

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request that the City Join Amicus Brief in the case of Headlands Reserve LLP v. City of Dana Point, Court of Appeal, 6th District,

MEETING DATE: September 1, 1999

PREPARED BY: City Attorney

RECOMMENDATION: That the City join the Amicus Brief in the case of Headlands Reserve LLP v. City of Dana Point.

BACKGROUND: Amicus Briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court in order to assist the court in understanding all of the issues and arrive at a conclusion.

This case involves judicial interference into the planning activities of local government. The City of Dana Point was in the process of preparing a general plan amendment and a specific plan relative to a certain part of the community. After spending eighteen months and approximately \$500,000 on that activity, the court held that the City could not process a general plan and specific plan simultaneously. The Court further directed that the City must process a specific plan submitted by a private party and suspend its pending consideration of a City proposed specific plan.

This decision establishes a precedent that is contrary to general planning practice throughout the State. The concurrent processing of general plan amendments and specific plans and other land use approvals is common throughout California. This particular practice saves substantial time and expense and promotes efficient planning. The concurrent processing concept has been approved by one of the Court of Appeals in the State of California. Mountain Defense League v. Board of Supervisors, (1977) 65 Cal.App.3d 723.

Unfortunately there is no express statutory authorization for concurrent processing of general plan amendments and related specific plans. Authority for concurrent processing has been assumed as part of local governments inherit powers to adopt planning regulations and procedures not expressly inconsistent with State law. DeVita v. County of Napa (1995) 9 Cal.4th 763, and Govt. Code §§65102, 65450-65456. A successful appeal in this case would confirm such inherent governmental powers and the consistent practice of cities throughout the State.

The decision if allowed to stand also would impact cities discretion to conduct their governmental affairs. Because the adoption or amendment of a specific plan is a legislative act, Yost v. Thomas (1984) 36 Cal.3d 561, a city's decision to accept or deny a landowners proposed specific plan for consideration is normally an act of legislative discretion. As a general rule, courts do not have authority to control city's exercise of such discretion, nor do courts have authority to order city councils to enact particular

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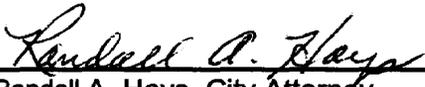

H. Dixon Flynn -- City Manager

legislation. See Common Cause v. Board of Supervisors (1989) 49 Cal.3d 432, City and County of San Francisco v. Superior Court (1959) 53 Cal.2d 236, Hutchinson v. City of Sacramento (1993) 17 Cal.App.4th 791, City Council of the City of Santa Barbara v. Superior Court (1960) 179 Cal.App.2d 389. The trial court in this case however asserted authority to compel processing of the landowners proposed specific plan even though the city's specific plan ordinance is discretionary in nature.

This case is important to the City because it represents an effort on the part of the Defendant City to turn back attacks on local governmental powers of planning and land use activities. If this decision is allowed to stand, it would represent a further ceding of local governmental powers to others. The Director of Planning and Community Development and I urge the recommendation upon you.

FUNDING: Not applicable.

Respectfully submitted,



Randall A. Hays, City Attorney