

BUTTE COUNTY GRAND JURY REPORT 2009-2010

CITY OF OROVILLE – CODES, ORDINANCES, AND PERMITS REPORT

SUMMARY

The 2009/2010 Butte County Grand Jury conducted a review of the functions of the Building Division of the City of Oroville’s Community Development and Public Works Department.

During our investigation, some employees testified they feared retaliation for lodging complaints or disagreeing with the City Administrator.

During a review of the operations of the Building Division, we discovered that many of the duties traditionally assigned to qualified City staff are being contracted to out-of-city consultants. The Grand Jury conducted a lengthy review of the contract and subsequent payments to one consulting firm who performed such duties. The Grand Jury questions the effectiveness of contracting out work that City building inspectors, building officials, fire marshals, and Fire Department personnel could perform.

The Grand Jury believes the City Administrator and the Oroville City Council have a positive vision for the economic development for the City of Oroville. The City Administrator has actively pursued this vision of development. However, the approaches by members of the Oroville City Council to achieve this vision appear to be very different. It appears to the Grand Jury that some members of the City Council are willing to allow the City Administrator to take any step, measure, or action to achieve these economic objectives regardless of the Oroville Municipal Code or impact on City staff. As an example, the City Administrator, without informing or receiving approval from the Community Development and Public Works Department or the City Council, and over the objection of the City Attorney, issued temporary Certificates of Occupancy and building permits.

After interviewing some City staff and consultants under City contract and conducting reviews of some City records, the Grand Jury discovered a number of code violations. The Grand Jury directed its attention to the Building Division and found that the City Administrator:

1. Disregarded some zoning designations when issuing permits,
2. Misinterpreted occupancy loads where a miscalculation can be critical, and
3. Signed or approved Temporary Certificates of Occupancy without authorization.

Because of the seriousness of the code violations that were discovered, the Grand Jury began an in-depth investigation of the Building Division. The Grand Jury found that Building Division records are incomplete. In our search of Building Division records,

neither the Grand Jury nor City personnel were able to find some original building permits, correction notices, and Certificates of Occupancy.

During the course of our investigation of the Building Division, the Grand Jury became concerned about the involvement of the City Administrator in various zoning, planning, and Fire Department issues. The City Administrator's micro-managing of City departments was previously noted and documented in the 2005/2006 Butte County Grand Jury Report. It appears to the 2009/2010 Grand Jury that these problems continue.

The Grand Jury heard testimony by employees of various City departments who testified that some code requirements were by-passed by the City Administrator and that they were told to complete temporary documents to allow the use of buildings with incomplete sprinkler system installations. The City Administrator allowed building occupancy levels that are in conflict with City and Airport Land Use Commission zoning code requirements. Certificate of Occupancy notices were signed by contract personnel who were not Certified California Fire Marshals. A City official testified that in some cases when a Certificate of Occupancy needed to be signed off quickly, in order to authorize the use of a building, the City Administrator or any contracted building personnel that were available would sign for the Building Official and Fire Marshal. The Grand Jury recommends that the City Administrator and its contracted consultants cease such behavior, and adhere to the City's codes.

GLOSSARY

“A” Building Code Designation – as described by the Uniform Building Code

AIOZ – Airport Influence Overlay Zone

ALUC – Butte County Airport Land Use Commission

“B” Building Code Designation – as described by the Uniform Building Code

Building Code – City of Oroville's Building Code which incorporates the Uniform Building Code

CA – City Administrator

CDPWD – Community Development and Public Works Department

CIC – Cleantech Innovation Center

Certificate of Occupancy – Document issued by the City permitting occupancy of a building

COBD – City of Oroville Building Division

CSG – A private consulting firm that contracts with governmental organizations to provide planning and fire inspection services

Grand Jury – 2009/2010 Butte County Grand Jury

HVAC – Heating, ventilation, and air conditioning

NGF – National Golf Foundation Consulting, Inc., a private consulting firm that evaluates golf courses

“R” Building Code Designation – As described by the Uniform Building Code

TMGC – Table Mountain Golf Course, a public golf course owned by the City of Oroville

Z-Five – A private consulting firm that contracts with governmental organizations to provide building inspection services

BACKGROUND

An official complaint was lodged regarding the City of Oroville with the 2008/2009 Butte County Grand Jury. Due to time constraints, that Grand Jury could not pursue the complaint. Subsequently, the 2009/2010 Grand Jury learned of other irregularities and decided to review the City of Oroville Building Division (COBD), which is a division of the City of Oroville's Community Development and Public Works Department (CDPWD).

APPROACH

The Grand Jury began its investigation by interviewing individuals working for various departments within the City of Oroville. Some employees testified they feared retaliation for lodging complaints or disagreeing with the City Administrator. The employees were concerned about their reputations, employment, and income. Information gained from these interviews convinced the Grand Jury to expand the investigation. The Grand Jury made a decision to follow the paper trail and develop a time line of four of the projects in the City of Oroville that had been brought to our attention. One project is a single-family residence. The other three are properties owned by the City. Specifically, these projects are:

1. A newly constructed, single-family residence in the Mission Olive Ranch Subdivision
2. The City Hall attic, basement, and additions
3. The Table Mountain Golf Course Clubhouse remodeling project
4. The Cleantech Innovation Center at the Oroville Airport

In order to conduct the investigation the following interviews and activities occurred:

Interviews. The Grand Jury conducted interviews with the following:

- Members of the Oroville City Council
- Members of the Oroville administration CSG Consulting representatives
- The City of Oroville Planning Department staff members
- ALUC representatives
- The City of Oroville Public Works Department staff members

Meetings. The Grand Jury attended meetings of the following:

- ALUC
- The Oroville City Council
- The Oroville Planning Commission

On-site Visits. The Grand Jury also conducted on-site visits to the following:

- The single-family residence under construction in the Mission Olive Ranch Subdivision
- The City Hall attic and basement
- The Table Mountain Golf Course Clubhouse
- The Cleantech Innovation Center

DISCUSSION

In contrast to other divisions of Community Development and Public Works, the Building Division has a small staff. Like most cities and counties, the Building Division charges fees for services it performs. Most fees are for building permits and cover the actions taken to change property usage, such as: plan checking, issuing building permits, and on-site inspections.

When the economy is at a low point and construction falls off, the collection of permit fees all but dries up. The Building Division and other offices that rely on these fees to operate are forced to reduce their personnel. In these circumstances, it is not unusual for City officials to contract certain services to outside consultants. The City of Oroville chose to contract with CSG Consulting for plan checking services, building officials, and interim fire marshals, and with Z-Five for building inspector services. All contracts must be approved by the Oroville City Council.

The discussion of the Grand Jury regarding the four projects is as follows:

Project No. 1: Mission Olive Ranch Subdivision

The Grand Jury began its code investigations when it was alerted to a zoning violation in the Mission Olive Ranch Subdivision. On October 19, 2009, a building permit application was filed for the construction of a new, single-family home in this subdivision. The adoption of the 2030 Plan in June 2009 designated the Mission Olive Ranch Subdivision as “Mixed-Use.” The Mixed-Use designation in the 2030 General Plan applies to urban areas with major roads, adequate infrastructure, and amenities to support higher densities. Townhomes, garden apartments, apartments, and condominiums would typically be found in this designation. Single-use commercial development may also be allowed by approval of the Oroville Planning Commission. In the City of Oroville's 2030 Plan, *single-use residential* construction is prohibited under this designation. (See Appendix A1.)

The Grand Jury became concerned about the disposition of the Mission Olive Ranch Subdivision map at the time the building permit was issued for a single-family residence. Research by the Grand Jury indicates that the map was final (See Appendix A2) and that issuing a permit for a single-family home violated the Mixed-Use designation of the 2030 Plan.

An application for a permit had been filed and the applicant believed the permit would be approved. The applicant was later informed by the Planning Department that the permit could not be approved because of the zoning designation, but that the City would act to resolve the problem. As time progressed, the applicant grew impatient regarding the delay in the issuance of a building permit.

On November 19, 2009, Building permit B0907-001 was issued with the statement that: *PLANS WERE RELEASED PER SHARON ATTEBERRY (PLANNING DEPARTMENT APPROVAL STILL PENDING)* (See Appendix A3.)

The Grand Jury is concerned that the City Administrator ignored zoning procedures and warnings by the Planning Department and the City Attorney of a possible zoning violation if the permit was issued. (See Appendix A4.) As late as November 16, 2009, correspondence between the Planning Department and the City Administrator indicate the proposed change in zoning to allow issuance of a single family permit in that subdivision had not been resolved.

Was the City Administrator unaware of the implications of issuing this permit prior to correcting the zoning designation of this project? By a City official's testimony to the Grand Jury, the City was advised by the City Attorney not to issue a permit prior to the amendment to the Mixed-Use designation. The City official also conceded to the Grand Jury that there was no authority to do so. The City Administrator knowingly and intentionally issued the permit in violation of the current zoning laws. When asked why this was done, the City official testified that the only entity that could raise an objection

to the issuance was the City of Oroville itself. Since the City would not raise an objection, this was an action the City Administrator was willing to undertake. The issuance of the building permit in violation of current zoning laws sets a precedent that could cause problems in the future. Laws are to be applied equally to all and are not to be ignored as a matter of convenience.

By not amending the zoning laws prior to issuance of the building permit, the City may have created some obstacles for the builder. In addition, the City stated no further building permits are to be issued until the appropriate zoning amendments are adopted.

Project No. 2: City Hall, Attic, and Basement Code Violations

Once the Grand Jury started investigations into other matters involving the City of Oroville, the Grand Jury heard rumors that the new addition to the Oroville City Hall was not up to fire code standards. To address these concerns, the Grand Jury obtained a number of documents pertaining to the City Hall building from the City of Oroville.

Among those documents was a report from the Interim Fire Marshal dated March 5, 2009, which outlined several issues in the attic and basement (see Appendix B1). This report was the result of a preliminary investigation undertaken as a result of concerns expressed by staff at City Hall regarding air quality and fire safety issues in the basement. The City took no action until a formal Correction Notice dated September 30, 2009 (see Appendix B2) was issued to the City. Both of those documents detailed serious Fire Code violations in both the new addition built in 2007 and the heating, ventilation, and air conditioning (HVAC) enclosure completed in 1995. The Grand Jury was concerned that it took a formal Correction Notice issued six months later before the City took any action on these serious issues. During interviews with City Council members, it was apparent they were not informed of these issues.

HVAC, Indoor Air Quality, Fire Hazards, and Code Violations

Several years ago a wooden frame, pitched roof was built over the existing flat roof of the old firehouse remodel at City Hall. The existing flat roof was left in place. The material covering the old roof is highly flammable as it is an asphalt/bitumen product (asphalt cement). The Interim Fire Marshal's March 5, 2009, report stated the, . . . *roofing membrane and foam products that are part of the original construction should not have been left in place due to their excessive flammability and self propagating of fire tendencies . . . the existing roof membrane on the attic floor should be promptly removed due to the possibility of it's increasing fire risk and/or impeding the Fire Department's ability to combat a fire in the attic.*

Although the Grand Jury heard testimony from various witnesses that they were aware of the March 5, 2009, memo at the time it was provided to the City, a high-ranking City official denied seeing this document until shortly before giving formal testimony on March 29, 2010. Several witnesses interviewed testified that the document had been provided to the high-ranking City official at the time of its writing.

A consultant hired by the City, who was **not** a certified Fire Marshal, gave the City a different opinion of the fire dangers. However, this consultant had never been in the attic, only viewed the attic vents from outside of the building, and declared that there were no fire hazards in the attic. This consultant seems to be highly regarded by the Community Development and Public Works Department, which usually pays attention to the consultant's recommendations. Should the consultant be listened to rather than a credentialed Fire Marshal who had previously uncovered the issues? Is this the type of advice the City of Oroville is paying for? The Grand Jury believes the CDPW should not be swayed by consultants operating outside their area of expertise.

When the new peaked roof was built on top of City Hall in 1995, it covered over the heating, ventilation, and air conditioning system (HVAC) that was mounted on the old flat roof. Covering the HVAC units led to several problems. These HVAC units are listed by the manufacturer as *for exterior use only*. The HVAC system was left in place, and modified by adding exhaust stacks, which do not penetrate the new roof as required by the Building Code. Also, the waste water air venting system did not vent to the outside as required by the Building Code.

Some City Hall employees told the Grand Jury they felt their health problems were a direct result of the bad air they were breathing. An air quality evaluation from the York Insurance Group dated October 21, 2009, stated, . . . *Carbon dioxide levels were above the recommended level of criteria of 1000 ppm at a number of different locations at various times through the day. This suggests inadequate outside fresh air exchange though the HVAC systems. While there were no hydrogen sulfide concentrations measures, there is the potential for sewer gas infiltration into occupied spaces.*

Another problem with the sewer gases being discharged, by the waste water air venting system, into attic is that they might be ignited. The Interim Fire Marshal, in the March 5, 2009, report, wrote, . . . *the effect of the sewer gases and environmental air being discharged into the attic also add to concerns of ignition of gases and superheating and combustion of those gases in a fire. With the products of combustion from the exhaust vents on the gas fired heaters being also ducted into the attic provides a likely source of ignition.* (See photographs in Appendix B3.)

Members of the Grand Jury inspected the attic and found additional problems. The side rails of the attic access ladder attached to the building are too short. In addition, the ladder only extends to the prior roof level and not to the current attic entrance level. Also, there are no handles to hold onto when one climbs into the small entryway, making it extremely hazardous.

Fire Suppression Sprinkler System

According to City Hall correspondence, the original plan submitted for the fire suppression sprinkler system installation in the attic above the City offices and City Council chambers shows that the building was to be protected throughout with sprinklers. This plan also included the basement. Only one small area was excluded from the plan

and that was the portion of the attic over three small offices. A construction company from out of the area was given the contract. During the sprinkler system installation, there were undocumented deviations from the original plans. These deviations affect the system's water pressure. Fire personnel have informed the Grand Jury that there are eight 90-degree elbow bends that greatly reduce pressure at the sprinkler heads. The device used to check the available water pressure was installed at the beginning of the system and not at the end where it should be. As of March 2010, this partially constructed system is not monitored nor does it have a water-flow alarm bell.

According to an email to the City Administrator from the Interim Fire Marshal dated November 25, 2009,

The fire code requires that the water-flow is monitored off-site when the system has in excess of 100 [sprinkler] heads. Upon completion of this system off-site monitoring will be required (in excess of 100 heads)

It is recommended that the water flow is tied to the alarm panel a [sic] this point, before further work commences. The control valves are also required to be either monitored (Tamper alarm at the panel) or locked in the open position with a chain and break-away padlocks or Fire Department Approved Knox Padlock.

City Hall Basement Code Violations

According to the Book of California Fire Codes, California Code of Regulations, No. 24, Part 9: Fire Codes 315:

915.2.4 Attic under floor and concealed spaces used for storage of combustible materials shall be protected on the storage side as require for one hour fire resistant rated construction. Opening shall be protected by assemblies that are self-closing and are noncombustible construction or solid wood core not less than 1.75 inches (44.5 mm) in thickness. Storage shall not be placed on exposed joists.

905.3.5 Underground [basement] buildings shall be equipped throughout with a class one automatic wet or manual wet stand pipe system.

Going down the flight of wooden steps to the basement in City Hall is like stepping back in time 50 years. The smell of mold and mildew is very prevalent. Boxes of old important papers are stacked in three and four foot high piles. There are exposed wires,

both obsolete and current, hanging down. Large maps and other combustibles are stored close to the gas water heater. Boxes containing papers and other flammable material are stacked in an unsafe manner (too close to the ceiling) violating the two-foot clearance requirement of the Fire Code. Combustible material should be stored away from all gas appliances. The Grand Jury recommends they be stored in metal cabinets or lockers. The original sprinkler system plan included a fire sprinkler system in the basement, yet none has been installed as of March 2010. If a fire erupted in the basement with the existing combustible materials and exposed wiring and the lack of a sprinkler system, it would be difficult to control. Each of these issues has been identified by two Interim Fire Marshals and by fire personnel of the City of Oroville Fire Department as hazards. (See photographs -- Appendix B3.)

The Grand Jury also heard from witnesses that the door to the basement is often propped open with a foot stop. When the Grand Jury conducted its tour of the basement on April 1, 2010, and on other occasions, it noticed this door was propped open. According to the Fire Code, the door should be kept closed. The Grand Jury recommends that the foot stop be removed from the door. In addition, the Grand Jury has been advised that the doorway to the basement is not a fire-rated assembly. The Grand Jury recommends it be replaced with such an assembly.

Project No. 3: The Table Mountain Golf Course Clubhouse Remodel

The City of Oroville owns the Table Mountain Golf Course and clubhouse. In recent years, the use of the golf course was declining along with its revenues. In September of 2007, the City of Oroville contracted with National Golf Foundation Consulting, Inc., (NGF Consulting) to assess the facility and recommend ways to encourage and increase its use and revenues.

The following is a summary of the significant findings and recommendations made by NGF Consulting:

The Table Mountain Golf Course offers a good golf experience, but we did note a slight deterioration of the facility, likely as a direct result of reduced expenses to match declining revenues. In addition the facility has a small and older Clubhouse that has clearly reached the end of its appropriate useful life and has become a detriment to the facility. However, we note that the clubhouse is located in an area defined as "Airport Influence Overlay Zone (AIOZ)," and thus cannot be expanded beyond a size defined by the AIOZ restrictions. As such, any alteration or modification of the clubhouse facility would have to occur at a different location on the golf course property and therefore could only be completed at great expense. The clubhouse facility at Table Mountain is old, outdated and inefficient. The add-on 'banquet' area is likely not up to code and should be modified. The NGF Consulting team does not believe that the Table Mountain clubhouse facility should be retained in any form.

On February 17, 2009, a building permit application was filed by the City of Oroville for “Banquet Room Improvements” at the Table Mountain Golf Course clubhouse. A set of plans was submitted to the City Building Division for an addition to the golf course clubhouse for review and approval. As is standard, the drawings were reviewed by the Interim Fire Marshal. During the review, the Interim Fire Marshal asked the staff at City Hall why the plans only showed the addition and did not show the building that was being added onto in clear detail. The Interim Fire Marshal was told that he needed to go take a look at the actual building because the plans didn't begin to tell the whole picture.

On February 23, 2009, he inspected the facility. The Interim Fire Marshall conveyed his concerns to the City Administrator and to the Director of Community Development and Public Works Department. Based on his inspection of February 23, 2009, the concerns were:

1. The proposed addition was already under construction and had already been framed without a building permit.
2. The existing TMGC building was not in compliance with the code for a “B” occupancy.
3. There was only one fire hydrant on the entire site and four hydrants are required by the code.
4. Due to the size of the addition, the building would have become an “A” occupancy which would require many code upgrades.

The City of Oroville chose **not** to accept the findings and recommendations of both NFG Consulting and the Interim Fire Marshal.

Fifteen years ago, the City constructed a roof over an existing patio for which a permit was obtained. In 2009 the City decided to enclose the patio to create a banquet room. This work began in February 2009, prior to the issuance of a new building permit. However, a building permit was issued in March of 2009.

As troubling as this irregularity was, more serious violations occurred. The two actions described below are linked together, in that they both violate Airport Land Use Commission (ALUC) occupancy loads.

So, what is ALUC and why are its regulations so important? ALUC is one of a number of similar commissions in all California counties that are, by law, concerned with public safety in the areas around the airports of California. ALUCs put limitations on population density, noise intensity, height of structures, trees, and other aspects of the use of the property near airports. According to the Butte County ALUC: *The Airport Land Use Commission is responsible for protecting public health, safety and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public exposure to excessive noise and safety hazards within areas around airports to the extent that such areas are not already devoted to incompatible uses.*

In the first action there is an ALUC code violation related to the TMGC clubhouse bar and grill. The clubhouse is located within an ALUC B1 zone (Approach and Departure Zone and Sideline Zone), which has an occupancy load limit of 50 persons per acre. The tracking system used by the City of Oroville, the PermitTrak system, had a notation that the building occupancy including the new banquet room shall not exceed 50 persons. (See Appendix C1.) The Grand Jury obtained two Certificates of Occupancy for the clubhouse bar and grill, each with an occupancy load of 96. This exceeds the ALUC B1 zone limits. The Grand Jury is concerned that:

1. Both certificates were dated as having been written on the same day (9/30/2008)
2. On one certificate, the contracted City Building Official signed in place of the Fire Marshal, who was neither qualified nor authorized to do so (See Appendix C2)
3. When initially reviewing City files, the Grand Jury was provided with the Certificate of Occupancy cited above
4. The Grand Jury went to the TMGC clubhouse, viewed the posted Certificate of Occupancy, and obtained a copy of it, which had the Interim Fire Marshal's signature and the contracted Building Official's signature (See Appendix C2)
5. When the Grand Jury later returned to City Hall and inspected the project's file folder, the Certificate of Occupancy signed only by the contracted Building Official was missing and a photograph of the Certificate of Occupancy signed by both the Building Official and the Interim Fire Marshal was in the folder

The second problematic action is related to the increase in *size* of the combined TMGC clubhouse bar and grill and banquet room project. The additional square footage of the proposed use would cause the occupancy load to increase. Given the size of the expansion, ALUC zoning would not allow an addition to an existing building in such close proximity to the airport landing strip. It should not even have been planned, much less approved.

The NGF report clearly recommended against adding a banquet room and clearly noted that any such addition would violate the ALUC occupancy limitations. The Grand Jury also learned that the issue of inadequate water supply for firefighting was also raised prior to construction. The Grand Jury does not understand why the City of Oroville decided to ignore these observations and recommendations. The Grand Jury did not see any evidence that the City approached ALUC for a variance before committing to spend over \$250,000 for the addition of the banquet room, upgrading the bathroom facilities to make them ADA compliant, and upgrading the exterior.

At the April 2010 ALUC meeting, the chairman stated that occupying chairs in an outside setting [such as the unenclosed covered patio] was much different than occupying chairs and tables in an enclosed room [such as the new banquet room]. Bogy's Bar and Grill (TMGC clubhouse/bar and grill) currently has a Certificate of Occupancy of 96 persons,

which already exceeds the ALUC B1 zoning limit of 50. (See Appendix C2.) The Grand Jury investigated this occupancy load number and was advised that it is based on the bar facilities, number of exits, and other building conditions that govern occupancy loads. The Grand Jury was told by a City official that the ALUC zone limitations were not considered. It appears the Planning Department was not consulted regarding this project.

The Grand Jury believes that the occupancy load was probably determined for the clubhouse prior to the adoption of the ALUC plan by the City of Oroville in 2000. If true, then there is a case for keeping it at 96 under a “grandfather” rule. However, enclosing the patio to form a banquet room could add 40-60 people inside the building. It appears to this Grand Jury that the banquet room addition would void the grandfather protection of the current Certificate of Occupancy for the bar. It would appear that a *new* overarching Certificate of Occupancy which addresses the limitations of the ALUC - B1 zone would be required.

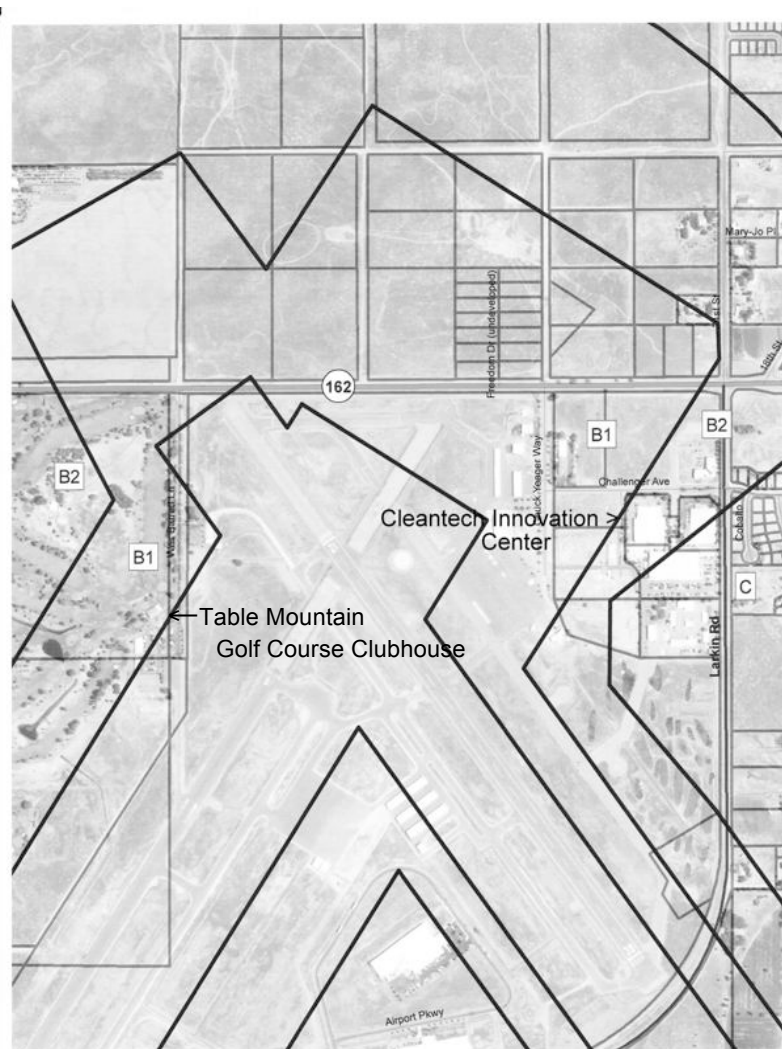
Project No. 4: Cleantech Innovation Center at the Oroville Airport Industrial Park

The Cleantech Innovation Center (CIC) is a building located on Challenger Avenue, in the Oroville Airport Industrial Park, near the City Airport. Thus, in addition, to other County and City codes, this building has restrictions on the *number of occupants* by the Airport Land Use Planning Commission (ALUC).

The land surrounding the Oroville Airport has been divided into an overlay of five Compatibility Zones:

- A: Runway Protection Zone,
- B1: Approach and Departure Zone and Sideline Zone,
- B2: Extended Approach and Departure Zone,
- C: Traffic Pattern Zone, and
- D: Other Airport Environs.

Each zone has a limit of how many people per acre can be in these areas at any given time. For instance, the Table Mountain Golf Course clubhouse is located in a B1 zone. The CIC building is in the B2 zone and may have 100 people per acre. The following is the Airport Overlay for the area surrounding the Oroville City Airport.



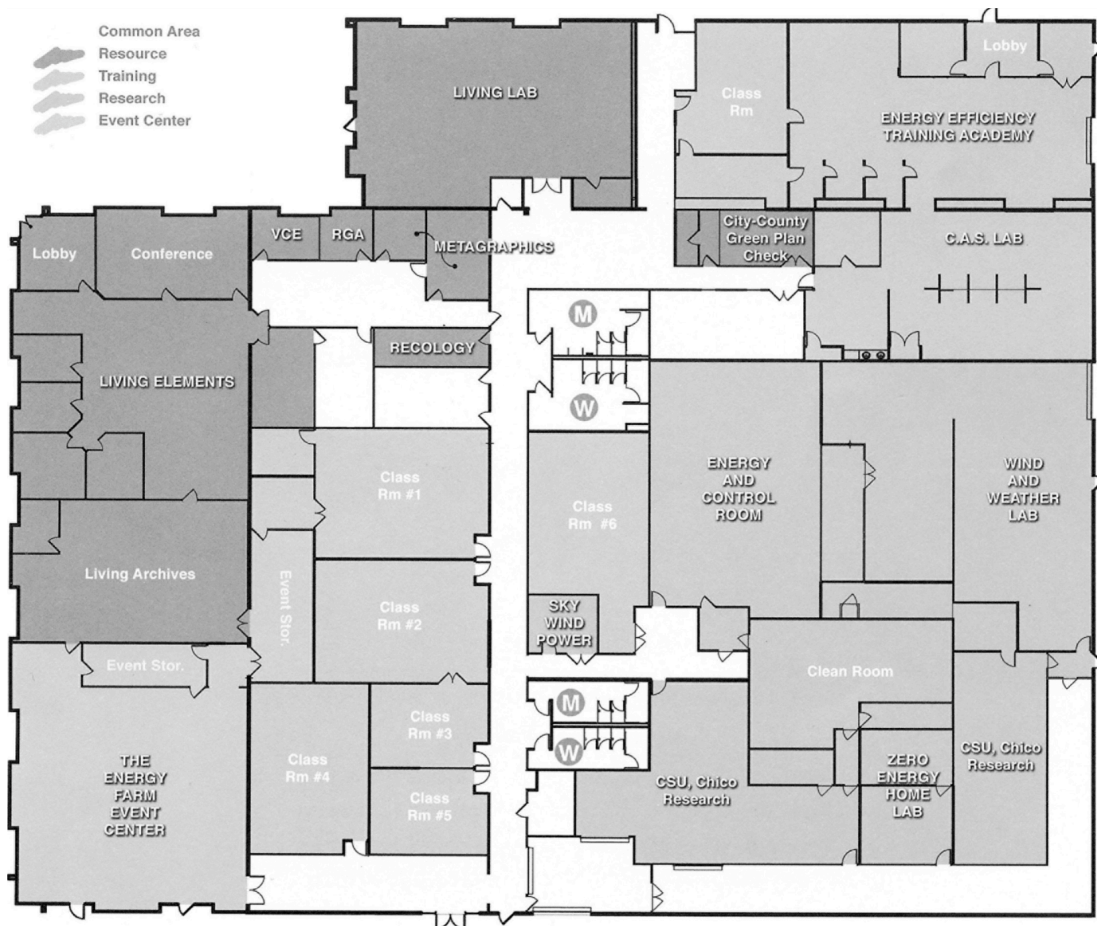
Oroville Municipal Airport Influence Overlay Zone Map

The Grand Jury feels that the ALUC regulations should be strictly adhered to. Public safety should never be compromised. The City of Sacramento ignored the Sacramento County ALUC regulations about population density in one of their overlay zones, and on September 24, 1972, a plane crashed into the building and 22 lives were lost, including 12 children. The citizens of Oroville rely on their City to protect them from such a catastrophe.

The Cleantech Innovation Center is a large building of approximately 42,000 square feet, nearly an acre. The CIC building is located in an area zoned as B2, according to the ALUC plan. The B2 zone has a density of 100 persons per acre. The ALUC zoning plan was adopted by the City of Oroville in 2000. Adopting this plan was voluntary on the part of the City of Oroville and is very commendable.

Originally the CIC building housed Spectra-Physics, Inc., which had a Certificate of Occupancy limit of 100 persons. In August 2009, a building permit was issued to partition the building into a number of businesses. Later, the City of Oroville Planning Department had a number of discussions with the developer about the intended use. The City Planning Department became concerned about the number of persons intended to be in the building, estimated at times to be up to 300-400 persons. **This is much higher than the 100 persons per acre density** allowed by the ALUC zones and other permit requirements. The Application for a Use Permit dated November 19, 2009, submitted by the developer indicated a **maximum occupancy of 250**. (See Appendix D1.)

The original building has been remodeled to house training facilities for those interested in learning about earth-friendly technologies and entering into earth-friendly businesses. The floor plan and information related to the contemplated use of the building are shown by the following Building Layout.



Cleantech Innovation Center (CIC) Building Layout

With the businesses, classrooms, event center, and laboratories in this large building, it is conceivable that up to 400 persons could easily occupy this site at any given time. However, the developer presented a matrix to the Oroville Planning Commission that

showed that there would be only approximately 80 people there each day. He said that the ALUC limitations would be strictly monitored and controlled by a Project Manager of the building. If the event center, which can accommodate 100 persons, had a program or activity, the Project Manager would monitor the programs and activities and see to it that the event would take place at a time when there were minimal people in the building. Otherwise the event center would be required to have the program later in the day, evenings, or on a weekend.

City officials proposed that use permits and Certificates of Occupancy would be issued to the individual lessees and would specify the occupancy limits of the business. In addition, the occupancy document would also include an overarching limit on the building that would require the businesses to comply with the decision of the “Project Manager”. The developer’s Major Users Schedule follows:

Major Users Schedule						
User	Days/Week	Hours/Day	# Users	User Hours per Week	Equivalent Fulltime	Weekends
Living Elements	5	8	10	400	10	
Living Lab	5	8	5	200	5	Yes
Event Center	2	2	100	400	10	Yes
Weatherization Training	5	6	18	540	13.5	
CAS Lab Training	5	6	18	540	13.5	
Classroom #1	4	4	12	192	4.8	
Classroom #2	3	2	20	120	3	
Classroom #3	3	2	15	90	2.25	
Classroom #4	3	2	20	120	3	
Classroom #5	3	2	15	90	2.25	
Classroom #6	1	2	20	40	1	
Energy & Control	2	4	2	16	0.4	
Wind & Weather	4	4	5	80	2	
Office Areas	5	8	10	400	10	
			270	3228	80.7	

Major Users Schedule Submitted by Developer

The Grand Jury questioned the numbers presented in the Major Users Schedule listed as equivalent full time. ALUC zoning requirements are not based on equivalent full-time occupancy; they are based on the number of people at any one time. The Grand Jury developed their own matrix using the information provided in the Major Users Schedule that shows how easily the building could hold many more people given the same number of days, the same hours each day, and the same number of people each day. The Grand Jury’s matrix follows:

Clean Tech Building Occupancy										
Proposed Use	Days per week Operated	Hours per day	Users	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Living Elements	5	8	10		10	10	10	10	10	
Living lab	5	8	5		5	5	5	5	5	
Other Areas	5	8	10		10	10	10	10	10	
Subtotal Monday to Friday, 8 hours per day			25	0	25	25	25	25	25	0
Weatherization Training	5	6	18		18	18	18	18	18	
CAS Lab Training	5	6	18		18	18	18	18	18	
Subtotal Monday to Friday, 6-8 hours per day			61	0	61	61	61	61	61	0
Classroom #1	4	4	12		12	12	12	12		
Wind & Weather	4	4	5			5	5	5	5	
Subtotal Monday to Friday, 5-8 hours per day			78	0	73	78	78	78	66	0
Classroom #2	3	2	20				20	20	20	
Classroom #3	3	2	15		15	15	15			
Classroom #4	3	2	20			20	20	20		
Classroom #5	3	2	15		15		15		15	
Energy & Control	2	4	2				2		2	
Classroom #6	1	2	20			20				
Subtotal Monday to Friday, 2-4 hours per day			170	0	103	133	150	118	103	0
Event center	2	2	100	100	100	100	100	100	100	100
TOTALS			270	100	203	233	250	218	203	100

Example of Potential Occupancy Developed by the Grand Jury

Given that the Event Center occupancy load can be up to 100 persons, ALUC’s zoning limitation of 100 persons will be exceeded unless the Event Center activities are the only activities occurring in the building. This seems unlikely. Will this occupancy load be enforced?

In addition to the Event Center and the other businesses in the building, the Cleantech Innovation Center has six classrooms, each with a capacity of 12-20 persons. The Grand Jury concludes that the available and unused classrooms are an incentive to increase the number of persons in the building, such that it could violate the building’s legal occupancy limits.

At a presentation with ALUC, the City of Oroville's representative indicated that the following steps had been taken to ensure that the buildings occupancy limits would not be exceeded:

- use Permits and Certificates of Occupancy would be issued to the individual entities that would specify the Occupancy limits of the business, AND
- that the Occupancy document would also include an overarching limit on the building which would require the entity to comply with the decision of the “monitor”.

Before a Certificate of Occupancy could be issued, the developer was required to provide certain documents, as is a common practice in applying for a Certificate of Occupancy. The documentation was procured and an appointment with the Oroville Planning Department was made. When the developer arrived for his appointment, there was no interim Planning Department Director available. There was no one in City Hall who was

qualified to give him his Certificate of Occupancy. Having his list of documents completed, he showed them to Planning Department staff. The City Administrator was summoned and approved a temporary Certificate of Occupancy without specifying an occupancy load limit or a time limit. However, the City Administrator had no authority to sign the document. (See Appendix D2.)

The Grand Jury is concerned with four things:

1. The City Administrator signed a temporary Certificate of Occupancy she had no authority to sign.
2. The temporary Certificate of Occupancy did not indicate an occupancy load limit or an expiration date.
3. There was no one routinely in City Hall qualified to sign Certificate of Occupancies. There is a professional consulting company under contract to the City of Oroville that has the authority, but is usually only in Oroville one or two days a week.
4. Although there is a plan to have the Project Manager monitor the number of people in the building at any given time, the building is large enough to accommodate a much larger number which could exceed the ALUC zoning requirements.

Zoning laws are created for many reasons, including public safety. It is unfortunate that the City of Oroville jeopardized the public, and those who occupy such an important project as the Cleantech Innovation Center, by providing so little oversight into the legalities surrounding zoning laws.

The Four Projects: Conclusion

The Grand Jury is left wondering how several projects of great importance can drag on for so long, in some cases for years, with unresolved issues. If the City would have followed established codes and procedures, the four projects referenced above, and conceivably other City projects, would be closer to completion and operating more smoothly and prosperously. The “vision” for Oroville that is sought after will be hard to achieve with an attitude in place that the **ends justify the means**.

FINDINGS AND RECOMMENDATIONS

Mission Olive Ranch Subdivision Findings

- F1. The single-family residence is built in a subdivision not zoned for single-family use.
- F2. The zoning was not amended prior to issuing a building permit.
- F3. The City Administrator issued a building permit but was not authorized to do so.

- F4. The City’s actions have created obstacles to the status of the single-family residence in the subdivision.

Mission Olive Ranch Subdivision Recommendations

- R1. Procedures should be observed which prohibit unauthorized approvals of the permit process. The required departments should sign off to indicate approval before a permit is issued.
- R2. Staff should inform applicants of permitted uses and zoning requirements at the time of application for a building permit.
- R3. The City Administrator, Planning Department, Planning Commission, and the City Council should immediately take the necessary steps to amend the 2030 General Plan to correct this problem.

CITY HALL, ATTIC, AND BASEMENT CODE VIOLATIONS FINDINGS

- F1. In spite of the danger to the staff and public, the City administration ignored the fire code violations for six months after receiving reports from the Interim Fire Marshal.
- F2. In response to concerns by staff about air quality in City Hall, a study was done that found that carbon dioxide levels exceeded the recommended levels.
- F3. HVAC units in the City Hall attic and sewer gasses are not vented through the roof to the outside as required by code.
- F4. The combustible roofing material was not removed during the 1995 attic construction and is a potential fire hazard.
- F5. Some sprinkler systems in the City Hall are ineffective and the City Hall basement has no sprinkler system.
- F6. Combustible materials are located close to the gas water heater and boxes and wires in the basement are a fire hazard.
- F7. The door to the basement is often held open by a doorstop and the door is not a fire rated assembly, thus causing a safety hazard if there is a fire in the basement.
- F8. The side rails on the ladder going up to the attic from the outside are too short making it hazardous to those entering the attic.

City Hall, Attic, and Basement Code Violations Recommendations

- R1. To insure the safety of staff and the public, the City Council and the City Administrator should immediately take action to correct fire code violations on City property upon discovery
- R2. The exhaust from the HVAC units and sewer gasses should be vented to the outside to comply with the Building Code.

- R3. The City Fire Chief should determine if the combustible roofing materials should be removed from the attic.
- R4. Sprinkler systems should be installed throughout City Hall and the basement according to code.
- R5. The City should remove the combustible materials located close to the gas water heater, along with the boxes and wires in the basement that are a fire hazard.
- R6. A door that is a fire rated assembly should be installed at the entrance to the basement and should be kept closed.
- R7. The side rails on the attic access ladder on the outside of the building should be extended at least 42 inches.

Table Mountain Golf Course Clubhouse Remodel Findings

- F1. The review of Table Mountain Golf Course by NGF Consulting, Inc., recommended demolishing and relocating the clubhouse to an area outside of outside the ALUC B1 zone.
- F2. Work on the clubhouse had commenced prior to the issuance of a building permit.
- F3. The firefighting water supply is inadequate at Table Mountain Golf Course.
- F4. A Certificate of Occupancy was not signed by qualified personnel.
- F5. The Certificate of Occupancy loads do not comply with ALUC B1 zoning.

Table Mountain Golf Course Clubhouse Remodel Recommendations

- R1. The City should consistently enforce regulations that prohibit the beginning of construction without a permit.
- R2. Provide an adequate number of fire hydrants and an adequate water supply line to the Table Mountain Golf Course clubhouse.
- R3. Insure qualified and authorized personnel approve Certificates of Occupancy before issuance.
- R4. Adhere to ALUC zoning code rules to set occupancy standards.

Cleantech Innovation Center Findings

- F1. The CIC building is large and if not carefully monitored, it could easily be occupied by more than the 100-person ALUC zoning limitation.
- F2. The City Administrator approved a Temporary Certificate of Occupancy even though she did not have the authority to do so.

Cleantech Innovation Center Recommendations

- R1. The City should not allow the ALUC occupancy load to be exceeded at any time.

- R2. The Oroville Code Enforcement Officer should make a number of unannounced visits to the CIC building yearly to ensure adherence with the occupancy load.
- R3. City officials should not exceed their authority in signing Certificates of Occupancy.

REQUEST FOR RESPONSES

Pursuant to Penal Code §§ 933 and 933.05, the 2009/2010 Butte County Grand Jury requests responses from the following:

- Oroville City Administrator
- Butte County Airport Land Use Commission
- Oroville City Council
- Oroville City Planning Commission

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

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Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

APPENDIX A

- A1. 2030 Plan “Mixed-Use” definition
- A2. Mission Olive Ranch Final Subdivision Map
- A3. Single-family residence building permit
- A4. Correspondence regarding zoning amendment of Mission Olive Ranch Subdivision

APPENDIX B

- B1. Report of Fire Marshal dated March 5, 2009
- B2. Correction Notice issued to the City of Oroville dated September 30, 2009
- B3. Photographs of City Hall's attic space and basement:
 - Photographs #1 and #2 - HVAC heater vents not exhausted directly to the outside
 - Photographs #3 and #4 – sewer gas vent not exhausted directly to the outside and HVAC condensate pan residue
 - Photographs #5 and #6 – storage of flammable objects in the basement
 - Photographs #7 and #8 – wiring in the basement and storage of flammable objects
 - Photograph #9 – storage of objects higher than the required minimum two-foot clearance

APPENDIX C

- C1. Table Mountain Golf Course PermitTrak Printout
- C2. Table Mountain Golf Course Certificates of Occupancy

APPENDIX D

- D1. Cleantech Developer Use Permit Application
- D2. Certificate of Occupancy approved by Sharon Atteberry dated November 24, 2009.

APPENDIX A1: 2030 PLAN “MIXED-USE” DEFINITION

CITY OF OROVILLE
2030 GENERAL PLAN
LAND USE ELEMENT

f. Medium High Density

This designation provides opportunities for townhouses, garden apartments and apartment buildings that would typically be located in urban areas with major roads, adequate infrastructure and amenities to support higher densities. This designation allows for 14.0 to 20.0 units per net acre.

g. High Density

This designation provides opportunities for townhouses, apartments and condominiums that would typically be found in specifically urban areas with major roads, adequate infrastructure and amenities to support higher densities. This designation allows for 20.0 to 30.0 units per net acre.

2. Mixed Use

Mixed use development allows and encourages different but compatible uses to be located in close proximity to each other. A common example is a single structure or a group of physically integrated structures that combine residential uses with commercial, public, entertainment and/or office uses. In multi-story mixed use developments, the ground floor uses are predominantly non-residential with the purpose of creating pedestrian activity. Since this designation allows for both residential and commercial uses a wider residential density range is established along with an appropriate FAR.

This designation applies to urban areas with major roads, adequate infrastructure and amenities to support higher densities. Townhomes, garden apartments, apartments and condominiums would typically be found in this designation. Single use commercial development may also be allowed by approval of the Planning Commission. Single use residential development is prohibited under this designation. This designation allows for 10.0 to 30.0 units per net acre and a maximum FAR of 0.40.

3. Retail and Business Services

This designation is intended to provide for business activities that offer goods and services to the community. This designation allows for a maximum FAR of 0.40, except in the Historic Downtown where an FAR of 2.0 will be al-