

UNDERSTANDING THE BASICS OF

LAND USE AND PLANNING

Guide to Local Planning

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Prepared by the Land Use and Environment Program, Steve Sanders, Director

Remember to always consult a knowledgeable attorney when confronted by legal issues.

UNDERSTANDING THE BASICS OF LAND USE AND PLANNING: Guide to Local Planning

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UNDERSTANDING THE BASICS OF LAND USE AND PLANNING

GUIDE TO LOCAL PLANNING

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About This Guide

County and city officials have many responsibilities. Among the most important is determining how the physical configuration of their communities will change, develop and adapt to meet the present and future needs of their residents.

Communities guide their physical growth and development through *local planning*. Planning covers a broad spectrum of activities, ranging from new development on vacant land, to adaptation of existing structures for new uses, to more sweeping redevelopment of individual parcels and whole neighborhoods with new buildings and facilities.

This guide is designed to provide a basic overview of the planning process for local elected and appointed officials and the general public. The

guide describes the typical participants in the planning process and the major plans and policies that comprise the framework of local planning. Following the description of the planning framework, the guide presents some of the emerging issues in local planning, and outlines important legal issues that local officials should consider when they make land use and planning decisions. The tab divider that accompanies the guide presents the “nuts and bolts” of the process of reviewing a typical application for development.

Resources to learn more about particular topics are highlighted throughout the guide. The endnotes include information on important legal citations and other references for those who wish to explore issues in more detail.

Planning – a Process and Profession

Planning, at its most fundamental level, refers both to a process and a profession:

- Local officials and residents use a *collaborative process* to determine the location, character, level and intensity of development that will be permitted or encouraged throughout their community, as well as the areas to be conserved and protected from development.
- Planning is also a *professional discipline*, whose practitioners possess technical information, analytical tools and problem-solving approaches informed by both research and practice.

▶ THE POWER TO PLAN

Local agencies derive their authority to shape their communities through planning and land use from the “police power.”¹ The source of this power is both the federal and California constitutions. The police power is broad and elastic and entitles cities and counties to take actions to protect the public’s general health, safety, and welfare. However, in most cases local regulations may not conflict with overriding state law.²

Local authority to regulate land use can expand to meet the changing conditions or priorities of society. Thus, actions that might not have been thought of as part of the general welfare a century ago (for example, curbing sprawl or promoting affordable housing) can fall within its purview today.³

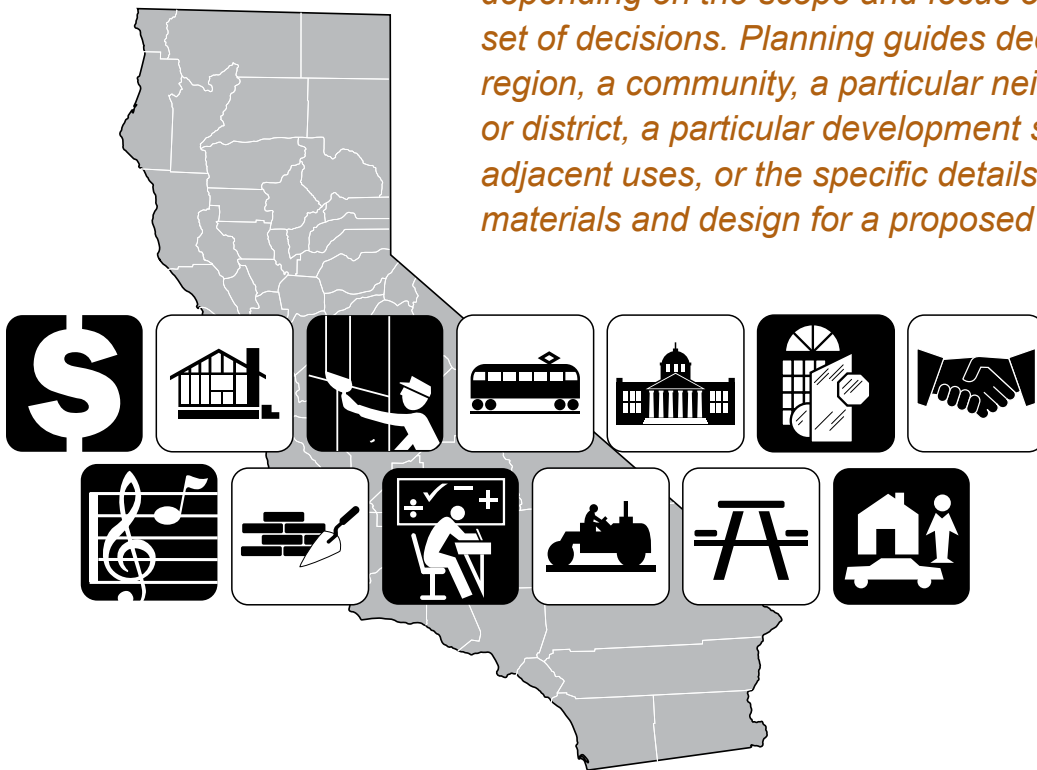
Courts have found that a wide variety of local concerns fall within this authority, including maintaining socio-economic balance, aesthetic values, property values, residential character, and growth management.⁴

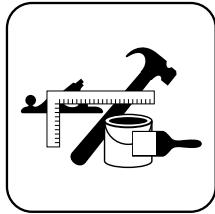
The Local Planning Framework

Cities and counties, when they plan, need to be able to consider a range of issues, from the big picture issues of how the community as a whole should grow and develop to the fine details of how particular buildings and facilities will fit in with other uses that share space on a neighborhood street.

Different planning tools have been developed to address the unique issues and considerations that occur at each of these levels. Taken together, these tools comprise a framework of local planning that officials can draw upon to manage the development and realize the collective vision for the future of their community and its residents.

The planning framework works along a continuum depending on the scope and focus of a particular set of decisions. Planning guides decisions for a region, a community, a particular neighborhood or district, a particular development site and its adjacent uses, or the specific details of building materials and design for a proposed project.





Why Plan?

Planning establishes goals and policies for directing and managing the future growth and development of a community or region. For example, cities and counties use planning to address fundamental issues such as the location and rate of growth, the character of development, transportation and housing needs, economic vitality, sustainability and environmental protection.

Proper planning offers the opportunity to:

- **Save Money.** Good planning can save on infrastructure and essential service costs by avoiding duplication, sizing facilities properly, and promoting efficient and cost-effective investments.
- **Create a Sense of Place and Reinforce a Sense of Community.** Planning can ensure that architectural, environmental and aesthetic elements are incorporated into projects to connect people to their community and establish a sense of place – the features and characteristics that define the unique identity of the community.
- **Protect and Enhance 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 conflicting land uses.
- **Safeguard Public Health.** The way places are built, rebuilt, and maintained affects people’s behavior and, as a result, their health. Good planning can provide opportunities for all residents to improve their health through greater physical activity and access to healthy foods and living situations, while reducing their exposure to air pollution and other health hazards.

- **Promote Public Safety.** Proper planning and design can make communities safer places to live, work and travel. Planning safe routes for bicycles, pedestrians and motorists can reduce accidents. Building codes and other regulations can reduce the risk of fire, flooding or collapse in the event of an earthquake. Buildings, parking lots, streets, and neighborhoods can all be designed to reduce opportunities for crimes to occur.
- **Increase Fairness and Opportunity.** Planning can help ensure that the burdens and benefits of development are fairly shared by all members of a community. Planning can also increase opportunities for all residents to attend quality schools, access good jobs, and participate in community life on an equal footing.
- **Provide Public Facilities and Infrastructure.** Planning helps communities prepare to meet future demands for public services and facilities, such as water and sewer systems, roads and transit lines, fire and police stations, schools, parks and libraries. Planning can ensure that transportation and other public facilities meet the needs of all members of the community and are safe, efficient, reliable and environmentally sound.
- **Improve 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. Well-planned communities offer residents and businesses a range of convenient and affordable choices – for business locations, transportation, housing, schools, parks, open space and other services and amenities.

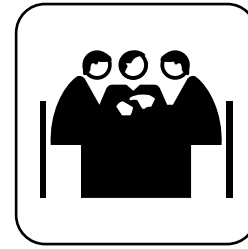
- **Protect the Environment and Conserve Resources.** Planning helps identify important natural and cultural resources and can direct development in a way that protects or enhances these resources. Planning can help communities reduce energy use, promote waste reduction and recycling, lower emissions of greenhouse gases that contribute to climate change, and otherwise conserve resources and protect the environment.
- **Provide a Forum for Resolving Conflicts and Reaching Agreement.** Planning processes provide a forum for developing a common vision, seeking community consensus and resolving disagreements about issues.
- **Set Clear Expectations.** Planning establishes the ground rules for decision-making regarding development. A comprehensive general plan, for example, sends a clear signal what standards and procedures will apply to development. Planning also signals which parties will be responsible for the various costs associated with development. This will not eliminate conflicts entirely, but does set expectations that can help minimize conflict – particularly when a jurisdiction has a practice of adhering to its plans.

MORE RESOURCES ON PLANNING

As a supplement to this guide, the Institute has published a handy glossary of the sometimes complex terminology that is used in the planning process: *Understanding the Basics of Land Use and Planning: Glossary of Land Use and Planning Terms* (see www.ca-ilg.org/planningterms).

To assist local agencies in helping the public understand common planning decisions, the Institute has also developed a series of plain-language, one-page descriptions of common land use actions. These can be attached to public hearing notices, made available at planning counters and through agency websites. Copies are available in PDF and Word formats in both English and Spanish. (See www.ca-ilg.org/onepaggers)

Participants in the Land Use Decision-Making Process



The Role of Local Officials in Planning

Decisions regarding planning and land use are a shared responsibility among local decision-makers. While local elected officials typically have ultimate decision-making authority, planning is a very participatory process.

Other key participants include members of the planning commission and other advisory boards and commissions, agency professional staff and legal advisors, as well as officials from other public agencies who may be affected by a land use decision. Important stakeholders include property owners and project applicants, neighbors, business owners, and other members of the public.

Local officials play a number of roles in land use matters. Within their jurisdictions, local officials typically act in three capacities:

- **Legislative:** Adopting broad policies governing development, such as general plans, zoning ordinances, and fee schedules.
- **Quasi-adjudicatory:** Applying these policies and state law to specific projects.
- **Enforcement:** Taking steps to assure that projects, once approved, comply with the applicable laws and conditions of approval.

Local officials also play an important role in regional planning activities. A number of regional agencies have been established to make plans for transportation, housing, open space, and other issues that transcend local agency boundaries. Local officials are typically selected or appointed to serve on the governing boards of these regional agencies. In some cases the members of the governing board may be directly elected by voters.

WHO DOES WHAT IN THE PLANNING PROCESS?

City Council or County Board of Supervisors

- Evaluates staff analyses, recommendations and decisions by advisory bodies, and agency goals in making final decisions on land use plans and proposals
- May act as appellate body on entitlement decisions

Planning Commission and Other Planning Advisory Bodies

- Considers staff analyses, including agency goals and policies, along with community input
- Makes recommendations and decisions based on findings of fact when applying general policies to specific situations such as use permits and tentative maps
- Makes recommendations to the governing body on policy matters such as the general plan, zoning ordinances, and development agreements
- May act as appellate body on entitlement decisions

Planning Staff

- Acts as technical staff to the governing body, planning commission, or other planning advisory bodies
- Prepares and maintains local plans and ordinances
- Identifies relevant local regulations for plans and project applications
- Organizes hearings and meetings on plans and project proposals as authorized by local officials
- Works with applicants to ensure that a project complies with community policies and standards and state and federal law
- Coordinates with other professional departments and agencies to incorporate comments and technical recommendations into a proposed plan or project
- Ensures that all appropriate procedures are followed during the planning process
- Prepares a professional analysis and recommendation
- Monitors project implementation and compliance with planning policies and conditions of approval

Agency Counsel (City Attorney or County Counsel)

- Advises officials on legal process requirements for decision-making (for example, public notice obligations)
- Answers questions about applicable law and how the law applies in particular situations
- Distinguishes between legal advice and policy advice, providing the latter only when asked
- Represents local government in legal issues and disputes

City Council Members and County Supervisors

Primary responsibility for making land use and planning decisions rests with the individuals elected by the voters to serve on the governing boards of cities and counties. In the case of cities, the mayor and city council members make the decisions. The members of the county board of supervisors – five officials elected by district from throughout the county – make decisions for counties. While they may delegate some functions to staff or advisory bodies, final authority rests with the representatives elected by the public.

The Planning Commission

The planning commission is a permanent committee made up of five or more individuals who have been appointed by the governing body (the city council or board of supervisors) to review and act on planning and development matters.⁵

While the governing body may choose to keep this function,⁶ many cities and counties have chosen to establish separate planning commissions.

Commissions have authority to oversee the development and review of the local general plan and other plans, policies and ordinances related to land use. They also review (and sometimes decide) land use and development applications and proposals in the same manner as a board of zoning adjustments (described in the following section).⁷

Commissioners serve at the will of the city council or board of supervisors, so commission membership may change in response to changes in those bodies.⁸ Planning commission actions 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.



► THE ROLE OF THE PLANNING COMMISSION

1. Acts as an advisory board to the governing body on all planning and development issues.
2. Reviews development applications and makes factual findings on a case-by-case basis to assure consistency with the provisions of the general plan and other local plans, policies and ordinances.
3. Functions as the primary decision-making body for many proposals (subject to appeal to the governing body, which retains final authority).
4. Through public hearings and other means, provides a key venue for residents and other community stakeholders to learn about planning issues and project proposals and provide their views.

Other Local Planning Bodies and Officials

Many cities and counties have established other advisory boards or commissions or assigned officials to assist the agency in making decisions on planning and land use issues. In larger jurisdictions, these bodies and appointees bring additional expertise into the decision-making process while allowing the planning commission and elected officials to focus on broad planning issues. They also provide an additional way to engage the public in planning and land use decisions, both through service as an appointee and through public meetings and hearings conducted by the body.

Some of these other advisory bodies and appointed officials include:

- **Board of Zoning Adjustment or Zoning Administrator.** A local body or hearing officer authorized to consider requests for variances to zoning requirements, created by ordinance and appointed by the governing body.⁹
- **Zoning Appeals Board.** An optional appointed body that hears and decides matters relating to the application of the zoning ordinance and considers appeals of the zoning administrator's decisions.¹⁰
- **Building Official.** An appointed agency official responsible for the administration and enforcement of building, housing, plumbing, electrical and related codes.
- **Design Review Commission or Architectural Review Board.** An optional commission appointed by the governing body to review development proposals to determine consistency with local adopted design goals, policies, guidelines, standards, and ordinances.¹¹
- **Historic Preservation Commission or Architectural Heritage Commission.** An optional commission appointed by the governing body charged with determining consistency with local historic and cultural resource preservation goals, policies, standards and ordinances.¹²

RESOURCES FOR FURTHER INFORMATION

The Planning Commissioner's Book is both a training tool for new planning commissioners as well as a handy general reference on planning. Originally published by the Governor's Office of Planning and Research, it is available on the ILG website at www.ca-ilg.org/opr.

The Role of the Public

There are many reasons to involve the public in planning and land use decision-making. Perhaps most importantly, participation enhances a sense of community. Individuals feel more connected when they are involved in the process of developing solutions to community problems.

Other benefits of public engagement in planning and land use decision-making can include:

- Better planning policies and documents that reflect issues flagged by a members of the public, particularly if a broad segment of the public participates in the decision-making process

- Enhanced community buy-in and support for policies ultimately adopted and less need to revisit the same planning issues repeatedly
- More knowledgeable residents that understand the trade-offs sometimes involved in planning and land use decisions

Public participation in local decision-making is fundamental to democracy. The public often evaluates the service of local officials based not only on the wisdom of their decisions, but also on their commitment to involving the public in decision making.



▶ ENGAGING THE PUBLIC IN PLANNING

The Institute for Local Government has developed a number of tools to help local officials foster greater public participation in land use and planning decisions. See www.ca-ilg.org/cgipubs.

For more information on these and other resources for involving the public, visit the Institute's website at www.ca-ilg.org.

The General Plan

The general plan is the foundation for local land use planning. When an agency adopts a general plan, it creates a vision for the foreseeable planning horizon — usually 10 to 20 years — and translates the vision into objectives, goals, policies and implementation programs for the physical development of the community.

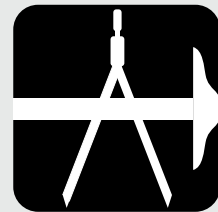
The general plan covers all of the land within the jurisdiction and any additional land that, in the agency’s judgment, bears a relationship to its planning.¹³

Cities and counties may also prepare one or more community plans as part of their general plan to provide more detailed attention to particular areas of the locality.

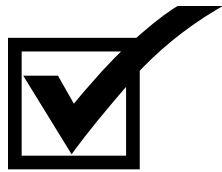
COMPONENTS OF PLANNING

✓ The General Plan

- Zoning
- Subdivisions
- Design Review
- Environmental Review
- Development Agreements
- Dedications and Fees



All other land use ordinances and policies flow from the general plan and must be consistent with the general plan.¹⁴ Projects will not be able to proceed unless they are found to be consistent with the general plan.¹⁵



Mandatory Elements

General plans are usually a combination of goals, policies, programs, diagrams, and maps. Every general plan at a minimum must address seven mandatory elements:¹⁶

- **Land Use Element.** Designates and provides a diagram or map illustrating the general type, intensity, and distribution of various land uses.¹⁷
- **Circulation Element.** Describes and provides a circulation diagram or map illustrating the location and extent of existing and proposed transportation routes, terminals, and other local public utilities and facilities.¹⁸
- **Housing Element.** Identifies and analyzes the existing and projected housing needs for all economic segments of the community, consistent with the regional “fair share” allocation of housing needs established through a regional planning process.¹⁹
- **Conservation Element.** Provides for the conservation, development and use of natural resources.²⁰
- **Open Space Element.** Details how open space, recreational areas and natural resources will be preserved and managed.²¹
- **Noise Element.** Establishes noise contours and standards, identifies and appraises noise sources and problems and includes implementation measures to address them.²²
- **Safety Element.** Addresses protection from any unreasonable risks associated with hazards such as fire, flood, and earthquakes.²³

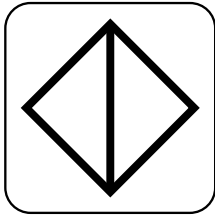
Optional Elements

Any number of optional elements may also be included in a general plan if, in the judgment of the city or county, they relate to the physical development of the area.²⁴ Optional elements frequently incorporated in general plans include: public facilities, economic development, design, historic preservation, air quality, growth management, agriculture, recreation, and scenic highways. More recent additions to this list include climate change, energy, water, and health. Once adopted, mandatory and optional elements have equal legal status and must be consistent with each other.²⁵

Local agencies can tailor general plans to fit community needs.²⁶ Individual elements may be combined so long as all legally required issues are addressed.

RESOURCES FOR FURTHER INFORMATION

The Governor's Office of Planning and Research has produced many useful resources on planning. See www.ca-ilg.org/opr.



Consistency Requirements

Land use and planning decisions require a finding that a land use action is consistent with the general plan.²⁷

Perfect conformity is not required, but the project must be found to be consistent with the general plan map and the general plan's objectives, goals, policies, and implementation programs.

The individual elements within a general plan must be integrated, internally consistent, and compatible.²⁸ In other words, the plan cannot contradict itself. This requirement is commonly referred to as “horizontal consistency” and has three primary components:²⁹

■ Consistency among 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.³⁰

■ 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 and other transportation alternatives can handle increased development, the element would be inconsistent.³¹

■ 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 internally inconsistent.³²

In addition, all other plans, 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.³³ In counties and general law cities, zoning and specific plans must also be consistent with the general plan.³⁴ Charter cities can require consistency through their own charter or by ordinance, but otherwise are exempt from the consistency rule.³⁵

Relationship of the General Plan to Other Local Plans

Community Plans. A community plan is part of a general plan, focusing on a particular neighborhood or community within the larger jurisdiction

Community plans allow a city or county to concentrate on the most salient issues and develop planning strategies and actions best suited for particular communities without going through the time and expense involved in revising or updating the general plan as a whole.

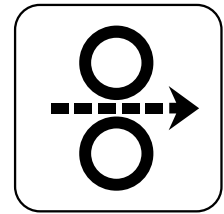
Specific Plans. Unlike general plans, specific plans are optional.³⁶ They are a flexible planning tool often used for larger areas, such as a downtown or a major transportation corridor, to encourage comprehensive planning.³⁷

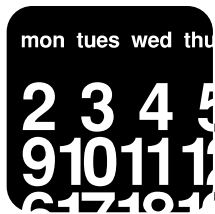
A specific plan may present broad policy concepts, focus on a particular planning or development issue, or provide detailed direction as to the type, location, intensity or design, financing, or infrastructure needed for development.

Many local agencies find specific plans to be a powerful and flexible planning tool. They often function as a macro-scale planning document similar to a community plan, but with the added power of a zoning ordinance coupled with a capital improvement program.

While not technically a part of the general plan as are community plans, specific plans must be consistent with the general plan.³⁸ 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.³⁹ A specific plan may be amended as often as necessary.⁴⁰

Redevelopment Plans. Cities and counties may create a redevelopment agency to act as a catalyst for the revitalization of “blighted” areas.⁴¹ Often the city council or board of supervisors acts as the governing board of the redevelopment agency,⁴² although some redevelopment agencies have a separate governing board.⁴³ Redevelopment agencies create a redevelopment plan outlining the programs and strategies the agency will employ to redevelop the area included in the agency’s purview.⁴⁴ Redevelopment plans must be consistent with the general plan.⁴⁵





Amending the General Plan

The general plan is a living document, meaning that it should change as conditions in the community change.⁴⁶

At the same time, it is also meant to provide some certainty for local planning. “General law” cities and counties (those operating under state law without a voter-approved local charter) may amend mandatory elements of the general plan up to four times per year.⁴⁷ Charter cities and counties may amend the general plan as often as necessary.⁴⁸ Many local agencies regulate how often they will consider general plan amendments to ensure that specific amendments are considered in the larger context of other proposed amendments and the general plan as a whole.

Amendments are adopted by resolution after a public hearing.⁴⁹ Optional elements can be amended as often as the local agency chooses. Project proponents may propose general plan amendments to fit the needs of a proposed development.

Updating the General Plan

While there are no hard-and-fast rules as to when a community should update its general plan, frequent piecemeal amendments can indicate that the general plan is dated or out of step with current conditions.⁵⁰ In such cases, an overhaul of the general plan may be needed to ensure that it remains an adequate basis for land use decision-making.

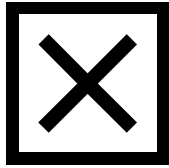
Periodic updates ensure that the long-term vision presented in the plan reflects the current needs or goals of the community. A general plan update can be quite expensive — often exceeding several hundred thousand dollars in mid- to large-size communities. A well thought-out plan update with broad public involvement and support usually pays dividends by reflecting current economic and development trends and reducing conflict over land use decisions.

The general plan does not have to be completed or updated on a fixed schedule (although new cities must adopt a plan within 30 months of their formation).⁵¹ The main exception to this rule is the housing element, which must be updated every eight years, to coincide with the schedule for regional planning for transportation mandated by SB 375.⁵²

Implementation and Follow-Through

The adoption of a general plan by itself does not guarantee orderly development. An agency can adopt a very good general plan only to find the original vision distorted by frequent amendments. City council members or county supervisors play a critical role in seeing that the plan's vision materializes, assisted by the planning commission and other advisory bodies.

State law provides for an annual reporting process on general plan implementation. These reports must be shared with a number of state agencies.⁵³ The reports enable the local agency to correlate recent land use decisions with the overall goals in the general plan, to assess how the plan is being implemented, and to identify modifications that will improve implementation.



Effects of a Deficient General Plan

In order to proceed, a development project must be found to be consistent with the general plan.⁵⁴ 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 if it determines that a plan is deficient in any of these respects.⁵⁵ Typically courts will limit such actions to instances where the specific general plan deficiency is related to the nature or circumstances of the project – for example, a residential subdivision proposed in a jurisdiction with a housing element that has been found to be deficient.⁵⁶

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Land Use One-Pager: About Specific Plans (2007) (www.ca-ilg.org/onepagers)

Land Use One-Pager: About General Plan Amendments (2007) (www.ca-ilg.org/onepagers)

Governor's Office of Planning and Research

The Governor's Office of Planning and Research has produced many useful resources on planning. See www.ca-ilg.org/opr.

California Planning Guide: An Introduction to Planning in California (December 2005)

General Plan Guidelines (October 2003)

The Planner's Guide to Specific Plans (January 2001)

Other Resources

Government Code Section 65350 and following (accessible from www.leginfo.ca.gov/calaw.html)

Government Code Section 65450 and following (accessible from www.leginfo.ca.gov/calaw.html)

Zoning

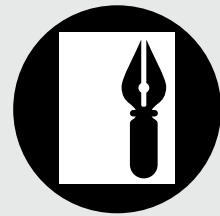
Historically, zoning is the separation of a community into districts, or “zones,” that regulate land uses and the intensity of development.⁵⁷ A zoning designation is assigned to every legally defined parcel within a zone in the community. An accompanying map shows officials and the public 1) the boundaries between zones, 2) which uses are permitted, and 3) the standards that apply to that use.

The goal of zoning is to assure that neighboring land uses are compatible.⁵⁸

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.

COMPONENTS OF PLANNING

- The General Plan
- ✓ Zoning
- Subdivisions
- Design Review
- Environmental Review
- Development Agreements
- Dedications and Fees



Before approving or denying a project, a local agency must determine whether the project complies with the provisions of local ordinances regulating development. Examples include the zoning ordinance, requirements for a conditional use permit, or an historic preservation ordinance.

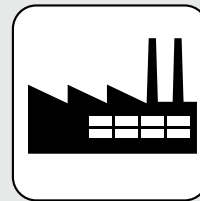
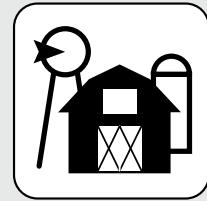
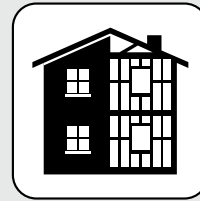
Zoning Ordinances

A traditional zoning ordinance will list land uses that are allowed “by right” for each zone. The term “by right” does not mean that the zoning ordinance confers an unconditional right to develop for a particular use.⁵⁹ Zoning is merely a legislative planning designation.⁶⁰ As such, zones are always subject to change and do not confer an 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.⁶¹

Form-based zoning codes have recently emerged as an alternative to traditional zoning. Under this type of zoning, the form of a development project (like height, footprint, materials or relationship to other buildings) is regulated rather than the specific uses (such as residential or commercial). The idea is to use zoning to ensure compatibility while allowing a greater mix of uses than traditional zoning affords.

WHAT TRADITIONAL ZONING ORDINANCES DO

- Divide a jurisdiction into various land use categories, such as heavy and light industrial, commercial, residential, open space, agricultural, recreational, scenic corridor, natural resource, and other purposes.
- List permitted uses within each category and provide for conditional and accessory uses.
- Regulate the intensity of use (for example, 18 residential units per acre).
- 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.



Cluster zoning is another variation on traditional zoning, allowing applicants to cluster uses on a portion of a site in order to preserve open space and natural areas or reduce infrastructure costs.

Zoning ordinances must be consistent with the general plan and, except in some charter cities, are invalid if inconsistent.⁶² Typically the planning commission is responsible for making zoning decisions on discretionary applications under the zoning ordinance.⁶³ Some agencies have appointed a board of zoning adjustment or a zoning administrator to consider requests for use permits and variances from zoning conditions.⁶⁴ Building design may also be subject to approval by a design review board or architectural review board.⁶⁵

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Land Use One-Pager: About Zone Changes (Rezoning) (2007) (www.ca-ilg.org/onepagers)

Governor's Office of Planning and Research

Planning, Zoning, and Development Laws (February 2009), available at www.ca-ilg.org/opr

Other Resources

Form-Based Codes Institute,
www.formbasedcodes.org

Government Code Section 65800 and following (accessible from www.leginfo.ca.gov/calaw.html)



Conditional Use Permits

Conditional uses are land uses that may be approved under the zoning code but only upon meeting specific conditions.⁶⁶ The conditional use permit (also called a “special use permit”) allows a local agency to more closely review individual projects that could negatively affect neighboring land uses. Staff and the planning commission (or other review body) can then develop a set of conditions to minimize the impact before authorizing the development.

Common conditions on approval include limited hours of operation, road improvements, soundproofing, additional landscaping, and additional parking. The permit is granted on the land, not to the property owner, and will remain valid even if the property changes owners.⁶⁷ The original permit may provide that the agency can modify the permit terms in the future, subject to providing notice and a hearing.⁶⁸ A conditional use permit may be revoked for noncompliance or other reasons cited in the permit, subject to notice and a hearing.⁶⁹

Variances

A variance is a limited waiver of zoning standards for a use that is already permitted within a zone.⁷⁰ Variances are considered only in extraordinary circumstances when the physical characteristics of a property, (such as size, shape, topography, location, or surroundings) or its use pose a unique hardship to the property owner.⁷¹ A variance can only be granted in special cases where the strict application of zoning regulations deprives the owner of a use enjoyed by other property owners in the same zone.⁷²

Economic hardship alone is an insufficient justification to approve 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.

Floating and Overlay Zones

A zoning ordinance may include regulations for a type of 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 conditions associated with mixed-use development “attach” as soon as the proposal is approved.

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. Overlay zones are often used in floodplains, hillsides, 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

A planned unit development (“PUD”) is both a zoning classification and a type of development. Also sometimes referred to as “planned communities,” planned unit developments normally consist of individually owned lots with common areas for open space, recreation and street improvements. Conventional zoning standards are often set aside to permit a more imaginative use of undeveloped property, such as clustering residential uses or integrating compatible commercial and industrial uses. Any substantial alteration in the physical characteristics of the development usually requires that rezoning procedures be followed.⁷³

Nonconforming Uses

There are two types of nonconforming uses: illegal and legal. Legal nonconforming uses — sometimes called grandfathered uses — are lawful uses that were in place prior to the adoption of the current zoning ordinance.⁷⁴ Such uses are generally permitted for as long as they operate lawfully.⁷⁵ However, the use typically is not allowed to expand or be replaced if voluntarily abandoned or accidentally destroyed.⁷⁶ The idea is to strike a balance between the notion of fairness (the use was lawful at the time of development) and the changed circumstances of the community (the use is no longer compatible with the character of the area).

A local agency may require that a legal nonconforming use terminate after a reasonable period of time (for example, after the investment has been amortized).⁷⁷ This allows the owner enough time to recoup the value of the investment in developing the property while also addressing the needs of the community.

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 property owner's investment. Illegal nonconforming uses are usually addressed through code enforcement.

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Land Use One-Pager: About Conditional Use Permits (2007) (www.ca-ilg.org/onepagers)

Land Use One-Pager: About Variances (2007) (www.ca-ilg.org/onepagers)

Governor's Office of Planning and Research

The Conditional Use Permit (August 1997), available at www.ca-ilg.org/opr

The Variance (July 1997), available at www.ca-ilg.org/opr

Other Resources

Government Code Section 65901 (accessible from www.leginfo.ca.gov/calaw.html)

Government Code Section 65906 (accessible from www.leginfo.ca.gov/calaw.html)

Subdivisions

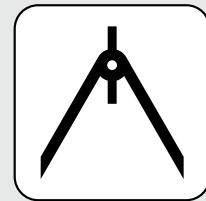
A subdivision is any division of contiguous land into separate parcels for sale, lease, or financing.⁷⁸ Any land transaction that legally separates property into distinct ownership units in which long-term ownership rights can be vested is a subdivision. California’s Subdivision Map Act⁷⁹ governs how local agencies oversee the subdivision of land. The process encourages orderly development and also protects against fraud by assuring that all subdivisions are recorded with the county recorder.⁸⁰

Each city, charter city, and county must adopt an ordinance that designates a local process for subdivision approval.⁸¹ Local ordinances can be more restrictive than the Map Act so long as they are consistent with 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.⁸² On the other hand, “minor subdivisions” — those that involve four or fewer parcels — require only a single parcel map (unless the local ordinance specifies that tentative

COMPONENTS OF PLANNING

- The General Plan
- Zoning
- ✓ Subdivisions
- Design Review
- Environmental Review
- Development Agreements
- Dedications and Fees



maps be filed for minor subdivisions as well).⁸³ The reasoning for this distinction is that minor subdivisions are less likely to raise complex issues, such as traffic and infrastructure needs.

A tentative map depicts the design and improvement of the proposed subdivision and the existing conditions that surround it.⁸⁴ The local agency reviews the tentative map to see if it meets local subdivision and zoning requirements. The local agency may impose conditions of approval to ensure that the development of the project is consistent with the general plan, zoning, public works and building standards, and any environmental mitigation measures adopted for the project.⁸⁵

Once the tentative map is approved, the applicant will then prepare a final map that is more technically correct and incorporates any conditions imposed by the local agency. All conditions must either be performed or guaranteed — by agreement, bond, letter of credit, or other financial security — before the final map can be approved.⁸⁶ An engineer usually reviews the final map.⁸⁷

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.⁸⁸ The approved final map is then recorded with the county and the applicant can proceed with the development.⁸⁹

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Land Use One-Pager: About Subdivisions (2007) (www.ca-ilg.org/onepaggers)

Other Resources

Government Code Section 66411 and following (accessible from www.leginfo.ca.gov/calaw.html)

TYPES OF SUBDIVISION MAPS⁹⁰

Parcel Maps

Procedures and approvals for parcel maps are left to local ordinance.⁹¹ 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.⁹²

Tentative Maps

Tentative maps typically illustrate the proposed design of the lots, public streets, sidewalks, parks, utilities, and other improvements. After a public hearing, the local agency may approve, conditionally approve, or deny the map. The agency may impose additional conditions that are consistent with the general plan and the zoning ordinance when approving a tentative map.⁹³

Vesting Tentative Maps

Some tentative maps are filed as “vesting tentative maps.”⁹⁴ This type of map confers a vested right to proceed with the development in accordance with the local ordinances, policies, and standards in effect when the local agency deemed the map application complete. 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.

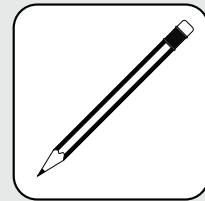
Design Review

Design review is often used to ensure that new development is compatible with the aesthetic character of a community or individual neighborhood. Whereas the zoning code usually focuses on the type and intensity of a use, design review focuses on aesthetic and architectural standards.⁹⁵ Design review procedures usually rely on deeply held values and beliefs about what is beautiful and what is ordinary.

In many communities, the planning commission functions as the design review board. In some communities, particularly larger communities or those with a concentration of architecturally significant structures or neighborhoods, the local agency may appoint a separate “design review board” or an “architectural review committee” to conduct design review.

COMPONENTS OF PLANNING

- The General Plan
- Zoning
- Subdivisions
- ✓ Design Review
- Environmental Review
- Development Agreements
- Dedications and Fees



Local design review ordinances are usually integrated into the zoning process. 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.

Design review can make it more difficult for the landowner or developer to determine whether the proposed project will be acceptable. Accordingly, the more specific the design standards are, the greater the certainty will be from the perspective of both the developer and neighborhood residents.

Design review can also breed monotony (or even mediocrity) to the extent that all buildings must conform to a narrow set of guidelines. The challenge 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.

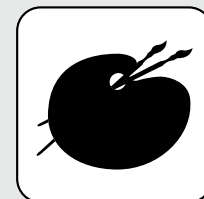
RESOURCES FOR FURTHER INFORMATION

Land Use One-Pager: About Design Review, Institute for Local Government (2007) (www.ca-ilg.org/onepagers)

Curtin's California Land Use and Planning Law addresses design review issues, available from Solano Press, (www.solano.com)

TYPICAL INFORMATION FOR DESIGN REVIEW

- Color boards showing the site plan, including the shape and size of the buildings, their relationship to the site, landscaping, and parking.
- Conceptual color elevations of each wall, especially those seen by the public or from off-site.
- Models showing 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 and base treatment, screening details, pedestrian walkways, and lighting.
- Colored landscape plans illustrating 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.



Environmental Review

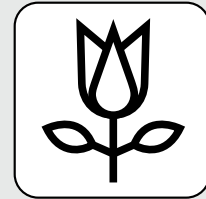
Requiring measures to protect the long-term health of the state’s environment has become an integral element of land use planning and project approvals. The environmental protection law most frequently applied to land use decisions is the California Environmental Quality Act (CEQA).

The California Environmental Quality Act is a complex law with a simple purpose: to assure that decision-makers understand and account for the environmental consequences of a project.⁹⁶ A key purpose of the California Environmental Quality Act is informational, since it gives decision-makers information on what the environmental impacts of a project will be and how to minimize those impacts.

What gives the environmental review process 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.⁹⁷ In other words,

▶ COMPONENTS OF PLANNING

- The General Plan
- Zoning
- Subdivisions
- Design Review
- ✓ **Environmental Review**
- Development Agreements
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agencies are not required to eliminate all potential harm to the environment, but they must reduce the risk of harm whenever they determine it is feasible to do so. 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 the reasons for its findings, or adopts a “statement of overriding considerations” that particular social or economic factors override the environmental concerns.⁹⁸



Determining the Level of Review

The environmental review process involves three possible levels of analysis:

- Negative declaration,
- Mitigated negative declaration, and
- Environmental impact report (often known by the acronym EIR).

In addition, some projects are exempt from review.⁹⁹ Other projects may be subject to more limited environmental

review because they are consistent with standards that were previously subjected to environmental review.¹⁰⁰

An example is a 2008 law designed to promote reductions in greenhouse gas emissions from vehicle trips. The law allows projects that are consistent with an adopted regional sustainable communities strategy or alternative planning strategy to undergo less rigorous environmental review than other projects.¹⁰¹

WHAT TYPE OF REVIEW IS APPROPRIATE?

- **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, such as a general plan amendment, rezoning, public works project or development permit.
- **Does an Exemption Apply?** A project may be exempt from the California Environmental Quality Act under state law or regulations.
- **Initial Study.** For projects that are not exempt, an initial study is completed 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 that describes why the project will not have a significant effect.
- **Mitigated Negative Declaration.** If the initial study shows that the project may cause significant environmental effects, a mitigated negative declaration may be prepared. A mitigated negative declaration is appropriate if revisions can be made to the project that would clearly avoid or mitigate the significant effects.
- **Environmental Impact Report.** If the initial study identifies potential significant environmental effects that cannot be eliminated through redesign or other mitigation measures, then an environmental impact report must be prepared.¹⁰²

The Environmental Impact Report

For projects not exempt from environmental review, the general rule is that an environmental impact report must be prepared if substantial evidence shows that there is a fair argument that a project may have a significant environmental effect.¹⁰³ This is the case even when there is an equal amount of evidence suggesting that an environmental impact report may not be necessary. This is called the “fair argument” standard.¹⁰⁴

After determining that an environmental impact report is required, the agency with primary authority to approve the project (known as the “lead agency”) must solicit the views of other agencies with some level of authority over the project (called “responsible agencies”) regarding the scope of the environmental analysis.¹⁰⁵ The lead agency should also consult with individuals and organizations that have an interest in the project.¹⁰⁶ This early consultation is called scoping.

The lead agency then directs the drafting of an environmental impact report based on this information and other data it has collected. When the draft environmental impact report is completed, the lead agency files a notice of completion with the appropriate state agency.¹⁰⁷

The draft environmental impact report is then made available for public review and comment for a minimum period of 30 to 45 days.¹⁰⁸ The lead agency must evaluate and respond in writing to all comments it receives during the review period.¹⁰⁹ If significant new information is added to the draft environmental impact report after it has been released for public review, the agency must re-circulate the report for additional public review and comment.¹¹⁰

Once the public review period ends, the lead agency prepares a final environmental impact report, usually consisting of the draft report together with responses to public comments received during the review period.¹¹¹ The lead agency then reviews the project in light of the environmental impact report and other applicable standards and policies.

A key goal of the California Environmental Quality Act is to ensure that the decisions made by local officials regarding environmental impacts are as well informed as possible. The environmental impact report must provide enough information to allow decision-makers to analyze the environmental consequences of a project. Thus, the adequacy of an environmental impact report is usually not judged on perfection or correct conclusions, rather on completeness and whether the level of analysis is reasonable and done in good faith.¹¹²

BASIC ELEMENTS OF AN ENVIRONMENTAL IMPACT REPORT

Table of Contents and Summary. Required elements that assist in making environmental impact reports—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.

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, or traffic congestion—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.

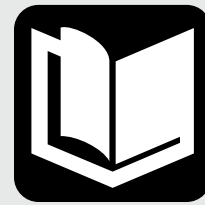
Cumulative Impacts. An evaluation of the incremental effects of the proposed project in connection with other past, current, and probable future projects.

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.



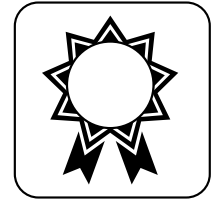
Certifying the Environmental Document

The first step in making a final determination on a project that has undergone environmental review is for the city council or board of supervisors to approve the negative declaration¹¹³ or certify the environmental impact report.¹¹⁴

The environmental review adds to the information decision-makers have about the pros and cons of a project. Just because a project has no significant unmitigated environmental effects does not mean the agency must approve the project. The local agency retains the discretion to reject the project or approve it in a manner that acknowledges any environmental consequences. The local

agency may also change the project, select an alternative project, impose conditions or fees, or take other actions (called “mitigation measures”) to avoid or minimize the environmental impacts of the project.¹¹⁵ When an agency adopts mitigation measures it must also adopt a program to monitor the implementation of the measures.¹¹⁶

In some cases, the environmental impacts of a project cannot be avoided. If decision-makers decide to approve a project with unavoidable significant adverse environmental effects, they must adopt a “statement of overriding considerations” explaining the specific social or economic factors that the agency considered in deciding to approve the project in spite of the environmental concerns.¹¹⁷



► UNDERSTANDING THE SCOPE AND APPLICATION OF ENVIRONMENTAL LAWS

For California Environmental Quality Act purposes, 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.¹¹⁸

Note that other state and federal environmental laws may also apply to a given project. Examples include the Endangered Species Act,¹¹⁹ the Clean Water Act,¹²⁰ the Clean Air Act¹²¹ and those pertaining to surface mining, timber harvesting and other natural resource issues.

Findings

Before the local agency can approve a project for which an environmental impact report or other environmental document has been prepared, it must certify the legal adequacy of the document and its review process.¹²²

The findings must explain whether the project as approved would have significant impacts on the environment, whether mitigation measures are feasible, why other alternatives were rejected, and in some instances why the project's benefits outweigh its consequences (the statement of overriding considerations).¹²³ The public is entitled to comment on the adequacy of the final environmental impact report before it is certified by the governing body.¹²⁴

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Land Use One-Pagers (2007)
(www.ca-ilg.org/onepagers):

About the Environmental Review Process

About Environmental Impact Reports

About Negative Declarations

Other Resources

State of California website on California Environmental Quality Act:
<http://ceres.ca.gov/ceqa/>

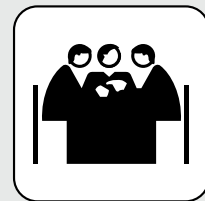
California Public Resources Code Sections 21000 and following
(accessible from
www.leginfo.ca.gov/calaw.html)

Solano Press (www.solano.com) has a number of land use-related publications, including the *Guide to CEQA*, available for purchase.

PUBLIC INPUT INTO THE ENVIRONMENTAL REVIEW PROCESS

Even though the environmental review process draws on scientific information and policy analysis, the process also encourages the public to provide input into the analysis.¹²⁵

Public agencies must also explain their reasoning (typically through findings) when they make a decision on a project.¹²⁶



Development Agreements

In California, a project that is in the approval process or has been approved but not yet built may be subject to new regulations and fees as they are adopted. Landowners or developers generally do not have an assured (or “vested”) right to develop until they obtain a building permit and have performed substantial work in reliance on that permit.¹²⁷ Until then, there is no guarantee that the local land use policies and regulations will remain the same.

To offset this risk, developers sometimes propose that their project be approved through a development agreement — a detailed contract between a developer and a local agency that spells out the rules for a particular project in very specific terms.¹²⁸ Development agreements are typically reserved for projects that are likely to be developed in several phases over a number of years.

▶ **COMPONENTS OF PLANNING**

- The General Plan
- Zoning
- Subdivisions
- Design Review
- Environmental Review
- ✓ **Development Agreements**
- Dedications and Fees



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 underway.¹²⁹ For local agencies, the advantage is that the agency and developer may agree to additional conditions — such as extra park land, school facilities, affordable housing, and other public improvements — that go beyond what the agency could require through the normal development process.¹³⁰

A development agreement must describe the project’s land uses, density, design features, and provisions for reserving or dedicating land for public purposes.¹³¹ It also must specify the duration of the agreement.¹³² 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 number of other items.

The development agreement constitutes a negotiated — and thus voluntary — deal. The development agreement is adopted by ordinance, considered “quasi-legislative” in nature, and is subject to referendum.¹³³

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.

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Land Use One-Pager: About Development Agreements (2007)
(www.ca-ilg.org/onepagers)

Other Resources

Government Code Section 65864 and following (accessible from www.leginfo.ca.gov/calaw.html)

Dedications and Fees

Dedications of land and development fees are often imposed as conditions on projects to offset new demands on public services and facilities.¹³⁴ Dedications and fees are sometimes called “exactions.”

New development usually requires the extension of infrastructure, such as roads, water and sewer lines, parks, pathways, libraries, and schools. Cities and counties use dedications and fees to ensure that new development pays its way.

A dedication occurs when ownership of an interest in real property is transferred to a local agency.¹³⁵ Development fees are often imposed in lieu of dedications when the type of infrastructure does not lend itself easily to individual dedications of property, such as with sewers, water systems, affordable housing, libraries, and open space.

▶ **COMPONENTS OF PLANNING**

- The General Plan
- Zoning
- Subdivisions
- Design Review
- Environmental Review
- Development Agreements
- ✓ **Dedications and Fees**



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.¹³⁶ This means dedication and fee requirements may be used to fund improvements necessary to address the effects of the project. Thus, a small development that will only generate light traffic cannot be required to cover the cost of an entire freeway interchange.

The legal basis for a dedication or fee is often established in the general plan,¹³⁷ but can also be established by a capital improvements plan,¹³⁸ the Subdivision Map Act,¹³⁹ or the California Environmental Quality Act.¹⁴⁰ When an agency imposes a development fee, it must make several specific findings.¹⁴¹ The findings are typically based on a detailed fee or “nexus” study.

Once development fees are collected, 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, and the beginning and ending balances, interest, other income, and expenditures from these accounts must be made public.

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Land Use One-Pager: About Development Fees (2007) (www.ca-ilg.org/onepaggers)

Development fees and dedications page at www.ca-ilg.org/fees

Other Resources

Government Code Section 66000 and following (accessible from www.leginfo.ca.gov/calaw.html)

Emerging Topics in Local Planning

Land use planning is a dynamic field. As new issues arise in importance, they are integrated over time into local agency plans and policies. For example, as public concern regarding conservation and pollution heightened over the last several decades, planning policies, tools and approaches evolved to address these concerns.

Two topics in particular have emerged as the focus of advances in the practice of planning, especially in California. Planning is evolving to integrate issues related to the links between health and the built environment, and the role that land use plays in climate change and the generation of greenhouse gases.

Planning is at the forefront of these issues in part because well-planned communities with a balance of housing, jobs, shopping, schools and recreation give people the option of walking, biking, or using transit rather than driving. This results in lower greenhouse gas emissions and also promotes physical activity and more vibrant, healthy and sustainable communities.





Health and the Built Environment

Because land use decisions affect the physical development of communities, they can have profound impacts on the health of people who live there. Obesity, diabetes, heart disease, asthma and other health conditions are linked to a long-term decline in both healthy eating habits and physical activity.¹⁴² These, in turn, are related to development practices and patterns of land use.¹⁴³

The design and layout of communities can discourage physical activity, restrict access to healthy foods, and disproportionately expose some communities and individuals to environmental pollutants that exacerbate health conditions such as asthma.

With the links between land use and public health established, attention has turned to developing planning policies and strategies to reverse the negative trends related to physical inactivity, unhealthy eating, and environmental hazards. Efforts to educate policymakers, the media, and the public on the problems and potential solutions have begun to take root, as well as efforts to bridge the professional and institutional barriers between the public health and planning and design professions.

WHAT MAKES FOR A HEALTHY NEIGHBORHOOD?

- Places where walking and bicycling are safe and convenient and where residents of all ages and abilities have the opportunity to be physically active.
- Nutritious, fresh, culturally appropriate food – grown locally whenever possible – is affordable and accessible, promoting health and boosting the local economy.
- Residents aren't exposed to environmental hazards or pollutants that endanger their present or future health or well-being.

Communities are pioneering a range of land use and planning approaches to create physical environments that promote health. Some examples of promising strategies include:

- Adding a health element to the local general plan to articulate policies and actions to improve community health, or incorporating health-related policies throughout the various elements of the general plan when it is updated or revised.
- Planning and developing facilities to accommodate pedestrian and bicycle travel, such as a network of safe bike routes, new and improved sidewalks, and traffic calming measures to reduce conflicts between pedestrians, cyclists and motor vehicles.
- Revising zoning regulations so that neighborhoods can accommodate farmers' markets that support local farmers and community gardens that can provide fresh food for local residents.
- Clustering a mix of new and existing development in areas with a range of good transportation choices, including walking, biking and transit.
- Partnering with schools, recreation districts and others to jointly develop and operate parks, playgrounds, sports fields, swimming pools and other facilities for physical activity.
- Providing incentives for corner stores to provide fresh fruits and vegetables and for full service grocery stores to locate in underserved neighborhoods.
- Adopting zoning policies that restrict fast food establishments near schools and playgrounds and limit the density of fast food outlets in residential communities.
- Preserving and enhancing open space and trails, urban forests and farms, community gardens, paths, and greenways. These amenities provide attractive destinations and recreation spaces that enhance residents' physical activity opportunities.
- Reducing the density of alcohol outlets coupled with incentives to increase healthy food retail at local markets can increase neighborhood safety, reduce violence, and reduce exposure to poor-quality food.
- Promoting "eyes on the street." The way that buildings, sidewalks and parking lots are designed and sited can make it easier for neighbors and passers-by to keep potentially unsafe areas in view, thereby discouraging crime.
- Providing safe routes to school for students to walk and bike. Local agencies can retrofit roadways with sidewalks, curb ramps and features that slow traffic, and strictly control the operation of motor vehicles on and near school sites, at bus stops and along school routes, making it easier and safer to walk.

**RESOURCES FOR
FURTHER INFORMATION
Institute for Local Government**

Healthy Neighborhoods Online
Resource Center at [www.ca-ilg.org/
healthyneighborhoods](http://www.ca-ilg.org/healthyneighborhoods)

Other Resources

*General Plans and Zoning:
A Toolkit on Land Use and Health*

*Healthy Planning Policies:
A Compendium from California
General Plans*

Both publications and other resources
available from Planning for Healthy

Places at Public Health Law and Policy
www.phlpnet.org and
www.healthyplanning.org

Center for Civic Partnerships
www.civicpartnerships.org

Cities, Counties and Schools Partnership
www.ccspartnership.org

HEAL Cities Campaign
www.healcitiescampaign.org

Healthy Eating Active Communities
www.healthyeatingactivecommunities.org

Leadership for Healthy Communities
www.leadershipforhealthycommunities.org

HEALTHY NEIGHBORHOODS RESOURCE CENTER

The Institute for Local Government's **Healthy Neighborhoods Project** provides resources local officials can use to protect and improve community health through planning, land use and other decisions. The Healthy Neighborhoods Resource Center includes information on a variety of topics, including:

- Economic Development and Redevelopment
- Housing
- Community Services
- Planning and Community Design
- Public Safety
- Transportation and Mobility
- Workplaces

See www.ca-ilg.org/healthyneighborhoods.

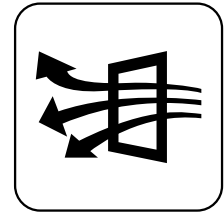
Land Use and Climate Change

California has embarked on an ambitious course to halt and then reverse the growth in emissions of greenhouse gases that trap infrared radiation, causing average global temperatures to rise and changing the climate.

Assembly Bill 32, California's Global Warming Solutions Act of 2006, gives the California Air Resources Board broad authority to regulate sources of greenhouse gas emissions.¹⁴⁴

Transportation accounts for 40 percent of greenhouse gas emissions, with cars

and light trucks accounting for almost three-quarters of those emissions (30 percent overall.)¹⁴⁵ With that in mind, another state law (SB 375 (Steinberg), adopted in 2008),¹⁴⁶ aims to reduce greenhouse gas emissions from cars and trucks through changes in regional and local planning for land use and transportation. That law directs the California Air Resources Board to set regional targets for reducing greenhouse gases for each of the eighteen metropolitan planning organizations (MPOs) that plan transportation investments in the larger urbanized regions of the state.



► LAND USE AND COMMUNITY DESIGN STRATEGIES TO REDUCE GREENHOUSE GAS EMISSIONS

- Create communities and neighborhoods that are safe and convenient for walkers and bicyclists
- Orient new development to capitalize on transit system investments and services
- Adopt policies that promote compact and efficient development in new and existing communities
- Incorporate greenhouse gas emissions considerations into the general plan and environmental review process
- Establish minimum levels of energy efficiency and green building standards for local agency buildings and facilities
- Establish and implement minimum levels of energy efficiency and green building standards for new and renovated commercial and residential buildings
- Implement sustainable landscaping
- Decrease the carbon footprint of the community's waste and recycling collection system
- Reduce energy use for traffic signals and street lights

Source: Institute for Local Government's California Climate Action Network Best Practices, www.ca-ilg.org/ClimatePractices

Because the existing regional transportation planning and housing allocation processes are overseen by local elected officials selected by their peers to serve on regional agency boards, SB 375 is intended to ensure that cities and counties are closely involved in developing an effective plan for the region to achieve the targets.

The new law establishes a collaborative process between regional and state agencies to set regional greenhouse gas reduction targets, and provides CEQA incentives for development projects that are consistent with a regional plan that meets those targets.

Housing and transportation decisions are coordinated through three planning processes. Regional agencies prepare the regional transportation plan and the regional housing needs assessment. Cities and counties are responsible for updating the housing element of the general plan.

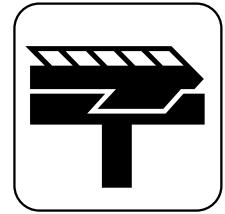
To increase public participation and local government input, the law strengthens several existing requirements for public involvement in regional planning.

SB 375 HAS THREE MAJOR COMPONENTS:

- Using the regional transportation planning process to achieve reductions in greenhouse gas emissions consistent with California's climate action goals.
- Coordinating the regional housing needs allocation process with the regional transportation process while maintaining local authority over land use decisions.
- Offering California Environmental Quality Act incentives to encourage projects that are consistent with a regional sustainable communities strategy that achieves greenhouse emission reductions.

The Regional Transportation Plan (RTP). An RTP is a plan that outlines transportation investments for a region. It is drafted by a Metropolitan Planning Organization (MPO) or Regional Transportation Planning Agency (RTPA) every four years (five years in regions that have attained federal air quality standards) and includes a 20-year outlook for likely growth in the region.

The RTP is the basis for state funding of transportation projects. Projects that are not in the RTP cannot be “programmed” for state or federal funding. The provisions of SB 375 apply only to the metropolitan planning organizations in the more urbanized regions of the state, and not to non-metropolitan regional transportation planning agencies typically found in more rural counties.



▶ **HOW DOES SB 375 AFFECT THE REGIONAL TRANSPORTATION PLAN?**

Under SB 375, the regional transportation plan must incorporate a sustainable communities strategy (SCS), a regional growth strategy that provides the basis for transportation investments in the region. The goal of the SCS is to reduce greenhouse gas emissions from transportation in the region.

To do this, the SCS identifies the “general location of uses, residential densities, and building intensities” within the region, including areas sufficient to house all economic segments of the projected regional population, while meeting the greenhouse gas targets set by the Air Resources Board. SB 375 requires that transportation funding decisions in the regional transportation plan be consistent with the sustainable communities strategy.

If the SCS falls short of meeting the targets, the region must prepare an “alternative planning strategy” (APS) that, if implemented, would meet the targets through a combination of alternative development patterns, infrastructure investments, or additional transportation measures or policies.





The Regional Housing Needs Assessment (RHNA). The regional housing needs assessment is a forecast of future household growth prepared by the council of governments (COG) for each region, based on population projections provided by the California Department of Housing and Community Development (HCD).

The RHNA is used to allocate the number of housing units needed to serve all income categories to each individual city and county within the region. The jurisdictions in turn use their regional housing needs allocation to periodically update the housing element of their local general plan.

The Housing Element of the General Plan. The housing element is one of seven elements required to be included in a city or county general plan, which governs land use and development within the community.

In general, the jurisdictions within a region where SB 375 applies must update their housing element every eight years (rather than every five years as required prior to SB 375). The updated element must demonstrate how the jurisdiction plans to accommodate its allocation of the regional housing need.

▶ HOW DOES SB 375 AFFECT THE REGIONAL HOUSING NEEDS ASSESSMENT AND THE LOCAL HOUSING ELEMENT?

SB 375 affects local planning for housing in two key ways. First, it synchronizes the schedule for the regional transportation plan, the regional housing needs allocation, and the update of the local housing element into a new eight-year planning cycle for each region. Secondly, SB 375 uses the SCS to serve as a common set of land use assumptions for both the regional transportation plan and the RHNA allocation.

The SCS influences RHNA and housing elements through what is essentially a four step process:

1. The California Department of Housing and Community Development (HCD) provides population growth projections to each region every eight years.
2. The MPOs for each region develop an SCS that accommodates that projection and strives to meet the regional greenhouse gas reduction target set by the Air Resources Board.
3. The council of governments for the region then allocates portions of the growth projections to the cities and counties in the region. SB 375 requires the allocation to be “consistent with the development pattern included in the sustainable communities strategy.”
4. The cities and counties then develop their housing elements to accommodate their housing allocation.

In the coming years, local planning efforts to address the causes and impacts of climate change are expected to increase dramatically in number, complexity and cost. By starting now, local communities can get ahead of the curve and guide land use and

development in ways that help reduce greenhouse gases, adapt to the changing climate, and avoid placing people, building, and critical infrastructure in harm’s way.

**RESOURCES FOR
FURTHER INFORMATION**

Institute for Local Government

California Climate Action Network
website, www.ca-ilg.org/ClimateChange

SB 375 Web Resource Center,
www.ca-ilg.org/SB375

Understanding the Basics of SB375,
a series of publications available at
www.ca-ilg.org/SB375

*Balancing Local and Regional Interests
when You're Asked to Serve Both*,
at www.ca-ilg.org/ethicsbalance

Other Resources

The following resources, among others,
are available through the ILG SB 375
Resource Center at www.ca-ilg.org/SB375:

*CAPCOA Model Policies for
Greenhouse Gases in General Plans*
(2009), California Air Pollution Control
Officers Association

*CALCOG Guide to Regional Planning
as Revised by SB 375* (2009), California
Association of Councils of Government

Managing the Risk of Land Use Litigation



Land use decision-making can be contentious: developers want entitlements, environmentalists want growth management, and neighborhood organizations want a say in the approval process. Other groups may also take issue with any given decision.

Land use decision-making can therefore become a “Catch-22” for local agencies: the applicant may sue if the project is denied and opposition groups may sue if the project is approved.

Often the best way to avoid litigation is to understand the legal underpinnings of land use regulation and implement good decision-making processes. Just as “walking the beat” prevents more crime than a perfectly executed search warrant, properly managing project review and designing inclusive hearing procedures are better risk management tools than merely assuring the public three minutes of testimony.

Fair Process

Certain standards relating to fair process apply when an agency acts on a general plan amendment, specific plan,¹⁴⁷ zoning ordinance,¹⁴⁸ or subdivision approval.¹⁴⁹ The standards vary according to whether decision-makers are acting in a

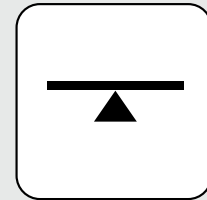
legislative or quasi-judicial capacity.¹⁵⁰ But the essence is the same: affected parties must receive adequate notice of all hearings (written in a way that can be reasonably understood) and have a fair opportunity to air concerns or rebut evidence presented.¹⁵¹

LEGAL ISSUE: EQUAL PROTECTION

The Equal Protection Clause of the federal constitution requires that similarly situated persons be treated in an equal manner.¹⁵² Because land use regulation is a system of classifying property requiring “line drawing,” nearly every regulation will make distinctions and affect different properties differently.¹⁵³ Doing so does not offend these protections. Generally, only when a regulation makes an *arbitrary* or *discriminatory* classification that affects a fundamental right will constitutional Equal Protection guarantees be implicated.¹⁵⁴ If it is “fairly debatable” that a regulation is reasonably related to a conceivable legitimate government purpose, it will generally be upheld.¹⁵⁵

Courts apply a *strict scrutiny* standard when a regulation abridges a fundamental individual right or applies only to a suspect class.¹⁵⁶ Suspect classes include 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.¹⁵⁷

For example, a regulation that prohibited landlords from renting units to non-traditional couples would be more likely to be judged under the strict scrutiny standard.¹⁵⁸



▶ LEGAL ISSUE: FREEDOM OF SPEECH

When analyzing free speech rights, courts first classify the type of speech or expression being regulated. Courts have drawn a distinction between *political* speech (expressing one's views or engaging in some expressive activities) and *commercial* speech (providing information about goods and services).¹⁵⁹ Regulations that affect political speech will be more strictly scrutinized.¹⁶⁰



Most zoning regulations, however, affect commercial speech rather than political expression. Sign ordinances are a common example.¹⁶¹ Zoning regulations (such as licensing requirements for adult businesses) that control the time, place, and manner of speech without prohibiting the speech or activity outright will generally be upheld.¹⁶² To pass legal muster, the restrictions must be content neutral and there must be an alternative location where the speech or activity may take place.¹⁶³

In California, a number of laws require greater notice and public involvement. For example, open meeting law requirements (the Brown Act),¹⁶⁴ the notice and publishing requirements in the Planning and Zoning Law,¹⁶⁵ and the review and comment process in the California Environmental Quality Act¹⁶⁶ (as well as the National Environmental Policy Act¹⁶⁷) all assure specific notice and participation rights.

Courts accord a degree of deference to local agency decision-makers—particularly when decision-makers are acting legislatively.¹⁶⁸ However, courts increasingly require decisions to be supported by sound data and reasoning.¹⁶⁹ Providing such support reduces local agencies' exposure to liability and the costs of litigation.

Takings

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.¹⁷⁰ For example, if a local agency acquires private property for a public road, the local agency must pay the owner the fair market value of the land acquired. This process is known as eminent domain.¹⁷¹

Regulations, including land use regulations, can also impinge too far on private property rights. This is known as a regulatory taking.¹⁷² An example would be a regulation that zoned an individual's entire parcel for use only 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.

There is a great deal of misunderstanding about the relationship between property rights and planning regulations. The Takings Clause is sometimes 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 limited set of circumstances. The Constitution permits property to be extensively regulated to protect public health and safety and promote the public's welfare; the courts have recognized that land use ordinances are just as likely to add value to property as to decrease it.¹⁷³

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 or all the uses of a property may be deemed a taking.¹⁷⁴

A Starting Point for Fairness and Predictability

Fair decision-making processes promote better governance and reduce the risk of litigation. Given the emotional and financial stakes often associated with land use decisions, it is understandable that people may act out of fear or anger when the process is perceived as unfair. Constitutional and statutory procedures and criteria are minimum requirements. In this context, it is helpful to think of the overarching goals of what land use decision-making processes are trying to achieve:

- **Well-Defined General Plan.** The general plan is the cornerstone for a community's physical development. It assures that there will be sufficient housing, jobs, open space, and infrastructure. But it is also the foundation for setting expectations about how land can be developed.

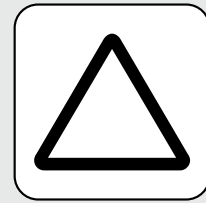
As such, a well-defined vision in the general plan serves as the baseline for a land use risk-management strategy.

- **Inclusive and Informed Decision-Making.** If a decision is only as good as the evidence supporting it, the information-gathering process is important to well-reasoned decisions. Inviting the public to weigh in on proposals helps decision-makers identify issues and limit the risk associated with unintended consequences. Such information can also identify measures that will address issues and unintended consequences. The information may also be used to craft findings that better support the final decision.
- **Predictability.** Interested parties should be able to reasonably predict what types of projects will be approved or denied. Failure to define or prioritize criteria results in inconsistent decisions that are more likely to be interpreted as arbitrary by courts.



GENERAL PREVENTATIVE RISK MANAGEMENT STRATEGIES

- **Regularly Review Land Use Controls.** Agency staff should regularly review zoning and subdivision ordinances to assure they are up-to-date. Areas to watch include environmental, sign, adult entertainment, telecommunications, and affordable housing requirements. Also, the agency should assure that the language in current regulations is consistent with past staff and council interpretations of policy.
- **Provide Strong Staff Support.** Provide support for all decision-makers, including elected officials, planning commissioners, design review board members, and even zoning administrators. Full staff support helps the process move more quickly and predictably. It also assures that all relevant information will be analyzed in the staff report and that adequate findings will be drafted in support of the decision.
- **Develop Written Hearing Procedures.** A written set of procedures to follow at each public hearing will help reduce contentiousness. Both the applicant and the public will know what to expect. Ideally, the procedures should include a description of the process, the time limits in which the hearing will be held, how testimony will be heard, and overall meeting decorum.
- **Act As An Unbiased Fact Finder.** Many land use matters involve a quasi-judicial hearing where the decision-maker evaluates standards and applies them to a given set of facts. Here, the decision-maker is playing a role similar to that of a judge and must retain a degree of neutrality. Decision-makers should refrain from talking with applicants (except at meetings) and avoid the appearance of favoritism.
- **Get Training.** Everyone involved in land use decision-making—from the new planning commissioner to the most seasoned staff—should have regular training opportunities to better understand each other's role, stay abreast of recent developments, and develop new ideas.



■ **Balance Benefits and Burdens.**

Predictability does not mean that the same decision must be made for each application. Each parcel is unique. Land use regulation is built on the premise that the sum of an agency's plans, ordinances, and policies will balance the benefits and burdens of regulation. This assures that different areas are set aside for housing, commercial activities, schools, and open space.

■ **Specificity, in Plain Language.**

Policies, final decisions, and even comments from decision-makers should be easy to understand. Avoid acronyms and definitions that can confuse those who do not work in the field professionally.

The decision-making process should always be objective and consistent. People do not generally fare well with uncertainty and predictability. With good planning, much of the contentiousness surrounding the land use decision-making process can be resolved.

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Regulatory Takings and Land Use Regulation: A Primer for Public Agency Staff (July 2006) (www.ca-ilg.org/takings)

An Ounce of Prevention: Best Practices for Making Informed Land Use Decisions (2006) (www.ca-ilg.org/ounce)

Understanding the Basics of Public Service Ethics: Transparency Laws (see www.ca-ilg.org/transparency)

Other Resources

Open and Public IV: A Guide to the Ralph M. Brown Act (2007). Available on the League of California Cities website at www.cacities.org/openandpublic, in hardcopy form by visiting www.cacities.org/publications, or by calling (916) 658-8257.

The Brown Act: Open Meetings for Local Legislative Bodies (2003). Available on the California Attorney General's website at <http://ag.ca.gov/> (select "Programs A-Z," click on "Publications," then click on "Open Meetings") or by going to. <http://ag.ca.gov/publications/brownAct2003.pdf>.

Endnotes

- 1 See Cal. Const. art. XI, § 7, *DeVita v. County of Napa*, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699 (1995).
- 2 Cal. Const. art. XI, § 7; See *Sequoia Park Associates v. County of Sonoma*, 176 Cal. App. 4th 1270, 98 Cal. Rptr. 3d 669 (2009).
- 3 *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); See *Big Creek Lumber Co. v. County of Santa Cruz*, 38 Cal. 4th 1139, 45 Cal. Rptr. 3d 21 (2006).
- 4 See *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490 (1981); *Citizens for Jobs and the Economy v. County of Orange*, 94 Cal. App. 4th 1311, 115 Cal. Rptr. 2d 90 (2002), *DeVita v. County of Napa*, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699 (1995).
- 5 Cal. Gov't Code § 65100.
- 6 Cal. Gov't Code § 65101.
- 7 Cal. Gov't Code §§ 65900 – 65902.
- 8 Cal. Gov't Code §§ 36506, 65100.
- 9 Cal. Gov't Code §§ 65900 – 65901.
- 10 Cal. Gov't Code §§ 65900, 65903.
- 11 See *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984), *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 100 Cal. Rptr. 2d 413 (2000).
- 12 See *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).
- 13 Cal. Gov't Code § 65300.
- 14 Cal. Gov't Code §§ 66473.5, 65860.
- 15 See *Sierra Club v. Napa County (Beringer Wine Estates)*, 121 Cal. App. 4th 1490, 19 Cal. Rptr. 3d 1 (2004).
- 16 Cal. Gov't Code § 65302.
- 17 Cal. Gov't Code § 65302(a).
- 18 Cal. Gov't Code § 65302(b).
- 19 See Cal. Gov't Code §§ 65583 and following; *Black Property Owners Association v. City of Berkeley*, 22 Cal. App. 4th 974, 981-82, 28 Cal. Rptr. 2d 305 (1994).
- 20 Cal. Gov't Code § 65302(d).
- 21 Cal. Gov't Code § 65302(e).
- 22 Cal. Gov't Code § 65302(f); see also Cal. Gov't Code § 65302.3.

- 23 Cal. Gov't Code § 65302(g).
- 24 Cal. Gov't Code § 65303.
- 25 *See Pala Band of Mission Indians v. Board of Supervisors*, 54 Cal. App. 4th 565, 63 Cal. Rptr. 2d 148 (1997).
- 26 Cal. Gov't Code §§ 65301-65302.
- 27 *See, for example*, Cal. Gov't Code §§ 66473.5 and 66474 (subdivision map approvals); Cal. Gov't Code §§ 65359 and 65454 (specific plan or other development plan and amendments); Cal. Gov't Code § 65867.5 (development agreements); Cal. Gov't Code §§ 65401 and 65402 (public works projects, acquisition or disposition of public property and construction of public buildings); Cal. Gov't Code § 65403 (capital improvement programs by joint powers agencies); Cal. Health & Safety Code §§ 33331 and 33367 (redevelopment projects); and Cal. Health & Safety Code § 34326 (housing authority projects).
- 28 Cal. Gov't Code § 65300.5.
- 29 Governor's Office of Planning and Research, State of California, *General Plan Guidelines* (2003).
- 30 *See Federation of Hillside and Canyon Associations v. City of Los Angeles*, 126 Cal. App. 4th 1180, 24 Cal. Rptr. 3d 543 (2004).
- 31 *See Shea Homes Ltd. Partnership v. County of Alameda*, 110 Cal. App. 4th 1246, 2 Cal. Rptr. 3d 739 (2003), *Cadiz Land Co., Inc. v. Rail Cycle, L.P.*, 83 Cal. App. 4th 74, 99 Cal. Rptr. 2d 378 (2000).
- 32 Governor's Office of Planning and Research, State of California, *General Plan Guidelines* (2003).
- 33 Cal. Gov't Code §§ 66473.5 and 66474.
- 34 Cal. Gov't Code §§ 65359, 65454 and 65860. *Endangered Habitats League, Inc. v. County of Orange*, 131 Cal. App. 4th 777, 32 Cal. Rptr. 3d 177 (2005), *Mira Development Corp. v. City of San Diego*, 205 Cal. App. 3d 1201, 252 Cal. Rptr. 825 (1988).
- 35 Cal. Gov't Code § 65803.
- 36 Cal. Gov't Code § 65450.
- 37 Cal. Gov't Code §§ 65450 and following.
- 38 Cal. Gov't Code §§ 65359, 65454; *see Endangered Habitats League v. Orange County (Rutter Development)*, 131 Cal. App. 4th 777, 32 Cal. Rptr. 3d 177 (2005), *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors*, 91 Cal. App. 4th 342, 110 Cal. Rptr. 2d 579 (2001).
- 39 *Sierra Club v. Napa County (Beringer Wine Estates)*, 121 Cal. App. 4th 1490, 19 Cal. Rptr. 3d 1 (2004).
- 40 Cal. Gov't Code § 65453(a).

- 41 Cal. Health & Safety Code §§ 33000 and following. *See also* Cal. Health & Safety Code §§ 33030, 33031 (defining blight).
- 42 Cal. Health & Safety Code § 33200.
- 43 Cal. Health & Safety Code § 33110.
- 44 *See* Cal. Health & Safety Code §§ 33010, 33020, 33021.
- 45 Cal. Health & Safety Code § 33331.
- 46 *City of Poway v. City of San Diego*, 229 Cal. App. 3d 847, 280 Cal. Rptr. 368 (1991).
- 47 Cal. Gov't Code § 65358.
- 48 Cal. Gov't Code § 65700(a).
- 49 Cal. Gov't Code §§ 65355, 65356.
- 50 *See DeVita v. County of Napa*, 9 Cal. 4th 763, 38 Cal. Rptr. 2d 699 (1995).
- 51 Cal. Gov't Code § 65360.
- 52 *See* Cal. Gov't Code § 65588(b) and (e)(7).
- 53 Cal. Gov't Code § 65400.
- 54 Cal. Gov't Code §§ 66473.5 and 66474.
- 55 *Endangered Habitats League v. Orange County (Rutter Development)*, 131 Cal. App. 4th 777, 32 Cal. Rptr. 3d 177 (2005).
- 56 *Sierra Club v. Board of Supervisors*, 126 Cal. App. 3d 698, 179 Cal. Rptr. 261 (1981).
- 57 *Suter v. City of Lafayette*, 57 Cal. App. 4th 1109, 67 Cal. Rptr. 2d 420 (1997).
- 58 *See Village of Euclid v. Ambler Realty Company*, 272 U.S. 365 (1926).
- 59 *See Martin v. City and County of San Francisco*, 135 Cal. App. 4th 392, 37 Cal. Rptr. 3d 470 (2005).
- 60 *Pala Band of Mission Indians v. Board of Supervisors*, 54 Cal. App. 4th 565, 63 Cal. Rptr. 2d 148 (1997).
- 61 *Gonzalez v. County of Tulare*, 65 Cal. App. 4th 777, 76 Cal. Rptr. 2d 707 (1998).
- 62 Cal. Gov't Code § 65860; *Building Industry Association of San Diego v. City of Oceanside*, 27 Cal. App. 4th 744, 33 Cal. Rptr. 2d 137 (1994). *See also* Cal. Gov't Code § 65860(a) (defining consistency). All ordinances enacted by a charter city having a population of at least 2 million must be consistent with its general plan. Cal. Gov't Code § 65860(d).
- 63 *See* Cal. Gov't Code § 65902.
- 64 Cal. Gov't Code §§ 65900 – 65901.

- 65 *See Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789 (1984), *Friends of Davis v. City of Davis*, 83 Cal. App. 4th 1004, 100 Cal. Rptr. 2d 413 (2000).
- 66 *Gonzalez v. County of Tulare*, 65 Cal. App. 4th 777, 76 Cal. Rptr. 2d 707 (1998).
- 67 *Malibu Mountains Recreation v. Los Angeles County*, 67 Cal. 4th 359, 79 Cal. Rptr. 2d 25 (1995).
- 68 *Garavatti v. Fairfax Planning Comm.*, 22 Cal. App. 3d 145, 99 Cal. Rptr. 260 (1971); *Community Development Comm. v. City of Fort Bragg*, 204 Cal. App. 3d 1124, 251 Cal. Rptr. 709 (1988).
- 69 *Bauer v. City of San Diego*, 75 Cal. App. 4th 1281, 89 Cal. Rptr. 2d 795 (1999); *Korean American Legal Advocacy Foundation v. City of Los Angeles* 23 Cal. App. 4th 376, 28 Cal. Rptr. 2d 530 (1994).
- 70 Cal. Gov't Code § 65906.
- 71 *Id.*
- 72 *Id.*; *Craik v. County of Santa Cruz*, 81 Cal. App. 4th 880, 96 Cal. Rptr. 2d 538 (2000).
- 73 *Millbrae Association. for Residential Survival v City of Millbrae*, 262 Cal. App. 2d 222, 69 Cal. Rptr. 251 (1968).
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- 82 Cal. Gov't Code § 66426.
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- 86 Cal. Gov't Code § 66464.
- 87 Cal. Gov't Code § 66434.
- 88 Cal. Gov't Code § 66458.
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- 97 14 Cal. Code Regs. § 15063.
- 98 Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15093.
- 99 *See* Cal. Pub. Res. Code §§ 21080 - 21080.33.
- 100 *See* Cal. Pub. Res. Code §§ 21083.3, 21090, 21093, 21094, 21156 - 21159.4; 14 Cal. Code Regs. §§ 15152, 15165 - 15179.5, 15183.
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- 106 Cal. Pub. Res. Code § 21083.9.
- 107 This has been the responsibility of the Governor's Office of Planning and Research. *See* Cal. Gov't Code §§ 65040 - 65040.6. The status of this agency is uncertain as this publication goes to press.
- 108 Cal. Pub. Res. Code § 21091(a); 14 Cal. Code Regs. § 15105.
- 109 Cal. Pub. Res. Code § 21091(d); 14 Cal. Code Regs. § 15088.
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Governor's Office of Planning and Research

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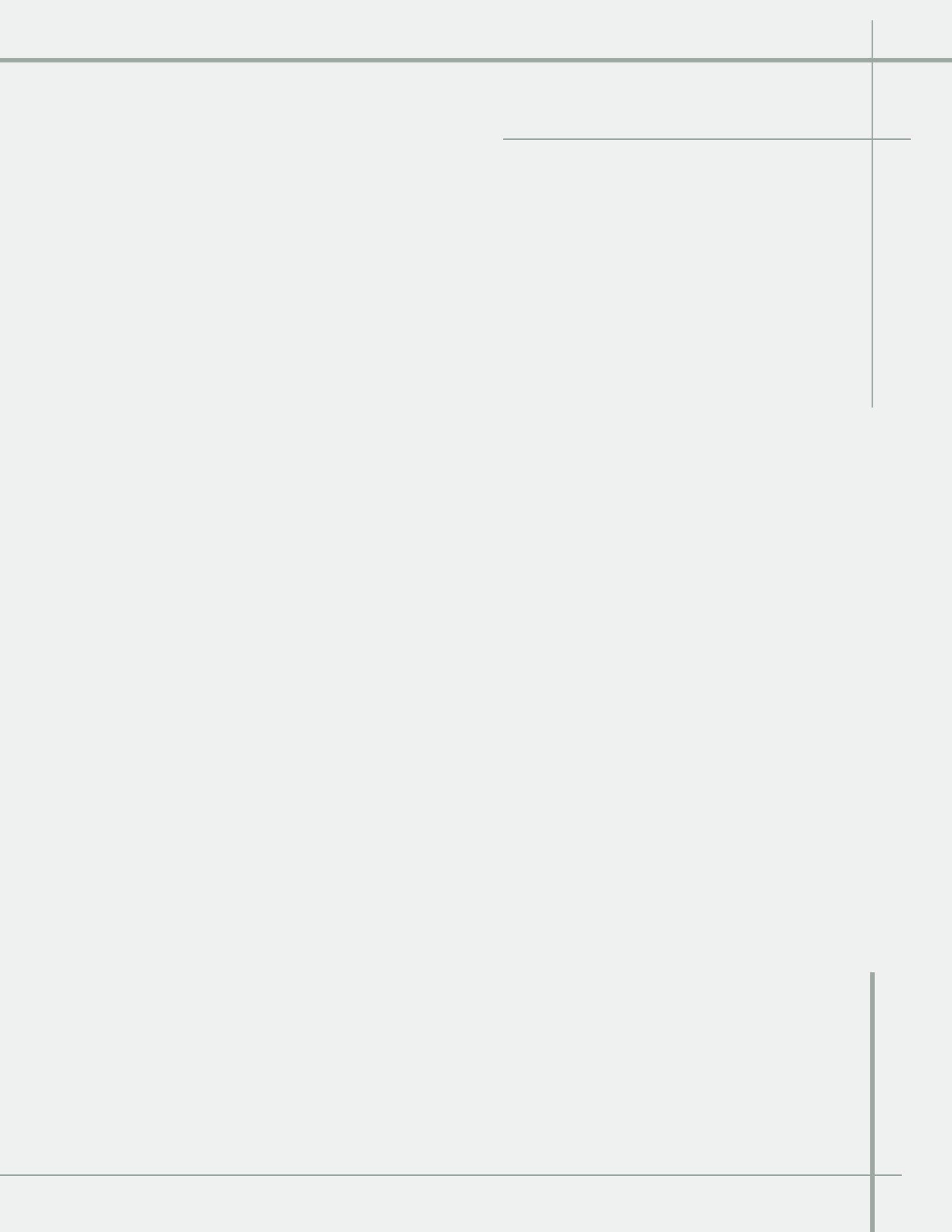
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