the developer of the Pacific City Project, Makalon Atlanta Huntington Beach, LLC. (developer), whereby the developer would construct the proposed senior center with in-lieu fees assessed pursuant to the Quimby Act. (Gov. Code, § 66477 et seq.) Under the Quimby Act, a city may require a developer to dedicate an amount of land or pay fees in-lieu thereof for park or recreational purposes as a condition to the approval of a tentative map or parcel map. (Gov. Code, § 66477, subd. (a).) The Pacific City Project involved the proposed construction of a 165 room boutique hotel, 163,000 square feet of retail stores, 12,000 square feet of restaurants, a 2.0 acre open space/park, and 516 condominium units in the "Main-pier sub-area of the Huntington Beach Redevelopment Project" adjacent to Pacific Coast Highway. The proposed senior center location is a straight-line distance of 2.95 miles from the northwest corner of the Pacific City Project.

On February 20, 2007, the City contracted EIP Associates/PBS&J to prepare an environmental impact report (EIR) for the new senior center on a five-acre site within the 356-acre Huntington Central Park. The City gave notice on September 17, 2007, that a draft EIR had been prepared for an approximately 45,000 square feet senior center on undeveloped land within Central Park and of the public comment period. The location was zoned as a low intensity recreation area, which permitted "barbeque and picnic amenities, a restroom, tot-lot, open turf area, and parking uses."

A number of individuals voiced their opposition to the project and EIR. Opposition grounds included the failure to consider alternative sites and that the proposed in-lieu funding violated the Quimby Act.

The City's planning commission certified the final EIR and approved a conditional use permit (CUP) on December 11, 2007. The final EIR consisted of the draft EIR with text changes and responses to comments. The mayor appealed the

decision. On February 4, 2008, after a public hearing on the appeal, the city council voted to approve the resolution certifying the final EIR and approved the CUP for the senior center.

Parks filed a petition on March 4, 2008. The petition alleged the City's certification of the EIR violated the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.),¹ inter alia, in that it failed to consider "a reasonable range of alternatives" including possible school sites that became available after the draft EIR was prepared, but before certification of the final EIR.

The second cause of action alleged the City violated CEQA and City Charter section 612 by purporting to approve the project without voter approval as required by the City Charter. The petition alleged the voters' action in approving Measure T in 2006 was not final approval. The third cause of action alleged the City violated its general plan and failed to modify the general plan or its zoning ordinance to accommodate the proposed senior center. The fourth cause of action sought declaratory relief and alleged the City's intended use of park in-lieu fees to fund construction of the proposed senior center violated the Quimby Act.

The superior court bifurcated the trial on the petition. On February 10, 2009, the court held the second cause of action was time-barred under section 21167, subdivision (a) and Government Code section 65009, subdivision (c)(1). It found that in certifying the EIR the City abused its discretion by failing to proceed in the manner provided by law and the City's findings regarding the lack of feasible alternative sites lacked substantial evidence. The court also found the EIR failed to discuss the consequences to the City of open space park land and the loss of funds to replace the land because the City planned to divert the in-lieu funds to finance the senior center rather than replenish the lost open space. The court also found the CUP was issued in violation

¹ All further statutory references are to the Public Resources Code, unless otherwise stated.

of the City's general plan. Lastly, the court found that use of in-lieu funds from the Pacific City project to finance the senior citizen center violated the Quimby Act because (1) the funds were not intended to be used to provide for park and open space land, and (2) using the entire in-lieu fee to pay for 100 percent of the cost of building the senior citizen center bore no reasonable relationship to the degree to which the future inhabitants of the Pacific City project would use the center. The court found that in all other respects, the City did not abuse its discretion in certifying the EIR.

The court directed the City to set aside and vacate the EIR for the proposed senior center in Central Park, all actions of the city council on February 4, 2008 regarding the proposed senior center, and the issuance of the CUP. The court further found the senior center may not be funded by the in-lieu fees without violating the Quimby Act and the City's enabling ordinance, Huntington Beach Municipal Code section 254.08.

II

DISCUSSION

A. Rules Applicable to CEQA Review

"CEQA is a comprehensive scheme designed to produce long-term protection to the environment. [Citation.]" (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.) The Legislature has enacted CEQA Guidelines to be followed in the process. (Cal. Code Regs., tit. 14, § 15000 et seq.)² "These Guidelines are binding on all public agencies in California." (Guidelines, § 15000.) CEQA requires "that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." (§ 21000, subd. (g).) The public policy behind CEQA includes the idea "that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects

² All references to "Guidelines" are to the State CEQA guidelines, which implement CEQA. (Cal. Code Regs., tit. 14, § 15000 et seq.)

of such projects” (§ 21002.) CEQA therefore requires the public agency to “mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” (§ 21002.1, subd. (b).)

The “heart and soul of CEQA” is the EIR. (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 911.) “Whenever a project may have a significant and adverse physical effect on the environment, an EIR must be prepared and certified. [Citations.]” (*Mountain Lion Foundation v. Fish & Game Com., supra*, 16 Cal.4th at p. 113.) The EIR’s function is “to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.” (§ 21002.1, subd. (a).)

Additionally, the EIR “inform[s] the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’ [Citation.]” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goleta II*)). Our review of the City’s certification of the EIR for the senior center is “limited to deciding ‘whether there was a prejudicial abuse of discretion . . . [which] is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.’ [Citation.]” (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 823.) “Generally speaking, an agency’s failure to comply with the procedural requirements of CEQA is prejudicial when the violation thwarts the act’s goals by precluding informed decisionmaking and public participation. [Citations.]” (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1375.) “Substantial evidence is defined as ‘enough relevant information and reasonable inferences from [the information supplied by the EIR] that a fair argument can be made to support a conclusion, even though other conclusions might

also be reached.” [Citations.] . . . “Substantial evidence shall include facts, reasonable assumptions predicated on facts, and expert opinion supported by facts.” [Citation.] “In determining whether substantial evidence supports a finding, the court may not consider or reevaluate the evidence presented to the administrative agency. [Citation.] All conflicts in the evidence and any reasonable doubts must be resolved in favor of the agency’s findings and decision. [Citation.] [¶] In applying that standard, rather than the less deferential independent judgment test, “the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.” [Citation.]” (*Uphold Our Heritage v. Town of Woodside* (2007), 147 Cal.App.4th 587, 596.) In any action reviewing a public agency’s decision relating to a CEQA determination, “the court shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in the light of the whole record.” (§ 21168.)

“[A] court’s proper role in reviewing a challenged EIR is not to determine whether the EIR’s ultimate conclusions are correct but only whether the EIR is sufficient as an informational document. [Citation.]” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 407 (*Laurel Heights*)). “We may not, in sum, substitute our judgment for that of the people and their local representatives. We can and must, however, scrupulously enforce all legislatively mandated CEQA requirements.” (*Goleta II, supra*, 52 Cal.3d at p. 564.)

B. Sufficiency of the EIR

1. Alternative Sites

“The core of an EIR is the mitigation and alternatives section.” (*Goleta II, supra*, 52 Cal.3d at p. 564.) The petition asserted and the superior court found that the EIR failed to adequately discuss feasible alternative sites for the senior center. The draft EIR considered the following possible alternatives to the project: (1) continued uses

allowed by the general and master plans, which would prohibit building the senior center in the park; (2) reducing the size of the proposed senior center from 45,000 to 30,000 square feet and building the center at the location of the Rogers Senior Center; (3) development of “multiple, smaller-scale senior centers throughout the City”; and (4) an alternative site for the senior center, again in Central Park, at the northwest corner of Ellis Avenue and Goldenwest Street. The proposed location for the senior center and the alternative site each consist of open space in Central Park. Although the initial feasibility study conducted in 2006 acknowledged the potential use of closed school sites as alternative locations for the senior center, the EIR did not discuss the use of such sites as alternative locations.

A number of citizens voiced their concern about the draft EIR’s failure to consider closed school sites, including the Kettler School property, as possible alternative locations for the senior center. The 2006 initial feasibility study specifically discussed the Kettler School site. The study noted that “[g]iven the significant amount of acreage, the option exists to develop either the main campus . . . or the school play fields adjacent to Edison Park, . . .” The response (see Guidelines, § 15088, subd. (a)) to the suggestion of the citizens was: “The school district board has not yet declared the Kettler School property surplus. Therefore, the City does not have the option to purchase the property under the Naylor Act. Consequently, the Draft EIR did not evaluate this property as an alternative site because the City’s ability to purchase it is speculative.”

“An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project, and evaluate the comparative merits of the alternatives.” (Guidelines, §§ 15126.6, subd. (a), 15364.) “A local agency must make an initial determination as to which alternatives are feasible and which are not. [Citation.] If an alternative is identified *as at least potentially feasible*, an in-depth discussion is required. [Citation.] On the other hand, when the infeasibility of an alternative is readily apparent, it “need not

be extensively considered.” [Citation.] ‘Even as to alternatives that are rejected, however, the “EIR must explain why each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages[, or cannot be accomplished.” [Citation.]” (*Center for Biological Diversity v. San Bernardino* (2010) 185 Cal.App.4th 866, 883, italics added.)

The Kettler School site had aspects that recommend it as a possible alternative site for the project. According to the City’s 2006 initial feasibility study, Kettler School would accommodate the proposed building, exterior programs, and future expansion. It has parking, would benefit from being close to Edison Park, is adjacent to compatible park uses, has significant vegetation, mature trees, and has potential compatibility with the Edison Community Center. Because it has already been developed, building the senior center at the school site would arguably reduce certain adverse environmental impacts that would occur with building the center in the park. (§ 21002; Guidelines, § 15126.6, subds. (a), (b).) “[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” (Guidelines, § 15126.6, subd. (b).) Thus, if feasible, the EIR should have discussed the alternative in detail. (*Goleta II, supra*, 52 Cal.3d at p. 566 [EIR must consider alternative location which offers substantial environmental advantage and may be feasibly accomplished].)

The question then, is whether the Kettler School was a feasible alternative site within the meaning of CEQA. More specifically, given the favorable information relating to that site in the initial feasibility study, did the fact that the school district had not declared Kettler School as surplus property at the time of the draft EIR make the site infeasible?

The Naylor Act (Ed. Code, §§ 17485 et seq., formerly Ed. Code, §§ 39390 et seq.) “governs the disposal of certain kinds of surplus school property.” (*City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921, 923.) “The net effect of the Act is to make surplus school property available to local communities at less than present market value, while assuring that participating school districts recover at least the cost of acquiring the property.” (*Id.* at pp. 923-924) If a school district decides to sell or lease surplus property, that land must first be offered to the city in which it is situated. (Ed. Code, § 17489, subd. (a).) With certain allowances, the sale price may not exceed the school district’s cost of acquisition, and may be as low as 25 percent of market value. (Ed. Code, § 17491, subd. (a).)

For CEQA purposes, “[f]easible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (§ 21061.1.) The fact that the City did not own a particular parcel of property at a given moment does not necessarily make the location an infeasible alternative. CEQA does not require the alternative be immediately available, only that it be “capable of being accomplished in a successful manner within a reasonable period of time.” (§ 21061.1.) Whether an alternative site is owned by the proponent of the project is “simply a factor” to be considered in determining feasibility. (*Goleta II, supra*, 52 Cal.3d at p. 575, fn. 7; Guidelines, §15126.6, subd. (f)(1) [whether site is owned by proponent is “[a]mong the factors that may be taken into account when the feasibility of alternatives”].) In *Goleta II*, the court recognized that even in situations where the proponent of a project is a private party that owns the proposed location of a project, there still may be cases “in which the consideration of alternative sites is necessary and proper.” (*Goleta II, supra*, 52 Cal.3d at p. 575.) Those instances are necessarily increased when the proponent is a governmental agency. “Understandably, the government’s power of eminent domain and access to public lands suggest that alternative sites may be more feasible, more often, when the developer is a public rather

than a private agency.” (*Id.* at p. 574.) The guidelines require the EIR to discuss “acquisition” when relevant. (Guidelines, § 15126; see *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 751 [EIR defective for failure to discuss possibility of land trade between private developer and United States Forest Service].)

The City argues the possibility of acquiring any of the school sites was too speculative to require in-depth discussion by the EIR, because the school district had not offered to sell surplus property and the City’s ability to purchase such property, even at (well) below market rates was uncertain. Had the City inquired of the school district and been informed the locations are not for sale, the point might be well taken. However, it does not appear the City ever inquired. The latter claim — the City’s ability to purchase school sites at below market rates was uncertain — rings hollow, given the City’s December 3, 2007 decision to approve its November 2007 surplus school property purchasing plan, which included a recommendation to purchase 7.73 acres of the Kettler School property, a total of 24.6 acres from three other school sites, and directed the City’s staff to update the plan as new sites are identified as surplus.

Given the fact that the Kettler School site may have been available at well below market value — not to mention the fact that the site had been considered as a potential site in the initial feasibility study — it must be concluded the site was at least “potentially feasible.” The EIR’s failure to discuss the Kettler site, as well as the other closed school sites that may have been available as alternative locations rendered the EIR deficient as an informative document. (*Goleta II, supra*, 52 Cal.3d at p. 564.) As a result, the City’s certification of the final EIR was a prejudicial abuse of discretion, requiring the certification be set aside.

2. Failure to Consider Loss of Open Land or Purchase of Open Land

The superior court found the EIR failed to accurately describe the project in that the City incorrectly presumed the land in Central Park upon which the senior center is to be constructed “has no value, is underused land, is surplus land, or is vacant land. However, the City’s General Plan and its Central Park Plan demonstrate the importance to the City of park land and open space land within the city.” The court noted that if the City were to use all the in-lieu funds from the Pacific City project to build the senior center, the net result is a loss of open space not only within Central Park, but also within the City as a whole. The EIR failed to discuss the environmental impact to the park and the city caused by the redirection of the in-lieu funds away from the purchase of open space toward construction of the senior center.

We agree with the City that the EIR adequately described the loss of open space in Central Park. The EIR did not, however, discuss the loss of open space throughout the City, caused by the City’s use of all the Quimby Act funds to construct the senior center instead of creating more open space. (See Guidelines, § 15131.)

With regard to the loss of open space, the EIR states: “Currently, 231 acres, or 65 percent, of Central Park are developed or planned for use as passive recreational areas. The change from passive to active at the project site would represent a 2 percent reduction of passive recreational space in Central Park” It also observed that building the senior center in the park would “reduc[e] the amount of undeveloped open space within Central Park” and concluded, “[t]his would be considered a significant cumulative impact of the proposed project.”

As noted above, the City did approve a plan in December 2007 to purchase surplus school property. The purchase of 10.6 acres for park open space was included in the plan. That plan which might have provided an alternative site for the senior center was not included in the EIR. The EIR should have addressed whether use of all the in-lieu fees from the Pacific City project (\$20 to \$25million) as funding for the senior center

was likely to affect the City's ability to acquire open land to replace the acreage lost by building the senior center.

3. *The Raptors (Birds of Prey)*

The EIR found “[d]evelopment of the proposed project would have a substantial adverse impact to raptor foraging habitat” and urged implementation of a mitigation measure that included “dedication as open space, conservation and/or enhancing areas of raptor foraging habitat at a ratio of 1:1 for acres of impact on raptor foraging habitat to provide suitable habitat values and functions for raptors.” The mitigation measure further provided that enhancement “would include, but not be limited to, the planting of native trees within and adjacent to conserved areas of raptor foraging habitat.”

Parks contends that as it relates to the issue of the impact on raptors, the EIR was defective because there was no evidence the mitigation measure will mitigate the impact on the raptors. It is not the City's burden to demonstrate the mitigation measure was sufficient. As we have stated before, “Where an EIR is challenged as being legally inadequate, a court presumes a public agency's decision to certify the EIR is correct, thereby imposing on a party challenging it the burden of establishing otherwise. [Citations.]” (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 530.) Parks has not carried its burden on this issue.

C. *Measure T Statute of Limitations*

The second cause of action alleged the City violated CEQA and section 612 of the City's Charter by “purporting to finally approve the project without a vote of the people as required by” section 612 of the City's Charter. As noted above, the issue was put to the voters in 2006 as Measure T and was approved by the voters on November 7, 2006. That vote was without benefit of an EIR. If the vote was an approval

of a “project” for CEQA purposes, section 21167, subdivision (a) required any action to be filed within 180 days of the approval, a date that expired prior to the filing of the present petition.

As a public agency generated initiative, Measure T was not exempt from CEQA compliance. (*Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 Cal.4th 165, 171.) The vote committed the City to going forward with the project. The petition, claiming an EIR was required before putting the matter to a vote, was not filed until March 2008, and is untimely under section 21167. That section requires an action alleging “that a public agency is carrying out or has approved a project that may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency’s decision to carry out or approve the project.” (§ 21167, subd. (a).) To the extent the second cause of action challenges the CUP on the ground that the voters were not provided an EIR before Measure T was voted on, Parks challenges the City’s “proceedings, acts or determinations taken, done, or made prior to” the issuance of the CUP. (Gov. Code, 65009, subd. (c)(1)(F).) That being the case, the cause of action accrued in 2006, when the City put Measure T on the ballot. Section 65009’s time limit, 90 days, expired prior to the filing of the instant petition in 2008. (Gov. Code, § 65009, subd. (c)(1).) Accordingly, the trial court did not err in concluding the second cause of action was time-barred.

D. The CUP and Violation of the City’s General Plan

Government Code section 65300 requires every city to “adopt a comprehensive, long-term general plan for the physical development of the . . . city.” The general plan must include: “A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment

of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land.” (Gov. Code, § 65302, subd. (a).) As we observed in *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, “The general plan functions as a “constitution for all future developments,” and land use decisions must be consistent with the general plan and its elements. [Citation.]” (*Id.* at p. 782.) A project must be compatible with the policies and objectives of the general plan, but “[p]erfect conformity is not required.” (*Ibid.*)

“We review decisions regarding consistency with a general plan under the arbitrary and capricious standard. These are quasi-legislative acts reviewed by ordinary mandamus, and the inquiry is whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. [Citations.] Under this standard, we defer to an agency’s factual finding of consistency unless no reasonable person could have reached the same conclusion on the evidence before it. [Citation.]” (*Endangered Habitats League, Inc. v. County of Orange, supra*, 131 Cal.App.4th at p. 782, fn. omitted.)

The superior court found the CUP violated the City’s general plan. That plan requires “structures located in the City’s parks and open spaces be designed to maintain the environmental character in which they are located” (Huntington Beach General Plan, LU 14.1.3, II-LU-44, and the City to acquire and develop its “parks in accordance with the Parks and Recreation Element of the General Plan.” (Huntington Beach General Plan, LU 14.1.5, II-LU-44.) The recreation element of the general plan, recognizes “[a]ll designated park lands need to be preserved with proper land use designation.” (Huntington Beach General Plan, III-RCS-6.) The recreation element further required development of system wide parks and recreation master plan “incorporate[ing] the Central Park Master Plan.” (Huntington Beach General Plan, I-RSC 4, III-RCS-17.) The Central Park master plan in turn designated the land where the senior center is proposed to be built as a low intensity recreation area, which would

permit picnic and barbeque amenities, tot-lot, restrooms, open turf area, and parking uses. The project would result in high intensity use.

The City claims that while it recognizes the project is inconsistent with the low intensity designation by the Central Park master plan, the park's general plan is not part of the City's general plan, and an amendment of the park plan after issuance of the CUP to bring the CUP into compliance with the park general plan is permissible. It is not.

The City's general plan specifically required the parks and recreation master plan to incorporate the Central Park master plan. As stated above, a general plan functions as a constitution for all future developments, and compliance with the Central Park master plan was, in effect, constitutionally compelled. The government may not justify the violation of a constitutionally compelled provision because it intends to subsequently amend its constitution. It must comply with the law as presently enacted. The trial court properly found the CUP violated the City's general plan.

E. *Declaratory Relief (Quimby Act)*

Subject to conditions not present here, “[t]he legislative body of a city or county may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park or recreational purposes as a condition of the approval of a tentative map or parcel map.” (Gov. Code, § 66477, subd. (a).) “This section shall be known . . . as the Quimby Act.” (Gov., Code, § 66477, subd. (g). The purpose of Quimby Act in-lieu fees is to “maintain and preserve open space for the recreational use of the residents of new subdivisions.” (*Home Builders Assn. of Tulare/King Counties, Inc. v. City of Lemoore* (2010) 185 Cal.App.4th 554, 566.) The City's Quimby Act ordinance declares the City has determined “that the public interest, convenience, health, safety and welfare require five acres of property for

each 1,000 persons residing within the City be devoted to local park and recreational purposes.” (Huntington Beach Zoning and Subdivision Ord., § 254.08C.)

As stated above, the City intends to fund construction of the new 45,000 square foot senior center, including banquet facilities and meeting rooms, with all or substantially all of the \$20 to \$25 million in-lieu fees from the Pacific City Project. The superior court granted Park’s request for declaratory relief and held use of the in-lieu funds violates the Quimby Act for “for two reasons: Firstly, the funds are not intended by the City to be used to provide for park and open space, and secondly, using the entire [sum of] in lieu fees to pay for 100 [percent] of the cost to build the senior center bears no reasonable relationship to [the] degree to which the proposed senior center will be used by the future inhabitants of the Pacific City project.” The court also found “the proposed senior center building and its intended usage does not satisfy the customary notion of a park.” The City contends the Quimby Act does not require use of fees toward what would customarily be considered a park, the senior center is a recreational facility, the Quimby Act expressly authorizes use of in-lieu fees for the development of recreation facilities, and the senior center would serve Pacific City residents. We need not address these issues because we agree with the City’s contention that Parks’ declaratory relief action is time-barred.

Government Code section 66499.37 provides: “Any action or proceeding to attack, review, set aside, void, or annul the decision of an advisory agency, appeal board, or legislative body concerning a subdivision, or of any of the proceedings, acts, or determinations taken, done, or made prior to the decision, *or to determine the reasonableness, legality, or validity of any condition attached thereto*, including, but not limited to, the approval of a tentative map or final map, shall not be maintained by any person unless the action or proceeding is commenced and service of summons effected within 90 days after the date of the decision. Thereafter all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision or

of the proceedings, acts, or determinations. The proceeding shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings.” (Italics added.)

The City issued the CUP for construction of the senior center on February 4, 2008. The trial court found the issuance of that CUP triggered the 90-day period under Government Code section 66499.37 and thus, Parks’ petition was timely filed. Here the trial court erred. While the CUP was the triggering event for purposes of other issues raised in the petition, it was not the triggering event for purposes of determining the propriety of the Quimby Act provision imposed on the developer of the Pacific Center in 2006.

In *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873 (*Timberidge Enterprises, Inc.*), the City of Santa Rosa enacted a resolution adopting a school impact fee that could be imposed upon the city’s approval of a subdivision map. The purpose of the fee was to alleviate overcrowding of schools caused by a new subdivision. The City of Santa Rosa imposed the fees on the plaintiffs as a condition of its approval of subdivisions to be developed by the plaintiffs. (*Id.* at p. 877.) The plaintiffs brought an action to declare the resolution and the fees imposed invalid. (*Ibid.*)

The City of Santa Rosa contended the action was untimely under Government Code section 66499.37. (*Timberidge Enterprises, Inc., supra*, 86 Cal.App.3d at p. 885.) The superior court rejected that argument and concluded the statute did not commence to run until such time as the fees were paid. The appellate court reversed. It found the event that triggered the commencement of the time period set forth in Government Code section 66499.37 was the approval of the subdivision map with attached condition. (*Id.* at p. 886.) “If the condition, as here, shall be that school impact fees be thereafter paid upon applications for permits to build upon the subdivision’s lots, the statute’s plain requirement is that an attack on the validity of the City’s decision, and its attending condition, be made within the designated period. Upon

failure of interested parties to do so, the validity of the condition is normally placed beyond legal attack. And here, it will be remembered, plaintiffs' claim of right to recover school impact fees paid is founded solely on the premise of the related condition's invalidity." (*Ibid.*)

Like the appellate court in *Timberidge Enterprises, Inc.*, "we discern a patent legislative objective that the validity of such decisions of a local legislative body, or its advisory agency, be judicially determined as expeditiously as is consistent with the requirements of due process." (*Timberidge Enterprises, Inc.*, *supra*, 86 Cal.App.3d at p. 886.) Indeed, since *Timberidge Enterprises, Inc.* was decided, the Legislature shortened the time frame in which challenges may be made to such decisions from 180 days to 90 days. (See Historical and Statutory Notes, 36E West's Ann. Gov. Code (2009 ed.) foll. § 66499.37, p. 382.)

In *Soderling v. City of Santa Monica* (1983) 142 Cal.App.3d 501, a developer challenged a condition imposed on the approval of a tentative tract map. The map and condition were approved on June 5, 1978, and the city subsequently gave the developer a 12-month extension of the tentative map. (*Id.* at pp. 503-504.) The developer's subsequent action challenging the city's 1980 denial of a final map, due to his failure to comply with the condition imposed in connection with the tentative map, was found to be untimely. (*Id.* at p. 505.) "The purpose of a conditional tentative map is to identify clearly the requirements to which a developer must conform; hence, he must demonstrate in his final map that he has resolved all of the deficiencies or problems enumerated in the tentative map. [Citation.] In other words, fulfillment of all tentative map conditions is, from the outset, a condition of final map approval. [Citations.]" (*Ibid.*)

On October 16, 2006, the City approved the owner participation agreement with the developer and the tentative tract map for the Pacific City development, a condition of which was the use of Quimby Act in-lieu funds for construction of a new

senior center on City owned property. If Parks was to challenge the in-lieu condition of that map, Government Code section 66499.37 required Parks to make the challenge within 90 days of the imposition of that condition, or not at all.

F. Conclusion

The certification of the EIR must be set aside because the EIR did not consider feasible alternative sites or whether the use of all the Quimby Act fees to fund construction of the senior center adversely impacts the City's ability to acquire open space within the City. The CUP must be set aside because it violates the City's general Plan. The challenge to the use of Quimby Act funds to finance construction of the senior center is time-barred, as is the challenge involving Measure T.

III

DISPOSITION

The judgment is affirmed except with regard to the declaratory relief action, which is reversed. Each party will bear their own costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, ACTING P. J.

IKOLA, J.

G043109

Parks Legal Defense Fund et al. v. The City of Huntington Beach et al.

Superior Court of Orange County

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ATTACHMENT NO. 4.24

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City of Huntington Beach
City Attorney's Office

ATTACHMENT NO. 4.25

ATTACHMENT NO. 5

FINAL SUBSEQUENT EIR NO. 07-002 NOT ATTACHED

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