CITY OF SHASTA LAKE

PLANNING COMMISSIONER HANDBOOK

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SECTION 1

The Planning Commissioner's Role

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WHAT IS A PLANNING COMMISSION?

The planning commission is a permanent committee made up of five or more individuals who have been appointed by the governing body (city council or board of supervisors) to review and act on matters related to planning and development.[1] Most planning commissioners are lay people without any previous land use experience. Commissioners serve at the pleasure of the council or board of supervisors, so commission membership may change in response to changes in those bodies. A local agency need not create a planning commission; in some jurisdictions, the governing body functions in that capacity.[2]

WHY PLAN?

Planning is a proactive process that establishes goals and policies for directing and managing future growth and development. Local agencies plan to address fundamental issues such as the location of growth, housing needs, and environmental protection. Additionally, planning helps account for future demand for services, including sewers, roads, and fire protection. In addition, planning:

- **Saves Money.** Good planning can save on infrastructure and essential service costs.
- **Sets Expectations.** Planning establishes the ground rules for development. A comprehensive general plan, for example, sends a clear signal that accepted standards and procedures apply to community development. This will not eliminate conflicts entirely, but at least sets expectations that can help minimize conflict.
- **Improves Economic Development and Quality of Life.** Economic development and quality of life issues go hand in hand because businesses want to locate in communities where their employees want to live. Planning outlines alternatives and choices so that the community can promote employment and economic well-being.
- **Provides a Forum for Reaching Consensus.** Planning processes, such as the development of the general plan, provide a forum for seeking community consensus. Planning efforts should always involve broad and diverse segments of the community to assure that the resulting plan fully addresses community needs. This will provide the public with a sense of ownership over the plan.

[1] Cal. Gov't Code § 65100.

[2] Cal. Gov't Code § 65101.

- **Connects People to the Community.** Planning ensures that architectural and aesthetic elements are incorporated into projects to connect people to their community and establish a sense of place.
- **Protects Property Values.** Property values are enhanced when a community plans for parks, trails, playgrounds, transit, and other amenities. Planning also protects property and property values by separating incompatible land uses. Imagine if a factory could just set up shop in the middle of a neighborhood. Planning assures that this will not occur.
- **Reduces Environmental Damage and Conserves Resources.** Planning helps identify important natural and cultural resources and can channel development in a way that protects or augments these resources.

THE COMMISSION'S DUTIES

The planning commission plays a central role in the planning process in three important ways. First, it acts as an advisory board to the main governing body on all planning and development issues. Second, the commission assures that the general plan is implemented by reviewing development applications on a case-by-case basis. Just as you build a building one brick at a time, you implement a community vision one project at a time. Third, the commission functions as the decision-making body for many proposals. However, any planning commission action can be appealed to the governing body, which can uphold the commission's decision, overturn it, modify it, or send it back for further study.

Planning commission duties vary depending on the jurisdiction. You can learn about your commission's particular responsibilities by asking the planning department. Most commissions have the following responsibilities:[3]

- **General Plan.** Assist in writing the general plan and hold public hearings on its adoption. (The governing body retains authority to actually adopt the general plan.) Promote public interest in the general plan. Consult with and advise public officials and agencies, utilities, organizations, and the public regarding implementation of the general plan. Also review, hold hearings on, and act upon proposed amendments to the plan.
- **Specific Plans.** Assist in writing any specific plans or community plans and hold public hearings on such plans. (The governing body retains authority to actually adopt specific plans.) Also review, hold hearings on, and act upon proposed amendments to such plans.
- **Zoning and Subdivision Maps.** Review, hold hearings on, and act upon zoning ordinances, maps, conditional use permits, and variances. Similarly consider subdivision applications.
- **Individual Project Approvals.** Review individual projects for consistency with the general plan, any applicable specific plans, the zoning ordinance, and other land use policies and regulations.
- **Report on Capital Improvements Plans.** Annually review the jurisdiction's capital improvements program and the public works projects of other local agencies for consistency with the general plan.
- **Coordinate Planning Efforts.** Coordinate local plans and programs with those of other public agencies.
- **Consider Land Acquisitions.** Report to the governing body on the consistency of proposed public land acquisition or disposal with the general plan.
- **Special Studies.** Undertake special planning studies as needed.

With so many responsibilities, it is important for every planning commission to think about how it will divide its time between day-by-day approvals and long-range planning efforts, both of which are important. It is easy to get caught up in the day-to-day efforts at the expense of long-range planning.

[3] *See for example* Cal. Gov't Code §§ 65103, 65353, 65400, 65401, 65402, 65854 and 66452.1.

OTHER LOCAL PLANNING BODIES

Some local agencies divide land use decision-making by creating positions and commissions to focus on specific aspects of the land use planning process.

- **Board of Zoning Adjustment.** A local body, created by ordinance and appointed by the governing body, whose responsibility is to consider requests for variances.
- **Building Official.** The person responsible for the administration and enforcement of building, housing, plumbing, electrical, and related codes.
- **Historic Preservation Commission.** A commission appointed by the governing body charged with carrying out the historic preservation chapter of the zoning ordinance.
- **Zoning Administrator.** An appointed official who implements zoning ordinance and is also often empowered to make decisions concerning design permits, administrative use permits, and other permits as provided for in the zoning ordinance.
- **Zoning Board.** An appointed body that hears and decides matters relating to the application of the zoning ordinance and considers appeals of zoning administrator's decisions.

PUBLIC SERVICE ETHICS

As a planning commissioner, you wield considerable power over how your community grows and develops. With this power comes the expectation that you will hold yourself to the highest ethical standards. Part of being ethical means exercising your power in the public's interests, as opposed to personal self-interest or other narrow, private interests. The chart on page 5 highlights some of the ethical values associated with public service and what they mean in terms of your duties as a planning commissioner.

There are a number of sources of guidance on your ethical obligations as a planning commissioner. One is the law. California has a complex array of laws relating to ethics that are summarized in this section. The law, however, merely sets a minimum standard for ethical conduct. Just because an action is *legal* doesn't mean that it is *ethical*. For example, it may be legal for you to vote on your best friend's project application, but if everyone in the community knows how close the two of you are, will the community truly feel that you were able to put the community's interests ahead of your personal loyalties? Another source of guidance may be your agency's own code of ethics, if it has one. Many cities and counties have adopted codes of ethics to serve as a guidepost in local decision-making.[4]

For More Information

For more resources designed to assist local officials in working through ethical dilemmas, visit the website for the Institute for Local Self Government at www.ilsg.org/trust.

At some point in your service as a planning commissioner, you will likely face two common types of ethical dilemmas. The first involves situations in which doing the right thing will come at a significant personal cost to you or your public agency. In these situations, the answer is relatively simple. The bottom line is that being ethical means doing the right thing for the community regardless of personal costs.

The second type of ethical dilemma involves those situations in which there are two conflicting sets of "right" values. In these instances, drawing the ethical bottom line is more difficult. If you find yourself faced

[4] For more information about codes of ethics, see *Developing a Local Agency Ethics Code: A Process-Oriented Guide,* published by the Institute for Local Self Government and available at www.ilsg.org.

with a "right versus right" decision, the following questions may help you come to an answer:

- Which ethical values are in conflict (for example, trustworthiness, compassion, loyalty, responsibility fairness, or respect)?
- What are the facts? What are the benefits to be achieved or the harm to be avoided by a particular decision? Is there a decision that does more good than harm?
- What are your options? Is there a course of action that would be consistent with both sets of values?
- Is one course of action more consistent with a value that is particularly important to you (for example, promise-keeping or trustworthiness)?
- What decision best reflects your responsibility as an officeholder to serve the interests of the community as a whole?
- What decision will best promote public confidence in the planning commission and your leadership?

For example, as a planning commissioner, you will frequently be asked to make exceptions to your jurisdiction's planning laws. A developer may, for instance, ask for a general plan amendment to enable a project to be approved. The developer is likely to point to numerous benefits that will flow to the community as the result of the amendment.

In coming to a decision in such a situation, the first step is to consider what ethical values are at stake. One might be fairness to those property owners who developed their properties in accordance with the policies expressed in the general plan. Another might be compassion for the developer seeking the amendment: if it is not economically feasible to develop the property as envisioned by the general plan, perhaps an amendment is in order.

The next step is to weigh the competing costs and benefits. Although the developer has identified the benefits to the community associated with approving the amendment, what are the benefits of adhering to the general plan? Will an amendment in this situation open the door for other amendment requests? How might the planning commission fairly evaluate those requests while still maintaining the overall integrity of the general plan? Are there options that might enable the community to reap some of the benefits described by the developer while still being consistent with the general plan as written?

Finally, consider which approach will best promote the public's confidence in the planning process. Will the public's confidence be undermined if the commission doesn't enforce the plan? Or will denying the amendment look so rigid and unfair to the applicant that it will undermine the public's faith in the planning commission as a decision-making body? What decision will best support the commission's stewardship of the community's growth and development?

The answers to the questions listed above will vary with each situation and likely will not always be clear-cut or obvious. However, asking difficult questions and thoroughly evaluating the answers can go a long way in helping you make consistently ethical decisions that further the public's interests.

ETHICS LAWS

California law promotes ethics in two ways: by requiring public disclosure and by prohibiting certain actions. The financial statements that you (and many public officials) must file with the Fair Political Practices Commission (FPPC) are an example of disclosure. In essence, the law allows the public to scrutinize the relationships between your personal finances and public decision-making. Disclosure laws allow the public (typically with the assistance of the media) to assess whether there may be too close of a relationship between your economic interests and the decisions you make as a public official.

In other instances, the law goes a step further and *prohibits* certain actions. For example, an official must disqualify him or herself from participating in a decision that will affect his or her financial interests. *This does not necessarily mean the disqualified official has done anything illegal or corrupt.* It simply means that the public's interests are better served by removing any question as to the official's decision-making motivations.

Public Service Values for Commissioners

Fairness

- I review applications and make other decisions based on the merits of the issues.
- I honor the law's and the public's expectation that the general plan and other planning policies will govern development decisions in our jurisdiction.
- I support the public's right to know and promote meaningful public involvement.
- I am impartial and do not favor developers or others who are in a position to help me.
- I promote equality and treat all people, projects, and perspectives equitably.

Compassion

- I recognize government's responsibilities to society's less fortunate.
- I consider exceptions to planning policies when there are unintended consequences or undue burdens.
- I realize that some people are intimidated by the public process and try to make their interactions as stress-free as possible.
- I convey the agency's care for and commitment to its community members.
- I am attuned to and care about the needs of the public, officials, and staff.

Respect for Others

- I treat fellow officials, staff, and the public with courtesy, even when we disagree.
- I focus on the merits in discussions, not personalities, character, or motivations.
- I gain value from diverse opinions and build consensus.
- I follow through on commitments, keep others informed, and make timely responses.
- I am approachable and open-minded and I convey this to others.
- I listen carefully and ask questions that add value to discussions.
- I am engaged and responsive.
- I involve staff in all meetings that affect agency business.

Responsibility

- I come to meetings prepared.
- I do not disclose confidential information without proper legal authorization.
- I represent the official positions of the agency to the best of my ability when authorized to do so.
- I explicitly state that my personal opinions do not represent the agency's position and do not allow the inference that they do.
- I refrain from any action that might appear to compromise my independent judgment.
- I take responsibility for my own actions, even when it is uncomfortable to do so.
- I do not use information that I acquire in my public capacity for personal advantage.
- I do not represent third parties' interests before my agency or neighboring agencies.

Integrity

- I am truthful with my fellow commissioners, the public, and others.
- I do not promise that which I have reason to believe is unrealistic.
- I am prepared to make unpopular decisions to further the public's interest.
- I credit others' contributions in moving our community's interests forward.
- I do not knowingly use false or inaccurate information to support my position.
- I excuse myself from decisions when my or my family's financial interests may be affected by my agency's actions.
- I disclose suspected instances of corruption to the appropriate authorities.

Public Trust

- I remember that my obligation as a public official is to serve the whole community.
- I make sound planning decisions that implement the policies expressed in the general plan.
- I consider the interests of the entire community in reaching my decisions.
- I give full considerations to all aspects of a project, including protection of the environment and the need for affordable housing.
- I promote the efficient use of the agency's resources.
- I balance the fiscal impacts of a project with the agency's social and planning goals.

Vision

- I work to assure that the vision expressed in the general plan is one that works to improve the quality of life in my community.
- I am proactive and innovative when setting goals and considering proposals.
- I maintain consistent standards but am sensitive to the need for compromise, thinking outside the box, and improving existing paradigms.
- I promote intelligent innovation to forward the agency's policies and services.
- I consider the broader regional and statewide implications of the agency's decisions and issues.

California's ethics laws fall into three general categories: (1) those involving possible financial gain by you as an officeholder, (2) those involving the use of your office for personal advantages and perks, and (3) those involving situations in which your ability to conduct a fair and impartial process might be questioned. Each of these relates back to the overarching goal of assuring the public that governmental decisions are made based on what best serves the public's interests.

Financial Gain

The notion behind financial gain laws is that the public has a right to know about a public official's financial situation and that officeholders should not even *appear* to be influenced by the effect of their decisions on their personal finances. Financial gain laws include:

- **Financial Interests—Disclosure and Disqualification Issues.** Public officials must periodically disclose their financial interests—such as interests in real property, investments, business positions, and sources of income and gifts—to the public.[5] This disclosure is made on a form called "Statement of Economic Interests," also known as "Form 700." A public official cannot make or attempt to influence a governmental decision if it is reasonably foreseeable that the decision could have a "material financial effect" on his or her financial interests.[6] The FPPC has developed a series of questions (known as the "eight-step process") to determine whether an official must be disqualified from participating in a decision. If you are worried that an upcoming decision will have an effect—positive or negative—on one or more of your financial interests, talk with your agency's attorney (not planning staff) as soon as possible.
- **Interests in Contracts Prohibited.** A public official may not have a financial interest in any contract made by the board or body of which the official is a member.[7] The law is very strict on this point. Such

THE STATE POLITICAL REFORM ACT: KEY THINGS TO KNOW

- California's disclosure and disqualification requirements are administered by the Fair Political Practices Commission (FPPC), which gives both informal and formal advice on the application of these requirements. Check out the FPPC's website (www.fppc.ca.gov) for contact information, as well as for other useful information relating to the FPPC's administration of the Political Reform Act.
- For purposes of disqualification, key areas of financial interest of concern to the FPPC include business entities in which an official has an investment of $2,000 or more; real property in which an official has an interest of $2,000 or more; sources of income of $500 or more within the preceding year; business entities in which the official is a director, officer, partner, trustee, employee, or manager; and anyone from whom the official has received gifts of $340 or more in the preceding year.
- When in doubt, the FPPC will usually err on the side of disclosure and disqualification.
- The city attorney's or county counsel's advice will not immunize an official from prosecution for violating disclosure and disqualification requirements. However, it is nonetheless wise to consult agency counsel as soon as you suspect that you may have an issue under the Political Reform Act.
- Violations of the Political Reform Act are subject to civil and criminal penalties, depending on the severity of the offense. For example, knowing and willful violation of the act is a misdemeanor and subjects the violator to a fine of the greater of $10,000 or three times the amount not reported.[8]
- For information on how to disqualify yourself, see Section 2, page 14.

[5] *See* Cal. Gov't Code §§ 87200 and following.

[6] *See* Cal. Gov't Code §§ 87100 and following.

[7] Cal. Gov't Code § 1090.

[8] Cal. Gov't Code § 91000(b).

contracts are void.[9] Under most circumstances, the prohibition cannot be avoided by disqualifying oneself from participating in the decision on the contract. Again, consult with your agency's attorney immediately if there is a contract before the commission in which you may have an interest.

- **Bribery.** Requesting, receiving, or agreeing to receive anything of value in exchange for an official action is a crime. In addition to criminal penalties, an individual convicted of bribery forfeits his or her office and is disqualified from holding public office in the future.[10]

Personal Advantages and Perks

The law strictly limits the degree to which an officeholder can receive benefits relating (or appearing to relate) to his or her status as an officeholder:

- **Gifts.** With certain exceptions, a public official must disclose most gifts over $50 on his or her Statement of Economic Interests and may not receive gifts from any one source that totals over $340 in a single year.[11] Gifts include meals, certain kinds of travel payments, and rebates or discounts to public officials not offered to others in the usual course of business.[12] The law is particularly strict about free transportation passes (not including frequent flier awards offered to everyone); acceptance of such passes results in immediate loss of office.[13]
- **Speaking Fees or Honoraria.** Public officials may not receive payments for giving a speech, writing an article, or attending a conference or meeting. Limited exceptions apply. Free conference admission, lodging, and meals provided directly in connection with speeches within California, for example, are not considered prohibited honoraria and need not be reported.[14]
- **Use of Public Resources.** It is a felony to misuse public funds, which can include such things as submitting inaccurate or inflated expense reports from traveling on agency business. Public resources (including staff time and office supplies) may not be used for either personal or political purposes.[15]

For More Information

Institute for Local Self Government, *A Local Official's Guide to Ethics Laws (2002)*, available at www.ilsg.org.

California Attorney General's Office, *Conflicts of Interests (1998)*, available at www.caag.state.ca.us/publications/conflict/conflict.pdf.

Fair Political Practices Commission booklets, available at www.fppc.ca.gov or through the toll-free advice line (866-ASK-FPPC).

- **Common Law Bias from Personal Interests.** A strong personal interest in a decision can be the basis for a finding of what is known as "common law bias." Common law bias is sufficient to disqualify a public official from participating in a decision, particularly if the official is sitting in a quasi-judicial capacity (see page 20). For example, one court found a council member biased on a proposed addition to a home in his neighborhood because the addition would block the council member's view of the ocean.[16]

Fairness and Impartiality

Officeholders should make decisions in a fair and impartial manner. Key laws that planning commissioners need to be aware of include:

- **Campaign Contributions.** Commissioners who are running for office must disqualify themselves from entitlement proceedings—such as land use permits—if they received campaign contributions of more than $250 during the previous twelve months from the applicant. Moreover, candidates may not receive or solicit contributions of more than $250 from any applicant while the application is pending and for three months afterward.[17]

[9] Cal. Gov't Code § 1092.

[10] Cal. Penal Code §§ 68, 98.

[11] Cal. Gov't Code §§ 87200, 87207; 2 Cal. Code of Regs. § 18940.2 ($340 amount valid through 2004).

[12] Cal. Gov't Code § 82028(a).

[13] Cal. Const. art. XII, § 7.

[14] Cal. Gov't Code §§ 89501, 89502; 2 Cal. Code of Regs. § 18950.3.

[15] Cal. Penal Code § 424. *See, e.g., People v. Battin*, 77 Cal. App. 3d 635 (1978).

[16] *See Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152 (1996).

[17] Cal. Gov't Code § 84308.

RECIPE FOR AN EFFECTIVE PLANNING COMMISSION[21]

- **Focus on the Big Picture.** Focus on the big picture before you; avoid being distracted by personalities, groups, or issues that do not have anything to do with the merits of the present agenda item.
- **Meeting Procedures.** Established rules and procedures keep meetings on track. The chairperson and staff should have defined responsibilities. In addition, rules for testimony should be clear and widely available at all meetings.
- **Follow the Law.** Keep legal requirements in mind. When in doubt, ask legal counsel for advice. Before approving an application, you should be able to answer the following questions in the affirmative: Is the proposal consistent with the general plan? Does it meet all applicable zoning and subdivision requirements? Are the environmental impacts reduced or eliminated by the conditions of approval, or are there overriding considerations? Is the commission's decision supported by findings of fact based on substantial evidence in the record?
- **Stay Informed.** Prior to the hearing, commissioners should have read the agenda packet and supplemental reports. It is also a good idea to review the portions of the general plan and the zoning ordinance that are relevant to each agenda item.
- **Open Communication.** Each commissioner shares responsibility for the free flow of ideas and discussion among everyone present at a meeting, including applicants, staff, members of the public, and the commissioners themselves. Be objective, listen, and ask questions.
- **An Efficient Pace.** The chair should recognize when testimony must be closed for deliberations. Commissioners should hold their motions until the discussion has concluded. Both the chair and the other commissioners should know whether to continue a hearing or to make a decision.
- **Effective Leadership.** An effective chairperson assists the flow of ideas and helps keep the proceedings on track.

- **Effect of Decisions on Family Members' Financial Interests.** A public official must disqualify him or herself from participating in a decision that would reasonably have a foreseeable material financial effect on a member of his or her immediate family (spouse and dependent children).[18]
- **Party or Factual Bias.** A strong personal animosity towards a project applicant or the receipt of information about a project may constitute a disqualifying source of bias when a planning commission is sitting in a quasi-judicial capacity.[19] This is a variation of the "*ex parte* communications" doctrine, which suggests that, in quasi-judicial matters, all communications to you about the merits (or demerits) of the proposed use should occur in the course of a public hearing (see page x).
- **Dual Officeholding.** State law prohibits public officials from holding multiple offices at the same time that subject them to conflicting loyalties.[20] Check with your agency counsel if you are worried that this prohibition may apply to an office you are seeking.

In addition to these state ethics requirements, cities and counties may have local restrictions and requirements.

WORKING WITH FELLOW COMMISSIONERS

Good working relationships within the planning commission, as well as with planning and other staff, the city council or board of supervisors, other boards and commissions, applicants, consultants, and the public, are critical in order for planning functions to be effective and efficient. Positive working relationships are based on

[18] Cal. Gov't Code §§ 82029, 87103.

[19] *See Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1234 n.23 (2000).

[20] *See* Cal. Gov't Code § 1126.

[21] Adapted from Governor's Office of Planning and Research, *The Planning Commissioner's Book,* (revised May 1998); http://ceres.ca.gov/planning/plan_comm/.

mutual understanding of the role of each group, including:

- Clear expectations about how each group will relate to the other, as defined by adopted procedures
- A common set of goals, as reflected in the general plan and other adopted planning documents
- A willingness to solve problems by listening to others, considering alternatives, and arriving at a consensus
- An ability to communicate directly and clearly with others

WORKING WITH STAFF

A good working relationship with staff will significantly improve your effectiveness as a planning commissioner. A planning department staff member will always be present at commission meetings. Other attendees may include representatives from your jurisdiction's attorney's office and public works department.

Planning staff advises the commission on local agency plans, ordinances, and policies. In addition, they provide background information and research, prepare plans and reports, make recommendations, and answer technical questions on development proposals under the commission's consideration. Other staff responsibilities include:

- Orienting new commissioners
- Noticing meetings
- Responding to requests for information in a timely and professional manner
- Delivering agenda packets in time for adequate review
- Highlighting key issues, data, and criteria in staff reports and presentations
- Anticipating the type of information that will be needed for a decision
- Being accessible and keeping all commissioners equally informed
- Reviewing applications for completeness
- Acting in a fair, ethical, and consistent manner

Members of the planning staff can be a tremendous resource for you. Most will have received at least some training in geography, landscape design, urban and rural planning, economics, law, and statistics. In addition to their other duties, staff are responsible for staying current on new trends, technologies, and regulations in the planning and development field. They can use this

TIPS FOR DEVELOPING AND MAINTAINING GOOD STAFF RELATIONS

A good staff-commission relationship is built on mutual trust and respect. Here are some ways to achieve that:

- Come to meetings having reviewed the materials prepared by staff.
- Ask questions of staff in advance and alert them to concerns you intend to raise during the meeting.
- If you disagree with a staff recommendation, state specific reasons for your decision. This will help staff to draft findings in support of your decision. Simply stating "I do not like the project" is not enough.
- Clearly communicate to staff what the commission needs in order to make well-informed decisions. If material is not being presented in an understandable way, work with staff to make changes.
- Treat staff with respect.
- Do not assume that staff is wrong and a critic is right.
- Compliment staff when and where appropriate.

information to assist the planning commission in developing creative solutions to local problems.

Consultants

Local agencies face serious restrictions on staff expansion, while the demand for public planning continues to increase. Consultants are often used to address temporary staffing needs, such as:

- Complete studies requiring special skills
- Provide additional support on an as-needed basis
- Prepare studies and analyses required by environmental laws
- Assist on large projects, such as a general plan update

The commission should consider consultants as extensions of regular staff.

WORKING WITH THE GOVERNING BODY

One not so obvious ongoing relationship to take into account is the relationship between the planning commission and the governing body (city council or board of supervisors). In most cases, individual commissioners serve at the pleasure of one or more members of the governing body and therefore should consider the views of the governing body in making their decisions.

The planning commission-governing body relationship can become strained (at least from the commission's perspective) if the governing body repeatedly overturns planning commission decisions. In such cases, you may feel that the governing body did not look at the land use issues as closely as the commission. One thing to keep in mind, however, is that the governing body must also contend with political pressures that are not always felt by the appointed commission.

Here are some ideas on how to promote a good ongoing relationship between the planning commission and the governing body:

Who Does What in the Project Review Process?

PLANNING STAFF

- Identifies relevant local regulations for project applications
- Works with applicants to make a project work
- Works with other departments and agencies, such as the engineering department or the regional air board, to incorporate comments and technical recommendations into a project
- Ensures that procedures are being followed
- Prepares a professional analysis and recommendation
- Monitors project implementation
- Holds consensus-building meetings on controversial projects

AGENCY COUNSEL

- Answers legal questions
- Does not give policy direction or advice
- Advises on relevant legal considerations, both in terms of process (for example, notice requirements) and substance

PLANNING COMMISSION

- Balances staff analysis, including agency goals and policies, with community input
- Renders a decision based on findings of fact when acting in a quasi-judicial capacity
- Makes recommendations to the governing body on policy matters when acting in a legislative capacity
- Evaluates land use aspects of projects and leaves more technical issues for staff review and implementation (commissioners should trust staff to implement their general directions)

GOVERNING BODY

- Balances staff analysis, planning commission decisions, and agency goals

- Make adequate findings to insure that the reasons for your actions are clear
- Ask for clarification of the governing body's policies or actions if they are unclear
- Include in planning commission minutes any questions or points of view that are not obvious in your decisions and findings
- Send a planning commission representative to meetings of the governing body to discuss difficult decisions
- Request an annual joint work session to discuss priorities, communication and other pressing issues
- Do not rely solely on staff to convey your message, either to the public or to the appropriate elected officials
- Do an annual self-evaluation and follow through with any needed changes in how the commission does business

Keep in mind that elected officials must answer to the voters. You may find it helpful to be familiar with the policy perspectives of the members of the governing body, particularly as they relate to land use policies and programs. (For example, are they "slow growth" or "pro-growth"?) Casting individual commission decisions in ways that address issues of concern to individual members of the governing body (if not conforming to them) reduces the liklihood that a commission decision will be overturned on appeal.

WORKING WITH THE MEDIA

The media can be a commissioner's best friend—or worst enemy. Developing a good relationship with the local media is an important—and often underrated—element of working in local government. Most members of the public will learn about local land use decisions through local newspapers, radio, and television. Because of this, it is important to engage reporters to make sure that the local agency's side of the story gets told.

One of the keys in working with the media is to retain your credibility. Here are some tips for retaining your credibility:

- Share information when you can and be as transparent as possible.
- Return phone calls promptly (respect reporter deadlines). Leaving questions unanswered invites errors and unintentional bias.
- Never say "no comment;" this always sounds evasive.
- One of the most respected comments is "I don't know. I'll get back to you." Be sure to get back with the information.
- Remember that there is no such thing as "off the record." If you don't want a comment to end up in the press, don't make it.

It can be beneficial to establish ongoing relationships or an open-door policy with media representatives, but always be careful to keep your comments concise and on point. Often the media is just looking for a quote from the commission, not necessarily all the relevant facts. Staff may be able to provide reporters with more specific facts or details.

Getting Your Message Out

Another good tip for dealing with the media is to identify and repeat a single message. If you think about it, most people are only quoted once or twice in an article. What is it that you want that quote to be? (See *Media Messages for Local Government* on the next page) If you stick to your message and keep repeating

For More Information

Delivering the Message (2000). California Association of Public Information Officials. Available at www.capio.org

it, it is more likely that the reporter will use that quote. The more you ramble, the greater the risk is that you will get off message and that the reporter might pull something out of context that you might not like to see in print.

In addition, focus on substance, not procedures. Most people find procedural and legal details boring. Jargon should be avoided at all costs. Instead, use everyday language. Why say "we gave it a negative declaration" when you can say "we've decided it won't significantly affect the environment"?

An excellent resource in working with the media is your jurisdiction's public information officer. This person can alert the media to favorable stories. If you never call reporters in advance, then all they will cover are meetings, not all of which go smoothly. Contrary to popular perception, good news goes in the paper too. It is more likely that your message will stick when the story matches the message.

MEDIA MESSAGES FOR LOCAL GOVERNMENT

Journalists often build stories around people to explain an issue in human terms. Often, land use stories are about an agency's action in response to public concerns. Emphasizing the benefits of this responsiveness as it impacts individuals puts the story into a framework with which readers can relate. Here are some talking points that address common land use decisions from the local agency perspective:

- **Good Planning Maximizes Property Values.** Planning maximizes property values by insuring that development occurs in a way that is compatible with the surrounding community and the environment. Often, when property owners complain that a particular action devalues their property, they are forgetting that the underlying value of their property is already higher due to nearby public investments in roads, sewers, infrastructure, and good planning in general.
- **What Is the Impact to the Average Person?** Describe the positive or negative implications of decisions in terms of what they mean for the general public. How does planning promote a better community?
- **Balancing Act.** Local officials must strike a fair balance between individual preferences and the interest of the whole community. What is at stake in most planning decisions is the ability of public agencies to solve problems and respond to the public's concerns.
- **Quality of Life.** Effective planning promotes important quality of life issues, including a sense of place and connectedness. Developing a sense of community helps draw people together and makes communities better places to live and raise families.
- **Economic Prosperity.** Quality of life and adequate infrastructure issues are often key factors when a business is deciding where to locate.
- **Fairness.** Public agencies seek solutions that achieve fairness and justice, not only for individual landowners but also for the community as a whole.

SECTION 2

Meetings & Procedures

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Meetings & Procedures

MEETINGS

Planning commissions hold meetings—lots of them. All of the commission's discussions and decisions must occur at open and noticed meetings. (See Open Meeting Requirements, page 27). Commission meetings are often one of the few windows through which the public gets to see their government in action. The public's perception of government is often derived from how meetings are conducted. Members of the public—including those at home watching televised sessions—are not likely to distinguish between commissioners, staff, and others testifying at meetings. Therefore, fair and respectful treatment of all is very important.

There are generally three types of planning commission meetings:

- **Regularly Scheduled Meetings.** Decisions on individual projects are made at regularly scheduled meetings, many times after a public hearing.
- **Special Meetings.** Special meetings focus on specific issues. They often involve greater public outreach efforts. An example is a community workshop where members of the community are encouraged to come out and talk about a project that will affect their neighborhood. In some instances, the location of a special meeting may be different from regularly scheduled meetings to make it more convenient for attendees.
- **Work Sessions.** Work sessions provide a less formal atmosphere for the commission to receive information and discuss matters in a relaxed manner. They are often used for initially dealing with more complex or lengthy matters or to educate the commission about a specific policy. The commission is not allowed to make motions or take other actions to resolve a question or make a decision at work sessions.

PREPARING FOR MEETINGS

As a planning commissioner, your primary job is to make land use decisions that are consistent with your local agency's plans, ordinances, and policies. To be effective, you should review the entire agenda packet before each meeting. This means reading the development application for each project on the agenda, along with the staff report, environmental assessment, and relevant sections of the general plan and the zoning or subdivision ordinance.

It is important that your agenda packet—usually received a few days before each meeting—contains the information that you need to make good decisions.

Commissioners should work closely with staff to develop a format that presents the key information clearly and efficiently. In addition, the commission should ensure that staff delivers the packets in time to allow for ample review before meetings.

You may also want to ask staff clarifying questions you have before each meeting. The questions should only address ambiguities that you have identified in the staff report or other documents. Discussing these issues before meetings gives staff time to provide you with the most relevant information. It also speeds up the permit process by minimizing the chance that a decision will be postponed due to incomplete information.

At public meetings, you should be able to both ask and answer questions about the projects under consideration, their relationship to the general plan and ordinances, and their potential impacts on the community. If legal questions arise, don't be afraid to ask your agency's attorney for an opinion. Never take legal advice from anyone other than your agency's own lawyer.

ABSTENTION AND DISQUALIFICATION

When reviewing meeting agendas, you should keep an eye out for any items from which you should abstain or disqualify yourself. You may abstain from considering an agenda item when you have potentially conflicting loyalties that are not otherwise addressed by law. For example, if your cousin has a pending development application, the public would probably perceive that your personal loyalties conflict with your public duties. Even when you are certain of your impartiality, it can still be a good idea to abstain to avoid the appearance of impropriety. Disqualification, on the other hand, occurs when the law determines that you must not participate in a decision based on certain circumstances (see Ethics Laws, page 4).

Identifying potential conflicts before each meeting provides you and your agency counsel (not planning staff) the opportunity to examine how the laws apply to your economic interests. If necessary, you are more likely to have time to consult with the Fair Political Practices Commission to determine whether you are indeed disqualified or whether an exception applies. Early identification of conflicts also enables staff to determine whether your disqualification will affect the commission's quorum on an item or whether your participation will be legally required despite the conflict (there are limited circumstances in which this occurs).[1]

The Duty to Decide, Not to Duck

What if the law allows you to vote but you would prefer not to? It can be tempting to abstain when you know a decision will be unpopular or when you simply do not know what the right decision is. However, you were appointed to make tough decisions. It is unfair to let your fellow commissioners take the heat for a necessary but unpopular decision. Instead, you should come to meetings fully prepared and ready to explain your decision.

If you are disqualified from participating on a specific agenda item, you must:[2]

- Publicly identify the financial interest or potential conflict of interest in sufficient detail to be understood by the public
- Refrain from discussing or voting on the matter
- Leave the room until after the discussion, vote, and any other disposition of the matter, unless the matter is on the consent calendar

After disqualification, the only way to participate on the agenda item is as a member of the public during the public comment period. However, you may wish to consider how the public will perceive such testimony. You must balance your rights as an individual citizen against your duty to maintain the public's trust in the agency you serve.

There are limited exceptions that allow a disqualified official to remain in the room and participate when one's "personal interests" are at stake. These include:

- Interests in real property wholly owned by the official or his or her immediate family;

1 Cal. Gov't Code § 87101; 2 Cal. Code Regs. § 18701.

2 *See* Cal. Gov't Code § 87105; 2 Cal. Code Regs. § 18702.5.

HOW TO GET THE MOST OUT OF PUBLIC MEETINGS

- **Notice.** Send out notices far enough in advance so that people can adequately respond. It is often good practice to find alternative means of keeping the public informed. It is very difficult for groups (such as a neighborhood association) to meet, become informed, take a position, and prepare testimony within a ten-day (much less a three-day) notice period.
- **Accessibility.** Hold the meeting at a place that is easy to reach using alternative transportation choices. Make sure the location is accessible for those with physical disabilities.
- **Room Size.** Ensure that the room is large enough to hold everyone who wants to attend.
- **Written Materials.** Have sufficient copies of the agenda and written materials placed near the entrance of the room.
- **Procedural Explanations.** Provide brief summaries of local agency procedures to help people who are new to the process understand what is going on and tailor their comments appropriately.
- **Speaker Slips.** Many agencies use speaker slips to organize comments during meetings. Such slips should provide space for the person's name and the agenda item that they want to speak on.
- **Audiovisual.** If electronic equipment will be used, make sure it is working and tested in advance. If software programs like PowerPoint will be used, pre-load the presentations into the computer.
- **Other Logistics.** Make sure all the other things—such as microphones, recorders, projectors, easels, maps, overheads, name plates, gavel, timer, flags, water, and anything else that will be used during the meeting—are in place.
- **Special Needs.** Address special needs that are likely to arise that are specific to the meeting. For example, an interpreter might be appropriate if a large number of people who do not use English as their first language is expected.
- **Timing.** Start on time.

- A business entity wholly owned by the official or his or her immediate family; and
- A business entity over which the official (or the official and his or her spouse) exercise sole direction and control.[3]

Even though the law allows the public official to remain in the room when these interests are at stake, the public official may still wish to balance that option with the potential that the public may nonetheless perceive that the official is improperly trying to influence his or her colleagues.

MEETINGS AND PUBLIC HEARINGS

Public hearings are formalized opportunities for public comment. They are usually required for specific types of actions, such as general plan adoption, zoning ordinances, development permits, and variances. The hearing guarantees that the fundamentals of due process—such as the right to notice and the opportunity to be heard—are incorporated into the decision-making process. (For more on due process, see Section 9).

Local agencies must give at least ten days notice for a public hearing (compared to the three-day notice for a general meeting required under the Open Meetings Law—(see page 28).[4] For legislative actions such as general plan amendments or zoning ordinances, the notice is usually posted in a newspaper of general circulation. For development permits, notice must be mailed to affected property owners, including all owners within 300 feet of the affected parcel. These are the minimum standards that apply to all agencies.

[3] 2 Cal. Code Regs. §§ 17802.5(d)(3), 18702.4(b)(1).

[4] Cal. Gov't Code §§ 65090, 65095.

Individual agencies may adopt additional procedures at their discretion.

It is sometimes difficult to tell the difference between a general meeting and a public hearing, particularly when local agencies have incorporated similar processes into their general procedures. The planning commission may go back and forth between regular meeting and public hearing in the same session. If a public hearing is on the agenda, the chair will open the hearing at the appropriate time. The public is then given the opportunity to speak. At the end, the chair will close the hearing and deliberations on the item will proceed. Alternatively, the hearing can be continued to another meeting.

BASIC MEETING PROCEDURES

Meetings should be run in a manner that makes the person in the audience who has never attended a meeting before feel comfortable and able to participate. A simple, well-explained procedure is vital to inclusiveness. A typical meeting would include:

- Chair calls the meeting to order
- Commission secretary calls the roll
- Chair introduces key staff
- Chair reviews the commission's procedures
- Chair announces any changes to the agenda
- Commission acts on consent items
- Agenda items are addressed in turn
- Comments and questions
- Chair adjourns meeting

Most agencies use a "consent calendar" for routine items—such as approval of minutes—that can be handled without discussion. These items generally do not involve policy questions.

Regular agenda items include both public hearing and non-hearing items. Both types of items are handled in the same way. First, the chair asks if the applicant is

CIVILITY IN PUBLIC MEETINGS

Public debate includes the potential for disagreement, but this does not mean that civility has to go out the window. Civility is the notion of mutual respect, even in the face of disagreement. Uncivil meetings contribute to public alienation and antipathy towards government. Critics often claim that government's inability to deal with a broad range of issues results from the destructive way in which they are addressed.

The following are some tips for maintaining civility in meetings:

- **Separate People from the Problem.** Recognize that other thoughtful people have different views. Focus on solutions that are most likely to succeed. Avoid resolving disputes on an "us versus them" basis.
- **Limit Misunderstandings.** Make a continuing effort to understand the views and reasoning of people with opinions different than your own.
- **Get the facts.** Work together to resolve factual disagreements. Fact-finding can get opponents on the same page in terms of identifying the problem. When uncertainty in the data remains, contending parties need to explain the reasoning behind their differing interpretations.
- **Use Fair Processes.** Genuinely solicit and consider public input. Make decisions on the basis of substantive arguments.
- **Remain Open to Being Persuaded.** One crucial element of civility is the recognition of the possibility that others may have better ideas than your own. Seriously consider persuasive arguments and explain your own position.
- **Recognize the Good in Others.** As one author recommends: "Identify the biggest redeeming quality of that person who's always driving you crazy. Keep it in mind the next time the two of you interact."[4]

[4] Tim Terez, *Civility at Work: 20 Ways to Build a Kinder Workplace* (2002) at www.betterworkplacenow.com/civilityart.html.

present. The chair may also find it helpful to determine how many other people also wish to speak about the application. This can often be accomplished by reviewing the speaker slips (pieces of paper filled out by those wishing to speak on an agenda item) that have been turned in to the commission secretary. The typical process for reviewing an application is:

- Staff report
- Commission questions of staff
- Applicant's presentation
- Commission questions to applicant
- Public comments
- Applicant's response
- Commission discussion

All questions should be addressed to the chair rather than to the applicant, staff, or anyone else. The chair should note these questions and ensure that they are answered. Other commissioners should also note issues of importance to them that are raised during testimony and bring them up later during the commission's deliberations.

The commission should openly discuss the issue at hand. It should state why it is making its decision and why it gives more weight to some factors than others. In many cases these reasons must be formally stated as findings. On complex projects, it is helpful to deal first with sub-issues, such as amendments to conditions, by making separate motions rather than making a motion to approve with numerous amendments.

In some cases when a public hearing is being held—or when there is a contentious or popular item that has attracted a lot of people—the commission may change the agenda order to accommodate those in the audience. However, doing so should be weighed against the chance that others might arrive later only to find that the issue on which they wished to speak has already been covered.

Commenting During Meetings: How Much Is Too Much?

Public meetings are an exceptionally precious resource. Accordingly, most commissioners are selective about their participation in the discussion. However, some ask questions that would be unnecessary had they prepared for the meeting and a few even use meeting time to "grandstand."

Commission meetings were not created as opportunities for individual commissioners to impress the media or the public. The goal is to accomplish the public's business as productively, efficiently, and professionally as possible. Most people are quick to spot comments that are more about self-promotion than about moving the discussion forward.

PARLIAMENTARY PROCEDURE

The rules of procedure at meetings govern how motions are made and votes are taken. Typically, this process is guided by *Robert's Rules of Order*. The rules themselves are quite detailed and do not always lend themselves easily to planning commission meetings. However, a simplified version of these rules was printed in a two-part article entitled "Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century" in *Western City* magazine.[5] The summary below is drawn from these articles.

The rules of order are meant to create an atmosphere in which a meeting can be conducted efficiently, fairly, and with full participation. The chair and the members of the commission bear responsibility for maintaining common courtesy and decorum. It is generally best if only one person speaks at a time and for every speaker to be recognized by the chair before speaking. Debate and discussion should be focused but free and open. The chair should always ensure that debate and discussion of an agenda item focuses on the item and policy in question, not on the personalities of the individual commissioners or anyone else in attendance.

A proposed course of action is first presented formally as a motion. Three types of motions are most common:

[5] David Rosenberg, *Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century* (pts. 1 & 2), *Western City*, Aug. and Sept. 2003; available at www.westerncity.com/articles.

Three Types of Motions:

Basic Motion: *"I move that we approve the Smith project as recommended in the staff report."*

Amendment to Motion: *"I amend the basic motion to add the requirement that the applicant incorporate the design features recommended in the neighborhood group report."*

Substitute Motion: *"I move to make a substitute motion that we reject staff's recommendation and accept the developer's proposal as presented to us originally."*

basic motions, motions to amend, and substitute motions. Basic motions are made when a commissioner recommends a specific action after saying, *"I move...."* You can change or amend the terms of a basic motion by saying, "*I move to amend....*" You can also completely replace the basic motion with another by saying, "*I move to make a substitute motion that....*"

Motions to amend and substitute motions are often confused. A motion to amend seeks to retain the basic motion but to modify it in some way. A substitute motion seeks to throw out the basic motion and substitute a new and different motion for it. The question of whether a motion is really a motion to amend or a substitute motion is left to the chair. If you make a motion to amend but the chair determines that it is really a substitute motion, the chair's determination stands.

A motion should be seconded to ensure that more than one member is interested in supporting it. Debate can continue as long as the commission wishes, subject to the decision of the chair that it is time to move on or take action. At some point during the debate, someone may make a motion to limit debate by saying: *"I move the previous question," "I move the question,"* or *"I call for the question."* What this motion is really saying is *"I've had enough debate. Let's get on with the vote."* A motion to limit debate may include a time limit. For example: *"I move we limit discussion on this item to 15 minutes."* When such a motion is made, the chair should ask for a second. Assuming there is a second, debate is stopped and a vote on the motion to limit is taken. A motion to limit debate requires a two-thirds vote.

Decisions are generally made by a simple majority vote. Usually, a simple majority of those present are required. However, there are a few instances—such as general plan approvals—where a majority of the entire commission is required.[6] A tie vote means the motion fails. Thus, for a five-member commission, a vote of 3-2 passes the motion, but a 2-2 vote with one abstention means the motion fails. If a simple majority is required, but one member is absent and the vote is 2-2, the motion still fails. In some cases, a super-majority (two-thirds) vote may be required. Examples of this kind of action include motions to limit debate, close nominations, or suspend rules.

If there is no end to the discussion in sight and you want to move on, adjourn, or at least end the discussion, you can make one the following motions.

- **Motion to Adjourn.** Commission adjourns to its next regularly scheduled meeting.
- **Motion to Recess.** Commission takes immediate recess. Normally, the chair determines the length of the recess.
- **Motion to Fix the Time to Adjourn.** Commission adjourns at a specified time. For example, the motion might be: *"I move we adjourn this meeting at midnight."*
- **Motion to Table.** Discussion is halted and the agenda item is placed on hold. The motion can designate a specific time to return to the discussion or it may be indefinite: *"I move we table this item until our meeting in October"* or *"I move we table this item indefinitely."* When an item is tabled indefinitely, a commissioner will have to make a motion to take the item off the table at a future meeting.

These motions are not debatable and require an immediate vote, with a simple majority required for passage.

6 Cal. Gov't Code §§ 65354, 65356.

10-STEP FORMAT FOR DISCUSSION OF AN AGENDA ITEM

1. The chair announces the agenda item number and the subject.
2. The chair invites the appropriate staff to report on the item.
3. The chair asks members of the commission if they have any clarifying questions for the staff.
4. The chair invites public comments. Reasonable time limits—usually 3 to 5 minutes per person—may be imposed. Discussion is closed after everyone is given the opportunity to speak.
5. The chair invites a motion and announces the name of the motion maker.
6. The chair asks for a second and announces the name of the person seconding.
7. If a motion is made and seconded, the chair makes sure everyone understands by repeating it or asking the maker to repeat it.
8. The chair invites discussion of the motion among the commissioners. Upon conclusion, the chair announces that it is time to vote. The chair should repeat the motion to assure that everyone understands it.
9. The chair takes a vote. Simple "ayes" and "nays" are normally sufficient. A person not voting abstains. A motion passes with a simple majority unless there is a super-majority requirement.
10. The chair announces the result, indicating the names of the members, if any, who voted in the minority. For example: "The motion passes by a vote of 3–2, with Smith and Jones dissenting. We have passed the motion requiring 10 days' notice for all future meetings of this body."

CHAIRING MEETINGS

At some point, it is likely that you will be asked to chair one or more meetings of the commission. The attitude and abilities of the chair are critical for an effective meeting. The chair sets the tone of the hearing by keeping the discussion on track, encouraging fairness, and bringing the commission to the point of decision, even on complicated or controversial issues. A capable chair will bring many personal attributes—such as active listening, tact, decisiveness, and patience—to the role.

In addition, the chair must think quickly to articulate positions, clarify motions, and give direction to staff based on the differing views of individual commissioners. A very important—and often underrated—key to chairing a meeting is having a full understanding of the agenda items. Effective chairs put extra effort into studying the agenda and preparing for the meeting to better understand the nuances of the issues and options before them.

It is common practice for the chair to take a less active role in debates and discussions. This does not mean that the chair should not participate. On the contrary, as a member of the body, the chair has full rights to participate in discussions. The chair should, however, usually offer his or her opinions last and should not make or second a motion unless he or she is convinced that no other member of the body will do so.

The responsibilities of the chair include:

- **Open the Meeting.** Explain why the meeting is being held, review the agenda and note any changes, and review the procedures and time limits (if any) that are in effect.
- **Manage Public Testimony.** Describe the agenda item and ask speakers to identify themselves. Ask speakers to be concise and not repeat points made by prior speakers. Intervene when speakers ramble or when successive speakers repeat the same testimony. Assure that people have a reasonable length of time to testify and balance that with the number of people who want to testify. Sometimes there is a tendency to be easy on the time limits in the beginning of a meeting and more strict at the end. Its fairer for all if the time limits are applied consistently throughout.
- **Facilitate Deliberations.** Summarize issues, ask for input from the commission as a whole, and ask for more information from staff if necessary. When commissioners disagree, assist them in expressing

their various concerns. When a motion is proposed, assure that it is stated understandably before a vote is taken. At times, the chair may have to move the meeting along by asking for or suggesting a motion (*"A motion at this time would be in order"* or *"A motion would be in order that we adopt staff's recommendation"*).

- **Maintain Order.** Assure that commissioners wait to be recognized before speaking and intervene to prevent more than one speaker from talking at a time. Do not allow members of the public to clap or cheer. Likewise, quickly step in when sharp words are exchanged. Limit dialogue between commissioners and persons testifying to fact-gathering that will contribute to the commission's decision-making ability.
- **Apply the Rules of Procedure.** Be familiar with the commission's procedures and agenda items. The chair's decision is final on most rules of procedure.
- **Draw Out Reasons for a Decision.** Make sure that findings are adopted when required. When the commission makes a decision that is contrary to staff's recommendation, make sure that the reasoning for the decision is explained so that the relevant findings can be drafted.

These duties are a lot to keep in mind, particularly the first few times you are called upon to chair a meeting. However, chairing a meeting is an acquired skill and you will become better at it the more you do it.

QUASI-JUDICIAL AND LEGISLATIVE DECISIONS

Understanding the type of decision that the commission is being asked to make will help you understand your role in making the decision. Most land use decisions can be divided into two categories: legislative and quasi-judicial. Legislative decisions involve policy choices that apply to a broad class of landowners. Examples include decisions to adopt general plans and zoning ordinances. In contrast, quasi-judicial decisions (also called adjudicative or administrative decisions) involve individual projects that are being considered for approval or imposition of conditions. Examples include zoning permits or other entitlements, such as variances.

The key difference between the two from a decision-making perspective—as is discussed in more detail in the next subsection below—is that procedural due process requirements apply to quasi-judicial decisions. Because these decisions are more formal, you have to be

QUASI-JUDICIAL ACTS	LEGISLATIVE ACTS
■ Conditional use permits	■ Airport land use plans
■ Variances	■ Water district annexations
■ Coastal zone permits	■ Planned unit developments
■ Subdivision maps	■ Zoning and zoning amendments
■ Williamson Act cancellations	■ General plan adoption
■ Development allotment per growth control ordinance	■ Annexations
■ Certificates of compliance	■ Special assessment establishment
■ General plan consistency determination	■ Road abandonment
■ Habitat conservation plan amendments	■ Specific plans
■ CEQA decisions requiring hearings and evidence	■ Habitat conservation plans
	■ CEQA decisions not requiring hearings or evidence

more careful about the sources of information you use to make your decision.

There is also a third type of decision that may arise from time to time: ministerial decisions. These actions are those mandatory, nondiscretionary activities that must be approved if certain standards are met. A final subdivision map, for example, must be granted when all of the conditions of the tentative map are met. Likewise, certain applications for second unit or "granny flat" approvals in single-family neighborhoods are ministerial.

KEY CONSIDERATIONS FOR QUASI-JUDICIAL PROCEEDINGS

As a commissioner, you play a unique role when you are considering an individual application or other quasi-judicial decision. In a way, you are operating as a court in that you are applying the local land use regulations to a specific application just as a court applies the law to a specific set of facts. Because of this, you should limit your decision to facts that are presented as part of the quasi-judicial process, just as a court basis its decision on the evidence presented before it.

This does not mean, however, that the commission must have detailed rules of evidence like a court does. The public hearing format is much simpler. However, you do need to be aware of how the basic requirements of procedural due process may affect your ability to make a decision. Basic procedural due process requirements include:

- **Notice of Hearing Required.** Quasi-judicial proceedings almost always involve a public hearing. Affected property owners should receive notice of the hearing by mail at least 10 days in advance, although different timelines and procedures may apply in charter cities.[7]

- **Decision-Maker Must Be Present For All Evidence.** Anyone involved in making the decision must have heard all the evidence. This becomes an issue if you miss a meeting where evidence is presented but the vote is postponed to a later meeting that you attend. While the best practice is to be present for all hearings, in some cases you may still vote after reviewing the tape or testimony of the earlier meeting, reading all

documents involved, reviewing all aspects of the issue presented, and stating on the record that such review and examination was completed.[8] However, your agency's attorney may recommend that you abstain from the vote to avoid questions about fairness.

- **Avoid *Ex Parte* Contacts.** An *ex parte* communication about a project occurs when you receive information—by meetings on the street, phone calls, and even e-mails—outside of the quasi-judicial process (*ex parte* is Latin for *"from one side only"*). Reliance on information received in this way can be unfair because the opposing parties are not there to rebut the information. If you are about to receive this kind of information, you should explain that you are not permitted to discuss the issue outside of the hearing. Ask that the person submit their comments in writing for the consideration of the entire planning commission. The comments will then be included as part of the record (and have greater legal effect). You should also discuss the contact with the agency's attorney. You may be able to resolve the problem by disclosing the contact and the substance of the communication at the hearing. This will get the evidence you received on the record.

- **Site Visits Raise Concerns.** It is often tempting to visit a project site to get a better feel for the issues. However, this action raises due process concerns. The visit provides you with an opportunity to draw conclusions outside of the hearing process. For example, if neighboring owners are concerned about traffic congestion and you visited the property on a

7 Cal. Gov't Code § 65091.

8 David J. Curtin, Jr., & Cecily T. Talbert, *Curtin's California Land Use and Planning Law* (Solano Press, 2004).

Sunday morning when there was no traffic, you might dismiss their claims as unwarranted. They may have just assumed you knew their concern was about congestion at peak travel times. Many local agencies require that you disclose any site visits that you may have made—along with any conclusions you drew from such visits—at the beginning of the hearing. Other agencies may take a more conservative approach. Always check with staff or the agency's attorney to see what procedures may apply to your commission.

- **Strong Personal Bias May Require Disqualification.** Strong personal bias may require that you disqualify yourself from making a decision. Procedural due process is built on the notion of an unbiased decision-maker. If you have spoken out for or against a specific project, you should consult with your agency's attorney to see if rules of common law bias require your disqualification. However, general predispositions—such as being generally concerned about the environment—are not enough to make disqualification necessary.[9]

Note that these rules generally apply only to quasi-judicial decisions. When you are making legislative decisions, such as adopting zoning ordinances, you have more freedom to gather your own information—such as by contacting members of the community and visiting sites—to help in making your decision.

MAKING A DECISION

The primary job of a planning commission is to make informed land use decisions. Reaching decisions that can be supported by a majority of the commission is often difficult and requires a well-structured meeting and discussion. The following tips may help in the decision-making process:

- Accept that you probably aren't going to make a project perfect.
- Remember that you have more choices than to simply approve or deny a project as presented. Be prepared to suggest changes that address a concern that you have or that was raised during public testimony. Be aware that the applicant may have already made changes to the project prior to the hearing. Ask about any such changes.
- Establish time limits and review periods to ensure that the project is implemented as the commission has required.
- Check with staff to see if a suggested condition can be enforced.
- Carefully consider the nexus (connection) to the project of any condition you wish to place on it. Does the condition really address a problem that will result from the project?
- Be willing to approve a project in concept and give staff clear direction to work with the applicant to complete the project.
- Consider the relationship of the project to the entire community and to your understanding of the community's goals and policies.
- Draw the line on conditions. Too many can overburden a project. If a project requires too many conditions, should you really be approving it? Remember, it is okay to deny a project if you have good legal cause.

Depending upon local procedures, the commission's decision on a project may be: (1) referred to the city council or board of supervisors as a recommendation for action (this is common for general plan amendments and rezonings) or (2) considered a final action unless appealed to the council or board (this is common for subdivisions, variances, and use permits).

FINDINGS

Findings are written explanations of why—legally and factually—the planning commission made a particular decision. They map how the commission applied the evidence presented to reach its final conclusion. Findings should be developed with at least five audiences in mind: the general public, interested parties, the governing body, other governmental entities, and courts. Sometimes you may hear staff say that findings must "bridge the analytic gap." This refers to a leading court decision that stated that findings must bridge the

[9] *See Fairfield v. Superior Court*, 14 Cal. 3d 768 (1975); *BreakZone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1235-1241 (2000).

Questions Findings Should Answer

Findings should answer the following questions, as relevant to the particular decision:

1. Why was the regulation adopted or rejected?

2. Why was the permit approved or denied?

3. How does the decision meet relevant statutory requirements?

4. What is the connection between the action and the benefits of the project?

5. What public policy interests are advanced by the decision?

6. What do particular provisions, restrictions, or conditions mean?

analytic gap between the evidence presented and the agency's ultimate decision.[10]

Findings are helpful to the public. They offer an important opportunity to show how the commission's decision promotes the public's interests. In addition, findings:

- **Encourage Interagency Communication.** Findings can explain the basis of the commission's decision to the governing body.
- **Assure That Standards Are Met.** Some laws require that certain findings must be made before the commission can take a particular action.
- **Help Courts Interpret the Action.** Courts often look to the findings to determine the underlying rationale for an action or requirement. Findings provide the local agency with an opportunity to tell its side of the story.

Findings are always required when local agencies are acting in their quasi-judicial capacity[11]—that is, when they are making decisions on individual permits.

Findings are also required for certain legislative decisions. It is often a good idea to develop findings even when they are not required, particularly for decisions that may be controversial or lead to litigation.

How findings are drafted will vary—and there is no perfect way to do it. Typically, the staff report includes a proposed set of findings that supports staff's recommendation. Proposed findings provide a starting point for the commission to develop the final set of findings. The drawback is that the commission may not adopt the recommended position, requiring the preparation of a new set of findings. Even if the commission adopts staff's position, the proposed findings may not reflect the entire record because they are usually written before any public testimony.

Some local agencies have tried to address this challenge in two ways. The first is to include two proposed sets of findings in the staff report, one in support of staff's position and one in support of the opposite position. This method, however, has its own drawbacks. In addition to creating more work for staff, the unused set of findings provides a starting point for anyone who wants to appeal the decision. Also, some members of the public find it hard to understand how the same set of facts can be used to support both positions.

The second and more common method is for the commission to make a tentative decision at the meeting and explain its reasoning to staff. Staff can then draft the findings and return them to the commission at the next meeting, where the decision can be finalized and the findings adopted. This approach is not always viable when time deadlines (such as those imposed by the Permit Streamlining Act) require a decision before the next meeting is scheduled to occur.

Regardless of how findings are drafted, there are always some instances when the commission will need to articulate its findings orally immediately upon taking action. The challenge in such a situation is to develop findings on the fly that are specific enough to withstand judicial review. The following four-step process will help in such situations:

[10] *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506 (1974).

[11] *Id.*

- State the impact (either positive or negative) of the project
- Cite the source of the information (for example, a study, testimony, or other evidence)
- Refer to the relevant governing statute, regulation, or ordinance
- Describe in detail why or how the project's impact either meets or fails to meet the requirements included in the statute, regulation, or ordinance

One of the simplest techniques is to use the word "because." It connects the reasoning to the legal principle. For example:

- *"The project is inconsistent with Section III (A) of the housing element because only 3 percent of the units will be affordable instead of the required 15 percent."*
- *"The 100-foot-wide buffer does not threaten bird and wildlife migration because the biologist's report notes on page 32 that 65 feet is sufficient for each species in the project area."*

THE RECORD

A key aspect of quasi-judicial hearings is the administrative record. The record is the collection of all evidence presented to the commission during the proceeding. This includes all written documents, testimony, photographs, maps, and any other evidence that was submitted during the hearing. Your own personal knowledge may also be relied upon as long as you announce it during the hearing (see page 21).

The record can include any written documents in the files of the local agency. Always be careful about what documents that you submit to planning staff. There have been instances where things have made it into the record—such as e-mails—that later turned out to be embarrassing. It is always a good rule to keep your communications with staff and others professional, particularly when they are expressed in writing.

Another issue that comes up from time to time is the level of detail used to express particular opinions and positions in the commission minutes. Different agencies have different forms of minutes—but it is difficult to ask the minute taker to take such detailed notes. Many agencies have solved this issue by taping the commission hearings.

APPEAL TO THE GOVERNING BODY

The process for appealing a planning commission decision will vary with each agency. Typically, commission decisions can be appealed to the governing body, which may overturn the commission's decision, adopt it, or modify it. In some instances, an applicant may request that only a specific portion of the commission's decision—such as a fee or mitigation condition—be reconsidered. Even in these cases, the governing body may decide to revisit the entire decision.

✓ *What Is in the Record*

The information that is included in the record can vary with the proceeding, but typically includes:

- The application
- A description of the property or area at issue
- Correspondence between the applicant and staff
- The staff report
- Written comments submitted by others
- Oral evidence given at the public hearing (memorialized)
- Plats, plans, drawings, photographs, deeds, and surveys
- Consultant reports
- Written testimony
- Records of mailed and published notices
- Relevant portions of the general plan, any specific plans, the zoning ordinance, and other ordinances and policies

In some communities, the planning commission may sit as an appeals board for decisions made by a zoning administrator, staff, or some other commission (like a historical resources or landmarks commission). Usually, these procedures are governed by specific guidelines contained in the local agency's zoning or development code.

JUDICIAL REVIEW

If an applicant or community member has appealed an action to the governing body and is still not satisfied with the result, he or she may seek corrective action in the courts. This is another point where the distinction between legislative and quasi-judicial actions is important. Courts are more deferential to legislative actions because they involve policy choices. Our legislative system of government reserves policy choices for the legislative branch. Because of this, courts will only look to see that legislative decisions were not arbitrary, capricious, or entirely lacking in evidentiary support.[12]

In contrast, quasi-judicial decisions are scrutinized more closely because the local agency is acting more like a court than a legislative body. Courts will examine whether there was substantial evidence to support the agency's findings. The court will uphold the agency's decision if the evidence substantially supports the findings or decision.[13]

There are individual cases in which courts may apply a stricter standard. For example, when vested rights are at issue (see page 105), courts may apply an independent judgment test that allows the court to reweigh the evidence and substitute its own conclusions.[14] Likewise, stricter tests may apply for constitutional issues, such as free speech.[15] In such cases, the quality of the underlying administrative record and the local agency's findings will often be at the heart of the case.

[12] *See for example California Hotel & Motel Association v. Industrial Welfare Commission*, 25 Cal. 3d 200 (1979).

[13] *Sierra Club v. California Coastal Commission*, 19 Cal. App. 4th 547 (1993).

[14] Cal. Civ. Proc. Code § 1094.5(b), (c); *Strumsky v. San Diego County Employees Retirement Assn.*, 11 Cal. 3d 28, 44-45 (1974); *Goat Hill Tavern v. City of Costa Mesa*, 6 Cal. App. 4th 1519, 1525 (1992).

[15] *See Desert Outdoor Advertising, Inc. v. City of Moreno Valley*, 103 F.3d 814, 820 (9th Cir. 1996), *cert. denied*, 522 U.S. 912 (1997).

SECTION 3

Public Participation in Land Use Planning

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THE IMPORTANCE OF PUBLIC PARTICIPATION

Public participation in local decision-making is fundamental to democracy. As a planning commissioner, the public will evaluate your service not only based on the wisdom of your decisions, but also on your commitment to involving the public in decision-making.

There are many reasons to involve the public in planning and land use decision-making. Perhaps most importantly, participation builds a sense of community. Individuals feel more connected when they are involved in the process of developing solutions to community problems. Moreover, individuals who are not involved in developing solutions are more likely to resist the solutions once developed. People who make contributions to the decision-making process often report that they walk away with a feeling of pride and a stronger connection to the community.

OPEN MEETING REQUIREMENTS

California's open meeting law—commonly referred to as the Brown Act[1] —provides the legal minimum for public engagement in meetings. All local legislative bodies—which includes planning commissions and many advisory committees—must conduct their business in an open and public meeting to assure that the public is fully informed about local decisions.[2]

Under the Brown Act, a "meeting" is defined as any situation involving a majority of a local legislative body's members in which business is transacted or discussed. In other words, a majority of the planning commission cannot talk privately about an issue before the commission no matter how the conversation occurs, whether by telephone or e-mail or at a local coffee shop.[3]

The following are some key points about the Brown Act that you should understand:

- **Meetings.** A "meeting" as any situation involving a majority of the commission in which business is transacted or discussed. This applies not only to the commission itself, but also to any advisory groups or committees created by the commission that are composed of a quorum (majority) of planning commissioners, have a continuing subject-matter jurisdiction, or have a meeting schedule fixed by

[1] Cal. Gov't Code §§ 54950 and following.

[2] See Cal. Gov't Code § 54952.2(a); Cal. Gov't Code § 54954.2(a).

[3] Cal. Gov't Code § 54952.2(b).

formal action of the commission or the governing body.[4]

- **Serial Meetings.** One thing to watch for is unintentionally creating a "serial" meeting—a series of communications that result in a majority of commissioners having conferred on an issue. For example, if two members of a five-member commission consult outside of a public meeting (which is not in and of itself a Brown Act violation) and then one of those commissioners consults with a third commissioner on the same issue, a majority of the commission has consulted on the same issue. The communication does not need to be in person. Sending or forwarding e-mail can be sufficient to create a serial meeting.
- **Permissible Gatherings.** Not every gathering of commissioners amounts to a violation. For example, an open meeting violation would not occur if a majority of the commission attended the same educational conference or attended a meeting not organized by the local agency. Nor is attendance at a social or ceremonial event in and of itself a violation. The basic factor to keep in mind is that a majority of the commission cannot meet and discuss business except at an open and fully noticed meeting.
- **Closed Sessions.** The Brown Act includes provisions for closed discussions under very limited circumstances, most of which do not apply to planning commissions. A commission may meet in a closed session to receive advice from its legal counsel regarding pending or reasonably anticipated litigation. However, the reasons for holding the closed session must be explained in the agenda.[5]

Because of the complexity of the Brown Act, it is important to be in close consultation with the planning commission's legal advisor to ensure that its requirements are observed.

POSTING AND FOLLOWING THE AGENDA

The Brown Act requires that the public be informed of the time of and the issues to be addressed at each meeting.[6] The agenda must be posted at least 72 hours in advance of a meeting and written in a way that informs people of what business will be discussed (this is shorter than the 10-day notice requirement for a public hearing, see Section 2, page 15). Any person may request that a copy of the agenda packet be mailed to them. Many cities and counties also post these materials on their websites. There are a few exceptions to the 72-hour requirement that relate to unexpected circumstances:

- **Need Arises After Agenda Posting.** Items may be added to the agenda if they arose after the agenda was posted. The commission must make these determinations by a two-thirds vote of the members present (or a unanimous vote if less than two-thirds of the members are present).[8]
- **Emergency Meetings.** Emergencies—such as work stoppages, events that impair public safety, and immediate perils—may justify discussion and action on an item not appearing on the posted agenda.[9] A majority of the commission must determine that such circumstances exist.[10]
- **Special Meetings.** The chair or a majority of the commission may call a special meeting, but an agenda must be posted 24 hours in advance and 24-hour written notice must be given to each commissioner and each newspaper, radio, or television station requesting notice of meetings. Any commissioner may waive the written notice requirement by filing a written waiver with the clerk or merely by attending the special meeting.[11]

What Happens When the Brown Act Is Violated?

Decisions that are not made according to the Brown Act—including the notice and public participation requirements addressed below— are void. Additionally, commissioners who intentionally violate the Brown Act may be guilty of a misdemeanor.[7]

4 Cal. Gov't Code § 54952(b).
5 Cal. Gov't Code § 54956.9.
6 Cal. Gov't Code § 54954.2(a).
7 Cal. Gov't Code § 54959.
8 Cal. Gov't Code § 54954.2(b)(2).
9 Cal. Gov't Code § 54954.2(b)(1).
10 Cal. Gov't Code § 54956.5(a).
11 Cal. Gov't Code § 54956.

In general, the commission may only discuss and act on items included on the agenda. However, commissioners or staff may briefly respond to questions or statements during public comments that are unrelated to the agenda items. Commissioners can also make requests to staff to place a matter on the agenda for a subsequent meeting.

THE PUBLIC'S RIGHT TO PARTICIPATE AT MEETINGS

A third element of the Brown Act is that the public has a right to address the planning commission at any open meeting on any subject before it. Your role as a commissioner is to both hear and evaluate these concerns. There are a number of basic rules that govern this right:

- **Reasonable Time Limits May Be Imposed.** Local agencies may adopt reasonable regulations to ensure that everyone has an opportunity to be heard in an orderly manner. Typical restrictions include time limits, prohibitions of repetitious or irrelevant comments,[12] and ruling as out of order personal attacks on the character or motives of any person. The chair may also suggest that a spokesperson be chosen for a group.
- **Taping or Recording of Meetings Is Allowed.** Anyone attending a meeting may record it with an audio or video recorder unless the commission makes a finding that the noise, illumination, or obstruction of view will disrupt the meeting. Any tape or film made by the local agency becomes a public record that must be made available to the public for at least 30 days. The agency must provide equipment to review the record without charge.[13]
- **Sign-In Must Be Voluntary.** Members of the public cannot be required to register their name or fulfill any other condition for attendance at a meeting. If an attendance list is used, it must clearly state that signing the list is voluntary.[14]

If a group willfully interrupts a meeting and order cannot be restored, the room may be cleared. Members of the press must be allowed to remain and only matters on the agenda can be discussed. However, the chair cannot stop speakers from expressing their opinions or their criticism of the planning commission.[15] Again, the basic point is that members of the public have the right to make their viewpoints known on any issue.

For More Information

- *The Brown Act: Open Meetings for Local Legislative Bodies,* 2003. Available on the California Attorney General's website at www.caag.state.ca.us (click on "Publications," then click on "General Publications and Forms").
- *Open and Public III: A User's Guide to the Ralph M. Brown Act,* 2000. Available on the League of California Cities website at www.cacities.org/store or by calling (916) 658-8257.

THE PUBLIC'S RIGHT TO ACCESS DOCUMENTS

The public's right to access documents is guaranteed by both the Brown Act and the Public Records Act. Under the Brown Act, copies of the agenda materials and other documents distributed to the planning commission must also be available to the public.[16] Any materials distributed by the local agency, its consultants, or commissioners must be available for public inspection at the meeting. Materials prepared and distributed by some other person must be made available after the meeting.

The Public Records Act gives the public the right to see any documents that are created as part of the planning process.[17] This is referred to as the "record." The record includes any writing containing information relating to the conduct of the public's business that was prepared, owned, used, or retained by a public agency. It includes documents, computer data, e-mails, facsimiles, and photographs. A document is presumed to be a public record unless a specific exception applies.[18] Two minor exceptions worth noting are:

[12] Cal. Gov't Code § 54954.3(b); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

[13] Cal. Gov't Code § 54953.5.

[14] Cal. Gov't Code § 54953.3.

[15] Cal. Gov't Code §§ 54954.3(c), 54957.9; *Perry Educational Association v. Perry Local Educators' Association,* 460 U.S. 37, 46 (1983).

[16] Cal. Gov't Code § 54957.5.

[17] *See generally* Cal. Gov't Code §§ 6250 and following.

[18] *State ex rel. Division of Industrial Safety v. Superior Court*, 43 Cal. App. 3d 778 (1974); *Cook v. Craig*, 55 Cal. App. 3d 773 (1976).

TOO MUCH OF A GOOD THING?

Evaluating the Testimony of Vocal Groups

Sometimes you may be tempted to think that there might be such a thing as too much public participation. This may be the case particularly when a vocal group shows up at a meeting to protest—or support—a particular agenda item. Typical scenarios include people who believe that a project might affect "the character of the neighborhood," that a project must be approved to provide much-needed jobs, or that rejection of a project is necessary to protect the environment.

What kind of weight do you give to the testimony of a small group, particularly if you are considering taking a position contrary to the one that they presented? Consider whether the viewpoint expressed by the group represents the opinion of the community as a whole or just a vocal minority. You might also want to think about the views of those who did not show up to protest (it is less common for people who support a project to come out in large numbers). If the proposal would affect hundreds of residents and only twenty show up, it could be fair to say that the twenty may not represent the majority of affected people. On the other hand, you should also consider why the particular individuals appeared at all. It might be that their properties or lives will be the most affected by the decision.

Even if the group does represent the majority of residents in the area, what do you do if you believe that the opposite choice is necessary for the good of the community? One option, if time permits, is to reach out to the community through some of the more creative outreach strategies discussed later in this Section. Acknowledging that both sides share a concern about the community can be helpful in that it shows that everyone's views have been heard and respectfully considered. For outreach to work, however, communication must go both ways. Don't initiate an outreach effort just to advocate your point of view—people will sense that and their positions will entrench further.

Finally, whatever you decide, it is often helpful to explain why you believe a particular course of action better serves the community's needs. Indicate the depth of thought you have given to the issue—particularly if you have linked your decision to values with which many people agree. Of course, there will always be a few who will remain upset and unforgiving. The very nature of public service means that you cannot please all of the people all of the time. As one official explained: "It's a job to do, not a job to have." At some point, you must evaluate whether keeping your position as a commissioner is more important than making the kinds of tough decisions that are involved in doing the job well.

- The "pending litigation" exception, which exempts documents that are prepared in support of ongoing litigation (otherwise opposing counsel could obtain all documents containing the agency's legal strategy just by asking for them).
- The "deliberative process" exception, which exempts preliminary drafts, notes, or other information relating to deliberative processes not ordinarily retained in the agency's course of business. The reason is to allow staff a certain degree of freedom to develop new ideas. The public agency must be able to demonstrate that the public's interest in nondisclosure outweighs the public's interest in disclosure.[19] Major drafts generally must be made available.

Despite these exceptions, the safe assumption is that virtually all materials involved in your service on the planning commission are public records subject to disclosure. Public records are subject to inspection at all times during the office hours of the agency in which they are kept.[20] The public may also ask for copies of records.

[19] *See* Cal. Gov't Code § 6254(a). *See also California First Amendment Coalition v. Superior Court,* 67 Cal. App. 4th 159 (1998).

[20] Cal. Gov't Code § 6253(a).

The request must reasonably describe an identifiable record or records subject to disclosure. The agency may charge a fee covering the direct cost of duplication.

REMOVING BARRIERS TO PARTICIPATION

A basic approach to encouraging public participation in planning decisions is to anticipate barriers to participation and remove them in advance. There are several things that may limit an individual's ability or desire to participate. Some view public involvement as "mere politics" and believe that their contributions will not be taken seriously. Others may find the complexity of government structure and finance overwhelming. In many cases, the logistics of attending a meeting present the biggest obstacle.

Designing an inclusive public participation process means taking a number of factors into account, including:

- **Opportunities for Meaningful Participation.** Whatever the format, a public meeting must provide meaningful avenues for communication. When people feel that their comments make a difference, they are more likely to take the time to attend meetings and share their ideas.
- **Effective Outreach Strategies.** Outreach efforts can help in getting more people to attend meetings. Take a look at your community and figure out how people are getting their information. Are notices posted where they are likely to be read? Are they published in languages other than English? What other opportunities are there to reach a broader audience?
- **Policy Background Pieces.** Many people are unfamiliar with the structure and functions of local government. Information sheets—for example, about how the local agency works, where revenues come from, or the nature of the decision in question—can help people make meaningful comments. They can also help people understand the unique problems faced by local government.
- **Meeting Times.** Planning commission meetings are usually scheduled for evenings. In some cases, they can run late into the night, making it prohibitive for parents and shift workers to attend. Rescheduling occasional meetings to weekdays or weekends may attract a wider range of participants.
- **Other Logistical Considerations.** Many other logistical barriers—such as transportation, language, and childcare—also impede participation. Efforts to minimize these barriers might include making meetings more easily accessible by public transit, providing interpreters, and arranging for short-term childcare on site.
- **Technology.** People do not necessarily have to be present at a meeting to make a meaningful contribution. Taking written comments or soliciting input via e-mail can broaden the scope of comments that are received.

"UPDATED" REPORTS CREATE CHALLENGES FOR THE PUBLIC

Planning commissioners and staff should be sensitive to the challenges the public faces when documents they need to prepare for a hearing are revised at the last minute. Members of the public usually prepare their testimony based on the materials that are distributed with the agenda. When these are revised before the hearing, the public is in the awkward position of having to quickly review the changes at the hearing and determine the extent to which their concerns have been addressed.

Planning commissioners may want to discuss with staff ways to avoid this dynamic. One solution is to put over such matters to the next hearing. This has the advantage of giving staff more time to evaluate what otherwise would be last-minute changes by a project applicant. It may also encourage applicants to address concerns early on since they may not want to see action on their application postponed to a future meeting.

- **Efficient Meetings.** Well-run meetings will influence overall effectiveness. People are more willing to participate in meetings that start on time and stay focused on the issues at hand. In addition, supplemental written materials should be written clearly, using plain language that is easily understood by everyone.

The most important support for broad public involvement may come from the local agency, which sets the tone for community dialogue. Officials and staff who welcome diverse public input are more likely to develop successful solutions that meet the community's needs.

GOING FURTHER: SIMPLE PUBLIC ENGAGEMENT IDEAS

The Brown Act sets a minimum participation requirement. Many local agencies go much further. For many people, local government is a mysterious process with which they are only vaguely familiar. This lack of understanding forms a barrier to their participation.

Improving the flow of information can help to improve the public's trust and confidence in local government. Some ideas include:

- **Getting Information to the Public.** Enhance the readability of public documents. Aim for an eighth-grade reading level. Publish an electronic or paper newsletter that provides brief updates on major plans and projects. Organize a speakers bureau—a list of planners, local officials, and other well-informed persons—willing to speak before service groups, clubs, and classes. Use the city or county website to make information readily available to the public and to permit applicants.
- **Getting Information from the Public.** Periodically survey a cross-section of the community about critical issues and challenges. Place "passive surveys" in the planning department, public libraries, city hall, and shopping malls. Such surveys must be brief. Because the respondents are not selected randomly, the results will not be statistically accurate. However, such

EIGHT MORE WAYS TO ENCOURAGE PUBLIC INVOLVEMENT

1. **Use Nontraditional Media.** Write articles for publication in the newsletters and on the websites of local stakeholder groups. Highlight issues and identify ways that people can get involved. The local agency can also publish its own newsletter.
2. **Use the Internet.** Post important documents and information on the agency's website.
3. **Speaker Series.** Invite outside speakers to provide valuable information and perspectives. Presentations can be one-time events, incorporated into planned programs, or part of a series.
4. **Use the Public Access and/or Government Channels.** The public access and/or local government channel on cable television can do more than just broadcast meetings. For big projects, consider using it to broadcast information or visioning surveys and invite the public to respond by submitting their responses to a specific telephone number or e-mail accounts or in person at the next scheduled meeting.
5. **Publish a Participation Guide.** Help the public understand how local government works. Avoid jargon. A guide can provide contact and meeting information to help bring individuals into the process. Post it on the Internet and make it available at meetings.
6. **Hold Town Hall Meetings.** Meet at a neutral site to seek input before considering a possibly controversial issue at a typical commission meeting. Invite key stakeholders to speak.
7. **Create a Task Force.** Create a task force to discuss major issues.
8. **Develop a Self-Guided Tour.** A self-guided auto tour encourages residents to drive by certain areas or sites. An accompanying survey about community needs and policy options can be made available by mail or on the Internet. Tabulate responses and use the data to support local planning efforts.

surveys often provide useful information and suggestions that will help the local agency be sensitive to community concerns.

- **Encouraging Participation Around Specific Projects.** Encourage developers and permit applicants to bring their proposals to neighborhood groups early in the application process. This enables them to respond to resident concerns early, before making significant investments in plans and permits. Publicize and maintain a website or a phone number to deal with issues likely to generate a great deal of public comment or inquiry.
- **Working with the Media to Encourage Greater Participation.** Issue news releases and public service announcements (PSAs). Even small agencies can use this technique. News releases can be written and distributed quickly, and the media will often use them word for word. PSAs are news releases for radio stations, written so that they can be read on the air in 15 to 30 seconds. Use community access television to produce shows about planning issues. Work with staff (some public agencies have public information officers) to contact the editor of the local newspaper and suggest news articles or editorials about important planning issues and activities. Arrange for notices, flyers, or other information to be delivered as an insert in the local newspaper. This "print and deliver" service is useful for getting information to a certain geographical part of the community.

As a general rule, public involvement should occur early and often. To be effective, public participation must be structured and meaningful. Endless meetings that lead nowhere can be a considerable drain on agency resources and community patience.

GOING FURTHER: MORE EXTENSIVE ENGAGEMENT STRATEGIES

Many complex problems facing a community will need more than a newsletter or one meeting to reach a solution. A variety of communication tools have evolved in recent years—many made easier with digital technology—that can help the community, and specific groups within the community, participate in public discussions. These include:

- **Visioning Exercises.** Visioning or goal-setting exercises can be used to guide the preparation of a general plan, specific plan, or zoning ordinance. Participants, ideally representing a cross-section of community interests, are asked develop desirable characteristics for the future development of the community. In a typical visioning process, meetings may occur monthly and occasionally weekly for several months. Trained facilitators often guide discussions and participants are divided into committees and subcommittees to pursue solutions to specific issues. At the end of the process the group usually develops a set of guiding principles that serve as a vision statement, which then can be incorporated into the general plan or other policy documents.
- **Small-Area Planning Committees.** A small-area planning committee may be useful in building consensus around plans for specific neighborhoods, business districts, historic districts, and transportation corridors. Committee members—who may include area residents and business owners along with representatives of local groups—are asked to develop goals to improve their local neighborhood. Usually, the goals such a committee develops will be more specific than those that come out of a broad, community-wide visioning exercise. Precise development ideas and even detailed designs may emerge from a small-area planning committee. Because such committees are focused on a defined geographical area, residents tend to be more engaged because they see the process as directly affecting their neighborhood.
- **Charettes.** Charettes are an intense set of workshops—often occurring over consecutive days—that are designed to educate the public about choices. They

often focus on urban forms and examine what types of architecture and uses would be the ideal fit for the community. Visual preference surveys and detailed drawings help participants develop specific ideas for what they want their community to look like. Participants then develop a set of guiding principles from these preferences. A facilitator usually leads the workshops. Meeting content can vary, but usually ranges from identifying issues that need to be addressed to developing a specific set of guidelines for general and specific plans, designs, and other actions. Whatever the format, the emphasis is on intense, focused deliberations that can produce results within a short period of time. Charettes are an effective way of "getting to yes," although they may require a big investment of time by participants and may not attract a representative cross-section of the community.

- **Stakeholder Groups.** A stakeholder is a person or group with a significant interest in a program or policy. A stakeholder group represents all the interests most likely to be affected by a proposal. Stakeholder groups are an excellent source of technical expertise and can provide a necessary reality check when a proposal produces unintended consequences. An alternative to a stakeholder process, which usually addresses a single issue, is to form an ongoing advisory committee. Advisory committees provide valuable perspectives on new issues as they arise.

These are just a few of the many innovative public participation strategies that a local agency may choose to employ. The key for anyone involved in the design of a public participation program is to determine what format will provide the most meaningful participation opportunities for the local community.

BUILDING CONSENSUS

Building consensus involves ongoing dialogue between the public, stakeholder groups, professionals, and local decision-makers. Consensus-building processes do not occur without a lot of effort. Sometimes, key individuals stake out positions well before the process begins. Participants may make sweeping statements like "the market will not support high-density homes" or "we are losing all of our farmland" without supporting data. An inclusive consensus-building process with the following elements can help counterbalances this situation:

- **Be Open-Minded.** Most participants don't respond well when a consensus-building process is used to legitimize a predetermined policy. If all participants are open to new ideas, the final product will probably be quite different than expected—and more effective.
- **Develop Rules for Engagement.** Everyone participating in a consensus-building process should agree to be bound by the same set of rules and protocols. It is critically important for participants to be involved in designing the process. Remember, involvement creates buy-in.
- **Get Reliable Information.** Information must be trustworthy and easy to read. Involve people who understand different issues, such as housing and traffic, and can speak to the probable impacts of various policy choices. Unveil "the numbers," then explain what they mean.
- **Consider a Facilitator.** Professional facilitators can keep a consensus-building process on track. Their focus on building a sound process—from creating a dialogue to developing assurances—helps ensure that goals are achieved.
- **Be Willing to Listen.** Taking the time to make sure everyone understands the differing viewpoints can help when parties are locked in a stalemate. Though such a process usually requires patience, the results are often worth the effort.

SECTION 4

The Planning Framework

SECTION 4

The Planning Framework

Local agencies are empowered to plan and regulate development under the police power, which authorizes actions to protect the public's health, safety and welfare. (See Section 9, page 103). A fairly extensive set of state laws have established detailed procedures—including zoning, subdivision and environmental laws —that designate how local agencies may implement this authority. However, these laws merely set a framework for planning, thus leaving it to local agencies to determine the various levels and intensity of development that will be permitted throughout the community.

THE GENERAL PLAN

The general plan is the foundation for local land use planning. The general plan provides a vision for the foreseeable planning horizon—usually 10 to 20 years—and translates it into goals and policies for the physical development of the community. All other land use ordinances and policies flow from the general plan. Projects will not be able to proceed unless they are consistent with the general plan. The general plan covers all of the land within the jurisdiction and any additional land that, in the agency's judgment, bears relation to its planning.[1]

Mandatory Elements

General plans are usually a combination of text, diagrams, and maps. Every general plan must address seven mandatory elements[2]:

- **Land Use**. Designates the type, intensity, and general distribution of various land uses.
- **Circulation.** Describes the location and extent of existing and proposed transportation routes, terminals, and other local public utilities and facilities.
- **Housing.** Provides for housing development for all economic segments of the community.
- **Conservation.** Provides for the conservation, development, and use of natural resources.
- **Open Space.** Details how open space, recreational areas and natural resources will be preserved and managed.
- **Noise.** Identifies and appraises noise sources and problems and includes implementation measures to address them.
- **Safety.** Addresses protection from any unreasonable risks associated with hazards such as fire, flood, and earthquakes.

1 Cal. Gov't Code § 65300.

2 Cal. Gov't Code § 65302.

LEAGUE OF CALIFORNIA CITIES' SMART GROWTH PRINCIPLES

- **Well-Planned New Growth:** Recognize and preserve open space, watersheds, environmental habitats and agricultural lands, while accommodating new growth in compact forms, in a manner that de-emphasizes automobile dependency; integrates the new growth into existing communities; creates a diversity of affordable housing near employment centers; and provides job opportunities for people of all ages and income levels.
- **Maximize Existing Infrastructure:** Focus on the use and reuse of existing urbanized lands already supplied with infrastructure, with an emphasis on reinvesting in the maintenance and rehabilitation of existing infrastructure.
- **Support Vibrant City Centers:** Give preference to the redevelopment of city centers and existing transportation corridors by supporting and encouraging mixed use development; housing for all income levels; and safe, reliable and efficient multi-modal transportation; and by retaining existing businesses and promoting new business opportunities that produce quality local jobs.
- **Coordinated Planning for Regional Impacts:** Coordinate planning with neighboring cities, counties and other governmental entities to establish agreed-upon regional strategies and policies for dealing with the regional impacts of growth on transportation, housing, schools, air water, wastewater, solid waste, natural resources, agricultural lands and open space.
- **Encourage Full Community Participation:** Foster an open and inclusive community dialogue, and promote alliances and partnerships to meet community needs.
- **Support High-Quality Schools:** Develop and maintain high-quality public education and neighborhood-accessible school facilities as a critical determinant in making communities attractive to families, maintaining a desirable and livable community, promoting life-long learning opportunities, enhancing economic development and providing a workforce qualified to meet the full range of job skills required in the future economy.
- **Build Strong Communities:** Support and embrace the development of strong families and socially and ethnically diverse communities, by working to provide a balance of jobs and housing within the community; avoiding the displacement of existing residents; reducing commute times; promoting community involvement; enhancing public safety; and providing and supporting educational, mentoring and recreational opportunities.
- **Joint Use of Facilities:** Emphasize the joint use of existing compatible public facilities operated by cities, schools, counties and state agencies, and take advantage of opportunities to form partnerships with private businesses and nonprofit agencies to maximize the community benefit of existing public and private facilities.
- **Support Entrepreneurial/Creative Efforts:** Support local economic development efforts and endeavors to create new products, services and businesses that will expand the wealth and job opportunities for all social and economic levels.
- **Establish a Secure Local Revenue Base:** Develop a secure, balanced and discretionary local revenue base to provide the full range of needed services and quality land-use decisions.

Any number of optional elements may also be included in a general plan.[3] Common optional elements include public facilities, economic development, design, historic preservation, air quality, growth management, agriculture, recreation, and scenic highways. Once adopted, mandatory and optional elements have equal legal status.[4]

Local agencies also retain flexibility to tailor general plans to fit community needs. Thus, there is no "right way" to develop a plan. Individual elements may be combined so long as all legally required issues are addressed. Additionally, statutorily required issues may be omitted if they are not locally relevant.[5] For example, a built-out city will not need to address prime agricultural lands.

Consistency Requirements

The individual elements within a general plan must be integrated, internally consistent, and compatible.[6] In other words, the plan cannot contradict itself. This requirement is commonly referred to as "horizontal consistency" and has three primary components:[7]

- **Consistency Between Elements.** All elements of the general plan must be consistent with one another. For example, if the land use element contains proposals that would increase population but the circulation element does not provide for ways to deal with traffic related to the population increase, the general plan would be inconsistent.[8]
- **Consistency Within Each Element.** Each individual element must be consistent with itself. For example, if the circulation element presents data and analysis indicating insufficient road capacity while also stating that current roads can handle increased development, the element would be inconsistent.[9]
- **Consistency Between Language and Maps.** The text of the general plan must be consistent with accompanying maps and diagrams. For example, if the text of the general plan includes a policy of conserving prime farmland while at the same time a map designates all or most of existing prime farmland as an area for housing development, the plan would be inconsistent.

Local officials, residents, businesses, developers, and staff all need the general plan to articulate a clear and consistent message to make day-to-day decisions. Inconsistencies are confusing and costly; at a minimum, they are likely to cause delays in the development process; at worst, they can result in litigation and liability.

In addition, all other ordinances and policies must be consistent with the general plan. This is often called "vertical consistency." For example, subdivision and development approvals must be consistent with the general plan. In counties and general law cities, zoning and specific plans must also be consistent with the general plan. Charter cities can require consistency through their own charter or by ordinance.[10] A good rule of thumb is that a particular action is consistent with the general plan if it will further the objectives and policies of the general plan and not obstruct their attainment.[11]

Amending the General Plan

The general plan is a living document, meaning that it should change as conditions in the community change. At the same time, it is also meant to provide some certainty for local planning. Mandatory elements cannot be amended more than four times per year.[12] This requirement has little practical effect, however, because there is no limitation on the number of provisions that can be changed in any single amendment.[13] Optional elements can be amended as often as the local agency chooses.

As a planning commissioner, you will likely consider a general plan amendment that is submitted to fit the needs of a proposed development. A few developers (but not all) automatically attempt to amend the general plan rather than submit a conforming proposal, which begs the question of what role the general plan really plays. To the extent that the general plan represents the collective vision of the community, you will have to

3 Cal. Gov't Code § 65303.

4 *Sierra Club v. Kern County*, 126 Cal. App. 3d. 698 (1981).

5 Cal. Gov't Code §§ 65301-65302.

6 Cal. Gov't Code § 65300.5.

7 Governor's Office of Planning and Research, State of California, *General Plan Guidelines* (2003).

8 *Twain Harte Homeowners Ass'n v. County of Tuolumne*, 138 Cal. App. 3d 664 (1982).

9 *Concerned Citizens of Calaveras County v. Board of Supervisors*, 166 Cal. App. 3d 90 (1985).

10 Cal. Gov't Code § 65803.

11 Governor's Office of Planning and Research, State of California, *General Plan Guidelines* (2003).

12 Cal. Gov't Code § 65358.

13 66 Cal. Op. Att'y Gen. 258 (1983).

balance the community's vision with the benefits of the specific project.

Frequent piecemeal amendments can be an indication that the general plan has major defects or is out of step with current conditions. In such cases, a major update of the general plan may be needed to ensure that it remains an adequate basis for land use decision-making. On the other hand, frequent amendments to a plan that has broad community support can lead to public frustration. Such dissatisfaction can manifest itself in the form of a land use ballot initiative. If passed, such an initiative will not only change the way a community grows, but also will make amending the general plan more difficult. (See below).

Updating a General Plan

Updating a general plan is a big deal. It takes a lot of time and effort, but it provides an excellent opportunity to involve the public in land use planning.[14] Additionally, periodic updates ensure that the long-term vision presented in the plan truly reflects community wants and needs. A general plan update can be quite expensive—often exceeding several hundred thousand dollars in mid- to large-size communities—but a well thought-out plan that has broad public support will usually pay big dividends in the end.

The role that the planning commission plays in an update will vary. It is common for the commission to

BALLOT BOX PLANNING: INITIATIVES & REFERENDA

Over the past 30 years, at least 1,000 land use measures have appeared on local ballots. Many of these measures have called for some form of growth management. Ballot measures come in one of two forms: as an *initiative* or a *referenda*. An initiative is a proposed piece of legislation that requires approval by a majority of the voters to become effective. An initiative can be placed on the ballot by a group of citizens after sufficient signature gathering or by the governing body upon a majority vote. In contrast, a referenda is placed on the ballot by a group of citizens (after sufficient signature gathering) solely to repeal an action taken by the main legislative body.

Typically, any action that could be taken by the governing body may be the subject of an initiative. However, once something has been adopted by initiative, it can only be changed by initiative. Initiative proponents often point to this certainty as one of the main benefits of the initiative process — once a comprehensive plan has been adopted by initiative, it is not so easily amended. However, this lack of flexibility can lead to its own problems, particularly when the language is not clear or raises other legal issues (such as takings or due process issues).

There are limits to initiative power. For example, initiatives may only be used for legislative actions (and thus may not be used to approve individual permits). Zoning ordinances adopted by initiative must be consistent with the general plan. In addition, local initiatives may not conflict with state law. For example, an initiative seeking to amend a general plan to limit growth may have to be reconciled against state housing laws that require specific amounts of land be set aside for the agency's fair share of regional housing needs.

Commissioners should know their role when an initiative is placed on the ballot. While commissioners are free to speak in favor of or against a particular initiative, they may not use agency resources. For example, it would be inappropriate to send a letter on city or county letterhead that outlined your position on a measure. Public agencies can provide informational materials about — but may not advocate for or against — a measure. Commissioners may take a position personally. They may even adopt a resolution in favor of or against. However, they may not otherwise use public resources to persuade others to vote one way or another.

For more information, see *Ballot Box Planning: Understanding Land Use Initiatives in California.* www.ilsg.org/ballotbox.

[14] Cal. Gov't Code § 65351.

Paying for the Update

To pay for a major general plan update, cities and counties may use revenue from general development fees.[15]

participate in and even oversee the development of the general plan before forwarding it to the governing body for final approval. Many communities begin incorporating public input during the early phases of plan development, which is often coordinated by the commission with the help of planning staff.

The general plan does not have to be completed or updated on any particular schedule (although new cities must adopt a plan within 30 months).[16] The main exception to this rule is the housing element, which must be updated every five years.[17] Prior to adoption, the general plan must be sent to neighboring cities, counties, special districts, school districts, area-wide planning agencies, and water agencies for comment. The commission must hold at least one public hearing prior to voting to recommend adoption. Approval by the planning commission requires a majority vote of the whole commission, not just a majority of the members present.[18] Following commission approval, the governing body must also hold a public hearing before voting.

Implementation and Follow-Through

The adoption of a general plan does not guarantee orderly development. Several agencies have adopted model general plans only to see their original vision distorted by frequent amendments. The planning commission plays a critical role in seeing that the plan's vision materializes. Making sure that each project conforms to this vision is a start. Often, the commission will also take on certain action items that are called for in the general plan—such as adopting a certain ordinance or studying the efficiency of a particular program.

An annual reporting process provides a means of monitoring the implementation of the general plan. State law calls for such reports,[19] which are forwarded to the governing body of the agency as well as to the state Office of Planning and Research and the Department of Housing and Community Development. The report provides a forum to assess how the plan is being implemented, identifies modifications that will improve implementation, and correlates recent land use decisions to the overall goals in the general plan.

For More Information

The *General Plan Guidelines*, a detailed resource on preparing general plans, is available on the Governor's Office of Planning and Research website at www.opr.ca.gov.

Effects of a Deficient General Plan

A deficient general plan places local development at risk. In order to move forward, a project must be found to be consistent with the general plan. This is a difficult finding to make when the general plan is internally inconsistent, invalid, or insufficient (for example, because it fails to address a statutorily required issue). A court can invalidate any land use action when a plan is deficient. Typically, however, courts will limit such actions to projects that are related to the specific manner in which the general plan is deficient.[20]

SPECIFIC PLANS

Specific plans are a kind of detailed general plan for a defined area. They are often used for larger areas, such as a downtown or a major transportation corridor, to encourage comprehensive planning.[21] A specific plan may merely present broad policy concepts or provide detailed direction as to the type, location, intensity, design, financing, and infrastructure capacity. It may also be more limited in scope, focusing on a particular issue. Specific plans must be consistent with the general plan. All zoning, subdivisions, public works projects, and future development agreements within an area covered by a specific plan must be consistent with the plan once it is adopted.

[15] Cal. Gov't Code § 66014.
[16] Cal. Gov't Code § 65360.
[17] Cal. Gov't Code § 65588.
[18] Cal. Gov't Code § 65354.
[19] Cal. Gov't Code § 65400(b).
[20] *Sierra Club v. Board of Supervisors*, 126 Cal. App. 3d 698 (1981).
[21] Cal. Gov't Code §§ 65450 and following.

A specific plan must include a statement of its relationship to the general plan as well as text and diagrams specifying:[22]

- The current distribution, location, and extent of the uses of land, including open space, within the area covered by the plan.
- The proposed distribution, location, extent, and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities.
- Standards and criteria by which development will proceed and for the conservation, development, and use of natural resources, where applicable.
- A program of implementation measures, including regulations, programs, public works projects, and financing measures necessary to carry out these provisions.

A specific plan may include a fee schedule for governmental approvals that will defray (but not exceed) the cost of preparing and administering the specific plan.[23] The procedure for adopting a specific plan is

CHECKLIST FOR GENERAL PLAN ADEQUACY

- **Is the plan complete?** The seven mandatory elements must be addressed.
- **Is it informational, readable, and available to the public?** Courts sometimes have held plans to be inadequate that were difficult to understand or not logically organized. The entire plan should be readily available to the public.
- **Is it internally consistent?** The elements, data, assumptions, and projections must be consistent with one another.
- **Is it consistent with state policy?** Relevant state policies may include the Coastal Act, the Surface Mining and Reclamation Act, and policies relating to open space, housing, and airport land use planning.
- **Does it cover all relevant territory?** Relevant territory includes all land within the agency's boundaries plus any land outside its boundaries that bears relation to the agency's planning.
- **Does it address all locally relevant issues?** The degree of detail must reflect local conditions.
- **Does it serve as a yardstick?** Can one take an individual parcel and check it against the plan to know which uses would be permissible?
- **Are specific requirements addressed?** For example:
  - Land use element identifies flooding areas
  - Noise element includes noise contours for all listed sources
  - Plan includes adequate standards of population density and building intensity
  - Circulation element lists funding sources for new transit
  - Density ranges are specific enough to make consistency findings
  - Housing element includes plan to conserve and improve existing affordable housing stock
- **Is it current?** The plan should be reviewed periodically. There is an implied duty to keep the plan current. Except for the housing element (which must be updated every five years), there is no set time period to update the plan. However, the Office of Planning and Research will notify the Attorney General if a local agency has not revised its general plan in 10 years.
- **Are the diagrams or maps adequate?** Do they show proposed land uses for the entire planning area?
- **Does it have an action plan?** An action plan helps assure that general plan will be implemented.
- **Was it adopted correctly?** Proper procedure includes adequate environmental review and housing element review by the Department of Housing and Community Development.

Source: *Curtin's California Land Use and Planning Law* (Solano Press, 23d ed., 2003)

[22] Cal. Gov't Code § 65451.

[23] Cal. Gov't Code § 65456.

For More Information

For more information on specific plans, see *The Planner's Guide to Specific Plans* (Governor's Office of Planning and Research, 2001 ed.).

similar to that for a general plan, with a few exceptions. Unlike the general plan, which must be adopted by resolution, a specific plan may be adopted by resolution or ordinance, or a combination of both. Additionally, a specific plan can be amended as often as necessary.

ZONING

Zoning is the separation of a city into districts, or "zones," that provide for the regulation of the intensity of development and uses of land. A zoning designation is typically assigned to every parcel. An accompanying map helps citizens (and commissioners) know where the boundaries between zones are and understand which uses can be permitted where. Zoning ordinances must be consistent with the general plan and, except in some charter cities, are invalid when they are not. Typically, zoning ordinances:

- Divide a jurisdiction into various land use designations, such as heavy and light industrial, commercial, residential, open space, agricultural, recreational, scenic corridor, natural resource, and other purposes.
- Provide for the intensity of use (for example, 18 units per acre).
- List permitted uses within each designation.
- Provide for conditional and accessory uses.
- Establish development standards, such as building height and bulk, setbacks, lot coverage, parking, signage, and landscaping.
- Provide for administrative procedures for variances, conditional use permits, design review, and zone changes.

Zoning works to assure that neighboring land uses are compatible. Residential uses, for example, are generally incompatible with heavy industrial uses. Most agencies have multiple zones in which similar uses are permitted but with differing development standards. For example, a minimum residential density might be 12 units to the acre in one zone and 16 units to the acre in another.

A zoning ordinance will list permitted uses that are allowed "by right" for each zone. However, the term "by right" does not mean that the zoning ordinance confers a universal right to develop a particular use. Zoning is merely a legislative planning designation. As such, zones are always subject to change and do not confer a right or entitlement. Instead, the term "by right" means that the permit is not subject to the discretionary review that is typical of the conditional use permit process.

The planning commission is not necessarily the only body within a local agency that may be responsible for making zoning decisions. A board of zoning adjustment or a zoning administrator may be appointed to consider use permit and variance requests. Building design may also be subject to approval by a design review or architectural review board.

STATUTORY LIMITATIONS

The state has imposed many specific limitations on the exercise of local zoning power. The following are some examples.[24]

- **Residential Zoning.** Sufficient land must be zoned for residential use based on how much land has been zoned for non-residential use and on the future housing needs. A small exception applies to built-out communities.
- **Mobilehome Park Conversions.** A developer converting a mobilehome park must submit a report describing the displacement of the residents and the availability of replacement space. The local agency may require mitigation.
- **Second Units ("Granny Flats").** Qualifying second unit applications are not subject to discretionary review.
- **Density Bonuses/Affordable Housing.** A local agency must allow a housing development to proceed at a density level that is 25 percent higher than allowed by the zoning ordinance when a developer agrees to make 25 percent of the pre-bonus units affordable to low-income households (or 10 percent affordable to very low-income households).
- **Group Homes and Child Care Facilities.** Day care facilities for six or fewer children licensed under the Community Care Facilities Act must be treated as single-family type residential uses. In addition, residential facilities serving six or fewer persons must also be considered equivalent to conventional single-family uses. The law also requires cities and counties to treat large family day care centers as single-family homes.
- **Coastal Zone.** Land in the coastal zone cannot be developed without a coastal development permit. (See page 72).
- **Solar Energy Systems.** Local agencies, including charter cities, may not unreasonably restrict the use of solar energy systems in a way that significantly increases cost or decreases efficiency.
- **Discrimination.** Ordinances that deny rights to use or own land or housing based on ethnic or religious grounds are illegal.
- **Manufactured Homes.** Manufactured homes cannot be prohibited on lots zoned for single-family dwellings.
- **Timber and Agricultural Land.** Farm and timber lands that are enrolled in special zones or preserves—which provide tax breaks in return for the promise to keep the land in agricultural or timber production—may not be developed without payment of a penalty. For agricultural lands, additional controls include (in some cases) a prohibition on annexation while the land is enrolled in such programs.
- **Psychiatric Care.** Zoning ordinances may not discriminate against general hospitals, nursing homes, and psychiatric care and treatment facilities.
- **Billboards and Signs.** Outdoor advertising displays cannot be removed without payment of just compensation. Reasonably sized and located real estate "for sale" signs must also be permitted.
- **Surplus School Sites.** If all public agencies waive their rights to purchase a surplus school site, the city or county with jurisdiction over the site must zone the property in a way that is consistent with the general plan and compatible with surrounding land uses.

Conditional Use Permits

Conditional uses are land uses that are not automatically authorized but may be approved under the zoning code upon meeting specific conditions. The conditional use permit ("CUP"—also called a "special use permit") allows a local agency to review individual projects that may potentially affect neighboring land uses negatively. The review process allows staff and the planning commission to develop a set of conditions to minimize the impact before allowing the development to proceed.

[24] *See* Cal. Gov't Code § 65913.1 (Residential Zoning); Cal. Gov't Code § 65863.7 (Mobilehome Park Conversions); Cal. Gov't Code § 65852.1 (Second Units); Cal. Gov't Code § 65915 (Density Bonus); Cal. Health & Safety Code §§ 1597.45 & 1597.46 (Group Homes and Child Care Facilities); Cal. Gov't Code § 65850.5 (Solar Energy); Cal. Gov't Code § 65852.3 (Manufactured Homes); Cal. Gov't Code §§ 51100 and following (Timberland); Cal. Gov't Code §§ 51200 and following (Agricultural Land); Cal. Welf. & Inst. Code § 5120 (Psychiatric Care); Cal. Bus. & Prof. Code § 5412 (Billboards); Cal. Civ. Code § 713 (Signs Advertising Real Property); Cal. Gov't Code § 65852.9 (Surplus School Sites).

The typical local zoning ordinance allows the city or county to grant a conditional use permit when the proposed use is in the interest of public convenience and necessity and is not contrary to the public health, morals, or welfare.[25]

Common conditions on approval include limited hours of operation, road improvements, soundproofing, additional landscaping, and additional parking. A condition must bear a reasonable relationship to the public need created by the development. This should be supported by evidence on the record.[26] Conditions often include a requirement that the use be commenced within a reasonable time or the permit will expire.

Conditional use permits are quasi-judicial actions and require a public hearing. A decision either to grant or reject the permit must be supported by findings. The terms of the permit may be modified by the agency if the original permit so provides.[27] The permit is granted on the land, not to the property owner, and will remain valid even if the property changes hands. A conditional use permit may be revoked for noncompliance or other reasons cited in the permit. Notice and a hearing will be required before the permit can be revoked.[28]

Variances

A variance is a limited waiver of zoning standards for a use that is already permitted within a zone. Variances are usually considered when the physical characteristics of a piece of property, such as size, shape, topography, location, or surroundings, pose unique challenges. For example, a very small or oddly shaped lot may need a variance from a setback or floor area ratio requirement in order to be developed.

A variance can only be granted in special cases where the strict application of zoning regulations deprives the owner of the uses enjoyed by nearby lands in the same zone. The variance should not be a grant of a special privilege. Economic hardship alone is not sufficient justification for approval of a variance. A variance may not be used to permit a land use that is not otherwise allowed in a zone, such as a heavy industrial use within a residential zone. This would require a zoning change, as there is no such thing as a "use variance."

Questions to Ask When Considering a Conditional Use Permit:

- Is the permit consistent with the general plan?
- Is the site appropriate for the proposed use?
- Is the proposed use compatible with surrounding uses?
- If not, can mitigation measures be imposed that will make it compatible?
- Will the proposed mitigation measures address any underlying issues?
- Will the project have any environmental effects? What will those effects be? What level of environmental review is required?
- Can the proposed use adequately be served by infrastructure and other services, such as police and fire protection?

Nonconforming Uses

There are two types of nonconforming uses: illegal and legal. Legal nonconforming uses—sometimes called grandfathered uses—are uses that were in place prior to the adoption of the zoning ordinance. Such uses are generally permitted for as long as they operate. However, the use typically is not allowed to expand or be replaced if voluntarily abandoned or accidentally destroyed.[29] The idea is to strike a balance between the notion of fairness (the use was legitimate at the time of development) and the changed circumstances of the community (the use is no longer compatible with the character of the area).

There are a few situations where tougher regulation of legal nonconforming uses may be appropriate. A local agency may require that a legal nonconforming use terminate after a reasonable period of time. This is called amortization. The idea behind amortization is to allow the owner enough time to recoup the value of the investment in developing the property while also addressing the needs of the greater community.

[25] *Upton v. Gray*, 269 Cal. App. 2d 352 (1969).

[26] *Bank of America v. State Water Resources Control Bd.*, 42 Cal. App. 3d 198 (1974).

[27] *Garavatti v. Fairfax Planning Comm.*, 22 Cal. App. 3d 145 (1971).

[28] *Community Development Comm. v. City of Fort Bragg*, 204 Cal. App. 3d 1124 (1988).

[29] *Paramount Rock Co. v. County of San Diego,* 180 Cal. App. 2d 217 (1960); *City of Fontana v. Atkinson*, 212 Cal. App. 2d 499 (1963).

Reasonableness depends upon such factors as the useful life of the structure, the extent of investment and present value, and the possibility and cost of relocation.[30]

On the other hand, illegal nonconforming uses are those that were built or started in violation of an existing zoning ordinance. Such uses are not allowed. Local agencies have the right to require that such uses be terminated immediately, regardless of the investment on the part of the owner. Illegal nonconforming uses are usually addressed through code enforcement. (See "Code Enforcement" sidebar on page 45).

Interim Zoning or Zoning Moratoria

Interim zoning—or a zoning moratorium —is a temporary halt to all or a particular kind of development. A moratorium is enacted to prohibit any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the agency plans to study within a reasonable time. The adoption of a moratorium requires a four-fifths vote for an initial 45-day period and may be extended for a total period that does not exceed 22 months and 15 days.[31] Additional limitations apply to moratoria that affect projects that include a significant percentage of multifamily housing. (See Section 5, page 59).

Floating and Overlay Zones

A zoning ordinance may include regulations for a zone that is not tied to any piece of property on the zoning map. This is referred to as a floating zone. The zone "floats" until such time that a property owner requests to have it applied to his or her land through rezoning. A common example is a mixed-use district. The zoning

ZONE CHANGE CHECKLIST

The following are some questions to which you should be able to answer "no" before approving a zone change to enable a specific project to proceed:

Relationship to Community

- Is the proposed change contrary to the land use map in the general plan?
- Is the proposed change incompatible with established land use patterns?
- Would the proposed change alter the population density pattern and thereby increase the load on public facilities (schools, sewers, streets, etc.) beyond community desires, plans, or capabilities?
- Are present zone boundaries properly drawn in relation to existing conditions or development plans with respect to size, shape, and position?

Changed Conditions

- Have the basic land use conditions remained unchanged since adoption of the existing zones?
- Has the development of the area conformed to existing regulations?

Public Welfare

- Will the change adversely affect neighborhood living conditions?
- Will the change adversely affect property values in adjacent areas?
- Will the change deter improvement or development of adjacent property in accordance with existing regulations?
- Will the change constitute a grant of special privilege to an individual?

Reasonableness

- Can the property be used in accordance with the existing zoning regulations?
- Is the change requested out of scale with the needs of the neighborhood or community?
- Are there adequate sites for the proposed use in zones permitting such uses?
- Will allowing the zone change set an undesirable precedent?

[30] *Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848 (1980); *City of Los Angeles v. Gage*, 127 Cal. App. 2d 442 (1954); *United Business Com. v. City of San Diego*, 91 Cal. App. 3d 156 (1979).

[31] Cal. Gov't Code § 65858.

CODE ENFORCEMENT

As a planning commissioner, you typically enforce the zoning code through the permit process. A permit is granted only when specified conditions—like setbacks and hours of operation—are met. What happens when those conditions are violated after the permit is issued? Zoning codes may include provisions that authorize administrative[32], civil, or criminal penalties.[33] Most agencies have a code enforcement officer. The building official and fire inspector also enforce the code to the extent that related health and safety issues are involved.

Enforcement will vary. A city ordinance may classify violations of the zoning code as infractions and authorize enforcement officials to issue citations similar to traffic tickets. Typically, a warning is the first step. If the condition persists, the ordinance may provide that a separate infraction can be charged for each day a violation continues.[34] Infractions may be punished by fines of up to $100 for a first violation, up to $200 for a second violation, and up to $500 for each additional violation of the same ordinance within a year.[35]

A local agency may also ask a court to issue an order requiring a property owner to correct violations of a zoning ordinance.[36] Enforcement costs may be recovered by a judgment lien when authorized by local ordinance.[37]

In addition, there may be special enforcement mechanisms. For example, a business that sells alcohol is subject to a permit issued by the state Department of Alcoholic Beverage Control (ABC). If the violation is related to rental housing, a local agency may be able to block the owner from taking various tax deductions and collect fees through the Franchise Tax Board.[38] A local agency may also file a notice against a property and "cloud" its title for violations of the local subdivision ordinance.[39]

conditions associated with mixed-use development "attach" as soon as the proposal is made.

An overlay zone, on the other hand, places additional regulations on existing zones within areas of special concern. Their boundaries are fixed, and usually encompass all or part of multiple zones. They are often used in floodplains, near fault lines, around airports, and in other areas where additional regulations are necessary to ensure public safety. Overlay zones are also commonly applied to downtowns and historic districts to ensure a certain aesthetic character.

Planned Unit Developments

Planned unit developments ("PUDs" or "planned communities") are both a type of development and a zoning classification. As a development, they normally consist of individually owned lots with common areas for open space, recreation and street improvements. They often set aside many conventional zoning standards to permit a more imaginative use of undeveloped property, such as clustering of residential uses and compatible commercial and industrial uses. The plan of development for a PUD is usually so specific that it meets or exceeds all of the typical zoning requirements. Any substantial alteration in the physical characteristics and configuration of the development usually requires that rezoning procedures be followed.[40]

SUBDIVISIONS

The Subdivision Map Act governs how local agencies oversee the subdivision of land. A subdivision is any division of contiguous land for sale, lease, or financing. Usually, any land transaction that creates a new right to exclusive occupancy is a subdivision. Each city, charter city, and county must adopt an ordinance that

[32] Cal. Gov't Code § 53069.4.
[33] Cal. Gov't Code § 36900(a).
[34] *See People v. Ratko Djekich,* 229 Cal. App. 3d 1213 (1991).
[35] Cal. Gov't Code § 36900(b).
[36] *City of Stockton v. Frisbie & Latta*, 93 Cal. App. 277 (1928).
[37] Cal. Gov't Code § 38773.1.
[38] Cal. Rev. & Tax. Code §§ 17274, 24436.5.
[39] Cal. Gov't Code § 66499.36.
[40] *Millbrae Ass'n. for Residential Survival v City of Millbrae*, 262 Cal. App. 2d 222 (1968).

Zoning vs. Building Codes

It is easy to confuse building codes with zoning codes, but they are not the same thing. Building codes are established at the state level and are incorporated into local codes to set structural safety requirements. They regulate details of construction, including use of materials; and electrical, plumbing, and heating specifications. Zoning ordinances, on the other hand, regulate the compatibility of neighboring land uses in terms of use, intensity, location, height and/or mass, and a number of other factors.[41] Unlike the flexibility cities and counties enjoy in adopting zoning requirements, local discretion with respect to building codes is limited.

designates a local process for subdivision approval.[42] In this way the Map Act encourages orderly development and infrastructure. The process also protects against fraud by assuring that all subdivisions are recorded with the county recorder.[43] Local ordinances can be more restrictive than the Map Act so long as they do not contradict or override its provisions.

The Map Act contains two procedures to process subdivision applications based on project size. "Major subdivisions"—those with five or more parcels—require more formal procedures that involve filing both a *tentative map* and a *final map* for approval. On the other hand, "minor subdivisions"—those that involve four or fewer parcels—require only a single *parcel map* and the oversight is more abbreviated (though the local ordinance can specify that tentative maps be filed for minor subdivisions as well). The reasoning behind this distinction is that larger subdivisions will raise more complex issues, such as traffic and infrastructure needs, than a minor subdivision.

Tentative Map Applications

Tentative map applications typically include a map of the proposed design of the lots, public streets, sidewalks, parks, utilities, and other improvements. Upon receipt, staff checks the application to see that it is complete and conforms to the general plan and the zoning code. Once the application is deemed complete, it is submitted to the "advisory agency," which is usually the planning commission. The local subdivision ordinance designates whether the advisory agency can actually approve or deny tentative maps, or merely make recommendations to the governing body. If no advisory agency is designated, then the tentative map is submitted directly to the governing body.[44]

After a public hearing, the local agency may approve, conditionally approve, or deny the map after making specific findings. The advisory agency may impose additional conditions when approving a tentative map. The Map Act includes a number of provisions that govern specific conditions, such as bike paths, transit facilities, school fees, and parkland, to name a few.[45] The local agency may incorporate other conditions that are consistent with the general plan and the zoning code.[46]

After the tentative map is approved, the applicant has two years in which to meet the conditions. Local ordinances may extend this period by an additional year and the applicant can apply for a five-year extension.[47] The applicant will then prepare a final map that incorporates the imposed conditions. All conditions must either be performed or guaranteed—by agreement, bond, letter of credit, or otherwise—before the final map can be approved. The final map must be filed before the tentative map expires. If not, then the process begins all over again. An engineer usually reviews of the final map. Approval of the final map is a ministerial act—meaning there is no discretion to reject the final map if all the conditions are met.[48] The approved final map is then recorded with the county and the applicant can proceed with the development.

[41] *Taschner v. City Council of the City of Laguna Beach*, 31 Cal. App. 3d 48 (1973).
[42] Cal. Gov't Code § 66411.
[43] Cal. Gov't Code § 66464.
[44] Cal. Gov't Code §§ 66452.1, 66452.2.
[45] *See generally*, Cal. Gov't Code §§ 66475–66498.
[46] Cal. Gov't Code §§ 66411, 66418-66419.
[47] *See* Cal. Gov't Code § 66452.6.
[48] Cal. Gov't Code § 66458.

CHECKLIST FOR APPROVING SUBDIVISION MAPS

Commissioners should be able to answer "yes" to the following questions when approving a subdivision map.

- Is the proposed map and design consistent with the general plan and any applicable specific plans?
- Is the site physically suited to the proposed type and density of development?
- Is the design of the subdivision or the proposed improvements unlikely to cause serious public health problems?
- Is the design of the subdivision or the proposed improvements unlikely to cause either substantial environmental damage or substantial and avoidable injury to fish or wildlife or their habitat?
- Have adequate conditions been applied to the approval (or has the project been redesigned) to mitigate the environmental effects identified in the environmental analysis?
- Are all dedications and impact fees reasonably related to the impacts likely to result from the subdivision?
- If a mitigated negative declaration or environmental impact report has been adopted or certified for the project, have the identified mitigation measures been made conditions of approval?

Source: *The Planning Commissioner's Book* (Governor's Office of Planning and Research, 1998).

Vesting Tentative Map Applications

Some tentative maps are filed as "vesting tentative maps."[49] If approved, a vesting tentative map confers a vested right to proceed with the development in accordance with the local ordinances, policies, and standards that were in effect when the local agency deemed the map application complete. Vesting tentative maps offer developers a degree of assurance not otherwise available except through a development agreement. The applicant may file a vesting tentative map for a parcel map even if the local subdivision ordinance does not require tentative parcel maps. Vesting tentative maps must be processed just like a standard tentative map. However, local agencies may impose additional application requirements and almost all do, which is why developers do not always use vesting tentative maps.

Parcel Map Applications

Procedures and approvals for parcel maps are left to local ordinance.[50] The primary difference between parcel maps and tentative maps is the number of conditions that can be applied. With a parcel map, a city or county can only impose requirements for the dedication of rights-of-way, easements, and the construction of reasonable off-site and on-site improvements for the parcels that are being created. Additionally, absent urgent health and safety reasons, local agencies cannot require the installation of improvements until the development permit is issued, although the subdivider may agree to early installation voluntarily.

Illegal Quartering

On occasion, a subdivider may try to avoid tentative map and final map requirements by subdividing one parcel four times using a parcel map and then repeating the process over and over again. Known as "quartering" or "4 X 4," this process is illegal and can result in severe penalties.[51] When a subdivider seeks to divide property that is contiguous to property he or she already subdivided, the earlier subdivisions are counted to determine the total number of parcels and thus what sort of map is required.[52]

[49] Cal. Gov't Code § 66498.1.

[50] Cal. Gov't Code § 66463.

[51] Cal. Gov't Code § 66499.31; Cal. Bus. & Prof. Code §§ 11000 and following.

[52] *Bright v. Board of Supervisors*, 66 Cal. App. 3d 191 (1977).

DEVELOPMENT AGREEMENTS

In California, developers generally do not have a vested right to develop until they obtain a building permit and have performed substantial work in reliance on that permit.[53] Until then, there is no guarantee that the local policies and regulations affecting the development will remain the same. A project that is in the approval process or not yet built may be subject to new regulations and fees as they are adopted.

To offset this risk, developers often propose that their development be approved through a development agreement, which is a detailed contract between a developer and a local agency that spells out the rules of development for a particular project in very specific terms. For developers, the advantage is that they can "lock in" their entitlements and the local regulations that are in effect at the time the agreement is approved, allowing them to obtain financing and get the project moving. For local agencies, the advantage is that the developer will usually agree to additional conditions—such as extra parkland, school facilities, and other public improvements—that go beyond what the agency could require through the normal development process.

A development agreement must describe the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for the reservation or dedication of land for public purposes. It also must specify the duration of the agreement, commonly as long as 15 to 20 years. However, most agreements go well beyond these minimums and will include construction and phasing elements, terms for financing public facilities, a description of the scope of subsequent discretionary approvals, and a host of other items. A development agreement affords a tremendous amount of flexibility, but also requires a great deal of planning and forethought.

The development agreement constitutes a negotiated—and thus voluntary—deal. Once approved, the agreement works like any contract. The developer therefore cannot come back later and challenge the conditions as being excessive. On the other hand, the local agency is also bound to the terms of the deal. If the agency wants to make changes, the developer will likely seek certain concessions if he or she agrees to modify the agreement at all.

The timing of a development agreement in the development process can also vary. Some come late in the process, some come early. In many cases, the agreement is combined with a tentative map. For large projects, a development agreement may be the very first step to lock in the laws that will apply during a lengthy approval process. These "front-end" development agreements are often the most detailed because they will have to include provisions for every stage in the approval and development process.

DESIGN REVIEW

Design review is often used to enhance aesthetic character. A community may prohibit uses detrimental to the general welfare, as well as developments that are

More on Development Agreements

- Development agreements only "lock in" local regulations, not federal and state laws.
- Upon request, local agencies must establish procedures for processing development agreements.
- Agreements should be reviewed annually to evaluate the developer's good faith compliance.
- Agreements may be terminated or modified if the developer does not comply with the terms.
- Agreements must be consistent with the general plan and are subject to environmental review. (Development agreements are projects under the California Environmental Quality Act.)
- A development agreement can be amended or canceled by mutual consent of the parties to the agreement, but the amendment itself is subject to the same approval procedures as the original agreement.

[53] *Consaul v. City of San Diego*, 6 Cal. App. 4th 1781 (1992); *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785 (1976).

"monotonous" in design and external appearance.[54] As one court put it: "Mental health is certainly included in the public health."[55] Whereas the zoning code usually focuses on the type and intensity of a use, design review focuses on aesthetic and architectural standards. Design review procedures usually rely on deeply held values and beliefs about what is beautiful and what is ordinary. The use of an appointed review board is standard. In larger communities, this is usually a separate "design review board" or an "architectural review committee." In some communities, the planning commission functions as the design review board.

Local design review ordinances are usually folded into the zoning process in some way. The amount of information included in a design review application will vary. An application for a small addition, for example, will probably not have as much information as an application for a large subdivision. Here is a list of some of the information likely to be presented as part of a design review application:

- Color boards showing the site plan, including the shape and size of the building or buildings, their relationship to the site, landscaping, and parking.
- Conceptual color elevations of each wall of the building(s), especially those seen by the public or from off-site.
- Models sufficient to show building mass, form, relationship to the landscape, and effects caused by grading. These can range from simple hand-built models to sophisticated computer-generated analyses.
- Design details, such as plazas, pavement design, window treatments (sills, awnings, etc.), entry gateways, building top (molding) and base treatment, screening details, pedestrian walkways, and lighting.
- Colored landscape plans sufficient to illustrate how landscaping will be used to soften the building's impact on its environment.
- Controls to ensure that signage will fit in with the rest of the development.
- Summary data, including facts on adjacent properties and sight lines.

Design review has some drawbacks. First, it makes it more difficult from the landowner's or developer's perspective to determine what will be an acceptable level of development. Accordingly, the more specific the design standards, the greater the certainty from the developer's perspective. Second, design review can breed monotony (or even mediocrity) to the extent that all buildings must conform to a narrow set of guidelines. The trick is to develop design guidelines that leave enough room for creativity. Finally, in some instances, the design review process may be abused by those who are looking for an opportunity to stop a development.

DEDICATIONS AND FEES

Dedications and fees are often imposed as conditions on development approvals to offset new demands on public resources. New development usually requires the extension of infrastructure, such as roads, parks, pathways, libraries, and schools. At one time, local agencies could fund infrastructure with property tax revenues, but such revenue has become more limited since the adoption of Proposition 13 in 1978. State legislation and voter-approved revenue limitations have further diminished local finances.[56] As a result, cities and counties rely heavily on dedications and fees to ensure that new development "pays its way." (See Section 10, page 113).

Dedications and fees are sometimes called "exactions." A dedication occurs when ownership of an interest in real property is transferred to a local agency. Dedications are most frequently used to secure land for parks, roads, bike paths, and schools. Development fees are often imposed in lieu of dedications when the type of infrastructure does not lend itself easily to case-by-case dedications of property, such as with sewers, water systems, affordable housing, libraries, and open space.

The basic rule when imposing dedications and fees is that they must be reasonably related in purpose and roughly proportional in amount to the impacts caused by the development.[57] Thus, a small development that will only generate light traffic cannot be required to cover the cost of an entire freeway interchange. The basis for a dedication or fee is often established in the general plan, but can also be established by a capital

[54] *Novi v. City of Pacifica*, 169 Cal. App. 3d 678 (1985).

[55] *See Crown Motors v. City of Redding*, 232 Cal. App. 3d 173, 178 (1991).

[56] J. Fred Silva & Elisa Barbour, *The State-Local Fiscal Relationship in California: A Changing Balance of Power* (1999) (available online at www.ppic.org).

[57] *Ehrlich v. City of Culver City*, 15 Cal. App. 4th 1737 (1993); Cal. Gov't Code §§ 66000-66025.

improvements plan, the Subdivision Map Act, or the California Environmental Quality Act.

When an agency imposes a fee, it must make several specific findings (sometimes referred to as "AB 1600 requirements" after the enacting legislation) that echo the proportionality rule.[58] Accordingly, the basis for the fee should be carefully documented in the record of the project approval. This is typically done through a detailed fee study. Local agencies must also comply with detailed accounting requirements to ensure that the funds are used appropriately. Agencies must deposit the funds in a separate capital facilities account. The beginning and ending balances, interest, other income, and expenditures from these accounts must be made public.

ENVIRONMENTAL REVIEW

Incorporating measures to protect the long-term health of the state's environment has become an integral element of planning and project approvals. As a planning commissioner the environmental protection law you will likely deal with is the California Environmental Quality Act (usually called "CEQA"). CEQA is a complex law with a simple purpose: to assure that decision-makers understand and account for the environmental consequences of a project. The term "environment" includes natural and man-made conditions that will be directly or indirectly affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance.[60]

CEQA does not provide the means to approve or deny a project. It merely provides an objective means for evaluation prior to a final decision. In this way, the primary purpose of CEQA is informational—it creates greater accountability for actions that affect the environment. In addition, it makes the approving agency responsible for seeing that the adopted protection measures are actually implemented.

The element that gives CEQA its "teeth" is a prohibition against approving projects as proposed if there are feasible alternatives or mitigation measures that would substantially lessen significant environmental effects. In other words, CEQA does not require agencies to eliminate all potential harm to the environment, but they must reduce the risk of harm whenever possible. Thus, a project with significant environmental impacts may be approved if the local agency finds that all alternatives or mitigation measures are infeasible and discloses its reasoning.[61]

NEPA and CEQA

The National Environmental Policy Act (NEPA)[59] is the federal government's equivalent to CEQA. NEPA applies to any federal project, including local projects that have federal funding. NEPA is very similar to CEQA but has its own terminology. For example, NEPA uses the acronym EIS ("environmental impact statement") for EIR, and FONSI ("finding of no significant impact") in lieu of negative declaration.

Determining the Required Level of Review

The CEQA process involves three possible levels of environmental review: the negative declaration, the mitigated negative declaration, and the environmental impact report (EIR). Some projects are exempt from review. The following is a summary of the main steps in determining the required level of inquiry:

- **Is the Action a "Project?"** Only "projects" are subject to environmental review. A project is any discretionary governmental action that could directly or indirectly result in a physical change in the environment. Examples include the adoption and amendment of general plans, specific plans, zoning ordinances, and development agreements; public works projects; building improvements; and many permits for development.
- **Does an Exemption Apply?** A project may be exempt from CEQA under state law or regulations for policy reasons. For example, infill housing projects meeting certain conditions do not require environmental

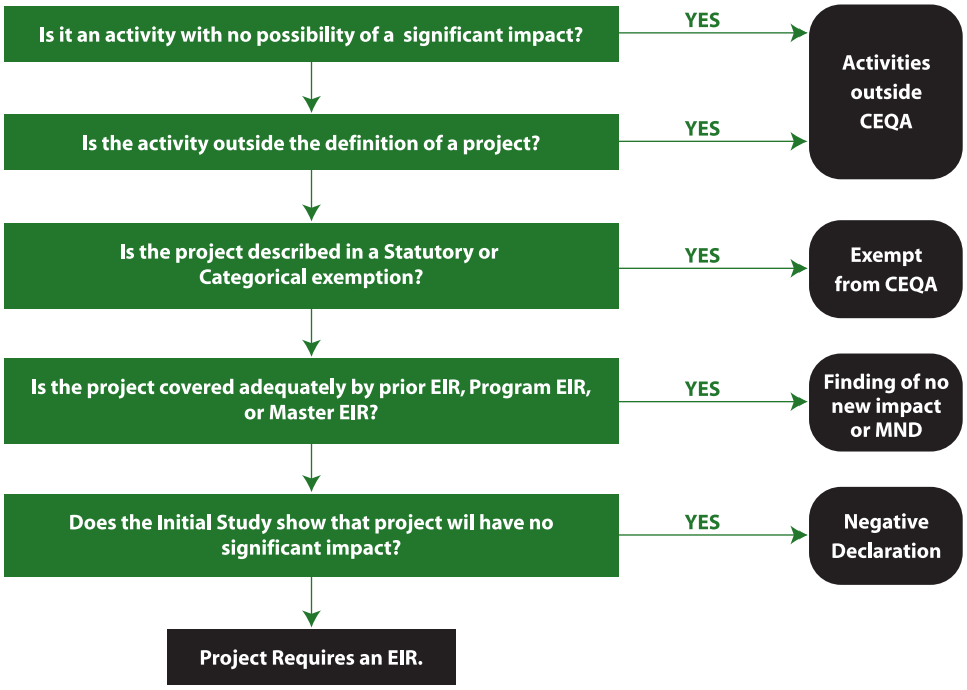
[58] Cal. Gov't Code §§ 66000-66025.

[59] 42 U.S.C. §§ 4321 and following.

[60] Cal. Pub. Res. Code § 21060.5.

[61] Cal. Pub. Res. Code §§ 21002, 21081; 14 Cal. Code Regs. §§ 15091-15094.

Screening for CEQA Applicability



Courtesy of Jones & Stokes Associates

review. Usually staff will determine whether an exemption applies.

- **Initial Review.** For projects that are not exempt, an initial study is prepared to determine whether the project may have a significant effect on the environment.
- **Negative Declaration.** If the initial study shows that the project will not have a significant effect on the environment, a negative declaration is prepared. A negative declaration briefly describes why a project will not have a significant impact.
- **Mitigated Negative Declaration.** If the initial study shows an environmental effect, a mitigated negative declaration may be prepared if revisions in project plans made or agreed to by the applicant before the proposed mitigated negative declaration is released for public review would clearly avoid or mitigate the effects.
- **Environmental Impact Report.** If the initial study identifies potential significant environmental effects that cannot be eliminated through redesign, then the lead agency (the agency that has ultimate approval over the project) must prepare an environmental impact report.

In many cases, it will be a close call whether a mitigated negative declaration or a full EIR is required. If there is

For More Information

For more information on CEQA, visit http://ceres.ca.gov/ceqa/. This site includes an interactive flow chart that can help focus on a specific issue. It also has good general information.

"fair argument" that a project will have a significant environmental effect, the safest course is to prepare an EIR (even when there is an equal amount of evidence suggesting that an EIR is not necessary). This is called the fair argument standard. This approach will maximize public involvement and ensure that all possible impacts have been analyzed. It will also minimize the delays and expense associated with litigation over whether an EIR should have been prepared.

The Environmental Impact Report

After deciding to do an EIR, the lead agency must solicit the views of responsible agencies (other agencies with some level of authority over the project) regarding the scope of the environmental analysis.[62] The lead agency should also consult with individuals and organizations that have an interest in the project. This early consultation is called scoping.

The lead agency then drafts an EIR based on this information and other data it has collected in connection with the report. When the draft EIR is completed, the lead agency files a notice of completion with the State Clearinghouse at the Office of Planning and Research. The draft EIR is then noticed for a 30- to 45-day public review and comment period.[63] The lead agency must evaluate and respond in writing to all comments it receives during this time. If the lead agency adds significant new information to the draft EIR after it has been released for public review, the draft EIR must be re-noticed and circulated again for public review.

Public hearings on a draft EIR are not required. If the lead agency chooses to hold hearings, they can either be conducted in conjunction with other proceedings or in a separate proceeding. Once the public review period ends, the lead agency prepares a final EIR, usually consisting of the draft EIR together with responses to public comments received during the review period. The lead agency then reviews the project in light of the EIR and other applicable standards.[64]

There are several basic elements to the environmental impact report:[65]

Tiering, Master EIRs, and Program EIRs

CEQA includes a number of provisions intended to streamline environmental review. These include tiering, program EIRs, and master EIRs. Generally, all of these provisions are designed to allow public agencies to consider planning-level environmental concerns in a single EIR that may be adopted for a general plan or other planning or policy action. Subsequent environmental documents on specific projects—such as focused EIRs or negative declarations—are then used to focus on project-specific impacts.

- **Table of Contents & Summary.** Required elements that assist in making EIRs—which are sometimes hundreds of pages long—more accessible to the public.
- **Project Description.** An accurate description of the project, including any reasonably foreseeable future phases of the project.[66]
- **Environmental Setting.** A description of the environment on the project site and in the vicinity of the project.
- **Evaluation of Impacts.** An identification and analysis of each significant impact expected to result from the project. Any potential significant effect—such as incompatible land uses, air pollution, water quality, traffic congestion, etc.—will have its own discussion.
- **Mitigation Measures.** A detailed description of all feasible measures that could minimize significant adverse impacts. Any potential environmental consequences of the mitigation measures must also be addressed.
- **Cumulative Impacts.** An evaluation of the incremental effects of the proposed project in connection with other past, current, and probable future projects.

62 14 Cal. Code Regs. §§ 15082, 15083.

63 Cal. Pub. Res. Code § 21091.

64 14 Cal. Code Regs. § 15132; Cal. Pub. Res. Code § 21092.5.

65 *See* 14 Cal. Code Regs. §§ 15022-15029.

66 *Laurel Heights Improvement Association of San Francisco v. Regents of the University of California*, 47 Cal. 3d 376 (1988).

- **Alternatives.** A proposed range of reasonable project alternatives that could reduce or avoid significant impacts, including a "no project" alternative. This often involves reviewing the location or the intensity of the development, or both. The alternatives need not be exhaustive and should not be speculative.
- **Growth-Inducing Impacts.** A description of the relationship of the project to the region's growth and whether the project removes obstacles to growth.
- **Organizations and Persons Consulted.** A list of groups and individuals contacted during the process, including during the scoping and public hearing phases.
- **Inconsistencies.** A discussion of any inconsistencies between the proposed project and applicable general plans and regional plans.

Remember that one of the fundamental goals of CEQA is information-sharing. It also works to make sure that you are making the most informed decisions possible regarding environmental impacts. Thus, the adequacy of an EIR is usually not judged on perfection, but rather on completeness and a good-faith effort at disclosure. The EIR must provide enough information to allow decision-makers to analyze the environmental consequences of a project.

Certifying the CEQA Document

The first step in approving a project that has undergone environmental review is to certify the negative declaration or the EIR. The project may then be approved in a manner that acknowledges any environmental consequences. The local agency can also change the project, select an alternative project, impose conditions, or take other actions (often called "mitigation measures") to avoid or minimize the environmental impacts of the project. When mitigation measures are adopted, the agency must also adopt a program to monitor the implementation of those measures.[67]

In many cases, the environmental impacts of a project cannot be avoided. For example, a community that is surrounded by prime farmland will probably need to use some of that land for housing at some point. In these cases, the agency can make a finding that explains why changes to the project are not feasible or why social or economic considerations override environmental concerns.[68] While theses findings may seem contrary to environmental protection, they are consistent with CEQA's fundamental purpose of publicly acknowledging and considering possible environmental effects.

CEQA Guidelines

You may hear several references to the "CEQA Guidelines" during the environmental review process. The guidelines, published by the state Resources Agency, clarify how the CEQA statutes are to be applied. For more information, see http://ceres.ca.gov/ceqa/.

PERMIT STREAMLINING ACT

The Permit Streamlining Act[69] requires local agencies to make individual land use decisions within 60 to 180 days of receiving a completed application. If the local agency fails to reach a decision within the allotted time, the application is automatically deemed approved—provided that adequate notice is sent to other affected parties. The Act applies only to quasi-judicial actions, such as subdivisions, site plans, conditional use permits, and variances, not to legislative actions, such as general plan or zoning amendments. If a project requires both legislative and administrative approvals, the Act's clock will not start ticking until the applicant has secured the legislative approvals.

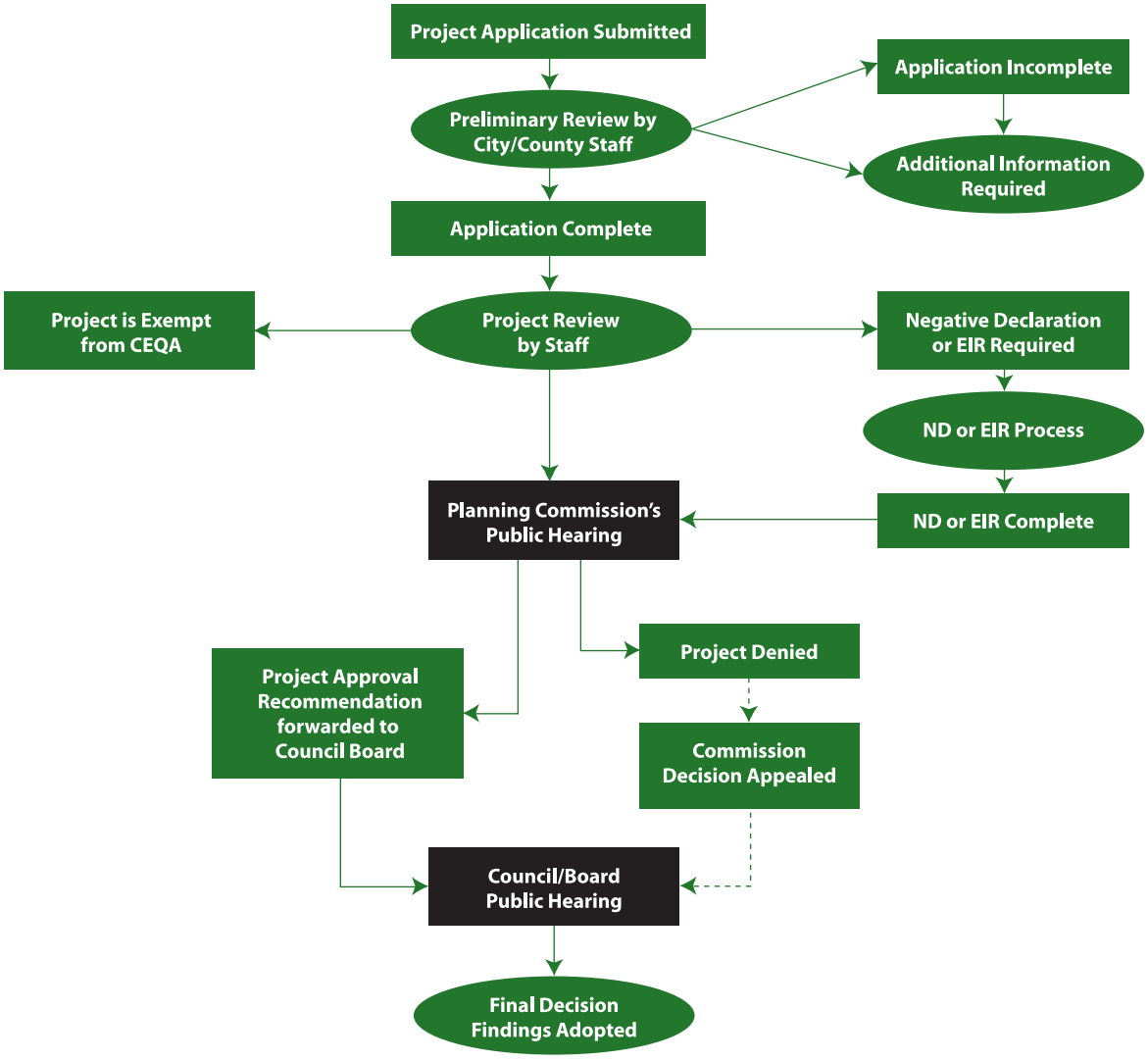
Once a private applicant has submitted a completed application, the local agency cannot ask for new information, but may ask that the developer clarify existing information. The exact time frame in which a decision must be reached depends on the level of environmental review. A decision on a project must be made within 60 days after the adoption of a negative declaration (or determination that the project is exempt from review) or 180 days after an environmental impact

[67] Cal. Pub. Res. Code § 21081.6.
[68] Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15093.
[69] Cal. Gov't Code §§ 65920 and following.

report has been certified. These timelines may be extended once for 90 days at the request of the developer.

Planning commissioners should keep this law in mind when making decisions on applicable projects near the end of the time limit. In circumstances when you are making a decision that is contrary to staff's recommendation, you may need to articulate findings "on the fly" because there will not be time to ask staff to draft an alternative set of findings and present them at the next meeting. (See Section 2, page 22 for more information.)

Typical Development Project Flow Chart



Local procedures may vary. Negative Declaration and EIR documents vary in processing time.
Courtesy of Governor's Office of Planning and Research.

SECTION 5

Housing Law and Policies

SECTION 5

Housing Law and Policies

Housing production in California has not kept pace with population and job growth in either quantity or location. With demand for housing greatly outpacing supply, prices have skyrocketed. In fact, the state is home to several of the country's most expensive housing markets. The housing shortage has particularly affected low- and middle-income families. Many of our most essential community members—teachers, firefighters and police officers, service workers, retail clerks, etc.—simply cannot afford to rent units in the communities where they work, much less purchase a median-priced home. Increasingly, people must live far from work in order to find housing, which has implications both for quality of life and for the environment.

Housing is a critical community asset and a necessity for a healthy and well-balanced community. Communities should strive to provide ample housing in a variety of types and at a variety of prices to serve the needs of all residents. There are numerous reasons to ensure that your community has a diverse housing supply, including:

- The availability of diverse, high-quality housing choices for workers is a significant factor in retaining and attracting businesses.
- Providing quality housing for all segments of society helps achieve social equity.
- The largest portion of most family budgets goes to housing. When more affordable housing is available, people have more money for other necessities, such as health care. People also have more disposable income to spend in the community, which can have big economic payoffs.
- Providing high-quality infill housing ensures more effective use of land and protection of natural and agricultural resources.
- More affordable housing generally leads to higher home ownership rates, which in turn leads to community stability.

As a planning commissioner, you are on the front lines of solving the state's housing problems. Your role is to assure that individual projects further community housing production needs and goals. Moreover, you will likely be involved in the development of local policies that go beyond the minimum requirements imposed by state law. A thorough knowledge of both housing law and policy options—summarized in this section—will serve you well as you tackle housing issues at the local level.

THE HOUSING ELEMENT

The housing element of the general plan is subject to a number of statutory requirements.[1] The housing element must identify and describe how the agency will provide for the existing and projected housing needs of all economic segments of the community (see "Affordable Housing Income Categories" sidebar). The projected housing need includes the local agency's share of the regional housing need as assigned by the Council of Governments (see Regional Housing Needs and the Housing Element, next page). In addition, the housing element must be updated every five years and is subject to review by the state Department of Housing and Community Development (HCD).

Although they generally do not construct housing themselves, local agencies must identify potential sites for future housing and formulate goals, policies, and programs that will promote its development. In general, a housing element must include:

- **Housing Needs Assessment.** The needs assessment must address existing and projected needs. The existing needs assessment must include an analysis of the number of households that must spend over 30 percent of their income for housing, live in overcrowded and substandard conditions, or have special housing needs (including the disabled, senior citizens, and the homeless). Assisted housing units that are at risk of losing their public subsidy must also be identified. The projected needs assessment summarizes by income category the number of new units needed to accommodate the agency's share of the regional housing need.
- **Land Inventory.** The land inventory must identify sites that are zoned and suitable for housing development—including having access to roads, water, sewers and other infrastructure—within the planning period. The agency must demonstrate that it can accommodate its share of the regional housing need by income level, especially its share of housing affordable to low- and moderate-income households.
- **Constraints Analysis.** The constraints analysis reviews governmental and nongovernmental constraints to housing production. Governmental constraints include land use controls, fees and dedications, building codes and their enforcement, and permit and processing procedures. Nongovernmental constraints include the availability of financing, land costs, and construction costs.

AFFORDABLE HOUSING INCOME CATEGORIES

Affordable housing means housing for households of moderate, low, and very low income. These classifications are based on an individual's income in relation to the median income in the area. Calculations are made by the U.S. Department of Housing and Urban Development (HUD) and incorporated into state standards. There are four main classification that are usually addressed in the housing element:

- Very Low—below 50 percent of the area median income
- Low—50 percent to 80 percent of median income
- Moderate—80 percent to 120 percent of median income
- Above Moderate—above 120 percent of median income

[1] *See* Cal. Gov't Code §§ 65580 and following.

REGIONAL HOUSING NEEDS AND THE HOUSING ELEMENT

The housing element must reflect the local agency's share of the regional housing need, which is determined through the regional housing needs assessment (abbreviated "RHNA" but pronounced "reena") process. The RHNA process starts with an estimate of the state's housing needs across all income levels by the state Department of Finance. This number is then proportionately divided among the state's regions. The regional number is further divided and assigned to each city and county by regional councils of governments (referred to as "COGs"). Each housing element must include goals and policies for how the local agency will provide its fair share of the state's housing needs.

The Department of Housing and Community Development (HCD) monitors local implementation of the regional housing needs assessment. Each community must update its housing element every five years and submit it to HCD for approval (also know as "certification"). The element itself must include three main parts:

- **Assessment.** The goals and policies must reflect the agency's responsibility in contributing to the attainment of state housing goals. This includes an examination of available resources and possible constraints.
- **Objectives.** The element must state goals, objectives, and policies for the maintenance, improvement, and development of housing consistent with the agency's fair share for market rate, moderate-income, low-income, very low-income, transitional, and homeless housing needs.
- **Action Plan.** The element must identify the programs to be implemented and sites for the development of housing for all income levels. This section must also address any constraints identified in the assessment and show that the housing element is consistent with the other elements of the general plan.

A housing element is inadequate when it fails to contain a program to conserve the existing stock of affordable housing or fails to identify a sufficient number of sites to accommodate its housing goals. A defective housing element may prevent approval of tentative subdivision maps and other land use approvals because the local government cannot make meaningful consistency determinations.

- **Housing Programs.** The element must identify adequate sites to accommodate the agency's share of the regional housing need and must identify programs to assist in the development of low- and moderate-income housing; remove or mitigate governmental constraints; conserve and improve the existing affordable housing stock; promote equal housing opportunity; and preserve existing affordable housing units.
- **Quantified Objectives.** The element must estimate the maximum number of units, by income level, to be constructed, rehabilitated, and conserved over the planning period.

Your Leadership Role

This section summarizes the primary laws and policies that apply to local housing programs. In many respects, the law only serves as a minimum standard. Additional policies—such as increasing densities or implementing inclusionary housing programs—can help proactively address local housing needs. Your willingness to engage on this issue will be a signal to developers of your community's desire to get more units built.

- **Public Participation.** The element must include a description of how the agency has or will engage all economic segments of the community to develop the housing element.

Once a draft of the housing element is completed, it is submitted to HCD for review and approval.[2] An approved element is presumed valid, which deters legal challenges. Conversely, it is easier for opponents to challenge and delay projects in communities with unapproved elements.[3] In addition, certain state funding and other programs are contingent on having a valid housing element. If a local agency decides to adopt its housing element without revising it to address issues raised by HCD in its review, the city must include written findings in its resolution of adoption. The findings must explain why the city feels it has complied with the statute in spite of any issues raised by HCD.

DENSITY BONUSES

Local agencies must adopt a density bonus ordinance[4] describing how density bonuses will be provided. At a minimum, the state density bonus law requires a 25 percent increase (or "density bonus") over the number of units allowed under the zoning code when a developer guarantees that 20 percent of the units in a project will be affordable to low-income families. The same is true when the developer guarantees either that 10 percent of the units will be affordable to very low-income households or that 50 percent of the units will be reserved for seniors. For condominiums, the required minimum density bonus is 10 percent if 20 percent of the units will be affordable to moderate-income households.

If a developer agrees to provide enough affordable units to qualify for a density bonus, the local agency must either grant the bonus (and at least one other development concession or incentive) or provide other incentives of equivalent value, including:

- Reducing development standards.
- Modifying setbacks, square footage minimums, parking standards, or design requirements.
- Approving mixed-use projects if the other uses are compatible and will reduce the cost of the housing.

- Providing other incentives or concessions as proposed by the developer that will result in identifiable cost reductions.

The granting of a density bonus does not require, in and of itself, a general plan amendment, zone change, or other discretionary approval, even when the project conflicts with the general plan. A developer who receives a density bonus must agree, and the local agency must ensure, the continued affordability of the affordable units for at least 30 years (or 10 years for condominiums), or longer if required by financing or a subsidy. The use of redevelopment funds, for example, could entail a longer affordability period. Keep in mind that the standards in the state density bonus statute represent minimums. Local agencies may offer additional incentives or tailor guidelines to meet local circumstances.

SECOND DWELLING UNITS

State law encourages the development of second units—also called in-law units, granny flats, or accessory apartments—in residential neighborhoods.[5] Most local agencies have adopted an ordinance that authorizes second units when certain standards are met. Local ordinances cannot ban second units entirely within their jurisdiction except where such units could endanger the public's health and safety. However, they may impose reasonable limitations, such as designated locations, height limits, density controls, parking standards, and architectural review.

[2] See Cal. Gov't Code § 65585.

[3] *Buena Vista Gardens Apartments Assn. v. City of San Diego*, 175 Cal. App. 3d 289 (1985) (permit for a planned residential development could not be approved until the city demonstrated substantial compliance with requirement for housing development programs to conserve and improve the condition of existing affordable housing stock).

[4] Cal. Gov't Code § 65915(c).

[5] Cal. Gov't Code § 65852.2.

Once a second unit application meets the standards set in the local ordinance, the permit must be granted ministerially. There is no public hearing or environmental review. Second unit applications are also exempt from local growth control ordinances. Those local agencies that have not adopted their own second unit ordinance must approve projects according to a prescribed set of standards set out in state law.

LIMITED AUTHORITY TO DENY AFFORDABLE PROJECTS

State law prohibits a local agency from denying an affordable housing project—or conditioning it in a way that makes the project infeasible—unless one of the following findings can be made (and supported by substantial evidence):[6]

- The agency has a valid housing element and the project is not needed to meet the agency's share of the regional housing need.
- The project would have a specific adverse impact on the public health or safety that could not be mitigated without rendering the project unaffordable.
- The action is required under federal or state law and there is no feasible method to comply with that law without rendering the project unaffordable.
- The approval would increase the concentration of low-income households in an area that already has a disproportionate number of lower-income households.
- The project is proposed on land zoned for agriculture or resource preservation and is surrounded on two sides by land being used for such purposes.
- The application was inconsistent with both the zoning ordinance and general plan when it was deemed complete and the jurisdiction has a valid housing element.

This is sometimes referred to as the anti-NIMBY law because it is designed to limit local agency discretion to reject a project that may generate significant neighborhood opposition. The above findings are difficult to make, effectively limiting the ability of a local jurisdiction to deny a qualified project that complies with all general plan and zoning policies.[7]

OTHER AFFORDABLE HOUSING LAWS

The Legislature has adopted a number of other laws that limit local agency authority to deny or condition projects that include affordable units:

- **Least-Cost Zoning Law.** The least-cost zoning law requires local agencies to zone sufficient vacant land to meet the housing needs of all segments of the population, including low- and moderate-income households (some exceptions apply to urban or built-out communities).[8] The law also requires that the zoning standards adopted by local agencies allow for the production of housing at the lowest possible cost. There are penalties for noncompliance, including a court order to approve applications related to the zoning deficiency. In one case, a court found that a city had to approve all development applications for a certain type of development—homeless shelters—until it complied with the least-cost zoning law.[9]
- **Local Agency Bears Burden of Proof.** Typically, when local agencies deny a project, their denial is presumed valid and the applicant has the burden of proving otherwise. The opposite presumption applies for denials of affordable housing projects. The local agency bears the burden of proving that the action was reasonably related to the public health, safety, or welfare.[10] This makes it more difficult for the agency to prevail if it is challenged in court.
- **Limited Authority to Adopt Moratoria.** A local agency may generally adopt a temporary moratorium on certain types of development. That authority is limited when applied to development projects that devote one-third or more of the square footage to multifamily housing. An agency may adopt a 45-day moratorium on such projects on a four-fifths vote of the governing body, but any attempt to extend the moratorium requires the agency to make findings supported by substantial evidence that: (1) approval of such projects would have a specific, adverse effect on the health and safety of the community; (2) the moratorium is

6 Cal. Gov't Code § 65589.5.

7 Cal. Gov't Code § 65589.5(d); *Sequoyah Hills Homeowners Ass'n v. City of Oakland*, 23 Cal. App. 4th 704 (1993).

8 Cal. Gov't Code § 65913.1.

9 *Hoffmaster v. City of San Diego*, 55 Cal. App. 4th 1098 (1997).

10 *Hernandez v. City of Encinitas*, 28 Cal. App. 4th 1048 (1994); Cal. Evid. Code § 669.5.

necessary to avoid that impact; and (3) there is no other feasible alternative to mitigate the impact.[11]

GROUP HOMES

Local agencies have limited authority to regulate smaller group homes (those that serve six or fewer persons at a time). Group homes typically serve people with physical and mental disabilities, adolescents and children, and recovering addicts and alcoholics. Permit denials for smaller group homes will be judged under a stringent standard set by the Fair Employment and Housing Act. The local agency must show that it has a compelling interest in the regulation that denies the permit and that other less discriminatory means are unavailable.[12] Some questions still remain as to the extent to which a local agency may address conditions caused by larger group homes (those serving 7 or more people) and the over-concentration of group homes.

INCREASING HOUSING DENSITY

One of the most basic techniques for expanding the supply of affordable housing is to increase general plan and zoning densities for residential development. This often requires building more multifamily housing units. In jurisdictions that employ this strategy, medium-range densities are commonly around 18 units per acre and high-density ranges usually allow at least 30 units per acre. Increasing allowable densities to these levels reduces the cost per unit, making more units affordable to more people. The more compact development pattern that results provides the added benefit of lower infrastructure costs. Contrary to what you might hear about the market's preference for single-family detached homes, the success of many multifamily projects across the state indicates a strong demand for townhouses and other kinds of higher-density development.

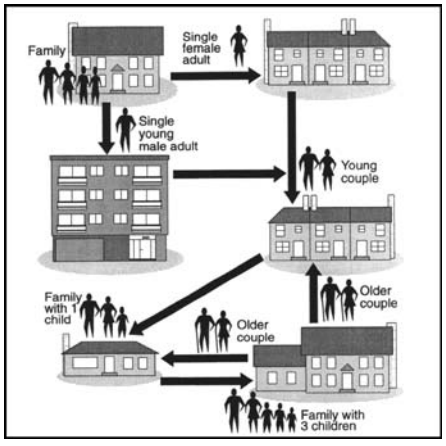
The quality of architectural design is an important consideration in higher-density projects. Many people who have qualms about such projects change their minds when they see high-quality designs. This is where a picture is really worth a thousand words or more. Strict (but clear and easy-to-understand) design guidelines can increase neighborhood acceptance of higher density standards (see page 65).

INCLUSIONARY HOUSING

Inclusionary housing, also known as inclusionary zoning, require new housing developments to include a certain percentage of affordable units. More than 100 local agencies throughout the state use this strategy. The typical inclusionary ordinance requires that between 10 and 20 percent of all new units be affordable to moderate-, low-, or very low-income families. Most ordinances will also offer developers incentives like streamlined permitting, funding from a housing trust fund, or density bonuses to offset the cost of providing affordable housing. In most cases the affordability requirements last for at least 30 years, although some are much longer. Local agencies must monitor the units while the affordability requirement is in effect to ensure that they are rented or resold at affordable rates.

Inclusionary ordinances are complex and can be controversial. A number of considerations should go into drafting an inclusionary ordinance, including:

- The percentage of the inclusionary requirement
- Income eligibility criteria for defining affordability
- Pricing criteria for affordable units
- Restrictions on resale and re-rental of affordable units



Compact housing meets people's needs at different points in their lives.

[11] Cal. Gov't Code § 65858(c).

[12] Cal. Gov't Code § 12955.8(b).

COMPACT HOUSING: THE NEW AMERICAN DREAM?

- Lower housing and transportation costs
- Living near town and neighborhood centers
- Living close to where the action is: restaurants, cafes, stores, culture, work, etc.
- Access to a greater variety of housing types.
- Developments sometimes include pools, daycare, and protected play areas
- Neighborhoods are more friendly to pedestrians and bicyclists
- Greater sense of community

- Provisions for alternatives to constructing the affordable units, such as in-lieu fees
- Incentives like permit streamlining
- How the program will be monitored and funded
- Design standards that make the affordable units blend in with the surrounding community but still allow the developer to trim some costs

For More Information

For more information on inclusionary housing, consult the *California Inclusionary Housing Reader*, available online at www.ilsg.org/inclusionary.

MIXED-USE DEVELOPMENT

Mixed-use developments combine residential, commercial, retail, and other uses in one project. They vary in size from a single building to an entire neighborhood. Mixed-use development can work in any community. A large city could add residences and shops to an office district, a small town could add second-story apartments above shops to revitalize main street, and a suburb could require that large new developments include more than just single-family homes.

Mixed-use development complements many other planning techniques, including compact design, historic preservation, infill, redevelopment, downtown revitalization, and transit-oriented development. It can reduce reliance on cars by locating jobs, shopping, and residences in one place. With so many amenities in one place, more people tend to be outside more often. Residents can thus get to know their neighbors, which fosters a sense of community and contributes to a safer neighborhood. Many communities have developed successful mixed-use "town centers" that fare very well on the real estate market and generate needed revenues for the local agency.

Things to consider in encouraging mixed-use development include:

- **Identify Areas.** Underused commercial districts and areas near transit stations are excellent locations for mixed-use development.
- **Amend Zoning and Building Codes.** Consider amending building codes and zoning ordinances that discourage mixed-use developments. For example, revising the zoning code to allow shared parking between residential and commercial uses and providing other flexible development standards can promote the feasibility of mixed uses.
- **Offer Incentives.** Consider offering incentives to encourage mixed-use development. This might include offering a density bonus, relaxing parking requirements, or expediting the processing of permit applications.

Housing Policy Matrix

POLICY	SUMMARY	BENEFITS	CONCERNS
Inclusionary Housing	New projects must include a percentage of affordable units	• Little initial cost to agency • Economic integration • Flexible design • Treats projects equally	• Shifts some costs to developers • Requires ongoing administration • Needs good market conditions
Density Bonus	Maximum density is increased in return for affordable units	• A good incentive to produce affordable units	• Additional incentives may be needed
Fee Exemptions	Fees are reduced or waived on affordable units or payment is deferred until occupancy	• Reduces cost of production	• Cost must be recovered (and cannot be shifted to other developments)
Up-Zoning	Densities are increased in selected neighborhood	• Small units are more affordable • Reduced per capita infrastructure costs	• Need to plan for transportation capacity • Design is very important
Second Units	Approval is ministerial in residential neighborhoods	• Uses existing infrastructure more efficiently • Uses surplus space • No government expenditure	• Addressing neighborhood concerns • Ministerial process may not allow agency to address special concerns
Rezoning	Unused commercial land is rezoned to residential	• Land is usually close to jobs	• Requires land inventory
Mixed-Use Development	Combines various uses in one building or area	• Savings from shared parking • Higher return on commercial use can offset low return on housing • Fiscal diversity	• Design is very important • Often requires changes to zoning code
Building Code Revisions	Allows flexibility for rehabilitation of existing structures	• Reduces costs • Revitalizes existing neighborhoods • Retains neighborhood character	• May raise disabled access issues, particularly when applied to rehabilitation of old buildings.
Adaptive Reuse	Old buildings are converted to new uses	• Places housing in new areas • Less expensive structure and infrastructure costs • Revitalizes existing communities • Can promote historic preservation	• Changing zoning and building codes • Previous use may have been hazardous • Property ownership issues • Financing may be difficult
Zero Lot Line Development	Allows homes to be sited on lot line (no setback)	• Works for single-family homes • More useful yard space • Lower development costs • Increases privacy	• Clear review criteria • Resistance in established areas • Parking and general design
Linkage Fees	Fees on commercial development pay for share of new affordable units	• Links housing issue to jobs • Creates new revenue source for affordable housing	• Makes development more expensive • Need for nexus study • Requires strong commercial market
Manufactured Housing & Mobilehomes	Prefabricated or mobile structures serve as housing	• New designs look like other housing • Substantially lower costs	• Lack of public acceptance • Zoning may need to be altered • Mobile homes not always mobile • "Pad" or site rental issues
Infill Development	Land is developed in existing neighborhoods	• Efficient use of infrastructure • Revitalizes older neighborhoods • Reduced development pressure on open space and agricultural lands	• Possibly higher land costs • Potential brownfield issues • Possible resistance from neighbors
Planned Unit Development	A comprehensive design and building plan	• Encourages efficient development • Often preserves open space • Allows high densities • Encourages a mix of uses	• Requires great attention to planning and detail at the beginning • Often a cumbersome process

- **Minimize Conflicts.** Design projects to minimize conflicts over problems like noise, traffic, and parking. A good architect can incorporate design components to address these issues, but project plans should still be studied closely during the design review process.
- **Avoid Displacement of Low-Income Residents.** Mixed-use developments can significantly increase property values in surrounding areas. Including new affordable units in the design will help offset any displacement of low-income residents.

INFILL DEVELOPMENT

Many communities have scattered empty or underused parcels. These are usually prime sites for infill development. Infill allows the local agency to take advantage of existing infrastructure (although sometimes it may need to be upgraded) to support new development. Infill sites are often particularly suited for affordable housing projects because of their proximity to existing jobs and services. Again, the architectural design will often be critical to gaining acceptance from neighboring property owners. In other cases, the neighborhood will welcome the project as part of a revitalization plan.

OVERCOMING LOCAL RESISTANCE

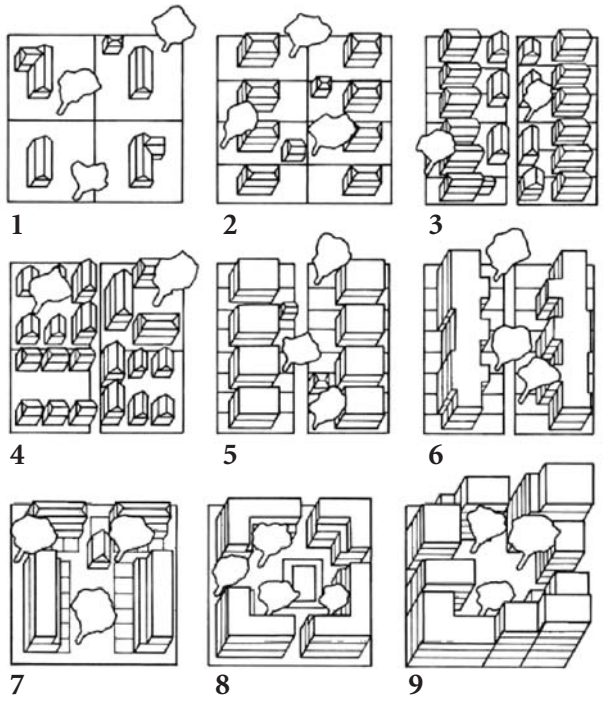
One of the most visible obstacles to affordable housing is community opposition. Indeed, you may face a situation where you want to make the "right" planning decision despite a large, vocal opposition. Such decisions are difficult to make, and are perhaps even more difficult for elected officials who must face those same opponents in the next election.

When resident sentiment is a big obstacle to a project, local agencies (or developers) can take a number of actions to engage the public up front. For example:

- **Don't Immediately Dismiss Opponents as NIMBYs.** It is easy fall into the trap of assuming that all opposition derives from a self-interested "not in my back yard" (NIMBY) attitude. This can be avoided by analyzing opponents' arguments. Individuals and neighborhood groups often raise legitimate concerns about projects that should be taken into account.

Nevertheless, there are some groups who just want to stop any kind of affordable housing project, regardless of the benefit to the community.

- **Consult with the Community in Advance.** Seek the community's views on the design of the project, both in the neighborhood in which the project will be built and in adjacent neighborhoods. There are a number of community outreach strategies summarized in Section 3.
- **Be Prepared to Educate.** People often have negative stereotypes of who will live in affordable housing and what it will look like. On some level, you can't really blame them—when was the last time you saw a "good" affordable housing project portrayed in the media? A quality education program can show what the design will look like and the typical occupations—such as teachers, public safety officers, retail clerks, and service workers—of the people who will occupy the units. The local agency should look for opportunities to educate residents well in advance of a proposed housing project. The revision and adoption of the housing element presents an excellent



1. Suburban Ranch: 4-6 units/acre,
2. Single-family Detached, 8-12 units/acre
3. Small-Lot Single-family w/ 2nd Unit, 16-24 units/acre
4. Cottage Courts, 16-24 units/acre
5. Duplexes/Fourplexes, 16-32 units/acre
6. Townhouses, 16-48 units/acre
7. Co-Housing Block, 20-50 units/acre
8. Garden Apartments, 20-60 units/acre
9. Mid-Rise Apartment Block 40/200 units/acre

Drawings by Stephen M. Wheeler, Greenbelt Alliance. Courtesy Local Government Commission.

opportunity to engage and educate residents about the need for and benefits of affordable housing. The agency could also organize or participate in housing tours and affordable housing events that showcase quality housing projects and include testimonials from the residents of the housing and from residents who previously opposed such projects.

- **Develop Networks.** Initiate and support partnerships among stakeholders. Connect project applicants with neighborhood groups during the planning process and encourage them to work through their concerns. Engage the business community in efforts to promote an adequate housing supply.

STREAMLINING PROCESSES

Long, complicated, overly subjective, or politically charged development procedures discourage the production of new housing. Planning officials can work with developers, the environmental community, and neighborhood interests to facilitate project approval without overlooking environmental issues and neighborhood concerns. Promoting one-stop permit processing centers, encouraging pre-application meetings, and expediting processing for affordable projects can reduce regulatory barriers to housing development.

PRESERVING AFFORDABLE HOUSING

Many local agencies face the added challenge of preserving their existing stock of affordable housing. In some cases, affordable housing units transition to market-rate units, convert to other uses, or disappear from the housing stock because of serious substandard conditions. Sometimes the loss of affordable units is market-driven. In other cases, it results from termination of the rent subsidy or prepayment of the mortgage assistance (most programs only impose affordability requirements for 20 to 55 years). In these circumstances—where local plans have to make up for lost units—local agencies feel even more pressure to increase production of affordable housing. To avoid this situation, many communities have started programs to keep units affordable. Typical methods include:

- Using affordable housing trust funds and other funds to purchase affordable units and turn them over to a land trust or authority to operate.
- Imposing conversion controls on mobilehome parks or single residency occupancy hotels (SROs) that provide important sources of affordable housing.
- Changing the zoning for mobilehome parks from a conditional use to a permitted use.
- Rehabilitating older or dilapidated housing.
- Monitoring assisted housing units at risk for conversion to to non-affordable uses; identifying funding resources to continue the affordable uses;

partnering with non-profit housing sponsors and assisting in their purchase of the housing; and in the event the units convert, assisting with tenant relocation and assistance.

ARCHITECTURAL STANDARDS

Design guidelines and design review assure better looking projects that fit with the neighborhood. Design review can supplement development regulations by addressing issues that cannot easily be quantified in an ordinance. It also offers more flexibility than a zoning ordinance might provide. The advantage of using design review to promote affordable housing is that it can address the concerns of neighbors who fear that a development will be ugly, too bulky, or out of character with the neighborhood. Good design is often the key to overcoming concerns about density.

Design review, however, can be a double-edged sword. Guidelines that are vague and cumbersome may discourage affordable housing projects. Additionally, the time required for review may also hinder projects from moving forward. To avoid this, the review process should ensure that developments will be reviewed in a timely manner and should restrict the scope of review. For example, the primary purpose of most design review processes is not to judge the specific design merits of a building, but rather to ensure that it reasonably fits within the context of the neighborhood. Many local agencies restrict the ability of design review to limit the size of the proposed project.

THE DESIGN ADVISOR (www.designadvisor.com)

The United States Department of Housing and Urban Development has developed an excellent website called the Design Advisor that is an excellent resource for design ideas. The following are some suggestions from the Design Advisor of questions to ask when reviewing a project's design:

- Do buildings relate to existing and planned buildings in terms of size, bulk, architecture, and use?
- Are there as many ground-level entries to individual units as possible?
- To the extent possible, do individual units have their own visual identity and individual addresses?
- Are buildings and landscaping situated to maximize sunlight and views?
- Is the project located near shops and schools and within 1/4 mile of a transit stop?
- Are parking lots located at the rear or on the side to allow a majority of units to front on the street?
- Are bicycle and pedestrian paths separated from vehicular traffic?
- Is open space provided as "outdoor rooms" for play, recreation, and social or cultural activities?
- Are play areas centrally located to allow for adult supervision from dwelling units?
- Is there sufficient energy-efficient lighting for safety?
- How does the first floor relate to the street? If close to the street, is it raised slightly to maintain privacy?
- Are height, color, setback, materials, texture, landscaping, trim, and roof shape varied to make the buildings visually and architecturally pleasing?
- Have porches, stairs, railings, fascia boards, and trim been incorporated to enhance the buildings' character?

SECTION 6

Environmental Issues

SECTION 6

Environmental Issues

GROWTH MANAGEMENT

Part of your role as a planning commissioner is to balance the need for new development with the protection of the environment. This is often referred to as growth management. Growth management doesn't mean "no growth." Halting all development is undesirable—and probably impossible—for most California cities and counties. The state's population is projected to increase by nearly 50 percent (or 18 million) in the next 25 years, and state housing laws require each city and county to plan for its fair share of new housing to support this growing population. (See Section 5, page 56). Population growth also means that new businesses will be needed in order for communities to remain economically viable.

The question for local officials is how to accommodate their community's share of growth in a way that satisfies competing demands for housing, economic development, and environmental protection. Exactly what constitutes a sound growth management policy will vary with each community. Growth management will incorporate most of the tools already addressed in Section 4 of this Handbook, but will use them in a way that limits the size of the urban footprint:

- **Urban Growth Boundaries.** Urban growth boundaries (UGBs) confine growth to a designated zone. The zone usually contains enough land to accommodate projected growth for 15 to 20 years. Generally, the zoning ordinance should be changed to encourage higher densities within the growth area.
- **Infrastructure Limitations.** Infrastructure controls limit "leapfrog" development patterns by requiring that new development occur within or directly adjacent to areas already served by existing public services and facilities, like roads, schools, water, and sewage disposal.
- **Infill & Increased Densities.** Taking advantage of empty lots within already urbanized areas and building at increased densities both help decrease the need to expand into undeveloped land—sometimes called "greenfields."
- **Revised Building and Development Standards**. Your local building and development standards may be set up in favor of the "suburban ideal"—single-family detached homes. Revised policies can encourage more compact development by limiting the width of streets, allowing for smaller or zero lot-line setbacks, encouraging two-story floor plans, and relaxing development standards for renovations.

URBAN GROWTH AND SERVICE BOUNDARIES

Typical considerations for establishing an urban growth boundary include:

- **Amount of Land Within Boundary**. The amount of land needed to accommodate future growth will be influenced by projected population and business growth, and the desired densities of new projects.
- **Protected Areas**. Valuable farmland or open space is often left outside of the line to limit development opportunities.
- **Interjurisdictional Cooperation**. One city's urban growth boundary probably does not mean much if the county or neighboring cities are not committed to the same principles.
- **Consistency**. The general plan and the zoning ordinance may have to be revised to reflect the new boundary.
- **Periodic Review**. Periodic reviews can provide data on the effectiveness of the boundary as a planning tool.

- **Building Caps.** Building caps manage growth by limiting the number of residential building permits that a local agency may issue each year. However, this approach may only push growth into neighboring communities without encouraging more compact growth patterns. In addition, building caps do not necessarily influence the type of growth that occurs. In other words, sprawling growth may continue under a building cap, but at a slower pace.

Critics of growth management often warn that it can drive up land and housing prices by limiting the supply of developable land. Adopting strategies designed to maintain an adequate supply of affordable housing within an urban growth boundary will offset this criticism. At a minimum, the extent to which growth controls affect housing opportunities will need to be addressed when the state Department of Housing and Community Development reviews your jurisdiction's housing element.

ENVIRONMENTAL JUSTICE

Environmental justice is the fair treatment and meaningful involvement of all people—regardless of race, color, ethnicity, or socioeconomic group—in the development, implementation, and enforcement of environmental laws.[1] The environmental justice movement grew out of a recognition that low-income and minority populations are often disproportionately exposed to high levels of environmental contaminants due to the proximity of their homes to freeways, landfills, incinerators, industrial areas, hazardous waste facilities, and other pollution sources. As a result, these groups are more likely to suffer the ill effects of pollution, such as asthma and even learning disabilities.

Historically, land use decisions have disproportionately impacted some of these communities through:

- Unequal enforcement of environmental and civil rights laws.
- Faulty assumptions by government agencies and private entities in calculating and assessing risks.
- Discriminatory zoning and land use practices.
- Exclusionary policies and practices that limit meaningful participation by low-income residents and people of color in governmental processes.
- Limited access to environmental benefits, such as access to parks and open space.

Fair treatment and meaningful public involvement are the cornerstones of environmental justice programs. "*Fair treatment*" means that no group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations. "*Meaningful involvement*" means that all residents should have an equal opportunity to

[1] Cal. Gov't Code § 65040.12.

BALANCING GROWTH AND WATER SUPPLY

Local agencies must take into account the extent to which long term water supplies can keep pace with new growth.[2] State law requires agencies to conduct a water assessment when certain types of developments are proposed, including:

- 500 new housing units
- 500,000 square feet of retail
- 250,000 square feet of office space
- 650,000 square feet of business park use or a mixed-use project with any combination equal to the scale noted above.

This assessment should be included in the environmental review (CEQA) process. If there is not adequate water to reliably supply the project (meaning that water will be available even during multiple dry years after accounting for all future demands), new water sources need to be identified. In some instances (such as subdivisions of 500 or more units or where total connections increase by at least 10 percent), local agencies must obtain written verification from a water provider that a reliable water supply is available.[3] There are some exceptions for certain infill and affordable housing projects.

participate in decisions that will affect the community's environment and health. Such decisions should be made in a way that the public's contribution can influence the regulatory agency's decision; the concerns of all participants involved are considered in the decision-making process; and decision-makers seek out and facilitate the involvement of those potentially affected.

Local agencies can pursue environmental justice on two fronts. First, they can ensure that current decisions are made with the goal of environmental justice in mind to prevent future problems. Second, they can work to correct past environmental injustices. A number of agencies have incorporated environmental justice goals and policies in the general plan, either as a single element or throughout all elements. A few local governments have developed environmental justice grant programs to help remedy existing environmental injustices.

For More Information

For information on incorporating environmental justice in the general plan, consult the *General Plan Guidelines* (Governor's Office of Planning and Research, 2003).

FARMLAND PROTECTION

Protection of farmland is another important growth management issue. California leads the nation in agricultural production, yet many communities have grown so fast that local agriculture has disappeared. The most effective farmland protection tool is an effective growth management plan. Most of the tools discussed in Section 4 can be used to protect farmland. However, there are a number of other effective tools:

- **Agricultural Element in the General Plan.** Many communities have adopted an agricultural element in their general plan to provide support for local agriculture. By doing so they require the other elements of the plan to be consistent with local agricultural policies.
- **Agricultural Zoning.** Many communities use large-lot zoning as a means to protect agriculture. When using this strategy, it is important to assure that the minimum lot size is sufficient to sustain a viable agricultural operation. The ideal lot size will vary depending on soil type, climate, and farming practice. In many areas of the state, minimum parcel size may need to be 50 to 80 acres. In ranching communities, the required acreage might be much higher. If the minimum lot size is set too low, the zoning is likely to

[2] *See* Cal. Water Code §§ 10631, 10656, 10910-10915.

[3] Cal. Gov't Code § 66473.7.

create "hobby" farms that will produce little benefit to the local agricultural economy.

- **Buffers & Right-to-Farm Ordinances.** Residential and agricultural uses of property are often incompatible. Agriculture is noisy and smelly. In addition, farms near urban areas suffer increased trespassing, theft, and vandalism. Keeping large buffers—sometimes 1000 to 2000 feet—between farms and residential areas will limit conflicts. Most counties and several cities have adopted "right-to-farm" ordinances that either attempt to limit the extent that residents can seek to stop typical farm activities that they might perceive as nuisances or provide notice and complaint procedures when such activities occur.
- **Conservation Easements.** State funds have recently become available to purchase conservation easements on farmland. Basically, the farmer sells the right to develop the land to a conservation group, guaranteeing that the land will not be developed (and presumably will stay in agriculture). This is the same idea underlying "transfer of development right" programs.
- **Williamson Act and Farm Security Zones.** The state's Williamson Act and Farm Security Zone programs provide farmers tax breaks for keeping their land in productive agriculture for periods of 10 and 20 years. In return, the land is valued for tax purposes at its agricultural value instead of its market value. The state then makes subvention payments to local agencies to compensate them for lost property tax revenues.

For More Information

For more information on farmland protection, see the *Farmland Protection Action Guide: 24 Strategies for California*, available at www.ilsg.org/farmland.

OPEN SPACE

Parks and open space play an increasingly important role in maintaining a healthful and interesting urban environment. In addition to protecting scenic, recreational, and environmental resources, they can promote public health and safety when they are located on flood plains, fire zones, steep slopes, or unstable soils, thus ensuring that such areas remain undeveloped. Many consider the preservation of open space to be as vital to the psychological, physiological, and economic well-being of individuals and communities as any other duty of a public agency.

The open space and conservation elements in the general plan are the basis for open space planning. These elements—which are often combined due to their overlapping nature—should provide a comprehensive plan for the long-range preservation of important local resources. These may include sites with outstanding scenic, historic, and cultural value; areas suited for park and recreation purposes; thus ensuring that such areas remain undeveloped, and areas that link major recreation and open space reservations, like utility easements, riverbanks, trails, and scenic highway corridors.[4] The open space element must also contain an "action program" that describes specific programs for conserving open space.[5] Areas desirable for open space conservation should be indicated on the land use map in the general plan as potentially suitable for recreational activities.

Sometimes looking at the open space element by itself is not enough. It may also be worthwhile to take a look at the circulation, transportation, and related elements.

4 *See* Cal. Gov't Code § 65560.

5 *See* Cal. Gov't Code §§ 65564; 65302(a).

Often, the goals and policies in other elements of the general plan may not directly affect open space, but they may place important resources at risk. Alternatively, other opportunities to preserve open space may exist if your community is involved in developing a Habitat Conservation Plan. Habitat Conservation Plans often focus on preserving and connecting existing open space to protect endangered and threatened plants and animals.

Another issue that often arises is finding funds necessary to purchase and maintain open space. In some cases—like on steep hillsides and flood plains—open space can be sufficiently protected through regulation alone. However, when public access is also desired, agencies may have to obtain property interests or fund operation and maintenance costs. A number of sources—like development impact fees, bond funds, and state and private conservation grants—may be available. Another source is the Quimby Act[6]—a section of the Subdivision Map Act—that authorizes local agencies to require that a certain amount of parkland (usually determined by a formula) be dedicated to a public agency as a condition of tentative map applications. Some communities have also adopted special parcel taxes to protect nearby lands, although these taxes are subject to the voter approval requirements of Proposition 218.

For More Information

For more information on protecting open space, consult *A Local Official's Guide to Open Space Acquisition,* available at www.ilsg.org/openspace.

ENDANGERED SPECIES LAWS

Endangered species laws receive a lot of attention, particularly in rural areas. The endangered species issue is particularly important in California because the state is home to 275 endangered plants and animals—more than any other state except Hawaii. Two laws govern the protection of endangered species, one federal (the federal Endangered Species Act, or "ESA") and one state (the California Endangered Species Act, or "CESA")[7] The two laws are not necessarily congruous. A species protected under state law may or may not be protected under federal law.

The key element of both the state and federal laws is the listing of species as either *protected* or *endangered.* Once listed, a species is entitled to certain protections, the most significant of which is the prohibition against any "take" (killing) or "harm" (injuring animals or disturbing habitat) without a permit from either the National Fish and Wildlife Service (federally listed species) or the state Department of Fish and Game (state-listed species). In the case of salmon or other ocean-dwelling fish that spawn in rivers, permission is necessary from the National Marine Fisheries Service (NMFS).

"Take" permits may be issued subject to a habitat conservation plan (HCP) under federal law or a Section 2081 permit under state law. In the early days of the federal Endangered Species Act, habitat conservation plans were designed for each listed species. However, since the habitats of many species overlap, it has become standard practice to develop Multiple Species Habitat Plans—also called Natural Communities Conservation Plans under state law—that address multiple species at once.

Local agencies play a key role in the development of habitat conservation plans. Without local agency involvement, individual landowners seeking to develop their land would have to file individual protection plans. This would require each landowner to hire a biologist and undergo the scrutiny of government regulators. Local agency involvement streamlines this process by developing plans covering a large area or region. Large-scale plans are better able to preserve sensitive habitat and channel development to less sensitive areas.

6 Cal. Gov't Code § 66477.

7 *See* 16 U.S.C. §§ 1531 and following (federal Endangered Species Act), Cal. Fish & Game Code §§ 2050 and following (California Endangered Species Act).

For More Information

For more information about federal and state endangered species laws, see *A Local Official's Guide to Habitat Conservation Laws* at www.ilsg.org/habitat.

Developing an area-wide plan, however, can be highly contentious, particularly if the plan limits development on certain properties. The process can focus landowner frustration on local government. Many local agencies have found that proactive public outreach strategies, such as extensive stakeholder involvement, are essential in gaining community acceptance of area-wide species protection plans.

COASTAL ACT

Development in the state's renowned coastal areas is governed by the Coastal Act[8], which empowers the California Coastal Commission to regulate all development in the "coastal zone." (The exception to this is the San Francisco Bay Area, where the San Francisco Bay Conservation and Development Commission governs development). The coastal zone is generally defined as the area that extends 1000 yards inland from the mean high tide line of the sea. The boundary can extend even further in estuarine areas.

The cornerstones of the Coastal Act are to preserve public access to the sea and shoreline and to encourage public participation in the development of coastal resources. The Act encourages the balancing of recreational and industrial uses of coastal resources and reconciles the conflicting nature of these goals by declaring that they be resolved in a manner that provides the greatest protection of significant coastal resources.

Any person who wishes to undertake any development in the coastal zone must first obtain a "coastal development permit." The Coastal Commission delegates authority to issue coastal development permits to local agencies that have an approved "local coastal program" (LCP). Each of the 73 cities and counties in the coastal zone must prepare an LCP for the agency's portion of the coastal zone for review and certification by the Coastal Commission. The purpose of this procedure is to ensure that LCPs reflect local issues and concerns while simultaneously meeting the statewide goals of the Coastal Act.

Getting an LCP approved by the Coastal Commission is not always easy. An LCP usually consists of two parts—a land use plan (similar to a specific plan for the coastal area) and the implementing zoning ordinances. These two elements can be submitted for approval at the same time or in two stages. The Coastal Commission will approve an LCP upon determining that it achieves the basic goals of the Coastal Act. The Coastal Commission will reject the LCP if it finds a "substantial issue" as to its conformity with the policies of the Coastal Act. If a substantial issue is found, the Coastal Commission must hold a public hearing.

Even after an LCP has been approved, the Coastal Commission retains a degree of control over development in the coastal zone. For example, the Coastal Commission must review each certified LCP at least once every five years to evaluate its effectiveness in implementing the Coastal Act.

Additionally, the Coastal Commission retains appeal jurisdiction (meaning it can overturn local decisions) for projects located between the sea and the first public road paralleling the sea or 300 feet from the beach, whichever is greater. The Coastal Commission retains similar authority over properties located on coastal bluffs or near estuaries. Either the applicant or someone who communicated a viewpoint (by speaking or writing) during the application process may appeal. The appeal must allege that the development does not conform to the standards of the LCP or the public access policies of the Coastal Act.

[8] Cal. Pub. Res. Code §§ 30000 and following.

WATER QUALITY

Water quality regulations protect local wetlands, streams, rivers, drinking water, and the overall health of the community. The most basic goal of these regulations is to prevent runoff—such as from rain—from picking up silt, oils, toxic metals, road grime, animal wastes, lawn fertilizers, farm chemicals, and other pollutants before draining into natural watercourses.

As a planning commissioner, you will be considering water quality issues in terms of whether a specific project includes all possible actions to minimize polluted runoff. For example, since construction sites are a major source of water sediments that upset stream and river environments, developers are often required to place sod barriers around storm drains to limit sediment discharge.

The federal Clean Water Act prohibits the discharge of any pollutant—anything that alters natural water quality—into any surface water without a permit.[9] The Act establishes two strategies to this end. The first requires the use of "best available technologies" (BATs) and "best management practices" (BMPs) to minimize the amount of pollution that flows away from any one site. These approaches can be used to either prevent the discharge of a pollutant into a water system or require treatment of a pollutant before it reaches the system. Prevention is usually preferred because it costs less than treatment. The second strategy relies on determining the amount of pollution that can be released into surface waters without adversely affecting their beneficial uses.

The Clean Water Act also distinguishes "point sources" and "nonpoint sources" of pollution. A point source is a confined or discrete conveyance, like a drainage pipe. A nonpoint source is anything else that discharges into surface water. Examples include runoff from agricultural operations or roads. As you might suspect, it is generally easier to identify and regulate point sources of pollution than nonpoint sources—and the law has recognized that fact by setting separate planning standards for each.

In California, the Clean Water Act is enforced by the State Water Resources Control Board (SWRCB), which in turn divides the state into nine geographic areas governed by Regional Water Quality Control Boards (RWQCBs). Each regional board serves a specific watershed and must develop a Basin Plan and a Watershed Management Initiative to guide regional watershed priorities. There are several mechanisms that these agencies use to control the discharge of pollutants:

- **National Pollutant Discharge Elimination System (NPDES).** The NPDES system prohibits all point source discharges into any body of water (which in California includes groundwater) without a permit.[10] The permit system allows for the imposition of best practices to minimize pollution discharge and assure that the discharge will not violate state water quality standards. These standards may change to reflect improvements in technology and management practices.
- **Stormwater Drainage Systems.** Storm runoff usually begins as a nonpoint source, but flows into point sources as storm drainage systems collect it. Accordingly, storm systems (except those in very rural areas) require NPDES permits. To obtain a permit, local agencies must reduce pollutants to the *maximum extent practicable*[11] by implementing a stormwater management plan. The management plan must specify what best management practices (BMPs) will be used to address certain program areas. The program areas include public education and outreach, illicit discharge detection and elimination, construction and post-construction, and good housekeeping for municipal operations. In general, municipalities with a population over 100,000 are required to conduct chemical monitoring, but smaller municipalities are not.

For More Information

The State Water Resources Control Board has developed a useful Model Urban Runoff Program. See www.swrcb.ca.gov/stormwtr/murp.html.

[9] 33 U.S.C. §§ 1342, 1344.

[10] 33 U.S.C. § 1344.

[11] This is the performance standard specified in Section 402(p) of the Clean Water Act, 33 U.S.C. 1342(p).

- **Publicly Owned Treatment Works (POTWs).** There is a separate set of standards for publicly owned water treatment works. One of the reasons for the separate standards is to assure that direct discharge requirements are not compromised by industry's use of a publicly owned sewage treatment works. Often, contaminants must be pretreated by businesses before they can enter a public water treatment system.
- **Nonpoint Source Management Plans.** The state must develop a nonpoint source management plan, which serves a particularly important role in many coastal areas where nonpoint sources have been identified as a major source of degradation in coastal waters. The State Water Resources Control Board and the Coastal Commission have identified approximately 60 nonpoint source pollution management measures, many of which address nonpoint source pollution resulting from development.

In addition, the state sets a total maximum daily load (TMDL) pollutant standard for certain bodies of water. The state first identifies how each body of water will be used—such as for drinking water, recreation, or supporting aquatic life—and sets appropriate quality standards. Lakes, rivers, and streams that are too polluted to serve their designated use even with technology-based effluent limitations[12] are defined as "impaired." For each of these water bodies, the state calculates a TMDL, which is the total amount of pollutant the water body can tolerate, plus a margin of safety, and still meet water quality standards.[13]

The TMDL accounts for all sources of pollutant (point and nonpoint) and sets numeric targets that will ensure recovery of the impaired body. Once TMDLs are set, the state must allocate the TMDL among all the sources contributing that pollutant to the watershed, including municipal wastewater, stormwater discharges, industrial sources, and nonpoint sources like agricultural runoff. The TMDL strategy in California relies on an adaptive process that matches management capabilities with scientific understanding. It also relies heavily on engaging the public and cultivating an understanding of watershed issues. Once established, TMDLs must be incorporated into the water quality plans (basin plans) formulated by the regional boards and the NPDES permits issued in the watershed.

WETLANDS

In addition to water quality regulations, the Clean Water Act prohibits the filling and dredging of wetlands without a permit issued by the Army Corps of Engineers.[14] The filling of a wetland is a common issue encountered by many planning commissioners. Fill comprises any material used to replace an aquatic area with dry land or raise the bottom elevation of a water body. This means that the scope of wetland protections extends to mechanized land-clearing activities—like grading—that result in a redeposit of soil in wetland areas.

The Clean Water Act grants the U.S. Environmental Protection Agency (EPA) authority over wetlands that are designated as "special aquatic sites." The EPA has developed a set of special standards that must be applied by the Corps of Engineers before it can approve a permit. The most significant of these is that the project cannot be approved when a practical and less environmentally adverse alternative exists (like changing the location of the project or the type of fill material). To the extent that damage cannot be avoided, the applicant must compensate for lost wetlands (often by restoring or upgrading degraded wetlands onsite or elsewhere).

Whether the Corps of Engineers grants such a permit will not be a direct concern of yours as a planning commissioner. To the extent that an individual project seeks to fill or dredge a wetland area, local agencies usually require the developer to obtain all the necessary permits from the Corps of Engineers (which may even involve compliance with the National Environmental Policy Act) before the application can be deemed complete. However, you do not have to approve a project just because a landowner has received such a permit.

AIR QUALITY

California has seven of the ten metropolitan areas in the country with the worst air quality. So-called mobile sources of pollution remain a major problem. Cars produce about half of the state's air pollution. Trucks,

[12] 33 U.S.C. § 1313(d).

[13] 33 U.S.C. § 1313(d)(1)(c).

[14] 33 U.S.C. § 1344, 33 C.F.R. 323.4(c).

[15] *See* 42 U.S.C. §§ 7401 and following.

buses, and trains make up another 10 percent. Although cars run much more cleanly today than they did in the past, their sheer number, coupled with increases in miles driven, make cleaning the air a difficult challenge.

Air quality is regulated through a complex system of federal, state, and local laws. The federal Clean Air Act requires the U.S. Environmental Protection Agency to set minimum air quality standards that all state and local programs must meet (called National Ambient Air Quality Standards or "NAAQS") for carbon monoxide, ozone, fine particulate matter (PM10), nitrogen dioxide, sulfur dioxide, and lead, among others.[15]

At the state level, responsibility for regulating air pollution is divided between the California Air Resources Board (ARB) and local and regional air pollution control districts (APCDs) and air quality management districts (AQMDs). The ARB prepares the State Implementation Plan (SIP) that describes the control measures the state will use to attain national standards. The state plan consists of emission standards for motor vehicles and consumer products. In addition, the ARB is responsible for oversight of state and local air pollution control programs, which are developed and implemented by 35 local air districts throughout the state. In metropolitan areas, the district board is usually made up of appointed local officials from around the region. In smaller areas, the county board of supervisors often serves as the air quality district board.

One of the primary responsibilities of local air districts is to adopt a local air quality plan, which forms the blueprint for how national air quality standards will be attained in the area. The goal of each plan is to achieve a five percent annual reduction in pollutants over each three-year attainment period. In addition, the local district must prepare attainment plans for each pollutant in the area that exceeds federal standards. Failure to meet these goals may result in loss of federal transportation funding.

Local air districts also implement plans to reduce the number of vehicle trips and the total miles traveled by motor vehicle. These measures often include ridesharing and parking buy-back programs. Attainment plans for areas designated as moderate, serious, severe, or extreme

non-attainment areas must make provisions for the regulation of emissions from "indirect sources."[16] These include any facility or road that attracts or may attract vehicles.[17] Each district's attainment plan, once adopted by the governing board, is transmitted to the Air Resources Board for approval and then included in the State Implementation Plan.

As a planning commissioner, you will not be directly involved in air quality regulation. However, your decisions will have an impact to the extent that they support viable transportation alternatives to the automobile. Although most communities have been planned around the automobile, several strategies can help reverse this trend:

- Encourage mixed-use development that is compact, and bicycle- and pedestrian-friendly.
- Encourage commercial developments to include bicycle parking and changing facilities for cyclists.
- Ensure that large developments include bicycle paths or lanes to make cycling to work or for errands a viable and safe option.

ENERGY

How far people have to travel between home, work, and daily errands; how homes are sited; and how buildings are designed have a tremendous impact on the consumption of electricity, natural gas, and motor fuels. Lowering a community's energy consumption can save money, protect the environment, and improve air quality. Two areas where these issues arise during your

[16] Cal. Health & Safety Code §§ 40716(a), 40918-40920.5.

[17] 42 U.S.C. § 7410(a)(5)(c).

service as a planning commissioner are transportation and community design:

- **Transportation.** Transportation is responsible for approximately 46 percent of all energy used in California, much higher than the national average. Strategies aimed at lowering automobile usage can thus be extremely effective at reducing a community's energy consumption. Policies that are bicycle- and pedestrian-friendly and that support mixed-use development, transit-oriented development, and more compact development will all have energy payoffs.
- **Community Design.** Community design is another area in which there are numerous opportunities for energy conservation. The Solar Rights Act of 1978 already requires that new subdivisions provide, to the extent feasible, future opportunities for natural heating and cooling and directs local agencies to deny permits to applicants who do not meet this requirement.[18] Local agencies can take advantage of natural heating and cooling by considering solar access issues early during subdivision review. Staff should review existing regulations, like setback or height limits, to ensure that they do not interfere with solar access opportunities. In addition, the amount of pavement, the number and types of trees, street widths, and numerous other design features also impact overall community energy consumption. Small changes in these areas can have tremendous energy payoffs.

GREEN BUILDING

Communities are increasingly asking that public and private buildings be constructed using "green" building techniques. Green building involves using energy, water, building materials, and land more efficiently. It also results in healthier indoor environments with cleaner

CONNECTING LAND USE PLANNING AND ENERGY CONSERVATION

- **Encourage Efficient Building Construction.** How homes, offices, and other buildings are constructed can have a major impact on energy use. California already has minimum energy performance standards for new residential and commercial construction. Local planners and building inspectors enforce these standards at the local level. However, local agencies may choose to impose stricter standards than the state minimums.
- **Point Out Alternatives During the Design Review Process.** Communities can help developers comply with and exceed local and state requirements by providing assistance during various phases of the development process. For example, staff can suggest simple techniques to increase solar access, like moving garages, modifying street or home orientation, and staggering building placement on lots. Or, they may suggest the use of daylight as a means to reduce electricity use in new commercial buildings.
- **Adopt an Energy Policy or an Energy Element in the General Plan.** To promote energy efficiency, some agencies have adopted an energy element in their general plan.[19] Individual ordinances implement the policies. An energy element ensures conformity between energy issues and other plan elements. Another option is to adopt a local energy policy to direct each agency department to implement in-house energy management programs or to evaluate the potential of alternative energy sources.
- **Promote Conservation.** Communities may wish to adopt regulations promoting energy conservation. Before passing a new regulation, however, it is important to evaluate the cost effectiveness and to review existing ordinances and building codes to make them consistent with energy objectives. For example, requiring solar heating for all new swimming pools is not always the most cost-effective approach since in some areas swimming pool covers are equally effective.
- **Provide Incentives.** Voluntary incentives designed to encourage energy conservation can be effective. For example, some cities waive or reduce building permit fees or give density bonuses for exceeding state building standards.

[18] Cal. Civ. Code § 714.

[19] For tips on creating an energy element, refer to the *General Plan Guidelines* (Governor's Office of Planning and Research, 2003).

For More Information

The *Energy Aware Planning Guide I* and the *Energy Aware Planning Guide II: Energy Facilities,* published by the California Energy Commission, are excellent resources on ways local agencies can promote energy conservation. They are available at www.energy.ca.gov/reports/energy_aware_guide.html.

air, fewer toxins, and more natural light. Green building reduces the overall impact of a development project on the environment and can also reduce long-term costs for building owners and for taxpayers.

Some techniques involved in green building include:

- Siting buildings to take advantage of natural heating and cooling and to encourage access by walking, bicycling, and mass transit.
- Using existing landscaping and natural features where possible and landscaping with plants with low water and pesticide needs.
- Incorporating energy efficiency measures (see Energy section on page 75).
- Using construction materials that are sustainably harvested, of recycled content and recyclable, durable, and locally produced.
- Using dimensional planning and other material efficiency strategies. These strategies reduce the amount of building materials needed and cut construction costs. One example is designing rooms on 4-foot multiples to conform to standard-sized wallboard and plywood sheets.
- Reusing and recycling construction and demolition materials. For example, using inert demolition materials as a base course for a parking lot keeps materials out of landfills and costs less.
- Designing with adequate space to facilitate recycling collection and to incorporate a solid waste management program that prevents waste generation.
- Designing for dual plumbing to use recycled water for toilet flushing or a gray water system that recovers rainwater or other nonpotable water for site irrigation.
- Minimizing wastewater by using ultra low-flush toilets, low-flow showerheads, and other water-conserving fixtures.
- Improving indoor air quality through a variety of methods, such as the use of construction materials and interior finish products with zero or low emissions.

Green building often costs more up front than traditional building methods, but over the life of a building is generally less expensive. Savings include lower energy costs and operating expenses, improved occupant health and productivity (office buildings), and reduced pollution and landfill.

A number of communities in California and across the country have developed programs to encourage green building in private development projects. Some communities offer technical assistance, grants, streamlined permitting, and other incentives. In a few cases, communities are requiring private developers to meet certain green building standards. Many local agencies have also committed to using green building techniques in new public buildings.

For More Information

For more information on green building and how communities are encouraging its use, check out the following resources:

- California Integrated Waste Management Board, www.ciwmb.ca.gov/greenbuilding
- U.S. Green Building Council, www.usgbc.org
- U.S. Department of Energy, www.sustainable.doe.gov/buildings/gbintro.shtml

BROWNFIELDS

"Brownfields" are abandoned, idled, or underutilized industrial or commercial properties where redevelopment is complicated by perceived or real contamination that can add time, cost, and uncertainty to a redevelopment project. While generally located in urban areas and in older suburbs, brownfields may also be present in rural communities in the form of closed lumber mills, abandoned mines, and similar facilities.

Brownfields range in size from hundreds of acres to small lots. Most have only low to medium levels of contamination, although often this cannot be determined before performing an environmental assessment. Some are not contaminated at all but are merely perceived as such due to a previous use. Proper clean-up is critical for contaminated sites, but such clean-up should not be viewed as a reason not to develop the site at all. Contamination can affect the community even if the site remains undeveloped.

Redeveloping brownfields can play a critical role in revitalizing a community by removing environmental hazards and relieving pressure on "greenfield" (open space and farmland) development. For local agencies, brownfield development also returns productive property to the tax rolls, stimulates the local economy and creates jobs. In addition, to the extent that the area is revitalized, the project can reverse negative perceptions about crime, safety and community health.

Developing brownfields can be complicated. The laws in this area—such as the federal Superfund law—impose strict clean-up requirements on owners, even when a previous owner actually caused the contamination. As a result, many developers are reluctant to purchase brownfield properties. There are a number of additional challenges to redeveloping brownfield sites:

- **Infrastructure.** Many brownfields are served by aging or obsolete infrastructure that must be upgraded, expanded, or replaced for development to be viable.
- **Liability concerns.** Under California law, liability for contamination attaches to current and past property owners, regardless of who actually contaminated the site. This has made many developers unwilling to purchase sites that may have some level of contamination.
- **Uncertainty.** Assessing a brownfield to determine what, if any, contamination exists can be costly. It is often difficult to determine ahead of time how much an assessment will cost and often the assessment is more costly and time-consuming than the clean-up itself.
- **Regulatory Requirements.** The complicated array of federal, state, and local laws that come into play when redeveloping a brownfield are often more than developers want to take on.
- **Financing.** Many banks are less willing to finance brownfield projects because of the perceived risks. When financing can be obtained, it is often at terms that are more onerous than they would be for a greenfield project.
- **Neighbors.** Brownfield sites are generally surrounded by other development, which means more neighbors and more potential opposition. The possibility of conflict over a proposed project is often enough to keep developers away.

However, none of these challenges is insurmountable. Both the federal and state governments have focused in recent years on making it easier to redevelop brownfields while still ensuring that such sites are properly cleaned and are safe for the community. This attention has

For More Information

For more information on brownfield development, see:

- California Center for Land Recycling, www.cclr.org
- National Governor's Association Center for Best Practices, www.nga.org/center
- U.S. Environmental Protection Agency's Brownfields Technology Support Center, www.brownfieldstsc.org
- International City County Management Association, www.icma.org

resulted in changes in laws and regulations, such as grants, low-interest loans, and tax incentive and extended financial protections to lenders involved with brownfield redevelopment, As a result, more and more communities are experiencing success at redeveloping brownfields and in turn developing more vibrant, livable communities.

Local governments can take an active role in redeveloping brownfield properties in a variety of ways. They can match potential businesses and developers with reuse sites. Local governments can coordinate funding, assume some financial responsibility for site remediation costs, offer incentives, and serve as links between private developers and state/federal environmental regulatory agencies. Some local governments have publicly acquired brownfield properties and handled the redevelopment on their own.

HAZARDOUS MATERIALS

The use and transportation of hazardous materials raises serious safety concerns. Many commercial, agricultural, and industrial operations engage in the transportation, storage, generation, or disposal of hazardous materials. Some facilities may have the potential for leaking hazardous materials into the local groundwater. Others may impact a local wastewater treatment system or the capacity of local law enforcement and fire departments to respond to hazardous materials spills or incidents.

What qualifies as a hazardous material is defined by various state and federal agencies. As a rough guideline, a material is hazardous if it is corrosive, explosive, oxidic, flammable, or poisonous. Careful planning can reduce the risk these materials pose to the community. In evaluating project proposals, you should assess whether they involve materials that are hazardous to humans, animals, or the environment. Other local planning considerations might include:

- **Hazardous Material Inventory**. A good starting point for minimizing risk related to hazardous materials is to create an inventory of businesses, sites, and transportation routes where hazardous materials are an issue. Disclosure ordinances, as they are called, vary in administrative procedures, financing schemes, and degree of public access to data (for homeland security reasons), but they provide a good foundation upon which to build a local hazardous materials managment program. Most counties maintain hazardous material inventories under the state's Unified Hazardous Waste and Hazardous Materials Management Regulatory Program.[20] This is known as the "unified program." State law requires counties to become certified unified program agencies (CUPAs) to implement the program. Cities have the option of applying to be designated a CUPA.

- **Siting.** As a planning commissioner, you are most likely to encounter hazardous materials issues in the context of siting facilities and transportation routes. Facilities that may involve hazardous materials should not be sited close to residential areas, hospitals, or schools.[21] Safe transportation or truck routes that limit residential exposure are also important considerations. In many instances, these decisions will be based on a number of project-specific characteristics, like the type of chemical or material at issue, wind direction, types of neighboring uses, and whether a material can be disposed of on-site or will need to be transported away from the site. Local agencies can be assured of receiving such information as part of project applications by requiring that applicants disclose whether hazardous materials will be present on the property.[22]

- **Local Permit Requirements**. Not all businesses that use hazardous materials—such as laboratories, printing facilities, and electronics manufacturing—need to apply for a development permit. In some cases, they merely move into existing buildings that were not necessarily designed with hazardous materials in mind. To ensure that businesses involving hazardous materials do not go unnoticed, many communities require such businesses to apply for a hazardous materials permit, which helps the local agency keep track of where dangerous materials are being used, processed, and transported.

- **Transportation.** Transportation of hazardous materials is largely regulated by state and federal law. Local authority is limited to setting truck routes and hours of use. In reviewing proposed plans for new

[20] Cal. Health & Safety Code §§ 25404 and following.

[21] Cal. Health & Safety Code § 42301.6.

[22] *See* Cal. Gov't Code § 65850.2.

[23] Cal. Pub. Res. Code §§ 40000 and following.

commercial or industrial projects, planners may recommend new truck routes if existing ones are not adequate.

- **Solid Waste.** Local agencies must adopt plans for the reduction, recycling, and reuse of solid waste.[23] These plans generally include elements that address where and how hazardous wastes can be disposed of separate from the general waste stream. City plans should be consistent with the county solid waste plan. Reasonable zoning controls may be imposed on hazardous waste facilities, so long as such regulations do not totally prohibit such facilities.
- **Emergency Response**. Complete prevention of all hazardous material spills or incidents is impossible. Each community should have a hazardous materials emergency response plan that specifies the responsibilities of local law enforcement, fire, and other public safety personnel and that coordinate city resources with county personnel, the California Highway Patrol, regional water quality boards, and industry resources. These plans can help you analyze the extent to which current systems can address the needs of proposed projects, and the extent to which an applicant may need to develop on-site safety procedures to minimize risks.

Most hazardous materials issues will be addressed during the environmental review process.

HAZARDOUS MATERIALS CHECKLIST

The following are some hazardous materials issues to consider when reviewing proposed developments:

- How will any hazardous waste generated at the proposed facility be disposed of?
- Will hazardous waste be transported to an off-site treatment facility or disposed of onsite?
- If hazardous waste will be disposed of onsite, by what method?
- Have the types of hazardous materials that will be generated, transported, stored, or disposed of in the proposed development been fully identified?
- Are the potential hazards adequately addressed and mitigated in environmental documents?
- Are hazardous sites disproportionately located within or near low-income areas or neighborhoods that have a high percentage of minorities?
- Are protective measures and education programs in place to assure that untreated hazardous materials will not be disposed of through the sewage or wastewater treatment system?
- How will hazardous materials be transported and what is the safest route?
- How does the proposed project impact the community's emergency response capabilities?
- What added costs will the project impose on law enforcement and fire departments?

SECTION 7

Infrastructure and Urban Development

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Infrastructure and Urban Development

ANNEXATIONS & SPHERES OF INFLUENCE

Every county (except San Francisco) has a Local Agency Formation Commission, commonly called a "LAFCO." These commissions oversee the formation, dissolution, and boundary changes of all cities and special districts within the county.[1] LAFCOs are charged with encouraging well-ordered urban development patterns, discouraging urban sprawl, and preserving open space and prime agricultural lands.[2] A city must seek LAFCO approval before it can annex territory into its boundaries. The same is true for a special district—like a fire or water service district—that seeks to change its service area.

Most LAFCOs have seven members: two from the county board of supervisors; two from the city councils within the county; two from the legislative bodies of special districts within the county; and one member of the public selected by the other six members.[3] Local officials serving on a LAFCO board must take a broad regional perspective and represent the interests of the general public when making decisions, not just the interests of their own agencies.

Each LAFCO designates a sphere of influence for every city and special district within its county and updates each sphere at least once every five years. A sphere of influence is a mapped area that represents the probable future boundaries and service area of a local agency. Typically, an agency's sphere of influence extends beyond its current boundaries, but that is not required.[4]

Bringing territory into a city's sphere of influence is often considered a precursor to annexation and can be controversial. A LAFCO's determination to extend a sphere of influence usually depends on whether the extension reflects the logical development of the region. The LAFCO will also consider the extent to which an extension would threaten agricultural and open space lands and require additional or improved public facilities.

Territory may be annexed to a city only if it is in the same county as and contiguous to the annexing city.[5]

1 Cal. Gov't Code §§ 56021, 56375.
2 Cal. Gov't Code § 56300; Cal. Gov't Code § 56377.
3 Cal. Gov't Code § 56325.
4 *Agoura Hills v. LAFCO*, 198 Cal. App. 3d 480 (1988), Cal. Gov't Code § 56425.
5 Cal. Gov't Code §§ 56741, 56119, 56031.

Annexations that leave "islands" of unincorporated land completely surrounded by the annexing city are generally prohibited. Annexations are initiated by resolution (from the city or county) or by a petition signed by five percent of the resident voters in the area to be annexed (or five percent of the landowners who own at least five percent of the assessed value of the land to be annexed).[6]

If annexation is initiated by a resolution from the city or county, the resolution must be accompanied by a plan for providing services within the affected territory. At a minimum, the plan must discuss the feasibility, level, and range of services (like roads, law enforcement, fire protection, sewer, and water) to be extended and how they will be financed.[7]

Annexations can have significant financial effects on the county from which territory is being annexed. For example, counties generally lose sources of tax revenue with each annexation by a city, but must nevertheless maintain many of the social services demanded by the annexed area. To minimize these financial impacts, the annexing city and the county must negotiate a revenue sharing agreement that assures revenue neutrality at least for the foreseeable future.[8]

ECONOMIC DEVELOPMENT

A vibrant local economy is essential to a healthy community. Although local agencies do not actually produce goods, the regulatory climate that they create influences the business climate. Accordingly, planning regulations that assure adequate space to attract a diverse array of new businesses and expand existing ones go a long way toward assuring that there is ample opportunity for the local economy to grow.

There are several common themes to economic development:

- **Downtown or Neighborhood Revitalization.** Downtown revitalization usually involves encouraging a combination of housing and businesses to locate downtown. Generally, more businesses will relocate to an area once a critical mass of new residents and businesses have located there.
- **Industrial or Business Clusters.** "Clusters" are networks of businesses that create a synergistic relationship. These networks involve businesses that—even though they may compete—need a similar infrastructure to operate. The computer chip industry in Silicon Valley is an example of a cluster. Many companies located there due to a knowledgeable workforce and a network of specialized support businesses. Not all clusters are as renowned. One community, for example, conducted a survey and discovered that it had several candy manufacturers within its region, and is building its economic development strategy accordingly. Other communities focus on tourism or agricultural product clusters.
- **Small Businesses.** Small businesses are job and wealth creators for the local community. Most economic development strategies devote at least some resources to helping new businesses get off the ground and supporting existing enterprises.

Formulating an economic development strategy generally involves a three-step process: analyzing the strengths and weaknesses of the local economy, establishing goals, and structuring an effective implementation program. The key is usually to look for strengths within the existing economy and leverage those characteristics.

As a planning commissioner, you will most commonly be involved in economic development to the extent that these goals are included in the general plan. For example, if an economic development strategy in the general plan called for the development of farm tourism (like wine tasting) or a scenic byway, your role would be to assure that plans, ordinances, and projects are approved in a way that is consistent with that purpose. Building in certain areas would be closely monitored, any zoning would likely encourage businesses like bed and breakfasts and boutique restaurants.

The overarching goal of local economic development programs is the creation of quality jobs for local residents and the long-term economic stability. As a result, many communities focus on attracting additional businesses to their community. This requires an examination of existing assets and economic conditions,

6 Cal. Gov't Code §§ 56654(a), 56767.

7 Cal. Gov't Code § 56653.

8 Cal. Rev. & Tax. Code § 99.

CREATING A CLIMATE FOR ECONOMIC GROWTH

- Is there a central list of all required permits?
- Is there a guidebook or brochure that helps direct businesses through the development process?
- Do applicants know how long each step of the permit process will take?
- Has the development community been surveyed to see how well the process works?
- Are case-by-case decisions consistent with adopted policies?
- Does the process strike a balance between flexibility and consistency?

such as proximity to markets and raw materials, labor cost and supply, quality of the environment, cost and supply of energy, transportation networks, availability of public services, and cost of land.

One factor frequently cited by many corporate executives in deciding where to locate is the community's attitude toward business. They want to know how the community treats existing businesses, the quality of local permit and regulatory processes, and whether industry is perceived as a contributing member of the community or as the opponent of the public sector. Assuring that your community is business-friendly while also pursuing other quality-of-life goals (a clean environment, a variety of housing choices, etc.) will go a long way towards achieving long-term economic prosperity.

JOBS-HOUSING BALANCE

A basic planning goal is to ensure that jobs and housing in a community are in "balance." When jobs and housing are imbalanced, this means that there is a mismatch between the locations of available housing and the locations of employment centers in a community, or a mismatch between the types of housing and the types of jobs available in a given area. When a community has a jobs-housing imbalance, it is difficult for most residents to live close to where they work. For example, expensive homes surrounding a shopping mall will likely not provide an opportunity for mall employees to live near their work.

When there are numerous people who live far from their workplaces and commute by car, this leads to greater traffic congestion, increased driver frustration, and diminished air quality. The longer people must commute, the more time they lose and the less likely they are to engage in community activities. Another major impact of a jobs-housing imbalance is that it can make it harder for a community to retain and attract employers. Employers in job-rich, housing-poor areas find are finding it increasingly difficult to attract skilled workers, often leading them to move elsewhere. Corporate executives frequently cite sufficient housing choices for employees as a primary consideration in locating new facilities.

There is no magic ratio for determining when jobs and housing are in balance. A lot will depend on demographics. A community in which a high percentage of the population is single adults will require more jobs; one with more children will require fewer. Additionally, simply creating a certain number of homes and jobs based on a numerical formula will not solve the problems associated with a jobs-housing imbalance. Jobs available in a community need to match the skills of the labor force, and housing should be available at prices and sizes that are appropriate to the local employment base so that residents have a choice of living close to where they work.

Balancing jobs and housing requires cooperation among all of the local agencies in a region. If one jurisdiction in a region is only building housing and not attracting commercial development, or the other way around, this will only contribute to a greater jobs-housing imbalance and the associated problems. Even with full regional collaboration, the solutions are incremental. Each agency

will need to assure that a variety of housing choices is in the "planning pipeline" to match planned commercial development. When approving a large commercial project, ask yourself where the employees will live and plan accordingly. As all communities in a region balance job opportunities and housing choices, people are more likely to live in areas that are close to their work.

Over the long term, addressing a jobs-housing imbalance means assuring that housing at a mix of income levels is available in the vicinity of all major employment centers. This can be done either by creating new housing near existing or planned job centers or by attracting more employment opportunities that are compatible with residential zones to areas with excess housing capacity. Encouraging infill, mixed-use, and transit-oriented development can all help create a more balanced community. In addition, the following techniques have been used to address jobs-housing imbalance issues and decrease the distances people travel between home and work:

- **Encourage Resident-Appropriate Development.** Attracting jobs that do not match the skills of local residents and/or developing housing that is unaffordable for local workers will only exacerbate a jobs-housing imbalance. Communities should understand their current and projected future demographics so that they can promote jobs and housing development that is appropriate to their residents.
- **Establish "First Source" Programs.** Programs that encourage employers to hire workers locally can improve the local economy and reduce the traffic associated with commuting.
- **Tailor Local Education Programs.** Programs that bring employers together with vocational and educational providers can help residents develop the skills necessary to participate in the local job market so that they do not have to commute elsewhere for work.
- **Pursue Inter-Jurisdictional Cooperation.** Neighboring communities can work together across a regional commute shed as they attempt to alleviate the spatial mismatch between jobs and housing.

While working towards a jobs-housing balance in the long term, in the short term, a community may also wish to pursue strategies that improve mobility. While not targeted at the root problem of segregated or incompatible land uses, improving mobility can improve overall quality of life. Telecommuting, alternative work schedules, ride sharing, parking buy-backs, subsidized transit passes, and employer sponsored shuttle-bus services can all reduce the impact of the spatial separation of jobs and housing.

REDEVELOPMENT

Redevelopment agencies are specially created entities that focus on revitalizing "blighted" urban areas.[9] Redevelopment agencies are authorized to make loans, construct public improvements, rehabilitate or remove structures, and provide affordable housing. The idea is that an investment by the redevelopment agency will spur new community investment. Redevelopment agencies may also—in a process called "assembling"—condemn land by eminent domain and turn it over to a private person or organization for redevelopment.

Redevelopment agencies are separate legal entities from the cities and counties that create them, although the city council or board of supervisors often doubles as the redevelopment board. A different set of laws governs the authority of redevelopment agencies. In larger communities, they often will have their own staff, but in smaller communities, city or county staff will serve both entities. Revenues generated by redevelopment can be used to reimburse the city or county for staff time and other expenses.

An area must be deemed blighted before a redevelopment agency can be created. What constitutes "blight" is sometimes controversial, but usually means areas with high concentrations of unsafe or poorly maintained buildings, high vacancy rates, obsolete infrastructure, or other conditions—like stagnant property values, high criminal activity, or lack of neighborhood businesses—that hinder economic viability. The conditions must be substantial enough to cause a serious burden that cannot reasonably be alleviated by private enterprise alone. Non-blighted properties may be included only in limited circumstances. The exception is that non-blighted (and even non-contiguous) areas may be included if needed to alleviate any displacement that might result from the redevelopment project or to provide low- or moderate-income housing.

The cost of redevelopment is paid through tax increment financing. The underlying assumption is that the assessed property values in a redevelopment area will increase as a result of increased investment. The increase in assessed property values means more tax will be collected within the area. The growth in the property tax collected on each property is the "tax increment." The tax increment is returned to the redevelopment agency and is used to repay the initial investment in the area and to provide more affordable housing. Redevelopment agencies can also generate revenue through transient occupancy taxes, land sale proceeds, lease revenues, other government funding, and bonds.

As a planning commissioner, you may be involved in the creation of new redevelopment areas. This is an involved process that can take a year or more. An agency can start the process on its own initiative or in response to a community request. The first step involves an initial survey and feasibility study. The planning commission

THREE MORE THINGS YOU SHOULD KNOW ABOUT REDEVELOPMENT

- **Affordable Housing.** Redevelopment agencies must act to create more affordable housing units in three ways. First, they must set aside at least 20 percent of the new property tax revenue generated by redevelopment for improving, preserving, and increasing the supply of low- and moderate-income housing in the redevelopment area. Second, affordable units that are destroyed by a redevelopment project must be replaced. Third, 15 percent (or, if the agency is the builder, 30 percent) of all new and rehabilitated housing in the redevelopment area must be affordable to low- and moderate-income households.
- **Displacement.** Redevelopment agencies must help all eligible residents and businesses who are displaced due to redevelopment to find a new location and pay their moving expenses. People cannot be displaced unless comparable replacement housing is available. "Comparable" means decent, safe, sanitary, and affordable. Payments may also be required when the new housing is more expansive or exceeds the person's or family's affordable housing cost as determined by law.
- **Project Area Committees.** A project area committee (PAC)—made up of residential owners and tenants, businesses, and organizations—must be formed if a substantial number of low- and moderate-income families will be displaced by the project. The PAC forms a bridge between the community and the redevelopment agency on matters related to the provision of replacement housing, relocations, and other issues. The PAC also reviews the draft redevelopment plan and makes recommendations to the agency board regarding whether the plan should be adopted.

9 Cal. Health & Safety Code §§ 33000 and following.

GOOD INFRASTRUCTURE PLANNING

Investment in existing streets, schools, public utilities, and other infrastructure encourages infill development. On the flip side, limiting or phasing development in areas with limited infrastructure discourages "leapfrog" development that extends infrastructure well beyond existing boundaries. There are a number of creative financing strategies that can strengthen public services and facilities in urban areas, including:

- **Establish Priority Funding Areas.** Priority funding areas can be used to revitalize existing neighborhoods or serve as a catalyst for key infill projects.
- **Fix it First Policies.** Similar to priority funding areas, fix it first policies promote investment in existing public facilities and structures to bring them in line with newer development in other areas.
- **Capital and Planning Grants.** Counties and councils of governments often give priority to smart growth objectives in distributing state and federal transportation dollars.
- **Brownfield Redevelopment Act.** To encourage infill projects, liability related to contaminated "brownfield" properties is limited in some cases for those who participate in the clean-up and redevelopment of the property.

will review these documents and, assuming it is in the best interest of the community, adopt a preliminary plan. The preliminary plan then goes to the redevelopment board. If accepted, it is then sent to the state Board of Equalization, the county, and all cities and special districts that receive property taxes from the area.

The next step is to develop a more technical draft plan that includes the reasons for selecting the area; a description of the physical, social, and economic conditions; and proposed financing methods. The draft plan, along with the preliminary report and the draft environmental impact report (EIR), is then circulated for comment. The planning commission then submits a report and recommendation on the redevelopment plan and its conformity to the general plan to the governing body of the city or county. The planning commission may also recommend for or against approval

The redevelopment plan is then considered for adoption by the governing body following a joint public hearing of the redevelopment agency and the council or board. At the same time, the governing body adopts a five-year implementation plan for the project. Notice of the hearing must be published for four consecutive weeks and written notices must be sent to each property owner in the proposed redevelopment area by certified mail advising them of the hearing and informing them that their property is subject to acquisition by purchase or condemnation.

CAPITAL IMPROVEMENTS PLANS

A capital improvements plan ("CIP") is a plan for the orderly expansion and financing of infrastructure—like roads, drainage, sewers, water lines, parks, libraries, and other civic amenities—to meet the needs of new and existing development. These costs are critical expenditures that can seldom be covered through a local agency's annual operating budget. Once a plan is adopted, it can be used to establish a fee schedule for new development.

To provide a simple example, if a city's capital improvements plan calls for each neighborhood to have its own park and the estimated cost for a park in a new 2000-unit development is $100,000, the per-unit fee would be $500. Most calculations are more complex, but the idea is the same: new development should pick up its fair share of the cost of infrastructure. Remember, however, that new development cannot be asked to make up for shortcomings in existing infrastructure. For example, if a county's existing wastewater treatment plant is

old, inefficient, and undersized, the county cannot place the entire cost of remedying these problems on new development.

Most capital improvements planning programs consist of four steps:

- **Project identification.** Perform a needs assessment on current facilities and project the need for additional facilities. Prepare preliminary cost estimates.
- **Prioritization.** List projects according to need. Explain why each project is important and describe the consequences of not funding it. The list must not only be flexible enough to respond to development opportunities, but also must be guided by the long-term benefits that will accrue to the local agency and its residents.
- **Reconciliation and Scheduling.** Reconcile the prioritized list into a plan that coordinates improvement scheduling and matches projects with available financing.
- **Adoption.** Formally review and adopt the plan. This is usually done by the governing body.

With careful capital improvements planning, local agencies run a lower risk of a major public works crisis that will require rapid and costly action to remedy. Additionally, local officials can gain a better understanding of the desires and needs of the community. They can use this understanding to build public support for critical projects, which can prevent costly conflicts and delays. The planning process also provides greater certainty for developers and businesses thinking about locating in the community.

TRANSPORTATION

Transportation and circulation systems are important to the local economy and quality of life. A capable transportation system helps assure adequate employment and mobility. The extent to which the planning commission can tackle this issue directly varies. Large metropolitan areas, for example, typically rely on a regional transportation authority to take the lead on transportation planning.

Transportation policies often focus on the automobile, but you should also consider public transit, rail, bicycles, and walking as important to the mobility mix. Land use policies are closely related to transportation choice. For example, policies that encourage infill and mixed-use development over dispersed single-family units often increase reliance on alternative transportation choices, which lowers automobile vehicle miles traveled (VMT), reduces congestion, and improves air quality.

Typical Automobile Trip Generation Chart

Single Family Subdivision	9.5 trips per dwelling unit
Apartment	5.7 trips per dwelling unit
Neighborhood Shopping Center	949 trips per net acre
Commercial Store	47 trips per 1000 sq. ft. floor area
Restaurant (sit down)	14 trips per employee
Bank, Savings and Loan	43 trips per employee
Commercial Office	15 trips per 1000 sq. ft. floor area
Industrial Park	64 trips per gross acre
Warehouse	81 trips per net acre
Research and Development	31 trips per net acre
Mass Production	93 trips per net acre

Trip generation charts are published by the state Department of Transportation and vary from region to region. In addition, census data can provides a summary of local commute methods. These percentages can be used to generate more accurate estimates for local projects.

TRAFFIC LEVEL OF SERVICE STANDARDS

LEVEL OF SERVICE	ROADWAY OPERATION	INTERSECTION OPERATION
A	Free flow conditions, minimal traffic volumes given the available approach, stable roadway capacity.	*Good.* Light to moderate traffic queues, little additional delay.
B	Stable flow conditions, vehicle maneuverability restricted to some extent.	Same as above.
C	Traffic flows smoothly, but vehicle maneuverability is restricted. Ability to recover from momentary conflicts without undue delay.	*Fair.* Moderately heavy traffic on approach, longer but stable queues, moderate but acceptable delay.
D	Traffic generally flows smoothly; however, occasional momentary congestion occurs.	*Poor.* Heavy traffic on approach, long unstable queues, some excessive delays.
E	Traffic flows under congested conditions; the maximum volume that the road can handle.	*Critical.* Heavily congested traffic conditions, excessive delays.
F	Traffic flows sporadically; stop and go conditions usually due to upstream bottleneck.	*Failure.* Demand exceeds capacity.

You will often discuss transportation issues in terms of the impacts that a new project will have on existing systems. The impact is usually expressed in terms of trip generation figures (see sidebar). A "trip" is a one-way commute between a production point (home) and an attraction location (for example, work). For example, the figure for a commercial site would be the daily number of workers, customers, visitors, and employees traveling to and from the site for business and personal reasons. This figure can be further broken down into number of persons driving alone, riding as passenger (ridesharing), using public transit, riding bicycles, and walking.

Provided with this figure, there are two main ways to analyze the impact on existing infrastructure: by total capacity and by level of service. The capacity of a main or ancillary road to absorb the additional vehicle trips that would be generated by a project depends on the number of lanes it contains. Mechanisms like left-turn lanes, wide shoulders, signals, stop signs, and other traffic management tools also affect road capacity. The general roadway capacity standards are:

- Two-lane roads: 10,000-12,000 vehicles per day
- Four-lane undivided roads: 20,000-24,000 vehicles per day
- Four-lane divided roads: 30,000-36,000 vehicles per day
- Six-lane divided roads: 45,000-55,000 vehicles per day
- Four-lane freeways: 80,000-100,000 vehicles per day
- Eight-lane freeways: 160,000-200,000 vehicles per day

To determine the extent that a road can handle additional volumes, the projected number of trips to be generated by a new development is added to the existing volume and compared against the roadway's total capacity.

TRANSPORTATION DEMAND MANAGEMENT STRATEGIES

DEMAND MANAGEMENT	FACILITY MEASURES	PROGRAM MEASURES
Ridesharing	• Passenger loading zone • Designated carpool/vanpool • Preferential space assignments	• Ridesharing matching service • Flexible work hours • Parking space/parking rate reductions • Van leasing
Transit	• Passenger waiting shelter • Bus turnout • Subsidy to transit district for improved service • Land dedication for bus transfer center or fixed guideway system	• Transit pass sales • Transit pass subsidy for employees/tenants • Flexible work hours
Bicycling	• Secure bicycle lockers or racks • Showers and clothes lockers • Bicycle paths	• Flexible work hours

The second level of analysis is to look at efficiency (see table on previous page). The closer a roadway comes to its full capacity, the less efficient it will be in terms of traffic flow. Traffic engineers usually measure the quality of traffic flow in terms of level of service (LOS) standards, which are performance standards for roads. LOS standards measure the capacity of a roadway versus the volume of traffic it is actually carrying and are one of several performance measures that may be applied to a roadway. Other standards are expressed as hours of delay or the average "floating car" speed. LOS standards are also applied to intersection capacity and operating characteristics.

The ideal level of service standards for a community are often set in the circulation element of the general plan. Typical language may read, "all intersections will operate at level of service D or better except those within one-quarter mile of a freeway off-ramp, which may operate at level of service E." Mitigation actions—like street widening, bicycle paths, increased mass transit options, or traffic signals—can then be added to increase capacity (for various transportation demand mangement strategies) or manage demand (see table).

Additionally, general plans may include goals that encourage transportation demand management (TDM) solutions. For example: "Traffic mitigation efforts should include measures that will decrease reliance on the automobile." Implementation of one or more facility measures can be a condition of development approval for projects where the applicant intends to lease out the building space to one or more tenants. Where the developer will be the sole tenant of a building, program measures can be used since the developer/employer can determine whether or not it can offer such measures as employee benefits.

PARKING

The parking issue is the flipside to automobile transport issues. Large minimum parking requirements and freely available parking encourage automobile travel. Parking facilities—and the policies that direct their development—have a significant bearing on the accessibility and the attractiveness of an area. The amount, location, and pricing of parking influences both business development and individual transportation decisions. Since parking is an essential element of an automobile trip, parking programs can either improve or impede automobile accessibility, ridesharing participation, and transit usage.

Parking demand is a function of the number of automobiles that will be attracted to a site and the length of time they remain there during the day. Drivers are more likely to leave a car parked all day at an office building than at a restaurant. Other factors, like parking fees, quality of transit, and general parking availability will also influence overall parking demand.

Parking requirements for new projects are usually formulated for specific uses and incorporated into the zoning code. For example, apartments might require 1.5 spaces per unit and a shopping center might require one space per every 100 square feet. Some uses may have exemptions from parking standards based on special use permits (for example, a convalescent hospital may have a lower requirement than a regular hospital because of the nature of its clients). Here are some other things to look for:

- **Lot Striping.** Increasing the spaces for compact cars can increase overall efficiency by 10 to 30 percent.
- **Demand Reduction.** Ridesharing, transit, and bicycling programs can reduce the demand for parking.
- **Transit-Oriented Development.** Generally, fewer parking spaces are needed for units built close to major transit hubs.
- **Parking Fees.** Tools like meters and permit systems that make parking more expensive can encourage alternative transportation choices and reduce the need for spaces.

HISTORIC PRESERVATION

Historic preservation protects buildings and landmarks that have a unique heritage. Examples include old homes, movie theatres, bridges, farms, and even entire neighborhoods. The benefits of historic preservation include revitalized neighborhoods, higher property values, and increased community pride. Typically, a historic preservation strategy will involve some or all of the following actions:

- Authorizing a survey of historic resources.
- Incorporating a historic preservation element as part of the general plan.
- Adopting a historic preservation ordinance that provides guidelines, incentives, and regulations to protect important resources.
- Designating certain areas as historic districts.
- Including historic preservation as a priority in redevelopment plans.

FOR MORE INFORMATION

- The **State Office of Historic Preservation** offers a wide array of resources on historic preservation in California, including model ordinances, model general plan elements, and information on relevant laws and financial incentives. The office also offers historic preservation grants. See www.ohp.parks.ca.gov.
- The **National Trust for Historic Preservation** provides technical assistance on all facets of historic preservation. See www.nationaltrust.org.
- The **National Park Service** provides information and technical assistance on federal preservation programs, including income tax incentives. See www.cr.nps.gov.

- Setting up a revolving loan fund to provide homeowners and businesses with money to rehabilitate historic buildings.
- Developing an awards program to recognize property owners for outstanding work in preserving or rehabilitating historic resources.

Successful programs will also find ways to engage the community to support historic preservation.

Federal and state programs protect many historic resources. For example, the National Register of Historic Places provides a national inventory of significant historic resources. To be placed on the register, a building must be determined to have local, state, or national importance by the U.S. Department of the Interior, upon recommendation by the state historic preservation officer. Buildings on the register are eligible for increased income tax credits if rehabilitated and, for certain programs, grants and loans. California has a parallel landmark certification program with similar benefits.

In addition, several state laws support local preservation efforts. For example, the State Historical Building Code[10] provides an alternative set of building regulations that allows greater flexibility in the restoration, preservation, and relocation of historic buildings. Local agencies may also issue bonds for the rehabilitation of historic commercial and residential rental properties. State law permits historic properties to be assessed at present value rather than at "highest and best use" value when uses of the property are restricted by an enforceable contract.

The California Environmental Quality Act (CEQA) also requires local agencies to take stock of their historic resources (and mitigate against their loss to the extent practicable) when new development will destroy or significantly impact historical resources.[11] CEQA also includes a categorical exemption (meaning no environmental review is required) for the rehabilitation or repair of certain historic resources.

[10] Cal. Health & Safety Code §§ 18950-18961, 24 Cal. Code Regs., Part 8.

[11] Cal. Pub. Res. Code § 21083.

SECTION 8

Community Design & Application Review

SECTION 8

Community Design & Application Review

REVIEWING PROJECT APPLICATIONS

As you review project applications, you will be evaluating the project's design and fit with the surrounding community. Good design is part art and part science. It might be called the process of connecting form and structure to build community. Thought of in this way, design is more than just determining whether a particular building is aesthetically attractive. It is also contextual: does the proposed use build community? How does the project relate to its surrounding environment? What should the community look like? Are there community needs that are not being met?

Over time, you will see your community less as a collection of buildings and streets and more as an interwoven fabric of forms and uses that shapes lives.

This big picture perspective is precisely what you are asked to provide as a planning commissioner. Owners, architects, builders, and neighbors often have their own interests in mind in the development process. Your role is to assure that long-term community needs are addressed as well. Remember, your community will still be living with the activity and architecture at a project site long after the owner has developed and sold the property.

The challenge is to incorporate big picture concepts into the weekly or monthly act of ruling on individual project applications. Long-term community goals must also be balanced against economic, legal, safety, and political concerns. For example, you may suggest a narrower street design to create a more compact feel in a planned neighborhood, only to find that the fire marshal wants extra-wide streets to assure that emergency vehicles can get through in any situation. All of these are valid concerns, which makes your role challenging to say the least. Yet it is the sum of these incremental decisions, the ones made day after day, that will ultimately shape the future of your community.

A PRIMER: 10 BASIC ELEMENTS OF COMMUNITY DESIGN

Any discussion about "good" design soon evokes intangible phrases like "sense of place" or "quality of life." These things are difficult to define, although you may already have an idea of what they mean to you. A

Want To Learn More?

Continuing to learn about urban design will influence how you think about your surroundings. You might consider inviting a panel of architects and designers to a forum on how urban design has shaped, or might shape, your community. Discussion can lead to a better understanding of the role design plays in shaping communities and ways to encourage good design.

thorough treatment of urban design is beyond the scope of this book. However, you may find it useful to understand some of the main themes that architects, planners, and developers often discuss. The following ten principles[1] are by no means exhaustive, but provide you with a starting point to begin the discussion of what constitutes "good" design.

- **Build to Human Scale.** Good urban design is people-oriented. This concept is often expressed as "pedestrian friendly" and "built to human scale." Buildings, streets, and open spaces should add to the experience of the individual. People like places where they can walk comfortably, admire a view, get a cup of coffee, see interesting buildings, meet a friend, or just people-watch. Large buildings with long, unbroken walls create dead spaces that people tend to avoid. Architectural features—like windows, doorways, balconies, and cornices—assure that buildings relate to the pedestrian. A traditional retail block, for example, may have four or five stores at a scale that is inviting to shoppers and passers-by. New development can create additional spaces—like small plazas or landscaped walkways—between buildings and wider sidewalks to accommodate outdoor cafes and other seasonal uses.
- **Design for Comfort and Safety.** To enjoy a space, people need to feel comfortable and secure. Architecture that isolates people—long, narrow passageways, for example—creates a feeling of insecurity. Amenities like good walking surfaces, shelter, shade, and interesting things to look at add to comfort. People feel more secure when they can see—and be seen by—other pedestrians. This is sometimes referred to as "eyes on the street" design. A good way to test whether a place will be physically comfortable is to ask yourself whether you would enjoy being there.
- **Create Places to Congregate.** Places where people congregate should offer a variety of activities. Choice makes a place more interesting. For example, shopping areas are a natural collection point. People will enjoy the space more if they can also sit outside, walk, meet a friend, or order a meal in the same area. Good design provides such choices in order to create and encourage neighborhood energy and vitality.
- **Assure Circulation and Accessibility.** Assuring circulation and accessibility involves creating safe, efficient passageways for cars, pedestrians, and other transportation options. Excessively wide streets, intermittent sidewalks, and poor circulation plans can create confusion for pedestrians and increase the chance of accidents. Creating separate paths for different uses can increase safety. In many cases, simple devices—like curbs and landscaping—assure this separation. Separate pathways can connect areas in ways that roadways often cannot. Many communities supplement walking, biking and driving options with public transit such as light rail and bus lines.
- **Mark Transitions and Boundaries.** Most people like to know where one neighborhood ends and another begins. A logical world with good spatial definition orients people. Transitions can tell people when they leave and enter town, what is public and private, where to sit and meet, where to stroll, and where to drive. Many towns are already informally divided into districts or neighborhoods based on existing landmarks. Reinforcing these boundaries—or creating new ones—provides a sense of order. The design of a neighborhood suggests what types of activities will take place there. Variations in building shape, doorway design, paving materials, curbs, landscaping, street

[1] Many of these principles were distilled from *Planning Commissioner Journal Reprints: Design & Aesthetics*. For more information, see www.plannersweb.com.

furniture, elevation, and signage let people know where one area or neighborhood gives way to another.

- **Connect Streets and Sidewalks to Buildings.** Buildings are usually designed to serve the needs of the occupants. However, unless buildings are also oriented to the outside, they will not serve the needs of the community. Small setbacks, interesting doorways and porches, and large windows can help create vital neighborhoods with lots of eyes on the street, which increases safety. Large display windows, detailed architectural designs, and parking lots placed behind buildings allow commercial activities to "spill" out onto the sidewalk. An active interface between building and street creates vibrant areas that people want to visit.
- **Add Detail and Variety.** Most people prefer a degree of aesthetic complexity and variety. Murals, attractive sidewalk designs, and the occasional fountain make public spaces more interesting. Architectural differentiations in materials, textures, roof shape, trim, and size also create variety. Monotonous facades symbolize institutionalism. To avoid this perception, make sure facades are broken into smaller units with varying shapes, sizes, windows, textures, colors, and perhaps even balconies.
- **Provide Cohesion and Balance.** Encourage architectural compatibility to increase the feeling of interconnection. New buildings should reflect, but not exactly replicate, the design and scale of existing buildings. Building height, size, roof shape, doorways, and materials are all design elements that can be made compatible without stamping out originality. Repeating small but obvious elements—like signage, lampposts, and curbs—on a neighborhood or district level also creates cohesion.
- **Stay True to Function.** Great design will not make up for poor function. Buildings and design must serve their purpose. People must be able to work, shop, and move efficiently through buildings and surrounding areas. For example, a project that relies on heavy pedestrian traffic should have wide sidewalks and places for people to rest. Overlooking these features may endanger the underlying economic purposes of

Yesterday and Today

In this excerpt from his book *The Great Good Place,* Ray Oldenburg describes how changes in urban design contributed to the decline of a once vibrant downtown. Oldenburg, a sociology professor at the University of West Florida in Pensacola, argues that a community's social vitality suffers without "third places" where people can gather to enjoy one another's company apart from work and home.[2]

In River Park [in 1940] informal socializing spilled out into the street and into places of commerce…The more gregarious or less busy citizen might take an hour to negotiate one block of Main Street, for there were always a good many people walking or lounging along it during daylight hours…The old-timers liked nothing better than to talk with the more active people of the community and keep up on things.

If one were to visit River Park today, one would see quite a different place…The people are largely gone from the street now, as are the physical amenities that earlier accommodated them.

The architecture of Main Street has changed noticeably. The earlier storefronts featured large windows and the majority of them had outdoor seating, in most cases integral to their architecture. Wide steps and Kasota stone slabs that flanked the entrances were heavily used by those who found them cool places to sit in the summer…Large windows and the encouragement to lounge at the portals combined to unify indoors and out and to encourage a 'life on the street' as well. That outdoor seating is all but gone now. The new storefronts are tight against the street and their much smaller windows allow little seeing in or seeing out.

[2] Ray Oldenburg, *The Great Good Place* (Paragon House, 1989), reprinted in *Planning Commissioner Journal Reprints: Design & Aesthetics* (p. 5).

THE AHWAHNEE PRINCIPLES

In 1991, a group of highly acclaimed leaders in land use planning and architecture came together to develop a set of forward-looking principles for new development. These principles were then presented to about 100 local elected officials at a conference at the Ahwahnee Hotel in Yosemite National Park. There they received both an enthusiastic response and their title: the Ahwahnee Principles.

Preamble:

Existing patterns of urban and suburban development seriously impair our quality of life. The symptoms are: more congestion and air pollution resulting from our increased dependence on automobiles, the loss of precious open space, the need for costly improvements to roads and public services, the inequitable distribution of economic resources, and the loss of a sense of community. By drawing upon the best from the past and the present, we can plan communities that will more successfully serve the needs of those who live and work within them. Such planning should adhere to certain fundamental principles.

Community Principles:

- All planning should be in the form of complete and integrated communities containing housing, shops, work places, schools, parks and civic facilities essential to the daily life of the residents.
- Community size should be designed so that housing, jobs, daily needs and other activities are within easy walking distance of each other.
- As many activities as possible should be located within easy walking distance of transit stops.
- A community should contain a diversity of housing types to enable citizens from a wide range of economic levels and age groups to live within its boundaries.
- Businesses within the community should provide a range of job types for the community's residents.
- The location and character of the community should be consistent with a larger transit network.
- The community should have a center focus that combines commercial, civic, cultural and recreational uses.
- The community should contain an ample supply of specialized open space in the form of squares, greens and parks whose frequent use is encouraged through placement and design.
- Public spaces should be designed to encourage the attention and presence of people at all hours of the day and night.
- Each community or cluster of communities should have a well-defined edge, such as agricultural greenbelts or wildlife corridors, permanently protected from development.
- Streets, pedestrian paths and bike paths should contribute to a system of fully-connected and interesting routes to all destinations. Their design should encourage pedestrian and bicycle use by being small and spatially defined by buildings, trees and lighting; and by discouraging high speed traffic.
- Wherever possible, the natural terrain, drainage and vegetation of the community should be preserved with superior examples contained within parks or greenbelts.
- The community design should help conserve resources and minimize waste.
- Communities should provide for the efficient use of water through the use of natural drainage, drought tolerant landscaping and recycling.
- The street orientation, the placement of buildings and the use of shading should contribute to the energy efficiency of the community.

THE AHWAHNEE PRINCIPLES, *Continued*

Regional Principles:

- The regional land-use planning structure should be integrated within a larger transportation network built around transit rather than freeways.
- Regions should be bounded by and provide a continuous system of greenbelt/wildlife corridors to be determined by natural conditions.
- Regional institutions and services (government, stadiums, museums, etc.) should be located in the urban core.
- Materials and methods of construction should be specific to the region, exhibiting a continuity of history and culture and compatibility with the climate to encourage the development of local character and community identity.

Implementation Principles:

- The general plan should be updated to incorporate the above principles.
- Rather than allowing developer-initiated, piecemeal development, local governments should take charge of the planning process. General plans should designate where new growth, infill or redevelopment will be allowed to occur.
- Prior to any development, a specific plan should be prepared based on these planning principles.
- Plans should be developed through an open process and participants in the process should be provided visual models of all planning proposals.

the project. Urban design involves incorporating the functional needs of the project and society into the physical appearance of the urban environment.

- **Mix It Up.** One of the more exciting developments in recent years is the willingness of architects and developers to create mixed-use projects. Such projects provide a combination of housing, office, retail, and (sometimes) open space. This compact development pattern assures that there is activity around the property during the day and the evening—and provides new places for people to meet and congregate. At the same time, the proximity of people to multiple uses decreases dependence on cars.

These principles provide only a starting point. The field of urban planning and design is broad. You will likely learn more about good design as your term on the commission continues. Another way to gain more insight is to think about the places you like to go—shopping areas, neighborhoods, other cities, etc.—and note what makes them work.

THE TYPICAL APPLICATION

The typical development application comes in many forms. Planning commissioners may review tentative or parcel maps, planned unit developments, building permits, conditional use permits, certain types of variances, design review permits, development agreements, and possibly other things. The agenda for any given meeting may require you to review an addition to a single-family residence one minute and a complex mixed-use or multifamily development the next. The larger the project, the more factors—like circulation and grading—you will have to take into account. Even the smallest project is likely to raise a few unique issues. Your job is to make sure those issues are considered and addressed.

Planning commissioners are not usually responsible for assessing all of the technical merits of a development project. Staff will summarize the most important technical points in the staff report. Although you may not see (or need to see) all the information received by your planning staff, it may be helpful to know what type of information they use to evaluate a project. Each local agency maintains a detailed list of all information

needed from a project applicant, although most require the same basic information, including:[3]

- **Signed Application.** The applicant must sign the application.
- **Vicinity Map.** The vicinity map shows the general location of the project in relation to the neighborhood. Typically, the applicant is asked to submit a map of the area within a 300-foot radius of the project and a mailing list of property owners who must receive notice of the project. With new and expanding computer technology, some agencies are taking on this function as part of their service to project applicants.
- **Existing Facilities Map.** The existing facilities map shows all existing buildings, roads, walls, landscaping, signs, utilities, and easements on the property.
- **Site Plan.** The site plan provides a bird's eye view of the proposed project. The plan is drawn to scale (the same scale as the existing facilities map) and should be large enough to be easily discernable. Most agencies set a standard size for plans and may require reductions for distribution to the commission, governing body, and the public.
- **Grading Plan.** A grading and drainage plan shows the proposed topography at appropriate contour intervals. This information is frequently combined on a map or survey of existing topography.
- **Architectural Elevations.** Architectural elevations show all sides of all proposed structures on the site. Elevations should be shown unobstructed by proposed landscaping materials so that you can see entire buildings as they will be constructed, not necessarily as they may look in several years with mature landscaping.
- **Materials Board.** The materials board provides samples of all proposed building materials and their colors. The board should be cross-referenced with the architectural plans to make it easy to identify where each material will be used.
- **Landscape Plan.** The landscape plan shows the proposed groundcover, shrubbery, trees, and hardscape elements. It should indicate the size and types of proposed trees and show any existing trees to be retained on site.
- **Environmental Questionnaire.** The environmental questionnaire provides site-specific information

OTHER SPECIAL SUBMITTALS

Depending on the nature of the development, additional information may be needed for the project application, including:

- Traffic analysis reports
- Biological studies (endangered species)
- Utility reports (availability of water, sewer, electrical, drainage, etc.)
- Wall plans (if not supplied as part of landscape plans)
- Cross-sections of the site or buildings (these are helpful in understanding complex structures and in determining the adequacy of proposed screening techniques for outdoor storage and mechanical equipment)
- Phasing plan for large multi-phased projects
- Renderings (colored drawings or computer-enhanced pictures showing buildings as they will appear when finished, including landscaping, special features, signs, and the surrounding environment)
- Color photographs to help in visualizing the project site and the surrounding area
- Lighting plan
- Sign plan

[3] Cal. Gov't Code § 65940.

necessary to assess whether or not the project could have a significant impact on the environment.

HOW TO REVIEW AN APPLICATION

A reviewer can get a basic understanding of a project by going through the following steps. The accompanying table—entitled Review Question Checklist (see next page)—provides a more detailed list.

- **Check the Scale of the Plans.** Understanding scale will help you get a feel for the actual size of the project. Check to see if the plans are drawn at ¼" to 1'0 scale (one quarter inch on the plan equals one foot on the site), ⅛" to 1'0, or perhaps even 1/30" to 1'0 scale for very large projects. A good way to interpret plans on a human scale is to judge them in five- to six-foot increments to see how the scale matches the size of a typical person.
- **Compare to the General Plan and the Zoning Code.** Is the project consistent with the general plan and the zoning code? Look at the range of permitted uses, density, housing needs, building heights, circulation, environmental issues like habitat preservation and open space protection, etc. If the applicant seeks a zone change or general plan amendment, you may want to consider whether the project's benefits justify the change.
- **Compare the Vicinity Map and the Site Plan.** How does the proposed project fit in with the existing community? Is it compatible with surrounding properties and the street? Is there any relationship between adjacent buildings (both on and off the project site), such as pedestrian walks, window-to-window visual contact, noisy areas adjacent to quiet areas, or shadows cast over plaza areas? Can changes in the design address potential conflicts?
- **Determine If There Are Views Worth Protecting.** Would the project obstruct the view of a landscape or landmark? Is there a view of a feature on the site itself that should be protected? (It may help to visualize the site in various places to make this analysis). If so, does the site plan and architecture take these views into account?

- **Review Existing and Proposed Contours and the Grading Plan.** An outline of the building should be drawn on a topographical map. How much grading is proposed? Make sure that floor elevations and parking facilities will be graded to levels that are consistent with the landscaping plan. Make sure the floor elevations and parking lot grades are not so high that buffers such as landscaping would be ineffective.
- **Locate Existing Trees.** Will existing trees be removed? Can and should they be saved? Does the proposed landscaping include replacement trees?
- **Check the Circulation Pattern.** How easily can people reach the site by various modes of transportation? Check circulation elements for transit riders, cars, delivery vehicles, pedestrians, and bicycles. Are there points of conflict, such as walkways that would lead pedestrians through traffic or between cars?
- **Locate Landscaped Areas.** Do landscaped areas soften buildings, break up parking areas and long, blank portions of wall? Is the selection of plants and trees appropriate for the climate? Are planters large enough to accommodate desirable amounts of landscaping? Are there areas for special landscape and hardscape treatment? Do trees have enough space to grow and remain healthy without damaging sidewalks? Is there a maintenance system, such as drip irrigation?
- **Check the Materials and Architectural Elements.** Review the materials and architectural elements of the project. Do they incorporate features that are

Review Question Checklist

The answers to these questions will help you determine the overall value of a project and form the basis for your review. Of course, not all questions will apply to every project.

1 *General*

- ☐ Does the project further the goals of the general plan?
- ☐ Are comfort needs—shade, seating, etc.—addressed?
- ☐ Do buildings interact with the street?
- ☐ Is the site oriented toward common areas to provide "eyes-on-the-street" security?
- ☐ Are there community spaces to serve as social and design focal points?
- ☐ Is the impact on environmentally critical areas—like steep slopes, wetlands, and stream corridors—minimized?
- ☐ Does the project contribute to the development of complete, integrated neighborhoods?
- ☐ Does the project add to a mix of uses in the neighborhood?
- ☐ Does the project contribute to the efficient use of existing infrastructure?

2 *Layout*

- ☐ Are buildings laid out sensibly?
- ☐ Is the site crowded, i.e. too much paving and building with too little landscaping?
- ☐ Are buildings sited to consider shadows, climate, noise, and safety?
- ☐ How does the project affect the privacy and views of neighboring properties?

3 *Buildings & Architecture*

- ☐ Is the scale and mass of new structures compatible with (but not necessarily the same as) surrounding structures?
- ☐ How does the scale of the buildings relate to the street?
- ☐ Are the facades varied and interesting or flat and monotonous?
- ☐ Are building facades carefully detailed, especially at the base; along cornices, eaves, and parapets; and around entries and windows?
- ☐ What materials will be used? Are they high-quality, long-lasting materials like tile, stone, stucco, or wood?
- ☐ Does roof design add to buildings and conceal roof-mounted equipment?

4 *Topography*

- ☐ Does the project "work" with the existing topography? Do buildings follow the natural contours of the land?
- ☐ Will there be drainage problems?
- ☐ Are there unsightly ditches, channels, or swales? Can they be aesthetically treated (natural) or undergrounded?
- ☐ Can significant trees be saved by revising the grading around them?

5 *Pedestrian Scale*

- ☐ Is the site and building design comfortable and convenient?
- ☐ What type of access is there to nearby transit stops, shopping, and parks?
- ☐ Can a pedestrian access all major activities both on and off site?
- ☐ Are the main entries clearly defined with covered porches or other pronounced architectural forms?
- ☐ Do commercial buildings abut the street with parking located behind?
- ☐ Do visible trash receptacles complement the architecture?
- ☐ Is there variety and detail from the pedestrian perspective?
- ☐ Are high-density areas supported by alternative forms of transportation?
- ☐ Do pedestrians know their options (sit and relax, enter a building, walk quickly, stop and look, cross a road, etc.)?

6 *Circulation*

- ☐ Does the project promote alternative transportation modes and help alleviate peak-hour traffic congestion?
- ☐ Are transit stops accessible from the site?
- ☐ Are entry and exit points safe with good sight distances?
- ☐ How will a cyclist access the site?
- ☐ Are street access points coordinated with median openings and access points on the opposite side of the street?
- ☐ Have the number of driveways onto adjacent streets been minimized?
- ☐ Are acceleration and deceleration lanes needed and provided on arterial streets?
- ☐ Does the on-site circulation system make sense (no dead-end aisles, limited parking along main drives)? Is there a hierarchy of driveways from public streets to main drives to parking bays?
- ☐ Is an adequate turning radius provided for large trucks and emergency equipment?
- ☐ Is auto access for corner developments on side streets or on primary arterials?

Review Question Checklist, Continued

7 *Conservation and Energy*

- ☐ Does the project endanger sensitive environmental resources?
- ☐ Does the design of buildings and landscaping promote water conservation though choice of plants, materials, and irrigation systems?
- ☐ Is outdoor solar lighting feasible?
- ☐ Does the site plan reduce erosion and minimize impervious surfaces?
- ☐ Does the project include energy-efficient heating and cooling systems, windows, appliances, and lighting?
- ☐ Was selection of materials based on recyclability and durability?
- ☐ Is the building oriented to maximize natural heating, cooling, and lighting?
- ☐ Have the potential shading effects on adjacent properties been considered?

8 *Housing (If Applicable)*

- ☐ Are there a variety of housing types, densities, prices, and rents?
- ☐ Are there affordable units?
- ☐ If the project includes higher-density units, are they organized around usable common space?

9 *Parking*

- ☐ Are adequate spaces provided?
- ☐ Does the number and location of disabled spaces make sense?
- ☐ Do aisle widths meet standards or have they been oversized?
- ☐ Are there paved areas that should be landscaped?
- ☐ Are parking areas sited in the rear to minimize the visual impact of parked cars?
- ☐ Is underground parking appropriate?

10 *Buffering*

- ☐ Is noise that might be created by traffic or air conditioning minimized?
- ☐ Are loading areas and garbage disposal areas screened from view?
- ☐ Will persons on surrounding properties be able to look down on storage, loading, or garbage areas? Can these views be mitigated?

11 *Citizen Involvement*

- ☐ Did the applicant get meaningful public participation from neighboring residents and the community as a whole?

12 *Loading*

- ☐ What type of loading will occur?
- ☐ Does the plan provide adequate maneuvering, loading, and drop-off areas?
- ☐ Does the location of loading areas assure ease of delivery service with minimal conflicts with customers and adjacent properties?

13 *Landscaping*

- ☐ How are focal areas—like site entrances, street corners, building entrance, plazas, and architectural elements—treated?
- ☐ Are local conditions—like wind, drought, rain, and common plant diseases—taken into account?
- ☐ Does the landscape plan complement the architecture?
- ☐ Are planters large enough for their intended use and plant material? (Three-foot planters next to a five-story building are not sufficient.)
- ☐ Are elements like landscaping, pavers, stamped concrete, benches, lighting, and fountains incorporated?

14 *Lighting*

- ☐ Are night-lights aesthetically pleasing, compatible, and appropriately located?
- ☐ Are walkways properly lit for safety?
- ☐ Are lights used only for safety or does the plan allow for special lighting (floodlights, up or down lighting, spotlights) of signs, buildings, and landscape?
- ☐ Will proposed lights shine onto adjacent property or buildings?

15 *Signage*

- ☐ Is your sign ordinance adequate or should there be a master sign program? (A special program is more likely needed for large, multi-tenant buildings).
- ☐ Do business and project signs complement the architecture (style, color, size, materials, number)? Are they in proper scale to the site and buildings?
- ☐ How are signs to be illuminated?

consistent throughout the neighborhood or district? Do they create visual interest?

- **Review Conservation Practices.** Recycled and energy-efficient materials can reduce a project's impact on the environment. Does the builder intend to use recycled materials? Is the project designed to minimize runoff (particularly from parking areas)? Are energy-efficient materials—like windows and heating and cooling systems—included in the plan? Are trees and landscaping used to minimize energy consumption and heat generation?
- **Check the Parking Layout.** Do the aisles relate well to entry-exit points? Is there a logical pattern for cars to follow? Is there sufficient landscaping to screen parking from view or to break up expanses of asphalt? If the project site fronts a pedestrian area, is the parking tucked behind the building to create a more vibrant streetscape?
- **Think About the Future.** What is likely to happen on adjacent undeveloped property? Does the project anticipate likely changes or is it adaptable? For phased projects, make sure that the first phase will stand by itself in case the next phase is never constructed.

SECTION 9

Legal Issues

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Legal Issues

THE POLICE POWER

The legal basis for all planning and land use regulation is the "police power." This power emanates from the Tenth Amendment to the United States Constitution and entitles states to take actions to protect the public's health, safety, and welfare. In turn, the California Constitution grants the same power to cities and counties, but limits the grant to the extent that local regulations may not conflict with state law.[1]

The police power is "elastic," meaning that it can expand to meet the changing conditions of society. Thus, actions that might not have been thought of as part of the general welfare a century ago (like actions to curb sprawl, perhaps) can fall within its purview today. Zoning and other forms of land use regulation are within the broad scope of the police power.[2] The U.S. Supreme Court expressed it this way:

> *The police power is not confined to elimination of filth, stench, and unhealthy places, it is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.*[3]

Courts have found that a wide variety of local concerns fall within the police power, including socio-economic balance, aesthetic values, residential character, and growth management.[4]

However, the police power is not unlimited. There are several constitutional limitations that affect the extent to which local agencies can use the police power. As mentioned above, local agencies cannot adopt regulations that conflict with state law. Other constitutional limitations include takings, equal protection, and freedom of speech, to name a few. These restrictions are outlined in more detail in the following sections.

PREEMPTION

A local agency may not take actions that conflict with state or federal law. Federal clean water and endangered species laws, for example, sometimes restrict the scope of local zoning ordinances. Likewise, the state Planning and Zoning Law imposes minimum planning standards with which local agencies must comply. This is known as preemption—the principle of law through which federal or state regulations supersede those of a city or county. When a conflict occurs, the local ordinance is invalid.

1 Cal. Const. art. XI, § 7; *Miller v. Board of Public Works*, 195 Cal. 477 (1925).

2 *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Associated Home Builders, Inc. v. City of Livermore*, 18 Cal. 3d 582 (1976).

3 *Village of Belle Terre v. Boraas*, 416 U.S. 1, 4-6 (1974).

4 *See Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848 (1980); *Ewing v. City of Carmel-by-the-Sea*, 234 Cal. App. 3d 1579 (1991); *DeVita v. County of Napa*, 9 Cal. 4th 763 (1995).

The extent to which local regulation may be preempted varies. In some cases, the Legislature has signaled a strong preference for statewide uniformity. In other cases, the paramount need for local control prevails. For example, the Planning and Zoning Law serves only as a minimum standard with which local agencies must comply, reserving in cities and counties the maximum degree of control over local zoning law.[5] Thus, local agencies retain a great deal of control over most zoning decisions. An exception is the extent to which local agencies may adopt temporary moratoria on development.[6] Here, the Legislature has adopted detailed procedures—including time limits, findings requirements, and supermajority voting requirements—with which local agencies must comply. As a result, local agency discretion in this area is much more limited.

Just because there is a state law on a subject does not necessarily preempt all action. There is often room for additional local action, particularly if the local ordinance is *more restrictive*. In other words, state and federal laws often act as a legislative minimum in the absence of a clear indication that the state or federal statute was intended to "occupy the regulatory field" entirely. For example, state law requires that a general plan include seven mandatory elements. However, cities and counties are free to adopt other elements beyond those seven—such as an agricultural protection or economic development element—that address specific local concerns.

Preemption and Charter Cities

There are actually two kinds of cities: charter and general law. Charter cities have "local constitutions"—called charters—that describe the organization and fundamental policies of the city or county. The state constitution grants charter cities authority over "municipal affairs" even when they conflict with state law.[7] In the land use context, the most important municipal affair is the power to develop internal procedures, such as those to process and approve legislative and adjudicative actions. As a result, charter cities are exempt from *some* of the procedural requirements in the Planning and Zoning Law. In other instances, however, such as the laws governing the adoption of moratoria (mentioned above), the

Legislature has made it clear that charter cities and general law cities have the same authority.[8] In recent years, the state Legislature has increasingly limited charter city authority, particularly in the area of affordable housing.

TAKINGS AND PROPERTY RIGHTS

The Takings Clause of the U.S. Constitution limits the police power, not by prohibiting certain actions but by requiring compensation when those actions impinge too far on private property rights. You are probably familiar with the principle that if land is condemned for a public road, the local agency taking the land must pay the owner the fair market value of the land taken. This form of taking is called eminent domain. The same general principle applies when a regulation—such as a zoning ordinance—has the same effect as physically appropriating land. This is known as a regulatory taking. An example would be a regulation that zoned an individual's parcel as a public park. The regulation would have the same effect as a taking because it would prevent the owner from excluding others and putting the land to economic use.

You are most likely to encounter the takings issue when you are denying a project or contemplating a new zoning ordinance that will limit the use of property. The issue may also be raised when you are imposing fees or

5 Cal. Gov't Code § 65800; *DeVita v. County of Napa*, 9 Cal. 4th 763, 782-783 (1995).

6 Cal. Gov't Code § 65858.

7 Cal. Const. art. XI, § 5(a).

8 Cal. Gov't Code § 65858.

requiring a dedication of property as a condition of development. Unfortunately, there is a great deal of misunderstanding about the relationship between property rights and planning regulations. The Takings Clause is often misunderstood to be a prohibition against any regulation that decreases property value or prevents the owner from "doing what they want with their land." In reality, compensation is required only in a very limited set of circumstances.

Most land use ordinances will not rise to the level of taking. The Constitution permits property to be extensively regulated, and courts have recognized that land use ordinances are often as likely to add value to a property as they are to decrease value. Our land use system cannot treat all properties equally.

Nevertheless, some regulations may rise to the level of a compensable taking. For example, regulations that wipe out all or almost all of a property's economic value may be held a taking. A regulation that permanently places an object on or uses a property may also be held a taking. However, these instances are comparatively rare. In the majority of cases, local regulations have been upheld against such claims. The following are some rough rules that help explain why most regulations do not rise to the level of a taking:

- **Claims Usually Fail When Economically Viable Uses of Property Remain.** Claims based on the notion that a regulation denies economical uses of property will fail when the property retains some economically viable uses. Zoning land for agriculture, for example, allows for an economic use and will generally survive a takings claim even when the owner claims the regulation is costing millions in lost development value. The Takings Clause does not guarantee that owners will be compensated for the most speculative use of land.[9]
- **Reasonable and Proportional Conditions on Development are Permitted.** Conditions on development will not cause a taking when they are reasonably related and proportional to the harm or impact likely to be caused by the development.[10] Moreover, conditions that are imposed by ordinance instead of on a case-by-case basis are even less likely to be held a taking.[11]
- **Landowners Must Seek A Variance Before Suing.** Courts are reluctant to require compensation unless they are absolutely sure that a regulation or condition will be applied in a way that amounts to a taking. Thus, landowners must usually file two applications and seek one variance before courts will entertain a claim. The variance procedure guarantees that the local agency has an opportunity to take corrective action in those circumstances where a regulation unfairly affects a particular parcel.[12]
- **"Automatic" or Per Se Takings Are Rare.** Regulations that cause 100 percent devaluation in property or cause a permanent physical presence on property will be found to be a taking in most circumstances, but such regulations are rare. It might seem that imposing a condition on development—such as the requirement to create a park or a bike path—is equivalent to a permanent physical occupation. The reason why this is not the case is that the condition is based on the development application, which is *voluntarily* sought by the developer.[13]
- **Fairness Matters.** Courts are often concerned about the extent to which the landowner was treated fairly by the local agency. Thus, it is always good to design efficient, straightforward processes that are consistent with the general plan in order to set appropriate development expectations.[14]

These are only rules of thumb. There are exceptions. The ultimate determination of whether an action is a taking will turn on the facts of each case. For this reason it is extremely important to consult with planning staff and agency counsel when the takings issue arises.

SUBSTANTIVE DUE PROCESS & VESTED RIGHTS

The substantive due process doctrine prohibits governmental action that arbitrarily or unreasonably deprives a person of life, liberty, or property. For planning commissioners, this issue arises most frequently in the context of property when an

[9] *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002).

[10] *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 324 (1994); *Ehrlich v. City of Culver City*, 12 Cal. 4th 854 (1996).

[11] *San Remo Hotel v. City and County of San Francisco*, 27 Cal. 4th 643 (2002).

[12] *Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985).

[13] *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Loretto v. Teleprompter Manhattan CATV Corporation*, 458 U.S. 419 (1982); *Yee v. City of Escondido*, 503 U.S. 519 (1992).

[14] *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999).

application has proceeded far enough through the approval process that the right to develop has attached. When this occurs the right to develop is said to have vested. Once a right vests, it cannot be affected by subsequent changes in local ordinances.

Generally, a right to develop will not vest until the last permit necessary for construction has been issued *and* substantial expenditures have been incurred in reliance on the permit. Until that time, a proposed development is vulnerable to changes in the general plan, zoning, and other local regulations.

However, there are some misunderstandings about this rule:

- **Zoning Does Not Confer A Right to Develop.** Some people misinterpret zoning regulations to mean that the level of development will be allowed automatically. Zoning confers no such right—it is merely a designation used for planning by local agencies. As such, it is always subject to any change the governing body sees fit.[15]
- **Initial Approval Does Not Necessarily "Lock In" Development.** Developers may argue that a preliminary approval—such as a tentative map approval—automatically exempts them from other ordinances that affect the development. Such conditions are not generally locked in, however, until the last permit is issued.[16]
- **Later Elements of Phased Projects May Be Subject to Different Rules.** The rules of vested rights offer less protection to developments involving multiple discretionary permits to be granted over an extended period of time. For example, a developer may spend large sums on acquisition, engineering, architectural, and planning costs for a four-phase development, but may only hold permits for phase one. To be protected from future changes in local regulations throughout the entire project, the developer would need to obtain vested rights for each phase. The vesting of rights for phase one does not vest rights for the entire project, nor does it guarantee that additional phases will even be approved.[17]

Given the uncertainty associated with changing regulations, developers will often seek to "lock in" their development plans. The main way to do this is to enter into an agreement with the local agency to assure that no future regulations will affect the development. However, a local agency cannot bind itself from exercising its legislative power in the future.[18] There are two exceptions. State law allows development applications to vest upon the filing of a vesting tentative map (see page 47) or upon entry into a development agreement (see page 48) with the local agency.

PROCEDURAL DUE PROCESS: NOTICE & HEARINGS

A local agency must afford procedural due process before depriving a person of a property right or liberty interest. This typically means providing the person with notice of the impending action and an opportunity to be heard before taking the action. In the context of land use and zoning, local agencies can meet this requirement by complying with the state laws that delineate specific notice and hearing procedures.[19] The purpose of the notice and the hearing requirement is not merely to go through the motions—but to offer the affected person a meaningful opportunity to rebut the evidence that is serving as the basis of the decision.

Procedural due process requirements apply mostly when a local agency is acting in its quasi-judicial capacity—that is, applying ordinances to specific properties as part of a land use application. When the local agency is acting legislatively, due process controls are more lenient because the legislative process provides its own set of guarantees. However, state law requires specific notices for a number of legislative acts, such as rezonings and general plan amendments.

DISCRIMINATION & EQUAL PROTECTION

The equal protection doctrine requires that similarly situated persons be treated in an equal manner. However, absolute equality is not required. Inherently, land use regulation is a system of classifying property.

[15] *Stubblefield Construction Co. v. City of San Bernardino*, 32 Cal. App. 4th 687 (1995); *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785 (1976).

[16] *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785, 791, (1976).

[17] *Court House Plaza Co. v. City of Palo Alto*, 117 Cal. App. 3d 871 (1981); *Lakeview Development Corp. v. City of South Lake Tahoe*, 915 F. 2d 1290 (1990).

[18] *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785 (1976).

[19] *See for example* Cal. Gov't Code §§ 65090-65096.

Nearly every regulation will affect different properties differently. What is significant for the equal protection analysis is the extent to which a regulation makes an arbitrary or discriminatory classification that affects a fundamental right. A classification must not be arbitrary and related to some difference that has a legitimate governmental interest.

Courts will analyze equal protection claims under one of two tests: strict scrutiny or rational basis. Most land use regulations will be judged under the rational basis test. Thus, if a regulation is reasonably related to a conceivable legitimate government purpose, it will be upheld. For example, special regulations for historic districts are rationally related to preserving community character and judged under the rational basis standard even though they treat historic properties differently.

Strict scrutiny is applied when a regulation abridges a fundamental right or applies only to a suspect class. Suspect classes are limited to race, national origin, and personal decisions relating to marriage, procreation, family relationships, and child-rearing. In these cases, the government must show that there is a "compelling interest" for the classification. For example, a regulation that prohibited landlords from renting units to non-traditional couples would be more likely to be judged under the stricter standard.

There are three things to watch out for when the equal protection issue arises:

- **Developers Claiming Protected Status.** One tactic developers sometimes use is to argue that a regulation unfairly singles them out. However, courts have ruled that developers are not a suspect class and development is not a fundamental interest.[20]
- **Single Property Owner Unfairly Treated.** Sometimes, landowners will bring an equal protection claim when they feel that they have been singled out. Such claims may prevail when the local agency has intentionally treated a specific landowner differently and the different treatment was motivated by ill will. This issue can be related to spot zoning issues as well.[21]
- **Regulations that Affect Low-Income Households.** One possible challenges to an ordinance is that it discriminates against lower-income households, of which racial minorities constitute a disproportionate percentage. Although courts have been more willing to entertain such claims in recent years, ordinances based on sound social or economic policies that are not intended to discriminate will generally be upheld.[22]

FIRST AMENDMENT: SIGNS, ADULT USES & FREE SPEECH

Most land use decisions that touch on the speech issue involve sign, news rack, and adult business regulation. Regulating these uses poses difficult legal and philosophical issues. You must balance the competing goals of having a beautiful (and smut-free) community with the right to sell public wares and convey ideological messages.

When analyzing free speech rights, courts first classify the type of speech being regulated. Courts have drawn a distinction between political speech (expressing one's views or engaging in expressive activities) and commercial speech (providing information about goods and services). Regulations that affect political speech will be more strictly scrutinized. Most zoning regulations, however, affect commercial speech.

Courts have applied the following general rules in evaluating such regulations:[23]

- **Time, Place and Manner.** Zoning regulations that control the time, place, and manner of speech without prohibiting the speech or activity outright will generally be upheld. In the case of adult businesses, for

[20] *Candid Enterprises, Inc. v. Grossmont Union High School District*, 39 Cal. 3d 878, 890 (1985).

[21] *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

[22] *Associated Home Builders Etc., Inc. v. City of Livermore*, 18 Cal. 3d 582 (1976); *Construction Industry Association v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975).

[23] *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981).

example, zoning can be used to limit the location (place), business hours (time), and even some types of performances (manner), but cannot totally prohibit such businesses from a community.

- **Content Neutral**. The restrictions must be content neutral. For example, with certain exceptions, it is generally acceptable to regulate the size of a business sign but not what message is written on the sign.
- **Substantial Governmental Interest.** The interest in regulating the activity must be substantial. Many adult business regulations are predicated on limiting secondary impacts (like crime) that are associated with such businesses rather than the "moral" nature of the speech activity itself. Courts have determined that this is a sufficient rationale to justify a regulation, provided that it is not too onerous.
- **Alternative Avenues of Communication.** There must be a location where the speech or activity may take place. For example, some local agencies set distance limitations (such as 1000 feet) between adult businesses and schools. The condition, however, must leave some places within the community where the activity can take place.

These are all just general rules and courts often apply them on a case-by-case basis. If you have concerns in this area, it is always advisable to consult with your agency's counsel.

RELIGIOUS USES

In the past, a generally applicable land use regulation was not deemed to substantially interfere with religion. Thus, a local agency could require that a new church facility meet city parking requirements even if the condition would make the building substantially more expensive and thus infeasible.

However, Congress adopted a more stringent test when it passed the Religious Land Use and Institutionalized Persons Act (RLUIPA).[24] Under RLUIPA, a government may not impose a land use regulation in a manner that imposes a substantial burden on religion unless the government demonstrates that the condition furthers a compelling governmental interest. In addition, the

condition must be the least restrictive means of furthering that interest.

One issue that makes RLUIPA problematic for local agencies is that the term "substantial burden" is not defined. This uncertainty makes it easier for religious groups to challenge zoning ordinances as they apply to religious buildings. The extra costs associated with a landmark preservation ordinance, for example, could be determined to be a substantial burden on a congregation (although the law remains uncertain on this point).

The type of ancillary activities and uses that are included in the term "religious exercise" is another unresolved issue. A planner might make the assumption that religious exercise merely means worship services. A particular church, on the other hand, may apply for a permit to include a school or even a homeless shelter on church premises on the grounds that providing such services is a natural extension of its religion.

Because of the uncertainties associated with RLUIPA, local agencies must be flexible when dealing with applications from religious groups. However, they must also be careful not to favor religious groups or they may face lawsuits alleging the endorsement of religion in violation of the Establishment Clause of the U.S. Constitution. (The Constitution also prohibits governments from favoring any religion). When making decisions related to religious uses, cities and counties should maintain detailed records that show findings of either substantial burden or compelling government interest depending on the outcome of the vote.

[24] 42 U.S.C. §§ 2000cc and following.