The Planning Commissioner Handbook

A comprehensive guide for planning commissioners



Institute for Local Government
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About the Institute for Local Government

the Institute for Local Government (ILG) is the non-profit training and education affiliate of the League of California Cities, California State Association of Counties and the California Special Districts Association which represent 1000s of local agencies across the state. ILG helps local officials and staff navigate the constantly changing landscape of their jobs by offering training, technical assistance, written resources and facilitation services specifically designed for local agencies.

The new edition of the handbook was developed by ILG with support and expertise from a working group of dozens of professional planning and development experts, including planning commissioners, local government planners, legal experts, state agencies, environmental groups and more.

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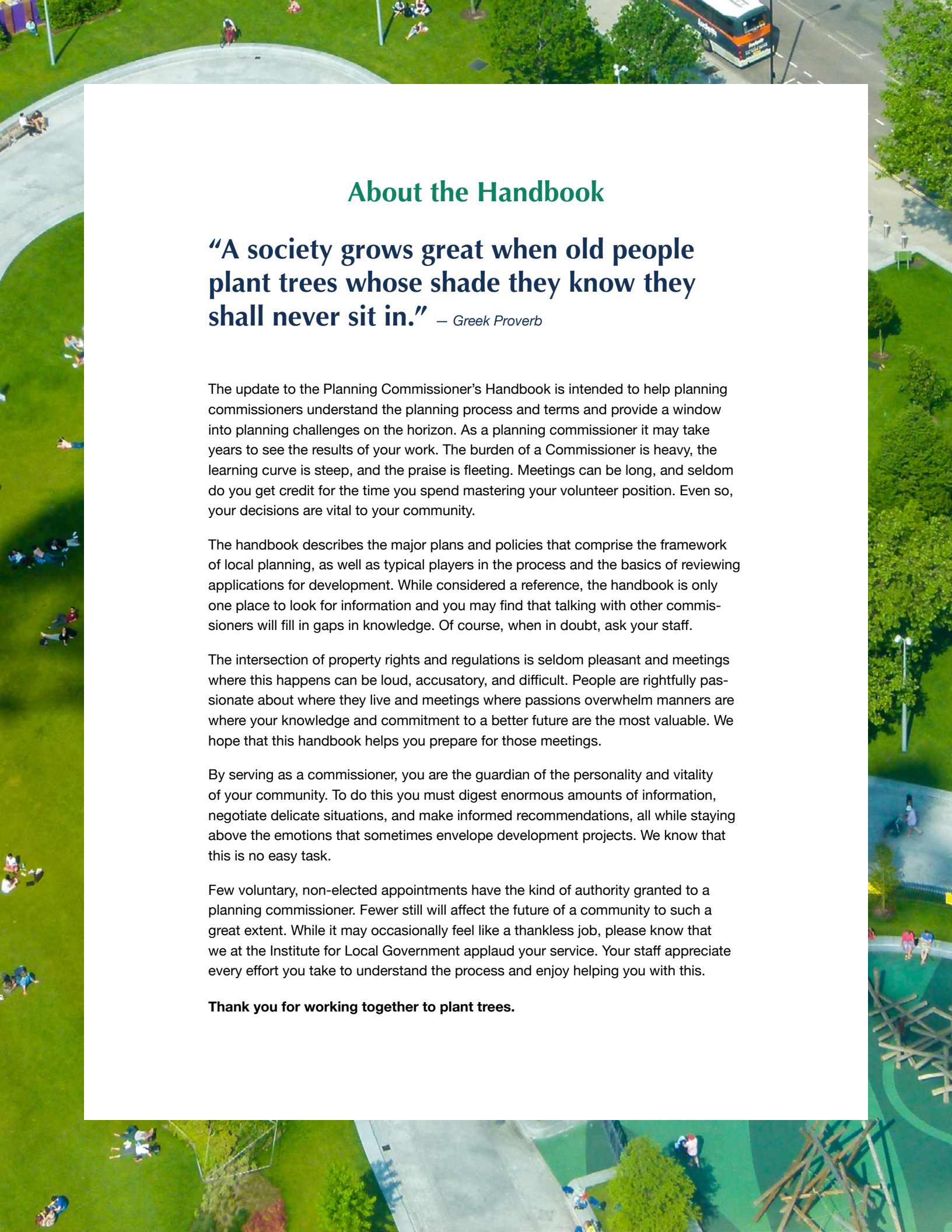
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Thank you to our partners



About the Handbook

"A society grows great when old people plant trees whose shade they know they shall never sit in." *— Greek Proverb*

The update to the Planning Commissioner's Handbook is intended to help planning commissioners understand the planning process and terms and provide a window into planning challenges on the horizon. As a planning commissioner it may take years to see the results of your work. The burden of a Commissioner is heavy, the learning curve is steep, and the praise is fleeting. Meetings can be long, and seldom do you get credit for the time you spend mastering your volunteer position. Even so, your decisions are vital to your community.

The handbook describes the major plans and policies that comprise the framework of local planning, as well as typical players in the process and the basics of reviewing applications for development. While considered a reference, the handbook is only one place to look for information and you may find that talking with other commissioners will fill in gaps in knowledge. Of course, when in doubt, ask your staff.

The intersection of property rights and regulations is seldom pleasant and meetings where this happens can be loud, accusatory, and difficult. People are rightfully passionate about where they live and meetings where passions overwhelm manners are where your knowledge and commitment to a better future are the most valuable. We hope that this handbook helps you prepare for those meetings.

By serving as a commissioner, you are the guardian of the personality and vitality of your community. To do this you must digest enormous amounts of information, negotiate delicate situations, and make informed recommendations, all while staying above the emotions that sometimes envelope development projects. We know that this is no easy task.

Few voluntary, non-elected appointments have the kind of authority granted to a planning commissioner. Fewer still will affect the future of a community to such a great extent. While it may occasionally feel like a thankless job, please know that we at the Institute for Local Government applaud your service. Your staff appreciate every effort you take to understand the process and enjoy helping you with this.

Thank you for working together to plant trees.

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The Planning Commissioner Handbook

Chapter 1

The Planning Commissioner's Role

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What is a Planning Commission?

The Planning Commission is an advisory body appointed by a governing body (city council or board of supervisors) that is responsible for directing the short and long range growth and development of a jurisdiction through maintenance and implementation of the city's or county's general plan, associated specific plans, rules and regulations. The planning commission is made up of five or more community members.[1] Most planning commissioners are professionals that have some familiarity with land use, traffic, engineering, elected office experience or development. Some planning commissioners are lay people without any previous land use experience. All commissioners are charged with acting in the public interest but serve at the pleasure of a city council or board of supervisors. Commission membership may change in response to changes in those bodies. A local agency is not required by law to create a planning commission but if they decline, they must assign the commission's legislatively required functions to another entity or itself.[2]



1 Cal. Gov't Code § 65101
2 Gov. Code 65000.

Why Plan?

Planning is a proactive process that establishes goals and policies for directing and managing land use and development. Local agencies plan to address fundamental community issues such as the location and type of development, infrastructure, mobility, housing availability, natural resource allocation, hazard mitigation (including the impacts of climate change) and economic development. Planning helps account for future demand for services, including sewers, roads and fire protection. Planning decisions impact public safety, public health, access to resources and environmental quality, and can exacerbate economic and racial inequities. During the planning process, commissioners can make the following positive impacts from planning decisions:

- **Saves Money.** Good planning can result in cost savings on infrastructure and essential services.
- **Sets Expectations.** Planning establishes the ground rules for development. A comprehensive general plan sends a clear signal about the goals and vision of the community. This will not entirely eliminate conflicts, but it sets expectations that can help minimize them.
- **Supports Economic Development.** Planning can assure community amenities and quality development that attracts businesses and residents.
- **Provides a Forum for Engaging the Entire Community.** Planning processes, such as the development of the general plan, provide a forum for seeking community input. Planning efforts should always involve broad and diverse segments of the community to ensure that the resulting plan fully addresses the needs of the entire community.
- **Promotes Public Health.** The physical design of a community can expand opportunities for biking, walking and other healthy activities. The location and design of uses can encourage activity and reduce negative environmental health impacts, such as air pollution.
- **Mitigates Hazards.** Planning can require that appropriate development and infrastructure are built in areas with a high risk of fire, flood and sea level rise to reduce the risk of property damage and injury to residents.
- **Increases Equity and Reduces Barriers to Opportunities.** Planning can increase housing supply, including affordable housing, and support transit to provide mobility and access to resources such as education, jobs and other community amenities.
- **Reduces Environmental Damage and Conserves Important Community Resources.** Planning helps identify important natural, cultural and historic resources and can channel development in a way that protects or augments these resources and maintains unique community character and sense of place.
- **Helps Establish the Need for Historical Site Preservation.** Planning facilitates the formation of historical districts, design review overlays and the establishment of scenic corridors.

The Commission's Duties

The planning commission plays a central role in the planning process in three important ways. First, it acts as an advisory board to the main governing body on all planning and development issues. Second, the commission assures that all land use decisions, including individual projects, are consistent with the policies and plans adopted by the governing body. Just as you build a building one brick at a time, you implement a community vision one project at a time. Third, the commission advocates for the best interests of all community members regarding land use and development policy and projects. However, most planning commission actions can be appealed to the elected governing body, which can uphold the commission's decision, overturn it, modify it or send it back for further study. Check your jurisdiction's planning commission guidelines for specific requirements.

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

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

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

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

Personal commitments by each planning commissioner to ensure productive and informed proceedings include:

1. Review existing community planning policies, plans and regulations. Understand state and federal laws that impact local planning such as general plan law, the California Environmental Quality Act (CEQA), Sustainable Groundwater Management Act and local hazard mitigation requirements.
2. Attend meetings to ensure a quorum and facilitate the business of the commission. Failure to regularly attend meetings may result in the removal of a commissioner.
3. Provide advance notice of a meeting absence to commission staff.
4. Review meeting materials in advance of a meeting. In accordance with Brown Act regulations, documents generally are released to commissioners and the public simultaneously, and agendas are publicly posted no less than 72 hours prior to a meeting.
5. Understand and comply with the Ralph M. Brown Act (Brown Act) and Rosenberg's Rules of Order or similar meeting and quorum protocols adopted by the agency. Commissioners are to follow Fair Political Practices Commission (FPPC) filing requirements including Form 700 filings. Failure to comply with deadlines and requirements can result in penalties.
6. Understand the priorities of the appointing elected official and the district/community they represent.
7. Review and follow the jurisdiction's ordinances and/or other applicable governing documents or governing body direction relating to the planning commission.
8. Members shall comply with the state's requirements for AB 1234 ethics training.

Other Local Planning Bodies

Some local agencies create different boards or positions to focus on specific aspects of the land use planning process.

- **Board of (Zoning) Adjustments.** A local body, created by ordinance and appointed by the governing body, whose responsibility is to consider zoning variance requests.
- **Building Official.** The person responsible for the administration and enforcement of building, housing, plumbing, electrical and related codes.
- **Design Review Board/Architectural Review Board/Advisory Committees.** These appointed boards are often sub-committees of the planning commission and review projects to make sure they are consistent with design guidelines or provide guidance on complex project design issues.
- **Historic Preservation Commission.** A commission appointed by the governing body charged with carrying out the historic preservation goals, policies and programs.
- **Zoning Administrator.** An appointed official who implements the zoning ordinance or code and is also often empowered to make decisions concerning design permits, administrative use permits and other permits as provided for in the zoning ordinance.
- **Zoning Board.** An appointed body that hears and decides matters relating to the application of the zoning ordinance and considers appeals of zoning administrator's decisions.

Public Service Ethics

As a planning commissioner, you wield considerable power over how your community grows and develops. With this power comes the expectation that you will hold yourself to the highest ethical standards. Part of being ethical means exercising your power in the public's interests, as opposed to personal self-interest or other narrow, private interests.

All parties appearing before the planning commission are entitled to a fair, ethical and accountable government process, which includes appointed committees and commissions. This requires that public officials and appointed committee and commission members adhere to the following:

1. Comply with both the letter and spirit of the laws and policies affecting government operations and processes;
2. Be independent, impartial and fair in their judgment and actions;
3. Prioritize the public good when fulfilling duties as a public servant and avoid any appearance that title or position is used for personal gain; and
4. Conduct public deliberations and processes openly, unless legally confidential, in an atmosphere of respect and civility.

There are a number of resources on the ethical obligations of planning commissioners. One is the law. California has a robust array of laws relating to ethics that are summarized in this section. The law, however, merely sets a minimum standard for ethical conduct. Just because an action is legal doesn't mean that it is ethical. For example, it may be legal for you to vote on your best friend's project application, but if everyone in the community knows how close the two of you are, will the community truly feel that you were able to put the community's interests ahead of your personal loyalties?

Making Ethical Decisions

Another source of guidance may be your agency's own code of ethics, if it has one. Many cities and counties have adopted ethics codes to provide guidance in local decision-making processes. At some point in your service as a planning commissioner, you will likely face two common types of ethical dilemmas. The first involves situations in which doing the right thing will come at a significant personal cost to you or your public agency. In these situations, the answer is relatively simple. The bottom line is that being ethical means doing the right thing for the community regardless of personal or organizational costs.

The second type of ethical dilemma involves those situations in which there are two conflicting sets of "right" values. In these instances, drawing the ethical bottom line is more difficult. If you find yourself faced with a "right versus right" decision, the following questions may help you come to an answer:

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

- What decision will best promote public confidence in the planning commission and your leadership?

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

In coming to a decision in such a situation, the first step is to consider what ethical values are at stake. One might be fairness to those property owners who developed their properties in accordance with the policies expressed in the general plan and the public who participated in developing the plan. Another might be compassion for the developer seeking the amendment: if it is not economically feasible to develop the property as envisioned by the general plan, perhaps an amendment is in order. The next step is to weigh the competing costs and benefits. Although the developer has identified the benefits to the community associated with approving the amendment, what are the benefits of adhering to the general plan? What are the costs of amending the plan? Will an amendment in this situation open the door for other amendment requests? How might the planning commission fairly evaluate those requests while still maintaining the overall integrity of the general plan? Are there options that might enable the community to reap some of the benefits described by the developer while still being consistent with the general plan as written?

Finally, consider which approach will best promote the public's confidence in the planning process. Will the public's confidence be undermined if the commission doesn't enforce the plan? Or will denying the amendment look so rigid and unfair to the applicant that it will undermine the public's faith in the planning commission as a decision-making body? What decision will best support the commission's stewardship of the community's economic and environmental health? The answers to the questions listed above will vary with each situation and likely will not be clear-cut or obvious. However, asking difficult questions and thoroughly evaluating the answers can go a long way in helping you make consistently ethical decisions that further the public's interests. Often we have biases that we are not aware we have. Make sure you consider any bias you may have that might impact your decision.



Ethics Laws

California law promotes ethical decision making in two ways: (1) requiring certain public disclosures and (2) prohibiting certain actions. The financial statements that you (and many public officials) must file with the Fair Political Practices Commission (FPPC) are an example of disclosure. In essence, the law allows the public to scrutinize the relationships between your personal finances and material financial interests, and your public decision-making. Disclosure laws allow the public (often with the assistance of the media) to assess whether there may be too close of a relationship between your economic interests and the decisions you make as a public official.

The law also prohibits certain actions. For example, a public official must disqualify themselves from participating in a decision that will materially affect their financial interests. This does not necessarily mean the disqualified official has done anything illegal or corrupt. It simply means that the public's interests are better served by removing any question as to the motivations behind the official's decision-making.

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

Public Service Values for Commissioners

Planning commissioners should consider the following value statements as they undertake their responsibilities.

Fairness

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

Compassion

- I recognize government's responsibilities to represent all community members regardless of their socioeconomic status.
- I consider exceptions to planning policies when there are unintended consequences or undue burdens.
- I realize that some people are intimidated by the public process and will try to make their interactions as stress-free as possible.

- I convey the agency's care for and commitment to the members of its community.
- I am attuned to and care about the needs of the public, officials and staff.

Respect for Others

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

Responsibility

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

Integrity

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

Public Trust

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

Vision

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

Financial Gain

The notion behind financial gain ethics laws is that the public has a right to know about a public official's financial interests. This ensures the public that elected and appointed officeholders are making decisions for the good of the community and are not being influenced by their personal finances to act in their own benefit. As a government official, the appearance of fairness is very important in maintaining the trust of the public. Financial gain ethics laws include:

- **Financial Interests—Disclosure and Disqualification Issues.** Public officials must periodically disclose their financial interests—including interests in real property, investments, business positions and sources of income and gifts—to the public.[4] This disclosure is made on a form called "Statement of Economic Interests," also known as "Form 700." A public official cannot make or attempt to influence a governmental decision if it is reasonably foreseeable that the decision could have a "material financial effect" on their financial interests.[5] The FPPC has developed a series of questions (known as the "four-step process") to determine whether an official must be disqualified from participating in a decision.[6] If you are worried that an upcoming decision will have an effect—positive or negative—on one or more of your financial interests, talk with your jurisdiction's attorney (not planning staff) as soon as possible.

- **Interests in Contracts Prohibited.** A public official may not have a financial interest in any contract made by the board

4 See Cal. Gov't Code §§ 87200 and following.

5 See Cal. Gov't Code §§ 87100 and following.

6 2 CCR § 18700.

or body of which the official is a member.[7] The law is very strict on this point: such contracts are void.[8] Under most circumstances, the prohibition cannot be avoided by disqualifying oneself from participating in the decision on awarding the contract. Again, consult with your agency's attorney immediately if there is a contract before the commission in which you may have an interest.

- **Bribery.** Requesting, receiving or agreeing to receive anything of value in exchange for an official action is a crime. In addition to criminal penalties, an individual convicted of bribery forfeits their office and is disqualified from holding public office in the future.[9]

The Political Reform Act: Key Things to Know

- California's disclosure and disqualification requirements are administered by the Fair Political Practices Commission (FPPC), which gives both informal and formal advice on the application of these requirements. The FPPC is provided the statutory authority to promulgate regulations that are consistent with and further the purposes of the Political Reform Act. Check out the FPPC's website (www.fppc.ca.gov) for contact information, as well as for other useful information relating to the FPPC's administration of the Political Reform Act.
- For purposes of disqualification, the FPPC's main concerns[10] include business entities in which an official has a direct or indirect investment of $2,000 or more; real property in which an official has a direct or indirect interest of $2,000 or more; sources of income of $500 or more within the last twelve (12) months; business entities in which the official is a director, officer, partner, trustee, employee or holds any management position; and anyone from whom the official has received gifts of $520 or more in the preceding year (note: the FPPC may increase the gift limit on January 1st of odd-numbered years under Government Code section 89503. Consult your agency counsel for the most up-to-date gift limit).
- When in doubt, the FPPC will usually err on the side of disclosure and disqualification.
- The city attorney's or county counsel's advice will not immunize an official from prosecution for violating disclosure and disqualification requirements. However, it is nonetheless wise to consult agency counsel as soon as you suspect that you may have an issue under the Political Reform Act.
- Violations of the Political Reform Act are subject to civil and criminal penalties depending on the severity of the offense. For example, knowing and willful violation of the act is a misdemeanor and subjects the violator to a fine of the greater of $10,000 or three times the amount not reported.[11]

7 Cal. Gov't Code § 1090.

8 Cal. Gov't Code § 1092; Thomson v. Call (1985) 38 Cal.3d 633. .

9 Cal. Penal Code § 86.

10 2 CCR § 18700.

11 Cal. Gov't Code § 91000(b).

Personal Advantages and Perks

State law strictly limits officeholder benefits relating (or appearing to relate) to his or her status as an officeholder:

- **Gifts.** With certain exceptions, a public official must disclose gifts over $50 on their Statement of Economic Interests (Form 700) and may not receive gifts from any one source that totals over $520 in a single year.[12] Gifts may include meals, entertainment, certain kinds of travel payments and rebates or discounts not offered to the general public in the usual course of business.[13] The law is particularly strict about free transportation passes (not including frequent flier awards offered to everyone). Acceptance of such passes results in immediate loss of office.[14]

- **Speaking Fees or Honoraria.** Public officials may not receive payments for giving a speech, writing an article or attending a conference or meeting. Limited exceptions apply. Free conference admission with an accompanying meal and nominal items provided by the organizer when provided directly in connection with a speech given by the official, for example, may not be considered a gift or income that must be reported.[15]

- **Use of Public Resources.** It is a felony to misuse public funds, which can include submitting inaccurate or inflated expense reports from traveling on agency business. Public resources (including staff time and office supplies) may not be used for either personal or political purposes.[16]

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

Fairness and Impartiality

Officeholders should make decisions in a fair and impartial manner. Key laws that enforce fair decision making by planning commissioners include:

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

- **Effect of Decisions on Family Members' Financial Interests.** A public official must disqualify themselves from participating in a decision that would reasonably have a foreseeable material financial effect on a member of their immediate family (spouse and dependent children).[18]

- **Party or Factual Bias.** A strong personal animosity towards a project applicant or the receipt of information about a project may constitute a disqualifying source of bias when a planning commission is sitting in a quasi-judicial capacity.[19] This is a variation of the "ex parte communications" doctrine, which suggests that, in quasi-judicial matters,

12 Cal. Gov't Code §§ 87200, 87207; 2 Cal. Code of Regs. § 18940.2 ($340 amount valid through 2022).

13 Cal. Gov't Code § 82028(a).

14 Cal. Const. art. XII, § 7.

15 Cal. Gov't Code §§ 89501, 89502; 2 Cal. Code of Regs. § 18950.342.

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

17 Cal. Gov't Code § 84308.

18 Cal. Gov't Code §§ 82029, 87103.

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

all communications to you about the merits (or demerits) of the proposed use should occur in the course of a public hearing.

- **Dual Officeholding.** State law prohibits public officials from holding multiple offices at the same time that subject them to conflicting loyalties.[20] Check with your agency counsel if you are worried that this prohibition may apply to an office you are seeking.

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

Tips for an Effective Planning Commission Meeting

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

20 See Cal. Gov't Code § 1126.

Fostering Positive Working Relationships with Others

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

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

Working with Staff

A good working relationship with staff will significantly improve your effectiveness as a planning commissioner. A planning department staff member will always be present at commission meetings. Other attendees may include representatives from your jurisdiction's attorney's office and public works department. Planning staff advises the commission on local agency plans, ordinances and policies. They also provide information on state requirements that impact local land use and development decisions. In addition, they support the commission's work by providing planning expertise, background information and research, preparing plans and reports, making recommendations and answering technical questions. Other staff responsibilities include:

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

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

Tips for Developing and Maintaining Good Relationships with Staff

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

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

Consultants

Local agencies often have limitations on staff expansion, while the demand for public planning continues to increase as communities grow. Consultants are often used to address temporary or specialized staffing needs, such as:

- Completing studies requiring special skills,
- Providing additional support on an as-needed basis,
- Preparing studies and analysis required by environmental laws, and
- Assisting on large projects, such as a general plan update, housing element update or specific plans.

Who Does What in the Project Review Process?

Planning Staff

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

- Monitors project implementation
- Holds consensus-building meetings with the public on controversial projects

Agency Legal Counsel

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

Planning Commission

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

Governing Body

- Balances staff analysis, planning commission decisions/recommendations, community input and jurisdiction's goals

Working with the Governing Body

One of the ongoing relationships to take into account is that between the planning commission and the governing body (city council or board of supervisors). In most cases, individual commissioners serve at the pleasure of one or more members of the governing body. Because these officials are elected by the community to represent them, planning commissioners should consider the views of the governing body in making their decisions.

The planning commission-governing body relationship can become strained if the governing body repeatedly overturns planning commission decisions. In such cases, a commissioner may feel that the governing body did not look at the land use issues as closely as the commission. One thing to keep in mind, however, is that the governing body must also contend with political pressures that are not always felt by the appointed commission. Here are some ideas on how to promote a good ongoing relationship between the planning commission and the governing body:

- Make adequate findings to ensure that the reasons for your actions are clear
- Ask for clarification of the governing body's policies or actions if they are unclear
- Include in planning commission minutes any questions or points of view that are not obvious in your decisions and findings
- Send a planning commission representative to meetings of the governing body to discuss difficult decisions as appropriate
- Request an annual joint work session to discuss priorities, communication and other pressing issues
- Do not rely solely on staff to convey your message, either to the public or to the appropriate elected officials
- Do an annual self-evaluation and follow through with any needed changes in how the commission does business
- Keep in mind that elected officials must answer to the voters. You may find it helpful to be familiar with the policy perspectives of the members of the governing body, particularly as they relate to land use policies and programs. (For example, are they "slow growth" or "pro-growth"?) Casting individual commission decisions in ways that address issues of concern to individual members of the governing body (if not conforming to them) reduces the likelihood that a commission decision will be overturned on appeal.

Planning to Increase Equity

Across the United States, the pursuit of understanding equity and addressing systems of advantage has intensified. Some could argue that establishing the appropriate starting point for engagement on this topic is among the most complicated in the entire process. Any policymaker will tell you that no amount of money or brute force of legislation will make institutionalized challenges, systemic inequities or even smaller problems disappear overnight, mainly due to interconnections with other structural issues. A perennial obstacle with public sector-led solutions is agency limitations, preventing the necessary cross-sector collaboration needed to develop and launch effective responses to equity challenges.

For this handbook, equity challenges are defined as societal problems that disproportionately impact one or more groups in contrast with the majority of the population. Examples of such challenges include: housing instability/homelessness, access to quality healthcare and education, obstructed participation with transit systems, and more. In this section, "communities" are referred to as groups that experience discrimination and exclusion (social, political and economic) because of unequal power relationships across economic, political, social and cultural dimensions.

As these communities continue to be negatively impacted by inequities at higher rates, the decisions of planning commissions have emerged as part of the ecosystem. For example, the negative impact from some zoning and other planning commission actions on wealth accumulation for underrepresented communities is heavily documented and undeniable, complicating the path to closing equity gaps.

While planning commissions are not exclusively tasked with finding or becoming the antidote to these issues, actions taken by various commissions have the potential to alleviate community level inequities or conversely, maintain and augment the challenges we're already observing -- challenges that continue to be exacerbated by housing shortages, population fluctuations, natural disasters, and other environmental hazards. The examples below describe equity-driven considerations in future planning commissions' ability to steward positive change in California.

Recognition to Boost Visibility and Establish Focus

The vast majority of negative experiences and adverse events impacting marginalized communities were ignored at the time they took place and were not recognized, acknowledged or discussed by the general public for many years. This long history of omission has further complicated the process of identifying a path forward that accurately addresses these struggles. Many planning commissions have started to reflect on this history and explore opportunities to expand their knowledge base by researching past commission actions and the impact of those actions on the communities in their region.

For example, several planning commissions[21] have added land acknowledgements to their public meetings to recognize the present-day impacts and challenges experienced by Native Americans, and the commission's role in the current status and trajectory of indigenous communities. Other commissions have gone a step further to proactively advance more explicit anti-racists policies. For example, in 2020, the San Francisco Planning Commission released a document[22] acknowledging how some actions of past commissions promoted white supremacy and contributed to the ongoing oppression of marginalized

21 City of Sacramento's Land Acknowledgment Policy requires all public meetings, including Planning Commission meetings, to include a recognition of Indigenous communities who originally lived on the land. A past agenda can be seen at http://sacramento.granicus.com/GeneratedAgendaViewer.php?view_id=21&event_id=4228
San Francisco's Planning Commission acknowledges the Indigenous people of the San Francisco Peninsula. A past agenda can be seen at https://sfplanning.org/sites/default/files/agendas/2022-01/20220120_cal%20%28ID%201272892%29.pdf

22 San Francisco Planning Commission's Resolution Centering Planning on Racial and Social Equity acknowledges past policies resulting in racial disparities and allocates resources to implement strategies for racial and social equity. The full resolution can be found here https://sfplanning.org/sites/default/files/documents/admin/R-20738_Centering_Planning_on_Racial_and_Social_Equity.pdf

groups.

Strengthening efforts to recognize and acknowledge what communities have experienced or are experiencing is a way to improve external relationships and build trust. Importantly, it also helps increase the visibility of and boosts education about unknown aspects of community history for both the commission and the general public.

Strengthening Governance to Advance Equity

While equity discussions may be introduced as formal commission items, evaluating and amending governance procedures and commissioner assignments can also play a significant role in guiding change.

In 2021, the Los Angeles Planning Commission held an all-day meeting[23] to listen to historically ignored and oppressed communities, and to organize the perspectives they heard to inform future planning and development strategies. The meeting was conducted as part of the mayor's initiative to achieve racial equity in city government, aiming to:

- Understand how structural racism has been built into existing policies;
- Amplify the voices of people most impacted by racist policies; and
- Develop the planning commission's anti-racist and equity framework to guide decision-making on projects and policies

The findings were used to inform an Anti-Racist and Equity Framework for the Commission.

Annual nomination and appointment cycles represent another opportunity to be intentional about commission diversity and inclusion, which is another step toward addressing community level challenges. Planning commissions and their governing bodies are able to set priorities and desired skillsets for future appointees by identifying specific expertise or lived experience (related to the equity challenges noted above) they would like on the Board or creating mechanisms to source future board members directly from underrepresented communities.

Leveraging Internal Resources to Accelerate Progress

Planning commissions have resources at their disposal that could support improved understanding of current inequities. Their access to experts, community leaders, and past community-level data and reports could be useful for addressing knowledge gaps and providing commissioners, the staff and the public with the education needed to make responsible decisions that lead to more equitable outcomes.

As a starting point, commissions could identify and investigate past zoning and planning decisions that have had severe present-day impacts. Other questions for consideration include but are not limited to:

- When considering real estate and land uses, do all commissioners fully understand the implications for education access and school district enrollment? What about air quality and environmental justice concerns? Do proposed housing developments have access to fresh food (grocery stores, farmers markets)?
- Should test scores and demographic summaries be included in related commission item analyses?
- What additional context do commissions need to determine community impact, above and beyond what is presented in the current required reports?

Inspired by commonly required Environmental Impact Statements and Reports, a 2021 Brookings Institute article[24] asserted:

23 Materials and a recording from this meeting are available at https://planning.lacity.org/about/cpc-equity-day-2021

24 The full article, "Build race equity into rezoning decisions" by Lance Freeman is available at https://www.brookings.edu/blog/how-we-rise/2021/07/13/build-race-equity-into-rezoning-decisions/

"To address the inequalities that often arise from zoning and other major land use regulations, racial equity analyses should accompany their adoption…The scope of such analyses could include how the costs and benefits of such an action are distributed across racial/ethnic groups, the risks of displacement disaggregated by race/ethnic group, and how the proposed development would relate to current residential segregation patterns."

Systemic inequalities will not be solved by a single iteration of a planning commission, but commissions and commissioners in every California jurisdiction do have an opportunity to explore how they might employ a more equitable decision-making framework. Doing so would enable commissions to create a values-based approach and inclusive organizational culture wherein equity is centered and communities are active and engaged in the planning process.

Find out more about equity and planning at https://interactioninstitute.org/equity-and-urban-planning-weave-equity-into-process-and-content/.





The Planning Commissioner Handbook

Chapter 2

Meetings and Procedures

Institute for Local Government℠

ILGPlanningHandbook.org

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Preparing for Meetings

Local legislative bodies — which includes planning commissions – are required in almost all cases to conduct their business at open and public meetings. The public's perception of government is often derived from how these meetings are conducted. Planning commission meetings that are conducted openly, fairly and respectfully promote public confidence in their government generally and the commission's decisions in particular.

Preparation will also promote public confidence by ensuring that planning matters are handled professionally and knowledgably by all involved. Remember, members of the public watching your meetings either in the audience or at home are not likely to distinguish between commissioners, staff and others participating in your meetings. Fair and respectful treatment for everyone is therefore very important. This includes knowing what is expected of you at a planning commission meeting, both as to how the meeting will be conducted and what decisions the commission will be asked to make.

Agenda Review

As a planning commissioner, your primary job is to make land use decisions that are consistent with your local agency's plans, ordinances and policies. These decisions will be listed in advance on a publicly posted agenda, and planning commissioners are typically provided with a staff report for each item.

It is important that your agenda packet—usually received a few days before each meeting— contains the information that you need to make good decisions. Depending on the number of items and their complexity, reviewing the agenda packet may take considerable time. Simple information items might have very short staff reports, but more complex development applications might require reports that are several hundreds of pages including environmental assessments, technical reports, project plans, etc.

Commissioners should work closely with executive staff to ensure that key information is presented clearly and efficiently in the agenda packet, and that is delivered in time to allow for ample review before meetings. You may also want to ask staff before the meeting any questions you have about the material in the written reports. The questions should only address ambiguities that you have identified in the staff report or other documents. Discussing these issues before meetings gives staff time to provide you with the most relevant information. It also increases the efficiency of commission meetings by minimizing the chance that a decision will be postponed due to incomplete information.

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

Abstention and Disqualifications

When reviewing meeting agendas, you should keep an eye out for any items from which you should abstain or disqualify yourself. You may abstain from considering an agenda item when you have potentially conflicting loyalties that are not otherwise addressed by law. For example, if your cousin has a pending development application, the public would probably perceive that your personal loyalties conflict with your public duties. Even when you are certain of your impartiality, it can still be a good idea to abstain to avoid the appearance of impropriety. Abstention should not be used just to avoid taking a position on a decision, however. This is unfair to the public, project applicants and your colleagues on the commission. It might also be prohibited by local rules adopted for the commission.

Disqualification, on the other hand, occurs when the law determines that you must not participate in a decision based on certain circumstances. If you have spoken out for or against a specific project, you should consult with your agency's attorney to see if rules of common law bias require your disqualification. However, general predispositions—such as being generally concerned about the environment—are not enough to make disqualification necessary.[1] Note that these rules generally apply only to quasi-judicial decisions. When you are making legislative decisions, such as adopting zoning ordinances, you have more freedom to gather your own information—such as by contacting members of the community and visiting sites—to help in making your decision.

Identifying potential conflicts before each meeting provides you and your agency counsel (not planning staff) the opportunity to examine how the laws apply to your economic interests. If necessary, you may need to consult with the Fair Political Practices Commission to determine whether you are indeed disqualified or whether an exception applies.

Early identification of conflicts also enables staff to determine whether your disqualification will affect the commission's quorum on an item or whether your participation will be legally required despite the conflict (there are limited circumstances in which this occurs).[2]

If you are disqualified from participating on a specific agenda item, you must:[3]

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

There are limited exceptions that allow a disqualified official to remain in the room and participate when one's "personal interests" are at stake. These include:[4]

- Interests in real property wholly owned by the official or his or her immediate family;
- A business entity wholly owned by the official or his or her immediate family; and
- A business entity over which the official (or the official and his or her spouse) exercise sole direction and control.

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

The Duty to Decide, Not to Duck

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

1 See Fairfield v. Superior Court, 14 Cal. 3d 768 (1975); BreakZone Billiards v. City of Tor ance, 81 Cal. App. 4th 1205, 1235-1241 (2000).

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

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

4 2 Cal. Code Regs. §§ 17802.5(d)(3), 18702.4(b)(1).

Meetings and Public Hearings

Public hearings are formalized opportunities for public comment. They are usually required for specific types of actions, such as general plan adoption, zoning ordinances, development permits and variances. The hearing guarantees that the fundamentals of due process—such as the right to notice and the opportunity to be heard—are incorporated into the decision-making process. Local agencies must give at least ten days notice for a public hearing (compared to the three-day notice for a general meeting required under the Brown Act).[5] For legislative actions such as general plan amendments or zoning ordinances, the notice is usually posted on the agency's website and in a newspaper of general circulation. For development permits, notice must be mailed to affected property owners, including all owners within 300 feet of the affected parcel. These are the minimum standards that apply to all agencies.

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

Basic Meeting Procedures

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

1. Chair calls the meeting to order
2. Commission secretary calls the roll
3. Chair introduces key staff
4. Chair reviews the commission's procedures
5. Chair announces any changes to the agenda
6. Commission acts on consent items
7. Agenda items are addressed in turn
8. Comments and questions
9. Chair adjourns meeting

Most agencies use a "consent calendar" for routine items—such as approval of minutes—that can be handled without discussion. These items generally do not involve policy questions. Regular agenda items include both public hearing and non-hearing items. Both types of items are handled in the same way. First, the chair asks if the applicant is present. The chair may also find it helpful to determine how many other people also wish to speak about the application. This can often be accomplished by reviewing the speaker slips (pieces of paper filled out by those wishing to speak on an agenda item) that have been turned in to the commission secretary. The typical process for reviewing an application is:

1. Staff report
2. Commission questions to staff
3. Applicant's presentation

5 Cal. Gov't Code §§ 65090, 65095.

4. Commission questions to applicant
5. Public comments
6. Applicant's response
7. Commission discussion

All questions should be addressed to the chair rather than to the applicant, staff or anyone else. The chair should note these questions and ensure that they are answered. Other commissioners should also note issues of importance to them that are raised during testimony and bring them up later during the commission's deliberations. The commission should openly discuss the issue at hand. It should state why it is making its decision and why it gives more weight to some factors than others. In many cases these reasons must be formally stated as findings. On complex projects, it is helpful to deal first with sub-issues, such as amendments to conditions, by making separate motions rather than making a motion to approve with numerous amendments.

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

How to Get the Most out of Public Meetings

- **Notice.** Send out notices far enough in advance so that people can adequately respond. It is very difficult for community groups to meet, become informed, take a position and prepare testimony within a ten-day (much less a three-day) notice period. Utilize an inclusive outreach strategy to keep the public informed.
- **Accessibility.** Hold the meeting at a place that is easy to reach using alternative transportation choices such as public transit, walking, biking or car-share. Make sure the location is accessible for those with physical disabilities. If holding virtual meetings, make sure to explain the platform so participants understand how to engage and consider accessibility needs such as closed captioning.
- **Room Size.** Ensure that the room is large enough to hold everyone who wants to attend.
- **Written Materials.** Have sufficient copies of the agenda and written materials available in multiple languages (as applicable) placed near the entrance of the room.
- **Procedural Explanations.** Provide brief summaries of local agency procedures to help people who are new to the process understand what is going on and tailor their comments appropriately.
- **Speaker Slips.** Many agencies use speaker slips to organize comments during meetings. Such slips should provide space for the person's name and the agenda item on which they want to speak.
- **Audiovisual.** Make sure all presentations, visuals and video conferencing software are working and tested in advance. If software programs like PowerPoint will be used, pre-load the presentations into the computer.

- **Other Logistics.** Make sure all the other things—such as microphones, recorders, projectors, easels, maps, name plates, gavel, timer, flags, water and anything else that will be used during the meeting—are in place.
- **Special Needs.** Address special needs that are likely to arise that are specific to the meeting. For example, an interpreter might be appropriate if a large number of people who do not use English as their first language is expected.
- **Timing.** Start on time.

Civility in Public Meetings

Public debate includes the potential for disagreement, but this does not mean that civility has to go out the window. Civility is the notion of mutual respect, even in the face of disagreement. Uncivil meetings contribute to public alienation and antipathy towards government. The following are some tips for maintaining civility in meetings:

- **Separate People from the Problem.** Recognize that other thoughtful people have different views. Focus on solutions that are most likely to succeed. Avoid resolving disputes on an "us versus them" basis.
- **Limit Misunderstandings.** Make a continuing effort to understand the views and reasoning of people with opinions different than your own.
- **Get the Facts.** Work together to resolve factual disagreements. Fact-finding can get opponents on the same page in terms of identifying the problem. When uncertainty in the data remains, contending parties need to explain the reasoning behind their differing interpretations.
- **Use Fair Processes.** Genuinely solicit and consider public input. Make decisions on the basis of substantive arguments.
- **Remain Open to Being Persuaded.** One crucial element of civility is the recognition of the possibility that others may have better ideas than your own. Seriously consider persuasive arguments and explain your own position.
- **Debate in Good Faith.** Discuss your differences with others without pretense and based on your sincere concerns and values.

Open Meeting Requirements: The Brown Act

California's open meeting law—commonly referred to as the Brown Act[6]—provides the legal minimum for public engagement in meetings. All local legislative bodies—which includes planning commissions and many advisory committees—must conduct their business in an open and public meeting to assure that the public is fully informed about local decisions.[7]

Under the Brown Act, a meeting is defined as any situation involving a majority of a local legislative body's members in which business is transacted or discussed at the same time and location. In other words, a majority of the planning commission cannot hear, discuss, deliberate or take action privately on any issue before the commission no matter how the conversation occurs, whether by telephone or e-mail or at a local coffee shop.[8] This applies also to any advisory groups or committees created by the commission that are composed of a quorum (majority) of planning commissioners, have a continuing subject-matter jurisdiction, or have a meeting schedule fixed by formal action of the commission or the governing body.[9]

Types of Meetings

For purposes of the Brown Act, almost all planning commission meetings are of one of either two types: a regular meeting or a special meeting.

Regular meetings are the meeting that occurs at planning commission's regularly established meeting day, time and location. Most of your meetings will be regular meetings, but there are some sorts of decisions or other actions that the planning commission can legally take only at a special meeting.

Special meetings are meetings held at a time or place that is different from the planning commission's regular meetings. Special meetings can be held for a variety of reasons, but they are typically called for scheduling reasons or to address some specific issue that might require the commission's particular attention.

Special meetings often require greater efforts for public outreach. For example, a community workshop meant for members of the public to provide input on a project prior to formal consideration might be held somewhere other than the commission's regular meeting location to make it more convenient for attendees. In such cases, the city or county might need take additional steps to advertise the meeting in order to follow inclusive public participation principles.

Special meetings sometimes also allow for a less formal atmosphere for the commission to receive information and discuss matters in a relaxed manner. They are often used for initially considering more complex or lengthy matters on an upcoming meeting agenda or to educate the commission about a specific policy. The commission is not allowed to make motions, take actions to resolve a question or make a decision at work sessions. In a work session, no testimony on the record is taken from the public, although members of the public are invited to attend and provide comment.

Closed Sessions. The Brown Act also includes provisions for discussions outside of public view in closed session, but only under very limited circumstances that mostly do not apply to planning commissions. A commission may meet in a closed session to receive advice from its legal counsel regarding pending or reasonably anticipated litigation. However, the reasons for holding the closed session must be explained in the agenda.

6 Cal. Gov't Code §§ 54950 and following.

7 See Cal. Gov't Code § 54952.2(a); Cal. Gov't Code § 54954.2(a).

8 Cal. Gov't Code § 54952.2(b).

9 Cal. Gov't Code § 54952(b).

Serial Meetings

One thing to watch for is unintentionally creating an illegal "serial" meeting—a series of communications outside of an open and public meeting that results in a majority of commissioners having conferred on an issue. These are expressly prohibited under the Brown Act.

Communication does not need to be in person or directly between commissioners in order to create a serial meeting problem. Communicating through third parties or sending or forwarding e-mails can be sufficient to create a serial meeting if it ultimately includes a majority of commissioners. For example, if two members of a five-member commission consult outside of a public meeting and then one of those commissioners consults with a third commissioner on the same issue, a majority of the commission has consulted on the same issue. Although the initial communication might not in and of itself violated the Brown Act violation, there is a violation as soon as the chain reaches a majority of commissioners. The result is the same if the communications are through email, telephone, or through a third party such as a staff person, applicant or member of the public.

If you discuss commission business with a third party, you should keep the conversation about commission business "unidirectional." Feel free to receive or solicit information, but don't describe views of any other commissioners or ask about the third party about the views of other commissioners.

When it comes to email and text messages, you should never communicate your position on a pending matter to a majority of members, or solicit responses from other members when forwarding information you receive, or "reply all" to a message sent to the majority.

Social Media. The Brown Act now has special rules that apply to social media communications.[10] Public officials may communicate on social platforms to answer questions and provide the public with information. They may also solicit information regarding matters being considered by the body, or that fall within the official's jurisdiction. However, the Brown Act now prohibits public officials from responding directly to any communications posted on the internet by any other members of the same legislative body regarding a matter within the jurisdiction of the legislative body. Direct responses also include the use of emojis and "like" buttons. Importantly, this applies to any two members - the majority is not required for a violation to occur. In practice, avoid responding to fellow members' posts at all and consider not following each other on social media.

Permissible Gatherings. Not every gathering of commissioners outside of a public meeting is necessarily prohibited. For example, a majority of the commission may attend the same educational conference or the same public meeting of another legislative body. Attendance at a social or ceremonial event is not in and of itself a violation. The basic factor to keep in mind is that a majority of the commission cannot meet and discuss commission business except at an open and fully noticed meeting.

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

Teleconferencing

The Brown Act only allows the use of teleconferencing for meetings of a legislative body under limited circumstances.[11] If one or more members participate in a meeting via teleconferencing, the following requirements apply:

- The remote location must be connected to the main meeting location by telephone, video or both.
- The notice and agenda of the meeting must identify the remote location.

10 Cal. Gov't Code § 54952.2

11 Cal. Gov't Code § 54953(b).

- The remote location must be posted and accessible to the public.
- All votes must be by roll call.
- The meeting must comply with the Brown Act, which includes allowing participation by members of the public present in the remote locations.
- A quorum of the body must participate from locations within the jurisdiction, but other members may participate from outside the jurisdiction.

The role of teleconferencing in public meetings expanded significantly during the COVID-19 pandemic in order to promote social distancing under a series of executive orders issued by Governor Newsom in response to the pandemic. Under these orders, the following Brown Act teleconferencing requirements were temporarily suspended:[12]

- The requirement that each member's teleconference location be noticed, posted and accessible to the public.
- The requirement that at least a quorum of the local body participates from locations within the jurisdiction.

The orders also require local agencies to make meetings accessible to the public telephonically or otherwise electronically, and imposes special notice and accessibility requirements.

In 2021, Governor Newson signed Assembly Bill (AB) 361 into law, amending the Brown Act and allowing legislative bodies to continue to meet virtually during the COVID-19 public health emergency. AB 361 allows for legislative bodies to meet virtually during a proclaimed state of emergency if any of the following apply:

- State or local officials have imposed or recommended measures to promote social distancing,
- The purpose of the meeting is to determine, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees, or
- The legislative body has already determined that as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

Agencies are still required to meet aspects of the Brown Act including: providing notice and posting agendas; providing the public access to the meeting and the opportunity to address the council/board/commission; and providing the public the opportunity to comment in real time.

Without additional action, AB 361 will sunset Jan 1, 2024.[13]

What Happens When the Brown Act Is Violated?

Decisions that are not made according to the Brown Act—including the notice and public participation requirements addressed below— are void. Additionally, commissioners who intentionally violate the Brown Act may be guilty of a misdemeanor.[14]

12 Executive Order N-29-20 § 3.

13 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB361

14 Cal. Gov't Code § 54959.

Posting and Following the Agenda

The Brown Act requires that the public be informed of the time of and the issues to be addressed at each meeting.[15] The agenda must be posted on the agency's website at least 72 hours in advance of a meeting and written in a way that informs people of what business will be discussed (this is shorter than the 10-day notice requirement for a public hearing). Teleconference location, if any, must be included on the agenda. Any person may request that a copy of the agenda packet be mailed to them. There are a few exceptions to the 72-hour requirement that relate to unexpected circumstances:

- **Need Arises After Agenda Posting.** Items may be added to the agenda if they arose after the agenda was posted. The commission must make these determinations by a two-thirds vote of the members present (or a unanimous vote if less than two-thirds of the members are present).[16]

- **Emergency Meetings.** Emergencies—such as work stoppages, events that impair public safety and immediate perils—may justify discussion and action on an item not appearing on the posted agenda.[17] A majority of the commission must determine that such circumstances exist.[18]

- **Special Meetings.** The chair or a majority of the commission may call a special meeting, but an agenda must be posted 24 hours in advance and 24-hour written notice must be given to each commissioner and each media outlet requesting notice of meetings. Any commissioner may waive the written notice requirement by filing a written waiver with the clerk or merely by attending the special meeting.[19]

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

The Public's Right to Participate in Meetings

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

- **Reasonable Time Limits May Be Imposed.** Local agencies may adopt reasonable regulations to ensure that everyone has an opportunity to be heard in an orderly manner. Typical restrictions include time limits, prohibitions of repetitious or irrelevant comments[20] and ruling as out of order personal attacks on the character or motives of any person. The chair may also suggest that a spokesperson be chosen for a group.

- **Recording of Meetings Is Allowed.** Anyone attending a meeting may record it with an audio or video recorder unless the commission makes a finding that the noise, illumination or obstruction of view will disrupt the meeting. Any recording made by the local agency becomes a public record that must be made available to the public for at least 30 days. The agency must provide equipment to review the record without charge.[21]

- **Sign-In Must Be Voluntary.** Members of the public cannot be required to register their name or fulfill any other condition

15 Cal. Gov't Code § 54954.2(a).

16 Cal. Gov't Code § 54954.2(b)(2).

17 Cal. Gov't Code § 54954.2(b)(1).

18 Cal. Gov't Code § 54956.5(a).

19 Cal. Gov't Code § 54956.

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

21 Cal. Gov't Code § 54953.5.

for attendance at a meeting. If an attendance list is used, it must clearly state that signing the list is voluntary.[22]

If a group willfully interrupts a meeting and order cannot be restored, the room may be cleared. Members of the press must be allowed to remain and only matters on the agenda can be discussed. However, the chair cannot stop speakers from expressing their opinions or their criticism of the planning commission.[23] Again, the basic point is that members of the public have the right to make their viewpoints known on any issue.

The Public's Right to Access Documents

The public's right to access documents is guaranteed by both the Brown Act and the Public Records Act. Under the Brown Act, copies of the agenda materials and other documents distributed to the planning commission must also be available to the public.[24] Any materials distributed by the local agency, its consultants or commissioners must be available for public inspection at the meeting. Materials prepared and distributed by other attendees or participants must be made available after the meeting.

The Public Records Act gives the public the right to see any documents that are created as part of the planning process.[25] This is referred to as the "record." The record includes any writing containing information relating to the conduct of the public's business that was prepared, owned, used or retained by a public agency, including: handwritten or printed documents; photos and videos; voicemails, drawings, plans and maps; and electronic communications such as emails, text messages, tweets and others. To be in the public record, the document must be related to the conduct of the public's business and prepared, owned, used or retained by the agency. This does not include every piece of paper.

A document is presumed to be a public record unless a specific exception applies.[26] Two minor exceptions worth noting are:

- The "pending litigation" exception, which exempts documents that are prepared in support of ongoing litigation (otherwise opposing counsel could obtain all documents containing the agency's legal strategy just by asking for them).
- The "deliberative process" exception, which exempts preliminary drafts, notes or other information relating to deliberative processes not ordinarily retained in the agency's course of business. The reason is to allow staff a certain degree of freedom to develop new ideas. The public agency must be able to demonstrate that the public's interest in nondisclosure outweighs the public's interest in disclosure.[27] Major drafts generally must be made available.

Despite these exceptions, the safe assumption is that virtually all materials involved in your service on the planning commission are public records subject to disclosure. To avoid combining public and private conversations, don't include personal or political business to an email about your agency business. Create a new email if you are changing topics.

Public records are subject to inspection at all times during the office hours of the agency in which they are kept.[28] The public may also ask for copies of records. The request must reasonably describe an identifiable record or records subject to disclosure. The agency may charge a fee covering the direct cost of duplication.

22 Cal. Gov't Code § 54953.3.

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

24 Cal. Gov't Code § 54957.5.

25 See generally Cal. Gov't Code §§ 6250 and following.

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

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

28 Cal. Gov't Code § 6253(a).

Parliamentary Procedures

The rules of parliamentary procedure govern how decisions are made at meetings. Many, but not all, local agencies rely on Robert's Rules of Order for this purpose. Parliamentary rules are meant to create an atmosphere in which a meeting can be conducted efficiently, fairly, orderly and with full participation. The chair and the members of the commission bear responsibility for upholding the rules and maintaining common courtesy and decorum.

Debate and discussion under the rules should be focused, but free and open. It is generally best if only one person speaks at a time and for every speaker to be recognized by the chair before speaking. The chair should always ensure that debate and discussion focus on the item and policy in question, not on the personalities of the individual commissioners or anyone else in attendance.

A proposed course of action is first presented formally as a motion. Three types of motions are most common: basic motions, motions to amend and substitute motions. Basic motions are made when a commissioner recommends a specific action after saying, "I move...." You can change or amend the terms of a basic motion by saying, "I move to amend...." You can also completely replace the basic motion with another by saying, "I move to make a substitute motion that...." Motions to amend and substitute motions are often confused. A motion to amend seeks to retain the basic motion but to modify it in some way. A substitute motion seeks to throw out the basic motion and substitute a new and different motion for it. The question of whether a motion is really a motion to amend or a substitute motion is left to the chair. If you make a motion to amend but the chair determines that it is really a substitute motion, the chair's determination stands.

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

Decisions are generally made by a simple majority vote. Usually, a simple majority of those present are required. However, there are a few instances—such as general plan approvals—where a majority of the entire commission is required.[29] A tie vote means the motion fails. Thus, for a five-member commission, a vote of 3-2 passes the motion, but a 2-2 vote with one abstention means the motion fails. If a simple majority is required, but one member is absent and the vote is 2-2, the motion still fails. In some cases, a super-majority (two-thirds) vote may be required. Examples of this kind of action include motions to limit debate, close nominations or suspend rules.

Three Types of Motions

- **Basic Motion:** "I move that we approve the Smith project as recommended in the staff report."
- **Amendment to Motion:** "I amend the basic motion to add the requirement that the applicant incorporate the design features recommended in the neighborhood group report."
- **Substitute Motion:** "I move to make a substitute motion that we reject staff's recommendation and accept the developer's proposal as presented to us originally."

29 Cal. Gov't Code §§ 65354, 65356.

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

- **Motion to Adjourn.** Commission adjourns to its next regularly scheduled meeting.
- **Motion to Recess.** Commission takes immediate recess. Normally, the chair determines the length of the recess.
- **Motion to Fix the Time to Adjourn.** Commission adjourns at a specified time. For example, the motion might be: "I move we adjourn this meeting at midnight."
- **Motion to Table.** Discussion is halted and the agenda item is placed on hold. The motion can designate a specific time to return to the discussion or it may be indefinite: "I move we table this item until our meeting in October" or "I move we table this item indefinitely." When an item is tabled indefinitely, a commissioner will have to make a motion to take the item off the table at a future meeting. These motions are not debatable and require an immediate vote, with a simple majority required for passage.

10-Step Format for Discussion of an Agenda Item

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

Chairing Meetings

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

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

It is common practice for the chair to take a less active role in debates and discussions. This does not mean that the chair should not participate. On the contrary, as a member of the body, the chair has full rights to participate in discussions. The chair should, however, usually offer opinions last and should not make or second a motion unless convinced that no other member of the body will do so. The responsibilities of the chair include[30]:

- **Open the Meeting.** Explain why the meeting is being held, review the agenda and note any changes and review the procedures and time limits (if any) that are in effect.
- **Manage Public Testimony**. Describe the agenda item and ask speakers to identify themselves. Ask speakers to be concise and not repeat points made by prior speakers. Intervene when speakers ramble or when successive speakers repeat the same testimony. Assure that people have a reasonable length of time to testify and balance that with the number of people who want to testify. Sometimes there is a tendency to be easy on the time limits in the beginning of a meeting and more strict at the end. It's fairer for all if the time limits are applied consistently throughout.
- **Facilitate Deliberations.** Summarize issues, ask for input from the commission as a whole and ask for more information from staff if necessary. When commissioners disagree, assist them in expressing their various concerns. When a motion is proposed, assure that it is stated understandably before a vote is taken. At times, the chair may have to move the meeting along by asking for or suggesting a motion ("A motion at this time would be in order" or "A motion would be in order that we adopt staff 's recommendation").
- **Maintain Order.** Assure that commissioners wait to be recognized before speaking and intervene to prevent more than one speaker from talking at a time. Do not allow members of the public to clap or cheer. Likewise, quickly step in when sharp words are exchanged. Limit dialogue between commissioners and persons testifying to fact-gathering that will contribute to the commission's decision-making ability.
- **Apply the Rules of Procedure.** Be familiar with the commission's procedures and agenda items. The chair's decision is final on most rules of procedure.
- **Draw Out Reasons for a Decision.** Make sure that findings are adopted when required. When the commission makes a decision that is contrary to staff's recommendation, make sure that the reasoning for the decision is explained so that the relevant findings can be drafted. These duties are a lot to keep in mind, particularly the first few times you are called upon to chair a meeting. However, chairing a meeting is an acquired skill and you will become better at it the more you do it.

30 https://www.ca-ilg.org/sites/main/files/file-attachments/understanding_the_role_of_chair.pdf?1498252437

Quasi-Judicial and Legislative Decisions

Understanding the type of decision that the commission is being asked to make will help you understand your role in making the decision. Most land use decisions can be divided into two categories: legislative and quasi-judicial.

- **Legislative decisions** involve policy choices that apply to a broad class of landowners. Examples include decisions to adopt general plans and zoning ordinances.

  Legislative Acts: Examples

  - General plan amendments
  - Zoning code amendments
  - Zoning map amendments
  - Special plan adoption and amendment
  - Annexations
  - Development agreements

- **Quasi-judicial decisions** (also called adjudicative or administrative decisions) involve individual projects that are being considered for approval, conditional approval or denial based on criteria previously established by some legislative action. Examples include zoning permits or other entitlements, such as variances.

  Quasi-Judicial Acts: Examples

  - Conditional use permits
  - Variances
  - Coastal zone permits
  - Subdivision maps
  - Williamson Act cancellations
  - Development allotment per growth control ordinance
  - Certificates of compliance
  - General plan consistency determination
  - Habitat conservation plan amendments
  - CEQA decisions requiring hearings and evidence

The key difference between the two from a decision-making perspective is that procedural due process requirements apply to quasi-judicial decisions. Because these decisions are more formal, you have to be more careful about the sources of information you use to make your decision.

There is also a third type of decision that may arise from time to time: ministerial decisions. These actions are mandatory,

nondiscretionary activities that must be approved so long as certain standards are met. A final subdivision map, for example, must be granted when all of the conditions of the tentative map are met. Likewise, certain applications for second unit or "granny flat" approvals in single-family neighborhoods are ministerial.

Key Considerations for Quasi-Jurisdictional Proceedings

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

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

- **Notice of Hearing Required.** Quasi-judicial proceedings almost always involve a public hearing. Affected property owners should receive notice of the hearing by mail at least 10 days in advance, although different timelines and procedures may apply in charter cities.[31]

- **Decision-Maker Must Be Present for all Evidence.** Anyone involved in making the decision must have heard all the evidence. This becomes an issue if you miss a meeting where evidence is presented but the vote is postponed to a later meeting that you attend. While the best practice is to be present for all hearings, in some cases you may still vote after reviewing the tape or testimony of the earlier meeting, reading all documents involved, presenting and stating on the record that such review and examination was completed.[32] However, your agency's attorney may recommend that you abstain from the vote to avoid questions about fairness.

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

- **Site Visits Raise Concerns.** It is often tempting to visit a project site to get a better feel for the issues. However, this action raises due process concerns. The visit provides you with an opportunity to draw conclusions outside of the hearing process. For example, if neighboring owners are concerned about traffic congestion and you visited the property on a Sunday morning when there was no traffic, you might dismiss their claims as unwarranted. They may have just assumed you knew their concern was about congestion at peak travel times. Many local agencies require that you disclose any site visits that you may have made—along with any conclusions you drew from such visits—at the beginning of the hearing. Other agencies may take a more conservative approach. Always check with staff or the agency's attorney to see what procedures may apply to your commission.

- **Strong Personal Bias May Require Disqualification.** Strong personal bias may require that you disqualify yourself from making a decision. Procedural due process is built on the notion of an unbiased decision-maker.

31 Cal. Gov't Code § 65091.

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

Making a Decision

When a public agency makes a decision, the guiding principle must always be what best serves the public's interests, not the personal self-interests of the decision-makers. That is because the very purpose of having public agencies is to provide mechanisms to engage in collective decision-making. The goal of this decision-making is to work through challenges being faced in a community, to provide services and facilities and, through laws, to guide individual behaviors to promote the overall safety, well-being and prosperity of the community.

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

- Remember that you have more choices than to simply approve or deny a project as presented. Be prepared to suggest changes that address a concern that you have or that was raised during public testimony. Be aware that the applicant may have already made changes to the project prior to the hearing. Ask about any such changes.
- Establish time limits and review periods to ensure that the project is implemented as the commission has required.
- Check with staff to see if a suggested condition can be enforced.
- Be willing to approve a project in concept and give staff clear direction to work with the applicant to complete the project.
- Consider the relationship of the project to the entire community and to your understanding of the community's goals and policies. Does the project exacerbate current challenges or disparities or does it work to address them in a way that aligns with community values?
- Draw the line on conditions. Too many can overburden a project. If a project requires too many conditions, should you really be approving it? Remember, it is okay to deny a project if you have good legal cause.

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

Findings

Findings are written explanations of why—legally and factually—the planning commission made a particular decision. They map how the commission applied the evidence presented to reach its final conclusion. Findings should be developed with at least five audiences in mind: the general public, interested parties, the governing body, other governmental entities and courts.

Sometimes you may hear staff say that findings must "bridge the analytic gap." This refers to a leading court decision stating that findings must bridge the analytic gap between the evidence presented and the agency's ultimate decision.[33] Findings are helpful to the public. They offer an important opportunity to show how the commission's decision promotes the public's interests. In addition, findings:

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

Findings are always required when local agencies are acting in their quasi-judicial capacity[34]—that is, when they are making decisions on individual permits. Findings are also required for certain legislative decisions. It is often a good idea to develop findings even when they are not required, particularly for decisions that may be controversial or lead to litigation.

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

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

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

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

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

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

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

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

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

Questions Findings Should Answer

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

- Why was the regulation adopted or rejected?
- Why was the permit approved or denied?
- How does the decision meet relevant statutory requirements?
- What is the connection between the action and the benefits of the project?
- What public policy interests are advanced by the decision?
- What do particular provisions, restrictions or conditions mean?

The Record

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

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

What is in the Record

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

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

Appeal to the Governing Body

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

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

Judicial Review

If an applicant or community member has appealed an action to the governing body and is still not satisfied with the result, he or she may seek relief in the courts. This is another point where the distinction between legislative and quasi-judicial actions is important. Courts are more deferential to legislative actions because they involve policy choices. Our legislative system of government reserves policy choices for the legislative branch. Because of this, courts will normally only look to see that legislative decisions were not arbitrary, capricious or entirely lacking in evidentiary support.[35]

In contrast, quasi-judicial decisions are scrutinized more closely because the local agency is acting more like a court than a legislative body. Courts will normally examine whether there was substantial evidence to support the agency's findings. The court will uphold the agency's decision if the evidence substantially supports the findings or decision.[36]

There are individual cases in which courts may apply a stricter standard. For example, when vested rights are at issue, courts may apply an independent judgment test that allows the court to reweigh the evidence and substitute its own conclusions.[37] Likewise, stricter tests may apply for constitutional issues, such as free speech.[38] In such cases, the quality of the underlying administrative record and the local agency's findings will often be at the heart of the case.

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

36 Sierra Club v. California Coastal Commission, 19 Cal. App. 4th 547 (1993).

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

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





The Planning Commissioner Handbook

Chapter 3

The Planning and Development Framework

INSTITUTE FOR LOCAL GOVERNMENT℠

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The General Plan

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

Mandatory Elements

General plans are usually a combination of text, diagrams and maps. Every general plan must address the statutory requirements for seven "elements" that are mandatory in every jurisdiction, plus two more elements that are required in certain settings:[2]

- **Land Use.** Designates the type, intensity and general distribution of various land uses.
- **Circulation.** Describes the location and extent of existing and proposed transportation routes, terminals and other local public utilities and facilities.
- **Housing.** Provides for housing development for all economic segments of the community.
- **Conservation.** Provides for the conservation, development and use of natural resources.
- **Open Space.** Details how open space, recreational areas and natural resources will be preserved and managed.
- **Noise.** Identifies and appraises noise sources and problems and includes implementation measures to address them.
- **Safety.** Addresses protection from risks associated with hazards such as fire, flood and earthquakes.
- **Environmental Justice.** Identifies communities within a jurisdiction that suffer from environmental justice impacts, and specifies how the jurisdiction will work to address these impacts. Required only in those jurisdictions that contain communities meeting specific state thresholds, optional in other jurisdictions.
- **Air Quality.** Identifies measures that the jurisdiction will take to lessen air quality impacts. Required only in communities in the San Joaquin Valley, optional in other jurisdictions.

Any number of optional elements may also be included in a general plan.[3] Common optional elements include public facilities, economic development, design, historic preservation, agriculture, water, health and recreation. Once adopted, all elements – whether mandatory or optional – have equal legal status. [4]

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

1 Cal. Gov't Code § 65300.
2 Cal. Gov't Code § 65302.
3 Cal. Gov't Code § 65303.
4 Sierra Club v. Kern County, 126 Cal. App. 3d. 698 (1981).
5 Cal. Gov't Code §§ 65301-65302

Consistency Requirements

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

- **Consistency Between Elements.** All elements of the general plan must be consistent with one another. For example, if the land use element contains land use designations that would increase population, but the circulation element does not provide for ways to deal with traffic related to the population increase, the general plan would be inconsistent.[8] Government Code Section 65583 (c)(7) specifically requires that the housing element identify "means by which consistency will be achieved with other general plan elements and community goals."

- **Consistency Within Each Element.** Each individual element must be consistent with itself. For example, if the circulation element presents data and analysis indicating insufficient road capacity while also stating that current roads can handle increased development, the element would be inconsistent.[9]

- **Consistency Between Language and Maps.** The text of the general plan must be consistent with accompanying maps and diagrams. For example, if the text of the general plan includes a policy of conserving prime farmland while at the same time the accompanying map designates all or most existing prime farmland as an area for housing development, the plan would be inconsistent.

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

In addition, all other local plans, ordinances and policies must be consistent with the general plan. This is often called "vertical consistency." For example, specific plans, subdivision ordinances and development approvals must all be consistent with the general plan. A good rule of thumb is that a particular action is consistent with the general plan if it will further the objectives and policies of the general plan and not obstruct their attainment.[10]

Amending the General Plan

The general plan is a living document, meaning that it should change as conditions in the community change. At the same time, it is also meant to provide some certainty for local planning. Mandatory elements in the general plan cannot be amended more than four times per year.[11] This requirement has little practical effect, however, because there is no limitation on the number of provisions that can be changed in any single amendment.[12] Optional elements can be amended as often as the local agency chooses.

Amendments may be necessary in order to conform with new state mandates. For example, the housing element must be updated on a regular schedule mandated by the state (generally once every eight years, but more frequently in some cases). A new or revised environmental justice element is required when two or more elements are updated and amendments to the safety element are also required each time a new housing element is adopted.

6 Cal. Gov't Code § 65300.5.

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

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

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

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

11 Cal. Gov't Code § 65358.

12 66 Cal. Op. Att'y Gen. 258 (1983).

As a planning commissioner, you may also be presented with a general plan amendment that is submitted to fit the needs of a proposed development. A developer may propose a general plan amendment as a means to move forward with a project that does not comply with your jurisdiction's existing general plan. To the extent that the general plan represents the collective vision of the community, you will have to consider such a proposal closely, balancing the community's vision with the benefits of the specific project.

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

Updating a General Plan

Updating a general plan is a big deal. It takes a lot of time and effort, but it provides an excellent opportunity to involve the public in land use planning.[13] Additionally, periodic updates ensure that the long-term vision presented in the plan truly reflects community wants and needs. A general plan update can be quite expensive—often exceeding several hundred thousand dollars in mid-sized communities and several million dollars in large communities—but a well thought-out plan that has broad public support will usually pay big dividends in the end.

The role that the planning commission plays in an update will vary. It is common for the commission to participate in and even oversee the development of the general plan before forwarding it to the governing body (city council or board of supervisors) for final approval, sometimes with more direct oversight by a general plan advisory committee or similar body.

Paying for a General Plan Update

To pay for a major general plan update, cities and counties may use several financial sources:

- General fund.
- Revenue from general development fees.
- A special general plan fee (if enacted by the jurisdiction).
- State grants that sometimes become available for this purpose.

Ballot Box Planning: Initiatives & Referenda

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

Typically, any action that could be taken by the governing body may be the subject of an initiative. Once something has been adopted by initiative, it can only be changed by another initiative. Initiative proponents often point to this certainty as one of the main benefits of the initiative process — once a comprehensive plan has been adopted by initiative, it is not easily

13 Cal. Gov't Code § 65351.

amended. However, this lack of flexibility can lead to its own problems, particularly when the language is not clear or raises legal issues (such as takings or due process issues).

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

Planning commissioners should know their role when an initiative is placed on the ballot. While commissioners are free to speak in favor of or against a particular initiative, they may not use agency resources to further their point of view. For example, it would be inappropriate to send a letter on city or county letterhead that outlined your position on a measure. Public agencies can provide informational materials about — but may not advocate for or against — a measure.

Commissioners may take a position personally. They may even adopt a resolution in favor of or against. However, they may not otherwise use public resources to persuade others to vote one way or another.

Implementing the General Plan

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

The state required annual reporting process provides a means of monitoring the implementation of the general plans.[14] These annual plans are shared with your commission's governing body and the state's Office of Planning and Research and the Department of Housing and Community Development. The report assesses how the plan is being implemented, identifies modifications that will improve implementation and correlates recent land use decisions to the overall goals in the general plan.

Effects of a Deficient General Plan

A deficient general plan places local development at risk. In order to move forward, a development project must be found to be consistent with the general plan. This is a difficult finding to make when the general plan is internally inconsistent, invalid or insufficient (for example, because it fails to address a statutorily required issue or it is outdated). A court can invalidate any land use action when a plan is deficient. Typically, however, courts will limit such actions to projects that are related to the specific manner in which the general plan is deficient.[15]

Checklist for General Plan Adequacy

- **Is the plan complete?** All mandatory elements must be addressed.
- **Is it informational, readable and available to the public?** Courts have held plans to be inadequate that were difficult to understand or not logically organized. The entire plan should be readily available to the public.
- **Is it internally consistent?** The elements, data, assumptions and projections must be consistent with one another.

14 Cal. Gov't Code § 65400(b).

15 Sierra Club v. Board of Supervisors, 126 Cal. App. 3d 698 (1981).

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

Resources Regarding the General Plan Update

The general plan guidelines, a detailed resource on preparing general plans, is available on the Governor's Office of Planning and Research website at www.opr.ca.gov. *The General Plan in California* by David Early, published by Solano Press, provides additional details and ideas regarding general plans.

Specific Plans

Specific plans are detailed plans for defined areas. Besides the general plan, they are the only type of planning document specifically defined in state law. Specific plans are often used for targeted areas, such as a downtown, a major transportation corridor or a new development area, to encourage comprehensive planning.[16] A specific plan may merely present broad policy concepts or provide detailed direction as to the type, location, intensity, design, financing and infrastructure capacity. It may also be more limited in scope, focusing on a particular issue. Specific plans must be consistent with the general plan. All zoning, subdivisions, public works projects and future development agreements within an area covered by a specific plan must be consistent with the plan once it is adopted.

By law, a specific plan must include a statement of its relationship to the general plan as well as text and diagrams specifying:[17]

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

A specific plan may include a fee schedule for governmental approvals that will defray (but not exceed) the cost of preparing and administering the specific plan.[18] The procedure for adopting a specific plan is similar to that for a general plan, with a few exceptions.

Unlike the general plan, which must be adopted by resolution, a specific plan may be adopted by resolution or ordinance, or a combination of both. Additionally, a specific plan can be amended as often as necessary.

16 Cal. Gov't Code §§ 65450 and following.

17 Cal. Gov't Code § 65451.

18 Cal. Gov't Code § 65456. Article 11 (commencing with Section 65650)

Zoning

Zoning is a set of detailed land use and development regulations that guides development on individual parcels. It generally divides a jurisdiction into a set of districts, or "zones," that provide for the regulation of the intensity of development, uses of land and design details. A zoning designation is typically assigned to every parcel in a jurisdiction. An accompanying map helps citizens (and commissioners) know where the boundaries between zones are and understand which uses can be permitted where. Zoning ordinances must be consistent with the general plan.

Typically, zoning ordinances:

- Divide a jurisdiction into various zones, which may be based on use (such as heavy and light industrial, commercial, residential, agriculture, etc.) or on design characteristics (such as downtown, suburban residential, rural, etc.).
- Provide for the intensity of use (for example, 18 units per acre).
- List permitted uses within each designation.
- Provide for conditional and accessory uses.
- Establish development standards, such as building height and bulk, setbacks, lot coverage, parking, signage and landscaping.
- Provide for administrative procedures for variances, conditional use permits, design review and zone changes.

Zoning codes typically follow one of two overall formats:

- **Traditional, or "Euclidean," Zoning**, has basic building blocks based on allowed uses, with the overall goal of segregating incompatible uses from each other. This type of zoning, which has existing in the US since the 1920s, is referred to as "Euclidean" due to the Supreme Court case that established its legal validity, which involved the town of Euclid, Ohio.
- **Form-Based Zoning** has basic building blocks based on urban form or design character. This type of zoning was developed in the 1980s and 1990s as a reaction to the poor design character that some planners and architects saw arise from traditional zoning's emphasis on separation of uses.

Today, we also find many "hybrid" zoning codes that have features of both traditional and form-based zoning codes.

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

"By Right" Uses

A zoning ordinance will generally list permitted uses and development solutions that are allowed "by right" in each zone. This means that a project can be approved at the staff level without public review by the planning commission, as long as it meets the specific criteria listed. Such criteria may be generalized or quite detailed, depending on the jurisdiction or the zone. The term "by right" does not mean that the zoning ordinance confers a permanent right to develop. Zoning is always subject to change, and a zoning change can change development rights.

The zoning ordinance will require that other types of proposed projects (which are not allowed "by right") must undergo public review at a hearing, generally in front of the planning commission, but sometimes in front of a staff level "zoning administrator" or another decision-making body such as a "zoning adjustments board." In these cases, the public review process will ensure that a proposed project is consistent with the applicable zoning regulations.

Statutory Limitation on Zoning Controls

Although zoning regulations are generally the purview of local jurisdictions, the state has imposed many specific limitations on the exercise of local zoning power. The following are some examples.

- **Residential Zoning.** Sufficient land must be zoned for residential use based on how much land has been zoned for non-residential use and on the future housing needs. A small exception applies to built-out communities.
- **Mobile Home Park Conversions.** A developer converting a mobile home park must submit a report describing the displacement of the residents and the availability of replacement space. The local agency may require mitigation.
- **Accessory Dwelling Units aka Granny Flats.** Qualifying second unit applications are not subject to discretionary review.
- **Density Bonuses/Affordable Housing.** A local agency must allow a housing development to proceed at a density level that is 25 percent higher than allowed by the zoning ordinance when a developer agrees to make 25 percent of the pre-bonus units affordable to low-income households (or 10 percent affordable to very low-income households).
- **Group Homes and Child Care Facilities.** Day care facilities for six or fewer children licensed under the Community Care Facilities Act must be treated as single-family type residential uses. In addition, residential facilities serving six or fewer persons must also be considered equivalent to conventional single-family uses. The law also requires cities and counties to treat large family day care centers as single-family homes.
- **Coastal Zone.** Land in the coastal zone cannot be developed without a coastal development permit.
- **Solar Energy Systems.** Local agencies, including charter cities, may not unreasonably restrict the use of solar energy systems in a way that significantly increases cost or decreases efficiency.
- **Discrimination.** Ordinances that deny rights to use or own land or housing based on ethnic or religious grounds are illegal.
- **Manufactured Homes.** Manufactured homes cannot be prohibited on lots zoned for single-family dwellings.
- **Timber and Agricultural Land.** Farm and timber lands that are enrolled in special zones or preserves—which provide tax breaks in return for the promise to keep the land in agricultural or timber production—may not be developed without payment of a penalty. For agricultural lands, additional controls include (in some cases) a prohibition on annexation while the land is enrolled in such programs.

- **Psychiatric Care.** Zoning ordinances may not discriminate against general hospitals, nursing homes and psychiatric care and treatment facilities.
- **Billboards and Signs.** Outdoor advertising displays cannot be removed without payment of just compensation. Reasonably sized and located real estate "for sale" signs must also be permitted.
- **Surplus School Sites.** If all public agencies waive their rights to purchase a surplus school site, the city or county with jurisdiction over the site must zone the property in a way that is consistent with the general plan and compatible with surrounding land uses.
- **Transitional and Supportive Housing.** Transitional housing and supportive housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. Supportive housing, as defined in Section 65650, shall be a use by right in all zones where multifamily and mixed uses are permitted.[19]

Zoning vs. Building Codes

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

Conditional Land Uses

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

The typical zoning ordinance allows the city or county to grant a conditional use permit when the proposed use is in the interest of public convenience and necessity and is not contrary to the public health, morals or welfare.[20] Common conditions of approval include limited hours of operation, road improvements, soundproofing, additional landscaping and additional parking. A condition must bear a reasonable relationship to the public need created by the development. This should

19 Article 11 (commencing with Section 65650)

20 Upton v. Gray, 269 Cal. App. 2d 352 (1969).

be supported by evidence on the record.[21] Conditions often include a requirement that the use be commenced within a reasonable time or the permit will expire.

Conditional use permits are quasi-judicial actions and require a public hearing. A decision either to grant or reject the permit must be supported by findings. The terms of the permit may be modified by the agency if the original permit so provides.[22] The permit is granted on the land, not to the property owner, and will remain valid even if the property changes hands. A conditional use permit may be revoked for noncompliance or other reasons cited in the permit. Notice and a hearing will be required before the permit can be revoked.[23]

Questions to Ask When Considering a Conditional Use Permit

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

Variances

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

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

Nonconforming Uses

Nonconforming uses are existing uses that do not comply with existing zoning. There are two types of nonconforming uses: illegal and legal.

Legal nonconforming uses—sometimes called grandfathered uses—are uses that were in place prior to the adoption of the

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

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

23 Community Development Comm. v. City of Fort Bragg, 204 Cal. App. 3d 1124 (1988).

zoning ordinance. Such uses are generally permitted for as long as they operate. However, the use typically is not allowed to expand or be replaced if voluntarily abandoned or accidentally destroyed.[24] The idea is to strike a balance between the notion of fairness (the use was legitimate at the time of development) and the changed circumstances of the community (the use is no longer compatible with the character of the area).

There are a few situations where tougher regulation of legal nonconforming uses may be appropriate. A local agency may require that a legal nonconforming use terminate after a reasonable period of time. This is called amortization. The idea behind amortization is to allow the owner enough time to recoup the value of the investment in developing the property while also addressing the needs of the greater community. Reasonableness depends upon such factors as the useful life of the structure, the extent of investment and present value and the possibility and cost of relocation.[25]

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

Zone Change Checklist

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

Relationship to Community

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

Changed Conditions

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

Public Welfare

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

Reasonableness

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

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

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

Overlay Zones

An overlay zone places regulations on specific parcels that go beyond those required by the basic zoning. They are often used in floodplains, near fault lines, around airports and in other areas where additional regulations are necessary to ensure public safety. Overlay zones are also commonly applied to downtowns and historic districts to ensure a certain aesthetic character. Overlay zones may be used to add uses that may not be allowed in the base district, such as an affordable housing overlay zone or multifamily residential overlay zone applied to a commercial site.

Floating Zones

A zoning ordinance may include regulations for a zone that is not tied to any piece of property on the zoning map. This is referred to as a floating zone. The zone "floats" until such time that a property owner requests to have it applied to his or her land through rezoning. Floating zones are most commonly utilized for uses that are desired by a community but where an appropriate site has not been identified. For example, a community might desire and outlet mall, an auto dealership or a big box retail center, but not have a site for it. In this case, the community could adopt "floating" zoning regulations that would only be applied to a specific site at the request of an owner at the time an application is processed and approved.

Floating Zone Example: Planned Unit Developments

Planned unit developments ("PUDs" or "planned communities") are both a type of development and a zoning classification. As a development, they normally consist of individually owned lots with common areas for open space, recreation and street improvements. They often set aside many conventional zoning standards to permit a more imaginative use of undeveloped property, such as clustering of residential uses and compatible commercial and industrial uses. The plan of development for a PUD is usually so specific that it meets or exceeds all of the typical zoning requirements. Any substantial alteration in the physical characteristics and configuration of the development usually requires that rezoning procedures be followed.[26] A PUD zone can be a "floating" zone that is adopted in the zoning code but then applied to specific parcels only at the request of an owner when an application is submitted, processed and approved.

Zoning Moratoria

A zoning moratorium is a temporary halt to all or a particular kind of development. A moratorium is enacted to prohibit any uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the agency plans to study within a reasonable time. The adoption of a moratorium requires a four-fifths vote for an initial 45-day period and may be extended for a total period that does not exceed 22 months and 15 days.[27] Additional limitations apply to moratoria that affect projects that include a significant percentage of multifamily housing.

26 Millbrae As 'n. for Residential Survival v City of Millbrae, 262 Cal. App. 2d 222 (1968).

27 Cal. Gov't Code § 65858.

Code Enforcement

As a planning commissioner, you typically enforce the zoning code through the permit process. A permit is granted only on the condition that a property owner or developer fulfills specified conditions, such as setbacks and hours of operation.

What happens when those conditions are violated after the permit is issued? Zoning codes may include provisions that authorize administrative[28], civil or criminal penalties.[29] Most agencies have a code enforcement officer. The building official and fire inspector also enforce the code to the extent that related health and safety issues are involved.

Zoning violations may be enforced at the time that a project is constructed, and this would typically be checked by the Building Department through the construction inspection process. After a project is completed and is operational, zoning violations might be reported by neighbors or other concerned residents, or they might be discovered by the local agency through systematic code enforcement activities.

Enforcement of zoning violations varies among jurisdictions. A local ordinance may classify violations of the zoning code as infractions and authorize enforcement officials to issue citations similar to traffic tickets. Typically, a warning is the first step. If the condition persists, the ordinance may provide that a separate infraction can be charged for each day a violation continues.[30] Infractions may be punished by fines of up to $100 for a first violation, up to $200 for a second violation and up to $500 for each additional violation of the same ordinance within a year.[31] A local agency may also ask a court to issue an order requiring a property owner to correct violations of a zoning ordinance.[32] Enforcement costs may be recovered by a judgment lien when authorized by local ordinance.[33]

In addition, a local jurisdiction may have special enforcement mechanisms available to address specific types of zoning violations. For example, a business that sells alcohol without proper permits may be subject to penalties imposed by the state Department of Alcoholic Beverage Control (ABC). If a zoning violation is related to rental housing, a local agency may be able to block the owner from taking various tax deductions and collect fees through the Franchise Tax Board.[34] A local agency may also file a notice against a property and "cloud" its title for violations of the local subdivision ordinance.[35]

28 Cal. Gov't Code § 53069.4.

29 Cal. Gov't Code § 36900(a).

30 See People v. Ratko Djekich, 229 Cal. App. 3d 1213 (1991).

31 Cal. Gov't Code § 36900(b).

32 City of Stockton v. Frisbie & Latta, 93 Cal. App. 277 (1928).

33 Cal. Gov't Code § 38773.1.

34 Cal. Rev. & Tax. Code §§ 17274, 24436.5.

35 Cal. Gov't Code § 66499.36.

The Subdivision Map Act

The Subdivision Map Act governs how local agencies oversee the subdivision of land. A subdivision is any division of contiguous land for sale, lease or financing. Usually, any land transaction that creates a new right to exclusive occupancy is a subdivision. Each city, charter city and county must adopt an ordinance that designates a local process for subdivision approval.[36]

The Subdivision Map Act encourages orderly development and provision of infrastructure, and it also protects against fraud by assuring that all subdivisions are recorded with the county recorder.[37] Local ordinances can be more restrictive than the Map Act so long as they do not contradict or override its provisions. The Map Act contains two procedures to process subdivision applications based on project size:

- **"Major subdivisions"**—those with five or more parcels—require more formal procedures that involve filing both a tentative map and a final map for approval.
- **"Minor subdivisions"**—those that involve four or fewer parcels—require only a single parcel map and the oversight is more abbreviated (though the local ordinance can specify that tentative maps be filed for minor subdivisions as well).

The reasoning behind this distinction is that larger subdivisions will raise more complex issues, such as traffic and infrastructure needs, than will a minor subdivision.

Checklist for Approving Subdivision Maps

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

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

36 Cal. Gov't Code § 66411.

37 Cal. Gov't Code § 66464.

certified for the project, have the identified mitigation measures been made conditions of approval?

Tentative Map Applications

Tentative map applications typically include a map of the proposed design of the lots, public streets, sidewalks, parks, utilities and other improvements. Upon receipt, staff checks the application to see that it is complete and conforms to the general plan and the zoning code. Once the application is deemed complete, it is submitted to the "advisory agency," which is usually the planning commission. The local subdivision ordinance designates whether the advisory agency can actually approve or deny tentative maps, or merely make recommendations to the governing body (the city council or board of supervisors). If no advisory agency is designated, then the tentative map is submitted directly to the governing body.[38]

After a public hearing, the local agency may approve, conditionally approve or deny the map after making specific findings. The advisory agency may impose additional conditions when approving a tentative map. The Map Act includes a number of provisions that govern specific conditions, such as bike paths, transit facilities, school fees and parkland, to name a few.[39] The local agency may also incorporate other conditions that are consistent with the general plan and the zoning code.[40]

Final Map Applications

After the tentative map is approved, the applicant has two years in which to meet the conditions. Local ordinances may extend this period by an additional year and the applicant can apply for a five-year extension.[41] During this time, the applicant will prepare a final map that incorporates the imposed conditions. All conditions must either be performed or guaranteed—by agreement, bond, letter of credit or otherwise—before the final map can be approved.

The final map must be filed before the tentative map expires. If not, then the process begins all over again.

An engineer usually reviews the final map. Approval of the final map is a ministerial act—meaning there is no discretion to reject the final map if all the conditions are met.[42] The approved final map is recorded with the county and the applicant can proceed with the development.

Illegal Quartering

On occasion, a subdivider may try to avoid tentative map and final map requirements by subdividing one parcel four times using a parcel map and then repeating the process over and over again. Known as "quartering" or "4 X 4," this process is illegal and can result in severe penalties. When a subdivider seeks to divide property that is contiguous to property he or she already

38 Cal. Gov't Code §§ 66452.1, 66452.2.

39 See generally, Cal. Gov't Code §§ 66475–66498.

40 Cal. Gov't Code §§ 66411, 66418-66419.

41 See Cal. Gov't Code § 66452.6.

42 Cal. Gov't Code § 66458.

subdivided, the earlier subdivisions are counted to determine the total number of parcels and thus what sort of map is required.

Vesting Tentative Map Applications

Some tentative maps are filed as "vesting tentative maps."[43] If approved, a vesting tentative map confers a vested right to proceed with the development in accordance with the local ordinances, policies and standards that were in effect when the local agency deemed the map application complete. Vesting tentative maps offer developers a degree of assurance not otherwise available except through a development agreement. The applicant may file a vesting tentative map for a parcel map even if the local subdivision ordinance does not require tentative parcel maps. Vesting tentative maps must be processed just like a standard tentative map. However, local agencies may impose additional application requirements and almost all do, which is why developers do not always use vesting tentative maps.

Parcel Map Applications

Procedures and approvals for parcel maps are left to local ordinance.[44] The primary difference between parcel maps and tentative maps is the number of conditions that can be applied. With a parcel map, a city or county can only impose requirements for the dedication of rights-of-way, easements and the construction of reasonable off-site and on-site improvements for the parcels that are being created. Additionally, absent urgent health and safety reasons, local agencies cannot require the installation of improvements until the development permit is issued, although the subdivider may agree to early installation voluntarily.

43 Cal. Gov't Code § 66498.1.

44 Cal. Gov't Code § 66463.

Development Agreements

In California, developers generally do not have a vested right to develop until they obtain a building permit and have performed substantial work in reliance on that permit.[45] Until then, there is no guarantee that the local policies and regulations affecting the development will remain the same. A project that is in the approval process or not yet built may be subject to new regulations and fees as they are adopted.

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

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

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

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

Overall, development agreements are designed to strengthen the planning process by encouraging public participation and reducing the economic costs of development. It is up to the local jurisdiction to enter into a development agreement, and the approval of one is considered a legislative act that is approved via ordinance and subject to a referendum for up to 30 days after the ordinance is approved.[46] Government Code §65867.5 requires that a development agreement be approved if the provisions of the agreement are consistent with the general plan and any applicable specific plan. Effective 2019, SB 1333 also subjects jurisdictions to consistency requirements.

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

46 216 Sutter Bay Associates v. County of Sutter, 58 Cal. App. 4th 860, 872-74 (1997)

More on Development Agreements

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

Community Benefit Agreements

Community Benefit Agreements (CBAs) are a specific type of development agreements intended to share the value created by a new development with the community in which it takes place.

Like development agreements, CBAs are private contracts negotiated between a developer and the local agency, in this case often with significant input from community representatives. The first nationally recognized community benefits agreement was the Los Angeles Sports and Entertainment District CBA between the developer and the Figueroa Corridor Coalition for Economic Justice, the City of Los Angeles and the Los Angeles Community Redevelopment Agency. It included a 70% local hiring requirement and a 20% affordable housing requirement for the new development. An example of a hybrid CBA/ development agreement is the USC Specific Plan Development Agreement between the University of Southern California (USC) and the City of Los Angeles. For that CBA, community benefits were advocated for by a coalition of community groups called United Neighbors Against Displacement. The USC CBA had a total value of $40 million, which included a $20 million anti-displacement fund, a buyout of existing alcohol licenses and a 30% local job hiring requirement. The accompanying development agreement included USC's commitment to improve public facilities and it vested USC's development rights.

Dedications and Fees

Requirements for dedication of land and payment of fees (referred to collectively as "exactions") are often imposed as conditions of approval on development to offset new demands on public resources caused by the development. New development usually requires the extension of infrastructure, such as roads, parks, pathways, libraries and schools. At one time, local agencies could fund new infrastructure with property tax revenues, but such revenue has become more limited since the adoption of Proposition 13 in 1978. State legislation and voter-approved revenue limitations have further diminished local finances.[47] As a result, cities and counties rely heavily on 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. Dedications are most frequently used to secure land for parks, roads, bike paths and schools. Development fees are often imposed in lieu of dedications when the type of infrastructure does not lend itself easily to case-by-case dedications of property, such as with sewers, water systems, affordable housing, libraries and open space.

The basic rule when imposing dedications and fees is that they must be reasonably related in purpose and roughly proportional in amount to the impacts caused by the development.[48] Thus, a small development that will only generate light traffic cannot be required to cover the cost of an entire freeway interchange. The basis for a dedication or fee is often established in the general plan, but can also be established by a capital improvements plan, the Subdivision Map Act, or the California Environmental Quality Act.

When an agency imposes a fee, it must make several specific findings (sometimes referred to as "AB 1600 requirements" after the enacting legislation) that echo the proportionality rule.[49] Accordingly, the basis for the fee should be carefully documented in the record of the project approval. This is typically done through a detailed fee study. Local agencies must also comply with detailed accounting requirements to ensure that the funds are used appropriately. Agencies must deposit the funds in a separate capital facilities account. The beginning and ending balances, interest, other income and expenditures from these accounts must be made public.

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

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

49 Cal. Gov't Code §§ 66000-66025.

Environmental Review

Incorporating measures to protect the long-term health of the state's environment has become an integral element of planning and project approvals in California. As a planning commissioner, the environmental protection law you will likely deal with is the California Environmental Quality Act (usually called "CEQA"). CEQA is a complex law with a simple purpose: to ensure that decision-makers understand and account for the environmental consequences of a project. The term "environment" includes natural and man-made conditions that will be directly or indirectly affected by a proposed project, including land, air, water, minerals, flora, fauna, noise and objects of historic or aesthetic significance.[50]

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

The element that gives CEQA its "teeth" is a prohibition against approving projects as proposed if there are feasible alternatives or mitigation measures that would substantially lessen significant environmental effects. In other words, CEQA does not require agencies to eliminate all potential harm to the environment, but they must disclose the environmental risks that will occur due to project approval, they must reduce the risk of harm whenever possible, and they must make "Findings of Overriding Consideration" to explain why they are approving a project if it would have significant environmental impacts. A project with significant environmental impacts may be approved, but only if the local agency finds that all alternatives or mitigation measures have been implemented or are infeasible, and if the agency also discloses its reasoning.[51]

NEPA and CEQA

The National Environmental Policy Act (NEPA) is the federal government's equivalent to CEQA. NEPA applies to any federal project, including local projects that have federal funding. NEPA is very similar to CEQA but has its own terminology. For example, NEPA uses the acronym EIS (Environmental Impact Statement) instead of EIR, and FONSI (Finding Of No Significant Impact) in lieu of CEQA's Negative Declaration.

Determining the Required Level of Review

The CEQA process involves four possible levels of environmental review: an exemption, a "negative declaration," a "mitigated negative declaration" and an "environmental impact report" (EIR). The following is a summary of the main steps in determining the required level of inquiry:

- **Is the Action a "Project?"** Only "projects" are subject to environmental review. A project is any discretionary governmental action that could directly or indirectly result in a physical change in the environment. Examples include

50 Cal. Pub. Res. Code § 21060.5.

51 Cal. Pub. Res. Code §§ 21002, 21081; 14 Cal. Code Regs. §§ 15091-15094.

the adoption and amendment of general plans, specific plans, zoning ordinances and development agreements; public works projects; building improvements; and many permits for development.

- **Does an Exemption Apply?** A project may be exempt from CEQA under state law or regulations for policy reasons. For example, infill housing projects meeting certain conditions do not require environmental review. Usually, staff will determine whether an exemption applies.
- **Initial Review.** For projects that are not exempt, an initial study is prepared to determine whether the project may have a significant effect on the environment.
- **Negative Declaration.** If the initial study shows that the project will not have a significant effect on the environment, a negative declaration is prepared. A negative declaration briefly describes why a project will not have a significant impact.
- **Mitigated Negative Declaration.** If the initial study shows an environmental effect, a mitigated negative declaration may be prepared if revisions in project plans made or agreed to by the applicant before the proposed mitigated negative declaration is released for public review would clearly avoid or mitigate the effects.
- **Environmental Impact Report.** If the initial study identifies potential significant environmental effects that cannot be eliminated through redesign, then the lead agency (the agency that has ultimate approval over the project) must prepare an environmental impact report.

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

The Environmental Impact Report

After deciding to do an EIR, the lead agency must solicit the views of responsible agencies (other agencies with some level of authority over the project) regarding the scope of the environmental analysis.[52] The lead agency should also consult with individuals and organizations that have an interest in the project. This early consultation is called scoping.

The lead agency then drafts an EIR based on this information and other data it has collected in connection with the report. When the draft EIR is completed, the lead agency files a notice of completion with the State Clearinghouse at the Office of Planning and Research. The draft EIR is then noticed for a 30- to 45-day public review and comment period.[53] The lead agency must evaluate and respond in writing to all comments it receives during this time. If the lead agency [54]adds significant new information to the draft EIR after it has been released for public review, the draft EIR must be re-noticed and circulated again for public review.

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

There are several basic elements to the environmental impact report:[55]

52 14 Cal. Code Regs. §§ 15082, 15083.

53 Cal. Pub. Res. Code § 21091.

54 14 Cal. Code Regs. § 15132; Cal. Pub. Res. Code § 21092.5.

55 See 14 Cal. Code Regs. §§ 15022-15029.

- **Table of Contents & Summary.** Required elements that assist in making EIRs—which are sometimes hundreds of pages long—more accessible to the public.
- **Project Description.** An accurate description of the project, including any reasonably foreseeable future phases of the project.[56]
- **Environmental Setting.** A description of the environment on the project site and in the vicinity of the project.
- **Evaluation of Impacts.** An identification and analysis of each significant impact expected to result from the project. Any potential significant effect—such as incompatible land uses, air pollution, water quality, traffic congestion, etc.—will have its own discussion.
- **Mitigation Measures.** A detailed description of all feasible measures that could minimize significant adverse impacts. Any potential environmental consequences of the mitigation measures must also be addressed.
- **Cumulative Impacts.** An evaluation of the incremental effects of the proposed project in connection with other past, current and probable future projects.
- **Alternatives.** A proposed range of reasonable project alternatives that could reduce or avoid significant impacts, including a "no project" alternative. This often involves reviewing the location or the intensity of the development, or both. The alternatives need not be exhaustive and should not be speculative.
- **Growth-Inducing Impacts.** A description of the relationship of the project to the region's growth and whether the project removes obstacles to growth.
- **Organizations and Persons Consulted.** A list of groups and individuals contacted during the process, including during the scoping and public hearing phases.
- **Inconsistencies.** A discussion of any inconsistencies between the proposed project and applicable general plans and regional plans.

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

Certifying the CEQA Document

The first step in approving a project that has undergone environmental review is to certify the negative declaration or the EIR. The project may then be approved in a manner that acknowledges any environmental consequences. The local agency can also change the project, select an alternative project, impose conditions, or take other actions (often called "mitigation measures") to avoid or minimize the environmental impacts of the project. When mitigation measures are adopted, the agency must also adopt a program to monitor the implementation of those measures.[57]

In many cases, the environmental impacts of a project cannot be avoided. For example, a community that is surrounded by prime farmland will probably need to use some of that land for housing at some point. In these cases, the agency can make a finding that explains why changes to the project are not feasible or why social or economic considerations override environmental concerns.[58] While these findings may seem contrary to environmental protection, they are consistent with CEQA's fundamental purpose of publicly acknowledging and considering possible environmental effects.

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

57 Cal. Pub. Res. Code § 21081.6.

58 Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15093.

Tiering, Master EIRs and Program EIRs

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

Permit Streamlining Act

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

Once a private applicant has submitted a completed application, the local agency cannot ask for new information, but may ask that the developer clarify existing information. The exact time frame in which a decision must be reached depends on the level of environmental review. A decision on a project must be made within 60 days after the adoption of a negative declaration (or determination that the project is exempt from review) or 180 days after an environmental impact report has been certified. These timelines may be extended once for 90 days at the request of the developer.

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





The Planning Commissioner Handbook

Chapter 4

Application Review

Institute for Local Government℠

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Reviewing Project Applications

Reviewing project applications is one of a planning commissioner's key duties. Your local ordinances will specify certain projects that are allowed "by right," and require no review at all, others that may be reviewed and approved by staff in an administrative process (also called "ministerial review") and still others that require review and approval by a public body.

In most cases, the planning commission is the body that conducts public review when it is required. In some jurisdictions, there may be other bodies that also have review authority, either prior to or parallel with planning commission review. In some cases, planning commission review may be a precursor to final review and approval by the city council or board of supervisors, but in many cases the planning commissioner is the final review body, either with or without the possibility of appeal to the city council or board of supervisors.

Application review is an evaluation of a development proposal against established community goals, objectives and defined criteria such as the zoning code, other development standards and design standards and guidelines. When the application review process occurs in public through the planning commission, it is, by definition, a discretionary process in which commissioners use their judgement to apply requirements in the code to a project, so as to either make findings of conformance or place conditions on the project while approving it, or to make findings of non-conformance and to therefore deny the project.

As you review project applications, you will be evaluating the project's overall planning and design and the extent to which the project is consistent with adopted development regulations and design standards and guidelines. Thought of in this way, application review is more than just subjectively determining whether a particular building is aesthetically attractive. It is often an iterative process that includes community interests, professional planning staff and local officials, and culminates in the approval of a specific design for a project.

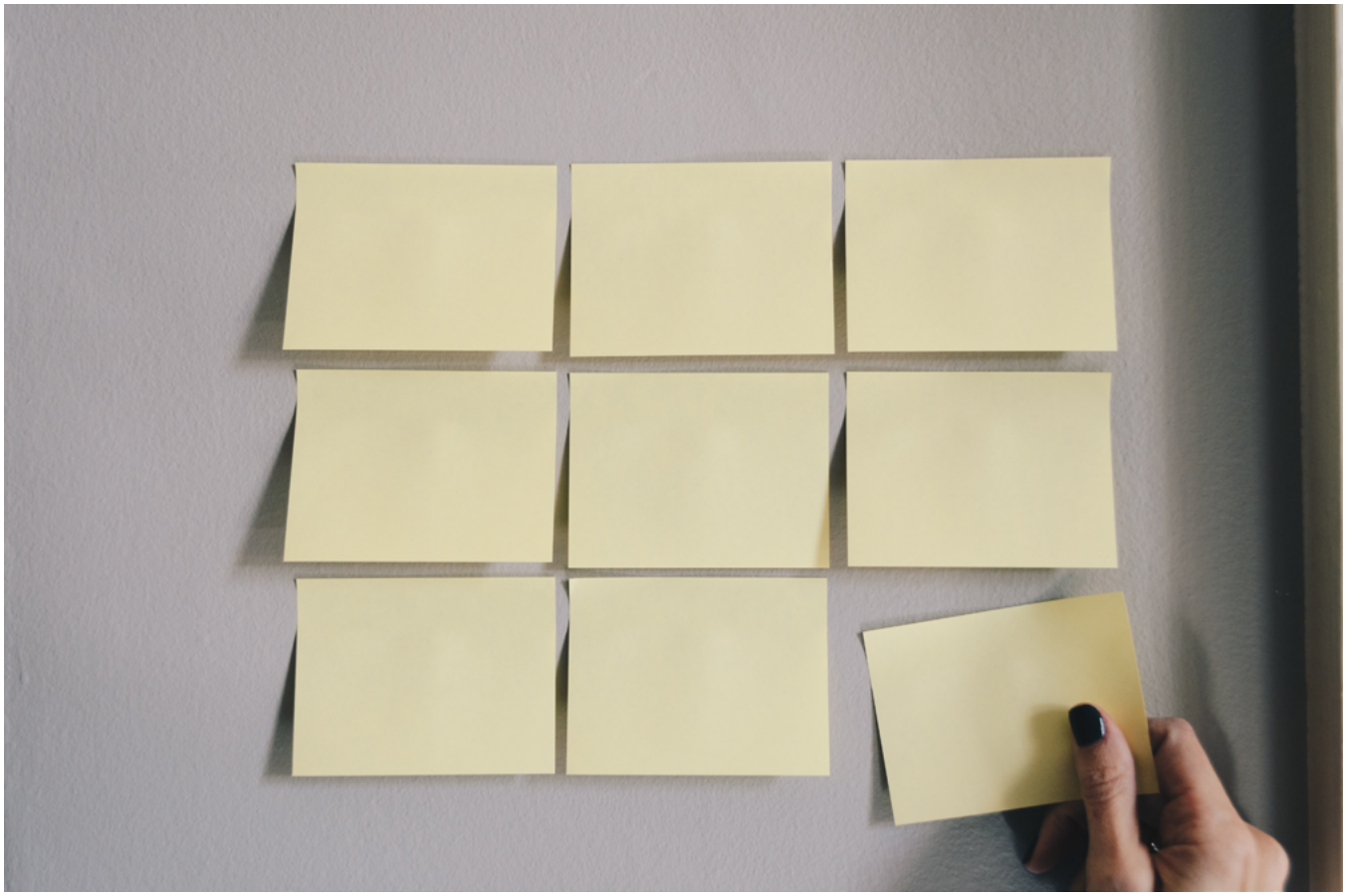
As a planning commissioner, your role is to ensure that long-term community needs are addressed, and that a project is consistent with the community's objectives, as set forth in the general plan, zoning code, design standards and guidelines and other applicable regulatory documents. The needs and desires of owners, architects, builders and neighbors must be balanced with long-term community goals, and you must balance the needs of all involved parties to the best of your ability, based on established criteria.

Ultimately, application review is one tool to guide the quality and character of development. Jurisdictions reap tangible benefits from having rules and standards to guide community character. Through the application review process, communities improve both the consistency and the predictability of the development evaluation process. Communities – and planning commissioners – should also seek to minimize the length of time necessary for project approval by streamlining decision-making processes while maintaining a community's quality standards.

What Application Review is Not

Application review is not a process by which the planning commission or other decision-making groups should seek to redesign a private development project. Decision-makers are tasked with evaluating the project fairly against applicable regulations, including zoning and design standards.

Application review is also not a process for mediating disputes about land use policy, nor a tool for stopping development by neighborhood activists. An application review decision should be based on legislatively adopted design standards and regulations, and not on subjective opinion or design preference. Individuals opposing a development that conforms with an established density or height requirement, for example, should focus their efforts on influencing plans, ordinances and standards prior to their adoption. Once plans, ordinances and standards are adopted, planning commissioners should approve projects that conform with them, regardless of personal preferences.



Design Review

Design review is one aspect of project review, generally with the intent to enhance the aesthetic character of a project. A community may prohibit uses detrimental to the general welfare, as well as developments that are "monotonous" in design and external appearance. As one court put it: "Mental health is certainly included in the public health." Whereas the zoning code usually focuses on the type and intensity of a use, design review focuses on aesthetic and architectural standards. Design standards can specify a wide variety of design requirements such as roof material and pitch, façade materials, architectural projections, etc. Design review procedures usually rely on deeply held values and beliefs about what is beautiful and what is ordinary. Design standards provide flexibility by providing options to the developer, who can choose which option fits best in a given situation. For example, a design may incorporate balconies in lieu of a certain ratio of windows on a given building façade. By including options by-right in the development code, designs can be adjusted for the wide variety of development sites in the community.

Design review may be conducted by staff or by an appointed committee. In larger communities, this is usually a separate "design review board" or an "architectural review committee." In some communities, the planning commission functions as the design review board.

Recent legislation requires objective design standards in some instances. To address the housing shortage, Senate Bill (SB) 35 and SB 330 require projects to be reviewed against objective design standards. All communities interested in regulating aesthetics should consider initiating a community planning process to establish objective design standards. For example, a community that takes pride in its mission style architecture could require red tile roofs of a certain pitch in some areas. Existing design guidelines can often be converted into design standards relatively easily. The new design standards can carry forward important elements from the design guidelines. The adoption of design standards also presents an opportunity to exempt projects from review by a Design Review Commission – and powerful Prohousing gesture likely to inspire confidence in developers. For more information on object design standards, see the Department of Housing and Community Development's (HCD) technical assistance document "Approaches and Considerations for Objective Design Standards".[1]

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

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

1 https://ascentenv.com/files/7516/3476/8856/Objective_Design_Standards_Toolkit-_2021.pdf

- Summary data, including facts on adjacent properties and sight lines.

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



New Guiding Legislation for Application and Design Review

To address the housing crisis, recent state legislation, including SB Senate Bill (SB) 35 and SB 330 have been enacted to place limits on the application and design review process.

- **Affordable Housing Streamlined Approval Process (SB 35, 2017).** SB 35 creates an opt-in program for developers that allows a streamlined ministerial (i.e., staff-level) approval process for developments in localities that have not yet made sufficient progress toward meeting their regional housing need allocation (RHNA). Eligible developments must include a specified level of affordability; be on an infill site; comply with existing residential and mixed-use general plan or zoning provisions; and comply with other requirements such as, locational and demolition restrictions. The streamlined, ministerial entitlement process created by SB 35 relies on objective standards. Most jurisdictions in California are subject to SB 35, since most jurisdictions have not made the progress toward meeting their RHNA that is required for exemption from SB 35's requirement.
- **Housing Crisis Act (SB 330, 2019).** SB 330, known as the Housing Crisis Act of 2019, creates a variety of restrictions on how local jurisdictions review and approve housing projects. Among a host of other provisions, SB 330 requires that housing projects proposed in most jurisdictions be reviewed only against objective standards that were in place at the time that the application is deemed complete. With the signing of SB 8 in 2021, the Housing Crisis Act will sunset in January 2030, unless extended again by the legislature and governor.

These two bills have placed several important limitations on application review for housing projects, which are described below.

Objective Standards

Together, SB 35 and SB 330 generally require housing projects to be reviewed only against objective standards. Objective standards are defined in Government Code Sections 65913.4 and 66300(a)(7) as standards that:

> "involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official before submittal."

Objective standards are intended to make the requirements that apply to certain eligible residential projects more predictable and easier to interpret for all stakeholders, including decision makers, staff, applicants and members of the public. The purpose of objective standards is for applicants to know beforehand what requirements apply to a proposed development and for the applicant to be able to design a project that meets those requirements before submittal.

There can be confusion about the difference between objective standards and other forms of design and development regulations. Historically, jurisdictions have often used a combination of these tools to review and regulate new projects, varying the approach between different districts or land uses depending on a number of factors.

To better understand these distinctions, we can look at development regulations in three categories:

- **Design and Development Guidelines** are advisory rules that provide direction to applicants, staff and the planning commission when reviewing projects, but are often vague and open to interpretation, which can add uncertainty to the development process. They may include statements that projects should "match" existing development patterns or "try to achieve" a certain look or feel, sometimes without specifying exactly how this is to be done. Guidelines generally use words like "should" or "may."
- **Design and Development Standards** (as defined prior to new state regulations regarding "objective design standards") are mandatory requirements that must be implemented in order for a project to be approved. They generally use words like "shall" or "must." However, many design and development standards have historically been subjective or difficult to measure, despite being mandatory. For example, a non-objective design standard might require that a project have a steeply pitched roof, without specifying what "steep" means.
- **Objective Design and Development Standards** are a subset of the standards described above that are measurable and verifiable, without a "gray area" for interpretation. Objective standards have a predicable input: knowing what the requirements are and how they are measured. Objective standards also result in a predicable output: a determination of consistency that can be validated. The result should be the same consistency determination no matter who is reviewing the project, and there should be no dispute between applicants and staff as to whether a project is consistent.

The following table provides additional detail to distinguish among guidelines, standards and objective standards.

Design Guidelines	Non-Objective Design Standards	Objective Design Standards
Often Subjective	Often Subjective	Objective
Recommendations, which may not be enforceable or have the "teeth" of regulations	Requirements, but can still be difficult to interpret due to subjectivity	Requirements, and generally easy to interpret due to objectivity
Generally open to interpretation, difficult to measure or verify	Sometimes open to interpretation, difficult to measure or verify	Measurable and verifiable
Use words such as "should" or "may"	Use language such as "shall," "must" or "is required to," but often also include requirements that are subject to interpretation	Use language such as "shall," "must" or "is required to"
Example: New developments should include adequate sidewalks.	Example: All pathways and sidewalks must be of ample width.	Example: The paved section of sidewalks shall be at least eight feet in width.
Generally adopted by resolution	May be adopted by resolution	Adopted by ordinance

Existing zoning and land development codes generally include objective development standards, such as minimum lot size, building height, setbacks, floor area ratio and other standards that define a maximum building envelope.

Limitations on Public Hearings

SB 35 and SB 330 both place additional limitations on public hearings. SB 35 requires affected cities and counties to provide a "streamlined ministerial approval process" for eligible affordable housing projects.

SB 330 prohibits an agency from conducting more than five hearings "if a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete." As described in Government Code Section 65905.5(a), an agency "shall consider and either approve or disapprove the application at any of the five hearings."

Changed Burden of Proof

One of the implications of objective standards is that there is a significant change in the burden of proof. Typically, design guidelines require an applicant to demonstrate consistency. The burden of proof rests on the applicant, who must demonstrate that the design guidelines have been applied in a manner that satisfies the planning commission or zoning administrator.

However, objective standards require an agency to provide a preponderance of evidence based upon a reasonable person standard showing that a project does not meet an objective design standard before it can deny the project. In other words, a project is assumed to be consistent unless an agency demonstrates through a preponderance of evidence in the record that the project does not meet an objective design standard. This significantly shifts the burden of proof from the applicant to the agency.[2]

2 See Government Code Section 65589.5 for additional detail about burden of proof.

The Typical Application

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

Planning commissioners are not usually responsible for assessing all of the technical merits of a development project. Staff will summarize the most important technical points in the staff report. Although you may not see (or need to see) all the information received by your planning staff, it may be helpful to know what type of information they use to evaluate a project. Each local agency maintains a detailed list of all information needed from a project applicant, although most require the same basic information, including:[3]

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

3 Cal. Gov't Code § 65940.

Other Special Submittals

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

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

How to Review an Application

A reviewer can get a basic understanding of a project by going through the following steps. The Review Question Checklist —found on page 95.

Note that some of the items listed below require subjective review and may therefore be outside the scope of review for certain housing projects, as described in the section on objective standards above.

- **Check the Scale of the Plans.** Understanding scale will help you get a feel for the actual size of the project. Check to see if the plans are drawn at ¼" to 1'0 scale (one quarter inch on the plan equals one foot on the site), ⅛" to 1'0, or perhaps even $\frac{1}{30}$" to 1'0 scale for very large projects. A good way to interpret plans on a human scale is to judge them in five- to six-foot increments to see how the scale matches the size of a typical person.

- **Compare to the General Plan and the Zoning Code.** Is the project consistent with the general plan and the zoning code? Look at the range of permitted uses, density, housing needs, building heights, circulation, environmental issues like habitat preservation and open space protection, etc. If the applicant seeks a zone change or general plan amendment, you may want to consider whether the project's benefits justify the change.

- **Compare the Vicinity Map and the Site Plan.** How does the proposed project fit in with the existing community? Is it compatible with surrounding properties and the street? Is there a positive relationship between adjacent buildings (both on and off the project site), such as pedestrian walks, window-to-window visual contact, noisy areas adjacent to quiet areas, or shadows cast over plaza areas? Could changes in the design address potential conflicts?

- **Determine If There Are Views Worth Protecting.** Would the project obstruct the view of a landscape or landmark? Is there a view of a feature on the site itself that should be protected? (It may help to visualize the site in various places to make this analysis). If so, does the site plan and architecture take these views into account?

- **Review Existing and Proposed Contours and the Grading Plan.** An outline of the building should be drawn on a topographical map. How much grading (if any) is proposed? Make sure that floor elevations and parking facilities will be graded to levels that are consistent with the landscaping plan. Make sure the floor elevations and parking lot grades are not so high that buffers such as landscaping would be ineffective.

- **Locate Existing Trees.** Will existing trees be removed? Can and should they be saved? Does the proposed landscaping include replacement trees?

- **Check the Circulation Pattern.** How easily can people reach the site by various modes of transportation? Check circulation elements for transit riders, cars, delivery vehicles, pedestrians and bicycles. Are there points of conflict, such as walkways that would lead pedestrians through traffic or between cars?

- **Locate Landscaped Areas.** Do landscaped areas soften buildings, break up parking areas and long, blank portions of wall? Is the selection of plants and trees appropriate for the climate? Are planters large enough to accommodate desirable amounts of landscaping? Are there areas for special landscape and hardscape treatment? Do trees have enough space to grow and remain healthy without damaging sidewalks? Is there a maintenance system, such as drip irrigation?

- **Check the Materials and Architectural Elements.** Review the materials and architectural elements of the project. Do they incorporate features that are consistent throughout the neighborhood or district? Do they create visual interest?

- **Review Conservation Practices**. Recycled and energy-efficient materials can reduce a project's impact on the environment. Does the builder intend to use recycled materials? Is the project designed to minimize runoff (particularly

from parking areas)? Are energy-efficient materials—like windows and heating and cooling systems—included in the plan? Are trees and landscaping used to minimize energy consumption and heat generation?

- **Check the Parking Layout.** Do the aisles relate well to entry-exit points? Is there a logical pattern for cars to follow? Is there sufficient landscaping to screen parking from view or to break up expanses of asphalt? If the project site fronts a pedestrian area, is the parking tucked behind the building to create a more vibrant streetscape?
- **Visit the Site.** Try to go by the location of the proposed project to get a sense of the context. It can reveal issues that don't show up in the application. This also has the benefit of giving the reviewer credibility while discussing the project in a public hearing.
- **Think About the Future.** What is likely to happen on adjacent undeveloped property? Does the project anticipate likely changes or is it adaptable? For phased projects, make sure that the first phase will stand by itself in case the next phase is never constructed.

Review Question Checklist

The answers to these questions will help you determine the overall value of a project and form the basis for your review. Of course, not all questions will apply to every project. Note also that some of the detailed questions listed below require subjective review, and may therefore be outside the scope of review for certain housing projects, as described in the section on objective standards above.

1. General Review Requirements

☐ What are the guiding regulations?

- General Plan
- Community Plan
- Specific Plan, Precise Plan or Master Plan
- Zoning, Land Development Code or Form-Based Code
- Objective Standards
- Design Guidelines

☐ What are the requirements for review time and process? Is the project subject to streamlining provisions?

☐ Is there a checklist to measure consistency or compliance? What discretion is provided in your jurisdiction's application review process?

☐ Are deviations, variances or alternative compliance measures provided to enable flexibility in application review?

2. Overall Planning and Design

☐ Does the project further the goals of the general plan?

☐ Are comfort needs—shade, seating, etc.—addressed?

☐ Do buildings interact with the street?

☐ Is the site oriented toward common areas to provide "eyes-on-the-street" security?

☐ Are there community spaces to serve as social and design focal points?

☐ Is the impact on environmentally critical areas—like steep slopes, wetlands and stream corridors—minimized?

☐ Does the project contribute to the development of complete, integrated neighborhoods?

☐ Does the project add to a desirable mix of uses in the district or neighborhood?

☐ Does the project contribute to the efficient use of existing infrastructure?

3. Layout

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

4. Buildings and Architecture

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

5. Topography

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

6. Pedestrian Scale

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

☐ Do pedestrians know their options (sit and relax, enter a building, walk quickly, stop and look, cross a road, etc.)?

7. Circulation

☐ Does the project promote alternative transportation modes?

☐ Does the project help alleviate peak-hour traffic congestion?

☐ Are transit stops accessible from the site?

☐ Are entry and exit points safe with good sight distances?

☐ How will a cyclist access the site?

☐ Are street access points coordinated with median openings and access points on the opposite side of the street?

☐ Have the number of driveways onto adjacent streets been minimized?

☐ Are acceleration and deceleration lanes needed and provided on arterial streets?

☐ Does the on-site circulation system make sense for all modes?

☐ Is an adequate turning radius provided for large trucks and emergency equipment?

☐ Is auto access for corner developments on side streets or on primary arterials?

8. Conservation and Energy

☐ Does the project endanger sensitive environmental resources?

☐ Does the design of buildings and landscaping promote water conservation though choice of plants, materials and irrigation systems?

☐ Is outdoor solar lighting feasible?

☐ Does the site plan reduce erosion and minimize impervious surfaces?

☐ Does the project include energy-efficient heating and cooling systems, windows, appliances and lighting?

☐ Was selection of materials based on recyclability and durability?

☐ Is the building oriented to maximize natural heating, cooling and lighting?

☐ Have the potential shading effects on adjacent properties been considered?

9. Housing (If Applicable)

☐ Are there a variety of housing types, densities, prices and rents?

☐ Are there affordable units?

☐ If the project includes higher-density units, are they organized around usable common space?

10. Parking

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

11. Buffering

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

12. Loading

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

13. Landscaping

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

14. Lighting

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

☐ Will proposed lights be shielded from shining onto adjacent property or buildings?

15. Signage

☐ Is your sign ordinance adequate or should there be a master sign program? (A special program is more likely needed for large, multi-tenant buildings).

☐ Do business and project signs complement the architecture (style, color, size, materials, number)? Are they in proper scale to the site and buildings?

☐ How are signs to be illuminated?

16. Citizen Involvement

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





The Planning Commissioner Handbook

Chapter 5

Housing Laws and Policies

Institute for Local Government℠

ILGPlanningHandbook.org

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Introduction to Housing in California

Home is the foundation of life. It is the place where we go to feel secure, warm, recharge and relax. Homes and the communities in which they are located provide us with a sense of belonging, safety and access to opportunities.



The lack of affordable homes has far-reaching policy impacts for California, local governments and the communities they serve. Additionally, the limits placed on housing choices through discriminatory land use policies impact access to jobs, transit, services, high-performing schools and other opportunities. Lack of access to opportunity is disproportionately experienced by people within protected classes such as race, sexual orientation and disability.

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

The consequences for a lack of housing options, high housing costs and land use policies exacerbate residential segregation and can severely impact qualify of life.

- Households paying a higher percentage of their household income means they have less money for food, health care, education and other necessities that can impact quality of life.
- Households over-commuting to their jobs because they must live in communities with lower housing costs detrimentally impacts the environment by increasing pollution and greenhouse gas emissions and negatively impacting public health.
- California has the second highest percentage of overcrowded households. Families and individuals live in overcrowded households to address high housing costs; however, this creates negative impacts on individuals physical and mental health. Research has shown that overcrowded homes lead to greater exposure to infectious and respiratory diseases.
- Lower-income residents and people in protected classes have limited access to certain communities and often live in communities with concentrated poverty, dilapidated housing stock, unsafe environmental conditions, underfunded schools and lack of overall access to social and economic opportunities due to exclusionary zoning policies.

As such, local governments play an important role in providing ample housing options, affordable homes and affirmatively further fair housing. Through up front planning, ministerial processes and active community engagement, local governments can help solve the housing and affordability crisis in California.

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

> Housing policy, program guidelines and regulations were instrumental in creating current inequities and will be equally important in both preventing further segregation and concentration of poverty, as well as increasing access to opportunity. In order to ameliorate past actions that led to inequity, decision-makers must create land use and funding policies to increase affordable housing in high resource neighborhoods that have often been exclusionary (explicitly or in effect of cost and zoning policies) and bring additional resources to traditionally under-resourced neighborhoods. — California State Guidance on Affirmatively Furthering Fair Housing (April, 2021).



Process of Developing Homes

The ultimate goal is for families, individuals, seniors and people who are currently experiencing homelessness to receive the keys to a place they can call home. The process of providing affordable and quality homes includes several steps at the local government level with multiple private and public players. Specifically, housing happens in two ways:

1. Through planning and land use policies ranging from general plans to zoning ordinances and design standards and,
2. Financing through varying local, state, federal and private funding sources.

Within the local planning and land use framework, there are four steps a local government goes through when approving and developing housing. Step one is the long-range planning where community goals and the vision is decided on. Step two is the development of zoning which works to implement step one. In step three, the permitting phase, developments are approved that fit the parameters set by zoning. Lastly, step four is the building phase.

Step 1: Planning – Local planning is the process by which jurisdictions and their community develop plans and policies that set the framework for how growth should occur. This is done through the development of the general plan including the housing element. This process often involves extensive and diligent public engagement. In this phase, the public has an opportunity to decide on a shared vision and community goals for the foreseeable future. Oftentimes in the planning process, local decision makers and the community are working to balance multiple objectives including economic development, climate change, establishing healthy communities, promoting social and economic equity and promoting affordability so that all members in the community can obtain quality of life.

Key things to consider during the planning phase:

Community engagement and outreach efforts are incredibly important during this phase. As such, local governments should make every effort to involve community members. This can also help prevent community opposition when housing developments are being approved.

Step 2: Zoning – Zoning of land helps implement the many policies and goals that were discussed and decided upon during the planning phases. Zoning specifies what kind of development should go where and details the standards that developments need to adhere by including density, heights and parking.

Step 3: Permitting – In this phase, developers can now use the framework established through phase 1 and 2 to propose projects that comply with the community goals and zoning requirements. This phase is often referred to as the entitlement process.

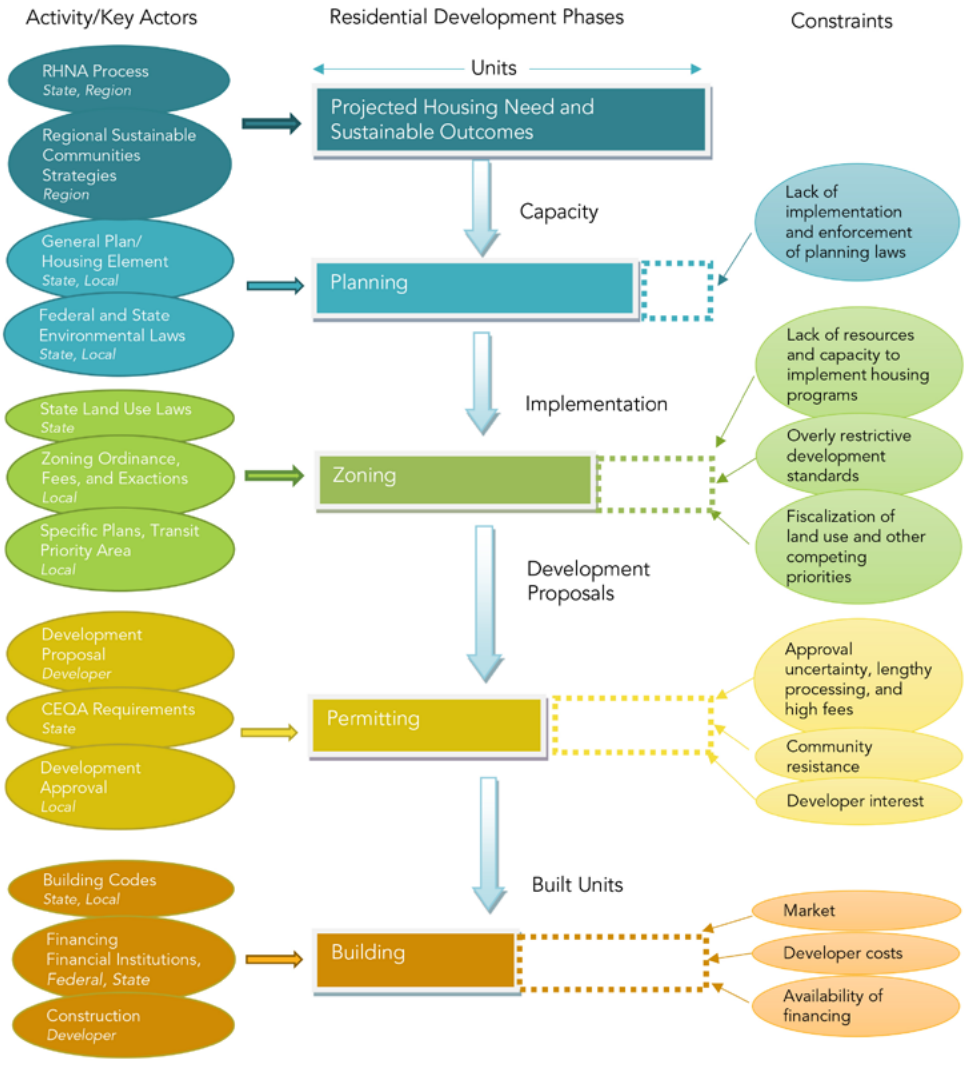
Key things to consider during the permitting phase:

- Discretionary entitlement processes with unclear requirements can become very lengthy creating possible delays in the project and further adding costs that can sometimes make projects infeasible.
- Restrictive development standards can severely impact the cost of housing.
- Consider establishing by-right, ministerial processes to reduce the time it takes to approve a project.
- Certain laws place limitations on a jurisdiction's process when approving certain housing

development projects such as Housing Crisis Act of 2019 (SB 330, Statutes of 2019). For more information see the section on SB 330 below.

Step 4: Building – By this phase, a development has secured all the needed local government approvals, also known as entitlements. The developer adheres to the building code requirements set by the California Building Standards Commission and amendments that a local government has made based on unique circumstances. After this, a developer can start building housing as long as they have secured all the necessary financing.

Figure B.4
Residential Development Process Flowchart



Planning and Zoning

Regional Housing Needs Allocation (RHNA)

The Regional Housing Needs Allocation, also known as RHNA, is assigned to a jurisdiction and represents the number of units a jurisdiction must zone and plan for. A jurisdiction's RHNA is divided into four income categories: Very Low, Low, Moderate and Above Moderate income categories. The RHNA process starts with an estimate of the state's housing needs across all income levels by the state Department of Finance and Department of Housing and Community Development (HCD). This number is then proportionately divided among the state's regions using specific factors including overcrowding, vacancy rates and cost burdened households The regional number is further divided and assigned to each city, town and county by regional councils of governments (referred to as COGs). In areas of the state where a COG is not present, HCD will act as the COG. Each COG develops a methodology based on the statutory objectives referenced on the next page. Each jurisdiction then updates the housing element to plan for their fair share of housing by using their RHNA numbers and develops an action plan (program section of the housing element) to set the table for development and accommodate their RHNA.

RHNA Statutory Objectives:

- Increase housing supply and mix of housing types, with the goal of improving housing affordability and equity in all cities and counties within the region.
- Promote infill development and socioeconomic equity; protect environmental and agricultural resources; encourage efficient development patterns; and achieve greenhouse gas reduction targets.
- Improve intra-regional jobs-to-housing relationship, including the balance between low-wage jobs and affordable housing units for low-wage workers in each jurisdiction.
- Balance disproportionate household income distributions (more high-income allocation to lower-income areas, and vice-versa).
- Affirmatively further fair housing.

The Housing Element

What is the Housing Element?

Since 1969, California requires that all local governments (cities and counties) adequately plan to meet the housing needs of everyone in the community. As such, local governments meet this requirement by adopting housing elements sometimes referred to as housing plans as part of their general plan (also required by the state). The housing element is a key planning document for local governments.

California's housing element law acknowledges that, in order for the private market to adequately address the housing needs

and demand of Californians, local governments must adopt plans and regulatory systems that provide opportunities for (and do not unduly constrain), housing development. As a result, housing policy in California rests largely on the effective implementation of local general plans and, in particular, local housing elements.

The housing element of the general plan is subject to a number of statutory requirements.[1] Housing elements are updated every five or eight years depending on the jurisdictions planning cycle.

Your Leadership Role

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

Housing Element Components

State law lays out very specific requirements that local governments needs to meet to have a compliant housing element.[2] The housing element is made up of several major components with three recurring themes that should be evaluated and analyzed throughout the element – community engagement, affirmatively furthering fair housing and harmony with other general plan elements.

1. Evaluation of past housing element accomplishment – what worked and what didn't?
    a. This section is often referred to as the review and revise piece of the housing element. It provides local governments with an opportunity to see what strategies and programs could be improved, continued as is, or removed based on the past housing element results and community feedback.

2. Housing Needs Assessment – who lives in your community?
    a. The needs assessment will analyze households in your community based on income levels and whether they are cost burdened or and living in overcrowded or substandard conditions. It will also analyze populations that may require special housing needs such as people with disabilities including developmental disabilities, seniors, people experiencing homelessness, farmworker population, extremely low-income and large families. Lastly, it will include identification and an analysis of assisted housing units in your community and if they are at risk of losing their public subsidy. This section will help you understand the varying housing needs of your community.

3. Constraints – what is the regulatory framework for housing?
    a. Certain land use controls, fees, building codes and permit and processing procedures can sometimes act as a constraint for housing to be built especially homes that are affordable for lower and moderate income families and for a local government to achieve the densities identified on their sites. The analysis must look at governmental and nongovernmental or market-driven regulations including the availability of financing, land costs and construction costs.

4. Land inventory and analysis[3]
    a. The land inventory identifies sites that are zoned or could be rezoned and will be suitable for housing development—

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

2 See Cal. Gov't Code §§ 65580 and following.

3 Housing Element Sites Inventory Guidebook (ca.gov)

including having current or planned access to roads, water, sewer and other infrastructure—within the housing element planning period. Through this process, a local agency will demonstrate that it can accommodate its share of the regional housing need by income level, especially its share of housing affordable to lower income households.

5. Policies and Programs
    a. In this section, a local government will set forth a schedule of actions to implement various objectives and goals in the housing element and address the housing needs of all economic segments. The element must identify adequate sites to accommodate the agency's share of the regional housing need and must identify programs to assist in the development of low- and moderate- income housing; remove or mitigate governmental constraints; conserve and improve the existing affordable housing stock; promote and affirmatively further fair housing opportunities; and preserve existing affordable housing units, and incentivize and promote the creation of ADUs.

Public Participation and Affirmatively Furthering Fair Housing

Housing and the availability of homes impact all of us. This is an opportunity for local governments to gather feedback from all segments of their community and make sure they are represented during the housing element update process. To adequately engage all segments of the community, a local government must make diligent and meaningful efforts in the public participation process. A local government should use a variety of communication and outreach methods to engage all segments of the community. Outreach should occur before and during the housing element update and should happen on an ongoing basis through implementation of the housing element programs. Feedback received from the community and stakeholders representing community groups should be summarized and incorporated into the element.

The housing element must be developed and reviewed through the lens of affirmatively furthering fair housing. Several historic actions and policies both by the private and public sector have led to housing discrimination, racial and ethnic segregation of neighborhoods, disinvestment in vulnerable communities and restricted access to opportunities. The first step to undoing past discriminatory actions is to identify and analyze local policies and how that has contributed to fair housing issues. All aspects of the housing element should review, analyze and determine if policies are exacerbating or improving integration and segregation issues, racially and ethnically concentrated areas of poverty, areas of opportunities and disproportionate housing needs including displacement risks. The housing element must also include programs and policies to significantly overcome identified patterns of segregation and to affirmatively further fair housing in a meaningful way.

Compliance

HCD plays a critical role in reviewing every housing element in the state and determining whether it complies with state law. Local governments must make the initial draft housing element available to the public for 30 days and take an additional 10 days to consider and incorporate comments before HCD can review the draft. Once local governments have submitted the initial draft of the housing element, HCD will take 90 days to review the element for compliance with state law. Within 90 days HCD will either provide findings from their review or determine that the draft document substantially complies with housing element law.[4]

If HCD finds that the draft does not substantially comply with state housing element law, a jurisdiction can revise the draft to incorporate HCD's comments and resubmit for another review of the draft housing element. While a jurisdiction is not legally required to resubmit their draft housing element, if they received findings from HCD, it is recommended that they do. This will provide the jurisdiction another opportunity to address HCD's comments in meeting state law, potentially providing more certainty that the draft housing element will be found in compliance.

Once HCD has provided written findings on the draft housing element, a jurisdiction can either provide another revised draft to HCD for review (as noted above) or consider HCD's comments and adopt the housing element (with or without additional revisions from the initial draft). Once adopted, a jurisdiction must submit the adopted housing element to HCD for a 60-day review period. In this time, HCD will determine if the adopted housing element is in compliance or provide written

4 See Cal. Gov't Code § 65585.

findings from their review. A compliant housing element is extremely important for several reasons noted below. At this time a jurisdiction can readopt their housing element to address HCD's findings. Please note, if a jurisdiction does not have a compliant housing element within 120 days of their statutory due date, they will need to complete any rezoning actions within the first year of the planning period.

Consequences of a Lack of Compliance with State Housing Element Law

Housing availability is a critical issue with statewide implications, and most housing decisions occur at the local level. Housing elements are essential to developing a blueprint for growth and are a vital tool to address California's prolonged housing crisis. As such, state law has established clear disincentives for local jurisdictions that fail to comply with State Housing Element Law.

First, noncompliance will result in ineligibility or delay in receiving state funds that require a compliant housing element as a prerequisite, including, but not limited to, the following:

- Permanent Local Housing Allocation;
- Local Housing Trust Fund Program;
- Infill Infrastructure Grant Program;
- SB 1 Caltrans Sustainable Communities Grants; and
- Affordable Housing and Sustainable Communities Program.

Second, jurisdictions that do not meet their housing element requirements may face additional financial and legal ramifications. HCD may notify the California Office of the Attorney General, which may bring suit for violations of State Housing Element Law. Further, statute provides for court-imposed penalties for persistent noncompliance, including financial penalties. Government Code section 65585, subdivision (l)(1), establishes a minimum fine of $10,000 per month and up to $100,000 per month. If a jurisdiction continues to remain noncompliant, a court can multiply the penalties up to a factor of six. Other potential ramifications could include the loss of local land use authority to a court-appointed agent. In addition to these legal remedies available in the courts, under the Housing Accountability Act[5], jurisdictions without a substantially compliant housing element cannot use inconsistency with zoning and general plan standards as reasons for denial of a housing project for very low-, low-, or moderate-income households.

More information about housing element compliance incentives and consequences: https://abag.ca.gov/sites/default/files/documents/2021-04/HE_Compliance_One-Pager.pdf

For more guidance, please visit HCD Building Blocks (ca.gov)

For technical assistance including sample ordinances: Housing Planning Hub Site (arcgis.com)

5 Gov. Code § 65589.5, subd. (d)

Key Topics and Strategies

Land Use and Zoning Policies That Expand Housing Options and Promote Affordability

There are several strategies that jurisdictions can use to accommodate and build more housing. Jurisdictions can use a mix of the strategies below and customize them based on the jurisdiction's unique attributes such as size of the locality, location and whether it's rural, suburban or urban.

Strategy	Example	Outcome
Increasing densities	Establish overlay zones, rezone specific areas or upzone For example: increasing zoning from 20-30 du/ac to 30-40 du/ac	• More housing and increased affordability
Allowing for more permitted residential uses	Expanding permitted uses in appropriate zones such as retail, commercial or establishing mixed-use zones	• More variety of housing options such as apartments and condos that can accommodate multiple age groups • Revitalizing parts of a community • Complementing planning outcomes including revitalization and transit orientated development
Reduced development standards and modified building codes	Encouraging small lot development or compact housing designs by reducing minimum lot sizes, increasing lot coverage, parking reductions, modifying height limits, reduced setbacks, etc.	• More variety of housing choices such as townhomes and smaller sized homes leading to affordability
Recycling underutilized land	Rezoning and reusing land/parcels that are underutilized to more intensive uses For example: abandoned warehouse or underutilized parking lot redeveloped into a mixed-use development with senior housing and grocery store	• Revitalization by transforming abandoned land uses into active spaces • More housing options
Adaptive reuse	Converting older or underutilized structures into new uses such as converting office spaces with expired leases into housing such as live/work units	• Less expensive because the infrastructure and building structure have already been built which leads to increased affordability • Revitalization of existing communities and abandoned spaces

Example: Implementing Mixed-Use Zoning

Mixed-use development complements many other planning techniques, including compact design, historic preservation, infill, higher densities, redevelopment, downtown revitalization and transit-oriented development. It can reduce reliance on cars by locating jobs, shopping and residences in one place. Many communities have developed successful mixed-use "town centers" that fare very well on the real estate market and generate needed revenues for the local agency.

Things to consider in encouraging mixed-use development include:

- Identify Areas. Under-used commercial districts and areas near transit stations are excellent locations for mixed-use development.
- Amend Zoning and Building Codes. Consider amending building codes and zoning ordinances that discourage mixed-use developments. For example, revising the zoning code to allow shared parking between residential and commercial uses and providing other flexible development standards can promote the feasibility of mixed uses.
- Offer incentives. Consider offering incentives to encourage mixed-use development. This might include offering a density bonus, relaxing parking requirements or expediting the processing of permit applications.
- Minimize Conflicts. Design projects to minimize conflicts over problems like noise, traffic and parking. A good architect can incorporate design components to address these issues, but project plans should still be studied closely during the design review process.
- Avoid Displacement of Low-Income Residents. Mixed-use developments can significantly increase property values in surrounding areas. Including new affordable units in the design will help offset any displacement of low-income residents.

Example: Infill and Recycling

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

Example: Affordable Housing Overlay Zones (AHOZ)

Affordable housing or zoning overlays are a zoning tool that allows jurisdictions to modify existing zoning to allow for, or require, certain types of residential development, or development at certain densities, on a parcel without modifying the standards of the underlying zoning district.
Usually, they have specific requirements and conditions (e.g., a percentage of the development must be deed-restricted as affordable to lower income households for a specific number of years) that must be met in order for a developer to take advantage of the overlay.
These are often combined with incentives to encourage developers to utilize the overlay.
Jurisdictions use overlays to help promote a specific type of development, and to increase densities without having to go through a rezoning procedure on the actual parcel and can be more useful when issues such as density and affordable housing become contentious. Key things to keep in mind when developing and implementing affordable housing overlay zones to make them more effective include making sure there are no additional discretionary actions needed beyond what is required of the base zoning and the development standards do not constrain a project from achieving the maximum density that the zone allows.

Allowing for a Variety of Housing Types

Providing various housing types can promote affordability, accommodate various types of families and individuals and create a more diversified community both in income and familial makeup. Additionally, California State Law[6] requires that the housing element provide zoning for variety of different housing types.

Housing Type	Description	Population
ADUs (second units, granny flats)	An ADU is a secondary unit with a complete independent living facility. California has passed several laws making it easier and more affordable to build ADUs. For example, jurisdictions must permit ADUs in any zones that allow for residential uses.	• Persons with disabilities • Seniors and seniors aging in place • Large joint families • People experiencing homelessness • Any individual • People with lower incomes • Students
Multifamily	Multifamily housing can range from duplexes to fourplexes or multiple units in an apartment building that provide an affordable option to varying circumstances and income levels.	• Persons with disabilities • Seniors • Families • Female headed households • People experiencing homelessness • People with low and moderate incomes
Transitional housing	Housing that helps move people experiencing homelessness into permanent housing. Individuals live in this type of housing for a set period of time and are provided with services to help them transition to living independently. State law requires jurisdictions to treat transitional housing as a residential use and subject to only those restrictions that apply to other residential uses of the same type in the same zone.	People experiencing homelessness

6 Government Code Section 65583 and .2

Housing Type	Description	Population
Supportive housing	Provides permanent housing to people who were experiencing homelessness and includes wrap around services to support the individual including mental and medical health benefits, career services, skills training, substance disorder counseling, etc. State law requires that supportive housing is treated as a residential use and only subject to the same restrictions that apply to other residential uses of the same type in the same zone. In addition, supportive housing meeting specific criteria, must be permitted by-right in zones where multifamily and mixed uses are permitted.	• People experiencing homelessness • Persons with disabilities, individuals • Families with overlapping issues including substance abuse disorders, chronic illnesses, disabilities, etc.
Farmworker housing	Housing options for farmworkers include migrant centers, multifamily units, SROs and employee housing located on agriculturally zoned land. Specifically, jurisdictions must allow employee housing for 6 or fewer as a single family use and housing consisting of 36 beds or 12 units as an agricultural use wherever agricultural uses are allowed.	Seasonal and permanent farmworkers
Single Room Occupancy (SROs)	Small independent units that might be provided through converted hotels/motels or apartment buildings.	• People experiencing homelessness and low-income individuals
Manufactured housing[7] and mobile homes[8]	Manufactured, factory-built homes and mobile homes provide affordable and unique housing options. They can be built at lower costs in comparison to a typical single-family home.	All incomes categories
Emergency shelters	Temporary shelters with beds and some supportive services including case managers. All jurisdictions must have at least one zone permitting emergency shelters by right.	People experiencing homelessness
Low Barrier Navigation Centers (LBNC)	LBNC incorporates best practices that reduce barriers to entering shelters such as allowing pets, providing storage for personal items and privacy. LBNC must be a use by right in areas zoned for mixed use and nonresidential zones permitting multifamily uses.	People experiencing homelessness

7 Manufactured home," means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974.

8 Mobilehome," means a structure that was constructed prior to June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected onsite, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation system when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. "Mobilehome" does not include factory-built housing, a manufactured home, a multifamily manufactured home, or a recreational vehicle

Housing Type	Description	Population
Hotel/motel conversions	Abandoned, underutilized or interested owners can convert hotels/motels into housing through the creation of units and SROs. This can be an extremely cost-effective and efficient way to meet housing demand.	• People experiencing homelessness and low-income individuals

*Please see below for applicable zoning and permitting laws for each housing type.

Additional housing types:

- Single family homes including small lot homes
- Townhomes
- Duplexes, triplexes, fourplexes
- Efficiency units
- Tiny homes
- Microhomes



Other Affordability Strategies: Inclusionary Housing and Density Bonuses

Inclusionary Housing

Inclusionary housing, also known as inclusionary zoning, require new housing developments to include a certain percentage of affordable units. More than 100 local agencies throughout the state use this strategy. The typical inclusionary ordinance requires that between 10 and 15 percent of all new units be affordable to moderate-, low- or very low-income families. Most ordinances will also offer developers incentives like streamlined permitting, funding from a housing trust fund, or density bonuses to offset the cost of providing affordable housing. In most cases the affordability requirements last for at least 30 years, although some are much longer. Local agencies must monitor the units while the affordability requirement is in effect to ensure that they are rented or resold at affordable rates.

Things to consider when developing an inclusionary housing policy:

- The percentage of the inclusionary requirement
- Income eligibility criteria for defining affordability
- Pricing criteria for affordable units
- Restrictions on resale and re-rental of affordable units
- Provisions for alternatives to constructing the affordable units, such as in-lieu fees
- Incentives like permit streamlining
- How the program and units created will be monitored and funded
- Design standards that make the affordable units blend in with the surrounding community but still allow the developer to trim some costs
- Inclusionary requirements work best in areas with high costs and high development pressure (e.g. coastal communities). In rural areas where the cost of housing and development pressure tends to be lower, inclusionary requirements can serve as a disincentive to housing development.

Density Bonuses

Density bonus law is a long-standing feature of state law that has undergone numerous changes over the years while maintaining a consistent framework for providing incentives to affordable housing development through zoning and land use mechanisms. The law provides benefits to developers when they agree to include affordable housing in projects of five units or more. Jurisdictions must have adopted a local density bonus ordinance that meets state requirements. Even without such an ordinance, local agencies must provide developers the benefits entitled under the law.

Under density bonus law, developers are entitled to any or all of the following, at their discretion, if they include affordable units in a housing development project:

- Additional density
- Concessions and incentives

- Waivers or reductions of development standards
- Reductions in parking requirements

In addition, developers must agree to replace certain units that are demolished in conjunction with the project, or that have been demolished on the project site within the last five years. This requirement does not apply to affordable housing projects. Replacement units count towards meeting the affordable housing set-aside requirement to qualify for benefits under the law. Units that must be replaced include:

- Deed-restricted housing affordable to low- and very low-income households
- Rent-controlled housing
- Housing that is or was occupied by low- or very low-income households

Financing

According to a survey conducted by the Public Policy Institute of California nine out of ten Californians consider housing affordability a problem and one in three Californians are considering leaving the state because of it.[9] As of March 2021, California median home price is $758,990 while the median income in California is just $75,000. Additionally, in 2017, almost 55% of renters were either cost burdened or severely cost burdened while 2 in 3 Californians who were cost burdened are also people of color.[10]

Housing, especially affordable housing, is provided in two steps for California. The first step is through land-use planning tools and policies implemented at the local level. The second step is through federal, state and local funding to finance the development.

Many federal, state and local housing programs help finance the development of multi- and single-family homes for affordable to low- and moderate-income Californians. Other programs provide financial assistance directly to renters and homeowners, such as rental assistance from federal Housing Choice Vouchers or state first-time homebuyer down-payment assistance. Additionally, housing programs often target specific “vulnerable” or “special needs” populations. These can include veterans, seniors, persons experiencing homelessness, persons with disabilities or farmworkers.

Due to the high costs of development, funding constraints and competitive program criteria that encourage developers to leverage other funds, rarely does any single housing program provide sufficient resources to fund a complete development. Therefore, developers must apply for, and receive, funding from multiple programs and address each program’s overlapping policy goals along the way. One multi-family development can easily need five to ten funding sources to finance construction and will usually have a combination of financing from state and federal tax credits, state housing programs, local land donation or other local grants, federal housing programs and private loans from financial institutions. Any decline or loss of housing funding sources further exacerbates this issue.

Applying for, and securing, many layers of funding can substantially increase the time it takes to start production. It also increases the difficulty associated with meeting each program’s various requirements. Delays in securing entitlements, building permits and construction along with additional operational costs could account for substantial cost increases and risk of losing affordable funding sources.

In addition to several state funding sources, there some other tools that have been established to assist jurisdictions.

- Affordable Housing Beneficiary Districts[11] - This program allows a jurisdiction to redirect its distribution of property

9 PPIC Statewide Survey: Californians and Their Government - Public Policy Institute of California

10 Californians in All Parts of the State Pay More Than They Can Afford for Housing - California Budget & Policy Center (calbudgetcenter.org)

11 AB 2031 (Chapter 2031, Statutes of 2016)

tax revenue payable to the city or county from the Redevelopment Property Tax Trust fund to the affordable housing beneficiary district for as long as the successor agency is in existence. The jurisdiction is then authorized to issue bonds against the property tax revenue to provide financial assistance for the development of affordable housing in the form of loans, grants and other incentives.

- Enhanced Infrastructure Financing Districts[12] (EIFDs) – EIFDs are property tax-increment financing districts that enable local agencies to finance community-wide significant improvements and activities, including infrastructure, affordable housing, transit priority and sustainable communities strategies projects, property acquisition, flood control and climate resiliency projects, community facilities, recreation and open spaces, brownfield restoration and military base reuse. Local and community college school districts and county offices of education cannot contribute property tax-increment. Local agencies can form non-contiguous districts, and can use tax-increment revenues to fund the maintenance of improvements financed by the EIFD.
    - Neighborhood Infill Finance and Transit Improvement District (NIFTI) - NIFTIs are a specialized EIFD targeted specifically to affordable housing production and transit improvements in qualified infill areas. Local agencies may contribute incremental sales tax revenue generated within the district. NIFTIs require affordable housing set-asides.
- Community Revitalization and Investment Authorities[13] (CRIA) – CRIAs are a property-tax increment financing tool for local governments to fund various types of economic revitalization programs including low- and moderate-income housing acquire and transfer real property, and provide direct assistance to businesses within the district. All taxing entities, except K-14 schools, within the district must elect to have their tax increment share diverted to the CRIA. At least 25 percent of allocated tax increment revenues must be for affordable housing purposes.

For a comprehensive list of funding sources related to housing: Housing_Funding_Tables_4-5-2021 Copy.pdf | Powered by Box

For a centralized website to access all state grant opportunities: Home - California Grants Portal

12 SB 628 (2014)

13 AB 2 (2015)

Streamlining

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

Well-meaning local regulatory and policies can sometimes act as an impediment to building housing, especially affordable homes for vulnerable populations. Furthermore, project-by-project review can provide an opportunity for community opposition causing further delays and uncertainty for a project approval. As local governments have been facing competing priorities when approving housing such as community opposition and an incentive to approve sales tax generating development, establishing by right uses and a process has been seen as an effective strategy to secure desperately needed housing while providing builders certainty. Additionally, as part of establishing the by right uses and process, local governments have an opportunity to engage the public in where and how housing should be built which can prevent the project-by-project reviews down the line.

By right is sometimes referred to as "as-of-right." Additionally, by-right is defined in several other laws related to housing including streamlining under SB 35, supportive housing, emergency shelters, etc. In a by right process or approval, a jurisdiction has limited discretion. When a permitted use is considered by right, the local government may not require a conditional use permit, planned unit development permit or any other discretionary permits or approvals that would constitute a "project" for the purposes of the California Environmental Quality Act (CEQA).

Accessory Dwelling Units (ADU)

State law encourages the development of accessory dwelling units (ADUs) – formally known as second units, in-law units, granny flats or accessory apartments—in residential neighborhoods.[14] While local agencies are not required to adopt ADU ordinances, all jurisdictions in California must allow for ADUs in areas zoned to allow for residential uses (including commercial, industrial, agricultural and other zones which may allow for residential uses). Local agencies that have adopted ADU ordinances are authorized to regulate ADUs when certain standards are met. Local ordinances cannot ban ADUs entirely within their jurisdiction except where addition of such units could endanger the public's health and safety (these findings must be made at the time of adopting an ordinance and are subject to HCD review). However, they may impose reasonable limitations, such as designated locations, height limits, density controls, parking standards and architectural review as long as the limitations are consistent with standards set forth in state ADU law.

Once an ADU application meets the standards set in the local ordinance and complaint with state law, the permit must be granted ministerially within 60 days. As ADUs meet the development standards set forth in state ADU law or a local jurisdiction's ADU ordinance there are no public hearings or environmental reviews allowed. ADU applications are also exempt from local growth control ordinances and are consistent with underlying general plan and zoning for the specific sites. Those local agencies that have not adopted an ADU ordinance must approve projects according to a prescribed set of standards set forth in state law.

Local agencies are encouraged to use ADUs as a strategy to meet their jurisdiction's Regional Housing Needs Allocation (RHNA). However, jurisdictions must provide reasonable assumptions, based on prior production, for the number of ADUs that can be built in the planning period. Jurisdictions must also have a program in the housing element to incentivize the

14 Cal. Gov't Code § 65852.2.

production of ADUs that can be made available at affordable rents, and a monitoring program to make changes to the approach to meeting the RHNA if ADU production is not meeting the assumptions made. This could include adding suitable sites to the sites inventory.

Group Homes

Group homes typically serve people with disabilities, adolescents and children and people in recovery. They are an important resource that provides people with disabilities, among other populations, the support they need to live in a community. One of the top challenges persons with disabilities face, is having access to housing choices throughout the community and in all neighborhoods that have residential uses. The Supreme Court[15] held that states are required to eliminate unnecessary segregation of persons with disabilities and to ensure that persons with disabilities receive services in the most-integrated settings appropriate.

State law[16] specifically requires local governments treat licensed group homes and residential care facilities with six or fewer residents no different than other by right single-family housing uses.[17] Local agencies must allow these residential care facilities in any area zoned for residential use and may not require licensed residential care facilities for six of less to obtain any discretionary permits or approvals that differ from similar residential uses. Additionally, regulating group homes based on disability status and non-related individuals is a violation of fair housing laws, therefore local governments cannot impose stricter zoning, building and safety standards than other residential uses. To further reduce constraints on providing housing for people with disabilities, jurisdictions definition of family should not make distinctions between related and unrelated persons. Lastly a local government should not impose stricter requirements or discretionary permits when zoning for groups homes of seven or more. Ultimately, residential care facilities for seven or more should be allowed ministerially and only subject to those requirements that apply to the residential uses of the same type in the same zone.

Transitional and Supportive Housing

Transitional housing is a type of supportive housing used to facilitate the movement of people experiencing homelessness into permanent housing. A person experiencing homelessness may live in a transitional apartment for a predetermined period of time, however not less than six months while receiving supportive services that enable independent living. Supportive housing is a type of housing that combines affordable units with wrap around supportive services to address the needs of people that have been chronically experiencing homelessness. Supportive housing provides special needs population with long-term, safe and stable housing while also providing easily accessible services such as health care, treatment and employment services. Supportive housing is a critical strategy needed to end chronic homelessness and help people achieve long-term housing. Additionally, research shows that supportive housing is a cost-effective solution as it can lower public costs associated with the use of emergency services such as shelters and hospitals.[18]

Jurisdictions must permit transitional and supportive housing as a residential use and only subject to those restrictions that apply to other residential dwellings of the same type in the same zone. [footnote (Government Code Section 65583(a)(5))] In other words, transitional housing and supportive housing are permitted in all zones allowing residential uses and are not subject to any restrictions (e.g. occupancy limit) not imposed on similar dwellings (e.g. single-family homes, apartments) in the same zone in which the transitional housing and supportive housing is located. For example, transitional housing located in an apartment building in a multifamily zone is permitted in the same manner as an apartment building in the same zone and supportive housing located in a single-family home in a single-family zone is permitted in the same manner as a single-family home in the same zone.

15 Olmstead v. L.C., 527 U.S. 581 (1999)

16 Health and Safety Code Sections 1267.8, 1566.3, 1568.08

17 Six or fewer does not include operator, operator's family or persons employed as staff

18 Permanent Supportive Housing - National Alliance to End Homelessness

In addition, AB 2162[19] streamlines and expediates the approval of supportive housing. Specifically, AB 2162 requires that affordable housing projects that include at least 25 percent or 12 units, whichever is more, of supportive housing be a use by right in zones where multi-family and mixed uses are permitted, including non-residential zones permitting multi-family uses. Supportive housing as a use by right[20] means that the local governments review of the owner-occupied or residential use may not require a conditional use permit (CUP), planned unit development (PUD)or other discretionary local government review or approval that would constitute a "project."[21] Additionally, the legislation requires a local government to approve, within statutory timelines, a supportive housing development that complies with specified criteria. Lastly, transitional and supportive housing must be considered a residential use, and subject to only those restrictions that apply to other residential dwellings of the same type in the same zone.

Emergency Shelters and Low Barrier Navigation Centers

Senate Bill 2 (SB2), passed in 2008[22] requires that local governments identify a zone where emergency shelters are allowed as a by right use (with no discretion).

Assembly Bill 101 (AB 101), passed in 2019, requires local governments to permit low barrier navigation centers (LBNC) as a use by right in areas zoned for mixed use and nonresidential zones that permit multifamily uses if the center meets specific criteria.[23] A LBNC is defined as a housing first, low barrier, temporary, service-enriched shelter focused on helping people and families experiencing homelessness quickly obtain permanent housing. This strategy is focused on making it easier for people to access shelter and permanent housing while providing any needed resources.

Affordable Housing Developments

Senate Bill 35 (SB 35)[24], was passed in 2017 as part of a 15-bill housing package targeted at addressing the state's housing shortage through regulatory reform and funding. Local agencies that have not permitted enough housing to meet their RHNA allocation during the housing element planning period are required to provide a streamlined ministerial approval process for certain developments that meet specified criteria. As such, developers have the option to apply for a ministerial approval rather than a discretionary approval. In order to qualify for this option, the proposed development must have a certain percentage of affordable units and must meet objective development standards already in effect at the time of the application. However, projects that are 10 or less units do not need to include an affordable unit set-aside to be considered an SB 35 project. The proposed project site must not have any environmental constraints as identified in state housing law and the project must pay prevailing wage. The intent with this streamlining legislation, as with many mentioned above, is to expediate and facilitate the construction of housing. SB 35 can be an effective tool to streamline many residential housing projects. However, local agencies are encouraged to establish streamlined processes and remove regulatory barriers for all housing development applications.

Housing Element Sites

There may be other streamlining provisions and requirements for specific developments depending on how your jurisdiction gained housing element compliance for the 6th cycle and what type of sites the housing element identified to meet the localities RHNA goals.

19 Chapter 753, statutes of 2018, CA

20 Government code Section 65583.2 (i)

21 "Project" defined for the purposes of Division 13 (commencing with Section 21000) of the Public Resources Code

22 Government Code Section 65583. (a)(4)(5)

23 Government Code Section 65660, 65664, and 65666

24 Government Code Section 65913.4

- Example: Reusing RHNA sites from pervious planning periods – if your jurisdiction is reusing vacant sites/parcels to meet the RHNA goals of the 6th cycle planning period that was previously identified in the last two planning periods (4th and 5th) for lower income households, those sites must approve housing by right if the development includes 20% or more of its units as affordable to lower-income households.[25] The same streamlining provision would apply if your jurisdiction was reusing non-vacant sites identified in the last planning period.
- Example: Rezoning to meet RHNA – if your jurisdiction had to include a rezoning program as part of its 6th cycle element to rezone to meet its RHNA goals, sites must be rezoned sites to allow for residential to be permitted by right for developments in which at least 20% of the units are affordable to lower income households.[26]

25 Government Code Section 65583.2 (c)

26 Government Code Section 65583(c)

CEQA Streamlining Provisions [27]

Certain types of development such as affordable housing, infill projects and transit-orientated development (TOD) can be exempt from the provisions of CEQA, when the project meets certain criteria. The Governor's Office of Planning and Research (OPR) has prepared technical advisories on the CEQA exemptions available for housing projects generally and affordable, transitional and supportive housing specifically.

In some cases, it is possible to streamline CEQA by tiering off of existing environmental analysis. Pursuant to CEQA Guidelines Section 15183, projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified may not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. For additional information on potential tiering options, see CEQA Guidelines Appendix J.

27 California Public Resources Code 21000

Implementation (Approval, Building and Permitting)

Community Opposition – Overcoming Local Resistance

Now that you have done the planning (general plan, housing element, specific plans, etc.), set up the zoning and applied the various streamlining options, it's time for implementation. This is the phase where you start reviewing and approving housing development proposals that meet the goals, policies and land use regulations development through the planning phases. The hope and intention is that because local governments engaged the public early during the planning phase and actively worked with the community to set goals on how the community should grow and develop, there would be limited pushback. However, despite local governments working diligently to engage their community and incorporate public feedback through the planning phases, housing proposals may still be met with opposition and pushback.

Community opposition will almost always delay or stop a development that is providing housing to many of your own community members. Affordable housing provides your community members including teachers, firefighters, police officers, public servants, seniors, etc., with much needed housing that helps them thrive. Delays in affordable housing projects can especially be dangerous. Affordable housing developments are subsidized through multiple state, federal and private funding sources and to retain those funding sources, these developers need to adhere to strict timelines. Delays to market-rate projects can create additional costs to the project that may end up being passed on to the resident and making it unaffordable to live in.



Community opposition can take several forms including referendums, ballot measures, opposition at public hearings, project-level CEQA lawsuits, etc. To prevent community opposition, in addition to doing proactive engagement during the planning phases, local governments can implement streamlining measures, by right processes, objective reviews and provide CEQA exemptions that promote a non-discretionary process.

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

- **Don't Immediately Dismiss Opponents as NIMBYs.** It is easy fall into the trap of assuming that all opposition derives from a self-interested "not in my back yard" (NIMBY) attitude. This can be avoided by analyzing opponents' arguments. Individuals and neighborhood groups often raise legitimate concerns about projects that should be taken into account. Nevertheless, there are some groups who just want to stop any kind of affordable housing project, regardless of the benefit to the community.
- **Consult with the Community in Advance**. Seek the community's views on the design of the project, both in the neighborhood in which the project will be built and in adjacent neighborhoods.
- **Be Prepared to Educate.** People often have negative stereotypes of who will live in affordable housing and what it will look like. A quality education program can show what the design will look like and the typical occupations— such as teachers, public safety officers, retail clerks and service workers—of the people who will occupy the units. The local agency should look for opportunities to educate residents well in advance of a proposed housing project. The revision and adoption of the housing element presents an excellent opportunity to engage and educate residents about the need for, and benefits of, affordable housing. The agency could also organize or participate in housing tours and affordable housing events that showcase quality housing projects and include testimonials from the residents of the housing and from residents who previously opposed such projects.
- **Develop Partnership and Networks.** Initiate and support partnerships among stakeholders. Connect project applicants with neighborhood groups and community-based organizations during the planning process and encourage them to work through their concerns. Engage the business community in efforts to promote an adequate housing supply.

Limited Authority to Deny Housing Projects

Housing Accountability Act

State law can limit a local agency from denying a housing development project. Specifically, the Housing Accountability Act (HAA)[28] establishes parameters around a jurisdiction's ability to deny or reduce the density of a housing development project, emergency shelter or farmworker housing when they are consistent with objective development standards and contribute to meeting housing needs.

The Housing Accountability Act (HAA) was originally enacted in 1982 to address local opposition to housing, especially affordable housing and the multiple levels of discretionary review that would result in preventing or delaying a development. This is sometimes referred to as the anti-NIMBY law because it is designed to limit local agency discretion to reject a project that may generate significant neighborhood opposition.

Over the years, the HAA has been strengthened to address the state's housing crisis, including:

- The agency must provide documentation based on a preponderance of the evidence to legally defend its denial of housing development projects.
- Requires courts to impose a fine of $10,000 or more per unit on local governments that fail to legally defend their

28 Government Code Section 65589.5

rejection of an affordable housing development.

- A reasonable person must determine conformance with local land use requirements.

State law prohibits a local agency from denying an affordable housing project—or conditioning it in a way that makes the project infeasible—unless one of the following findings can be made (and supported by preponderance of the evidence):[29]

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

For housing that does not meet the definition affordable housing project, state law also prohibits a local agency from denying or imposing a condition that the project be developed at a lower density if a project is consistent with objective development standards —unless one of the following findings can be made (and supported by substantial evidence):

- The housing development project would have a specific, adverse impact upon the public health or safety.
- There is no feasible method to satisfactorily mitigate or avoid the adverse impact, other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

For purposes of the HAA a "specific, adverse impact" means a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies or conditions as they existed on the date the application was deemed complete. Pursuant to Government Code section 65589.5 (a)(3) it is the intent of the Legislature that the conditions that would have a specific, adverse impact upon the public health and safety arise infrequently.

Please note, the jurisdiction must provide written notification to the developer if a project is not consistent with objective development standards within 30 days of an application being deemed complete for projects containing 150 or fewer units, or 60 day of an application being deemed complete for projects over 150 units. Failure to provide written documentation within the timeframes results in the project being deemed consistent with applicable standards.

Other Affordable Housing Laws

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

- **Least-Cost Zoning Law.** The least-cost zoning law requires local agencies to zone sufficient vacant land to meet the housing needs of all segments of the population, including low- and moderate-income households (some exceptions apply to urban or built-out communities).[30] The law also requires that the zoning standards adopted by local agencies

29 Government Code Section 65589.5

30 Cal. Gov't Code § 65913.1.

allow for the production of housing at the lowest possible cost. There are penalties for noncompliance, including a court order to approve applications related to the zoning deficiency. In one case, a court found that a city had to approve all development applications for a certain type of development—homeless shelters— until it complied with the least-cost zoning law.[31]

- **Local Agency Bears Burden of Proof.** A local government is tasked with making findings or determinations based on "substantial evidence." Under the substantial evidence standard, local government is merely required to find reasonable, adequate evidence in support of their findings, even if the same or even more evidence supports a finding to the contrary. Findings or determinations based on a "preponderance of the evidence" standard require that local governments weigh the evidence and conclude that the evidence on one side outweighs, preponderates over, is more than the evidence on the other side, not necessarily in the number or quantity, but in its convincing force upon those to whom it is addressed9. Evidence that is substantial, but not a preponderance of the evidence, does not meet this standard

- **Limited Authority to Adopt Moratorium.** A local agency may generally adopt a temporary moratorium on certain types of development. That authority is limited when applied to development projects that devote one third or more of the square footage to multi-family housing. An agency may adopt a 45-day moratorium on such projects on a four-fifths vote of the governing body, but any attempt to extend the moratorium requires the agency to make findings supported by substantial evidence that: (1) approval of such projects would have a specific, adverse effect on the health and safety of the community; (2) the moratorium is necessary to avoid that impact; and (3) there is no other feasible alternative to mitigate the impact.[32]

SB 330, Housing Crisis Act of 2019

The Housing Crisis Act of 2019[33] strengthens protections for housing development projects under the Housing Accountability Act (HAA), Planning and Zoning Law and the Permit Streamlining Act. The provisions set forth under SB 330 sunset in 2030.

A housing developer has the option of submitting a "preliminary application" for any housing development project. Submittal of a preliminary application allows a developer to provide a specific subset of information on the proposed housing development before providing the complete information required by the local government. Upon submittal of an application and a payment of the permit processing fee, a housing development project is subject only to the ordinances, policies, standard or any other measure (standards) adopted and in effect when a preliminary application was submitted. The project applicant then has 180 day to submit a full application.

For affected cities and counties, the Housing Crisis Act provides the following:

- Generally (with specified exceptions) cannot change the general plan land use designation, specific plan land use designation, or zoning of a parcel, or parcels, of property to a less intensive use or reducing the intensity of land use, unless it offsets that decrease through a concurrent increase on another parcel.

- Cannot impose or enforce design standards adopted after 2020 that are not objective.

- Cannot enforce any moratoriums or similar restrictions without gaining permission from HCD.

- No growth caps or controls that limit or cap the number of land use approvals or permits for housing approvals or construction except under certain provisions.

- No population caps except under certain provisions.

- Replacement requirements for housing being demolished.

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

32 Cal. Gov't Code § 65858(c)

33 Chapter 654, Statutes of 2019 (SB 330)

No Net Loss

The No Net Loss Law ensures that jurisdictions do not take any actions that reduce the potential capacity for new developments on their housing element sites. Further it requires that local governments have sufficient adequate sites available at all times during RHNA planning period.[34] As such, if jurisdictions are considering modifying development standards, revising densities, limiting development on RHNA sites, or downzoning, they should be mindful about triggering the No Net Loss Law. Additionally, if the jurisdiction finds that there is a shortfall of sites to accommodate its remaining RHNA, the jurisdiction must take specific actions to correct the shortfall by either amending its housing element to include additional sites or rezone new sites. Failure to comply with the provisions of No Net Loss Law is also a violation of housing element law and HCD can revoke housing element compliance and/or refer the violation to the Attorney General.

Key points to remember:

- Any change in development standards resulting in less density, denial of a project or downzoning could trigger No Net Loss. If a jurisdiction downzones a lower- or moderate-income housing element site or approves a development on a lower income site at a lower density or higher income level than what was assumed for the site in the inventory, it must make written findings supported by substantial evidence.
    - If a jurisdiction cannot make specific written findings and still reduces the density or capacity of the site, it must identify or rezone an additional site with an equal or greater residential density.
    - If an approval of a development project results in fewer units by income category than identified in the jurisdiction's housing element for that parcel and the jurisdiction does not find that remaining sites in the housing element area adequate to accommodate the jurisdictions RHNA it must identify and make adequate sites available, including any rezoning within 180 days.

34 Government Code Section 65583, subd (a)(3))

Other Topics

California's housing crisis is a half century in the making. Decades of underproduction underscored by exclusionary policies have left housing supply far behind need and costs soaring. As a result, millions of Californians, who are disproportionately lower income and people of color, must make hard decisions about paying for housing at the expense of food, health care, childcare and transportation—one in three households in the state don't earn enough money to meet their basic needs.

Statewide Housing Plan

The Statewide Housing Plan is a living, comprehensive roadmap that tracks California's progress toward the state's current goal of 2.5 million homes needed over roughly eight years to create a more affordable, equitable California for all. It will take a concerted, collaborative effort statewide to effect change. The Statewide Housing Plan guides the state, local governments, and housing partners to continue to address multiple challenges quicker and to track efficacy.

Access the plan here: https://statewide-housing-plan-cahcd.hub.arcgis.com/

Affirmatively Furthering Fair Housing (AFFH)

Definition

Affirmatively Furthering Fair Housing (AFFH) means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development.

In short, AFFH means that local jurisdictions need to take concrete, meaningful steps to dismantle the legacy of segregation and unequal housing opportunity in California.

Housing is a key determinant in whether or not people have the resources to live healthy lives and achieve their full potential. Land use policies and planning often translate into the ability of families to access neighborhoods of opportunity, with high-performing schools, greater availability of jobs that afford entry to the middle class and convenient access to transit and services. The limits on housing choice and access experienced by people within protected classes, such as race, sexual orientation or disability, have far-reaching impacts on access to job opportunity, quality education and mental and physical health.

Residential segregation and exclusion, whether by race, ethnicity, disability or income, is a result of numerous housing

policies, practices and procedures—both public and private—that have had enduring and pervasive negative impacts. Overt and covert housing discrimination through land use policy, shifting housing markets and patterns of investment and disinvestment, have restricted meaningful fair housing choice and equitable access to opportunity, particularly for communities of color. Historic patterns of segregation persist in California despite the long-standing federal mandate, established by the Fair Housing Act of 1968 (FHA), that federal agencies and federal grantees affirmatively further the purposes of the FHA.

Although federal mandates prohibit overt forms of discrimination in housing, forces driving residential segregation have persisted, sometimes taking on new forms to achieve the same discriminatory ends. Racially explicit practices were subtly replaced by race-neutral methods to exclude people of color from predominantly white neighborhoods. Over time, single-family zoning emerged and replaced race-based zoning as a tool for segregating communities by restricting more affordable housing options, such as apartments or condominiums. Exclusionary zoning policies have made it difficult for lower-income residents to access certain communities and in turn has had a discriminatory effect on protected characteristics such as race, disability and familial status. Furthermore, federal, state and local subsidized programs failed to construct affordable housing in high-resource neighborhoods, which are disproportionately white, thereby reinforcing the spatial segregation of low-income communities of color.

To address these conditions, Assembly Bill 686 (AB 686), signed in 2018, establishes an independent state mandate that expands the duty of all California's public agencies to affirmatively further fair housing. With the passage of AB 686, state and local public agencies are required to affirmatively further fair housing through deliberate action to explicitly address, combat and relieve disparities resulting from past and current patterns of segregation to foster more inclusive communities. Now, all public agencies must both (1) administer programs and activities relating to housing and community development in a manner that affirmatively furthers fair housing, and (2) take no action inconsistent with this obligation. These new statutory obligations charge all public agencies with broadly examining their existing and future policies, plans, programs, rules, practices and related activities and make proactive changes to promote more inclusive communities.

Importantly, AB 686 also creates new housing element requirements applying to all housing elements due to be revised on or after January 1, 2021. These requirements include an assessment of fair housing practices, an analysis of the relationship between available sites and areas of high or low resources, and concrete actions in the form of programs to affirmatively further fair housing. The purpose of this assessment and analysis is to replace segregated living patterns with truly integrated and balanced living patterns and to transform racially and ethnically concentrated areas of poverty (R/ECAP) into areas of opportunity. Some of the ways local jurisdictions can fulfill their obligation to affirmatively further fair housing is through strategies and actions that:

- Enhance mobility strategies and promote inclusion for protected classes,
- Encourage development of new affordable housing in high-resource areas,
- Implement place-based strategies to encourage community revitalization, including preservation of existing affordable housing, and
- Protect existing residents from displacement.

These actions, taken together, must significantly address disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, fostering and maintaining compliance with civil rights; and must affirmatively further fair housing.


AB 686
Expands and protects duty to affirmatively further fair housing (AFFH) in CA
1
All public agencies required to administer programs and activities relating to housing and community development in a manner to AFFH and take no action that is materially inconsistent with this obligation.
2
New Housing Element Requirements
*Applies to housing elements due to be revised on or after January 1, 2021
Outreach
A diligent effort must be made to equitably include all community stakeholders in the housing element public participation process.
Assessment of Fair Housing
All housing elements must include an assessment of fair housing within the housing needs section. This assessment should include an analysis of fair housing issues in the jurisdiction including existing segregation and inclusion trends and current fair housing practices.
Sites Analysis
Local jurisdictions must evaluate and address how particular sites available for development of housing will meet the needs of households at all income levels and will AFFH by replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity.
Priorities, Goals, and Actions
Based on findings from the needs assessment and the site inventory analysis with respect to AFFH, local jurisdictions will assess contributing factors to fair housing barriers and adopt policies with programs that remediate identified fair housing issues and/or further promote fair housing.

Homelessness

California has multiple crises including a housing shortage, affordability crisis and as a result, a homelessness crisis. California has an estimated 161,548 persons experiencing homelessness.[35] Additionally, 26% of the total homelessness population is located in California, the highest percentage in comparison to all states.[36] As of 2021, California has made a commitment to invest $12 billion to address homelessness.[37] While the topic of homelessness can be very complex, the high cost of housing in California is a significant factor in the state's homelessness crisis. The high cost of living in California come from a combination of land and construction prices and increasingly complex and difficult land use and entitlement processes. Furthermore 80.6% of low-income households are either cost burdened or severely cost burdened.[38] People experiencing homelessness range in populations and demographics. Of the roughly 161,548, Californians experiencing homelessness, 8,030 were families, 11,401 were veterans, 12,172 were unaccompanied young adults and 51,785 were individuals.[39]

Building a more affordable supply of housing units can drastically help reduce the number of families and persons experiencing homelessness in California.

Prohousing

In July 2021, HCD launched the Prohousing Designation Program (PDP), which recognizes local jurisdictions that go above and beyond in ensuring Californians can have safe, affordable homes in vibrant, inclusive and sustainable communities. In response to the state's housing crisis, the Legislature enacted the 2019-2020 Budget Act (AB 101), which authorized HCD to award cities and counties with additional incentives in the form of funding opportunities.

Local jurisdictions that adopt local policies to facilitate the planning, approval and construction of housing beyond state law can apply to receive the designation. Once a jurisdiction receives the designation from HCD, it receives bonus points or preference when applying for funds from the following programs: the Infill Infrastructure Grant (IIG), the Affordable Housing and Sustainable Communities (AHSC) program and the Transformative Climate Communities (TCC) program. All three programs include local governments and agencies as applicants or co-applicants with affordable housing developer partners. As program implementation continues, HCD will expand the list of housing and non-housing funding sources to provide further incentives to Prohousing jurisdictions.

Examples of Prohousing policies include promoting greater density by including multi-family housing such as triplexes to fourplexes, up-zoning in locations near jobs and transit in order to reduce vehicle emissions and creating more homes in places of high opportunity for low-income families. Compliance with state housing laws is a threshold requirement for achieving and maintaining a Prohousing Designation.

PDP represents a two-year long collaborative process in which HCD engaged stakeholders from across the state in program design and implementation, including a robust public input process to establish emergency regulations. Ultimately, PDP is an exciting opportunity for local jurisdictions to reap the benefits of being "Prohousing," - access to funding streams that are competitively awarded and often oversubscribed.

Apply now! HCD is accepting and reviewing applications on a rolling basis. For more information, including access to the application and emergency regulations outlining the Program, please visit: https://www.hcd.ca.gov/community-development/prohousing/index.shtml. In addition, HCD will be receiving applications, soliciting feedback, and providing ongoing technical assistance to applicants via email: ProhousingPolicies@hcd.ca.gov.

35 United States Interagency Council on Homelessness

36 United States Interagency Council on Homelessness

37 CA Comeback Homelessness Plan

38 Californians in All Parts of the State Pay More Than They Can Afford for Housing - California Budget & Policy Center (calbudgetcenter.org)

39 Homeless in California Statistics 2018. Homeless Estimation by State | US Interagency Council on Homelessness (usich.gov)

Design Standards

Design standards assure better looking projects that fit with the neighborhood. Design standards function like development standards (e.g. setbacks, maximum heights, etc.) but exist purely to regulate for aesthetic reasons. Design standards can specify a wide variety of design requirements such as roof material and pitch, façade materials, architectural projections, etc. In the past, aesthetics was commonly regulated by subjective design guidelines that had to be interpreted by a regulatory body. While design guidelines offered a high degree of flexibility, they were cumbersome to administer and often required numerous meetings and project redesigns before a final design was agreed upon by the local agency. Those factors drove up the costs of development by extension, the cost of housing.

Compact Housing: The New American Dream?

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

Design standards, in contrast, provide objective requirements and options for developers. In doing so, a developer is able to design a project that meets the communities pre-determined architectural desires and create a design compatible with the existing neighborhood. Design standards provide flexibility by providing options to the developer, who can choose which option fits best in a given situation. For example, a design may incorporate balconies in lieu of a certain ratio of windows on a given building façade. By including options by right in the development code, designs can be adjusted for the wide variety of development sites in the community.

Recent legislation requires objective design standards in some instances. To address the housing shortage, SB 35 and SB 330 require projects to be reviewed against objective design standards. All communities interested in regulating aesthetics should consider initiating a community planning process to establish objective design standards. For example, a community that takes pride its mission style architecture could require red tile roofs of a certain pitch in some areas. Existing design guidelines can often be converted into design standards relatively easily. The new design standards can carry forward important elements from the design guidelines. The adoption of design standards also presents an opportunity to exempt projects from review by a Design Review Commission – and powerful Prohousing gesture likely to inspire confidence in developers.

Planning Integration Concepts

Alignment with State Planning Priorities: Balancing Housing Growth with Climate Goals

California's Planning Priorities are outlined in government code section 65041.1 and are intended to promote equity, strengthen the economy, protect the environment and promote public health in all communities across the state. More specifically, they ensure that planning policies and programs promote infill development near jobs, transit and infrastructure, protect natural and working lands and promote compact and efficient development outside infill in order to minimize ongoing costs to taxpayers. The strategic development of housing, in alignment with State Planning Priorities will ensure for balanced growth and a climate resilient development pattern.

Aligning climate and housing objectives can be achieved by promoting compact and infill development wherever possible. The California Air Resources Board has determined that reducing vehicle miles traveled (VMT) is one of a many strategies that achieves greenhouse gas reduction targets. Doing so reduces sprawl and thus reduces greenhouse gas emissions, while protecting natural and working lands and balancing jobs and housing land uses. Compact development reduces increased costs to taxpayers by avoiding the development of costly new roads and infrastructure that need to be maintained over time. While the development/maintenance to support infill or new development is outside the realm of singular housing development, there are many innovative tools codified in state law that facilitate infrastructure finance to support housing. See chapter 3 on development agreements, and chapter 11 on tax increment finance tools for more information.

Consistency and Integration of Housing Element with Other General Plan Elements

The housing element may be the only element that has regulatory oversight by the state, but it needs to be horizontally consistent with other planning elements and vertically consistent with the general plan and with any programs, plans or overlay zones that implement the general plan. Doing so requires that each housing decision before the planning commission is in alignment with the general plan and corresponding implementation programs.

Another key point to be aware of are the statutory laws that integrate the housing element with other planning elements and regional plans. Below are a set of statutory laws to be aware of in order to understand how other planning elements or regional plans are connected to the housing element update and regional housing needs assessment and to ensure local plans are updated in compliance with state law. Some general plan elements are triggered upon the adoption of the housing element. For example, many communities must address the topic of wildfire following the next housing element update, pursuant to SB 1241 (2012). Additionally, all communities must update their safety element to address climate adaptation, resilience and evacuation routes. Because climate adaptation, resilience, wildfire and evacuation routes are closely related, jurisdictions are encouraged to holistic approach to addressing these requirements in a integrated manner.

- Effective 2014, after a housing element update, the safety element should be updated to include wildfire requirements per SB 1241.
- Effective 2017, general plans must be updated to integrate climate adaptation, depending on whether or not they have a Local Hazard Mitigation Plan, or effective 2019, must integrate climate adaptation into the general plan after a housing element update, per SB 379.
- Effective 2018, when two or more elements are updated concurrently, jurisdictions must create an environmental justice element or incorporate environmental justice principles into all other planning elements per SB 1000.
- Effective 2020, after a housing element update the safety element should be updated to incorporate at least two emergency evacuation routes per SB 99.
- Effective 2022, upon revision of a local hazard mitigation plan (LHMP) or if no LHMP, the safety element must be updated to identify evacuation routes and their capacity, safety and viability under a range of emergency scenarios.
- SB 375 mandates that the Regional Housing Needs Assessment process is aligned with the sustainable communities strategy and reduces greenhouse gas emissions by 40% by 2030 and by 80% by 2050.

Anti-Displacement

Preserving housing opportunities in areas close to transit, jobs, high-performing schools and services helps prevent displacement of existing residents and increases access to opportunity for low-income households that might not otherwise be able to afford to live in these locations. Displacement is involuntary residential migration resulting from increased rents, pressure from property owners, demolition of housing, conversion of units from rental to ownership uses or from deed-restricted to market-rate, or evictions. Displacement does not include voluntary migration to other areas and housing choices.

Transit and job-rich communities in California tend to overlap with high-cost coastal and job-dense areas, making them even

less affordable. However, when households have to move further away from job and transit rich areas to find more affordable housing options, the consequence comes in the form of higher transportation costs, long commute times, more vehicle miles traveled (VMT) leading to emitting greater greenhouse gas emissions (GHG) in the environment.

The UC Berkeley Urban Displacement Project documented that displacement "is occurring in 48 percent of Bay Area neighborhoods, divided almost evenly between low-income and moderate/high-income neighborhoods." The project's findings further noted that, "more than half of low-income households, all over the nine-county region, live in neighborhoods at risk of or already experiencing displacement and gentrification pressures." The study documents how losses of naturally occurring affordable housing units exceed the concurrent growth of low-income households between years 2000-2013. The Urban Displacement Project's work has been extended to the Los Angeles area where it is uncovering similar trends.[40]

As a further example, a recent research brief on displacement from UC Berkeley included a case study focused on a San Francisco neighborhood near Civic Center BART station and found that "both market-rate and subsidized housing development can reduce displacement pressures, but subsidized housing is twice as effective as market-rate development at the regional level."

In addition to new construction, preserving deed-restricted and naturally occurring affordable housing can support affordable housing supply goals for California as well as curb displacement pressures.

Preserving Affordable Housing

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

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

40 urban_displacement_project_-_executive_summary.pdf (urbandisplacement.org)

Housing Law Matrix

Statute	Topic	Description	Target Population (If Applicable)
GC § 65580	**Housing Element**	Local governments plan for current and future housing needs, including their share of the regional housing need, through the housing element update process. Unlike other parts of the general plan, a housing element must be revised every five to eight years.	
GC § 65584	**Regional Housing Needs Allocation**	The RHNA, established by legislation in 1980, is a process whereby HCD, in consultation with the Department of Finance, projects housing demand by income group to accommodate population growth for all regions of the state. These regions, through their Council of Governments (COG), then determine each city and county's fair share of the housing need. Each jurisdiction's updated housing element must demonstrate enough residential capacity, through adequate zoning, to accommodate this projected growth.	
GC § 56000, et seq	**The Cortese-Knox-Hertzberg Local Government Reorganization Act**	Local Agency Formation Commissions (LAFCO) approve annexation requests by local governments. Factors that the LAFCO considers in reviewing annexation proposals include, but are not limited to (Section 56841), population growth, topography, community services, conformity with state policies and priorities, agricultural preserve in open space, consistency with local plans, etc.	
Cal. Public Resource Code § 75125 GC § 65080	**Sustainable Community Strategy of SB 375**	In an effort to reduce California's carbon emissions, legislation such as SB 375 required regions to develop a sustainable community strategy plan (SCS) to integrate housing in their transportation plans in a way that encourages infill development and reduces vehicle miles travelled, achieving their greenhouse gas reduction goals. This planning is adopted at the regional level, and while many jurisdictions implement the objectives of the plan, they are not required to do so.	
GC § 51200	**Williamson Act**	Enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural, or related, open space use. In return, landowners receive property tax assessments.	

Statute	Topic	Description	Target Population (If Applicable)
Public Resources Code § 21000 et seq.; 14 CCR § 15000 et seq.	**California Environmental Quality Act (CEQA)**	Requires that decision makers consider the environmental consequences of an action before action is taken. CEQA applies to all discretionary decisions of government, including land-use approvals and public works decision. Where a federal permit is required (as for construction in a wetland or a navigable waterway), compliance with the National Environmental Policy Act (NEPA), 42 USC 4321 et seq., is also required.	
GC § 65913.1	**Least Cost Zoning**	Least Cost Zoning Law requires local governments to zone sufficient land for residential use with appropriate standards in relation to zoning for nonresidential uses, to meet the housing needs of all income groups. Appropriate standards are defined to mean densities and development standards must contribute to the economic feasibility of producing housing at the lowest possible cost.	
GC § 65589.5	**Housing Accountability Act (HAA)**	The Housing Accountability Act (HAA), establishes limitations to a local government's ability to deny, reduce the density of, or make infeasible housing development projects, emergency shelters, or farmworker housing that are consistent with objective local development standards and contribute to meeting housing need.	
Section § 8899.50, GC § 65583 (c)(10)(A))	**Affirmatively Furthering Fair Housing (AFFH)** AB 686 (2018)	• All public agencies must administer programs and activities relating to housing and community development in a manner that affirmatively furthers fair housing as a matter of state law and take no action inconsistent with this obligation. • Housing element must now include additional data, analysis, conclusions and programs on fair housing issues.	All people with a special focus on protected classes

Statute	Topic	Description	Target Population (If Applicable)
AB 1397 (2017) GC § 65583.2	**Site Identification for RHNA** AB 1397 (2017)	AB 1397 was part of the passage of the 2017 housing package and included several provisions for how jurisdictions are identifying sites for their lower-income RHNA. This includes: • Requiring a stronger and more detailed analysis when using non-vacant sites, sites smaller than ½ acre, and greater than 1- acres for LI RHNA. • Reusing sites from prior housing elements are only eligible if they meet the density appropriate for low-income households and allow for by-right development for proposals that include at least 20% of units affordable to lower-income households.	All people with a special focus on lower-income households
GC § 65913.4	**Streamlining** SB 35 (2017)	Jurisdictions who have not met their RHNA requirements are subject to providing a streamlined ministerial approval process for developments that meet certain criteria. Eligible developments must include a specified level of affordability, be on an infill site, comply with existing residential and mixed-use general plan or zoning provisions, and comply with other requirements such as locational and demolition restrictions.	All people with a special focus on lower-income households
GC § 65941.1, 6659.5(o)	**Vesting rights and development application** **SB 330 – Housing Crisis Act of 2019**	SB 330 allows a housing developer to submit a "preliminary application" to a local agency for a housing development and allows the housing developer to "freeze" the applicable fees and development standards that apply to their project while they assemble the rest of the material necessary for a full application submittal.	
AB 101 (2019) GC § 65660, 65664, 65666	**Streamlining – Low Barrier Navigation Centers** AB 101 (2019)	Low barrier navigation centers must be a use by right in areas zoned for mixed use and nonresidential zones permitting multifamily uses.	People experiencing homelessness
GC § 65583	**Streamlining – Supportive Housing** AB 2162 (2018)	Supportive housing must be a use by right in zones where multi-family and mixed uses are permitted including nonresidential zones permitting multi-family uses.	People experiencing homelessness
GC § 65583 (a)(4)(5)	**Zoning and Permitting – Emergency Shelters, Transitional and Supportive Housing** SB2 (2007)	Jurisdictions must identify zone(s) where emergency shelters are allowed by right. In addition, transitional housing and supportive housing are considered a residential use of property and subject only to those restrictions that apply to other residential dwellings of the same type in the same zone.	People experiencing homelessness

Statute	Topic	Description	Target Population (If Applicable)
Health and Safety Code § 1267.8, 1566.3, 1568.08	**Streamlining – Group Homes**	Licensed group homes and residential care facilities with six or fewer residents should be treated no differently than other by right single-family housing uses. Local agencies must allow these licensed residential care facilities in any area zoned for residential use.	People with disabilities
GC § 65852.2 (j)(1) and (a)(8)	**Streamlining - ADUs**	Accessory Dwelling Units are residential units with complete independent living facilities for one or more persons and must be approved by right. Local agencies must allow for ADUs in all zones which allow for residential uses and are consistent with existing general plan and zoning designations for the lot.	All persons with a special focus on people with disabilities, seniors, students, large families, etc.,
California Public Resources Code § 21000	**Streamlining - CEQA**	Certain types of development such as some affordable housing, infill projects, or transit-oriented development are exempt from the provisions of CEQA. Streamlining in the form of exemptions or being able to use existing environmental documentation (tiering) when evaluating a project, are available for transportation priority projects (TPPs) that are consistent with the Regional SCS.	All people with a special focus on lower-income households

GC § 65585	**Housing Element Enforcement**
	
	AB 72 (2017) AB 215 (2021)
		• Authorizes HCD to find a locality's housing element out of substantial compliance if it finds the locality has acted, or failed to act, in compliance with its housing element and HCD had previously found it in substantial compliance.
		
		• HCD can refer violations of housing element law to the state Attorney General.
		
		• HCD can refer violations of the of the following laws to the state Attorney General:
		
		  • Housing Accountability Act
		
		  • No Net Loss Law
		
		  • Density Bonus Law
		
		  • Anti-Discrimination in Land Use Law
		
		  • Portions of the Permit Streamlining Act
		
		  • Housing Crisis Act of 2019
		
		  • Affirmatively Furthering Fair Housing
		
		  • Streamlined Ministerial Approval Processes	

Statute	Topic	Description	Target Population (If Applicable)
		• By Right Supportive Housing Provisions • By Right Low Barrier Navigation Centers • Attorney General (AG) may seek certain remedies if a court finds that a local government is not substantially compliant with housing element law. Upon such a finding, the court may issue an order directing the locality to bring its housing element into compliance. If the locality fails to comply within a specified period, the court must impose fines starting at $10,000 per month, up to $600,000 per month, as specified. • An agent of the court may be appointed to bring the housing element into substantial compliance.	
GC § 65852.3	**Manufactured Housing and Mobilehomes**	Manufactured housing and mobilehomes that are on a permanent foundation must be permitted in the same manner and in the same zones as traditional stick-built structures.	
Health and Safety Code § 17021.6	**Farmworker/ Employee Housing**	Employee housing consisting of up to 36 beds or 12 units is deemed as an agricultural use and no other permits or zoning clearance is required of this use that is not required of any agricultural use in the same zone.	Farmworkers and employees
Health and Safety Code § 17021.5	**Employee Housing**	Employee housing providing accommodations for 6 or fewer employees shall be deemed as a single-family structure and considered a residential use. No additional zoning clearance should be required of employee housing that is not required of single-family use of the same type in the same zone.	Farmworkers and employees
GC § 66300	**Housing Crisis Act of 2019**	Limits the ability of local governments to, among other things: change the general plan land use designation, specific plan land use designation, or zoning to a less intensive use or reduce the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below that was in effect on January 1, 2018; impose a moratorium or similar restriction or limitation on housing development; or cap the number of housing units that can be approved or constructed.	

Statute	Topic	Description	Target Population (If Applicable)
		The HCA also imposes requirements on housing developments that require demolition of housing units, including: replacing protected units, including at least as many units as the greatest number of units that existed on the site within the last five years, and providing relocation benefits and right of first refusal to occupants of protected units that are lower income households.	
GC §§ 65852.21; 66411.7; 66452.6	**SB 9 (2021)**	Requires ministerial approval of two primary units on a lot in a single-family zone (i.e. a duplex), a lot split or both. It also extends the life of an approved tentative map up to 24 months or 48 months if certain conditions are met.	
GC § 65915-65918	**Density Bonus Law**	Local jurisdictions must provide density bonuses and development incentives to developers who propose to construct affordable housing on a sliding scale, where the amount of density bonus and number of incentives vary according to the percentage of units that are affordable to lower- and moderate-income households. If certain conditions are met, incentives, concessions and waivers must be granted to provide relief from development standards (e.g., height, parking requirements, etc.) that might otherwise make the development infeasible.	Lower income households
GC § 65850 et seq.	**Inclusionary Housing Ordinance** AB 1505 (2017)	• Local governments may adopt ordinances that require a certain percentage of rental units affordable to lower or moderate-income households • Inclusionary ordinances must provide alternative means of compliance such as, but not limited to, in-lieu fees, land dedication, off-site construction or acquisition and rehabilitation of existing units. • HCD can review economic feasibility studies related to rental housing ordinances.	
GC § Section 7060	**Building – Ellis Act**	The “Ellis Act” is a state law which says that landlords have the unconditional right to evict tenants if the landlord removes all of the units in the building from the rental market. The evicted tenants have certain rights including first right of return for a period of 10 years, re-rental must the same as previous rents for 5-years, and relocation payments must be provided to the tenant.	Renters

Statute	Topic	Description	Target Population (If Applicable)
GC § 65863.10-65863.13	**Preservation Noticing Law**	Owners of government-assisted projects must provide tenants, local public agencies and community partners interested in these properties notice when subsidies or rental restrictions expire or are terminated, or when owners opt out, unless specifically exempted. Additionally, owners must send a Notice of Opportunity to Submit an Offer to Purchase to all regionally-interested qualified entities at least 12 months prior to expiration, unless an exemption applies. The owner has an obligation to entertain such offers.	
GC § Section 54220-54234	**Surplus Lands Act**	Local agencies must send notices about available, surplus local public land to HCD, any local public entity within the jurisdiction where the surplus local land is located, and developers who have notified HCD of their interest in developing affordable housing on surplus local public land. Prior to agreeing to terms to dispose of surplus property, local agencies must send a description of notices of availability sent and negotiations conducted, in addition to a copy of any restrictions to be recorded against the property, to HCD for review.	
GC § Section 65913.11	**Limitations on Development Standards** **SB 478 (2021)**	Sets limitations on floor area ratio (FAR) and lot coverage standards that can be imposed on housing projects of 3-10 units within multifamily or mixed-use zones in jurisdictions within an urbanized area or cluster.	





The Planning Commissioner Handbook

Chapter 6

Community Design

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Basic Principles of Community Design

Maintaining and enhancing design quality of your community is one of your chief duties as a planning commissioner. You will be thinking about community design in almost all the work you do, whether it's reviewing a new plan or zoning regulation, or considering a specific project for approval.

Discussions about "good" design often invoke intangible phrases like "sense of place" or "quality of life." These things are difficult to define and can therefore be problematic when planning commissioners review plans and projects. Yet there exists a set of basic principles of community design that should inform all plan creation and project review, and that can be clearly articulated as the basis for community planning.

Planning for sustainability requires a comprehensive approach to all elements, which allows for the realization of synergies and a harmonious interaction of essential elements. The way people move around, the infrastructure and the process by which all these things are developed and come together are crucial elements which must be taken into consideration. Sustainable community design is a way of planning, building and creating places for living and working that allows the community to contribute to the on-going long-term health of the jurisdiction and the natural environment.

The following list of eleven principles[1] is by no means exhaustive, but it is meant to provide you with a starting point to begin the discussion of what constitutes "good" design in your community.

It is important to note that these principles do NOT qualify as "objective design standards," nor even as "design guidelines," both of which are described in detail in the Application Review section. Thus, these principles cannot be used by themselves as a basis for application review, nor should they be incorporated by themselves as design guidance in a jurisdiction's regulatory documents. Design standards and guidelines need to be much more specific than the principles shown here. That said, the principles listed here can provide an important foundation for you as a planning commissioner to use in reviewing both proposed regulatory and planning documents as well as proposed projects.

- **Build to Human Scale.** Good urban design is people-oriented. This concept is often expressed as "pedestrian friendly" and "built to human scale." Buildings, streets and open spaces should add to the experience of the individual. People like places where they can walk comfortably, admire a view, get a cup of coffee, see interesting buildings, meet a friend or just people-watch. Large buildings with long, unbroken walls create dead spaces that people tend to avoid. Architectural features—like windows, doorways, balconies and cornices—assure that buildings relate to the pedestrian. A traditional retail block, for example, may have four or five stores at a scale that is inviting to shoppers and passers-by. New development can create additional spaces—like small plazas or landscaped walkways—between buildings and wider sidewalks to accommodate outdoor cafes and other seasonal uses.

- **Design for Comfort and Safety.** To enjoy a space, people need to feel comfortable and secure. Architecture that isolates people—long, narrow passageways, for example—creates a feeling of insecurity. Amenities like good walking surfaces, shelter, shade and interesting things to look at add to comfort. People feel more secure when they can see—and be seen by—other pedestrians. This is sometimes referred to as "eyes on the street" design. A good way to test whether a place will be physically comfortable is to ask yourself whether you would enjoy being there.

- **Create Places to Congregate.** Places where people congregate should offer a variety of activities. Choice makes a place more interesting. For example, shopping areas are a natural collection point. People will enjoy the space more if they can also sit outside, walk, meet a friend or order a meal in the same area. Good design provides such choices in order to create and encourage neighborhood energy and vitality.

1 Many of these principles were distilled from the Planning Commissioners Journal, available at www.plannersweb.com, and from the Smart Growth Network's 10 Principles of Smart Growth, available at https://smartgrowthamerica.org/our-vision/what-is-smart-growth/.

- **Provide Connections.** Ensuring circulation and accessibility involves creating safe, efficient passageways for cars, pedestrians, bikes and other transportation options. Excessively wide streets, intermittent sidewalks and poor circulation plans can create confusion for pedestrians and increase the chance of accidents. Creating separate paths for different uses can increase safety and make our communities walkable and bicycle friendly. In many cases, simple devices—like curbs and landscaping—can provide the needed separation.

- **Connect Buildings to Streets and Sidewalks.** Buildings should be oriented to the outside, so they serve not only their users but also their communities. Small setbacks, interesting doorways and porches and large windows can help create vital neighborhoods with lots of eyes on the street, thereby promoting both safety and vitality. Large display windows, detailed architectural designs, and parking lots placed behind buildings allow commercial activities to "spill" out onto the sidewalk. An active interface between building and street creates vibrant areas that people want to visit.

- **Mark Transitions and Boundaries.** Most people like to know where one neighborhood ends and another begins. A logical world with good spatial definition orients people. Transitions can tell people when they leave and enter town, what is public and private, where to sit and meet, where to stroll and where to drive. Many towns are already informally divided into districts or neighborhoods based on existing landmarks. Reinforcing these boundaries—or creating new ones—provides a sense of order. The design of a neighborhood suggests what types of activities will take place there. Variations in building shape, doorway design, paving materials, curbs, landscaping, street furniture, elevation and signage let people know where one area or neighborhood gives way to another.

- **Include Detail and Variety.** Most people prefer a degree of aesthetic complexity and variety. Murals, attractive sidewalk designs and the occasional fountain make public spaces more interesting. Architectural differentiations in materials, textures, roof shape, trim and size also create variety. Monotonous facades symbolize institutionalism. To avoid this perception, make sure facades are broken into smaller units with varying shapes, sizes, windows, textures, colors and perhaps even balconies.

- **Build on Existing Precedents.** New development should reflect, but not exactly replicate, the design and scale of existing buildings. Building height, size, roof shape, doorways and materials are all design elements that can be made compatible with existing nearby precedents, but without stamping out originality. Repeating small but obvious elements—like signage, lampposts and curbs—on a neighborhood or district level also creates cohesion. Context is important – in places undergoing major change or, those that do not have a lot of existing development, it may be more important to rely on the vision for the area as opposed to existing building stock.

- **Stay True to Function.** Great design will not make up for poor function. Buildings and design must serve their purpose. People must be able to work, shop and move efficiently through buildings and surrounding areas. For example, a project that relies on heavy pedestrian traffic should have wide sidewalks and places for people to rest. Overlooking these features may endanger the underlying economic purposes of the project. Urban design involves incorporating the functional needs of the project and society into the physical appearance of the urban environment.

- **Mix it Up.** Mixed-use projects provide a combination of a variety of uses in a single development (vertically or horizontally), and may include housing, office, retail and open space. This development pattern ensures that there is activity around the property 24 hours per day. At the same time, the proximity of people to multiple uses decreases dependence on cars. Consider the ideas of a "fifteen minute neighborhood" where most daily functions — living, working, eating, entertainment, recreation — are available within a fifteen minute walk.

- **Emphasize Compact Development.** Compact design means placing uses in close proximity to each other, and at relatively high densities, so as to make efficient use of land and allow people to easily move from one use to another. Encouraging development to grow up, rather than out, is one way to do this. Infill development—building on empty or underutilized lots—is another. Building within an existing neighborhood can attract more people to the jobs, homes and businesses already there, while also making the most of public investments in things like water and sewer lines, roads and emergency services.

These principles provide only a starting point and are drawn from a several formal declarations adopted by various organizations that advocate for good urban design. These include the Ahwahnee Principles (by the Local Government

Commission, 1991), the Charter for or from the New Urbanism and the Canons for Sustainable Architecture and Urbanism (by the Congress for New Urbanism, 1996 and 2009 respectively). The field of urban planning and design is broad, and many other groups have issued statements of urban design principles. You will likely learn more about good design as your term on the commission continues. However, the most direct way to gain more insight is to visit and think about the places you like to go and note what makes them work.



Crime Prevention through Environmental Design[2]

Crime Prevention through Environmental Design (CPTED – generally pronounced "sep-ted") is a design philosophy based on the theory that the proper design and effective use of the built environment can lead to a reduction in the fear and incidence of misuse, as well as an improvement in the quality of life.

CPTED is a process and a way of thinking about design. It is not a program or system of ready–made solutions. CPTED emphasizes understanding and changing the physical environment in an effort to reduce improper activity at particular locations.

CPTED is effective because of the concept of "defensible space." This concept suggests that all space in the human environment is defendable; a guardian can take responsibility for a given space and take action to defend it from non-legitimate, criminal or unintended use. Alternately, space can be undefended: when there is no one who takes responsibility for the space, it is left exposed to unintended uses.

To help defend a location, there are four overlapping CPTED strategies that need to be employed: 1) Natural Surveillance, 2) Territorial Reinforcement, 3) Access Control and 4) Maintenance. Each strategy employs a slightly different method of sending a clear message that a responsible person is nearby and inappropriate activity is not welcome. These strategies are not exclusive. They may be applied concurrently and will provide greater benefits as a result.

- **Natural Surveillance.** Natural surveillance is the design of an area that places physical features, activities and people in locations that maximize the ability to see what is occurring in a given space. An example of natural surveillance is a parking garage built with large openings facing a major street. Windows allow pedestrians and motorists passing by to see into the parking area and detect unwanted activity. In the event that misuse does occur, there is a greater chance that it will be seen and reported to police. Other examples include properly trimmed and maintained landscaping, which allows visibility, and appropriately scaled lighting, which highlights the pedestrian environment.

- **Territorial Reinforcement.** Territorial reinforcement is the design of an area that clearly defines its boundaries and ownership. All space can be defined as public, private or semi-public/semi-private. The underlying principle of territorial reinforcement is that the transition between spaces should be clearly identifiable for both the user and others in the area. Territorial reinforcement allows legitimate users to develop a sense of ownership over a space and act as guardians against unwanted acts. Examples of territorial reinforcement are small decorative fencing placed around the semi-private outdoor patio of a business and proper signage that communicates the ownership of a space and the rules of its use.

- **Access Control.** Access control is the physical guidance of movement to and from a space by the placement of entrances, exits, fencing, landscaping, locks and other barriers. This CPTED strategy works because it not only limits and guides movement, but it also causes improper access to be noticed more readily. Some examples of access control are well-marked pedestrian pathways through parking lots, which give direction to users and alert drivers to the concentrated presence of pedestrians, and bollards placed near the entrance of a park to prevent vehicle entry while allowing pedestrian passage.

- **Maintenance.** Up-to-date maintenance demonstrates that someone cares about a space, is watching and will defend

2 This section is adapted from the CPTED discussion in the Bay Fair BART Station Area Improvement Plan prepared by Mike Wells of Justice and Security Strategies as a subconsultant to Design, Community & Environment and published by the Bay Area Rapid Transit District, 2009.

the property against misuse. A property that is run-down or in disrepair is likely to attract non-legitimate activities. Routine maintenance or clean-up can have a great deal of impact in making an area unattractive to offenders. This strategy works because it is based on what is known as the “Broken Windows Theory.” The theory suggests that a neglected space will elicit mistreatment, while a maintained space will bring proper treatment creating naturally safe space that requires less need for law enforcement. This strategy lessens fear in a community by creating perceptions of responsibility and caring.

Green Building

The State of California and local communities are increasingly asking that public and private buildings be constructed using "green" building techniques and energy conserving technologies. Green building involves using energy, water, building materials and land more efficiently than was often the case in the 20th Century. It also results in healthier indoor environments with cleaner air, fewer toxins and more natural light. Green building reduces the overall impact of a development project on the environment and can also reduce long-term costs for building owners and for taxpayers. Some techniques involved in green building include:

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

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

Both the State of California and in addition a number of communities in California and across the country have developed programs to encourage green building in private development projects. Recent updates to the California Building Code include many green building features. Some communities offer technical assistance, grants, streamlined permitting and other incentives. In a few cases, communities are requiring private developers to meet green building standards that exceed those found in the Building Code. Many local agencies have also committed to using green building techniques in new public buildings.

Design for Historic Preservation

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

- Authorizing a survey of historic resources.
- Incorporating a historic preservation element as part of the general plan.
- Adopting a historic preservation ordinance that provides guidelines, standards, incentives and regulations to protect important resources.
- Designating certain properties as local historic resources, often in tandem with a “Mills Act” program to provide property tax relief to owners of local historic resources.
- Designating certain areas as historic districts.
- Including historic preservation as a priority in development plans.
- Setting up a revolving loan fund to provide homeowners and businesses with money to rehabilitate historic buildings.
- Adopting an adaptive re-use ordinance to encourage the sensitive rehabilitation of older buildings, by offering relief from selected code standards such as parking or setbacks.
- Developing an awards program to recognize property owners for outstanding work in preserving or rehabilitating historic resources.
- Creating a Historic Preservation Commission charged with overseeing the programs and initiatives identified above.

Successful programs will also find ways to engage the community to support historic preservation. Many communities have a local historical or preservation society that will be an immediate constituency and advocacy group for historic preservation issues.

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

In addition, several state laws support local preservation efforts. For example, the State Historical Building Code provides an alternative set of building regulations that allows greater flexibility in the restoration, preservation and relocation of historic buildings. Local agencies may also issue bonds for the rehabilitation of historic commercial and residential rental properties. State law permits historic properties to be assessed at present value rather than at “highest and best use” value when uses of the property are restricted by an enforceable contract. It is important to note that what is considered “historic” will shift over time. Buildings that are not currently considered historic may receive that designation in the future.

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





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Chapter 7

CEQA and Environmental Issues

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Introduction

Environmental issues in planning can be addressed during the formation and implementation of long-range plans (e.g., general plans, community plans, specific plans, or other specific forms of environmental planning such as open space or conservation planning), the design of specific projects, and during the environmental review process for proposed plans or projects as governed by the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). This section of this Handbook focuses primarily on CEQA, however as noted in other sections of the Handbook, long-range plans and how projects are designed also play important roles in addressing environmental issues and the long-term health and sustainability of a community.

The California Environmental Quality Act (CEQA) is a formal process to publicly report on the possible environmental impacts of a proposed agency decision. While the results of technical studies used for CEQA compliance can be used to inform land planning, CEQA compliance is limited in its usefulness as a planning tool. The following addresses key CEQA terms, procedures and topics, but is far from a comprehensive study of the CEQA process. Instead, the following is provided from a commissioner's perspective of the information needed to understand the often-lengthy CEQA document that accompanies a development request on the agenda.

Background

CEQA was signed by Governor Ronald Regan in 1970 and is based on the National Environmental Policy Act (NEPA). While there are similarities between the two, CEQA is typically more comprehensive in scope. While the CEQA guidelines are the most often used procedures for environmental compliance, the guidelines recommend that each agency adopt their own procedures and many agencies have done so. Your agency may have adopted their own guidelines and may have the same topics, different topics or fewer topics. Be sure to check with your agency to understand which CEQA guidelines apply.



Environmental Issues in Long-Range Planning

All land planning has an environmental component. It is impractical to separate physical impacts on the environment from the land planning process. To be effective, land plans are intended to change circumstances, and CEQA is specifically intended to evaluate the potential impacts of that change. There are several emerging planning issues that are not part of the CEQA guidelines or supporting laws but nevertheless are part of the broader planning discussion and warrant mentioning here.

- **Growth Guidance.** Knowledge of the potential environmental impacts can affect the conversation about the direction, intensity and timing of future growth. The environmental aspect can include historic buildings and cultural resources, services and utilities, equity and environmental justice. These are issues that each community will address and may have policies in their general plan or other guidance documents that would affect the environmental analysis.

- **Environmental Justice and Equity.** California Government Code Section 65040.12(e)(1) defines environmental justice as "the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice includes, but is not limited to, all of the following:

  - The availability of a healthy environment for all people.

  - The deterrence, reduction and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.

  - Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision-making process.

  - At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions."[1]

  The federal Environmental Protection Agency (EPA) defines environmental justice as "…the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. This goal will be achieved when everyone enjoys:

  - The same degree of protection from environmental and health hazards, and

  - Equal access to the decision-making process to have a healthy environment in which to live, learn and work."[2]

The first bullet speaks to the unequal impact from industrial, and transportation hazards that affect lower income and disadvantaged communities. The second is addressed in the public participation section of the handbook. While NEPA has always included a requirement to consider environmental justice, CEQA currently does not. However, as the general plan is now required to consider environmental justice lead agencies may address environmental justice concerns in CEQA, although it is not explicitly required by law. The impacts of projects are quantified in the environmental analysis but there is often cursory analysis of indirect impacts that occur to communities along transportation routes, for example. Many communities are using the development agreement process to establish community benefit programs intended to offset direct and indirect

1 Government Code 65040.12

2 https://www.epa.gov/environmentaljustice

impacts associated with industrial or other large-scale projects.

- **Green Building, LEED, etc.,** Green buildings focus on the sustainability of the materials, use of the land and consumption of energy and water through all phases of a project. While "green building" is often a generic term for this type of building, and some green building projects are certified through a voluntary green building rating system known as the Leadership in Energy and Environmental Design (LEED), there are several methods of improving the sustainability of a project. The California Building Code (CBC) regulates all building in California and is adopted by each agency. It is the CBC that requires solar panels and other energy saving features of new construction. The CBC also includes the California Green Building Standards Code (CALGreen), which includes both mandatory and voluntary measures related to water efficiency, waste reduction, low-VOC materials, EV charging and other measures. CALGreen is similar to but not equivalent to LEED. LEED certifications are often only possible after completion of a project and the certifications are not made by the agency; however, compliance with CALGreen is enforced by the permitting agency. As such, it may be difficult to require a LEED certification and follow through with the requirement. In these instances, it is common to see "…or equivalent" used as part of the condition. Compliance with the CBC and CALGreen is required and can be determined by the agency.

- **Community Benefit Plans.** A community benefit plan (also sometimes referred to as a community benefits agreement) or similar program is often part of a development agreement or condition of approval for a large project that will have direct or indirect impacts to the community, and in particular disadvantaged communities. The plans can require on or off-site improvements such as noise walls, air filtration, tree planting, trails, sidewalks, or other physical improvements intended to offset the impact(s) of the project. Until recently, development was considered its own reward, however some communities experience more impact from some types of development than others. A community benefit plan is one way an agency can help offset those impacts. If the community benefit plan will result in physical impacts those impacts must be part of the environmental analysis.

- **Wildfire/Evacuations/Rebuilding California.** The California weather pattern can deliver drought, high winds and wildfire danger. Over the past decade, the wildfire season has largely become a year-round concern. As a commissioner it can be difficult to address wildfire and safety issues with communities as part of the environmental process. There are often no easy answers. Fuel management can only do so much to reduce risk in areas where wildfires are prevalent because steep terrain, limited access and topography all factor into the ability to fight wildfire. It is also important to note that fuel modification must be repeated as underbrush and trees grow back. Wildfire has always been a CEQA topic, and fire safe plans and more collaborative approaches with fire planning through state and federal agencies will provide more tools for communities to use in addressing this issue.

How an Environmental Analysis is Conducted

It often takes a year or more to complete an environmental analysis and many project features are evaluated in the process. The reason it takes this long is that many studies can only be conducted at certain times, such as when school is session, or during the growing season for biological resources.

Determining the Required Level of Review

The CEQA process involves four possible levels of environmental review: an exemption, a "negative declaration," a "mitigated negative declaration" and an "environmental impact report" (EIR). The following is a summary of the main steps in determining the required level of inquiry:

- **Is the Action a "Project?"** Only "projects" are subject to environmental review. A project is any discretionary governmental action that could directly or indirectly result in a physical change in the environment. Examples include the adoption and amendment of general plans, specific plans, zoning ordinances and development agreements; public works projects; building improvements; and many permits for development.
- **Does an Exemption Apply?** A project may be exempt from CEQA under state law or regulations for policy reasons. For example, infill housing projects meeting certain conditions do not require environmental review. Usually, staff will determine whether an exemption applies.
- **Initial Review.** For projects that are not exempt, an initial study is prepared to determine whether the project may have a significant effect on the environment.
- **Negative Declaration.** If the initial study shows that the project will not have a significant effect on the environment, a negative declaration is prepared. A negative declaration briefly describes why a project will not have a significant impact.
- **Mitigated Negative Declaration.** If the initial study shows an environmental effect, a mitigated negative declaration may be prepared if revisions in project plans made or agreed to by the applicant before the proposed mitigated negative declaration is released for public review would clearly avoid or mitigate the effects.
- **Environmental Impact Report.** If the initial study identifies potential significant environmental effects that cannot be eliminated through redesign, then the lead agency (the agency that has ultimate approval over the project) must prepare an environmental impact report.

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

The Environmental Impact Report

After deciding to do an EIR, the lead agency must solicit the views of responsible agencies (other agencies with some level of authority over the project) regarding the scope of the environmental analysis.[3] The lead agency should also consult with

3 14 Cal. Code Regs. §§ 15082, 15083.

individuals and organizations that have an interest in the project. This early consultation is called scoping.

The lead agency then drafts an EIR based on this information and other data it has collected in connection with the report. When the draft EIR is completed, the lead agency files a notice of completion with the State Clearinghouse at the Office of Planning and Research. The draft EIR is then noticed for a 30- to 45-day public review and comment period.[4] The lead agency must evaluate and respond in writing to all comments it receives during this time. If the lead agency adds significant new information to the draft EIR after it has been released for public review, the draft EIR must be re-noticed and circulated again for public review.

Public hearings on a draft EIR are not required. If the lead agency chooses to hold hearings, they can either be conducted in conjunction with other proceedings or in a separate proceeding. Once the public review period ends, the lead agency prepares a final EIR, usually consisting of the draft EIR together with responses to public comments received during the review period. The lead agency then reviews the project in light of the EIR and other applicable standards.[5]

There are several basic elements to the environmental impact report:[6]

- **Table of Contents & Summary.** Required elements that assist in making EIRs—which are sometimes hundreds of pages long—more accessible to the public.
- **Project Description.** An accurate description of the project, including any reasonably foreseeable future phases of the project.[7]
- **Environmental Setting.** A description of the environment on the project site and in the vicinity of the project.
- **Evaluation of Impacts.** An identification and analysis of each significant impact expected to result from the project. Any potential significant effect—such as incompatible land uses, air pollution, water quality, traffic congestion, etc.—will have its own discussion.
- **Mitigation Measures.** A detailed description of all feasible measures that could minimize significant adverse impacts. Any potential environmental consequences of the mitigation measures must also be addressed.
- **Cumulative Impacts.** An evaluation of the incremental effects of the proposed project in connection with other past, current and probable future projects.
- **Alternatives.** A proposed range of reasonable project alternatives that could reduce or avoid significant impacts, including a "no project" alternative. This often involves reviewing the location or the intensity of the development, or both. The alternatives need not be exhaustive and should not be speculative.
- **Growth-Inducing Impacts.** A description of the relationship of the project to the region's growth and whether the project removes obstacles to growth.
- **Organizations and Persons Consulted.** A list of groups and individuals contacted during the process, including during the scoping and public hearing phases.
- **Inconsistencies.** A discussion of any inconsistencies between the proposed project and applicable general plans and regional plans.

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

4 Cal. Pub. Res. Code § 21091.

5 14 Cal. Code Regs. § 15132; Cal. Pub. Res. Code § 21092.5.

6 See 14 Cal. Code Regs. §§ 15022-15029.

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

allow decision-makers to analyze the environmental consequences of a project.

While timing of the technical analysis may differ, every environmental analysis follows a similar process. First the entirety of the project is explained, then the conditions as they exist at the time the analysis is started. Anticipated project impacts are compared against existing conditions to determine if the result exceeds the adopted threshold of significance. The reports and analysis are used to form the substantial evidence that is the foundation of the environmental document. Key sections or terms in the impact discussion are project specific, and most follow a similar pattern:

- **Existing Condition or Baseline.** At the basic level the existing condition is the baseline against which the proposed project is evaluated. Most of the time this existing condition is what exists on the ground at the project site such as building(s), or natural features like wetlands and trees. A baseline can also be historic such as a previously active use, or future such as in after a project or improvement is completed. Note that the use of a baseline other than current conditions is rare and while allowed by the CEQA Guidelines, the lead agency must support the use of alternative baselines with substantial evidence in the record. The important part of the baseline is that it sets one edge of the measurement against which the impacts are evaluated. The other edge is set by the adopted threshold of significance adopted by the agency. Generally, an impact that is greater than the baseline but below the threshold of significance is considered less than significant and not subject to mitigation. Baselines and thresholds are agency-dependent and apply to all projects considered by the agency, while environmental impacts are unique to each project.

- **Project Description.** This is the whole of the action that is requested by the agency, regardless of whether it is a staff, commission or council level of approval. The project often extends beyond the property line of the application and includes any work that is essential to support of the project. This might include water or sewer line extensions, storm drainage improvements, widened roadways or intersections and even new buildings, such as a school or fire station.

- **Thresholds of Significance.** CEQA recommends that each agency adopt their own threshold of significance or identify the threshold as part of the environmental analysis. The threshold of significance is the point at which the agency considers a project impact significant enough to warrant mitigation to change the project and reduce the impact or make special findings if the decision is to proceed even if the impacts cannot be reduced below the threshold. Even though the CEQA Guidelines specifically state that the Appendix G checklist questions should not be considered thresholds, many agencies default to the questions in the checklist. Be sure to check to see if your agency has adopted thresholds of significance.

- **Impact Discussion.** This is where the document shows the work of comparing the results of any technical studies and overall analysis and discussion of the impacts in relationship to the adopted threshold. Ideally the impact discussion is clear and focused on addressing any impact that exceeds the threshold of significance. If an impact does not exceed the threshold, there is no authority to require mitigation to change the project. The impact discussion can have one of the following outcomes: No Impact, Less than Significant Impact, Less than Significant Impact with Mitigation Measures Incorporated, Significant and Unavoidable Impact. Only Significant Impact with Mitigation Measures Incorporated and Significant and Unavoidable Impact provide the agency with the authority to mitigate under CEQA.

- **Mitigation Measures.** Mitigation measures are agency-required changes to the project that are in direct relation to the impact discussion finding that some portion of the project will exceed the threshold of significance. While the mitigation measure is a condition of approval, it can only be applied to a project in response to a finding of significance. It is important to note that mitigation measures must be specific to the impact, implementable by the applicant or the agency, and objectively measurable to be effective. The impact analysis may also indicate a timing for when the measure must be complete. Usually, timing falls into one of the following periods: prior to ground disturbance, during construction and during operation. In rare circumstances a mitigation measure may extend past completion of the project, but these are difficult to enforce and should be accompanied by methods of ensuring compliance.

  While others may assist with the mitigation, ultimately the lead agency is responsible for ensuring the mitigation is completed and must prepare a mitigation monitoring report, which is part of the record and available to the public. Ensure that the measure(s) adopted for the project are within the authority of your agency to implement. Measures that require improvements outside your jurisdiction (i.e. Caltrans, adjacent agency) that cannot be guaranteed should

be reviewed carefully as many consider these measures infeasible. There may be regional measures that ensure the improvement will be completed, but without assurances the mitigation may not be adequate.

Finally, CEQA does not give the lead agency any powers that they do not already possess. This means that the ability to mitigate can be limited.

- **Conclusion.** This section closes the impact discussion by explaining the level of significance after application of the mitigation measures. The conclusion is either less than significant with application of mitigation measure(s) or significant and unavoidable.

Impacts to services are not generally a CEQA issue even though this may be a planning concern. For example, the number of police officers needed to serve a project is not a CEQA issue, however if a new police station is needed for additional officers, the physical impacts of the new station would need to be evaluated in the CEQA document.

Certifying the CEQA Document

The first step in approving a project that has undergone environmental review is to certify the negative declaration or the EIR. The project may then be approved in a manner that acknowledges any environmental consequences. The local agency can also change the project, select an alternative project, impose conditions or take other actions (often called "mitigation measures") to avoid or minimize the environmental impacts of the project. When mitigation measures are adopted, the agency must also adopt a program to monitor the implementation of those measures.[8]

In many cases, the environmental impacts of a project cannot be avoided. For example, a community that is surrounded by prime farmland will probably need to use some of that land for housing at some point. In these cases, the agency can make a finding that explains why changes to the project are not feasible or why social or economic considerations override environmental concerns.[9] While these findings may seem contrary to environmental protection, they are consistent with CEQA's fundamental purpose of publicly acknowledging and considering possible environmental effects.

Tiering, Master EIRs and Program EIRs

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

8 Cal. Pub. Res. Code § 21081.6.

9 Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15093.

Types of Environmental Compliance

The CEQA guidelines contain may different methods of compliance ranging from an exemption to an EIR. The process is different for each, however, all compliance methods have the same fundamental requirements:

1. All conclusions are based on fact, which constitutes “substantial evidence.”
2. The information used to consider a project such as the technical studies, staff report, model runs, etc., are part of the record, and must be available to the public for review. CEQA does not require a public hearing in most cases, however if a hearing is required for the project, the environmental determination must be presented.
3. The environmental determination must be made before action can be taken to approve a project. (No environmental compliance is necessary for denial.)

The timelines and level of analysis vary by project, agency and topic, however for all discretionary projects brought before the commission there should be an environmental determination.



CEQA Environmental Topics

This section includes general information about specific environmental issues or topics that must be covered in environmental documents. They are organized alphabetically here, similar to the Appendix G Initial Study Checklist in the CEQA Guidelines. This is not a discussion of how to complete an environmental analysis in CEQA, or when something may be considered significant, but rather a quick reference guide to the topic matter and when possible, a link to where more information can be found.

1. Aesthetics

The appearance of a development is an important consideration in the planning process. Aesthetics are essential to a neighborhood and helps to define communities. From an environmental perspective, whether a building is attractive usually fails to be a significant impact. Whether the building or development would degrade the surrounding community can be an environmental impact, however the basis for this would need to be set in the general plan or other documents that provide a means of comparing the existing characteristics to those of the proposed project. Usually, this portion of the environmental analysis focuses on blocking view of some sort (mountains, canyons, ocean, lake, etc.) or removal of a significant geological (hill, rock) or biological (lake, tree) feature.

2. Agriculture and Forestry Resources

CEQA requires that a commission consider the conversion of agricultural land to non-agricultural uses. Conservation of farmland is a policy of the state. There are several methods used to consider conservation including:

- **Agricultural Element in the General Plan.** Some communities have adopted an agricultural element in their general plan to provide support for local agriculture. By doing so they require the other elements of the plan to be consistent with local agricultural policies. The agricultural element may also establish a threshold of significance or perhaps place a cap on the conversion of agricultural land.

- **Agricultural Zoning.** Some communities use large-lot zoning to protect agriculture. When using this strategy, it is important to assure that the minimum lot size is sufficient to sustain a viable agricultural operation. The ideal lot size will vary depending on soil type, climate and farming practice. In many areas of the state, minimum parcel size may need to be 50 to 80 acres. In ranching communities, the required acreage might be much higher. If the minimum lot size is set too low, commercial agriculture may become infeasible leading to requests for urban development.

- **Buffers & Right-to-Farm Ordinances.** Residential and agricultural uses of property are often incompatible. Agriculture is noisy and smelly and more akin to industrial uses than residential or park land uses. In addition, farms near urban areas suffer increased trespassing, theft and vandalism. Keeping large buffers—sometimes 1,000 to 2,000 feet—between farms and residential areas can limit conflicts but may also lead to other issues such as maintenance costs. Many counties and several cities have adopted “right-to-farm” ordinances that either attempt to limit the extent that residents can seek to stop typical farm activities that they might perceive as nuisances or provide notice and complaint procedures when such activities occur.

- **Conservation Easements.** In a conservation easement, a farmer sells the right to develop the land to a conservation group, or other entity that guarantees that the land will not be developed (and presumably will stay in agriculture). While a conservation easement is a form of mitigation, it may not mitigate to less than significant because existing farmland is still being taken out of production.

- **Williamson Act and Farm Security Zones.** The state's Williamson Act and Farm Security Zone programs provide farmers tax breaks for keeping their land in productive agriculture for periods of 10 and 20 years. In return, the land is valued for tax purposes at its agricultural value instead of its market value. An active Williamson Act contract prevents most types of development for a period of ten years, with a contract that renews annually. The Act establishes a payment plan to allow a property to exit the act early, otherwise it is ten years from the point of notice of non-renewal until development can occur. Most, but not all, Williamson Act lands are in unincorporated areas of the state.

- **Timberland Production Zones (TPZ).** Similar to the Williamson Act, a county board of supervisors may designate areas of timberland as timberland preserves. The zoning designation is known as a Timberland Production Zone (TPZ). Land in a TPZ is restricted in use to the production of timber for an initial 10-year term and is considered "enforceably restricted," which can lower land value and consequently property taxes.

3. Air Quality

Although vehicles run much more cleanly today than they did in the past, their sheer number, coupled with increases in miles driven, make cleaning the air a difficult challenge. Air quality is regulated through a complex system of federal, state and local laws. The federal Clean Air Act requires the U.S. Environmental Protection Agency to set minimum air quality standards that all state and local programs must meet (called National Ambient Air Quality Standards or "NAAQS") for carbon monoxide, ozone, fine particulate matter (PM10), nitrogen dioxide, sulfur dioxide and lead, among others.[10]

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

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

Local air districts also implement plans to reduce emissions from a variety of mobile, stationary and area-wide sources in a region. For mobile sources, this may include the number of vehicle trips and vehicle miles traveled (VMT). Examples of programs or mitigation measures can include ridesharing and parking buy-back programs. Attainment plans for areas designated as moderate, serious, severe or extreme non-attainment areas must make provisions for the regulation of emissions from "indirect sources."[11] These include any facility or road that attracts or may attract vehicles.[12] Each district's attainment plan, once adopted by the governing board, is transmitted to the Air Resources Board for approval and then included in the State Implementation Plan.

The air quality analysis will likely be based on outputs from the California Emissions Estimator Model (CALEEMOD). The model quantifies direct emissions from construction and operation activities (including vehicle use), as well as indirect emissions, such as GHG emissions from energy use, solid waste disposal, vegetation planting and/or removal and water use. Further, the model identifies mitigation measures to reduce criteria pollutant and GHG emissions along with calculating the benefits achieved from measures chosen by the agency.

10 See 42 U.S.C. §§ 7401 and following.

11 Cal. Health & Safety Code §§ 40716(a), 40918-40920.5.

12 42 U.S.C. § 7410(a)(5)(c).

Both federal government (National Ambient Air Quality Standards[13]) and California (California Ambient Air Quality Standards)[14] have established health-based AAQS for seven air pollutants. These pollutants are ozone (O3), nitrogen dioxide (NO2), carbon monoxide (CO), sulfur dioxide (SO2), coarse inhalable particulate matter (PM10), fine inhalable particulate matter (PM2.5) and lead (Pb). In addition, the state has set standards for sulfates, hydrogen sulfide, vinyl chloride and visibility-reducing particles.

Criteria Air Pollutants

The pollutants emitted into the ambient air by stationary and mobile sources are categorized as primary and/or secondary pollutants. Primary air pollutants are emitted directly from sources. Carbon monoxide (CO), volatile organic compounds (VOC), nitrogen oxides (NOx), sulfur dioxide (SO2), coarse inhalable particulate matter (PM10), fine inhalable particulate matter (PM2.5) and lead (Pb) are primary air pollutants. Of these, CO, SO2, NO2, PM10 and PM2.5 are "criteria air pollutants," which means that AAQS have been established for them. VOC and NO are criteria pollutant precursors that form secondary criteria air pollutants through chemical and photochemical reactions in the atmosphere. Ozone (O3) and nitrogen dioxide (NO2) are the principal secondary pollutants. Each of the primary and secondary criteria air pollutants and its known health effects are described in the following table.

Pollutant	Health Effects	Example of Sources
Carbon Monoxide (CO)	• Chest pain in heart patients • Headaches, nausea • Reduced mental alertness • Death at very high levels	Any source that burns fuel such as cars, trucks, construction and farming equipment and residential heaters and stoves
Ozone (O_3)	• Cough, chest tightness • Difficulty taking a deep breath • Worsened asthma symptoms • Lung inflammation	Atmospheric reaction of organic gases with nitrogen oxides in sunlight
Nitrogen Dioxide (NO_2)	• Increased response to allergens • Aggravation of respiratory illness	Same as carbon monoxide sources
Particulate Matter (PM_{10} & $PM_{2.5}$)	• Hospitalizations for worsened heart diseases • Emergency room visits for asthma • Premature death	• Cars and trucks (particularly diesels) • Fireplaces and woodstoves • Windblown dust from overlays, agriculture and construction
Sulfur Dioxide (SO_2)	• Aggravation of respiratory disease (e.g., asthma and emphysema) • Reduced lung function	Combustion of sulfur-containing fossil fuels, smelting of sulfur-bearing metal ores and industrial processes

13 https://www.epa.gov/criteria-air-pollutants/naaqs-table

14 https://ww2.arb.ca.gov/resources/california-ambient-air-quality-standards

Pollutant	Health Effects	Example of Sources
Lead (Pb)	• Behavioral and learning disabilities in children • Nervous system impairment	Contaminated soil

Source: CARB 2009, South Coast AQMD 2005

Because many of the criteria pollutants are related to transportation, busy roads near homes can result in health impacts for people who may be far from an industrial project. The health hazards associated with air quality impacts are a driving force behind the consideration of environmental justice in the general plan and may be brought up during planning meetings. Many communities are looking to offset air quality and health impacts through use of community benefit plans.

4. Biological Resources

Two laws govern the protection of endangered species, one federal (the federal Endangered Species Act, or "ESA") and one state (the California Endangered Species Act, or "CESA")[15] The two laws are not necessarily congruous. A species protected under state law may or may not be protected under federal law.

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

"Take" permits may be issued subject to a habitat conservation plan (HCP) under federal law or a Section 2081 permit under state law. Since the habitats of many species overlap, it has become standard practice to develop Multiple Species Habitat Plans (MSHCP)—also called Natural Communities Conservation Plans (NCCP) under state law—that address multiple species at once.

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

The HCP will have a listing of species that it covers, areas that are prohibited from development – typically called criteria cells – and a development review process. Most all of this will either be complete, or nearly complete, by the time the environmental document is circulated for review. Note that species not covered by the HCP will need to be evaluated individually, and that most HCPs still require some form of biological resource assessment to accompany a development proposal. Finally, all HCPs have a fee paid at building permitting to implement the HCP, purchase property in criteria cells and maintain the property.

Wetlands

The Clean Water Act prohibits the filling and dredging of wetlands without a permit issued by the Army Corps of Engineers.[16]

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

16 33 U.S.C. § 1344, 33 C.F.R. 323.4(c).

The filling of a wetland is a common issue encountered by many planning commissioners. Fill comprises any material used to replace an aquatic area with dry land or raise the bottom elevation of a water body. This means that the scope of wetland protections extends to mechanized land-clearing activities—like grading—that result in a redeposit of soil in wetland areas.

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

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

5. Cultural Resources

Cultural resources address impacts to the buildings, landscape or places in a community that were important to local, national or worldwide events. While tribal consultation has its own checklist section, not all agencies separate tribal and cultural resources. CEQA does not mandate a specific format for the analysis and, provided all the environmental issues are addressed, this is an acceptable combination. Paleontology is the study of fossils and fossilized remains and is in the geology and soils portion of the analysis.

6. Energy

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

- **Transportation.** Transportation is responsible for approximately 46 percent of all energy used in California, much higher than the national average. Strategies aimed at lowering automobile usage can thus be extremely effective at reducing a community's energy consumption. Policies that are bicycle- and pedestrian-friendly and that support mixed-use development, transit-oriented development and more compact development will all have energy payoffs.

- **Community Design.** Community design is another area in which there are numerous opportunities for energy conservation. The Solar Rights Act of 1978 already requires that new subdivisions provide, to the extent feasible, future opportunities for natural heating and cooling and directs local agencies to deny permits to applicants that do not meet this requirement.[17] Local agencies can take advantage of natural heating and cooling by considering solar access issues early during subdivision review. Staff should review existing regulations, like setback or height limits, to ensure that they do not interfere with solar access opportunities. In addition, the amount of pavement, the number and types of trees, street widths and numerous other design features also impact overall community energy consumption. Small changes in these areas can have tremendous energy payoffs.

17 Cal. Civ. Code § 714.

Connecting Land Use Planning and Energy Conservation

Encourage Efficient Building Construction. How homes, offices and other buildings are constructed can have a major impact on energy use. California already has minimum energy performance standards for new residential and commercial construction. Local planners and building inspectors enforce these standards at the local level. However, local agencies may choose to impose stricter standards than the state minimums.

Point Out Alternatives During the Design Review Process. Communities can help developers comply with and exceed local and state requirements by providing assistance during various phases of the development process. For example, staff can suggest simple techniques to increase solar access, like moving garages, modifying street or home orientation and staggering building placement on lots. Or, they may suggest the use of daylight as a means to reduce electricity use in new commercial buildings.

Adopt an Energy Policy or an Energy Element in the General Plan. To promote energy efficiency, some agencies have adopted an energy element in their general plan. Individual ordinances implement the policies. An energy element ensures conformity between energy issues and other plan elements. Another option is to adopt a local energy policy to direct each agency department to implement in-house energy management programs or to evaluate the potential of alternative energy sources.

Promote Conservation. Communities may wish to adopt regulations promoting energy conservation. Before passing a new regulation, however, it is important to evaluate the cost effectiveness and to renew existing ordinances and building codes to make them consistent with energy objectives. For example, requiring solar heating for all new swimming pools is not always the most cost-effective approach since in some areas swimming pool covers are equally effective.

Provide Incentives. Voluntary incentives designed to encourage energy conservation can be effective. For example, some jurisdictions waive or reduce building permit fees or give density bonuses for exceeding state building standards.

7. Geology and Soils

Often there is a geotechnical report that accompanies the CEQA document and makes recommendation based on the soil type. Some soils shrink or swell when wet, which can damage foundations and improvements. If these exist, there will be recommendations by the soils engineer in the report to address the impacts. Recommendations that require over excavation or import of new material can often lead to additional truck trips for construction that will need to be addressed in the air quality, greenhouse gas and possibly noise sections. Soils can also be too sandy to support on-site sewer treatment which can lead to engineered systems or similar specialized design. The soils report may also indicate a depth to groundwater that is a factor in subsidence (sinking of the ground) or liquefaction (seismically-induced sinking) Finally, because fossils are considered part of the geologic history of a property, this section of the analysis will also address paleontology. Mitigation for an area that may uncover paleontological resources will include monitoring during construction and often a plan for the repository of any resources uncovered.

8. Greenhouse Gas Emissions

The environmental analysis will focus on the reduction of greenhouse gases attributed to the project. Greenhouse gases (GHG) are gases that trap heat in the atmosphere and include the following:

- **Carbon dioxide (CO2):** Carbon dioxide enters the atmosphere through burning fossil fuels (gasoline, coal, natural gas and oil), solid waste, trees and other biological materials, and because of certain chemical reactions (e.g., manufacture of cement). Carbon dioxide is removed from the atmosphere (or “sequestered”) when it is absorbed by plants as part of the biological carbon cycle.
- **Methane (CH4):** Methane is emitted during the production and transport of coal, natural gas and oil. Methane emissions also result from livestock and other agricultural practices, land use and by the decay of organic waste, such as in solid waste landfills.
- **Nitrous oxide (N2O):** Nitrous oxide is emitted during agricultural, land use, industrial activities, combustion of fossil fuels and solid waste, as well as during treatment of wastewater.
- **Fluorinated gases:** Hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and nitrogen trifluoride are synthetic, powerful greenhouse gases that are emitted from a variety of industrial processes. Fluorinated gases are sometimes used as substitutes for stratospheric ozone-depleting substances (e.g., chlorofluorocarbons, hydrochlorofluorocarbons and halons). These gases are typically emitted in smaller quantities, but because they are potent greenhouse gases, they are sometimes referred to as high global warming potential gases (“High GWP gases”).

Not all greenhouse gases have the same effect on the environment. As shown in the following table, carbon dioxide C02 is considered the base with all other gases considered as a multiple of C02.

Greenhouse gas	Chemical Formula	Global Warming Potential, 100-year Time Horizon	Atmospheric Lifetime (years)
Carbon Dioxide	CO2	1	100*
Methane	CH4	25	12
Nitrous Oxide	N2O	265	121
Chlorofluorocarbon-12	CCl2F2	10,200	100

Greenhouse gas	Chemical Formula	Global Warming Potential, 100-year Time Horizon	Atmospheric Lifetime (years)
Hydrofluorocarbon-23 (HFC-23)	CHF3	12,400	222
Sulfur Hexafluoride	SF6	23,500	3,200
Nitrogen Trifluoride	NF3	16,100	500

**No single lifetime can be given for carbon dioxide because it moves throughout the earth system at differing rates. Some carbon dioxide will be absorbed very quickly, while some will remain in the atmosphere for thousands of years.*

The passage of Assembly Bill (AB) 32, the California Global Warming Solutions Act of 2006, set the stage for California's long-term approach to addressing climate change, and does so in a way that aims to improve the environment, protect public health and safety and conserve natural resources while maintaining a robust economy. Since the adoption of AB 32 in 2006, the state has expanded its GHG reduction goals, regulations, programs and policies, some of which apply directly to local governments while others apply directly to state agencies. In 2016, the state passed Senate Bill (SB) 32, which sets a statewide goal of reducing emissions 40 percent below 1990 emission levels by the year 2030. The state has also set long-term goals for an 80 percent reduction by the year 2050, and recently, Executive Order B-55-18 set a steeper goal for the state to achieve economy-wide carbon neutrality by 2045. The goal of carbon neutrality by 2045 is in addition to other statewide goals, meaning not only should emissions be reduced to 80 percent below 1990 levels by 2050, but that, by no later than 2045, the remaining emissions should be offset by equivalent net removals of CO2e (carbon dioxide equivalent) from the atmosphere, including through sequestration in forests, soils and other natural landscapes.

9. Hazards and Hazardous Materials

The use and transportation of hazardous materials can raise safety concerns. Many commercial, agricultural and industrial operations engage in the transportation, storage, generation or disposal of hazardous materials. Some facilities may have the potential for leaking hazardous materials into the local groundwater. Others may impact a local wastewater treatment system or the capacity of local law enforcement and fire departments to respond to hazardous materials spills or incidents. What qualifies as a hazardous material is defined by various state and federal agencies and should be explained in the analysis. As a rough guideline, a material is hazardous if it is corrosive, explosive, oxidic, flammable or poisonous. Careful planning can reduce the risk these materials pose to the community.

The California Environmental Protection Agency (CalEPA) maintains a list of hazardous materials sites known as the Cortese List. The list shows properties that either have current hazardous materials issues or have had a clean up plan to address hazardous materials on the property. The list is specific to parcel number and agency. If property is on this list, it must be disclosed in both the analysis and in the public notice(s) for the project.

Hazards may also include physical or natural hazards such as wildfire, or landslide. These issues are usually discussed at length in other sections of the analysis specific to those issues.

10. Hydrology and Water Quality

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

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

The federal Clean Water Act prohibits the discharge of any pollutant—anything that alters natural water quality—into any surface water without a permit.[18] The Act establishes two strategies to this end. The first requires the use of "best available technologies" (BATs) and "best management practices" (BMPs) to minimize the amount of pollution that flows away from any one site. These approaches can be used to either prevent the discharge of a pollutant into a water system or require treatment of a pollutant before it reaches the system.

Prevention is usually preferred because it costs less than treatment. The second strategy relies on determining the amount of pollution that can be released into surface waters without adversely affecting their beneficial uses.

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

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

- **National Pollutant Discharge Elimination System (NPDES).** The NPDES system prohibits all point source discharges into any body of water (which in California includes groundwater) without a permit.[19] The permit system allows for the imposition of best practices to minimize pollution discharge and assure that the discharge will not violate state water quality standards. These standards may change to reflect improvements in technology and management practices.

- **Stormwater Drainage Systems.** Storm runoff usually begins as a nonpoint source, but flows into point sources as storm drainage systems collect it. Accordingly, storm systems (except those in very rural areas) require NPDES permits. To obtain a permit, local agencies must reduce pollutants to the maximum extent practicable[20] by implementing a stormwater management plan. The management plan must specify what best management practices (BMPs) will be used to address certain program areas. The program areas include public education and outreach, illicit discharge detection and elimination, construction and post-construction and good housekeeping for municipal operations. In general, municipalities with a population over 100,000 are required to conduct chemical monitoring, but smaller municipalities are not.

- **Publicly Owned Treatment Works (POTWs).** There is a separate set of standards for publicly owned water treatment works. One of the reasons for the separate standards is to assure that direct discharge requirements are not compromised by industry's use of a publicly owned sewage treatment works. Often, contaminants must be pretreated by businesses before they can enter a public water treatment system.

- **Nonpoint Source Management Plans.** The state must develop a nonpoint source management plan, which serves a particularly important role in many coastal areas where nonpoint sources have been identified as a major source of degradation in coastal waters. The State Water Resources Control Board and the Coastal Commission have identified approximately 60 nonpoint source pollution management measures, many of which address nonpoint source pollution resulting from development.

18 33 U.S.C. §§ 1342, 1344.

19 33 U.S.C. § 1344.

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

In addition, the state sets a total maximum daily load (TMDL) pollutant standard for certain bodies of water. The state first identifies how each body of water will be used—such as for drinking water, recreation or supporting aquatic life—and sets appropriate quality standards. Lakes, rivers and streams that are too polluted to serve their designated use even with technology-based effluent limitations[21] are defined as "impaired." For each of these water bodies, the state calculates a TMDL, which is the total amount of pollutant the water body can tolerate, plus a margin of safety, and still meet water quality standards.[22]

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

Balancing Growth and Water Supply

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

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

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

11. Land Use and Planning

For CEQA, the land use and planning analysis is based on two factors: division of an existing community; and potential conflict with a land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental impact. A new rail line, or large project, that would physically separate an existing neighborhood would likely be an issue needing to be discussed in the analysis. The courts have determined that compliance with a general plan is not an environmental impact unless the project conflicts with policy as mentioned. Determination of whether a project is consistent with the general plan and/or ordinances is important and considered in the Planning Framework chapter of this handbook but is usually not an environmental impact.

21 33 U.S.C. § 1313(d).

22 33 U.S.C. § 1313(d)(1)(c).

12. Mineral Resources

The California Department of Conservation maintains maps of mineral resources[23] and also provides oversight for reclamation of mines and quarries as part of the Surface Mining and Reclamation Act (SMARA). While all minerals are studied and reviewed in the state, primary focus is often on essential construction materials such as sand and aggregate. These materials are heavy and expensive to move making local sources better from a cost and environmental impact perspective. From a CEQA perspective, the focus is on whether a project will reduce the availability of a local, regional or even statewide important mineral. Placing homes on top of a significant aggregate site for example, would likely preclude mining of the materials at a future date. The general plan will also include a map of important mineral resources that must be considered as part of the environmental analysis.

13. Noise and Vibration

Noise is most often defined as unwanted sound - whether it is loud, unpleasant, unexpected or otherwise undesirable. Although sound can be easily measured, the perception of noise and the physical response to sound complicate the analysis of its impact on people. People judge the relative magnitude of sound sensation in subjective terms such as “noisiness” or “loudness.”

Noise Descriptors. The following are brief definitions of terminology used in analysis:

- **Sound.** A disturbance created by a vibrating object, which, when transmitted by pressure waves through a medium such as air, is capable of being detected by a receiving mechanism, such as the human ear or a microphone.
- **Noise.** Sound that is loud, unpleasant, unexpected or otherwise undesirable.
- **Decibel (dB)**. A unitless measure of sound, expressed on a logarithmic scale and with respect to a defined reference sound pressure. The standard reference pressure is 20 micropascals (20 μPa).
- **Vibration Decibel (VdB).** A unitless measure of vibration, expressed on a logarithmic scale and with respect to a defined reference vibration velocity. In the U.S., the standard reference velocity is 1 micro-inch per second (1x10-6 in/sec).
- **A-Weighted Decibel (dBA).** An overall frequency-weighted sound level in decibels that approximates the frequency response of the human ear.
- **Equivalent Continuous Noise Level (Leq); also called the Energy-Equivalent Noise Level.** The value of an equivalent, steady sound level which, in a stated time period (often over an hour) and at a stated location, has the same A-weighted sound energy as the time-varying sound. Thus, the Leq metric is a single numerical value that represents the equivalent amount of variable sound energy received by a receptor over the specified duration.
- **Statistical Sound Level (Ln).** The sound level that is exceeded “n” percent of time during a given sample period. For example, the L50 level is the statistical indicator of the time-varying noise signal that is exceeded 50 percent of the time (during each sampling period); that is, half of the sampling time, the changing noise levels are above this value and half of the time they are below it. This is called the “median sound level.” The L10 level, likewise, is the value that is exceeded 10 percent of the time (i.e., near the maximum) and this is often known as the “intrusive sound level.” The L90 is the sound level exceeded 90 percent of the time and is often considered the “effective background level” or “residual noise level.”
- **Maximum Sound Level (Lmax).** The highest RMS sound level measured during the measurement period.
- **Root Mean Square Sound Level (RMS).** The square root of the average of the square of the sound pressure over the measurement period.

23 www.conservation.ca.gov/cgs/mrp

- **Day-Night Sound Level (Ldn or DNL).** The energy-average of the A-weighted sound levels occurring during a 24-hour period, with 10 dB added to the sound levels occurring during the period from 10:00 PM to 7:00 AM.
- **Community Noise Equivalent Level (CNEL).** The energy average of the A-weighted sound levels occurring during a 24-hour period, with 5 dB added from 7:00 PM to 10:00 PM and 10 dB from 10:00 PM to 7:00 AM. NOTE: For general community/environmental noise, CNEL and Ldn values rarely differ by more than 1 dB (with the CNEL being only slightly more restrictive – that is, higher than the Ldn value). As a matter of practice, Ldn and CNEL values are interchangeable and are treated as equivalent in this assessment.
- **Peak Particle Velocity (PPV).** The peak rate of speed at which soil particles move (e.g., inches per second) due to ground vibration.
- **Sensitive Receptor.** Noise- and vibration-sensitive receptors include land uses where quiet environments are necessary for enjoyment and public health and safety. Residences, schools, motels and hotels, libraries, religious institutions, hospitals and nursing homes are examples.

Amplitude

Unlike linear units such as inches or pounds, decibels are measured on a logarithmic scale. Because of the physical characteristics of noise transmission and perception, the relative loudness of sound does not closely match the actual amounts of sound energy. The table presents the subjective effect of changes in sound pressure levels. Ambient sounds generally range from 30 dBA (very quiet) to 100 dBA (very loud). Changes of 1 to 3 dB are detectable by most people under quiet, controlled conditions, and changes of less than 1 dB are usually not discernible (even under ideal conditions). A 3 dB change in noise levels is considered the minimum change that is detectable with human hearing in outside environments. A change of 5 dB is readily discernible to most people in an exterior environment, and a 10 dB change is perceived as a doubling (or halving) of the sound.

Noise Perceptibility

Change in dB	Noise Level
± 3 dB	Barely perceptible increase
± 5 dB	Readily perceptible increase
± 10 dB	Twice or half as loud
± 20 dB	Four times or one-quarter as loud

Source: California Department of Transportation (Caltrans). 2013, September. Technical Noise Supplement ("TeNS").

Because people are more sensitive to unwanted noise intrusion during the evening and at night, state law and many local jurisdictions use an adjusted 24-hour noise descriptor called the Community Noise Equivalent Level (CNEL) or Day-Night Noise Level (Ldn). The CNEL descriptor requires that an artificial increment (or "penalty") of 5 dBA be added to the actual noise level for the hours from 7:00 PM to 10:00 PM and 10 dBA for the hours from 10:00 PM to 7:00 AM. The Ldn descriptor uses the same methodology except that there is no artificial increment added to the hours between 7:00 PM and 10:00 PM. Both descriptors give roughly the same 24-hour level, with the CNEL being only slightly more restrictive (i.e., higher). The CNEL or Ldn metrics are commonly applied to the assessment of roadway and airport-related noise sources.

Vibration Fundamentals

Vibration is an oscillatory motion through a solid medium in which the motion's amplitude can be described in terms of displacement, velocity or acceleration. Vibration is normally associated with activities stemming from operations of railroads or vibration-intensive stationary sources but can also be associated with construction equipment such as jackhammers, pile drivers and hydraulic hammers. As with noise, vibration can be described by both its amplitude and frequency. Vibration displacement is the distance that a point on a surface moves away from its original static position; velocity is the instantaneous speed that a point on a surface moves; and acceleration is the rate of change of the speed. Each of these descriptors can be used to correlate vibration to human response, building damage and acceptable equipment vibration levels. During construction, the operation of construction equipment can cause groundborne vibration. During the operational phase of a project, receptors may be subject to levels of vibration that can cause annoyance due to noise generated from vibration of a structure or items within a structure.

Vibration amplitudes are usually described in terms of either the peak particle velocity (PPV) or the root mean square (RMS) velocity. PPV is the maximum instantaneous peak of the vibration signal and RMS is the square root of the average of the squared amplitude of the signal. PPV is more appropriate for evaluating potential building damage and RMS is typically more suitable for evaluating human response.

As with airborne sound, annoyance with vibrational energy is a subjective measure, depending on the level of activity and the sensitivity of the individual. To sensitive individuals, vibrations approaching the threshold of perception can be annoying. Persons accustomed to elevated ambient vibration levels, such as in an urban environment, may tolerate higher vibration levels. The table below displays the human response and the effects on buildings resulting from continuous vibration (in terms of various levels of PPV).

Human Reaction to Typical Vibration Levels

Vibration Level, PPV (in/sec)	Human Reaction	Effect on Buildings
0.006–0.019	Threshold of perception, possibility of intrusion	Vibrations unlikely to cause damage of any type
0.08	Vibrations readily perceptible	Recommended upper level of vibration to which ruins and ancient monuments should be subjected
0.10	Level at which continuous vibration begins to annoy people	Virtually no risk of "architectural" (i.e. not structural) damage to normal buildings
0.20	Vibrations annoying to people in buildings	Threshold at which there is a risk to "architectural" damage to normal dwelling – houses with plastered walls and ceilings
0.4–0.6	Vibrations considered unpleasant by people subjected to continuous vibrations and unacceptable to some people walking on bridges	Vibrations at a greater level than normally expected from traffic, but would cause "architectural" damage and possibly minor structural damage

Source: California Department of Transportation (Caltrans). 2013, September. Transportation and Construction Vibration Guidance Manual.

14. Population, Housing and Employment

Most agencies monitor whether a project will increase the number of residents or jobs within their jurisdiction. From a CEQA perspective, the primary issue is whether the population or employment increase would lead to a need for more homes, or businesses to serve the increase. Usually, if a project is consistent with the agency general plan, the analysis need only demonstrate that the anticipated population and/or employment is consistent with the general plan assumptions. The population estimates contained in the analysis are usually from the California Department of Finance Demographic Research Unit reports that are used by the state for subventions and become the official population of the agency. Other information can come from the Economic Development Department (EDD), or the U.S. Census American Community Survey (ACD) data. Most important in the analysis is whether the assumed persons per unit or jobs per square foot are consistent with the assumptions made in the traffic analysis.

Many state and local agencies estimate population and provide job statistics for a variety of reasons. From a CEQA perspective, the emphasis will be on verifying consistency with projections made for regional planning, and possibly the agency general plan. If the estimates are outside of the regional projections, the analysis should both explain why the projections are different, and what the environmental impacts might be.

15. Public Services

Police, fire, library, city hall and schools are all part of public services. The environmental analysis focuses on the physical needs of any service expansion. This means that the need to add police or fire services to keep within a response time or meet a specified ratio is likely not an environmental issue (though it certainly may be a planning issue). If the expansion of personnel requires new construction such as a fire station or substation, then the impact of those improvements must be addressed.

Schools are independent public agencies and are often exempt from local regulations. As independent agencies, schools are also required to comply with CEQA. From an agency perspective, school impacts are fully addressed through payment of impact fees[24] and an agency may not deny approval of a project based on the adequacies of school facilities[25]. Agencies must, however, evaluate the indirect impacts associated with needing a school such as traffic, air quality, noise, etc.

16. Recreation

Impacts to recreation used to be limited to an increase in population from a project. Now, recreation can include trails used to connect homes to parks, schools, employment and shopping. Further, many communities require parks in their office and heavy employment areas to improve aesthetics and improve opportunities for health. The amount of park land is often set in the general plan as a ratio of population to acreage. Large projects can be expected to include public or private opportunities for recreation consistent with the general plan, while smaller projects often pay an in-lieu fee to meet their park obligation. The environmental analysis should identify parks that would serve a project site, and whether any improvements would be needed. If improvements are necessary, then the impact of those improvements must be included in the analysis. Many agencies have adopted fees to allow smaller projects to meet their obligation. Occasionally, the fees refer to the Quimby Act[26] that is part of the Subdivision Map Act. Under the Quimby Act, an agency may require dedication of parkland for subdivisions above a certain size. As the Quimby Act only applies to subdivisions, agencies may adopt park fees as part of their overall developer impact fee program.

24 Government Code Section 65996

25 Government Code Section 65997

26 Government Code Section 66477

17. Transportation (VMT)

Transportation evaluates the various methods of mobility available to a community. The initial evaluation is usually personal vehicle travel, however the environmental analysis may also include walking, bicycling, busses and rail. Level of service (LOS) is a metric that measures automobile delay. As of July 1, 2020, pursuant to the requirements of SB 743, LOS can no longer serve as a basis for a significant transportation impact in CEQA. By focusing on how much vehicle miles travelled (VMT) is generated by a proposed project, this shift in CEQA aligns transportation impact analysis with the reduction of greenhouse gas emissions from projects, reductions in air pollution, and other adverse environmental and health impacts associated with ongoing use of LOS.

Land use and project siting decisions, along with the presence of transportation infrastructure or services to support the use of other modes such as transit, walking, biking, ridesharing, etc., will affect how much VMT is generated by a proposed project. There are various methods of reducing individual vehicle miles travelled and the analysis may include several examples such as connecting trails, mixed use, new transit connections, etc. Note too that existing roadway(s) may be narrowed to accommodate other forms of mobility such as bicycle lanes, dedicated transit and trails consistent with the complete streets provisions of an agency's adopted circulation element. While the physical improvements associated with the road change may not constitute an environmental impact for purposes of CEQA, any reduction in LOS is generally not considered an impact under CEQA.

Many general plans still contain LOS standards as a policy. From an environmental analysis perspective, if complying with the LOS standard of the general plan requires a roadway expansion or other physical change to the circulation system, the impacts of the improvements must be evaluated. Note that an inconsistency with an LOS policy in a general plan is not an impact under CEQA, as auto delay is not an environmental impact and CEQA only requires analysis of planning inconsistencies that lead to environmental impacts.

The analysis of a project's impact on transportation in CEQA may be completed using a local or regional transportation or travel demand model. In some cases, these models may be based on the adopted general plan. The model may also be used to generate a list of improvements that could be used to support a development impact fee to help reduce VMT or address specific transportation improvements required by local plans. The environmental analysis will often demonstrate whether a project is consistent with the model assumptions, or if different, whether new improvements will be needed to support the project. It is common for a project to be responsible for property edge (frontage) roadway or other transportation improvements that support other modes, but pay fees for larger local or regional improvements.

18. Tribal Cultural Resources

Tribal consultation is a government-to-government process and is required for all general plan amendments (SB-18) and most environmental documents. For general plan amendments, the consultation must be completed before the amendment can be approved. Tribal consultation as part of the CEQA process is similar but involves contacting tribes who have previously requested consultation. The tribal consultation process is usually a meeting that can result in project specific mitigation concerning issues such as construction monitoring and the disposition of any resources discovered. The consultation process may also identify previously unknown resources that may require modification of the project and/or additional study. Unlike other technical studies that support the environmental analysis, the studies for this issue are kept confidential by the agency per state law to protect the resources.[27]

19. Utilities and Service Systems

Water, sewer, storm drainage, power and more recently, internet access are all examples of utilities and service systems. The environmental analysis will focus on whether the project will require the expansion of one or more services. If expansion

27 Public Resources Code Section 21082.3(c)(1) (ref OPR Technical Advisory AB52 and SB18 June 2017)

is required then the impacts of the expansion must be evaluated. Most agencies have a series of master plans that specify capacities and increment(s) of expansion linked to growth. The master plans are often used as the basis for the development impact fee used to fund the incremental expansion. The environmental analysis will identify whether the proposed project is within the planned services as shown in the master plan, or if there is no master plan within the design capabilities of the service system. The environmental impacts of any service extension to serve a site must also be part of the analysis.

20. Wildfire

The California Department of Forestry and Fire Protection (CAL FIRE) maps areas of significant fire hazards based on fuels, terrain, weather and other relevant factors. These zones, referred to as Fire Hazard Severity Zones (FHSZ)[28], influence how people construct buildings and protect property to reduce risk associated with wildland fires. The environmental analysis will evaluate the consistency with the provisions of the safety element, and whether the project falls into one or more of the following wildfire zones.

21. Mandatory Findings of Significance

The mandatory findings of significance bring the analysis in the preceding checklist to a conclusion. Often the section is used to specifically address the cumulative impact of the project or summarize the impacts in the previous analysis to help support the conclusion. From the mandatory findings of significance, an agency can determine whether a negative declaration, mitigated negative declaration or environmental impact report is warranted.

Note that the checklist is often a convenient method of supporting an addendum or an exemption even though it may not be required in either instance. Like most checklists, the point is to not forget some part of the analysis before acting. Agencies are welcome to devise their own checklist provided all the environmental issues are covered. Many agencies eliminate some of the questions in the Appendix G checklist that simply don't apply to their agency.

28 CALFIRE Maps





The Planning Commissioner Handbook

Chapter 8

Infrastructure Planning

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Infrastructure

Infrastructure refers to the physical support services necessary for development. At the simplest level, a road, driveway or easement of some type is essential to gaining property access and allowing development on a property. Other infrastructure can include water or sewer lines in developed areas, or wells and irrigation channels in rural areas. Electrical power, telephone lines, television cable and fiber optic are also considered infrastructure. Generally, the more people expected at a site, the more infrastructure that is needed to provide services.

Infrastructure for individual projects is handled at the staff level and is usually the first question asked concerning the development potential for a property. Most agencies have development standards that establish a basic minimum amount of infrastructure for certain types of development, and in many instances have adopted ordinances that require an extension of lines to connect to existing infrastructure. As a result, by the time the planning commission is considering a project these issues have largely been addressed.

Occasionally infrastructure must be brought from an area outside of the project boundaries and occasionally for some distance. When this occurs, there are direct impacts such as trenching, road closure, etc. associated with construction and indirect impacts such as growth inducement that the commission must consider. As this need would be part of the project itself, both the direct and indirect impacts should also be addressed in the staff report for the project and provided to the commission.

The commission will have a considerable say in where infrastructure is provided in long range planning associated with a general or a specific plan, or master planning of a large project. As a part of this process, the commission will need to consider existing and future land use. Staff will provide information regarding utilities in that area that may be available to support additional development. An example might be considering adding new housing to a downtown where water and sewer lines already exist. In some instances, there will be adequate capacity because the system may have been designed for housing in the past, in others expansion of the system may be required as part of any improvements. Without a technical engineering study, it is not possible to know what improvements will be needed.

Infrastructure Planning

Good Infrastructure Planning

Good infrastructure planning starts with the general plan and the anticipated density and intensity of development. Because we can estimate utility demand based on population and building size, dwelling units, persons per acre, type and size of commercial development are important components of long-range planning. Ideally infrastructure should be phased, meaning that you only build enough to meet your short-term needs and allow for expansion to meet long term needs. However, the individual phases may need to be larger than the project at hand to take advantage of engineering efficiencies, or practicality. For example, it is not possible to build half an overpass.

Infrastructure can also be used to help guide development into areas of the community that meet the goals of the general plan. If major infrastructure is extended into an area that currently lacks infrastructure it becomes easier for development to occur, which can attract developer interest. While in one context this could be considered growth inducing, in another it can be seen as furthering the expectations expressed in the general plan.

Infrastructure planning does not just look at new (greenfield) development potential, it is also important to evaluate the potential to intensify development that has already occurred. For example, if you are expanding housing opportunities in your downtown it is likely that that the new homes will have a greater demand on sewer and water systems than the existing commercial land use. While expanding existing infrastructure can be disruptive to daily activities, encouraging infill may have greater long-term benefits.

Capital Improvement Plans

A capital improvements plan ("CIP") is a plan for the orderly expansion and financing of infrastructure— like roads, drainage, sewers, water lines, parks, libraries and other civic amenities—to meet the needs of new and existing development. These costs are critical expenditures that can seldom be covered through a local agency's annual operating budget. Once a CIP is created, it can be used to establish a fee schedule for new development. The planning agency is required to review capital improvements for consistency with the general plan.[1] One method of ensuring consistency is to have the planning commission review and make a general plan consistency finding for the CIP prior to its adoption by the agency.

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

Master plans are often prepared for important infrastructure. These plans are based on the general plan and reflect the anticipated development potential within the service area covered by the plan. Often the staff report or analysis for the project will reference whether the project is consistent with the water, wastewater or storm drainage master plan. In some cases, payment of fees is all that is needed for the project to be considered consistent, and in others the project will actually construct some of the improvements called for in the master plan. As the improvements and fees are based on development potential, projects that are less than the expected potential can have an impact on the overall plan because the agency may receive less in the way of fees which can affect funding of other plan components.

1 Government Code Section 65103(c)

Wet Utilities

Water

Developers refer to infrastructure as utilities and divide them into wet and dry utilities. Wet utilities include water, sewer and storm drainage. Water service can be provided by a public agency or by a private water company or in some instances by the landowner themselves through either a private well or collection of wells. The placement of water lines is regulated by an agency's design standards and by the physical constraints of the site. Because water lines operate under pressure, steep slopes and valleys are not as critical an issue to new water lines.

It is important to note that most water services are sized (meaning the diameter of the pipes and the design of the system) not for the actual use of the building but to meet fire flow which is a much higher demand. Water providers prepare an Urban Water Management Plan (UWMP) that assumes development consistent with a general plan, shows the service area and source of all water.[2] Usually, a project that is consistent with the general plan and the UWMP is sufficient to determine there is adequate water for that project. Note that the update periods of the UWMP and different than those of the general plan therefore as part of the development review process the agency confers with the water provider early in the development review process to ensure adequate water resources. For large projects, Water Code Section 10910 requires preparation of a Water Supply Assessment (WSA) as part of the environmental documentation for the project. The WSA must demonstrate that water is available to meet the needs of the project during multiple drought years.

For rural projects, or projects that are on some form of groundwater well, providing service can be more complicated. The reason for this is the Sustainable Groundwater Management Act[3] that establishes regional planning to prevent overdraft of groundwater. Overdraft is when more water is extracted from the ground than can be replenished. Other planning considerations for groundwater wells include water quality, gallons per minute, emergency generator(s) as backup and possible interaction with other groundwater wells. Well placement, abandonment and construction are usually overseen by the local health department who maintain standards for groundwater wells.

In California, water is a valuable and scarce resource. The wise and efficient use, and ultimately reuse of water, is an essential part of the long range and current planning process. After years of multiple droughts, our fragile water collection and distribution system is mandating that decisions on development include a discussion of water usage. Depending on location and water resources, efficient use of water may require the elimination of lawns in some areas, and the extension of reclaimed water into others.

Sewer

Sewer or sanitary sewer is arguably one of the most important aspects of development as careful consideration is needed to avoid contamination and health impacts. Agencies that provide sewer service create master plans that rely on development potential established by the general plan. These master plans often form the basis of impact fees charged for development to connect to the system. The sewer master plans typically have a collection and a treatment system component.

2 Water Code Section 10631

3 Water Code Section 10720

Collection System

Sewer lines are placed underground, and ideally designed to use gravity to move liquid and solids toward a wastewater treatment plant. Because of the mix of liquid and solids, the slope of the sewer line is important. If the slope of the line is too steep the liquid will flow faster than the solids which can lead to the solids blocking the pipe. If the slope of the line is too shallow the flow will collect and can stagnate causing odor and blockage problems. If topography does not allow the use of gravity, the agency may require a form of pump known as a lift station to lift the sewer up and into a gravity system. In some instances, the pump can force sewage into a pressurized sewer line which is known as a forced main. While lift stations and forced mains are essential in some communities, engineers try to avoid them because they require power and have moving parts which require regular maintenance. Because of the potential for blockage, and to relieve hydraulic pressure, lines are connected using a series of manholes. A manhole (or maintenance hole) is usually a concrete column that leads to the sewer line. The sewer line is open at the bottom of a manhole to allow inspection and to remove blockage.

Treatment System

Once the sewage reaches the wastewater treatment plant it is treated in accordance with state and federal requirements. Some wastewater treatment plants treat sewage at a level that allows reuse of the water. Reused water can be pressurized like potable water but is delivered in a purple pipe. The pipes are purple to avoid cross connection with potable water lines that are white. Purple pipe water is often used for irrigation of landscaping and can also be used for some industrial purposes.

If a wastewater treatment plant does not create reusable water it must discharge the water either onto land or into a receiving water body. The quality of water discharged from the wastewater treatment plant is regulated by the state Regional Water Quality Control Board and is in a published permit that can be reviewed by the public.

Onsite Systems

In areas where there is no sanitary sewer system, on-site systems may be used. Because of the potential public health hazard, the design of on-site systems is usually monitored by the health department. The most commonly known on-site system is called a septic tank. A septic tank consists of a concrete box that has multiple chambers that capture liquids and solids from the structure(s). Bacteria forms in the tank that breaks down the solids and the excess liquid drains into a leach field. A leach field is a collection of perforated pipes that are underground and allow the liquids to drain into the soil where more bacteria in the soil further treat the water. Septic tanks are dependent upon soil types, depth to ground water, and the types of use, all of which are regulated by the health department. Septic tanks also require regular maintenance and rely upon the owner to have knowledge of the system limitations.

There are several different ways of treating wastewater on-site and each has benefits and constraints. Engineers will select the system best suited for the project, soil conditions and regulatory environment. These decisions seldom rise to the level of the planning commission as they are highly technical in nature and heavily regulated for public health and safety.

Drainage

Land can create impervious surfaces which are surfaces that repel stormwater and keep it from soaking into the ground. Stormwater runoff can be channelized by topography into creeks and rivers, and by development through buildings, roads, curbs and channels. Flowing water is powerful and erosive and unless kept in check it can create damage and hazards far in excess to the size of a given storm. The process of planning for storms is called stormwater planning and often occurs at a regional and local level.

All land can be placed in a defined watershed. A watershed is an area with a ‘top’ and a ‘slope’ toward a receiving water

body or drainage. Development within the watershed changes the natural drainage by placing buildings, roads and other improvements in the path of stormwater. While collecting stormwater in pipes and channels concentrates its potentially damaging effects, a collection system can protect communities from flooding, aid in groundwater recharge and in some cases allow reuse of the water. Toward the top of the watershed the storm drainage system may consist of curbs along paths or roadways that direct drainage away from improvements. As the amount of impervious area increases, the stormwater is directed to drop inlets (DI) which is usually a form of grate in the curb line of a roadway that leads to a pipe. A series of pipes and channels direct the stormwater flow to the receiving waterbody. Generally, stormwater system pipelines and channels are larger at the bottom of the watershed the closer they are to the receiving water body.

As with sewer, the discharge of stormwater into a receiving water body is regulated by the Regional Water Quality Control Board (RWQC). The RWQC requires development to prepare a Stormwater Pollution Prevention Plan (SWPPP) as part of the National Pollutant Discharge Elimination System Permit (NPDES) that every agency has, or operates under (some agencies operate under a larger agency permit). The quality of the stormwater runoff is monitored and if it exceeds standards active measures are required to improve the quality. A component of the stormwater system can include onsite detention or retention basins, along with pervious landscaping or recharge areas to keep as much of the stormwater on the project site as possible.



Dry Utilities

Electricity

While California is moving toward individual buildings providing their own power, for the foreseeable future there will still be a need to connect to the larger power grid. Power lines range in size from very large to very small and have different design and setback requirements based on their size. For example, it may not make fiscal sense to underground some power lines because of their size, while others are usually required to be undergrounded for aesthetic reasons. Often an older community has a mix of above ground services to buildings and underground services.

Each community has different standards for the extension of power; however, this usually is not a development issue that the Commission has to address. Often there can be a disagreement between the developer and the agency on the size of line that must be undergrounded because generally the larger the line the more expensive it is to underground. A similar disagreement can occur if power poles need to be relocated for a road or intersection improvement. This is usually a fiscal argument rather than a planning issue and will likely be decided at the council or board level. Note that some general plans have policies that require undergrounding, and the commission may be asked to consider whether the condition of approval is consistent with the general plan. The other requirements for electrical connection are found in the California Building Code (CBC), and cannot be changed by commission action.

Electric and Magnetic Fields from Power Lines

The concern over electric and magnetic fields from power lines is a frequent topic at commission meetings. Unfortunately, the science is not conclusive, which makes discussing the issue difficult. The following text is taken from the Environmental Protection Agency (EPA) website on the issue. “Electromagnetic radiation (EMR) consists of waves of electric and magnetic energy moving together through space. An example of electromagnetic radiation is visible light. Electromagnetic radiation can range from low to high frequency, which is measured in hertz, and can range from low to high energy, which is measured in electron volts. Wavelength, another term associated with electromagnetic radiation, is the distance from the peak of one wave to the next.

There are two general kinds of electromagnetic radiation: ionizing radiation and non-ionizing radiation. Ionizing radiation is powerful enough to knock electrons out of their orbit around an atom. This process is called ionization and can be damaging to a body’s cells. Non-ionizing radiation has enough energy to move atoms in a molecule around and cause them to vibrate, which makes the atom heat up, but not enough to remove the electrons from the atoms.

Electromagnetic Fields (EMF)

Electromagnetic fields associated with electricity are a type of low frequency, non-ionizing radiation, and they can come from both natural and man-made sources. For example, lightning during a thunderstorm creates electromagnetic radiation because it creates a current between the sky and the ground. Surrounding that current is an electromagnetic field. One example is the Earth’s magnetic field. We are always in the Earth’s magnetic field, which is generated at the Earth’s core. This magnetic field makes compasses work and is also used by pigeons and fish to navigate.

Electromagnetic Radiation (EMR)

EMR associated with power lines is a type of low frequency non-ionizing radiation. Electric fields are produced by electric charges, and magnetic fields are produced by the flow of electrical current through wires or electrical devices. Because of this, low frequency EMR is found near electrical sources such as power lines. As current moves through a power line, it creates a magnetic field called an electromagnetic field. The strength of the EMF is proportional to the amount of electrical current passing through the power line and decreases as you move farther away. Because of this property, the exposure to an electromagnetic field you would receive from a power line decreases with distance."[4]

Increasing distance, usually in the form of a setback, easement, roadway, parking lot or other design feature that only provides for occasional or temporary exposure to the power line(s) is the primary method of addressing health concerns over EMF and EMR.[5]

Gas

Some communities have access to natural gas in pipes that are underground. Natural gas is provided by one of the utility companies, often in conjunction with electricity, and metered into the individual property. In areas where natural gas is not available, gas may be provided through individual propane tanks that are stored on the property being served, or occasionally on one property that serves several others that are close by. These tanks must be placed carefully as they need to be filled regularly by truck and should be protected from snow accumulation and accidental damage. The tanks can also be considered unsightly by some so screening of some type is usually required. The use of gas in development is regulated by the California Building Code, and in some instances by an agency climate action plan that may have strict regulations regarding the use of natural gas.

Communication Infrastructure

Other utilities include cable television, telephone lines, fiber optic cable delivering broadband internet, and even wireless systems that can transmit within and outside of a development providing service to an area. Most of these are provided underground and included in trenches that are separate from the wet utilities as mixing dry and wet utilities is not permitted by regulation. Like power and water, these utilities are often provided by private companies or districts in collaboration with the community as part of a franchise agreement or other public-private agreement to provide service.

4 https://www.epa.gov/radtown/electric-and-magnetic-fields-power-lines

5 https://www.cpuc.ca.gov/General.aspx?id=2181





The Planning Commissioner Handbook

Chapter 9

Transportation

Institute for Local Government℠

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Government Role in Managing Transportation Systems

Transportation and circulation systems are important to the local economy and quality of life. A capable transportation system helps ensure adequate employment and mobility. The extent to which the planning commission can tackle transportation issues varies among communities. Some communities have transportation commissions that are separate from the planning commission, and most metropolitan areas also have regional transportation authorities that take the lead on regional transportation planning. Nonetheless, it's important for planning commissioners to understand many aspects of the transportation system as they affect community planning.

Transportation planning and governance occurs at many different government levels: federal, state, regional and local. The federal government dictates transportation safety and air quality requirements and provides transportation funding to the lower levels of government. The state, regional and local transportation agencies fund, plan, construct, operate and maintain different transportation infrastructure.[1]

Levels

Federal

The U.S. Department of Transportation (DOT) is the main federal agency that carries out the U.S. Congress's funding directives and transportation policies. The U.S. DOT is made up of nine administrations, each specializing in a particular mode or aspect of transportation, such as highways, transit, railroads, aviation and maritime. The Congestion Mitigation and Air Quality Improvement (CMAQ) Program, managed by U.S. DOT, distributes funding to states for transportation projects that reduce traffic congestion and improve air quality to meet national air quality standards.[2]

State

The California Legislature determines the state's transportation expenditure priorities and establishes the state's revenue resources. The state also distributes certain federal and state funds to regional and local transportation agencies. Some major transportation state agencies include California Department of Transportation (Caltrans), the High-Speed Rail Authority and the California Transportation Commission. The California Transportation Commission approves and oversees transportation projects proposed by Caltrans. Caltrans owns and operates all state-designated highways and has authority to make its own decisions regarding these facilities with only limited local input.

Regional

California has two types of regional transportation planning bodies: 1) Metropolitan Planning Organizations (MPOs) for urbanized areas with a population over 50,000 and 2) Regional Transportation Planning Agencies (RTPAs) which oversee rural areas of the state. MPOs prepare Regional Transportation Plans (RTPs), which prescribe the urbanized area's long-term transportation needs and priorities and specific transportation projects for the federally funded Transportation Improvement Program (TIP). As part of Senate Bill 375, RTPs also include Sustainable Communities Strategies (SCSs), which strive to

1 Legislative Analyst's Office, 2021, August 18, California's Transportation System, https://lao.ca.gov/Publications/Report/3860.
2 U.S. Department of Transportation, 2021, August 18, Federal Programs Directory: CMAQ Improvement Program, https://www.transportation.gov/sustainability/climate/federal-programs-directory-congestion-mitigation-and-air-quality-cmaq.

achieve greenhouse gas emissions reduction targets set by the California Air Resources Board (CARB).[3] SCSs contain strategies to integrate transportation, housing and land use decisions to meet CARB's climate goals. RTPAs perform similar activities as MPOs but for rural areas.

The "self-help counties," which include most of the state's most urbanized counties, have passed county-wide sales tax measures that generate funds for transportation projects. These are typically administered by a specialized body created to oversee these funds, usually referred to as a "transportation authority" or "transportation commission." Funds from these sales tax measures, as well as funds from the state and federal governments, often flow through these regional agencies to local governments.

Congestion Management Agencies (CMAs) coordinate transportation planning, land use and air quality measures through reducing traffic congestion and decreasing reliance on motor vehicle use at a county level.[4] CMAs create and update long-range Countywide Transportation Plans (CTPs), which contain transportation investment priorities for the next 20 to 30 years.

In many of California's regions and subregions, CMA functions are undertaken by MPOs, RTPAs and/or transportation agencies overseeing transportation sales tax funds. Note that some regions have a single entity that handles all transportation planning, while others have several agencies the work together to provide planning. Check with your own agency to understand who is responsible for regional transportation planning and how your jurisdiction is represented.

Local

Local governments, typically at the county and city level, manage and maintain local streets and roads in their jurisdictions. Local transportation policies and objectives are prescribed in the jurisdiction's general plan circulation element and/or active transportation plans such as bicycle, pedestrian, and/or safe routes to school plans.

3 California Air Resources Board, 2021, August 19, What are Sustainable Communities Strategies?, https://ww2.arb.ca.gov/our-work/programs/sustainable-communities-program/what-are-sustainable-communities-strategies

4 ChangeLab Solutions, 2021, August 19, Getting Involved in Transportation Planning, https://www.changelabsolutions.org/sites/default/files/Health_Transport_Factsheet_FINAL_20110713_%28rebrand_20130409%29.pdf.

Transportation Modes

One of the most basic concepts in transportation is that of different “modes,” which refers to the form of transportation, such as cars and trucks (collectively referred to as “vehicles” bikes, walking and transit (which is a collective term that covers buses, rail, ferries and other shared systems). Planners will often refer to a facility that accommodates more than one mode of transportation as “multi-modal.” Since some modes (such as bicycling, walking and transit) generally have lower environmental impacts than others (such as vehicles), encouraging “non-vehicular mode choice” is often a primary goal of transportation planning.

Trip Generation

To plan for future transportation needs there needs to be an estimate of transportation demand. Trip generation is usually based on engineering studies such as produced by the Institute of Traffic Engineers Trip Generation Manual (ITE) that provides a range of trip estimates by land use type. Some regions have prepared their own trip generation estimates so be sure to check with your agency to understand the source of the trip generation estimates. The trip generation figures are often expressed in terms of peak hours which can be different for each project.

Streets, Roads and Vehicular Travel

Street Types

The U.S. Department of Transportation's Federal Highway Administration (FHWA) classifies urban and rural streets by a hierarchy of three functions. Each of the three street types have designated design standards, including allowable lane widths, shoulder widths, curve radii, etc. These street types are:

- **Arterial.** With higher speeds, increased widths and significantly greater vehicle capacity, arterial streets are the largest type of surface street, and typically serve to convey vehicles across communities, as well as to larger, limited-access state or interstate highways. Arterial streets frequently feature widely spaced intersections and relatively few pedestrian crossings. Single-family residential uses are less common along arterial streets, which are instead usually dominated by commercial, office, industrial and multi-family residential land uses.

- **Collector.** Collector streets tend to be moderately-sized, with somewhat higher vehicle speeds and volumes of traffic. As their name would suggest, collector streets collect traffic from local streets and direct it toward larger arterials. Collector streets are most likely to feature a variety of land uses, including single- or multi-family residential, institutional, recreational, or even low-intensity commercial, office or industrial uses.

- **Local.** Local streets tend to be the smallest street type, with narrow widths, low speeds and limited traffic volumes. Such streets are most often flanked by low- to medium-intensity residential uses or, in some cases open space, recreational or institutional land uses, such as parks and schools. Local streets are usually intended as the first leg in vehicle trips originating from homes and as the final leg of the return trip. Though local streets may at times intersect with larger arterial streets, local streets most often interface with collector streets.

Each agency develops their own list of street types that are generally variations of the above that can include both public and private ownership. These standards are usually in the general plan and engineering development standards for the agency.

Vehicle Miles Traveled (VMT)

Under Senate Bill 743, passed in 2013, the most important way that vehicular travel is measured and mitigated is through assessment of vehicle miles traveled (VMT). VMT measures the total amount of driving in a community and provides a holistic lens through which to view the roadway transportation system's impact on the climate, environment, human health and access to economic and social opportunity.[5] Communities and projects that generate relatively low VMT allow people to make short trips and travel by modes of transportation other than cars, such as biking, walking and transit, thereby producing societal benefits such as improving air quality from auto emissions and making more efficient use of the land.

Today, much of planning focuses on creating communities and projects that can minimize VMT. This occurs by approving projects in centralized locations, increasing residential and employment densities, developing projects with a mixture of uses and creating transportation facilities that support non-vehicular modes.

5 Governor's Office of Planning and Research, 2021, August 5, SB 743 Frequently Asked Questions, https://opr.ca.gov/ceqa/updates/sb-743/faq.html.

Roadway Capacity and Congestion

Beyond looking at VMT, you may also discuss roadway and vehicular transportation issues in terms roadway capacity and traffic congestion. Community members often desire to minimize congestion on their streets, and the traffic impact of a new development is often measured in terms of trip generation figures and impact on congestion. A "trip" is a one-way commute between a production point (such as a home) and an attraction location (such as work). For example, the transportation impact of a commercial site might be expressed in terms of the trips to and from the site made by workers, customers, visitors and employees traveling for business and personal reasons. This figure can be further broken down into number of persons driving alone, riding as passenger (ridesharing), using public transit, riding bicycles and walking.

The capacity of a main or ancillary road to absorb additional vehicle trips that would be generated by a project depends on the number of lanes it contains. Mechanisms like left-turn lanes, wide shoulders, signals, stop signs and other traffic management tools also affect road capacity. The general roadway capacity standards are set by each agency.

Traffic Level of Service (LOS) Standards

Traffic engineers can measure the quality of traffic flow in terms of level of service (LOS) standards that considers the capacity of a roadway versus the volume of traffic it is carrying. Other standards are expressed as total vehicle delay or the average "floating car" speed. Measurement of vehicle delay is more focused on accommodating the auto driver, as increased vehicle delay can cause driver discomfort/frustration and extended travel time to a destination. LOS standards are applied to intersection capacity and operating characteristics.

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

LOS standards can be confusing because of the letter system by which they are expressed. School students generally seek to earn only As and Bs, so it can be tempting to assume that only LOS A and B (or perhaps C) are acceptable. In fact, LOS D is quite acceptable in most cases, and LOS E or even F might be acceptable in some parts of a community. As a planning commissioner, you should work with your staff and other commissioners to decide what Level of Service is appropriate in each part of your community.

Table 1. LOS Roadway and Intersection Operation Conditions

LOS	Roadway Operation	Intersection Operation
A	Free flow conditions, minimal traffic volumes given the available approach, stable roadway capacity.	Light to moderate traffic queues, little additional delay.
B	Stable flow conditions, vehicle maneuverability restricted to some extent.	Same as above.
C	Traffic flows smoothly, but vehicle maneuverability is restricted. Ability to recover from momentary conflicts without undue delay.	Moderately heavy traffic on approach, longer but stable queues, moderate but acceptable delay.
D	Traffic generally flows smoothly; however, occasional momentary congestion occurs.	Heavy traffic on approach, long unstable queues, some excessive delays.

LOS	Roadway Operation	Intersection Operation
E	Traffic flows under congested conditions; the maximum volume that the road can handle.	Heavily congested traffic conditions, excessive delays.
F	Traffic flows sporadically; stop and go conditions usually due to upstream bottleneck.	Demand exceeds capacity.

While LOS can be an effective method of sizing roadways, its ineffective in measuring actual efficiency because it only looks at vehicles and not occupancy of the vehicles. This means that a car with three people in it is treated the same as a car with a single occupant resulting in a larger roadway than might otherwise be necessary. Roadways, and especially their maintenance, are expensive. By reducing the need to widen roadways communities can save money, use their existing resources more efficiently, and encourage people to use other modes of transportation.

Complete Streets

Transportation policies often focus on the automobile, but planning commissioners also need to consider public transit, rail, bicycles and walking as important to the mobility mix. In 2008, the Complete Streets Act (AB 1358), was signed into law, which required government agencies to include "complete streets" concepts that address the safety and mobility of all users when updating the circulation element of their General Plans. Complete streets relate to the creation of a multi-modal road and transportation system that supports a variety of transportation types for the benefit of all road and transportation system users, which includes bicyclists, pedestrians, transit riders, motorists, movers of commercial goods, children, people with disabilities and seniors.

In response, many communities have adopted complete streets policies, which require the integration of complete streets design into transportation projects. Complete streets improvements include sidewalks, bike lanes, pedestrian crossings and signals, narrower travel lanes, dedicated bus lanes, bus islands and shelters and more. Local governments also create and adopt complete streets Plans that contain policies, recommendations and designs for these types of improvements, typically for a transportation corridor within the jurisdiction.

Traffic Calming

The objective of traffic calming measures is to reduce the speed of automobile travel to provide a safer and more pleasant environment for pedestrians and bicyclists. Traffic calming improvements change the roadway such that most drivers naturally slow down. Some examples of traffic calming measures are:

- Vertical deflections like speed humps, speed tables and raised intersections
- Horizontal diversions like chicanes and curb extensions
- Roadway narrowing where there is a reduction in the width or number of vehicular lanes to provide space for other improvements like bike lanes or parking[6]

6 U.S. Department of Transportation, 2021, August 5, Traffic Calming to Slow Vehicle Speeds, https://www.transportation.gov/mission/health/Traffic-Calming-to-Slow-Vehicle-Speeds.

Freight

Planning commissioners should balance the importance of freight (e.g., delivery trucks) to the local and regional economy with freight's negative externalities that can impact communities.[7] These negative externalities include noise, congestion and air pollution. Freight planning should consider whether existing or future truck routes pass through residential, pedestrian-heavy commercial and environmentally sensitive areas. For example, it may not be beneficial for a truck route to be located along a vibrant, slow-moving retail corridor with heavy pedestrian traffic. Planning for freight in commercial or industrial areas should accommodate for curbside deliveries through designated loading areas so that trucks do not block other traffic on the roadway.

7 American Planning Association, 2021, August 4, APA Policy Guide on Freight. https://www.planning.org/policy/guides/adopted/freight/.

Parking

The need for parking is one of the most pronounced effects of our society's reliance on the automobile as our primary mode of transportation. Not only do we need places to drive our cars, we also need places to park them. The land dedicated to parking can take up a large percentage of a development area, thereby reducing land available for buildings, open space and other amenities. To the extent that we can lessen reliance on the automobile and provide for mixed use developments that are in use for most of the day and night, we also lessen the need for parking, thereby increasing the land supply available for other uses. Moreover, parking can be very expensive, so lessening parking demand can save money.

Parking facilities—and the policies that direct their development—have a significant bearing on the accessibility and the attractiveness of an area. The amount, location and pricing of parking influences both business development and individual transportation decisions. Since parking is an essential element of an automobile trip, parking programs can either improve or impede automobile accessibility, ridesharing participation and transit usage. It's important to provide adequate parking to serve the uses in the area, but not so much that the abundance of parking discourages use of other transportation methods.

On-street Parking and Curb Management

On our public streets, curbside lanes are traditionally used for on-street parking, which can be regulated or unregulated. Parking regulations can require parking time limits and/or payment via the use of meters, pay boxes or parking permits.

Increasingly, curbside lanes are also being used for other uses, such as drop-off and loading of ride-hailing users and goods, transit, bike share, parklets and green infrastructure. As competition between public and private interests increases, it is important for local agencies to encourage curb management practices that balance the needs of pedestrians, cyclists, transit, cars, local businesses and the environment. Emerging technologies in transportation and the increase of e-commerce delivery trucks are already changing how curbs are used. Ride-hailing services, bike share stations and autonomous vehicles can compete with parking and transit uses if not designed or priced correctly. In response, some jurisdictions are experimenting with "flex zones" or "flexible curbs," which allow for different types of uses to be located in place of on-street vehicle parking, in some cases only at designated times.

Off-street Parking and Parking Standards

Local governments generally regulate off-street parking through regulations that govern the number of parking spaces required for each type of development, based on the concept of "parking demand," which is a function of the number of automobiles that will be attracted to a site and the length of time they remain there during the day. Factors like parking fees, quality of available transit and general parking availability will influence the overall parking demand associated with a given use.

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

Large minimum parking requirements and freely available parking encourage automobile travel. For this reason, many communities have recently lowered their minimum parking requirements for specific uses. Some communities have also undertaken other efforts to lessen the need for (and the social and environmental impacts of) off-street parking. These

include:

- Eliminating minimum parking requirements, allowing individual developers to provide parking as they see fit.
- Adding maximum parking requirements, which prohibit developers from providing excessive parking and thereby potentially inducing people to drive.
- Decoupling or delinking parking from building projects. In these situations, “free parking” cannot be tied to a project. Instead, users must pay for parking separately from the buildings that they own or rent, which creates a financial incentive for people to find other modes of transportation other than driving.

Planning commissioners should consider the zoning code’s minimum and maximum parking standards specific to a project, which includes the project’s use, density and zoning district. Where feasible, especially in dense areas of development and near transit, planning commissioners should aim to adopt as low of a parking standard as possible to promote the use of other travel modes such as walking, biking and riding transit, and minimize the amount of space on the project site dedicated to parking.

Transportation Demand Management (TDM)

Your community's planning documents may include goals that encourage transportation demand management (TDM) solutions for planning and development issues. Managing transportation demand is about providing travelers, regardless of whether they drive alone, with travel choices, such as work location, route, time of travel and mode. In the broadest sense, demand management is defined as providing travelers with effective choices to improve travel reliability. Implementation of one or more TDM measures can be a condition of development approval for new development projects. Typical examples of TDM measures are listed below.

Table 2. Transportation Demand Management Strategies

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

Transit

Planning commissioners should be aware of the various types of transit and how these transit networks integrate with the built environment. The most common types of mass transit are:

- **Bus.** Public buses are an integral part of local and regional transit networks as they provide connecting trips for residents on the ground to various community destinations. Bus planning includes consideration of bus routes, frequency and reliability. It is also important to ensure that bus amenities such as benches, bus shelters and bike parking are provided at transit hubs and near high density residential areas.
- **Bus rapid transit.** Bus rapid transit (BRT) is a busway system that is designed to provide higher capacity and faster service than the traditional busway system. This is usually achieved by providing higher frequency of buses, larger/longer buses and/or bus-only lanes.
- **Light rail.** Light rail includes lighter weight vehicles, like trams, often traveling at grade levels. They require less infrastructure than heavy rail systems, and often include overhead lines to power the light rail vehicle.
- **Heavy rail.** Heavy rail can include subways, railroad trains and overhead trains. These transit systems require larger infrastructure and right-of-way for its tracks.
- **Ferry.** Ferry systems carry its passengers via a boat across a body of water, like a bay.

Transit Oriented Design

When reviewing development projects located near mass transit, typically called transit oriented development (TOD), you should ensure that the densities for these projects are high enough to support transit ridership. Zoning codes, overlay zones and specific plans typically establish minimum unit density, building types or sizes and/or floor area ratio (FAR). These standards help developers determine the appropriate building size, unit mix and other design features when designing their TOD projects.[8] Establishing minimum densities (and eliminating maximum densities) allow for clustering of uses to create the needed critical mass for a thriving transit hub.

The table below shows the residential densities needed to support different forms of transit for various TOD settings.

Table 3. Transit-Supportive Residential Densities[9]

Transit Type	TOD Settings		
	Urban Downtown (minimum du/acre)	Urban Neighborhood (minimum du/acre)	Suburban Town Center / Commuter Town (minimum du/acre)
Bus	50	25	15
Rail	75	40	30

8 Metro, 2021, August 5, Minimum Densities, https://www.metro.net/projects/tod-toolkit/minimum-densities/.

9 Metropolitan Council, 2021, August 30, Land Use Densities: Rules of Thumb, https://metrocouncil.org/Communities/Services/Livable-Communities-Grants/Transit-Oriented-Development/TOD/Metropolitan-Council-TOD-Guide-Land-Use-Densities.aspx.

The fact that certain minimum densities are needed to support transit also explains why not all existing neighborhoods have extensive transit systems. As shown in the table, the densities in most single-family and rural areas are nowhere near high enough to support even local bus service. As a planning commissioner, it may be important to be able to explain to constituents in lower density areas why convenient transit service cannot easily be made available to them.

Active Transportation

Active transportation, also called non-motorized transportation, is a means of getting around by human energy, generally by walking or biking. Communities sometimes prioritize facilities to support active transportation over those that support automobiles to promote healthier lifestyles for residents and a healthier environment by reducing traffic congestion and greenhouse gas emissions. This can be accomplished by the creation of an active transportation plan and/or a pedestrian and bicycle plan, containing a comprehensive set of strategies to provide more and safer options for biking and walking. These plans often describe the existing conditions for biking and walking, and propose recommendations related to infrastructure, programs and policies.

Pedestrian Facilities

Pedestrian facilities provide comfortable and safe infrastructure for both people who walk and those with disabilities such as people in wheelchairs or have hearing/visual impairments. Pedestrian facilities should be highly visible to nearby motorists and bicyclists and provide adequate space for movement. Pedestrian improvements include:

- **Sidewalks** are provided adjacent to curbs and can be buffered from the roadway with street trees, landscaping, bike racks or other uses. Areas with high pedestrian traffic should provide wider sidewalks to allow for comfortable pedestrian movement and pedestrian amenities like benches, outdoor dining, planters and lighting. A jurisdiction's sidewalk network should avoid any gaps or missing sidewalks and be maintained to repair uneven paving and cracks.
- **Pedestrian crossings** are markings on the ground that provide pedestrians a designated area to cross a roadway and increase visibility for motorists. High visibility crossings have special treatments such as distinct patterns, colored paint or decorative paving. Crossings are located at both intersections and midblock. Midblock crossings can include midblock pedestrian refuge islands, which provide a place to safely wait when crossing multiple lanes of traffic. Crossings can also be in the form of pedestrian overpasses or bridges which provide a separated crossing over a roadway.
- **Pedestrian signals** and lights alert motorists to crossing pedestrians. These signals are located at traffic intersections and midblock. Midblock crossing signals include rapid flashing beacons (RFB) and high intensity activated crosswalk (HAWK) beacons, which flash lights to alert motorists to yield or stop for pedestrians to cross the street.
- **Curb ramps** provide pedestrians access between the sidewalk and street, specifically for people with disabilities such as people who use wheelchairs. It is common for yellow truncated domes to be installed at curb ramps, especially in high traffic areas, to aid people who are visually impaired to sense the beginning or end of a sidewalk.

Bike Facilities

Bicycle facilities are categorized by four classes, which vary in treatment and location relative to a roadway. They offer different levels of separation and protection between bicyclists and motorists. The four classes are typically designated as different colors on bikeway maps and include:

- **Class I facilities** are separated bicycle and pedestrian paths that are not part of a roadway. These facilities are often called trails and are shared by both bicycle and pedestrian traffic. They can be paved with asphalt or be made up of dirt.
- **Class II facilities** are bike lanes painted on a street adjacent to vehicular lanes. To add further protection, these facilities can include a painted buffer and a physical element like flexible posts, planters or bollards to provide a barrier between

bicyclists and vehicle traffic.

- **Class III facilities** or “bike routes” are shared with motor traffic and use signage and/or “sharrow” markings applied to road surface to alert motorists. These bikeways are typically designated on low-volume streets or streets that have limited right-of-way to create a separate bike lane.
- **Class IV facilities**, also known as cycle tracks, are bikeways for the exclusive use of bicycles and includes a separation required between the separated bikeway and the through vehicular traffic. The separation may include, but is not limited to, grade separation, flexible posts, inflexible physical barriers or on-street parking. Class IV facilities can be designed for one-way or two-way bike traffic.

Safe Routes to School

Safe Routes to School (SR2S) is a national program that strives to increase the number of children walking and biking to school through education and incentive programs and infrastructure improvements. SR2S programs and plans can be implemented by various agencies, including local government, school districts and even a school.

Balancing Transportation with Other Issues

Transportation planning is an integral piece to urban development and therefore impacts decisions made about other important issues for planning, including land use, equity, housing provision and economic development. Planning commissioners should always consider how transportation is being planned for when considering other issues, with the goal of providing various sustainable and equitable transportation options.

Land Use

Land use policies are closely related to transportation choice, which influences urban development. For example, policies that encourage infill and mixed-use development over dispersed single-family units often increase reliance on alternative transportation choices, which lowers automobile vehicle miles traveled (VMT), reduces congestion and improves air quality. When evaluating land development projects, you should consider whether these projects promote walkability and smart growth and provide robust transportation amenities. People are more likely to walk, bike or take transit when housing, jobs, retail, parks and other community uses are clustered and located near transit hubs. This also impacts the decision for private car ownership and can decrease the demand for parking.

Housing Affordability

High housing costs, especially for housing near transit, can often force people to live far from work, significantly increasing commute times and costs.[10] Longer commute times can increase greenhouse gas emissions due to more vehicle emissions and decrease productivity. Planning commissioners should work to ensure that affordable housing options are provided near transit and other major transportation access points.

Equity

To increase equity in transportation, transportation should be safe, affordable and accessible to high-need communities, including those of low incomes, seniors, people with disabilities, people of color and others who may not own a private vehicle or have access to public transportation. By providing quality pedestrian, bike and transit amenities in high-need communities, residents can decrease their reliance on a vehicle ownership and use these amenities to travel to work, school and other uses.

Economic Development

Investment in transportation infrastructure can stimulate the economy and increase productivity by creating jobs to not only build the infrastructure, but also connect and move people to office and retail, providing opportunities for employment and spending.

10 California Department of Housing and Community Development, 2021, August 4, Housing and Transportation Costs, https://www.hcd.ca.gov/policy-research/specific-policy-areas/housing-transportation.shtml.

The Future

Transportation systems are evolving, creating more alternatives for travel using single-occupancy automobiles, and thereby increasing capacity, lessening parking demand and minimizing impacts from transportation systems. As a planning commissioner, you might want to consider how these new technologies can be included in your community.

Shared Vehicles / TNCs

Transportation network companies (TNCs) such as Uber and Lyft provide a platform by which multiple individuals can ride in the same automobile, either individually (with one private trip following another) or in a shared format. These services can provide benefits, such as decreasing the demand for car ownership, lessening the need for parking and helping to solve the "last mile" problem of how to get people from a transit stop to their ultimate destinations. However, TNCs can also create impacts within the urban environment, such as increased congestion, particularly if the TNC service is being overly used for single passenger occupancy use rather than ridesharing.

Micromobility

Micromobility refers to lightweight, personal transportation vehicles such as bicycles, e-bikes, and e-scooters that can be publicly accessed on demand. Micromobility vehicles also help complete "first and last mile" trips for transit as their parking areas are typically strategically located near transit hubs. Typically, these vehicles are ridden in bike lanes and have designated docking or parking areas on public sidewalks. Some micromobility services do not have designated parking areas and can create a nuisance and/or hinder public use of the sidewalk.

Autonomous Vehicles

Autonomous vehicles move autonomously, either without a driver or with minimal intervention from a driver, by sensing their surrounding environment with technologies such as cameras, radars and Lidar. Autonomous vehicles include autonomous shuttles, which can provide higher capacity "first and last mile" transportation between mass transit hubs and uses such as office complexes, commercial centers, airports, schools and hospitals. Although there are relatively few examples of working autonomous vehicle systems as of this writing in the early 2020s, it is likely that we will see more and more AV technology in the near future.

Electric Vehicles

Electric vehicles are gaining more acceptance and availability. While they can reduce greenhouse gas emissions and of course may not have traditional emissions from internal combustion engines, there is still a need to plan for an overall reduction in VMT. While electric vehicles reduce emissions, they still take up physical space on roadways and need parking just like other vehicles.





The Planning Commissioner Handbook

Chapter 10

Public Participation in Land Use Planning

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The Importance of Public Participation

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

Public engagement can help you achieve:

- Better identification of the public's values, ideas and recommendations
- More community buy-in and support for land use planning related activities
- Improved decision making and better outcomes
- Residents more informed about current planning issues and concerns
- Faster project implementation with less need to revisit
- More trust between local leadership and the community
- Better understanding of the broader vision of the community

Local governments must be intentional about level of engagement they are looking for (what feedback they are seeking, what will be done with the feedback and how they will report back to the community). Because of this, community engagement processes should be transparent. Whenever the community is asked to participate in a process, they should be informed of how their input will be considered. Public participation falls on a spectrum from simply keeping the public informed to empowering community members through engagement. In your role as a planning commissioner, you can work with your jurisdiction's staff to make sure that the appropriate level of engagement is used and that the engagement process is designed to be inclusive of all sectors of your community. You should be aware of the scope of engagement and who was included in the engagement process. Do you have input from the entire community?

There are many terms that describe the involvement of the public in civic and political life. This is important because understanding how they differ will help local agencies find the best approach (or approaches) to support land use and housing planning. It will also help you as a commissioner understand how extensive the engagement was and who is represented as you make decisions.

Types of Engagement

- **Civic Engagement:** This includes the many ways that residents involve themselves in the civic and political life of their community. Activities like volunteering as a local Little League coach, attending neighborhood or community-wide meetings, helping to build a community playground– and much more fall into this category.
- **Public Engagement:** This is a general term for a range of methods through which members of the public become more informed about and/or influence public decisions.

"Authentic" public engagement is inclusive, deliberate, dialogue-based and culturally competent. When authentic public engagement occurs, local government leadership better understands where the public stands and gives residents the opportunity to contribute to solutions through their input, ideas and actions. Culturally competent engagement shows respect and awareness of different cultural traditions, communication styles, norms, preferences and viewpoints and creates

opportunities for all sectors of the community to feel comfortable engaging.

Ways to Engage the Public

- **Public Information/Outreach:** One-way local government communication to residents to inform them about a public problem, issue or policy matter.
- **Public Consultation:** Instances where local officials ask for the individual views or recommendations of residents about public actions and decisions, but where there is generally little or no discussion to add additional knowledge and insight and promote an exchange of viewpoints.
- **Public Participation/Deliberation:** Processes through which participants receive new information on the topic at hand and through discussion and deliberation jointly prioritize or agree on ideas and/or recommendations intended to inform the decisions of local officials.
- **Sustained Public Problem Solving:** This engagement typically takes place through the work of place-based committees or task forces, often with multi-sector membership, that over an extended period address public problems through collaborative planning, implementation, monitoring and/or assessment.

The Role of the Planning Commissioner in Engagement Activities

While most public engagement efforts are implemented by local government staff, elected and appointed officials play an important role in the process. Planning commissioners can:

- Identify decisions that will benefit from public engagement
- Respect and support governance models that include members of the public in decision-making
- Promote and encourage public participation in engagement opportunities
- When appropriate, attend and observe public engagement activities
- Review and consider public input as part of the decision-making process
- Support efforts to build staff competency in public engagement techniques

The American Planning Association's Ethical Principles in Planning requires that planning process participants should:

1. Recognize the rights of residents to participate in planning decisions;
2. Strive to give residents (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment; and
7. Pay special attention to the interrelatedness of decisions and the long-range consequences of present actions.

Public Engagement Requirements Under State Law

The Brown Act sets a minimum participation requirement in public meetings. In recent years, the state legislature has increased the requirements for public participation for general plan and housing element updates. SB 1000[1] now requires cities and counties with disadvantaged communities to incorporate environmental justice (EJ) policies into their general plans. All jurisdictions are required to identify lower-income communities that are disproportionately affected by pollution and other environmental justice issues. Once these communities have been identified, jurisdictions are now required to create goals, policies, and objectives to address a minimum of seven EJ-related issues – one of which is "civil" engagement ("community engagement"). In addition, local governments are also required to "make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element."[2] It is important to understand these legal and minimum engagement requirements to ensure the success of general plan updates, housing element updates and other planning and development activities.

Government Code 65583(c)(7) requires: "The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort." This can take a variety of forms including conducting outreach in many formats including a mix of in person and virtual activities, partnering with community-based organizations and considering language access and ADA accessibility requirements.

In addition to being required in certain circumstances, community engagement efforts can contribute to improving local housing policy and the planning processes by:

- Helping communities develop an informed understanding of laws, regulations and growth implications.
- Maximizing opportunities for residents to contribute to public debate.
- Informing the development and implementation of local land use planning projects.
- Encouraging social innovation and skill sharing.
- Broadening and deepening input into government policymaking processes.
- Strengthening public support for affordable housing.
- Empowering the community to meaningfully weigh in on planning decisions.
- Generating solutions that have not been thought of yet.

1 Chapter 587, Statutes of 2016

2 Government Code 65583(c)(7)

Removing Barriers to Participation

When designing an inclusive and equitable engagement process, it is important to anticipate barriers to participation and remove them in advance. There are several things that may limit an individual's ability or desire to participate. The complexity of government can be overwhelming, particularly for those who have historically been shut out of decision-making processes. In your role as a planning commissioner representing the public, you should strive to make participation as inclusive as possible.

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

Consider the following factors to design an inclusive public participation process:

- **Opportunities for Meaningful Participation.** Whatever the format, a public meeting must provide meaningful avenues for communication. When people feel that their comments make a difference, they are more likely to take the time to attend meetings and share their ideas. It is also important to manage the expectations of the community. Clarify where you are in the engagement and development processes - what feedback/input you are seeking, what will be done with the feedback, the next steps in the process and additional opportunities to engage. Asking for feedback that can, or will, not be used may not only discourage community members from participating in future engagement efforts, but could break the trust of your community which is very hard to regain.

- **Effective Outreach Strategies.** Outreach efforts can help in getting more people to attend meetings. Take a look at your community and figure out how people are getting their information. Are notices posted where they are likely to be read? Are they published in languages other than English? What other opportunities are there to reach a broader audience? Are you considering a broad range of outreach methods including digital platforms?

- **Background Information.** Many people are unfamiliar with the structure and functions of local government. Information sheets—for example, about how the local agency works, where revenues come from, or the nature of the decision in question—can help people provide meaningful comments. They can also help people understand the unique problems faced by local government. In particular, housing and land use decisions can be very technical and challenging for your community to understand. Participants who do not understand the content or how to engage may not ask questions and will leave the meeting frustrated, be discouraged from engaging in future meetings or efforts or just oppose the project/plan. Avoid using overly technical language and acronyms where possible.

- **Meeting Times and Locations.** Planning commission meetings are usually scheduled in the evenings. In some cases, they can run late into the night, making it prohibitive for parents and shift workers to attend. Rescheduling occasional meetings to weekdays or weekends may attract a wider range of participants. Also consider locations that are accessible and inviting to your residents including venues outside of city hall or your county administration building. You may have greater participation by hosting meetings in trusted neighborhood locations such as a local church or school, or by including an option for virtual participation during an in-person meeting. Is the location accessible by transit, biking or walking? Is it a place that your residents will feel comfortable? Can you provide food or short-term childcare for participants?

- **Language Access and Literacy.** It is important to consider options to reach and engage residents with limited English-proficiency, immigrant communities, or people with lower educational attainment. Before a public meeting or workshop, consider translating flyers, handouts and other materials. Engage with ethnic media outlets and community-based organizations to promote engagement opportunities and design materials that accommodate different literacy levels.

At public meetings/workshops you can consider providing simultaneous or consecutive interpretation services and/or hosting small group discussions (or full workshops) in the major languages spoken in the community. Consider asking community leaders and community based organization to send out invitations. The processes can be intimidating for native English speakers; and even more so for non-English speakers. Non-English speakers may be more likely to participate if someone they know and trust asks them to.

- **Accessibility.** Ensure your public meetings comply with the Americans with Disabilities (ADA) Act. Some considerations include ensuring that meeting locations are accessible to those with wheelchairs, canes or scooters; providing interpretive services for deaf and hard of hearing individuals; space to accommodate service animals; meeting materials in alternate formats (large print, audio files, etc.) if requested; and requiring presenters to submit materials in advance so they may be shared with individuals who are vision impaired. For virtual public meetings, consider providing accessibility options such as live captioning and transcripts for recorded sessions. Consider accessibility for website and written resources as well.

- **Technology.** People do not necessarily have to be present at a meeting to make a meaningful contribution. Taking written comments or soliciting input via e-mail, social media and other online platforms can broaden the scope of comments that are received. In the wake of the COVID pandemic, many community members have become accustomed to the flexibility of engaging on virtual platforms. Consider continuing to offer virtual engagement opportunities by streaming meetings, using comprehensive virtual engagement platforms, conducting electronic surveys and posting recordings and transcripts afterward.

- **Efficient Meetings.** Well-run meetings will influence overall effectiveness. People are more willing to participate in meetings that start on time and stay focused on the issues at hand.

Updated Reports Create Challenges for the Public

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

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

Going Further: Simple Public Engagement Ideas

State law sets a minimum participation requirement. Many local agencies go much further. For many people, local government is a mysterious process with which they are only vaguely familiar. This lack of understanding forms a barrier to their participation. Improving the flow of information can help to improve the public's trust and confidence in local government.

Some ideas include:

- **Getting Information to the Public.** Enhance the readability of public documents. Aim for an eighth-grade reading level. Publish an electronic or paper newsletter that provides brief updates on major plans and projects. Organize a speakers bureau—a list of planners, local officials and other well-informed persons—willing to speak before service groups, clubs and classes. Use the city or county website to make information readily available to the public and to permit applicants. Avoid using jargon and acronyms whenever possible.

- **Getting Information from the Public.** Periodically survey a cross-section of the community about critical issues and challenges. Place "passive surveys" in the planning department, public libraries, city hall, the county administration building, and shopping malls. Such surveys must be brief. Because the respondents are not selected randomly, the results will not be statistically accurate. However, surveys often provide useful information and suggestions that will help the local agency be sensitive to community concerns.

- **Know Your Community.** Have a basic understanding of who lives in your community. Understanding the breakdown of age, ethnicity, income, language spoken at home, renter vs. homeowner, etc. can help you better identify who you should be engaging and inform how you engage them.

- **Encouraging Participation around Specific Projects.** Encourage developers and permit applicants to bring their proposals to neighborhood groups early in the application process. This enables them to respond to resident concerns early, before making significant investments in plans and permits. Publicize and maintain a website or a phone number to deal with issues likely to generate a great deal of public comment or inquiry. Encourage project developers to build trust early and sustain it throughout the duration of the project.

- **Using Media to Spread the Word.**

    - **Earned media**, also called free media, is publicity gained through editorial influence, e.g. newspaper articles or newsletters. Reach out to the community, talk to people one-on-one and to groups at their meetings. Encourage word of mouth amongst residents. Speak to leaders from a wide range of groups (such as school, business, faith based, advisory boards, task forces, health and neighborhood) to expand awareness and raise visibility..

    - **Ethnic media** is produced by and for culturally diverse populations, immigrants, racial, ethnic and linguistic groups. Identify which groups of community members you hope will attend based on demographics and/or who could be affected by the housing plan. Translate outreach materials as needed and share with appropriate community groups.

    - **Owned media** is communication channels that are within one's control, such as websites, blogs, or email. Send relevant information out in a timely manner via e-blasts, press releases, blog posts, etc.

    - **Social media** is websites and applications that enable users to create and share content or participate in social networking. Announce the housing planning meeting and invite people using pages/accounts in online social networks (e.g., Twitter, Facebook, Instagram).

Going Further: More Extensive Public Engagement Strategies

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

- **Visioning Exercises.** Visioning or goal-setting exercises can be used to guide the preparation of a general plan, specific plan, or zoning ordinance. Participants, ideally representing a cross-section of community interests, are asked to develop desirable characteristics for the future development of the community. In a typical visioning process, meetings may occur monthly and occasionally weekly for several months. Trained facilitators often guide discussions and participants are divided into committees and subcommittees to pursue solutions to specific issues. At the end of the process the group usually develops a set of guiding principles that serve as a vision statement, which then can be incorporated into the general plan or other policy documents.

- **Small-Area Planning Committees.** A small-area planning committee may be useful in building consensus around plans for specific neighborhoods, business districts, historic districts and transportation corridors. Committee members—who may include area residents and business owners along with representatives of local groups—are asked to develop goals to improve their local neighborhood. Usually, the goals such a committee develops will be more specific than those that come out of a broad, community-wide visioning exercise. Precise development ideas and even detailed designs may emerge from a small-area planning committee. Because such committees are focused on a defined geographical area, residents tend to be more engaged because they see the process as directly affecting their neighborhood.

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

- **Stakeholder Groups & Advisory Committees.** Stakeholder Groups are used as a means for an agency to connect with the formal and informal leaders, partner organizations and community members through informational and discovery interviews or small group consultations. Interviews are excellent tools to better understand underlying issues or concerns and can be an effective means to engage people who may be advocates or adversaries. Stakeholder groups are an excellent source of technical expertise and can provide a necessary reality check to ensure a proposal does not produce unintended consequences for a particular group of people or organization in the community (see "Listening Sessions" in the next section). An alternative to a stakeholder process, which usually addresses a single issue, is to form an ongoing advisory committee. Advisory committees are generally appointed members of the community and provide valuable perspectives on new issues as they arise and interpretations of the public's perception of those issues. Advisory committees typically have a specified charge (what they are formed to do) and meet for a specified duration (either a specific number of meetings or until a particular decision has been made). Advisory committees create a space for deliberation of options and solutions by members who then make recommendations to the staff, planning commission,

city council or board of supervisors.

- **Listening Sessions.** Conduct small group meetings with stakeholders to uncover issues and opportunities. Thought provoking, open-ended questions allow for in-depth exploration of a variety of areas that may not arise in a larger venue.
- **Meeting the Community Where They Are.** Identify alternative ways to reach stakeholders and community members beyond meetings. Connecting with an existing event or activity can be useful, especially to share information and ask for further engagement. This can mean going to a farmer's market, holiday event, health fair, school, church event or setting up shop at a local café or brewery.
- **Surveys.** Conducting online and paper surveys can solicit information from those who may not engage in in-person activities. Surveys can ask residents to prioritize community needs, select locations for projects, solicit personal experiences or take the community's temperature on new development or projects. Consider asking demographic questions to determine if the survey respondents are representative of your community as a whole.
- **Mapping Exercises.** These exercises allow residents to identify community assets, needs and opportunities on a large photo aerial map of the community or a virtual map. Participants can be encouraged to use sticky dots, markers or other similar items to identify key areas or preferences.

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





The Planning Commissioner Handbook

Chapter 11

Fiscal Issues

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The Fiscal-Planning Link

Land use planning is fundamentally linked to the cost of providing public services and infrastructure. Take, for example, a general plan goal to develop a network of greenways and bike paths. Reaching this goal typically involves adding open space dedication requirements as conditions of approval for tentative map applications or negotiating for such space in development agreements.

While a network of greenways and bike paths is an admirable goal for the land use planner, the financial analyst will ask how will the paths and greenways be managed? Who will pay for construction? How will they be policed? Where will funding for lighting, landscaping, restrooms and other facilities come from? How frequently will the paths need to be maintained?

It is not the job of a planning commissioner to conduct a detailed financial analysis of each project. Staff will often highlight these issues in the staff report. However, the relationship between local fiscal needs and overall land use planning goals is part of the decision-making calculus. If you weigh fiscal goals too heavily, for example, you risk sacrificing other worthwhile goals, like air and water quality, affordable housing and transportation mobility.



Overview of the State-Local Fiscal System

Successful local governance is closely tied to rational local finances and financial management. Unfortunately, since the adoption of Proposition 13 in 1978, California's fiscal system has limited local agencies' control over their finances. Proposition 13 replaced local agencies' authority to raise local property taxes with a countywide one percent rate. Later, Propositions 62 and 218 further limited local authority to impose other taxes and certain types of fees. While these measures have reduced the tax burden on homeowners, they also have made it difficult for local agencies to generate sufficient revenues to cover the cost of services.

Proposition 13 also had an unexpected (at least from the perspective of local agencies) side effect: it put the state in greater control of how local property taxes are distributed among cities, counties, special districts and schools. The result has been that state government has redistributed property taxes to meet its own needs at critical times. For example, when the state faced a severe budget deficit in 1992, it met its legal obligation to fund schools by diverting specified amounts of local property taxes into an "educational revenue augmentation fund" (ERAF) in each county.[1] In other words, the state shifted the property tax distribution to balance its own budget. Although intended as a temporary emergency measure to reduce the state's burden for funding public schools, as of 2021, the tax shift remains in effect.

The problem for local agencies is that housing generally does not generate enough property tax revenue to cover the cost of the services it requires. This is due to the limitation on both the property tax rate and changes in assessed value. Moreover, greater proportions of local budgets are increasingly composed of restricted revenues that are earmarked for specific purposes by the state or local voters. Discretionary revenue—the primary source of funds for police, fire, parks and libraries (among other services)—is harder to come by, making it difficult for local agencies to make adjustments to their budgets as circumstances change.

Currently, about two-thirds of revenues in most jurisdictions are restricted to specific purposes. For example, service charges (like water and garbage charges) pay for a particular service. Similarly, some departments like community development are enterprise organizations and derive most, if not all, of their funding from planning fees collected. Local taxes (property, sales and use, utility user and others) comprise most of the remaining unrestricted "general revenues" that may be used for local priorities or new programs.[2]

The result of these trends is that local agencies often do not receive sufficient revenue to meet service demands. To compensate, some local agencies have adopted development strategies that focus on attracting sales tax generators—like large retail establishments and auto malls—to increase their discretionary revenues.[3] Many observers believe that dependence on sales taxes creates an incentive for local agencies to favor retail development over housing and other land use choices. The argument is that this "fiscalization" of land use decisions forces some agencies to put revenue generation ahead of other community and regional priorities.[4]

As important as sales tax has become, its long-term importance is in doubt. Economists predict a gradual loss of sales tax revenue resulting from the transition of consumption patterns from goods to services and growth in untaxed catalog and internet sales.[5]

1 Proposition 98, adopted by the voters in 1988, requires an amount equal to a specified percentage of the state's general fund be transferred to K-12 schools.

2 Paul G. Lewis & J. Fred Silva, Growth Challenges and Local Government Finance: A Primer for the Sacramento Valley, (September 2001) (available at www.ppic.org), at 5; Michael Coleman, A Primer on California City Finance, (November 2002), at 6.

3 Michael Coleman, City Budget Impacts of Land Development: The Roots of Fiscalization, (December 2002) (available at www.californiacityfinance.com).

4 Lewis & Silva, at 8.

5 Donald Bruce & William F. Fox, Sales and Local Tax Revenue Losses from E-Commerce: Updated Estimates, (September 2001) (see www.statestudies.org); Paul G. Lewis and Elisa Barbour, California Cities and the Local Sales Tax, (July 1999), at 21 (available online at www.ppic.org/content/pubs/R_799PLR.pdf).

Propositions That Limit Local Fiscal Options

Since the late 1970s, a series of statewide initiatives have steadily eroded local control over tax and fee revenue, including:

- **Proposition 13.** Proposition 13 limits the maximum amount of any tax that is based on the value of real property. It also requires two-thirds voter approval for special taxes.[6]
- **Proposition 62.** Proposition 62 requires majority voter approval for general taxes.[7] It also prohibits local transaction taxes or sales taxes on the sale of real property within a city, county or district.[8] Local agencies may collect property transfer taxes.
- **Proposition 218.** Passed in 1996, Proposition 218 moved the majority voter approval requirement for general taxes to the state constitution. It also made other changes in the law relating to taxes and property-related fees and assessments.[9]

6 See Cal. Const. art. XIIIA, §§ 1(a) and 4.

7 See Cal. Gov't Code §§ 53720 and following.

8 See Cal. Gov't Code § 53725.

9 See Cal. Const. arts. XIIIC and XIIIB.

State-Controlled Revenues

A large portion of most local agency budgets is derived from four taxes that are collected at the state or county level and distributed to local agencies according to state-legislated formulas:

- **Property Tax.** The property tax is an ad valorem (value-based) tax imposed on real (and tangible personal) property. The tax is capped at 1 percent of the property's assessed value during the 1975-76 baseline year and may not be raised by more than 2 percent per year. Property can be reassessed when it is sold or when improvements are made. The revenues are collected by counties and allocated among cities, counties, school districts and special districts. The tax is allocated based upon the taxing agency's tax rate prior to the adoption of Proposition 13. Redevelopment agencies receive a large part of the incremental growth in the property tax within redevelopment areas.[10]

  State law that governs the annexation of property requires an agreement between a city and county regarding the disposition of property taxes generated by the affected properties. Although this agreement may be reached on a project-by-project basis, in many instances cities and counties enter into "master tax sharing agreements" in order to streamline annexation proceedings.

- **Sales and Use Tax.** The sales tax is imposed on retailers for the privilege of selling tangible personal property in California. The use tax is like the sales tax except that it is imposed on the user of a product purchased out of state and delivered for use in California. Although the basic sales tax rate is 7.25 percent, the tax actually comprises state sales and use tax and a local sales and use tax. The local sales and use tax (most often 1 percent) goes to the "site" of the sale, which is the city or county in which the sale occurs. In some areas, voters have approved an extra quarter or half of one percent for transit purposes, open space or libraries.[11]

- **Motor Vehicle License Fee.** The motor vehicle license fee (VLF—sometimes called the car tax) is the state's personal property tax on vehicles and is dedicated in the state constitution to cities and counties. VLF funds are an important source of general fund revenue, providing 16 percent of general revenues to the average city budget and often as much as 24 percent. The VLF is collected by the state Department of Motor Vehicles and allocated to cities and counties based on population.[12]

- **Gas Tax.** The state imposes an 18-cent per gallon tax on gasoline for research, planning, construction, improvement and maintenance of public streets, highways and mass transit. A portion of this amount is distributed to local agencies based on population and another portion is distributed to counties based on the number of registered vehicles. Smaller amounts are apportioned for specific purposes, like snow removal and bicycle transportation.[13] In addition, counties receive a substantial amount of revenue from federal and state sources related to social services, health care and other services that they provide.

10 Cal. Health & Safety Code § 33607.5.

11 California State Board of Equalization, California City and County Sales and Use Tax Rates, (October 2003) (available at www.boe.ca.gov).

12 Michael Coleman, VLF Facts: A Primer on the Motor Vehicle In-Lieu Tax, the Car Tax Cut and Backfill, (March 2004) (available at www.californiacityfinance.com).

13 Cal. Sts. & High. Code §§ 2106, 2107.

Locally Controlled Taxes

Local agencies may impose additional taxes that are subject to the voter approval requirements included in Proposition 218. Such taxes are classified as either "general" or "special." A "general tax" may be used for any public purpose—the funds are fully discretionary and may be deposited into the general fund. A majority vote of the electorate is required to impose, increase or extend a general tax.

On the other hand, a "special tax" is a tax imposed for a specific purpose. For example, many county transportation authorities impose an additional half of one percent to the local sales tax rate that is specifically designated for transportation projects. A two-thirds majority of voters is required to add, increase or extend a tax for a specific purpose. There are a variety of commonly imposed local taxes, including:

- **Parcel Tax.** A special non-ad valorem (non-value based) tax on parcels of property generally based on either a flat per-parcel rate or a variable rate depending on the size, use or number of units on the parcel. This is also known as a supplemental assessment. Parcel taxes require two-thirds voter approval and are imposed for any number of purposes, including funding police and fire services, neighborhood improvement and revitalization and open space protection.[14]

- **Sales Tax.** Additional transaction and use taxes may be imposed by a city or countywide special district with voter approval (majority for general purposes, two-thirds for specific purposes) up to a maximum set by state law. These measures typically add a certain amount—like a cent or a fraction of a cent—to the sales tax rate. They may be imposed as a general tax, but are often imposed for a specific purpose—like to fund transportation, health care, education or open space programs.[15] There is a special sales tax for public safety that is distributed to cities through the county.[16]

- **Business License Tax.** A fee charged on the issuance of a business license, usually levied as a general tax. The amount of the tax is often based on the number of employees or gross sales.

- **Transient Occupancy Tax (TOT).** A tax charged on the rental of a room for less than 30 days in a hotel, inn or other lodging facility. Rates range from four to fifteen percent of the cost of the lodging. In nearly all cases, these are adopted as general taxes. Some agencies, however, make a point of budgeting the funds for tourism or business development-related programs. In those jurisdictions with a TOT, it provides seven percent of general revenues on average and often as much as 17 percent.

- **Utility User Tax (UUT).** A tax levied on the users of various utilities, like telephones, electricity, gas, water or cable television. Utility user rates vary from one to eleven percent. For those jurisdictions that impose the UUT, it provides an average of 15 percent of general revenue and often as much as 22 percent.

- **Document Transfer Tax.** An excise tax on the transfer of interests in real estate. Counties are authorized to tax at a rate of 55 cents per $500 of the property value. Cities may impose the tax at one half of this amount, which is credited to the payment of the county tax.

14 See Cal. Const. art. XIIID, § 3.

15 See for example Cal. Rev. & Tax. Code §§ 7285, 7288.1.

16 See Michael Coleman, Proposition 172 Facts: A Primer on the Public Safety Augmentation Fund, (December 2003) (available at www.californiacityfinance.com).

Locally Raised Fees

A fee is a charge imposed for a service or facility provided directly to an individual or to mitigate the impacts of an activity on the community. Fees fall into four general categories:

- User fees charged for using a service such as garbage collection.
- Development fees charged to mitigate against the impacts of development.
- Regulatory fees charged to support the regulation of specific activities or industries. Examples include fees charged to alcoholic beverage sale licensees to address public nuisances associated with those sales, or landfill assessments to reduce illegal waste disposal.
- Property-related fees.

Fee revenues must be deposited into a specific fund that is dedicated to the purpose for which the fee is imposed. A fee may not exceed the estimated cost (including overhead or administration costs) of providing the service. For example, when a local agency provides water and sewer service, the rate that it may charge must be based on a calculation of the actual costs of providing the service to residents.

Proposition 218 created a special subset of fees called “property-related fees.” These are fees that are imposed as an “incident of property ownership.” In other words, the mere ownership of property is the basis for imposing the fee. Proposition 218 procedural requirements apply to all property-related fees, making them more difficult to enact. To impose a property-related fee, the agency must first hold a public hearing. At the hearing, a majority of affected owners can stop the fee by filing written protests. If no protest is filed, the agency must still conduct an election unless the fee is imposed for sewer, water or refuse collection services. Otherwise, a majority vote of the property owners of the property subject to the fee, or at the option of the agency, a two-thirds vote of the general electorate, is required to impose the fee.

Local Benefit Assessments

Benefit assessments are charges for public improvements or services that provide a specific benefit to property within a predetermined area. Each parcel or business in the area is charged according to the benefit received from the improvement. California has a number of laws that permit the establishment of benefit assessment districts. Some allow for bond financing; others levy assessments.

A property can only be subject to a benefit assessment if it is specially benefited by the improvements to be financed. Properties that are generally benefited may not be charged. For example, if the purpose of the assessment is to landscape a center median, only those properties likely to benefit by fronting the street with the center median could be included in the assessment district. Claiming that all properties in a community would benefit based upon beautification of the community would merely be evidence of a general benefit.

An engineer's report must be prepared to determine which properties will be specially benefited by improvements. The engineer's report includes a description of the improvements to be financed, cost estimates of the improvements and an assessment diagram mapping the district's boundaries, zones and parcels. The report identifies the method of allocating the annual assessments to each parcel and the proposed maximum annual assessment per parcel to pay administration or registration costs. Different classes of properties pay different assessment amounts, calculated in proportion to the special benefit received.[17]

A new assessment requires the approval of a majority of the property owners who return mailed ballots through an assessment ballot proceeding. Voting is weighed in accordance with the amount of the assessment.[18] Local agencies implementing new assessments in pre-existing neighborhoods have to conduct a great deal of community outreach. Creating assessments in new developments is often easier when the developer of a large tract agrees to create the assessment district before subdividing the property. Once created, the assessment applies to all new lots and homes built or created within the assessment district. A lighting and maintenance district (LMD) is an example of a benefit assessment district.

17 Cal. Const. art. XIIID, § 2.

18 A list of cities that have conducted assessment ballot proceedings is available online at www.cacities.org (search keyword "Proposition 218"). The ballots are weighted according to the dollar value of their proposed assessments (the equivalent of one vote per dollar). Thus, the vote of a landowner whose lot has an assessed value of $50,000 counts twice as much as the vote of a landowner with a $25,000 lot.

Local Debt Financing Tools

Local agencies may issue bonds and other debt instruments to finance improvements and services. Debt financing enables costs to be spread over time and is needed when the cost of a project exceeds revenues available during the acquisition or construction period. Terms of repayment vary but usually do not exceed the life of the project. A variety of debt financing tools are available:

- **Community Facility Taxes.** The Mello-Roos Community Facilities Act[19] authorizes local agencies to impose a special tax to finance public facilities, infrastructure and public services. The tax must be authorized by a two-thirds vote of the registered voters living within the district. If fewer than 12 voters live within the district, approval requires a two-thirds vote of the district's landowners. The difficulty of meeting the two-thirds vote requirement generally limits the availability of Mello-Roos to large undeveloped parcels with less than 12 registered voters.

- **Infrastructure Financing Districts (IFDs).** This mechanism[20] allows cities and counties to finance infrastructure improvements that are consistent with their general plan. Infrastructure financing resembles redevelopment tax increment financing in that an increase in tax revenues beyond a base level goes to the IFD, which itself requires a fairly complex procedure for establishment, including approval by two-thirds of the district electorate. An IFD differs from a redevelopment district in that any competing agencies that receive tax funds must agree to the passing over of the tax increment to the IFD and the IFD does not have the power of eminent domain. There is also no blight requirement to establish an IFD. Once established, an IFD can issue bonds backed by the tax increment revenue.

- **Enhanced Infrastructure Financing Districts (EIFDs).** EIFDs are established by a city or county to define an area in which improvement or rehabilitation of community infrastructure is a priority. EIFD activities are primarily funded through a property tax increment within the EIFD area. EIFDs must receive consent from other taxing entities including applicable cities, counties or special districts. EIFD creation is also subject to public review. In addition to tax increment funding EIFDs are able to use revenues dedicated by a taxing authority to the EIFD or loans from a city, county or special district. With 55% voter approval, the district may also issue bonds.

- **Community Revitalization and Investment Authorities (CRIA).** CRIAs are intended to replace some functions of the dissolved redevelopment authorities, the CRIAs offer municipalities an opportunity to capture additional tax revenues for the revitalization of neighborhoods. The authorities can be formed in two ways. First, a municipality can create an authority and establish an authority board with five members, two of which must be residents or workers in the CRIA plan area. Second, a city, county and special district can create an authority by entering into a joint powers agreement. Again, the board of five members must include two members from the community. CRIAs will have expansive revitalization authority. Their key funding mechanism will be similar to that of redevelopment agencies. CRIAs will be able to receive the tax increment on increased property taxes in a subject area with consent from taxing entities including the city, county and special districts. Twenty-five percent of revenue from the tax increment must be allocated to Low- and Moderate-Income Housing Fund.

- **General Obligation Bonds.** General obligation bonds are essentially IOUs issued by public entities to finance large projects. General obligation bonds are backed by property tax revenue, which is used to repay the bond over a twenty- to thirty-year period. Increasing the property tax to repay the debt requires two-thirds voter approval and may only be done to acquire or improve real property.[21] Since investors perceive property taxes as being less risky than the security

19 Cal. Gov't Code §§ 53311 and following.

20 Cal. Gov't Code §§ 53395-53397.11.

21 Cal. Const. art. XIIIA, § 1(b).

for other types of indebtedness, general obligation bonds may be issued at relatively low interest rates. Bonds provide a means for getting money up front to fund a project. They also distribute the cost over time. On the other hand, interest costs raise the overall amount that the agency will pay.

- **Lease-Purchase Agreements.** Lease-purchase agreements work when local agencies might otherwise be prevented from incurring debt to purchase an asset.[22] Under a lease-purchase agreement, the agency leases the asset for a period of years with the option to purchase the land or improvement at the end of the lease.[23] The amount of the lease is equivalent to the principal and interest that would be paid if the transaction were financed as a loan. Certificates of participation (COPs) are a variation of this tool. These enable a group of investors, or a publicly created financing authority, to acquire an asset and lease it to a public agency. The investors then transfer the right to receive payments to a trustee, who redistributes the lease payments on a proportional basis.



22 See Cal. Const. art. XVI, § 18. Local agencies are constitutionally prohibited from borrowing an amount of money in excess of the amount that can be repaid in a year's time. Lease purchase, certificates of participation and other special funding mechanisms are exceptions to this rule.

23 See City of Los Angeles v. Offner, 19 Cal. 2d 483 (1942); Dean v. Kuchel, 35 Cal. 2d 444 (1950).

Accounting and Types of Funds

Most local agencies have developed detailed accounting procedures in order to assure that funds are spent according to their intended purpose. Where the money comes from often determines how it may be spent. For example, a local agency cannot use funds raised to provide affordable housing to build a library. To keep these different sources of funds straight, local agencies typically use accounting methods that designate different funds. There are five general classifications:

- **General Funds.** Funds that are not required to be accounted for in any other fund. The funds are fully discretionary, meaning the governing body can spend them as it sees fit.
- **Enterprise Funds.** Funds from self-supporting activities that provide services on a user-charge basis. Examples include water, wastewater treatment, garbage collection, parking, golf courses and marinas.
- **Special Revenue Funds.** Funds designated for specific sources or that have specific limitations on use according to law. Examples include affordable housing mitigation fees and special purpose parcel taxes.
- **Internal Service Funds.** Funds used to account for services—like accounting or vehicle maintenance— that are provided internally from department to department. The use of such funds is a budgeting tool to help track and balance costs across various budget categories.
- **Reserve Funds.** General or special purpose funds that are set aside for future use or harder economic times.

Keeping track of where local agency revenues come from and how they can be used is helpful to understanding the overall fiscal picture of the community. Over time, discretionary revenue as a percentage of the entire budget for California cities and counties has decreased. This sometimes creates a situation where there may be surplus funds in one account at the same time that another fund is in serious deficit. However, if the funds in the account with the surplus are dedicated, they may not be transferred to cover the shortfall.

Fiscal Implications

The long-term fiscal consequences are often part of the consideration when deciding to approve large projects. New development brings in new residents, employees, and uses that will demand local services, such as law enforcement, fire protection, parks, libraries, sewer and water service. Anticipating and evaluating the associated fiscal impacts of new development helps local agencies ensure that they do not extend infrastructure in a way that becomes too much of an economic burden for their community to bear. In addition, such analysis helps formulate new funding strategies for facilities and infrastructure and revitalization.

A fiscal impact analysis can also be used to compare the fiscal costs of alternative approaches to a development. If a project is not fiscally sustainable but meets community planning goals, the analysis may suggest the need for additional revenues—like development fees or special benefit assessments—to cover costs related to the development, such as for water service, transportation and public safety.

A typical fiscal impact analysis includes a number of assumptions about how your community will grow, how property values will change and how much tax revenue will be generated by the development. It also requires an estimate of a baseline scenario or an assumed future without the development to allow for a comparison of fiscal conditions with and without development.

Here is a simplified version of how the numbers in a fiscal impact analysis are derived:

- **The Increased Demand for Services is Quantified.** The changes that will be caused by the proposal are quantified by measurable units, like jobs created, housing units built or square footage of retail.
- **The General Cost of Services is Estimated.** The type and amount of services is identified. An estimate of the cost of providing this amount of service is made. Estimating the cost, however, is often difficult given the "lumpy" nature of services—like sewer—that may have little or no incremental cost until capacity is reached. To provide another example, the police may have sufficient capacity to handle one development, but may be forced to hire additional staff if the same development were proposed again. Staff will often make estimates to take these difficulties into account.
- **The Cost of Serving the New Development is Calculated.** This can be expressed as either a per unit cost or a total cost for the development.
- **New Revenues Generated by the Project are Estimated.** The likely per unit revenues to be derived from the project, like property taxes, development fees, license fees and other revenues is calculated.
- **Projected Costs and Revenues are Compared.** The estimated revenues and costs and determine net fiscal impact is compared. A positive number suggests that the projected revenues are sufficient to cover costs.

It is worth repeating that a fiscal impact analysis provides a rough estimate at best. As noted above, the analysis is built on a number of assumptions. Another major limitation is that the analysis does not capture the interactions among land uses. For example, a retail development may show a net positive in terms of comparing probable revenues with the cost of services for that property, but it may also unexpectedly reduce sales tax revenues from neighboring businesses. A further weakness is that the analysis only considers the impacts for the deciding agency. The development may have impacts on neighboring jurisdictions that are not included. Finally, the analysis often does not account for cumulative impacts. For example, where a single development may only have a slight negative effect on a particular service, a series of similar developments may change the nature of the community and significantly impact revenues or expenditures.

Accordingly, a fiscal impact analysis is just a planning tool. It helps project the budgetary consequences and responsibilities of developing the community. As a planning commissioner, you should use the tool with the proverbial grain of salt and remember to balance the fiscal analysis with other community goals, like affordable housing and environmental protection. In the long run, a community needs a balance of uses— housing, retail, commercial, educational, parks and open space—to be healthy, and seeking only revenue-maximizing projects will not help achieve this balance.

Thinking Fiscally

The following questions are designed to help you determine what the fiscal impact of a project may be:

- Will service quality — like police or fire response time — be affected?
- Will new sources of revenue need to be identified to sustain the project?
- Are the costs that are being generated one-time costs or will they be ongoing?
- Do regulatory fees cover the ongoing costs?
- To what extent will development affect the budgets of other local agencies — like schools or special districts?
- Does the intended use of the new development (like number of workers or residents per household) match the underlying numbers used in the model?
- For businesses, will new employees be relocating to the community or commuting?
- Will new services be necessary?
- Will additional staff be required?
- Do the estimates reflect a typical year or do they need to be adjusted?
- Is there sufficient capacity to serve the development? What about the next development?


FINANCE TRACKER
DUE
BILL
AMOUNT
HABIT TRACKER
BUDGET
DEBTS
VET CARE
GROOMING



The Planning Commissioner Handbook

Chapter 12

Legal Issues

INSTITUTE FOR LOCAL GOVERNMENT℠

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This section covers legal principles affecting planning. This handbook does not constitute legal advice. Please consult your jurisdiction's city attorney or county counsel.

The Police Power

The legal basis for all planning and land use regulation is the "police power," which is the government's power to regulate in the name of the public's health, safety and welfare. The Tenth Amendment to the United States Constitution reserves this power to the states and the California Constitution in turn grants the same power to cities and counties to the extent that local regulations do not conflict with state law.[1]

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

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

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

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

1 Cal. Const. art. XI, § 7; Miller v. Board of Public Works, 195 Cal. 477 (1925).
2 Euclid v. Ambler Realty Co., 272 U.S. 365 (1926); Associated Home Builders, Inc. v. City of Livermore, 18 Cal. 3d 582 (1976).
3 Village of Belle Terre v. Boraas, 416 U.S. 1, 4-6 (1974).
4 See Metromedia, Inc. v. City of San Diego, 26 Cal. 3d 848 (1980); Ewing v. City of Carmel-by-the-Sea, 234 Cal. App. 3d 1579 (1991); DeVita v. County of Napa, 9 Cal. 4th 763 (1995).

Preemption

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

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

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

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

6 Cal. Gov't Code § 65858.

Preemption and Charter Cities

There are actually two kinds of cities: charter and general law. Charter cities have "local constitutions"— called charters— that describe the organization and fundamental policies of the city. The state constitution grants charter cities authority over "municipal affairs" even when they conflict with state law.[7] In the land use context, the most important municipal affair is the power to develop internal procedures, such as those to process and approve legislative and adjudicative actions. As a result, charter cities are exempt from some of the procedural requirements in the Planning and Zoning Law. In other instances, however, such as the laws governing the adoption of moratoria, implement streamlined ministerial decision making on certain qualifying housing development projects, and allow for the provision of density bonuses (mentioned above), the California Legislature has made it clear that charter cities and general law cities have the same authority.[8] In recent years, the California Legislature has increasingly limited charter city authority, particularly in the area of affordable housing and now requires both general law and charter cities to maintain consistency between land use destinations in the general plan and the zoning code, also known as "vertical consistency".

7 Cal. Const. art. XI, § 5(a).

8 Cal. Gov't Code § 65858.

Takings and Property Rights

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

You are most likely to encounter the takings issue when you are denying a project or contemplating a new zoning ordinance that will limit the use of property. The issue may also be raised when you are imposing fees or requiring a dedication of property as a condition of development. Unfortunately, there is a great deal of misunderstanding about the relationship between property rights and planning regulations. The Takings Clause is often misunderstood to be a prohibition against any regulation that decreases property value or prevents the owner from "doing what they want with their land." In reality, compensation is required only in a very limited set of circumstances.

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

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

- **Claims Usually Fail When Economically Viable Uses of Property Remain.** Claims based on the notion that a regulation denies economical uses of property will fail when the property retains some economically viable uses. Zoning land for agriculture use, for example, allows for an economic use and will generally survive a takings claim even when the owner claims the regulation is costing millions in lost development value. The Takings Clause does not guarantee that owners will be compensated for the most speculative use of land.[9]

- **Reasonable and Proportional Conditions on Development are Permitted.** Conditions of approval on development do not cause a taking when they are reasonably related and roughly proportional to the harm or impact likely to be caused by the development.[10] A condition that does not meet these standards, or even a denial based on the applicant's failure to agree to such a condition, can give rise to a takings claim.[11] However, conditions that are imposed by ordinance instead of on a case-by-case basis are less likely to be held a taking.[12]

- **Landowners Must Seek A Variance Before Suing.** Courts are reluctant to require compensation unless they are absolutely sure that a regulation or condition will be applied in a way that amounts to a taking. Thus, landowners must usually file two applications and seek one variance before courts will entertain a claim. The variance procedure

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

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

11 Koontz v. St. Johns River Water Management District, 570 U.S. 595 (2013).

12 San Remo Hotel v. City and County of San Francisco, 27 Cal. 4th 643 (2002).

guarantees that the local agency has an opportunity to take corrective action in those circumstances where a regulation unfairly affects a particular parcel.[13]

- **"Automatic" or Per Se Takings Are Rare.** Regulations that cause 100 percent devaluation in property or cause a permanent physical presence on property will be found to be a taking in most circumstances, but such regulations are rare. It might seem that imposing a condition on development—such as the requirement to create a park or a bike path—is equivalent to a permanent physical occupation. The reason why this is not the case is that the condition is based on the development application, which is voluntarily sought by the developer.[14]

- **Fairness Matters.** Courts are often concerned about the extent to which the landowner was treated fairly by the local agency. Thus, it is always good to design efficient, straightforward processes that are consistent with the general plan in order to set appropriate development expectations.[15]

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

13 Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172 (1985).

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

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

Substantive Due Process & Vested Rights

The substantive due process doctrine prohibits governmental action that arbitrarily or unreasonably deprives a person of life, liberty or property. For planning commissioners, this issue arises most frequently in the context of property when an application has proceeded far enough through the approval process that the right to develop has attached.

When this occurs the right to develop is said to have vested. Once a right vests, it cannot be affected by subsequent changes in local ordinances. Generally, a right to develop will not vest until the last permit necessary for construction has been issued and substantial expenditures have been incurred in reliance on the permit. However, the California Legislature has in recent years given some qualifying housing development projects some vested rights at the time either a preliminary application or application that meets certain enumerated requirements under state law, is deemed complete.[16] The California Legislature has carved out these exemptions to address California's housing crisis.[17] Until that time of vesting rights, a proposed development is vulnerable to changes in the general plan, zoning and other local regulations.

However, there are some components of this rule that warrant further clarification:

- **Zoning Does Not Confer A Right to Develop.** Some people misinterpret zoning regulations to mean that the level of development will be allowed automatically. Zoning confers no such right—it is merely a designation used for planning by local agencies. As such, it is almost always subject to any change the governing body sees fit unless preempted by the state.[18]

- **Initial Approval Does Not Necessarily "Lock In" Development.** Developers may argue that a preliminary approval—such as a tentative map approval—automatically exempts them from other ordinances that affect the development. Such conditions are not generally locked in, however, until the last permit is issued or, under limited circumstances, where an applicant has acquired vested rights based on substantial work and incurred liabilities when based on reasonable reliance on adopted development standards.[19] There are also some exceptions for housing development projects.[20]

- **Later Elements of Phased Projects May Be Subject to Different Rules.** The rules of vested rights offer less protection to developments involving multiple discretionary permits to be granted over an extended period of time. For example, a developer may spend large sums on acquisition, engineering, architectural and planning costs for a four-phase development, but may only hold permits for phase one. To be protected from future changes in local regulations throughout the entire project, the developer would need to obtain vested rights for each phase. The vesting of rights for phase one does not vest rights for the entire project, nor does it guarantee that additional phases will even be approved.[21]

Given the uncertainty associated with changing regulations, developers will often seek to "lock in" their development plans. The main way to do this is to enter into an agreement with the local agency to assure that no future regulations will affect the development or to submit a qualifying housing development project that requires ministerial approval or limited discretionary

16 See 2019 Cal. Legis. Serv. Ch. 654 (S.B. 330).

17 Cal. Gov't Code § 65589.5.

18 Stubblefield Construction Co. v. City of San Bernardino, 32 Cal. App. 4th 687 (1995); Cal. Gov't Code § 66300.

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

20 Cal. Gov't Code § 65589.5.

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

authority. However, a local agency cannot bind itself from exercising its legislative power in the future.[22] There are several exceptions. State law allows development applications to vest upon the filing of a vesting tentative map or upon entry into a development agreement with the local agency; or on the date a qualifying housing development project application is deemed completed, as described in this paragraph.

22 Avco Community Developers, Inc. v. South Coast Regional Commission, 17 Cal. 3d 785 (1976).

Procedural Due Process: Notice & Hearings

A local agency must afford procedural due process before depriving a person of a property right or liberty interest. This typically means providing the person with notice of an impending action and an opportunity to be heard before taking the action. In the context of land use and zoning, local agencies can meet this requirement by complying with the state laws that delineate specific notice and hearing procedures.[23] The purpose of the notice and the hearing requirement is not merely to go through the motions—but to offer affected persons and the public more generally, a meaningful opportunity to rebut the evidence that is serving as the basis of the decision.

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

23 See for example Cal. Gov't Code §§ 65090-65096.

Discrimination & Equal Protection

The equal protection doctrine requires that similarly situated persons be treated in an equal manner. However, absolute equality is not required. Inherently, land use regulation is a system of classifying property. Nearly every regulation will affect different properties differently. What is significant for the equal protection analysis is the extent to which a regulation makes an arbitrary or discriminatory classification that affects a fundamental right. A classification must not be arbitrary or unreasonable and instead the difference must be related to a legitimate governmental interest.

Courts most often will analyze equal protection claims under one of two tests: strict scrutiny or rational basis. Most land use regulations will be judged under the rational basis test. Thus, if a regulation is reasonably related to a legitimate government purpose, it will be upheld. For example, special regulations for historic districts are rationally related to preserving community character and judged under the rational basis standard even though they treat historic properties differently. Strict scrutiny is applied when a regulation abridges a fundamental right, or applies only to a suspect class. Suspect classes include, but are not limited to race, national origin, disability, marital status and sexual orientation, among others. In these cases, the government must show that there is a "compelling interest" for the classification. For example, a regulation that prohibited landlords from renting units to gay or lesbian couples within the State of California would be judged under the strict scrutiny standard and would almost certainly be ruled unconstitutional.

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

- **Developers Claiming Protected Status.** One tactic developers sometimes use is to argue that a regulation unfairly singles them out. However, courts have ruled that developers are not a suspect class and development is not a fundamental interest.[24]

- **Single Property Owner Unfairly Treated.** Sometimes, landowners will bring an equal protection claim when they feel that they have been singled out. Such claims may prevail when the local agency has intentionally treated a specific landowner differently and the different treatment was motivated by "ill will," as evidenced by an irrational and arbitrary demand. This issue can be related to spot zoning issues as well.[25]

- **Regulations that Affect Low-Income Households.** One possible challenge to an ordinance is that it discriminates against lower-income households, of which racial minorities constitute a disproportionate percentage. Although courts have been more willing to entertain such claims in recent years, ordinances based on sound social or economic policies and traditional zoning standards that are not intended to discriminate will generally be upheld on equal protection grounds.[26] However, the California Legislature has made it more challenging to deny housing development projects with an affordable housing component by requiring the waiver of lawfully adopted development standards when the standards would physically preclude construction of affordable housing.[27]

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

25 Village of Willowbrook v. Olech, 528 U.S. 562 (2000).

26 Construction Industry Association v. City of Petaluma, 522 F.2d 897 (9th Cir. 1975).

27 Cal. Gov't Code § 65915.

First Amendments: Signs, Adult Uses & Free Speech

Land use decisions that touch on freedom of speech include sign, tattoo parlor[28] and adult business regulation. Regulating these uses poses difficult legal and philosophical issues. You must balance the competing goals of having a beautiful, well-planned community with the right to sell public wares or convey protected ideological messages.

When analyzing free speech rights, courts first classify the type of speech being regulated. Courts have drawn a distinction between political speech (expressing one's views or engaging in expressive activities) and commercial speech (providing information about goods and services). Regulations that affect political speech will be more strictly scrutinized. Most zoning regulations, however, affect commercial speech. Courts have applied the following general rules in evaluating such regulations:[29]

- **Time, Place and Manner.** Zoning regulations that control the time, place and manner of speech, without prohibiting the category of speech or activity outright will generally be upheld. In the case of adult businesses, for example, zoning may be used to limit the location (place), business hours (time) and even some types of performances (manner), but cannot totally prohibit such businesses from a community.
- **Content Neutral.** The restrictions must be content neutral. For example, with certain exceptions, it is generally acceptable to regulate the size of a business sign but not what message is written on the sign.
- **Substantial Governmental Interest.** The interest in regulating the activity must be substantial. Many adult business regulations are predicated on limiting secondary impacts (like crime) that are associated with such businesses rather than the "moral" nature of the speech activity itself. Courts have determined that this is a sufficient rationale to justify a regulation, provided that it is not too onerous.[30]
- **Alternative Avenues of Communication.** There must be a location where the speech or activity may take place. For example, some local agencies set distance limitations (such as 1000 feet) between adult businesses and schools. The condition, however, must leave some places within the community where the activity can take place.

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

28 Anderson v. Hermosa Beach: http://cdn.ca9.uscourts.gov/datastore/opinions/2010/09/09/08-56914.pdf

29 Metromedia, Inc. v. City of San Diego, 453 U.S. 490 (1981).

30 City of Los Angeles v. Alameda Books, Inc. 535 U.S. 425 (2002).

Religious Uses

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

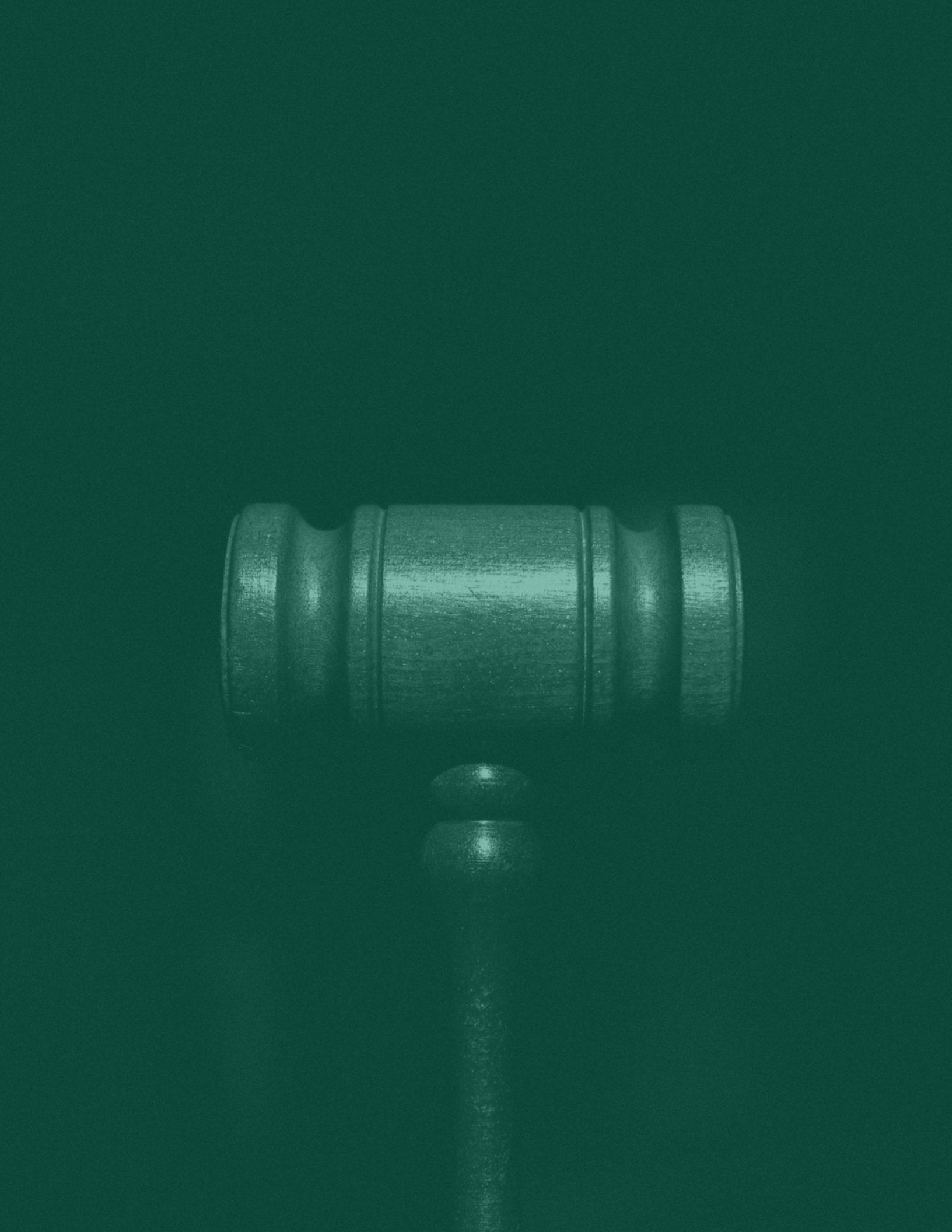
However, Congress adopted a more stringent test when it passed the Religious Land Use and Institutionalized Persons Act (RLUIPA).[31] Under RLUIPA, a government may not impose a land use regulation in a manner that imposes a substantial burden on religion unless the government demonstrates that the condition furthers a compelling governmental interest. In addition, the condition must be the least restrictive means of furthering that interest.

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

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

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

31 42 U.S.C. §§ 2000cc and following.





The Planning Commissioner Handbook

Glossary

Institute for Local Government℠

ILGPlanningHandbook.org

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A

Abandonment
A cessation of the use of the property by the owner without intent to transfer the property to another or resume the use of the property.

Abatement
Reducing or eliminating the degree or intensity of a nuisance or other property-related problem, usually used in connection with zoning code or environmental program enforcement.

Abutting
Having property or zone district boundaries in common; for example, two lots are abutting if they have property lines in common.

Acceptable Risk
A hazard that is deemed to be a tolerable exposure to danger given the expected benefits to be obtained. Different levels of acceptable risk may be assigned according to the potential danger and the criticalness of the threatened structure. The levels may range from “near zero” for nuclear plants and natural gas transmission lines to “moderate” for open-space, ranches and low intensity warehouse uses.

Access
A way of approaching or entering a property. Access includes ingress, the right to enter, and egress, the right to leave. In zoning and subdivision regulations, recorded lots are required to have direct access to a public street or highway or to a private street meeting public standards. This guarantees entry by owners and emergency vehicles.

Accessibility/Assessable
A term that describes the usability of a product or service by people with disabilities.

Accessory Building or Use
An activity or structure on a property that is incidental and subordinate to the main use of a site.

Accessory Dwelling Unit
A unit with complete independent living facilities for one or more persons with one of the following variations: (1) Detached: The unit is separated from the primary structure. (2) Attached: The unit is attached to the primary structure. (3) Converted Existing Space: Space (e.g., master bedroom, attached garage, storage area, or similar use, or an accessory structure) on the lot of the primary residence that is converted into an independent living unit. See also JUNIOR ACCESSORY DWELLING UNIT.

Accessory Use
An activity or structure that is incidental to the main use of a site. For example, a small business office within a store might be considered an accessory use, and might not be counted in the calculation of the size of the store for zoning purposes.

Acre Foot
A volume of water one foot deep covering one acre; approximately 326,000 gallons. One acre-foot of water is enough to meet the needs of two typical families for a year.

Acres, Gross
The entire acreage of a site. Most communities calculate gross acreage to the centerline of proposed bounding streets and to the edge of the right-of-way of existing or dedicated streets.

Acres, Net
The portion of a site that can actually be built upon. The following generally are not included in the net acreage of a site: public or private road rights-of-way, public open-space and flood ways.

Active Living Community
A community designed to provide opportunities for people of all ages and abilities to incorporate physical activity into their daily routines. By encouraging people to be more active, active living communities may improve health by lowering people's risk for health conditions such as obesity, diabetes and heart disease.

Ad Valorem Tax
A tax assessed based on the dollar value of an item or activity. Typical examples are property and sales taxes. Ad valorem taxes contrast with per-unit taxes, such as alcoholic beverage and cigarette taxes, which are assessed at a fixed dollar per unit purchased. See EXCISE TAX, PARCEL TAX, TAX.

Adaptation
See CLIMATE ADAPTATION.

Adaptive Reuse
Converting obsolete or historic buildings from their original or most recent use to a new use. For example, the conversion of former hospital or school buildings to residential use, or the conversion of an historic single-family home to office use.

Administrative Decision
See QUASI-JUDICIAL DECISION.

Adverse Impact
A negative consequence for the physical, social or economic environment resulting from an action or project.

Aerosol
Particulate matter, solid or liquid, larger than a molecule but small enough to remain suspended in the atmosphere. Natural sources include salt particles from sea spray, dust and clay particles as a result of weathering of rocks, both of which are carried upward by the wind. Aerosols can also originate as a result of human activities and are often considered pollutants.

Afforestation
Planting of new forests on lands that historically have not contained forests, or have not been recently forested.

Affordable Housing
Housing capable of being purchased or rented by persons whose income level is categorized as very low, low, or moderate within standards set by the California Department of Housing and Community Development or the U.S. Department of Housing and Urban Development.

Affirmatively Furthering Fair Housing (AFFH)
A legal requirement that federal agencies and federal grantees actively address and work to eliminate housing discrimination and segregation.

Agenda
A document that specifies what will be discussed at a local agency meeting. Agendas contain a brief, general description of each item the governing body will be addressing. Members of the public may request that an agenda be mailed to them. Local agencies generally cannot discuss and make decisions on items that are not on the agenda. See California Government Code section 54950.

Aging in Place
The ability to live in one's own home and community safely, independently and comfortably, regardless of age, income or ability level.

Agricultural Preserve
Land designated for agricultural use. See WILLIAMSON ACT.

Agricultural Urbanism
An approach to integrating growth and development with preserving agricultural resources and enhancing elements of the food system.

Agriculture
Use of land for the production of food and fiber, including the growing of crops and/or the grazing of animals on natural prime or improved pasture land.

Air Pollution
One or more chemicals, substances or physical conditions (such as excess heat or noise) in high enough concentrations in the air to harm humans, other animals, vegetation or materials.

Air Rights
The right granted by a property owner to a buyer to use space above an existing right-of-way or other site, usually for development.

Airport-Related Use
A use that supports airport operations including, but not limited to, aircraft repair and maintenance, flight instruction and aircraft chartering.

Albedo
The fraction of solar radiation reflected by a surface or object, often expressed as a percentage. Snow covered surfaces have a high albedo; the albedo of soils ranges from high to low; vegetation covered surfaces and oceans have a low albedo.

Alternative Fuels
Fuels such as methanol, ethanol, natural gas and liquid petroleum gas that are cleaner burning and help to meet the California Air Resources Board's mobile and stationary emission standards. These fuels may be used in place of less clean fuels for powering motor vehicles.

Ambient
Surrounding on all sides; used to describe measurements of existing conditions with respect to traffic, noise, air and other environments.

Ambient Air
Air occurring at a particular time and place outside of structures. Often used interchangeably with “outdoor air.”

Ambient Air Quality Standards (AAQS)
Health- and welfare-based standards for outdoor air which identify the maximum acceptable average concentrations of air pollutants during a specified period of time. See NAAQS.

Amortization
The process by which nonconforming uses and structures must be discontinued or made to conform to requirements of the current zoning ordinance at the end of a specified period of time.

Anchor Tenant
The major store or stores within a shopping center.

Ancillary Benefits
Complementary benefits of a given policy. For example, ancillary benefits of a climate policy could include improvements in local air quality and reduced reliance of imported fossil fuels. See CO-BENEFITS.

Annex/Annexation
To incorporate a land area into an existing district or municipality, with a resulting change in the boundaries of the annexing jurisdiction. See DETACHMENT.

Anthropogenic
Made by people or resulting from human activities. Usually used in the context of emissions that are produced as a result of human activities.

Appeal
When a person believes a decision was made in error, an appeal may be filed so that a higher decision-making body can review the case.

Approach Zone
The air space at each end of a landing strip that defines the glide path or approach path of aircraft as they land. The approach zone should be free from obstruction. See CLEAR ZONE, OUTER APPROACH ZONE, TRANSITION ZONE.

Appropriation
A legal authorization granted by the governing body to expend monies and incur obligations for specific purposes. See EXPENDITURE.

Aquifer
An underground, water-bearing layer of earth, porous rock, sand, or gravel, through which water can seep or be held in natural storage. Aquifers generally hold sufficient water to be used as a water supply. See GROUNDWATER.

Arable
Land capable of being cultivated for farming.

Architectural Control; Architectural Review
Regulations and procedures requiring the exterior design of structures to be suitable, harmonious, and in keeping with the general appearance, historic character and/or style of surrounding areas. A process used to exercise control over the design of buildings and their settings. See DESIGN REVIEW.

Arterial
A roadway that provides intra-community travel and access to the countywide highway system, characterized by medium-speed (30-40 mph) and medium-capacity (10,000-35,000 average daily trips). Access to community arterials should be provided at collector roads and local streets, but direct access from parcels to existing arterials is common. See COLLECTOR, STREETS, MAJOR, TRIP.

Articulation
Variation in the depth of the building plane, roof line or height of a structure that breaks up plain, monotonous areas and creates patterns of light and shadow.

Assessed Valuation
The value at which property is appraised for tax purposes. See PROPERTY TAX.

Assessment District
See BENEFIT ASSESSMENT DISTRICT.

Assisted Housing
Generally multifamily rental housing, but sometimes single-family ownership units, whose construction, financing, sales prices or rents have been subsidized by federal, state or local housing programs.

Atmosphere
The mixture of gases surrounding the Earth. The Earth's atmosphere consists of about 79.1 percent nitrogen (by volume), 20.9 percent oxygen, 0.93 percent argon, 0.036 percent carbon dioxide and trace amounts of other gases. In addition the atmosphere contains water vapor, whose amount is highly variable but typically 1%.

Attainment
Compliance with state and federal ambient air quality standards within an air basin. See NON-ATTAINMENT.

Automobile-Intensive Use
A use of a retail area that depends on exposure to continuous auto traffic.

B

BANANA
Build Absolutely Nothing Anywhere Near Anything. See also NIMBY, NIABY, and NIMTOO.

Base Flood
In any given year, a 100-year flood that has a one percent likelihood of occurring, and is recognized as a standard for acceptable risk. See FLOOD, 100-YEAR.

Below-Market Rate (BMR)
(1) Any housing unit specifically priced to be sold or rented to low-or moderate-income households for an amount less than the fair-market value of the unit. Both the State of California and the U.S. Department of Housing and Urban Development set standards for determining which households qualify as “low-income” or “moderate-income.” (2) The financing of housing at less than prevailing interest rates.

Benefit Assessment Bonds
Bonds levied by cities, counties and special districts to acquire or construct public improvements that convey a special benefit to a defined group of properties.

Benefit Assessment District
A defined area that receives a special benefit from the construction of one or more public facilities. A Benefit Assessment District is a financing mechanism for providing public infrastructure as allowed under various statutes. Bonds may be issued to finance the improvements, subject to repayment by assessments charged against the benefiting properties. Creation of a Benefit Assessment District enables property owners in a specific area to cause the construction of public facilities or to maintain them (for example, a downtown, or the grounds and landscaping of a specific area) by contributing their fair share of the construction or installation and operating costs.

Benefit Assessment
Charges levied on parcels to pay for public improvements or services provided within a pre-determined district or area according to the benefit the parcel receives from the improvement or services.

Berm
A mound of earth usually two to six feet high designed to shield and buffer uses like parking areas. Also used to minimize water run-off.

Bicycle Friendly
Possessing urban design factors that help make an area that caters to the needs of bicyclists. Factors include public facilities such as bicycle racks on streets or by public buildings. Regulations that allow riders to take bicycles on board buses, trains, etc. Accessibility such as the position of bicycle paths relative to roads, quality of the terrain, presence of curb cuts, etc. Safety features such as lighting, security measures and protection from on-road vehicles.

Bicycle Paths, Lanes and Routes

A path is a paved route not on a street or roadway and expressly reserved for bicycles traversing an otherwise unpaved area. Bicycle paths may parallel roads but typically are separated from them by landscaping. A bicycle lane is a corridor expressly reserved for bicycles, existing on a street or roadway in addition to any lanes for use by motorized vehicles. A bicycle route is a facility shared with motorists and identified only by signs; it has no pavement markings or lane stripes. See BIKEWAYS.

Bikeways

The term bikeways encompasses bicycle lanes, bicycle paths, and bicycle routes. Bikeways are divided into three classes. Class I bikeways are paved routes, not on a street or roadway, expressly reserved for bicycles traversing an otherwise unpaved area. Class II bikeways are corridors expressly reserved for bicycles, existing on a street or roadway in addition to any lanes for use by motorized vehicles. Class III bikeways are shared with motorists and identified only by signs. See BICYCLE LANES, PATHS AND ROUTES.

Biological Productivity

The amount of plants and animals that grow and thrive in a defined region.

Biosphere

The part of the Earth system comprising all ecosystems and living organisms, in the atmosphere, on land (terrestrial biosphere) or in the oceans (marine biosphere), including derived dead organic matter, such as litter, soil organic matter and oceanic detritus.

Biotic Community

A group of living organisms characterized by a distinctive combination of both animal and plant species in a particular habitat.

Black Carbon Aerosols

Particles of carbon in the atmosphere produced by inefficient combustion of fossil fuels or biomass. Black carbon aerosols absorb light from the sun, shading and cooling the Earth's surface, but contribute to significant warming of the atmosphere.

Blight

A condition of a site, structure or area that may cause nearby buildings and/or areas to decline in attractiveness and/or utility. The Community Redevelopment Law contains a definition of blight used to determine eligibility of proposed redevelopment project areas. See California Health and Safety Code sections 33031 and 33032.

Blueline Stream

A watercourse shown as a blue line on a U.S. Geological Service topographic quadrangle map.

Board of Appeals

An appointed board that hears appeals on variances and exceptions.

Board of Supervisors

A county's legislative body. Board members are elected by popular vote and are responsible for enacting ordinances, imposing taxes, making appropriations and establishing county policy. The board adopts the general plan, zoning and subdivision regulations that apply to unincorporated areas. The board also adopts a budget that guides and directs regional services provided to incorporated and unincorporated areas such as public health and human services.

Bond
A certificate of debt issued by an entity, guaranteeing payment of the original investment, plus interest, by a specified future date. Funds raised through the sale of bonds can be used for various public purposes.

Brown Act
The California's open meeting law for local agencies. The Brown Act imposes certain requirements for agendas, public comments and other aspects of public meetings. See California Government Code sections 54950.

Brownfield
An area with abandoned, idle or under-used industrial and commercial facilities where expansion, redevelopment or reuse is complicated by real or perceived environmental contamination.

Buffer Zone
An area of land separating two distinct land uses that acts to soften or mitigate the effects of one land use on the other. Where a commercial district abuts a residential district, for example, additional use, yard or height restrictions may be imposed to protect residential properties. The term may also be used to describe any zone that separates two unlike zones like a multifamily housing zone between single-family housing and commercial uses.

Building Code
Standards adopted by the state governing the construction, alteration, demolition, occupancy or other use of buildings used for human habitation. The state regulations are substantially the same as those contained in the most recent editions of the Uniform Building Code, Uniform Housing Code, Uniform Plumbing Code, Uniform Mechanical Code and the National Electric Code. Local governments may have stricter standards under certain circumstances. See California Health and Safety Code sections 17921-17922. See also UNIFORM BUILDING CODE, UNIFORM HOUSING CODE.

Building Coverage
The amount of a lot that is covered by buildings, usually expressed as a percentage.

Building Envelope
The space remaining on a site for structures after all building setback, height limit and bulk requirements have been met.

Building Official
The person responsible for the administration and enforcement of the building, housing, plumbing, electrical and related codes.

Build-Out
Development of land to its full potential (100 percent build-out) or as permitted under current or proposed planning or zoning designations. See CARRYING CAPACITY. For a general plan or specific plan, the term may also refer to a figure that is less than the absolute maximum (100 percent) and is instead a projected level of total residential units and/or nonresidential development envisioned to exist after 20 or 30 years of growth.

Built Environment
All aspects of our surroundings that are constructed by people. buildings, roads, parks and all other improvements that form the physical character of a community.

Bulk Regulations

Zoning or other regulations that control the height, mass, density and location of buildings. The purpose of bulk regulations is to provide proper light, air and open space. Some bulk regulations also are intended to reflect context-sensitive design.

Business Improvement Districts

Public-private partnerships among property owners and commercial tenants who collectively contribute to the maintenance, development and promotion of their commercial district.

Busway

A vehicular right-of-way reserved exclusively for buses. Getting public transit out of traffic speeds it up, making it a more attractive option.

By Right

A use of land that is permitted as a principal use in a zoning district.

C

California Ambient Air Quality Standard (CAAQS)

Legal limit that specifies the maximum level and time of exposure in the outdoor air for a given air pollutant and which is protective of human health and public welfare. CAAQSs are recommended by the Office of Environmental Health Hazard Assessment (OEHHA) and adopted into regulation by the California Air Resources Board. CAAQSs are the standards which must be met per the requirements of the California Clean Air Act (CCAA).

California Environmental Quality Act (CEQA)

A state law requiring state and local agencies to regulate activities with consideration for environmental protection. If a proposed activity has the potential for a significant adverse environmental impact, an Environmental Impact Report (EIR) must be prepared and certified as to its adequacy before taking action on the proposed project. See ENVIRONMENTAL IMPACT REPORT.

California Housing Finance Agency (CHFA)

A state agency established by the Housing and Home Finance Act of 1975 that is authorized to sell revenue bonds and generate funds for the development, rehabilitation and conservation of low- and moderate-income housing.

Caltrans

California Department of Transportation.

Capital Improvements Program (CIP)

A program established by a city or county government and reviewed by its planning commission, which schedules permanent improvements, usually for a minimum of five years in the future, to fit the projected fiscal capability of the local jurisdiction. The program generally is reviewed annually, for conformance to and consistency with the general plan.

Capital Outlay

Expenditures which result in the acquisition of or addition to fixed assets. See DEBT FINANCING, PAY AS YOU GO, PAY AS YOU USE.

Carbon Dioxide (CO2)

A naturally occurring gas, and also a by-product of burning fossil fuels and biomass, as well as land-use changes and other industrial processes. It is the reference gas against which other greenhouse gases are measured and therefore has a Global Warming Potential of 1. Carbon dioxide represents about three quarters of total U.S. greenhouse gas emissions. See GLOBAL WARMING POTENTIAL.

Carbon Sequestration

The process of removing carbon from the atmosphere and storing it in a “carbon sink,” a fixed molecule in soil, oceans or plants. Because of the amounts of carbon that are stored in soils, small changes in soil carbon content can have major impacts on carbon dioxide levels in the atmosphere. Soils contain inorganic carbon (calcium carbonate) and organic carbon (humus), and can be either a source or a sink for atmospheric carbon dioxide depending on how landscapes are managed. See CARBON SINK.

Carbon Sink
Carbon reservoirs and conditions that take-in and store more carbon (i.e., carbon sequestration) than they release. Carbon sinks can serve to partially offset greenhouse gas emissions. Forests and oceans are large carbon sinks. See CARBON SEQUESTRATION.

Carrying Capacity
Used in determining the potential of an area to absorb development. (1) The level of land use, human activity or development for a specific area that can be accommodated permanently without an irreversible change in the quality of air, water, land or plant and animal habitats. (2) The upper limits of development beyond which the quality of human life, health, welfare, safety or community character within an area will be impaired. (3) The maximum level of development allowable under current zoning. See BUILD-OUT.

Census Tract
Small portions of populated areas in which data is collected for statistical purposes during a census.

Census
The nationwide population count conducted every 10 years by the U.S. Census Bureau.

Central Business District (CBD)
The major commercial downtown center of a community. General guidelines for delineating a downtown area are defined by the U.S. Census of Retail Trade, with specific boundaries being set by the local municipality.

Certificate of Compliance
(1) Sometimes used synonymously with Certificate of Occupancy. (2) Also refers to a certificate issued under the Subdivision Map Act when a division of property is in compliance with the Map Act and local subdivision ordinances. (3) Less commonly, may also refer to an enforcement device used to inform others (like a potential purchaser) that a property does not comply with local codes and details what must be changed to bring the property back into compliance.

Certificate of Occupancy
An official certification that a building or place conforms to the provisions of the zoning and building codes, and therefore may be used or occupied. Permits are necessary for new construction and alterations to existing structures. A structure cannot be occupied without a certificate of occupancy.

Channelization
(1) The straightening and/or deepening of a watercourse for purposes of storm-runoff control or ease of navigation. Channelization often includes lining of stream banks with a retaining material like concrete. (2) At the intersection of roadways, the directional separation of traffic lanes through the use of curbs or raised islands that limit the paths that vehicles may take through the intersection.

Charrette
An intensive planning session where citizens, designers, and others collaborate on a vision for development. The charrette workshop is designed to stimulate ideas and involve the public in the community planning/design process.

Charter City
A city that is incorporated under its own charter rather than the general laws of the state. Charter cities have broader powers than do general law cities in matters that are “municipal affairs” (as opposed to matters of “statewide concern”).

Circulation Element
One of the eight state-mandated elements of a local general plan, it contains adopted goals, policies and implementation programs for the planning and management of existing and proposed thoroughfares, transportation routes and terminals, as well as local public utilities and facilities, all correlated with the land use element of the general plan.

City Council
A city's legislative body. The popularly elected city council is responsible for enacting ordinances, imposing taxes, making appropriations, establishing city policy and hiring some city officials. The council adopts the general plan, zoning and subdivision ordinance.

Clear Zone
That section of an approach zone of an airport where the plane defining the glide path is 50 feet or less above the centerline of the runway. The clear zone ends where the height of the glide path above ground level is above 50 feet. Land use under the clear zone is restricted. See APPROACH ZONE, OUTER APPROACH ZONE, TRANSITION ZONE.

Climate
Climate is generally defined as the "average weather" over a period of time ranging from months to thousands of years. The classical period is three decades, as defined by the World Meteorological Organization (WMO). Statistical measurements of climate most often focus on surface variables such as temperature, precipitation and wind. See WEATHER

Climate Adaptation
Adjustment in natural or human systems to a new or changing environment. Adaptation to climate change refers to adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderates harm or exploits beneficial opportunities. Various types of adaptation can be distinguished, including anticipatory and reactive adaptation, private and public adaptation and autonomous and planned adaptation.

Climate Change
Climate change refers to any significant change in measures of climate (such as temperature, precipitation or wind) lasting for an extended period (decades or longer). Climate change may result from natural factors, such as changes in the sun's intensity or slow changes in the Earth's orbit around the sun; natural processes within the climate system (e.g. changes in ocean circulation); human activities that change the atmosphere's composition (e.g. through burning fossil fuels); and the land surface (e.g. deforestation, reforestation, urbanization, desertification, etc.).

Climate Mitigation
A human intervention to reduce the human impact on the climate system; it includes strategies to reduce greenhouse gas sources and emissions and enhancing greenhouse gas sinks.

Climate Resilience
The ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self-organization and the capacity to adapt to stress and change.

Clustered Development
Development in which a number of dwelling units are placed closer together than usual, or are attached, with the purpose of retaining an open-space area.

Co-Benefit
The benefits of policies that are implemented for various reasons at the same time acknowledging that most policies

designed to address one issue also have other, often at least equally important, rationales (e.g., related to objectives of development, sustainability, and equity). The term co-impact is also used in a more generic sense to cover both the positive and negative side of the benefits. See ANCILLARY BENEFIT

Collector

A street that provides circulation within and between neighborhoods, characterized by relatively low speed (25-30 mph) and low volume (5,000-20,000 average daily trips). Collectors usually serve short trips and are intended for collecting trips from local streets and distributing them to the arterial network. See ARTERIAL.

Commercial

A land use classification that permits facilities for the buying and selling of commodities and services.

Common Open Space

Land within or related to a development, not individually owned or dedicated for public use, that is designed and intended for the common use of the residents of the development.

Community

A specific group of people, often living in a defined geographic area, who share a common culture, values and norms and who are arranged in a social structure according to relationships the community has developed over a period of time. The term “community” encompasses worksites, schools and health care sites.

Community Benefits

In planning and land use, this refers to developer exactions that are required as a condition of development. The benefits contained in a community benefits agreement (CBA) may be provided by the developer or by other parties benefiting from the development subsidies, such as the stores that rent space in a subsidized retail development. Some benefits can be built into the project itself, such as the inclusion of a childcare center in the project or the use of environmentally sensitive design elements, such as white roofs that help avoid the “heat island” effect. Some benefits will affect project operations, such as wage requirements or traffic management rules. Other benefits will be completely separate from the project, such as money devoted to a public art fund or support for existing job-training centers.

Community Care Facility

Housing for the elderly licensed by the California Department of Social Services, typically for residents who are frail and need supervision. Services normally include three meals daily, housekeeping, security and emergency response, a full activities program, supervision in the dispensing of medicine, personal services like assistance in grooming and bathing, but no nursing care. Sometimes referred to as residential care or personal care.

Community Character

The image of a community or area as defined by such factors as its built environment, natural features and open space elements, type of housing, architectural style, infrastructure and the type and quality of public facilities and services.

Community Development Block Grant (CDBG)

A grant program administered by the U.S. Department of Housing and Urban Development on a formula basis for entitlement communities and by the California Department of Housing and Community Development for non-entitlement jurisdictions. This grant allots money to cities and counties for housing rehabilitation and community development, including public facilities and economic development.

Community Facilities District

Under the Mello-Roos Community Facilities Act of 1982 (California Government Code sections 53311 and following), a legislative body may create within its jurisdiction a special tax district that can finance tax-exempt bonds for the planning, design, acquisition, construction and/or operation of public facilities, as well as public services for district residents. Special taxes levied solely within the district are used to repay the bonds. See MELLO-ROOS BONDS.

Community Food System

A community food system, also known as a local food system, is a collaborative effort to integrate agricultural production with food distribution to enhance the economic, environmental and social well-being of a particular place. Foods produced, processed and distributed as locally as possible supports a food system that preserves local farmland and fosters community economic viability, requires less energy for transportation and offers consumers the freshest foods.

Community Noise Equivalent Level (CNEL)

A 24-hour energy equivalent level derived from a variety of single-noise events, with weighting factors of 5 and 10 dBA applied to the evening (7 p.m. to 10 p.m.) and nighttime (10 p.m. to 7 a.m.) periods to allow for greater sensitivity to noise during these hours. See DAY-NIGHT AVERAGE SOUND LEVEL, DBA, DECIBEL.

Community Park

Land with full public access intended to provide recreation opportunities beyond those supplied by neighborhood parks. Community parks are larger in scale than neighborhood parks but smaller than regional parks. See NEIGHBORHOOD PARK, REGIONAL PARK.

Community Plan

A planning document that focuses on a particular area or community within the city or county. A community plan can also serve as an extension of a general plan or as a separate document that supplements a general plan.

Community Redevelopment Agency (CRA)

A local agency that was created under California Redevelopment Law (California Health and Safety Code sections 33000 and following), or a local legislative body that was elected to exercise the powers granted to such an agency, for the purpose of planning, developing, re-planning, redesigning, clearing, reconstructing, and/or rehabilitating all or part of a specified area with residential, commercial, industrial, and/or public (including recreational) structures and facilities. On June 28, 2011, Governor Jerry Brown signed into law two bills that effectively dissolved all California Redevelopment Agencies (RDAs). As a result, effective February 1, 2012, all RDAs and community development agencies were dissolved, and successor agencies, as defined by the law, were required to be appointed to oversee the distribution of tax proceeds that would have been paid to the RDAs.

Community Service Area

A geographic sub-area of a city or county used for the planning and delivery of parks, recreation and other human services based on an assessment of the service needs of the population in that sub-area.

Community Service District (CSD)

A geographic sub-area of a city or county used for the planning and delivery of parks, recreation, and other human services based on an assessment of the service needs of the population in that sub-area. A CSD is a taxation district with independent administration.

Community Supported Agriculture (CSA)

A community of individuals who pledge support to a farm operation so that the farmland becomes the community's farm,

with the growers and consumers providing mutual support and sharing the risks and benefits of food production. Shareholders pledge in advance to cover the anticipated costs of the farm operation and farmer's salary. In return, they receive shares in the farm's bounty throughout the growing season.

Commute Shed

The area from which people do or might commute from their homes to a specific workplace destination, given specific assumptions about maximum travel time or distance.

Compatibility

The characteristics of different uses or activities that permit them to be located near each other in harmony and without conflict. The designation of permitted and conditionally permitted uses in a zoning district is intended to achieve compatibility. Some elements affecting compatibility include intensity of occupancy as measured by dwelling units per acre; pedestrian or vehicular traffic generated; volume of goods handled; and environmental effects like noise, vibration, glare, air pollution or radiation.

Complete Streets

An approach that enhances mobility through a comprehensive transportation network consisting of streets and off-street pathways designed to accommodate all modes of travel and enable safe access for all users. Pedestrians, bicyclists, motorists and bus riders of all ages and abilities are able to safely move within and through a jurisdiction or place, particularly to key public assets, job centers and shopping areas. Individual streets can also be complete streets, though every street need not accommodate every user for a jurisdiction to implement a complete streets system.

Concurrency

Installation and operation of facilities and services needed to meet the demands of new development simultaneous with the development.

Condemnation

The exercise by a public agency of the right of eminent domain. See EMINENT DOMAIN, TAKING.

Conditional Use Permit (CUP)

A discretionary permit issued by a hearing body to allow a conditional use that may or may not be allowable under the zoning code. If approval is granted, the developer must meet certain conditions to harmonize the project with its surroundings. Each application is considered on its individual merits. CUPs require a public hearing and, if approval is granted, are usually subject to the fulfillment of certain conditions by the developer. Approval of a CUP is not a change in zoning.

Conditional Use

A use that may locate within a zone only upon taking measures to address issues that may make the use detrimental to the public health, safety and welfare and will not impair the integrity and character of the zoned district. See CONDITIONAL USE PERMIT, PERMITTED USE.

Condominium

A structure of two or more units, the interior spaces of which are individually owned; the balance of the property (both land and building) is owned in common by the owners of the individual units.

Congestion Management Plan (CMP)

A mechanism employing growth management techniques, including traffic level of service (LOS) requirements, standards for public transit, trip reduction programs and capital improvement programs for the purpose of controlling and/or reducing the

cumulative regional traffic impacts of development. See CONCURRENCY, GROWTH MANAGEMENT, LEVEL OF SERVICE (TRAFFIC).

Connectivity

The ease of travel between two points. The degree to which streets or areas are interconnected and easily accessible to one another. An example of high connectivity would be a dense grid pattern in a downtown area.

Conservation Easement

A partial interest in land that severs the right to develop the land from its basic use, like low-density uses, open space or agriculture. The right to develop the land is usually held by a land trust or other entity that monitors the land and enforces the terms of the easement. The underlying owner of the land can continue to use the land according to the terms of the easement. See EASEMENT.

Conservation Element

One of the eight state-mandated elements of a local general plan, it contains adopted goals, policies and implementation programs for the conservation, development and use of natural resources, including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals and other natural resources.

Consistency; Consistent with

Free from significant variation or contradiction. The various diagrams, text, goals, policies, and programs in the general plan must be consistent with each other, not contradictory or preferential. The term “consistent with” is used interchangeably with “conformity with.”

Consumer Price Index (CPI)

A statistical description of price levels provided by the U. S. Department of Labor. The change in this index from year to year is used to measure the cost of living and economic inflation.

Cooperative

A group of dwellings or an apartment building that is jointly owned by the residents, the common ownership including the open space and all other parts of the property. The purchase of stock entitles the buyer to sole occupancy but not the individual ownership of a specified unit.

Cordon Count

A measurement of all travel (usually vehicle trips, but sometimes person trips) in and out of a defined area (around which a cordon is drawn).

Council of Governments (COG)

California’s 25 Councils of Governments are regional planning agencies concerned primarily with transportation planning and housing; they do not directly regulate land use. Elected officials from each of the cities and counties belonging to the Council of Governments make up its governing board.

County

A political subdivision of the state.

Covenant
A private legal restriction that places a burden on a parcel of land in favor of another parcel. The restriction is recorded in the deed. Covenants are most commonly used in the establishment of a subdivision to restrict the use of all individual lots in the development to a certain type of use (like single-family units), but may also be used to guarantee views and solar access.

Covenants, Conditions and Restrictions (CC&Rs)
A term used to describe restrictive limitations—usually recorded as covenants—that may be placed on property and its use, and which usually are made a condition of holding title or lease. They are intended to preserve the physical nature and character of the development.

Criterion
A standard upon which a judgment or decision may be based. See STANDARDS.

Critical Facility
Facilities housing or serving many people, that are necessary in the event of an earthquake or flood, like hospitals, fire, police and emergency service facilities, utility "lifeline" facilities, like water, electricity and gas supply, sewage disposal and communications and transportation facilities.

Cross-Acceptance
The review by two or more jurisdictions of each other's plans. Each jurisdiction determines whether the plans submitted are consistent or can be made compatible with its own. The process provides for communication and negotiation between the affected jurisdictions.

Cul-de-sac
A short street or alley with only a single means of ingress and egress at one end and with a large turnaround at its other end.

Cumulative Impact
As used in the California Environmental Quality Act, the total impact resulting from the accumulated impacts of individual projects or programs over time. See CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Curb Cut
A ramp opening in a curb where vehicles or wheelchairs may enter or leave the roadway.

D

Day-Night Average Sound Level (Ldn)
The A-weighted average sound level for a given area (measured in decibels) during a 24-hour period with a 10 dB weighting applied to night-time sound levels. The Ldn is approximately numerically equal to the Community Noise Equivalent Level for most environmental settings. See COMMUNITY NOISE EQUIVALENT LEVEL.

dBA
The "A-weighted" scale for measuring sound in decibels; weighs or reduces the effects of low and high frequencies in order to simulate human hearing. Every increase of 10 dBA doubles the perceived loudness though the noise is actually ten times more intense.

Debt Financing
Issuance of bonds and other debt instruments to finance municipal improvements and services.

Debt Instrument
Written pledge to repay debt such as bills, notes and bonds. See BOND.

Debt Service
Payment of principal and interest on long-term indebtedness.

Decibel (dB)
A unit of sound pressure (abbreviated as dB) that is used to express noise level. The reference level is a sound pressure of 20 micro newtons per square meter. Zero decibels, the starting point of the scale, is about the level of the weakest sound that can be heard by someone with very good hearing in an extremely quiet location. Typical examples of noise levels would be 50 decibels in an average residence; 90 decibels for someone standing 20 feet from a subway train; and 120 decibels if standing 200 feet from a jet.

Dedication, In Lieu Of
Cash payments that may be required of an owner or developer as a substitute for a dedication of land, usually calculated in dollars per lot, and referred to as in lieu fees or in lieu contributions.

Dedication
A grant of private land to a public agency for public use. Dedications are often used to obtain roads and parkland needed to serve a project. Dedication requirements are often imposed as a condition of a tentative map, parcel map or as a condition of development. See CONDITIONAL USE, IN-LIEU FEE, PARCEL MAP, TENTATIVE SUBDIVISION MAP.

Deed Restriction
A private legal restriction on the use of land recorded in the deed. The restriction burdens or limits the use of the property in some way. See COVENANT, EASEMENT.

Defensible Space
(1) In firefighting and prevention, an area of non-combustible surfaces separating urban and wild land areas. (2) In urban areas, open-spaces, entry points and pathways configured to provide maximum opportunities to rightful users and/or residents to defend themselves against intruders and criminal activity.

Deficiency Plan
An action program for improving or preventing the deterioration of level of service on the Congestion Management Agency street and highway network. See CONGESTION MANAGEMENT PLAN, LEVEL OF SERVICE (TRAFFIC).

Deforestation
Those practices or processes that result in the conversion of forested lands for non-forest uses.

Density Bonus
An increase in the allowable number of residences granted by the city or county in return for the project's providing low- or moderate-income housing. A housing development that provides 20 percent of its units for lower-income households, ten percent of its units for very-low income households, or 50 percent of its units for seniors is entitled to a density bonus and other concessions. See California Government Code section 65915. The density bonus is the most common form of incentive used by inclusionary housing programs. A density bonus provides an increase in allowed dwelling units per acre (DU/A), Floor Area Ratio (FAR) or height which generally means that more housing units can be built on any given site.

Density
The amount of development per acre permitted on a parcel under the applicable zoning. Common measures of density include population per acre or square mile and dwelling units per acre. Gross density includes the area necessary for streets, schools and parks. Net density does not include land area for public facilities.

Density Transfer
A way of retaining open space by concentrating densities—usually in compact areas adjacent to existing urbanization and utilities—while leaving unchanged historic, sensitive, or hazardous areas. In some jurisdictions, for example, developers can buy development rights of properties targeted for public open space and transfer the additional density to the base number of units permitted in the zone in which they propose to develop. See TRANSFER OF DEVELOPMENT RIGHTS.

Density, Employment
A measure of the number of employed persons per specific area (for example, employees per acre).

Density, Residential
The number of permanent residential dwelling units per acre of land. Densities specified in the general plan may be expressed in units per gross acre or per net developable acre. See ACRES, GROSS, and DEVELOPABLE ACRES, NET.

Design Review; Design Control
The comprehensive evaluation of a development and its impact on neighboring properties and the community as a whole, from the standpoint of site and landscape design, architecture, materials, colors, lighting and signs, in accordance with a set of adopted criteria and standards. "Design Control" requires that certain specific things be done and that other things not be done. Design Control language is most often found within a zoning ordinance. "Design Review" usually refers to a system set up outside of the zoning ordinance, whereby projects are reviewed against certain standards and criteria by a specially established design review board or committee. See ARCHITECTURAL CONTROL.

Design Review Board
A group appointed by the governing body to consider the design and aesthetics of development within all or a portion of the community.

Detachment
Withdrawal of territory from a special district or city; the reverse of annexation. See ANNEXATION.

Detention Dam
Detention dams are constructed to retard flood runoff and minimize the effect of sudden floods. Detention dams fall into two main types. In one type, the water is temporarily stored and released through an outlet structure at a rate that will not exceed the carrying capacity of the channel downstream. Often, the basins are planted with grass and used for open space or recreation in periods of dry weather. The other type, most often called a retention pond, allows for water to be held as long as possible and may or may not allow for the controlled release of water. In some cases, the water is allowed to seep into the permeable banks or gravel strata in the foundation. This latter type is sometimes called a water-spreading dam or dike because its main purpose is to recharge the underground water supply. Detention dams are also constructed to trap sediment. These are often called debris dams. See STORMWATER DETENTION.

Developable Acres, Net
The portion of a site that can be used for density calculations. Some communities calculate density based on gross acreage. Public or private road rights-of-way are not included in the net developable acreage of a site.

Developable Land
Land that is suitable as a location for structures and that can be developed free of significant impact on natural resource areas.

Development Agreement
A legislatively approved contract between a jurisdiction and a person having legal or equitable interest in real property within the jurisdiction that "freezes" certain rules, regulations and policies applicable to development of a property for a specified period of time, usually in exchange for certain concessions by the owner. See California Government Code section 65865.

Development Fees
This is a fee or charge imposed on developers to pay for the costs to the community of providing services to a new development. It is a means of providing a fund for financing new public improvements without resorting to deficit financing.

Development Rights
The right to develop land by a landowner who maintains fee-simple ownership over the land or by a party other than the owner who has obtained the rights to develop. Such rights usually are expressed in terms of density allowed under existing zoning. See INTEREST, FEE; INTEREST, LESS THAN-FEE; and DEVELOPMENT RIGHTS, TRANSFER OF (TDR).

Development Rights, Transfer of (TDR)
A program that can relocate potential development from areas where proposed land use or environmental impacts are considered undesirable (the "donor" site) to another ("receiver") site chosen on the basis of its ability to accommodate additional units of development beyond that for which it was zoned, with minimal environmental, social and aesthetic impacts. Also known as transfer of development credits. See DEVELOPMENT RIGHTS.

Disadvantaged Communities
Communities designated by the California Environmental Protection Agency to be over-burdened by pollution, socio-

economic and health impacts. Disadvantaged communities are specifically targeted for investment of proceeds from the state's cap-and-trade program. These investments are aimed at improving public health, quality of life and economic opportunity in California's most burdened communities at the same time reducing pollution that causes climate change.

Discretionary Decision

As used in CEQA, an action taken by a governmental agency that calls for the exercise of judgment in deciding whether to approve and/or how to carry out a project.

Discretionary Project

Under the California Environmental Quality Act and generally, an activity which requires the public agency to exercise judgment in deciding whether or not to approve or deny a project, as opposed to an administrative action. See CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Discretionary Review

A special power of a planning commission, outside the normal building permit application approval process, through which the commission can modify or disallow a proposed, zoning-compliant project when exceptional and extraordinary circumstances associated with a proposed project exist. These exceptional and extraordinary circumstances often involve conflicts with a jurisdiction's general plan or other policies. For example, if zoning permits a four-story building on a parcel but every building in the neighborhood is two stories tall, the planning commission may exercise its power and deny a permit for a larger building because of general plan language requiring that new buildings reflect the existing character of a neighborhood.

Displacement

Occurs when residents can no longer afford to remain in their homes due to rising housing costs. Residents may also be forced out by lease non-renewals, evictions, eminent domain or physical conditions that render homes uninhabitable as investors await redevelopment opportunities. Indirect displacement refers to changes in who is moving into a neighborhood as low-income residents move out. In a gentrifying neighborhood, when homes are vacated by low-income residents, other low-income residents cannot afford to move in because rents and sales prices have increased. Low-income residents can also be excluded as a result of discriminatory policies or changes in land use or zoning that foster a change in the character of residential development.

District

(1) An area of a city or county that has a unique character identifiable as different from surrounding areas because of distinctive architecture, streets, geographic features, culture, landmarks, activities or land uses. (2) A portion of the territory of a city or county within which uniform zoning regulations and requirements apply; a zone. See also SPECIAL DISTRICT.

Documentary Transfer Tax

Also called Real Property Transfer Tax, this tax is imposed on the transfer of ownership in real estate at a rate of $0.55 per $500.00 of property value.

Down-Zoning

A change in the zoning classifications of land to a classification permitting development that is less intensive or dense, like from multifamily residential to single-family residential or from commercial to residential. A change of zoning in the opposite direction is referred to as up-zoning. See ZONING.

Due Process (of Law)

A requirement that legal proceedings be conducted fairly. Such protections may include, depending on the proceeding, the right to be heard, the right to rebut evidence, that sufficient evidence is presented to reach an informed option and that

conflicts of interest have been avoided.

Dwelling Unit

A room or group of rooms (including sleeping, eating, cooking and sanitation facilities, but not more than one kitchen), which constitutes an independent housekeeping unit, occupied or intended for occupancy by one household on a long-term basis.

E

Earmarked Funds
Funds that have been tagged or “earmarked” for a specific purpose. See GENERAL FUND.

Easement, Conservation
A tool for acquiring open space with less than full-fee purchase, whereby a public agency buys only certain specific rights from the landowner. These may be positive rights (providing the public with the opportunity to hunt, fish, hike or ride over the land) or they may be restrictive rights (limiting the uses to which the land owner may devote the land in the future.)

Easement, Scenic
A tool that allows a public agency to use an owner’s land for scenic enhancement such as roadside landscaping or vista preservation.

Easement
The right to use property owned by another for specific purposes or to gain access to another property. For example, utility companies often have easements on the private property of individuals to be able to install and maintain utility facilities.

Economic Development Commission (EDC)
An agency charged with seeking economic development projects and economic expansion at higher employment densities. A possible ally for bringing in businesses such as grocery stores to underserved areas.

Ecosystem
The complex system of plant, animal, fungal and microorganism communities and their associated non-living environment interacting as an ecological unit. Ecosystems have no fixed boundaries; instead their parameters are set to the scientific, management or policy question being examined. Depending upon the purpose of analysis, a single lake, a watershed or an entire region could be considered an ecosystem.

Effluent
A discharge of pollutants, with or without treatment, into the environment.

EIR
Environmental Impact Report. A detailed review of a proposed project, its potential adverse impacts upon the environment, measures that may avoid or reduce those impacts, and alternatives to the project.

Elderly Housing
See SENIOR HOUSING.

Elderly
See SENIORS.

Electric Vehicle (EV)
A motor vehicle that uses an electric motor as the basis of its operation. Such vehicles do not directly emit air pollutants and generate a lower impact on the environment throughout the lifecycle of the vehicle compared to vehicles powered by internal combustion engines.

Embodied Energy
How much energy was required to extract, process, package, transport, install and recycle or dispose of materials that make up a building's construction.

Emergency Shelter
A facility that provides immediate short-term housing and supplemental services for the homeless. Shelters come in many sizes, but an optimum size is considered to be 20 to 40 beds. Supplemental services may include food, counseling and access to other social programs. See LOW BARRIER NAVIGATION CENTER, TRANSITIONAL HOUSING.

Eminent Domain
The right of a public entity to acquire private property for public use upon the payment of just compensation. See TAKING.

Emissions
The release of a substance into the atmosphere, including particulate matter and gasses.

Emission Factor
For stationary sources, the relationship between the amount of pollution produced and the amount of raw material processed or burned. For mobile sources, the relationship between the amount of pollution produced and the number of vehicle miles traveled. By using the emission factor of a pollutant and specific data regarding quantities of materials used by a given source, it is possible to compute emissions for the source.

Emission Inventory
An estimate of the amount of pollutants emitted into the atmosphere from major mobile, stationary, area-wide and natural source categories over a specific period of time such as a day or a year.

Emission Standard
The maximum amount of pollutant that can legally discharged from a single source, either mobile or stationary.

Empowerment Zones
U.S. Department of Housing and Urban Development designations for urban communities. Businesses that locate in these areas are eligible for tax credits and other financial incentives for hiring local residents.

Encroachment
Any obstruction or protrusion into a right of way or adjacent property, whether on the land or above it.

Encumbrance
An anticipated expenditure committed for the payment of goods and services not yet received or paid for.

Endangered Species
Animal or plant species designated as endangered under federal or state law, whose prospects for survival and reproduction are in immediate jeopardy from one or more causes. See HABITAT CONSERVATION PLAN.

Energy Intensity
The ratio of energy consumption to a measure of the demand for services (e.g., number of buildings, total floorspace, floorspace-hours, number of employees or constant dollar value of Gross Domestic Product for services).

Energy-efficiency
The ratio of the useful output of services from an article of industrial equipment to the energy use by such an article; for example, vehicle miles traveled per gallon of fuel (mpg).

Energy Smart
Meeting your energy needs cost effectively and with the least impact on the environment.

Envelope
The skin of a building-including the windows, doors, walls, foundation, basement slab, ceilings, roof and insulation – that separates the interior of a building from the outdoor environment.

Environment
Under the California Environmental Quality Act, "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." See CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Environmental Impact Report (EIR)
A report required pursuant to the California Environmental Quality Act that assesses all the environmental characteristics of an area, determines what effects or impacts will result if the area is altered or disturbed by a proposed action, and identifies alternatives or other measures to avoid or reduce those impacts. See CALIFORNIA ENVIRONMENTAL QUALITY ACT, INITIAL STUDY.

Environmental Impact Statement (EIS)
Under the National Environmental Policy Act, a statement on the effect of development proposals and other major actions that significantly affect the environment. See NATIONAL ENVIRONMENTAL POLICY ACT.

Environmental Justice
The fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation and enforcement of environmental laws, regulations and policies. See California Government Code section 65040.12.

Environmental Justice Element
One of the eight state-mandated elements of a local general plan. Only jurisdictions with disadvantaged communities are required to incorporate environmental goals, policies and programs to promote equity and protect human health from environmental hazards.

Equity
The state, quality or ideal of being just, impartial and fair; creating a situation where all groups have access to the resources and opportunities necessary to improve the quality of their lives and differences in life outcomes cannot be predicted on the basis of race, class, or other dimensions of identity.

Erosion
(1) The loosening and transportation of rock and soil debris by wind, rain, or running water. (2) The gradual wearing away of

the upper layers of earth.

Exaction
A contribution or payment required as an authorized precondition for receiving a development permit; usually refers to mandatory dedication (or fee in lieu of dedication) requirements found in many subdivision regulations.

Excise Tax
Tax placed on a person for a voluntary act, making the tax avoidable. Includes sales and use tax, business license tax, transient occupancy tax, utility user tax, etc. Phrase “excise tax” is most commonly used to refer to a parcel tax. See AD VALOREM TAX, PARCEL TAX, TRANSIENT OCCUPANCY TAX, UTILITY USERS TAX.

Expansive Soils
Soils that swell when they absorb water and shrink as they dry.

Expenditure
The actual payment for goods and services. See APPROPRIATION.

Expressway
A divided multi-lane major arterial street for through traffic with partial control of access and with grade separations at major intersections. See ARTERIAL, FREEWAY, PARKWAY.

Extreme Weather Event
In most cases, extreme weather events are defined as lying in the outermost (“most unusual”) ten percent of a place’s history.

Exurban Area
The region that lies beyond a city and its suburbs.

F

Fair Market Rent
Amount of rent, including utility allowances, determined by the U.S. Department of Housing and Urban Development for purposes of administering the Section 8 Existing Housing Program. See SECTION 8 RENTAL ASSISTANCE PROGRAM.

Family
(1) Two or more persons related by birth, marriage or adoption (U.S. Bureau of the Census). (2) An individual or a group of persons living together who constitute a bona fide single-family housekeeping unit in a dwelling unit, not including a fraternity, sorority, club or other group of persons occupying a hotel, lodging house or institution of any kind (California). See HOUSEHOLD.

Farmers Home Administration (FmHA)
A federal agency that provides loans and grants for improvement projects and low-income housing.

Fast Food Restaurant
Any retail establishment intended primarily to provide short-order food services for on-site dining and/or take-out, including self-serve restaurants (excluding cafeterias where food is consumed on the premises), drive-in restaurants and formula restaurants required by contract or other arrangement to offer standardized menus, ingredients and fast food preparation.

Fault
A fracture in the Earth's crust forming a boundary between rock masses that have shifted.

Feasible
Capable of being accomplished in a successful manner within a reasonable time taking into account economic, environmental, social and technological factors.

Fee Interest
Entitles a landowner to exercise complete control over use of land, subject only to government land use regulations.

Feeder Roads
Smaller roadways that "feed" or connect traffic to larger roadways.

Fees
Also known as monetary exactions, fees require project proponents to pay certain amounts in order to have their applications processed (the fees reimburse the agency for the expenses of processing the application). Fees also may be assessed to mitigate the impact of a proposed development on the community (for example, school facilities fees to help expand the schools to assure they have enough capacity for the demand created by a new housing development). State law closely regulates the adoption, levy, collection and challenge to development fees imposed by a local public agency. It applies to both fees imposed on a broad class of projects by legislation of general applicability and fees imposed on a project-specific basis. See EXACTION, IMPACT FEE.

Field Act
Legislation passed after a 1933 Long Beach earthquake that collapsed a school, that established more stringent structural requirements and standards for construction of schools than for other buildings. See California Education Code sections 17280; 81130 and following.

Final Subdivision Map
A map of an approved subdivision filed in the county recorder's office. It usually shows surveyed lot lines, street right-of-ways, easements, monuments, distances, angles and bearings, pertaining to the exact dimensions of all parcels, street lines and so forth. See TENTATIVE SUBDIVISION MAP, PARCEL MAP.

Finding
A determination or conclusion based on the evidence presented to a hearing body in support of its decision. When it presents its decision, the body is often required to demonstrate in writing that the facts presented in evidence support its decision in conformance with the law.

Fire Hazard Zone
An area where, due to slope, fuel, weather or other fire-related conditions, the potential loss of life and property from a fire necessitates special fire protection measures and planning before development occurs.

Fiscal Impact Analysis
A projection of the direct public costs and revenues resulting from population or employment change to the local jurisdiction(s) in which the change is taking place. Enables local governments to evaluate relative fiscal merits of general plans, specific plans or projects. See GENERAL PLAN, SPECIFIC PLAN.

Fiscal Impact Report (FIR)
A report projecting the public costs and revenues that will result from a proposed program or development. See FISCAL IMPACT ANALYSIS.

Fiscal Year
The period designated for the beginning and ending of financial transactions. Nearly all agency fiscal years begin on July 1 and end June 30 of the following year.

Flood Insurance Rate Map (FIRM)
For each community, the official map on which the Federal Insurance Administration has delineated areas of special flood hazard and the risk premium zones applicable to that community.

Flood, 100-Year
The magnitude of a flood expected to occur on the average every 100 years, based on historical data. The 100-year flood has a one percent chance of occurring in any given year. See BASE FLOOD.

Floodplain Fringe
All land between the floodway and the upper elevation of the 100-year flood. See FLOOD, 100-YEAR.

Floodplain
The relatively level land area on either side of the banks of a stream regularly subject to flooding. That part of the floodplain subject to a one percent chance of flooding in any given year is designated as an "area of special flood hazard" by the Federal Insurance Administration.

Floodway
The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the "base flood" without cumulatively increasing the water surface elevation more than one foot. No development is allowed in floodways. See BASE FLOOD.

Floor Area Ratio (FAR)
The gross floor area permitted on a site divided by the total net area of the site, expressed in decimals to one or two places. For example, on a site with 10,000 net square feet of land area, a floor area ratio of 1.0 will allow a maximum of 10,000 gross square feet of building floor area to be built. On the same site, an FAR of 1.5 would allow 15,000 square feet of floor area; an FAR of 2.0 would allow 20,000 square feet; and an FAR of 0.5 would allow only 5,000 square feet. Also commonly used in zoning, FARs typically are applied on a parcel-by-parcel basis as opposed to an average FAR for an entire land use or zoning district. See ZONING.

Floor Area, Gross
The sum of the horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including any space where the floor-to-ceiling height is less than six feet. Some agencies exclude specific kinds of space (for example, elevator shafts, parking decks) from the calculation of gross floor area.

Food Desert
Areas characterized by poor access to healthy and affordable food that may contribute to social and spatial disparities in diet and diet-related health outcomes. The term "food desert" can mean a literal absence of retail food in a defined area, with studies of food deserts more commonly assessing differential accessibility to healthy and affordable food between socioeconomically advantaged and disadvantaged areas.

Food Insecurity
Limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.

Food Miles
The distance food travels from where it is grown or raised to where it is ultimately purchased by the consumer or end-user.

Food Security
Access by all people at all times to enough food for an active, healthy life. Food security includes at a minimum the ready availability of nutritionally adequate and safe foods and an assured ability to acquire acceptable foods in socially acceptable ways.

Footcandle
The unit of illumination when the foot is the unit of length.

Footprint
Land area taken up by a building.

Footprint; Building Footprint
The outline of a building at all of the points where it meets the ground.

Form-Based Codes

A method of regulating development to achieve a specific urban form by controlling physical form primarily, with a lesser focus on land use, through city or county regulations. Form-based codes address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks.

Fossil Fuels

Fuels such as coal, oil and natural gas; so-called because they are the remains of ancient plant and animal life.

Franchise

Fee paid to a municipality from a franchisee for “rental” or “toll” for the use of streets and rights-of-way.

Freeway

A high-speed, high-capacity, limited-access road serving regional and countywide travel. Such roads are free of tolls, as contrasted with turnpikes or other toll roads. Freeways generally are used for long trips between major land use generators. At Level of Service E, they carry approximately 1,875 vehicles per lane per hour in both directions. Major streets cross at a different grade level. See EXPRESSWAY, LEVEL OF SERVICE (TRAFFIC).

Friction Factor

Constraint applied in a traffic model to introduce an approximation of conditions that exist on streets in a city or county. These conditions reduce the speed of traffic and the desirability of specific links in the network upon which the traffic model distributes trips. Examples are frequency of low-speed curves, frequency of driveways, narrowness of lanes and lack of turning lanes at intersections.

Frontage

The frontage, or front, of a lot is usually defined as the side nearest the street.

Fund Balance

Difference between the assets (revenues and other resources) and liabilities (expenditures incurred or committed to) of a particular fund.

Fund

Accounting entity with a set of self-balancing revenue and expenditure accounts used to record the financial affairs of a governmental organization. See EXPENDITURE.

G

Gann Initiative.
See PROPOSITION 4.

Gateway
A point along a roadway entering a city or county at which a motorist gains a sense of having left the environs and of having entered the city or county.

General Fund
Fund used to account for all financial resources except those required to be accounted for in another fund (like enterprise or grant funds). Usually, the General Fund is the largest fund in an agency. See EARMARKED FUNDS.

General Law City
A city incorporated under and subject to the general laws of the state.

General Obligation (G.O.) Bonds
Bonds issued through a governmental entity which have the legal authority to levy a tax on real and personal property located within the governmental boundaries at any rate necessary to collect enough money each year to pay for principal and interest due. See BOND, LIMITED OBLIGATION BONDS.

General Plan
The general plan is the foundation for local land use planning. The plan provides a vision for the foreseeable planning horizon—usually 10 to 20 years—and translates it into goals and policies for the physical development of the community. All other land use ordinances and policies flow from the general plan. The general plan covers all of the land within the jurisdiction and any additional land that, in the agency's judgment, bears relation to its planning. See California Government Code section 65300. See also SPECIFIC PLAN.

General Revenue
Those revenues that cannot be associated with a specific expenditure, such as property taxes (other than voter-approved indebtedness), sales tax and business license tax. See EARMARKED FUNDS, EXPENDITURE.

General Tax
Tax used for general agency purposes which is deposited into the general fund. See GENERAL FUND.

G.O. Bonds
See GENERAL OBLIGATION (G.O.) BONDS.

Gentrification
A process of neighborhood change where higher-income residents move into a historically marginalized neighborhood, housing costs rise and the neighborhood is physically transformed through new higher-end construction and building upgrades, resulting in the displacement of vulnerable residents and changes to the neighborhood's cultural character.

Geographic Information Systems (GIS)
Computer-based systems capable of integrating and displaying different types of geological and demographic information. By creating maps, one may depict an area's natural and human-made resources, including soil types, population densities, land uses, transportation corridors, waterways, street patterns, mass-transit patterns, sewer lines, water sources and utility lines.

Geothermal Energy
Heat that comes from the Earth's interior.

Global Warming
An increase in the temperature of the Earth's atmosphere. Global warming has occurred in the past as a result of natural influences, but the term is most often used to refer to the warming predicted by computer models to occur as a result of increased emissions of greenhouse gases.

Goal
A statement of desired future conditions regarding a particular topic; a goal paints a picture of how something will be in the future. A goal in and of itself is not sufficient to understand its intent, extent, or context. A goal itself should be kept simple, with policies, objectives and implementation actions providing further definition.

Grade
(1) Leveling or smoothing the contours of a property. (2) The rate of rise or descent of a sloping surface, usually expressed in degrees or a percentage calculated by the number of feet of rise per 100 feet of horizontal distance. (A 10 percent grade would mean a 10-foot vertical rise over 100 feet of horizontal distance.)

Granny Flat
An accessory dwelling for one or more elderly persons that is attached to or separate from a main residence. Cities and counties may approve such units in single-family neighborhoods. See Government Code section 65852. See ACCESSORY DWELLING UNIT.

Grants
Contributions of cash or other assets from another governmental agency to be used or expended for a specified purpose, activity or facility. See EARMARKED FUNDS.

Green Design
Using natural products and safer procedures to protect people's health and well-being.

Green Infrastructure
The range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, or evapotranspirate stormwater and reduce flows to sewer systems or to surface waters.

Green Space
Open, undeveloped land with natural vegetation.

Greenbelt
A band of countryside surrounding a city or urbanized area on which building is generally prohibited.

Greenfield
Farmland and open areas where there has been no prior industrial or commercial activity, and therefore where the threat of contamination is lower than in urbanized areas. See BROWNFIELD.

Greenhouse Effect
The warming effect of the Earth's atmosphere. Light energy from the sun which passes through the Earth's atmosphere is absorbed by the Earth's surface and re-radiated into the atmosphere as heat energy. The heat energy is then trapped by the atmosphere, creating a situation similar to that which occurs in a car with its windows rolled up. A number of scientists believe that the emission of CO2 and other gases into the atmosphere may increase the greenhouse effect and contribute to global warming.

Greenhouse Gas (GHG)
Any gas that absorbs infrared radiation (i.e. heat) in the atmosphere. Greenhouse gases include, but are not limited to, water vapor, carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), ozone (O3), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6). Atmospheric gases such as carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), ozone (O3), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF6) and water vapor that slow the passage of re-radiated heat through the Earth's atmosphere.

Greenways
Linear open spaces that link parks and communities, such as paths or trails. They provide public access to green spaces and opportunities for residents of all ages and abilities to be physically active.

Greyfield
A blighted area, often a failed shopping center, that is ripe for redevelopment.

Gross Acreage
The entire acreage of a site. Most communities calculate gross acreage to the centerline of proposed bounding streets and to the edge of the right-of-way of existing or dedicated streets. See NET ACREAGE.

Ground Failure
Ground movement or rupture caused by strong shaking during an earthquake. Includes landslide, lateral spreading, liquefaction and subsidence.

Ground Shaking
Ground movement resulting from the transmission of seismic waves during an earthquake.

Groundwater Recharge
The natural process of infiltration and percolation of rainwater from land areas or streams through permeable soils into water-holding rocks that provide underground storage (aquifers). See AQUIFER.

Groundwater
Water under the earth's surface, often confined to aquifers capable of supplying wells and springs. See AQUIFER.

Group Home; Group Care Facility
Any facility used to provide non-medical residential care, day treatment, adult day care or foster family agency services.

Typically used to assist abused or neglected children or people who are physically disabled or mentally impaired.

Growth Management Plan

A plan for a given geographical region containing demographic projections (i.e., housing units, employment and population) through some specified point in time and which provides recommendations for local governments to better manage growth and reduce projected environmental impacts. See CONCURRENCY, CONGESTION MANAGEMENT PLAN.

Guidelines

General statements of policy or design direction. Guidelines established by a jurisdiction do not contain absolutes or standards, but may be presented alongside standards.

Guideway

A roadway system that guides the vehicles using it as well as supporting them. Examples include a streetcar and monorail system, with the railroad being the most familiar and common guideway. Most guideway transit systems make use of wayside electrical power for propulsion.

H

Habitat Conservation Plan (HCP)
A process established under Section 10 of the Endangered Species Act which allows the incidental taking of a listed, threatened, or endangered species upon the approval of a “single” or “multi” species plan. The development of such plans requires extensive studies, research and coordination between federal, state and local agencies and with citizen groups. The HCP must show how the impacts of the taking have been minimized and mitigated to the maximum extent practicable, that adequate funding for the plan will be provided, and that the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

Habitat
The physical location or type of environment in which an organism or biological population lives or occurs.

Hazard Mitigation
Sustained action taken to reduce or eliminate long-term risk to people and their property from hazards and their effects.

Hazardous Material
Any substance that, because of its quantity, concentration or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. The term includes, but is not limited to, hazardous substances and hazardous wastes.

Health
A state of physical, mental and social well-being and not merely the absence of disease and infirmity.

Health Impact Assessment (HIA)
A combination of procedures, methods and tools by which a policy, program or project may be judged as to its potential effects on the health of a population, and the distribution of those effects within the population. HIAs can be used to evaluate the potential health effects of a project or policy before it is built or implemented. It can provide recommendations to increase positive health outcomes and minimize adverse health outcomes. The HIA process brings public health issues to the attention of persons who make decisions about areas that fall outside of traditional public health arenas, such as transportation or land use.

Healthy Community/Healthy Places
Communities that are developed, designed and built to promote good health.

Highest and Best Use
The use of a property that will bring the greatest profit to its owners. In theory, the economics of the real estate market establish a maximum value for each parcel of land at any given time. However, owners are not necessarily entitled to that use, particularly when that use may have negative effects on the use and enjoyment of neighboring properties.

High-Occupancy Structure
All pre-1935 buildings with over 25 occupants and all pre-1976 buildings with over 100 occupants.

High-Occupancy Vehicle (HOV)
Any vehicle other than a driver-only automobile (for example, a vanpool, a bus or a car carrying two or more persons).

Highway
High-speed, high-capacity, limited-access transportation facility serving regional and county-wide travel. Highways may cross at a different grade level.

Historic Preservation
The preservation of historically significant structures and neighborhoods in order to facilitate restoration and rehabilitation of the building(s) to a former condition.

Home Owner's Association (HOA)
A non-profit organization operating under recorded legal agreements running with the land. Generally, each lot owner in a condominium or similar planned development becomes a member upon purchase and each lot is subject to a charge for a proportionate share of the expenses for the organization's activities, like maintaining common areas, landscaping, recreation facilities and parking areas.

Household
All those persons, related or unrelated, who occupy a single housing unit. The concept of household is important because the formation of new households generates the demand for housing. Each new household formed creates the need for one additional housing unit or requires that one existing housing unit be shared by two households. Thus, household formation can continue to take place even without an increase in population, thereby increasing the demand for housing. See FAMILY.

Housing and Community Development, Department of (HCD)
The state agency responsible for assessing, planning for, and assisting communities to meet the needs of low- and moderate-income households. HCD also certifies housing elements of general plans for local jurisdictions.

Housing and Urban Development, U.S. Department of (HUD)
A cabinet-level department of the federal government that administers housing and community development programs.

Housing Authority, Local (LHA)
A local housing agency established in state law, subject to local activation and operation. Originally intended to manage certain federal subsidies, but vested with broad powers to develop and manage other forms of affordable housing.

Housing Element
One of the eight state-mandated elements of a local general plan, it assesses the existing and projected housing needs of all economic segments of the community; identifies potential sites adequate to provide the amount and kind of housing needed; and contains adopted goals, policies and implementation programs for the preservation, improvement and development of housing. Under state law, housing elements must be updated periodically, usually every five to eight years (typically in connection with transportation planning efforts).

Housing Unit
A house, an apartment, a mobile home or trailer, a group of rooms or a single room that is occupied as a separate living quarters, or, if vacant, is intended for occupancy as a separate living quarters (U.S. Census definition).

Hybrid Electric Vehicle (HEV)
A vehicle that combines an internal combustion engine with a battery and electric motor. This combination offers the range and refueling capabilities of a conventional vehicle, while providing improved fuel economy and lower emissions.

I

Impact Fee
A fee, also called a development fee, levied on the developer of a project by a city, county or other public agency as compensation for otherwise-unmitigated impacts the project will produce. Development fees must not exceed the estimated reasonable cost of providing the service for which the fee is charged. The most common are. (1) impact fees (such as parkland acquisition fees, school facilities fees or street construction fees) related to funding public improvements which are necessitated in part or in whole by the development; (2) connection fees (such as water line fees) to cover the cost of installing public services to the development; (3) permit fees (such as building permits, grading permits, sign permits) for the administrative costs of processing development plans; and (4) application fees (rezoning, CUP variance, etc.) for the administrative costs of reviewing and hearing development proposals. See California Government Code sections 66000 and following. See also DEVELOPMENT FEES.

Impact
The effect of any direct human actions or the indirect repercussions of human actions on existing physical, social or economic conditions.

Impacted Areas
Census tracts where more than 50 percent of the dwelling units house low- and very low-income households. Often correlated to food and park deserts, so can be helpful for researching food and park access.

Impermeable
Incapable of permeating, absorbing, or diffusing water, thereby creating runoff.

Impervious Surface
A surface through which water cannot penetrate, like a roof, road, sidewalk or paved parking lot. The amount of impervious surface increases with development and establishes the need for drainage facilities to carry the increased runoff.

Improved Land
Raw land to which has been added basic utilities such as roads, sewers, water lines and other public infrastructure facilities. Can also mean structures/buildings have been erected on the land.

In Lieu Fee
See DEDICATION, IN LIEU OF.

Inclusionary Zoning
Provisions established by a public agency to require that a specific percentage of housing units in a project or development remain affordable to very low- and low-income households for a specified period. Often such regulations require a minimum percentage of housing for low-and moderate-income households in new housing developments and in conversions of apartments to condominiums.

Incorporation
Creation of a new city.

Incubator Space
Retail or industrial space that is affordable to new, low-margin businesses.

Indoor Air Pollution
Air pollutants that occur within buildings or other enclosed spaces, as opposed to those occurring in outdoor, or ambient air. Some examples of indoor air pollutants are nitrogen oxides, smoke, asbestos, formaldehyde and carbon monoxide.

Industrial
A land use classification often divided into “heavy industrial” uses, like construction yards, quarrying and factories; and “light industrial” uses, like research and development and less intensive warehousing and manufacturing.

Infill Development
Development of vacant or underutilized land (usually individual lots or leftover properties) within areas that are already largely developed and are served by an established system of roads and infrastructure.

Infrastructure
Public services and facilities like sewage-disposal systems, water-supply systems, other utility systems, schools and roads.

Initial Study
Under the California Environmental Quality Act, a preliminary analysis of the potential environmental impacts of a proposed project prepared by the lead agency. This process is used to determine whether an Environmental Impact Report must be prepared, or a Negative Declaration will be sufficient. See CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Initiative
A ballot measure used to enact new legislation. In California, city and county initiative measures may be placed on the ballot by petition of the voters or action of the governing body.

In-Lieu Fee
Cash payments that may be required of an owner or developer as a substitute for a dedication of land, usually calculated in dollars per lot, and referred to as in lieu fees or in lieu contributions. See DEDICATION, EXACTION.

Institutional Uses
(1) Publicly or privately owned and operated activities like hospitals, convalescent hospitals, intermediate care facilities, nursing homes, museums, and schools and colleges; (2) churches and other religious organizations; and (3) other non-profit activities of a welfare, educational, or philanthropic nature that cannot be considered residential, commercial or industrial.

Intensity, Building
For residential uses, the actual number or the allowable range of dwelling units per net or gross acre. For non-residential uses, the actual or the maximum permitted floor area ratios (FARs). See FLOOR AREA RATIO.

Interagency
Indicates cooperation between or among two or more discrete agencies in regard to a specific program.

Interest, Fee
Entitles a landowner to exercise complete control over use of land, subject only to government land use regulations.

Interest, Less-than-fee
The purchase of interest in land rather than outright ownership; includes the purchase of development rights via conservation, open-space or scenic easements. (See EASEMENT CONSERVATION, EASEMENT SCENIC, LEASE and LEASHOLD INTEREST

Interim Zoning
See MORATORIUM.

Intermittent Stream
A stream that normally flows for at least 30 days after the last major rain of the season and is dry a large part of the year.

Inverse Condemnation
The illegal removal of property value through excessive government regulation. Legal advice should be sought before proceeding in cases of potential inverse condemnation. As a result, the owner claims entitlement to payment for the property loss under the constitutional right to compensation for property that was condemned under the government's right of eminent domain. For example, a city widens a street, taking the entire parking lot of a local store. The city offers to pay for the lot, but the store claims the market has lost all its business since no one can park, and wants the value of the entire parcel, including the market building.

Investment Earnings
Revenue earned from the investment of idle public funds.

Investor Owned Utilities (IOUs)
Private companies that provide a utility, such as water, natural gas or electricity, to a specific service area.

Issues
Important unsettled community matters or problems that are identified in a community's general plan and dealt with by the plan's objectives, policies, plan proposals and implementation programs.

J

Jobs to Housing Balance/Fit/Ratio

One of many measures or variables used by planners to examine the proportions of residents, jobs, and services in urban areas and to guide development planning for efficient city land use and transportation networks. A jobs to housing ratio in the range of 0.75 to 1.5 is considered beneficial for reducing vehicle miles traveled, traffic congestion and air pollution. Ratios higher than 1.5 (jobs rich) indicate that there may be more workers commuting into the area because of a surplus of jobs, while ratios below 0.75 (housing rich) indicate that an area primarily serves to provide lower cost or exclusive housing. A jobs to housing ratio is most appropriately applied at sub-regional and regional levels in urbanized areas.

Joint Powers Authority (JPA)

A legal arrangement that enables two or more units of government to share authority in order to plan and carry out a specific program or set of programs that serves both units.

Joint-Use Agreements

are agreements between a school district and another entity, such as a city, county, nonprofit or private organization, regarding the sharing of capital, operating costs and responsibilities for a facility.

Junior Accessory Dwelling Unit (JADU)

A specific type of conversion of existing space that is contained entirely within an existing or proposed single-family residence. See ACCESSORY DWELLING UNIT.

L

L10
A statistical descriptor indicating peak noise levels—the sound level exceeded ten percent of the time. It is a commonly used descriptor of community noise and has been used in Federal Highway Administration standards and the standards of some cities and counties.

Land Banking
The purchase of land by a local government for use or resale at a later date. Banked lands have been used for development of low- and moderate-income housing, expansion of parks, and development of industrial and commercial centers. Federal rail-banking law allows railroads to bank unused rail corridors for future rail use while allowing interim use as trails.

Land Use Classification
A system for classifying and designating the appropriate use of properties.

Land Use Element
A required element of the general plan that uses text and maps to designate the future use or reuse of land within a given jurisdiction's planning area. The land use element serves as a guide to the structuring of zoning and subdivision controls, urban renewal and capital improvements programs, and official decisions regarding the distribution and intensity of development and the location of public facilities and open space. See MANDATORY ELEMENT.

Land Use Regulation
A term encompassing the regulation of land in general and often used to mean those regulations incorporated in the general plan, as distinct from zoning regulations (which are more specific).

Land Use
The occupation or utilization of land or water area for any human activity or any purpose defined in the general plan.

Landmark
(1) A building, site, object, structure, or significant tree having historical, architectural, social or cultural significance and marked for preservation by the local, state or federal government. (2) A visually prominent or outstanding structure or natural feature that functions as a point of orientation or identification.

Landscaping and Lighting Act of 1972
The 1972 Act lets cities, counties and special districts levy assessments for land purchase and the construction, operation and maintenance of parks, landscaping, lighting, traffic signals and graffiti abatement.

Landslide
Downslope movement of soil and/or rock, which typically occurs during an earthquake or following heavy rainfall.

Lateral Spreading
Lateral movement of soil, often as a result of liquefaction during an earthquake. See LIQUEFACTION.

Leapfrog Development
New development separated from existing development by substantial vacant land.

Lease
A contractual agreement by which an owner of real property (the lessor) gives the right of possession to another (a lessee) for a specified period of time (term) and for a specified consideration (rent).

Leasehold Interest
(1) The interest that the lessee has in the value of the lease itself in condemnation award determination. (2) The difference between the total remaining rent under the lease and the rent the lessee would currently pay for similar space for the same time period.

LEED
An acronym for Leadership in Energy and Environmental Design. LEED is a voluntary, consensus-based green building rating system developed and maintained by the U.S. Green Building Council to support and certify successful green building design, construction and operations.

Leq
The energy equivalent level, defined as the average sound level on the basis of sound energy (or sound pressure squared). The Leq is a "dosage" type measure and is the basis for the descriptors used in current standards, such as the 24-hour CNEL used by the State of California.

Level of Service (LOS) Standard
A standard used by government agencies to measure the quality or effectiveness of a municipal service like police, fire or library, or the performance of a facility, like a street or highway.

Level of Service (Traffic)
A scale that measures the amount of traffic that a roadway or intersection can accommodate, based on such factors as maneuverability, driver dissatisfaction and delay.

Level of Service A
Indicates a relatively free flow of traffic, with little or no limitation on vehicle movement or speed.

Level of Service B
Describes a steady flow of traffic, with only slight delays in vehicle movement and speed. All queues clear in a single signal cycle.

Level of Service C
Denotes a reasonably steady, high volume flow of traffic, with some limitations on movement and speed, and occasional backups on critical approaches.

Level of Service D
Designates the level where traffic nears an unstable flow. Intersections still function, but short queues develop and cars may have to wait through one cycle during short peaks.

Level of Service E
Represents traffic characterized by slow movement and frequent (although momentary) stoppages. This type of congestion is considered severe but is not uncommon at peak traffic hours, with frequent stopping, long-standing queues and blocked intersections.

Level of Service F
Describes unsatisfactory stop-and go traffic characterized by traffic jams and stoppages of long duration. Vehicles at signalized intersections usually have to wait through one or more signal change and “upstream” intersections may be blocked by the long queues.

Levy
To impose taxes, special assessments or service charges for the support of governmental activities; the total amount of taxes, special assessments or service charges imposed by a governmental agency. See SERVICE CHARGES.

Licenses and Permits
Charge designed to reimburse agency for costs of regulating activities being licensed, like the licensing of animals, bicycles, etc.

Lien
A claim on assets, especially property, for the payment of taxes or utility service charges. See SERVICE CHARGES.

Life-Cycle Costing
A method of evaluating a capital investment that takes into account the sum total of all costs associated with the investment over the lifetime of the project.

Light-Duty Rail Transit (LRT)
Streetcars or trolley cars that typically operate entirely or substantially in mixed traffic and in non-exclusive, at-grade rights-of-way. Passengers typically board vehicles from the street level (as opposed to a platform that is level with the train) and the driver may collect fares. Vehicles are each electrically self-propelled and usually operate in one or two-car trains.

Limited Obligation Bonds
Similar to general obligation bonds except that security for the issuance is limited exactly to the revenues pledged in the bond statement and not to the full faith and credit of the jurisdiction. See BOND, GENERAL OBLIGATION BONDS.

Linkage
With respect to jobs/housing balance, a program designed to offset the impact of employment on housing need within a community, whereby project approval is conditioned on the provision of housing units or the payment of an equivalent in-lieu fee. The linkage program must establish the cause-and-effect relationship between a new commercial or industrial development and the increased demand for housing.

Liquefaction
The transformation of loose, wet soil from a solid to a liquid state, often as a result of ground shaking during an earthquake.

Liquidity
The ability to convert a security into cash promptly with minimum risk of principal.

Live-Work Quarters
Buildings or spaces within buildings that are used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work.

Local Agency Formation Commission (LAFCO)
The Cortese/Knox Act (see Government Code section 56000) establishes a Local Agency Formation Commission in each county. Commissions within each county that review and evaluate all proposals for formation of special districts, incorporation of cities, annexation to special districts or cities, consolidation of districts and merger of districts with cities. The LAFCO members generally include two county supervisors, two city council members, and one member representing the general public. Some LAFCOs include two representatives of special districts.

Local Coastal Program (LCP)
A combination of a local government's land use plans, zoning ordinances, zoning district maps and (within sensitive coastal resources areas) other implementing actions that together meet the local requirements of, and implement the provisions and policies of, the California Coastal Act of 1976.

Local Coastal Program Land Use Plan
The relevant portion of a local government general plan or coastal element that details type, location and intensity of land use, applicable resource protection and development policies, and, where necessary, implementation actions.

Location-Efficient Mortgages
Competitive rates and low down payments to those who want to live in "location-efficient communities" that are convenient to resources and reduce the need to drive.

Lot
The basic development unit – an area with fixed boundaries, used or intended to be used by one or more uses within one building and its accessory building(s). A lot must meet the requirements of the zoning district in which it is located and must front on a public street or an approved private street.

Lot Line Adjustment
The adjustment of a lot line between two or more existing parcels where land taken from one parcel is added to an adjacent parcel and where a greater number of parcels than originally existed are not thereby created.

Lot of Record
A lot that is part of a recorded subdivision or a parcel of land that has been recorded at the county recorder's office containing property tax records.

Low Barrier Navigation Center
A service-enriched shelter focused on moving people into permanent housing. A low barrier navigation center provides temporary living facilities while case managers connect residents to supportive services, such as employment training, public benefits, health services, substance abuse and mental health services and connections to permanent housing opportunities. Traditional shelters often have rules requiring people to show up at a certain time and leave at a certain time the next day; they prohibit pets, separate by sex, and limit the items people can bring in. All these barriers keep some homeless people from going to traditional shelters.

Low-Income Household
A household with an annual income usually no greater than 80 percent of the area median family income adjusted by

household size, as determined by a survey of incomes conducted by a city or a county, or in the absence of such a survey, based on the latest available eligibility limits established by the U.S. Department of Housing and Urban Development for the Section 8 housing program. See SECTION 8 RENTAL ASSISTANCE PROGRAM.

Low-Income Housing Tax Credits

Tax reductions provided by the federal and state governments for investors in housing for low-income households.

M

Maladaptation
Any changes in natural or human systems that inadvertently increase vulnerability to climatic stimuli; an adaptation that does not succeed in reducing vulnerability but increases it instead.

Mandatory Element
A component of the general plan mandated by state law. California state law requires that a general plan include elements dealing with eight subjects – circulation, conservation, housing, land use, noise, open space, safety and environmental justice – and specifies to various degrees the information to be incorporated in each element.

Manufactured Housing
Residential structures that are constructed entirely in a factory and that, since June 15, 1976, have been regulated by the federal Manufactured Home Construction and Safety Standards Act of 1974 under the administration of the U.S. Department of Housing and Urban Development. See MOBILE HOME, MODULAR UNIT.

Marks-Roos Bonds
Bonds authorized by the Marks-Roos Local Bond Pooling Act of 1985 which provide local agencies with extremely flexible financing powers through participation in joint powers authorities. See BOND, JOINT POWERS AUTHORITY.

Master EIR (MEIR)
Section 21156 et seq. of the Public Resources Code authorizes preparation of a "master environmental impact report" for specific kinds of projects involving broad policy decisions, specifically including general plans. The MEIR is designed to allow an agency to eliminate or reduce the scope of the environmental review of subsequent discretionary activities or projects that follow the expected course of action whose environmental effects are addressed in the MEIR. A MEIR can streamline development in the short term but have a shorter shelf-life compared to a program environmental impact report or PEIR.

Master Environmental Assessment
An inventory or database for use with later environmental impact reports, a master environmental assessment (MEA) can assist a city or county in formulating a general plan or any element thereof by identifying environmental characteristics and constraints required to be addressed in the general plan. Relevant portions of the MEA can be referenced and summarized in preparing later EIRs and negative declarations.

Mean
The average of a number of figures computed by adding up all the figures and dividing by the number of figures. Compare MEDIAN and MODE.

Mean High Tide Line
The average high tide line in coastal zones. The state of California owns all lands located below the mean high tide line.

Mean Sea Level
The average altitude of the sea surface for all tidal stages.

Median
The middle number in a series of items in which fifty percent of all figures are above and fifty percent are below. Compare with MEAN and MODE.

Median Strip
The dividing area, either paved or landscaped, between opposing lanes of traffic on a roadway.

Mello-Roos Bonds
Locally issued bonds that are repaid by a special tax imposed on property owners within a community facilities district established by a governmental entity. The bond proceeds can be used for public improvements and for a limited number of services. Named after the program's legislative authors.

Mello-Roos Community Facilities Tax
Special non ad valorem tax imposed to finance public capital facilities and services in connection with new development.

Mello-Roos District
A distinct entity of government for the purpose of imposing and collecting the Mello-Roos Community Facilities Tax.

Mercalli Intensity Scale
A subjective measure of the observed effects (human reactions, structural damage, geologic effects) of an earthquake. Expressed in Roman numerals from I to XII.

Metes and Bounds
A system of describing or identifying land using measures (metes) and direction (bounds) from an identifiable point of reference like a monument or other marker, the corner of intersecting streets or some other permanent fixture.

Microclimate
The climate of a small, distinct area, such as a city street or a building's courtyard; can be favorably altered through functional landscaping, architecture or other design features.

Mineral Resource
Land on which known deposits of commercially viable mineral or aggregate deposits exist. This designation is applied to sites determined by the California Geological Survey as being a resource of regional significance and is intended to help maintain the quarrying operations and protect them from encroachment of incompatible land uses.

Minipark
A small neighborhood park of approximately one acre or less. See NEIGHBORHOOD PARK.

Ministerial Decision
These actions are mandatory, nondiscretionary activities that must be approved so long as certain standards are met. A final subdivision map, for example, must be granted when all of the conditions of the tentative map are met. Likewise, certain applications for second unit or "granny flat" approvals in single-family neighborhoods are ministerial.

Minor Land Division
Contiguous property which is partitioned into four or fewer lots usually qualifies as a minor land division.

Mitigated Negative Declaration

A written statement by the lead agency that revisions to a project, agreed to by the applicant, would avoid potential significant adverse impacts, and there is no substantial evidence that the project, as revised, will have a significant effect on the environment. See CALIFORNIA ENVIRONMENTAL QUALITY ACT, NEGATIVE DECLARATION.

Mitigation Measures

In the context of the California Environmental Quality Act, measures that modify a project to reduce or eliminate a significant environmental impact. See CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Mitigation Monitoring Program

A program which is adopted as part of the Mitigated Negative Declaration or Environmental Impact Report process that establishes a reporting system designed to ensure compliance to and implementation of the adopted mitigation measures. See CALIFORNIA ENVIRONMENTAL QUALITY ACT, ENVIRONMENTAL IMPACT REPORT, MITIGATED NEGATIVE DECLARATION.

Mixed-Use

Properties on which various uses like office, commercial, institutional and residential are combined in a single building or on a single site in an integrated development project with significant functional interrelationships and a coherent physical design. A “single site” may include contiguous properties.

Mobile home

A structure, transportable in one or more sections, built on a permanent chassis and designed for use as a single-family dwelling unit that (1) has a minimum of 400 square feet of living space; (2) has a minimum width in excess of 102 inches; (3) is connected to all available permanent utilities; and (4) is tied down (a) to a permanent foundation on a lot either owned or leased by the homeowner or (b) is set on piers, with wheels removed and skirted, in a mobile home park. See MANUFACTURED HOUSING, MODULAR UNIT.

Modal Choices

Transportation options; one’s preferred method of transportation, such as walking, bicycling, using an automobile, riding a bus or rail, etc.

Mode

(1) In statistics, the number that occurs most frequently in a given series. Compare with MEAN, MEDIAN. (2) A method of transportation.

Moderate-Income Household

A household with an annual income between the lower income eligibility limits and 120 percent of the area median family income adjusted by household size, usually as established by the U.S. Department of Housing and Urban Development for the Section 8 housing program. See LOW-INCOME HOUSEHOLD, SECTION 8 RENTAL ASSISTANCE PROGRAM.

Modular Unit

A factory-fabricated, transportable building or major component designed for use by itself or for incorporation with similar units on site into a structure for residential, commercial, educational or industrial use. Differs from mobile homes and manufactured housing by (in addition to lacking an integral chassis or permanent hitch to allow future movement) being subject to California housing law design standards. California standards are more restrictive than federal standards in some respects (for example, plumbing and energy conservation). Also called factory-built housing and regulated by state law of that title. See MOBILE HOME, MANUFACTURED HOUSING.

Moratorium
A zoning designation that temporarily reduces or freezes allowable development in an area until a permanent classification can be fixed; generally assigned during general plan preparation to provide a basis for permanent zoning. See Government Code section 65858.

Motor Vehicle License Fee (VLF)
VLF is fee for privilege of operating vehicle on public streets. VLF is levied annually at two percent of the market value of motor vehicles and is imposed by the state “in lieu” of local property taxes. VLF is also called Motor Vehicle in-Lieu Tax.

Multi-Family Units
Freestanding buildings composed of two or more separate living units, with each unit having its own bedroom, kitchen and bathroom facilities.

Multiple Family Residential
A type of housing that has several residential units on a parcel or parcels of land. Examples of multiple family residential housing include condominiums and apartments.

Multiplier Effect
Refers to the impact the recirculation of money through the economy has on job and wealth creation. For example, money paid as salaries to industrial and office workers is spent on housing, food, clothing, and other locally available goods and services. This spending creates jobs in housing construction, retail stores and professional offices. The wages paid to workers in those industries is again re-spent, creating still more jobs. Overall, one job in basic industry is estimated to create approximately one more job in non-basic industry.

Municipal Improvement Act of 1913
Legislation allowing cities, counties and special districts to fund everything included in the 1911 Act plus power and public transit facilities; assessments can be levied before construction begins.

Municipal Services
Services traditionally provided by local government, including water and sewer, roads, parks, schools, police and fire protection.

N

National Ambient Air Quality Standards (NAAQS)
The prescribed level of pollutants in the outside air that cannot be exceeded legally during a specified time in a specified geographical area.

National Environmental Policy Act (NEPA)
An act passed in 1974 establishing federal legislation for national environmental policy, a council on environmental quality, and the requirements for environmental impact statements.

National Flood Insurance Program (NFIP)
A federal program that authorizes the sale of federally subsidized flood insurance in communities where such flood insurance is not available privately.

National Historic Preservation Act
A 1966 federal law that established a National Register of Historic Places and the Advisory Council on Historic Preservation, and that authorized grants-in-aid for preserving historic properties.

National Register of Historic Places
The official list, established by the National Historic Preservation Act, of sites, districts, buildings, structures and objects significant in the nation's history or whose artistic or architectural value is unique.

Natural Infrastructure
The preservation or restoration of ecological systems, or utilization of engineered systems that use ecological processes, to increase resiliency to climate change, manage other environmental hazards, or both. This may include, but is not limited to, floodplain and wetlands restoration or preservation, combining levees with restored natural systems to reduce flood risk, and urban tree planting to mitigate high heat days.

Natural State
The condition existing prior to development.

Need
A condition requiring supply or relief. The city or county may act upon findings of need within or on behalf of the community. A lack of access to healthy food could be identified as a need.

Negative Declaration
In the context of the California Environmental Quality Act, a written statement briefly describing the reasons why a proposed project will not have a significant effect on the environment and does not require an Environmental Impact Report. See CALIFORNIA ENVIRONMENTAL QUALITY ACT, MITIGATED NEGATIVE DECLARATION.

Neighborhood Completeness
A land use indicator that attempts to define how well a neighborhood is served by specific land uses (e.g., affordable housing, fire/police station, grocery store, parks, library, school, post office).

Neighborhood Park
City- or county-owned land intended to serve the recreation needs of people living or working within one-half mile radius of the park.

Neighborhood Unit
According to one widely accepted concept of planning, the neighborhood unit should be the basic building block of the city. It is based on the elementary school, with other community facilities located at its center and arterial streets at its perimeter. The distance from the school to the perimeter should be a comfortable walking distance for a school-age child; there would be no through traffic uses. Limited industrial or commercial would occur on the perimeter where arterials intersect. This was a model for American suburban development after World War II.

Neighborhood
A planning area commonly identified as such in a community's planning documents, and by the individuals residing and working within the neighborhood. Documentation may include a map prepared for planning purposes showing the names and boundaries neighborhoods. Though neighborhoods are not legal designations, they are among the most commonly recognized and understood land use designations.

Neotraditional Development
Typical of pre-World War II communities, neotraditional development is characterized by urban regions comprising many cohesive neighborhoods, each with their own commercial core and linked to one another by some form of transit. While a metropolitan area has a central downtown, the many neighborhood centers provide a secondary service area that can be reached on foot from people's homes. The neighborhood centers may include retail establishments, offices, service providers, cinemas, health clubs, dense housing and a transit hub.

Net Acreage
The portion of a site that can actually be built upon. The following generally are not included in the net acreage of a site: public or private road rights-of-way, public open-space and flood ways. See GROSS ACREAGE.

New Urbanism
A design philosophy intended to create a strong sense of community by incorporating features of traditional small towns. Compact, walkable neighborhoods with active streets, housing and shopping in close proximity and accessible public spaces are a few of the hallmarks of new urbanism.

Nexus
In general, a minimum threshold of connection necessary within a taxing jurisdiction to allow taxing authority over out-of-state individuals or businesses. There must be a reasonable connection ("nexus") between required development impact fees and a development project subject to the fees. See California Government Code sections 66000 and following.

NIABY
(See also BANANA, NIMBY, and NIMTOO) Not In Anyone's Back Yard.

NIMBY
An acronym for "Not-In-My-Backyard." This is a somewhat unflattering characterization for opponents of development

projects, with the implication being that the opponents are advocating strictly based on personal self-interest as opposed to the larger community interests. Local agencies' alleged responsiveness to "NIMBY-ism" is one of the reasons some advocate that state law preempt local agencies' authority over certain kinds of land use decisions (see for example, AFFORDABLE HOUSING).

NIMTOO

(See also BANANA, NIMBY and NIABY) Not In My Term Of Office.

Noise Attenuation

Reduction of the level of a noise source using a substance, material, or surface, like earth berms and/or solid concrete walls.

Noise Contour

A line connecting points of equal noise level as measured on the same scale. Noise levels greater than the 60 Ldn contour (measured in dBA) require noise attenuation in residential development. See DAY-NIGHT AVERAGE SOUND LEVEL, DBA.

Noise Element

One of the eight state-mandated elements of a local general plan, it assesses noise levels of highways and freeways, local arterials, railroads, airports, local industrial plants and other ground stationary sources, and adopts goals, policies and implementation programs to reduce the community's exposure to noise.

Noise

Any sound that is undesirable because it interferes with speech and hearing, or is intense enough to damage hearing, or is otherwise annoying. Noise, simply, is "unwanted sound."

Non-Attainment

The condition of not achieving a desired or required level of performance. Frequently used in reference to air quality.

Nonconforming Use

A use that was valid when brought into existence, but by subsequent regulation becomes no longer conforming. "Non-conforming use" is a generic term and includes (1) non-conforming structures (by virtue of size, type of construction, location on land or proximity to other structures), (2) non-conforming use of a conforming building, (3) non-conforming use of a non-conforming building and (4) non-conforming use of land. Thus, any use lawfully existing on any piece of property that is inconsistent with a new or amended general plan, and that in turn is a violation of a zoning ordinance amendment subsequently adopted in conformance with the general plan, will be a non-conforming use. Typically, non-conforming uses are permitted to continue for a designated period of time, subject to certain restrictions.

Nonpoint Source Pollution

Sources for pollution that are less definable and usually cover broad areas of land, like agricultural land with fertilizers that are carried from the land by runoff or automobiles. See POINT SOURCE POLLUTION.

Notice (of Hearing)

A legal document announcing the opportunity for the public to present their views to an official representative or board of a public agency concerning an official action pending before the agency.

Notice of Completion (NOC)

Under the California Environmental Quality Act, a notice issued and properly filed by the lead agency upon completion

of the Draft Environmental Impact Report. The NOC contains a description of the proposed project. See CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Notice of Determination (NOD)

Under the California Environmental Quality Act, a notice issued and properly filed by the lead agency upon its approval of a project subject to the California Environmental Quality Act, and stating whether or not the project will have a significant effect on the environment. The notice must be filed within five working days of the action approving a project. See CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Notice of Preparation (NOP)

Under the California Environmental Quality Act, a brief notice issued by the lead agency stating it plans to prepare an Environmental Impact Report for a proposed project. The notice is sent to responsible and trustee agencies and other interested agencies. These parties are asked to comment on the scope of the Environmental Impact Report and potential impacts of the proposed project. These comments are then use to further define the scope of the Environmental Impact Report. See CALIFORNIA ENVIRONMENTAL QUALITY ACT, ENVIRONMENTAL IMPACT REPORT.

O

Objective
A specific statement of desired future condition toward which the city or county will expend effort in the context of striving to achieve a broader goal. An objective should be achievable and, where possible, should be measurable and time-specific. The State Government Code section 65302 requires that general plans spell out the "objectives," principles, standards and proposals of the general plan. "The addition of 100 units of affordable housing by 1995" is an example of an objective.

Off-Gassing
The release of gas into the air from products treated with chemicals during their manufacture.

Official County Scenic Highway
A segment of state highway identified in the Master Plan of State Highways Eligible for Official Scenic Highway Designation and designated by the Director of the Department of Transportation (Caltrans).

Off-Site Improvements
Conditions that can be required of a project that involves the installation of streets, curbs, gutters, sidewalks, street trees and other improvements that are located adjacent to the project on publicly-owned property.

Off-the-Grid
A term used to describe a system that runs on renewable energy sources independent of a conventional public utility grid.

Open Space Element
One of the eight state-mandated elements of a local general plan, it contains an inventory of privately and publicly owned open-space lands, and adopted goals, policies, and implementation programs for the preservation, protection and management of open space lands.

Open-Space Land
Any parcel or area of land or water that is essentially unimproved and devoted to an open-space use for the purposes of (1) the preservation of natural resources, (2) the managed production of resources, (3) outdoor recreation or (4) public health and safety.

Ordinance
A law or regulation adopted by a governmental authority, usually a city or county.

Outdoor Advertising Structure
Any device used or intended to direct attention to a business, profession, commodity, service or entertainment conducted, sold or offered elsewhere than upon the lot where such device is located. See SIGN.

Outdoor Recreation Use
A privately or publicly owned or operated use providing facilities for outdoor recreation activities.

Outer Approach Zone

Airspace in which an air-traffic controller initiates radar monitoring for incoming flights approaching an airport. See APPROACH ZONE, CLEAR ZONE, TRANSITION ZONE.

Overlay

A land use designation on the general plan land use map, or a zoning designation on a zoning map, that modifies the basic underlying designation in some specific manner. For example, overlay zones are often used to deal with areas with special characteristics, like flood zones or historical areas. Development of land subject to an overlay must comply with the regulations of both zones. See GENERAL PLAN, ZONING.

Overlay Zoning

Additional or stricter standards to existing zoning that can be used to protect particular natural or cultural features.

Ozone Layer

The protective layer of the Earth's atmosphere, about 15 miles above the ground, that absorbs some of the sun's ultraviolet rays, thereby reducing the amount of potentially harmful radiation that reaches the Earth's surface. It may be contrasted with the ozone component of photochemical smog near the Earth's surface, which is harmful.

P

Parcel Map (lot split)
A subdivision map that divides a parcel up into four or fewer lots. The city or county can place conditions on the approval of parcel maps. See FINAL SUBDIVISION MAP, SUBDIVISION MAP ACT, TENTATIVE SUBDIVISION MAP.

Parcel Tax
Special non-ad valorem tax on parcels of property generally based on either a flat per-parcel rate or a variable rate depending on the size, use or number of units on the parcel. See AD VALOREM TAX, EXCISE TAX.

Parcel
A lot in single ownership or under single control, usually considered a unit for purposes of development.

Park Land; Parkland
Land that is publicly owned or controlled for the purpose of providing parks, recreation or open-space for public use. See COMMUNITY PARK, NEIGHBORHOOD PARK, REGIONAL PARK.

Parking Area, Public
An open area, excluding a street or other public way, used for the parking of automobiles and available to the public, whether for free or for compensation.

Parking Management
An evolving Transportation Demand Management technique designed to obtain maximum use from limited parking spaces. Can involve pricing and preferential treatment for High-Occupancy Vehicles, non-peak period users and short-term users. See HIGH-OCCUPANCY VEHICLE, TRANSPORTATION DEMAND MANAGEMENT.

Parking Ratio
The number of parking spaces provided per 1,000 square feet of floor area, for example, 2.1 or “two per thousand.”

Parking Space, Compact
A parking space (usually 7.5 feet wide by 16 feet long when perpendicular to a driveway or aisle) permitted in some localities on the assumption that many modern cars are significantly smaller, and require less room, than a standard automobile. A standard parking space, when perpendicular to a driveway or aisle, is usually 8.5 feet wide by 18 feet long.

Parking, Shared
A public or private parking area used jointly by two or more uses.

Parks
Open space lands whose primary purpose is recreation. See OPEN-SPACE LAND, COMMUNITY PARK, NEIGHBORHOOD PARK, REGIONAL PARK.

Parkway Strip
A piece of land located between the rear of a curb and the front of a sidewalk, usually used for planting low ground cover and/or street trees, also known as “planter strip.” See STREET TREE PLAN.

Parkway
An expressway or freeway designed for non-commercial traffic only; usually located within a strip of landscaped park or natural vegetation. See EXPRESSWAY,

Particulate Matter (PM)
Very small pieces of solid or liquid matter such as particles of soot, dust, fumes, mists or aerosols. The physical characteristics of particles, and how they combine with other particles, are part of the feedback mechanisms of the atmosphere. See AEROSOL.

Pay As You Go
Concept of paying for capital projects when the initial cost is incurred, rather than over time through the use of debt financing. See CAPITAL OUTLAY, DEBT FINANCING.

Pay As You Use
Concept that debt financing enables the public entity to spread the cost of a capital project over time, as the project is being used. See CAPITAL OUTLAY, DEBT FINANCING.

Peak Hour/Peak Period
For any given roadway, a daily period during which traffic volume is highest, usually occurring in the morning and evening commute periods. Where “F” levels of service are encountered, the “peak hour” may stretch into a “peak period” of several hours’ duration.

Pedestrian Friendly
In basic terms, a street or area that has sidewalks on both sides of the roadway and safe street crossings. In broader terms, it denotes a street, neighborhood, or city that supports, through planning and zoning, the location of stores, offices, residences, schools, recreational areas and other public facilities within walking distance of each other. Such areas also often feature narrow streets, street trees, awnings, covered transit shelters, benches, brick paving or other less conventional paving types, among other elements.

Performance Standards
Zoning regulations that permit uses based on a particular set of standards of operation rather than on particular type of use. Performance standards provide specific criteria limiting noise, air pollution, emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, wastes, traffic impacts and visual impact of a use.

Permeable
Description of any surface that allows another substance (for example, water) to pass through it.

Permit
A specific authorization from a planning body to engage in a particular type of development or activity.

Permitted Use
An authorized use within a zoning district. See CONDITIONAL USE.

Pervious
Permeable; allows something to pass through it.

Photovoltaic Cell
A device that converts sunlight into electricity.

Physical Diversity
A quality of a site, city or region in which a variety of architectural styles, natural landscapes and/or land uses are found.

Plan Line
A precise line that establishes future rights-of-way along any portion of an existing or proposed street or highway and which is depicted on a map showing the streets and lot line or lines and the proposed right-of-way lines, and the distance thereof from the established centerline of the street or highway, or from existing or established property lines.

Planned Community
A large-scale development whose essential features are a definable boundary; a consistent, but not necessarily uniform, character; overall control during the development process by a single development entity; private ownership of recreation amenities; and enforcement of covenants, conditions and restrictions by a master community association. See COVENANTS, CONDITIONS, AND RESTRICTIONS.

Planned Unit Development (PUD)
Land use zoning which allows the adoption of a set of development standards that are specific to a particular project. PUD zones usually do not contain detailed development standards; those are established during the process of considering proposals and adopted by ordinance upon project approval.

Planning and Research, Office of (OPR)
A governmental division of the state of California that has among its responsibilities the preparation of a set of guidelines for use by local jurisdictions in drafting general plans.

Planning Area
The area directly addressed by the general plan. A city's planning area typically encompasses the city limits and potentially annexable land within its sphere of influence.

Planning Commission
A body, usually having five or seven members, created by a city or county in compliance with California law which requires the assignment of the planning functions of the city or county to a planning department, planning commission, hearing officers, and/or the legislative body itself, as deemed appropriate by the legislative body. See California Government Code section 65100.

Plat Map
A map of a lot, parcel, subdivision or development area where the lines of each land division are shown by accurate distances and bearings.

Plug-In Hybrid Electric Vehicle (PHEV)
A vehicle that is similar to traditional hybrids but is also equipped with a larger, more advanced battery that allows the vehicle to be plugged in and recharged in addition to refueling with gasoline. This larger battery allows you to drive on a combination of electric and gasoline fuels.

Point Source
A single identifiable source that discharges pollutants into the environment. Examples are smokestacks, sewers, ditches or pipes. Any pollution with a definable, specific source of origin is referred to as “point-source pollution.”

Police and Fire Special Tax
Special tax on parcels of property in support of police, fire protection or both.

Police Power
Broad power held by government to legislate for the purpose of preserving the public’s health, safety, morals and general welfare. The authority that localities have to adopt zoning and land use regulations and general plans is derived from the police power.

Policy
A statement of a public body that forms the basis for enacting legislation, making decisions and achieving stated objectives and goals. The policies under which zoning ordinances are enacted and administered should be found in a community’s general plan.

Pollution
A change in the physical, chemical or biologic characteristics of the air, water or soil that can affect the health, survival or activities of all forms of life in an unwanted way.

Pollution, Non-Point
Sources for pollution that are less definable and usually cover broad areas of land, such as agricultural land with fertilizers that are carried from the land by runoff, or automobiles.

Pollution, Point
In reference to water quality, a discrete source from which pollution is generated before it enters receiving waters, such as a sewer outfall, a smokestack or an industrial waste pipe.

Poverty Level
As used by the U.S. Census, families and unrelated individuals are classified as being above or below the poverty level based on a poverty index that provides a range of income cutoffs or “poverty thresholds” varying by size of family, number of children and age of householder. The income cutoffs are updated each year to reflect the change in the Consumer Price Index.

Preemption
The principle of law through which federal or state regulations supersede those of a city or county. A local agency may not take actions that conflict with state or federal law.

Prefabricated
Standardized building sections that are created in a factory to be shipped and assembled in another location.

Prime Agricultural Land
(1) Land used actively in the production of food, fiber or livestock. (2) All land that qualifies for rating as Class I or Class II in the Natural Resources Conservation Service land use compatibility classifications. (3) Land that qualifies for rating 80 through 100 in the Storie Index Rating. See STORIE INDEX.

Prime Farmland
Land which has the best combination of physical and chemical characteristics for the production of crops. Prime Farmland must have been used for the production of irrigated crops within the last three years. Prime Farmland does not include publicly owned lands for which there is an adopted policy preventing agricultural use.

Principal
"Face" or "par value" of an instrument. It does not include accrued interest.

Principle
An assumption, fundamental rule or doctrine that guides policies, proposals, standards and implementation measures.

Private Road/Private Street
Privately owned (and usually privately maintained) motor vehicle access that is not dedicated as a public street. Typically the owner posts a sign indicating that the street is private property and limits traffic in some fashion. For density calculation purposes, some jurisdictions exclude private roads when establishing the total acreage of the site; however, aisles within and driveways serving private parking lots are not considered private roads.

Pro Rata
Refers to the proportionate distribution of something to something else or to some group, like the cost of infrastructure improvements associated with new development apportioned to the users of the infrastructure on the basis of projected use.

Prohousing Designation
The Prohousing Designation Program was authorized by the 2019-20 Budget Act and tasks the Department of Housing and Community Development (HCD) with designating jurisdictions as "Prohousing," when they demonstrate policies and strategies to accelerate housing production. Prohousing jurisdictions will then be awarded additional points or preference funding and grant programs.

Program
An action, activity or strategy carried out in response to adopted policy to achieve a specific goal or objective. Policies and programs establish the who, how and when for carrying out the what and where of goals and objectives.

Property Tax
An ad valorem tax imposed on real property (land and permanently attached improvements) and tangible personal property (movable property). See AD VALOREM TAX, ASSESSED VALUATION, GENERAL REVENUE, MOTOR VEHICLE LICENSE FEE, TAX.

Proposition 4
Also called the Gann Initiative, this initiative, now Article XIIIB of the state constitution was drafted to be a companion measure to Proposition 13, Article XIIIA of the constitution. Article XIIIB limits growth in government spending to changes in population and inflation.

Proposition 13
Article XIIIA of the California Constitution, commonly known as Proposition 13, which limits the maximum annual increase of any ad valorem tax on real property to 1 percent of the full cash value of such property.

Proposition 62
A 1986 proposition that, among other things, implemented a majority vote requirement for general taxes. This portion of Proposition 62 was later ruled unconstitutional.

Proposition 98
Passed in 1988, this measure establishes a minimum level of funding for public schools and community colleges. This measure also provides that any state revenues in excess of the appropriations limit be spent on schools.

Proposition 172
A 1993 measure which places a one-half cent sales tax for local public safety in the constitution. The tax is imposed by the state and distributed to cities and counties.

Proximity
The distance between different land uses such as residential and commercial.

Public Owned Utilities (POUs)
Non-profit utility providers owned by a community and operated by municipalities, counties, states, public power districts or other public organizations. Within POUs, residents have a say in decisions and policies about rates, services, generating fuels and the environment.

Public and Quasi-Public Facilities
Institutional, academic, governmental and community service uses, either owned publicly or operated by non-profit organizations, including private hospitals and cemeteries.

Public Records
Most public agency documents are public records that must be made available for public inspection upon request. For example, agendas and other documents distributed by any person to a majority of the legislative body in connection with any matter subject to discussion at a public meeting item are public records, which must be made available to the public "without delay." If the agency distributes material prepared by it (including consultants) or a member of the legislative body during a meeting, copies of the material must be available for public inspection at the meeting. Materials prepared by some other person and distributed during a meeting must be made available after the meeting. See California Government Code sections 54957.5 and 6250 (open meetings law materials availability requirements). See also BROWN ACT.

Public Services
See MUNICIPAL SERVICES.

Q

Quality of Life

The degree to which individuals perceive themselves as able to function physically, emotionally and socially. On a larger scale, quality of life can be viewed as including all aspects of community life that have a direct and quantifiable influence on the physical and mental health of its members.

Quasi-Judicial Decisions

Involve individual projects that are being considered for approval, conditional approval or denial based on criteria previously established by some legislative action. Examples include zoning permits or other entitlements, such as variances.

R

Radiant Heating
An efficient heating system that warms cold objects, which then radiate heat into the surrounding space evenly.

Rail Banking
The practice of leaving the tracks, bridges and other infrastructure intact for potential use as trails or to preserve railroad rights-of-way.

Ranchette
A single dwelling unit occupied by a non-farming household on a parcel of 2.5 to 20 acres that has been subdivided from agricultural land.

Reach Code
A local ordinance that "reaches" beyond the state minimum requirements, intended to support meeting local and/or statewide energy and greenhouse gas reduction goals.

Real Property Transfer Tax
See DOCUMENTARY TRANSFER TAX.

Reclamation
The reuse of resources, usually those present in solid wastes or sewage.

Reconstruction
As used in historic preservation, the process of reproducing by new construction the exact form and detail of a vanished structure as it appeared during a specific period of time. Reconstruction is often undertaken when the property to be reconstructed is essential for understanding and interpreting the value of a historic district and sufficient documentation exists to insure an exact reproduction of the original.

Recreation, Active
A type of recreation or activity that requires the use of organized play areas including, but not limited to, softball, baseball, football and soccer fields, tennis and basketball courts and various forms of children's play equipment.

Recreation, Passive
Type of recreation or activity that does not require the use of organized play areas. Examples include open fields, trails and camping areas.

Redevelop
To demolish existing buildings; or to increase the overall floor area existing on a property; or both; irrespective of whether a change occurs in land use.

Referendum
A voter challenge to legislative action taken by a city council or county board of supervisors. If enough signatures are filed, the governing body must either rescind its decision or place the issue on the ballot for a vote.

Reforestation
Planting of forests on lands that have previously contained forests but that have been converted to some other use.

Regional Housing Needs Assessment (RHNA)
Mandated by the state as part of the periodic process of updating local housing elements of the general plan. RHNA quantifies the need for housing, by household income group, within each region during specified planning periods. Communities use RHNA in land use planning, prioritizing local resource allocation, and in deciding how to address identified existing and future housing needs resulting from population, employment and household growth. See COUNCIL OF GOVERNMENTS, HOUSING AND COMMUNITY DEVELOPMENT

Regional Park
A park typically 150-500 acres in size focusing on activities and natural features not included in most other types of parks and often based on a specific scenic or recreational opportunity. See COMMUNITY PARK, NEIGHBORHOOD PARK, PARKS.

Regional
Pertaining to activities or economies at a scale greater than that of a single jurisdiction and affecting a broad geographic area.

Regulation
A rule or order prescribed for managing government.

Regulatory Taking
A taking of private property for a public purpose that results from extensive regulation of land.

Rehabilitation
The repair, preservation and/or improvement of substandard housing.

Reimbursement for State Mandated Costs
Requirement that the state must reimburse local agencies for the cost of state-imposed programs. Process is commonly called “SB 90” after its original 1972 legislation. See California Constitution article XIIIB, section 6.

Relocation Permit
Needed if a building is to be moved to a lot within the city and if the building is to cross a public street, alley or easement.

Renewability
Natural materials that are rapidly renewable, such as fast-growing trees and agricultural products.

Renewable Energy
Energy derived from sources that do not deplete natural resources. Examples include solar, wind and geothermal energy from the Earth’s core.

Rents
Revenues received through the rental of public properties to private parties like convention space and library facilities.

Residential
Land designated in the city or county general plan and zoning ordinance for buildings consisting only of dwelling units. May be improved, vacant or unimproved. See DWELLING UNIT.

Responsible Agency
In the California Environmental Quality Act, all public agencies other than the lead agency that have discretionary approval over a project. Responsible agencies send comments to the lead agency regarding the environmental impacts about which they have expertise. See CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Retrofit
To add materials and/or devices to an existing building or system to improve its operation, safety or efficiency. Buildings have been retrofitted to use solar energy and to strengthen their ability to withstand earthquakes, for example.

Reusability
Products that are long-lasting and require little maintenance.

Rezoning
An amendment to the map and/or text of a zoning ordinance to effect a change in the nature, density or intensity of uses allowed in a zoning district and/or on a designated parcel or land area. See ZONING.

Richter Scale
A measure of the size or energy release of an earthquake at its source. The scale is logarithmic; the wave amplitude of each number on the scale is 10 times greater than that of the previous whole number.

Ridgeline
A line connecting the highest points along a ridge and separating drainage basins or small-scale drainage systems from one another.

Right-Of-Way
A strip of land occupied or intended to be occupied by certain transportation and public use facilities, like roads, railroads and utility lines.

Riparian Lands
Plant and wildlife areas adjacent to perennial and intermittent streams. Riparian areas are delineated by the existence of plant species normally found near freshwater.

Riparian Rights
The right of a landowner to make use of the water in a river or stream on or bordering a property.

Runoff
Water from rain or snow that is not absorbed into the ground but instead flows over less permeable surfaces into streams and rivers.

S

Safety Element
One of the eight state-mandated elements of a local general plan, it contains adopted goals, policies and implementation programs for the protection of the community from any unreasonable risks associated with seismic and geologic hazards, flooding, and wildland and urban fires. Many safety elements also incorporate a review of police needs, objectives, facilities and services.

Sales Tax
The sales tax is imposed on retailers for the privilege of selling tangible personal property in California. Tax base is the total retail price. See TAX BASE.

Sanitary Landfill
The controlled placement of refuse within a limited area, followed by compaction and covering with a suitable thickness of earth and other containment material.

Sanitary Sewer
A system of subterranean conduits that carries refuse liquids or waste matter to a plant where the sewage is treated, as contrasted with storm drainage systems (that carry surface water) and septic tanks or leech fields (that hold refuse liquids and waste matter on-site). See SEPTIC SYSTEM.

Scenic Highway Corridor
The area outside a highway right-of-way that is generally visible to persons traveling on the highway.

Scenic Highway/Scenic Route
A highway, road, drive or street that, in addition to its transportation function, provides opportunities for the enjoyment of natural and man-made scenic resources and access or direct views to areas or scenes of exceptional beauty or historic or cultural interest. The aesthetic values of scenic routes often are protected and enhanced by regulations governing the development of property or the placement of outdoor advertising. Until the mid-1980's, general plans in California were required to include a scenic highways element.

School Impact Fees
Fees imposed on new developments to offset their impacts on area schools.

Second Unit
A self-contained living unit, either attached to or detached from, and in addition to, the primary residential unit on a single lot. See ACCESORY DWELLING UNIT, GRANNY FLAT.

Section 8 Rental Assistance Program
A federal (U.S. Department of Housing and Urban Development) rent-subsidy program that is one of the main sources of federal housing assistance for low-income households. The program operates by providing "housing assistance payments" to owners, developers and public housing agencies to make up the difference between the "Fair Market Rent" of a unit (set

by the U.S. Department of Housing and Urban Development) and the household's contribution toward the rent, which is calculated at 30 percent of the household's adjusted gross monthly income (GMI). "Section 8" includes programs for new construction, existing housing and substantial or moderate housing rehabilitation.

Seiche
A standing wave in an enclosed or partially enclosed body of water such as a lake, reservoir or bay. Seiches may be caused by wind, seismic activity or tsunamis and are often imperceptible to the naked eye.

Seismic
Caused by or subject to earthquakes or earth vibrations.

Senior Housing
A broad term that is used to describe any type of living facilities that are maintained for the use of people who have reached the age of retirement. There are different types of senior housing designed to meet the needs of seniors in various states of health and with different levels of activity.

Seniors
Persons age 62 and older.

Septic System
A sewage-treatment system that includes a settling tank through which liquid sewage flows and in which solid sewage settles and is decomposed by bacteria in the absence of oxygen. Septic systems are often used for individual-home waste disposal where an urban sewer system is not available. See SANITARY SEWER.

Service Charges
Charges imposed to support services to individuals or to cover the cost of providing such services. The fees charged are limited to the cost of providing the service or regulation required (plus overhead).

Setback Regulations
The requirements that a building be set back a certain distance from the street (front), side or rear lot line. The frontage or front of a lot is usually defined as the side nearest the street. On a corner lot, the narrowest side is usually determined to be the front lot line. In triangular or other odd-shaped lots, rear lot lines may need to be defined more precisely in the code or judged by the planning commission or other hearing body with appropriate jurisdiction on a case-by-case basis.

Setback
The minimum distance required by zoning to be maintained between two structures or between a structure and a property line.

Settlement
(1) The drop in elevation of a ground surface caused by settling or compacting. (2) The gradual downward movement of an engineered structure due to compaction. Differential settlement is uneven settlement, where one part of a structure settles more or at a different rate than another part.

Short-Term Financing Methods
Techniques used for many purposes, such as meeting anticipated cash flow deficits, interim financing of a project and project implementation. Using these techniques involves issuance of short-term notes. Voter approval is not required.

Sign Permit
This permit allows for a sign to be erected in compliance with stated policies or conditions.

Sign
Any outdoor or indoor object, device, display or structure that is used to advertise, identify, display, direct or attract attention to a person, organization, business, product, service, event or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination or projected images. See OUTDOOR ADVERTISING STRUCTURE.

Significant Effect
A beneficial or detrimental impact on the environment. May include but is not limited to significant changes in an area's air, water and land resources.

Siltation
(1) The accumulating deposition of eroded material. (2) The gradual filling in of streams and other bodies of water with sand, silt and clay.

Single Room Occupancy (SRO)
A single room, typically 80-250 square feet, with a sink and closet, but which requires the occupant to share a communal bathroom, shower, and kitchen. See AFFORDABLE HOUSING.

Site
A parcel of land used or intended for one use or a group of uses and having frontage on a public or an approved private street. See LOT.

Site Plan Review
The process whereby local officials, usually the planning commission and staff, review the site plans of a developer to assure that they meet the purposes and standards of the zone, provide for necessary public facilities like streets, parks and schools, and protect adjacent properties through appropriate siting of structures and landscaping.

Site Plan
A plan, to scale, showing uses and structures proposed for a parcel of land. It includes lot lines, streets, building sites, public open space, buildings, major landscape features – both natural and man-made – and, depending on requirements, the locations of proposed utility lines.

Smart Growth
A broad concept that describes a series of principles that encourage development that better serves the economic, environmental and social needs of communities than do many of the principles that have guided development in the post-World War II period. The U.S. Environmental Protection Agency identified the following ten principles of smart growth. (1) Mix land uses (2) Take advantage of compact building design (3) Create a range of housing opportunities and choices (4) Create walkable neighborhoods (5) Foster distinctive, attractive communities with a strong sense of place (6) Preserve open space, farmland, natural beauty, and critical environmental areas (7) Strengthen and direct development toward existing communities (8) Provide a variety of transportation choices (9) Make development decisions predictable, fair, and cost effective (10) Encourage community and stakeholder collaboration in development decisions.

Smart Code
A comprehensive form-based zoning and planning approach that incorporates smart growth and New Urbanism principles to help organize the human habitat. It is based on the idea of the Transect, which defines a continuum of urbanized conditions

ranging from the permanently rural and undeveloped, to the dense, intensely urbanized city centers.

Social Capital
The individual and communal time and energy that is available for such things as community improvement, social networking, civic engagement, personal recreation and other activities that create social bonds between individuals and groups. Circumstances that prevent or limit the availability of social capital for a community and its members can have a negative effect on the health and well-being of the members of that community. These negative effects on health and well-being can in turn have negative effects on the community as a whole.

Solar Access
The provision of direct sunlight to an area specified for solar energy collection when the sun's azimuth is within 45 degrees of true south.

Solar System, Active
A system using a mechanical device, like a pump or a fan, and energy in addition to solar energy to transport a conductive medium (air or water) between a solar collector and the interior of a building for the purpose of heating or cooling.

Solar System, Passive
A system that uses direct heat transfer from thermal mass instead of mechanical power to distribute collected heat. Passive systems rely on building design and materials to collect and store heat and to create natural ventilation for cooling.

Solid Waste
Any unwanted or discarded material that is not a liquid or gas. Includes organic wastes, paper products, metals, glass, plastics, cloth, brick, rock, soil, leather, rubber, yard wastes and wood, but does not include sewage and hazardous materials. Organic wastes and paper products comprise about 75 percent of typical urban solid waste.

Special District
A governmental entity formed to deliver a specific service, like fire protection, water service or the maintenance of open space.

Special Populations
Certain classifications used to identify target groups including the poor, women, children, the elderly and members of racial/ethnic minority groups.

Special Tax
Tax earmarked for a specific purpose or governmental program. Special taxes require a two-thirds vote of the electorate voting in an election in order to be implemented. See COMMUNITY FACILITIES DISTRICT, EARMARKED FUNDS, MELLO-ROOS BONDS, MELLO-ROOS COMMUNITY FACILITIES TAX, POLICE AND FIRE SPECIAL TAX, TAX.

Specific Plan
A plan that an agency may adopt to implement the general plan in all or part of the area covered by the general plan. See California Government Code section 65450. A specific plan must specify in detail the land uses, public and private facilities needed to support the land uses, phasing of development, standards for the conservation, development and use of natural resources, and a program of implementation measures, including financing measures. A specific plan is most often adopted by ordinance, but can also be adopted by resolution. See GENERAL PLAN.

Speed, Average
The sum of the speeds of the cars observed divided by the number of cars observed.

Speed, Critical
The speed that is not exceeded by 85 percent of the cars observed.

Sphere of Influence
The probable physical boundaries and service area of a local agency, as determined by the Local Agency Formation Commission of the county. See LOCAL AGENCY FORMATION COMMISSION.

Spot Zoning
The awarding of a use classification to an isolated parcel of land that is detrimental or incompatible with the uses of the surrounding area, particularly when such an act favors a particular owner. A special circumstance like historical value, environmental importance, or scenic value would justify special zoning for a small area. The application of a use classification to an isolated parcel, when done in the context of a comprehensive zoning or general plan update, is not necessarily considered spot zoning. See ZONING.

Sprawl
The process in which the spread of development across the landscape far outpaces population growth. The landscape sprawl creates has four characteristics. a population that is widely dispersed in low-density development; rigid separation of uses, so that homes, commerce and workplaces are segregated from one another; a network of roads laid out to separate land into huge blocks and offering poor access; and a lack of well-defined, thriving activity centers, such as downtowns and town centers. Most of the other features usually associated with sprawl – a lack of transportation choices, relative uniformity of housing options and difficulty walking from place to place – result from these conditions.

Standards
(1) A rule or measure establishing a level of quality or quantity that must be complied with or satisfied. Government Code §65302 requires that general plans spell out the objectives, principles, "standards," and proposals of the general plan. Examples of standards might include the number of acres of park land per 1,000 population that the community will attempt to acquire and improve, or the "traffic Level of Service" (LOS) that the plan hopes to attain. (2) Requirements in a zoning ordinance that govern building and development as distinguished from use restrictions. For example, site-design regulations such as lot area, height limit, frontage, landscaping, and floor area ratio.

State Clearinghouse
In California, the State Clearinghouse is part of the Governor's Office of Planning and Research and is responsible for distributing environmental documents to state agencies. Lead agencies are required to submit their draft Environmental Impact Reports or negative declarations if a state agency is the lead agency, a state agency is a responsible agency or trustee agency or the project is of statewide, regional or area importance. See CALIFORNIA ENVIRONMENTAL QUALITY ACT, ENVIRONMENTAL IMPACT REPORT, NEGATIVE DECLARATION.

State Responsibility Areas
Areas of the state in which the financial responsibility for preventing and suppressing fires has been determined by the State Board of Forestry (pursuant to Public Resources Code 4125) to be primarily the responsibility of the state.

Stock Cooperative Housing
Multiple-family ownership housing in which the occupant of a unit holds a share of stock in a corporation that owns the structure in which the unit is located.

Storie Index
A numerical system (0-100) rating the degree to which a particular soil can grow plants or produce crops, based on four factors. soil profile, surface texture, slope and soil limitations. See PRIME AGRICULTURAL LAND.

Storm Surge
An abnormal rise of water generated by a storm, over and above the predicted astronomical tides.

Stormwater Detention
Any storm drainage technique that retards or detains runoff, like detention or retention basins, parking lot storage, rooftop storage, porous pavement or dry wells. See DETENTION DAM.

Street Furniture
Features associated with a street that are intended to enhance its physical character and use by pedestrians, such as benches, trash receptacles, kiosks, lights and newspaper racks.

Street Network or Grid
The patterns formed by roadways and the extent to which they are connected to each other (i.e., “connectivity”). For example, the traditional urban block-like grid involves a dense matrix of interconnected streets typically seen in older urban areas. The hierarchical grid, common in most suburban areas, consists of sets of dead-end streets and cul-de-sacs that feed into secondary roadways that ultimately feed into major roadways; traffic collects on main arteries.

Street Tree Plan
A comprehensive plan for all trees on public streets that sets goals for solar access, and standards for species selection, maintenance and replacement criteria, and for planting trees in patterns that will define neighborhood character while avoiding monotony or maintenance problems.

Street-Right-Of-Way
is publicly owned land that contains both the street and a strip of land on either side of the street that holds appurtenant facilities (i.e., sidewalks, sewers and storm drains).

Streets, Local
See STREETS, MINOR.

Streets, Major
The transportation network that includes a hierarchy of freeways, arterials, and collectors to service through traffic. See ARTERIAL, COLLECTOR, EXPRESSWAY, FREEWAY.

Streets, Minor
Local streets not shown on the circulation plan, map or diagram, whose primary intended purpose is to provide access to fronting properties.

Streets, Through
Streets that extend continuously between other major streets in the community.

Streetscaping
Includes improving traffic management, adding landscaping, sidewalks, building fronts and street amenities, such as garbage cans and benches.

Strip Development
Commercial and high-density residential development located adjacent to major streets. This type of development is characterized by its shallow depth, street-oriented layout, lack of unified design theme, and numerous points of street access. It impedes smooth traffic flow.

Strip Zoning
A zone normally consisting of a ribbon of uses fronting both sides of a major street and extending inward for approximately half a block. Strip commercial development is the most common form. It usually is characterized by an assortment of gas stations, drive-in and fast-food restaurants, motels, tourist shops and some automobile sales and service operations.

Structure
Anything constructed or erected that requires location on the ground (excluding swimming pools, fences and walls used as fences).

Subdivision Map Act
California law that this act vests in local legislative bodies the regulation and control of the design and improvement of subdivisions, including the requirement for tentative and final maps. See California Government Code sections 66410 and following.

Subdivision
The division of a tract of land into defined lots, either improved or unimproved, which can be separately conveyed by sale or lease, and which can be altered or developed. The process often includes setting aside land for streets, sidewalks, parks, public areas and other infrastructure needs—including the designation of the location of utilities.

Subregional
Pertaining to a portion of a region.

Subsidence
The sudden sinking or gradual downward settling and compaction of soil and other surface material with little or no horizontal motion. Subsidence may be caused by a variety of human and natural activity, including earthquakes. See SETTLEMENT.

Subsidize
To assist by payment of a sum of money or by the granting of terms or favors that reduce the need for monetary expenditures. Housing subsidies may take the form of mortgage interest deductions or tax credits from federal and/or state income taxes, sale or lease at less than market value of land to be used for the construction of housing, payments to supplement a minimum affordable rent, and the like.

Substandard Housing
Residential dwellings that, because of their physical condition, do not provide safe and sanitary housing.

Substantial Evidence
Under some circumstances, a local agency's land use decision must be supported by what is called "substantial evidence" in light of the whole record. The public can assist the agency in gathering and putting information into the record that may provide the basis for the agency's decision. The agency's findings must be supported by substantial evidence and then the findings must support the agency's decision.

Subvention

Subsidy or financial support received from county, state or federal government. The state and counties levy certain taxes that are "subvened" to cities, including motor vehicle license fees, state mandated costs and motor vehicle fuel tax. See MOTOR VEHICLE LICENSE FEE, REIMBURSEMENT FOR STATE MANDATED COSTS.

Supplemental Property Tax

In the event a property changes ownership, the county collects a supplemental property tax assessment in the current tax year by determining a supplemental value. In future tax periods, the property carries the full cash value. See PROPERTY TAX, PROPOSITION 13.

Sustainability

Community use of natural resources in a way that does not jeopardize the ability of future generations to live and prosper. Sustainability presumes that resources are finite, and should be used conservatively and wisely with a view to long-term priorities and consequences of the ways in which resources are used.

Sustainable Development

Development that maintains or enhances equity, economic opportunity and community well-being while protecting and restoring the natural environment upon which people and economies depend. Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs.

T

Taking
The appropriation by government of private land for which just compensation must be paid. Another term for Eminent Domain. Often used when the claim is made that a government regulation is akin to eminent domain, though the legal standard requires the denial of all economically viable use of the land. See CONDEMNATION.

Target Areas
Specifically designated sections of the community where loans and grants are made to bring about a specific outcome, such as the rehabilitation of housing affordable by very low-and low-income households.

Tax Allocation Bonds
Former redevelopment agencies could not receive or spend tax increment funds until they established debt. For this reason, redevelopment agencies established debt by issuing Tax Allocation Bonds secured by the available tax increment that grew since the Redevelopment Agency was first established. Health and Safety Code (H&SC) section34171 (d)(1)(A) defines the obligations of bond documents as enforceable obligations of Successor Agencies and all payments due are to be included in the Recognized Obligation Payment Schedule (ROPS). See BLIGHT, BOND, COMMUNITY REDEVELOPMENT AGENCY.

Tax Allocation Districts (TAD)
Defined areas where real estate property tax money gathered above a certain threshold for a certain period of time (typically 25 years) is used for a specified improvement. The funds raised from a tax allocation district are placed in a tax-free bond where the money can continue to grow. These improvements are typically for revitalization and especially to complete redevelopment efforts. TAD is a geographic area in which TIF can be used.

Tax Base
The objects or transactions to which a tax is applied (like parcels of property, retail sales, etc.). State law or local ordinances define the tax base and the objects or transactions exempted from taxation.

Tax Increment Financing (TIF)
Tax increment financing (TIF) tools work by transferring the property tax revenues that flow from a designated project area to the city, county and other taxing entities. Additional tax revenue in future years (the “increment”) is diverted into a separate pool, which can be used to pay for improvements directly or to pay back bonds issued against the anticipated TIF revenue. In California, TIF has historically been used by redevelopment agencies to raise funding for infrastructure improvements, housing and other projects in redevelopment areas. However, with the dissolution of redevelopment agencies as of February 1, 2012, the traditional form of TIF is not available.

Tax Rate
The amount of tax applied to the tax base. The rate may flat, incremental or a percentage of the tax base or any other reasonable method. See TAX, TAX BASE.

Tax
Compulsory charge levied by a government for the purpose of financing services performed for the common benefit. See TAX BASE, TAX RATE.

Telecommuting
Working at home or in a location other than the primary place of work, making use of the internet, email and telephone.

Temporary Use
A use established for a fixed period of time with the intent to discontinue such use upon the expiration of the time period.

Tentative Subdivision Map or Tentative Map
The map or drawing illustrating a subdivision proposal. The city or county will conditionally approve or deny the proposed subdivision based upon the design depicted on the tentative map.

Tentative Subdivision Map
A map showing the design of a proposed subdivision of five or more lots. It includes existing conditions in and around the subdivision. This is the stage when a city or county must place all the restrictions it deems necessary on the map. The term "tentative" is misleading, because additional conditions or substantive design changes cannot be required once a tentative subdivision map is approved. See FINAL SUBDIVISION MAP, SUBDIVISION MAP ACT.

Tract Map
See FINAL MAP SUBDIVISION.

Traditional Development
Similar to NEOTRADITIONAL DEVELOPMENT.

Traffic Calming
A strategic set of physical changes to streets to reduce vehicle speeds and volumes. It refers to the use of street design techniques, such as curb extensions, traffic circles and speed humps, to slow and control the flow of automobile traffic.

Traffic Model
A mathematical representation of traffic movement within an area or region based on observed relationships between the kind and intensity of development in specific areas. Many traffic models operate on the theory that trips are produced by persons living in residential areas who are attracted by various non-residential land uses. See TRIP.

Traffic Zone
In a mathematical traffic model the area to be studied is divided into zones, with each zone treated as producing and attracting trips. The production of trips by a zone is based on the number of trips to or from work or shopping or other trips produced per dwelling unit.

Transect
The characteristics of ecosystems and the transition from one ecosystem to another. Establishes a hierarchy of places/contexts from the most natural to the most urban. The Natural-to-Urban Transect is a means for considering and organizing the human habitat in a continuum of intensity that ranges from the most rural condition to the most urban.

Transfer of Development Rights
Programs that use the market to implement and pay for development density and location decisions by allowing landowners to sever development rights from properties in government-designated low-density areas. This makes it possible for development to be sold to purchasers who want to increase the density of development in areas that local governments have selected as higher-density areas.

Transient Occupancy Tax
Local tax on persons staying 30 days or less in a hotel, inn, motel, tourist home, non-membership campground or other lodging facility. Also called Transient Lodging Tax or Bed Tax. See AD VALOREM TAX, EXCISE TAX, TAX.

Transit, Public
A system of regularly scheduled buses and/or trains available to the public on a fee-per-ride basis. Also called mass transit.

Transit
The conveyance of persons or goods from one place to another by means of a local public transportation system.

Transit-Dependent
Refers to persons unable to operate automobiles or other motorized vehicles, or those who do not own motorized vehicles. Transit-dependent citizens must rely on transit, paratransit or owners of private vehicles for transportation. Transit-dependent citizens include the young, the disabled, the elderly, the poor and those with prior violations of motor vehicle laws.

Transition Zone
Controlled airspace extending upward from 700 or more feet above the ground wherein procedures for aircraft approach have been designated. The transition zone lies closer to an airport than the outer approach zone and outside of the inner approach zone. See APPROACH ZONE, CLEAR ZONE, OUTER APPROACH ZONE.

Transitional Housing
Shelter provided to the homeless for an extended period, often as long as 18 months, and generally integrated with other social services and counseling programs to assist in the transition to self-sufficiency through the acquisition of a stable income and permanent housing. See EMERGENCY SHELTER.

Transit-Oriented Development (TOD)
Moderate- to higher-density development, located within easy walk of a major transit stop, generally with a mix of residential, employment and shopping opportunities designed for pedestrians without excluding the auto. TOD can be new construction or redevelopment of one or more buildings whose design and orientation facilitate transit use.

Transportation Demand Management (TDM)
A strategy for reducing demand on the road system by reducing the number of vehicles using the roadways and/or increasing the number of persons per vehicle. TDM attempts to reduce the number of persons who drive alone during the commute period and to increase the number in carpools, vanpools, buses or trains, or walking or biking. TDM can be an element of TSM (see below).

Transportation Systems Management (TSM)
A comprehensive strategy to coordinate many forms of transportation (like car, bus, carpool, rapid transit, bicycle) to reduce the impact of additional development on transportation capacity. Transportation Systems Management focuses on using existing highway and transit systems more efficiently rather than expanding them. TSM measures are characterized by their low cost and quick implementation time frame, like computerized traffic signals, metered freeway ramps and one-way streets.

Transportation Tax
Special tax imposed by counties for county transportation needs. Typically collected with the sales and use tax, some cities receive a portion of the transportation tax usually in .25 percent tax rate increments. See AD VALOREM TAX, SPECIAL TAX, TAX.

Trees, Street

Trees strategically planted-usually in parkway strips, medians, or along streets-to enhance the visual quality of a street. See MEDIAN STRIP, PARKWAY STRIP, STREET TREE PLAN.

Trip Generation

The dynamics that account for people making trips in automobiles or by means of public transportation. Trip generation is the basis for estimating the level of use for a transportation system and the impact of additional development or transportation facilities on an existing, local transportation system. Trip generations of households are correlated with destinations that attract household members for specific purposes.

Trip

A one-way journey that proceeds from an origin to a destination via a single mode of transportation; the smallest unit of movement considered in transportation studies. Each trip has one "production end," (or origin—often from home, but not always), and one "attraction end," (destination). See TRAFFIC MODEL.

Truck Route

A path of circulation required for all vehicles exceeding set weight or axle limits, a truck route follows major arterials through commercial or industrial areas and avoids sensitive areas.

Tsunami

A wave, or series of waves, generated when a large volume of a body of water, such as an ocean, bay or lake, is displaced rapidly. Tsunamis may be caused by earthquakes, volcanic eruptions or other underwater explosions, landslides or other disturbances.

Turbidity

A thick, hazy condition of air or water resulting from the presence of suspended particulates or other pollutants.

U

Underutilized Parcel
A parcel that is not developed but could be redeveloped in a manner that would yield substantially more development and/or value based on its current or zoning. A parcel may also be considered underutilized based on its potential to be rezoned for the purposes of meeting state requirements, such as affordable housing in the RHNA context.

Undevelopable
Specific areas where topographic, geologic and/or surficial soil conditions indicate a significant danger to future occupants and a liability to the city or county are designated as “undevelopable” by the city or county.

Undue
Improper, or more than necessary.

Uniform Building Code (UBC)
A national, standard building code that sets minimum standards for construction. See BUILDING CODE.

Uniform Housing Code (UHC)
State housing regulations governing the condition of habitable structures with regard to health and safety standards and providing for the conservation and rehabilitation of housing in accordance with the code.

Universal Design
Designing for the entire lifespan of community residents and creating a community with the maximum flexibility and usability for the full spectrum of people.

Upzone
The rezoning of land to a less restrictive zone (for example, from industrial to residential). Upzoning generally increases the economic value of land.

Urban
Of, relating to, characteristic of, or constituting a city. Urban areas are generally characterized by moderate and higher density residential development, commercial development and industrial development, and the availability of public services required for that development, specifically central water and sewer, an extensive road network, public transit and other such services (for example, safety and emergency response). Development not providing such services may be “non-urban” or “rural.”

Urban Design
The attempt to give form, in terms of both beauty and function, to selected urban areas or to whole cities. Urban design is concerned with the location, mass and design of various urban components and combines elements of urban planning, architecture and landscape architecture.

Urban Growth Boundary
An officially adopted and mapped line dividing land to be developed from land to be protected for natural or rural uses. Urban growth boundaries (also called urban limit lines) are regulatory tools, often designated for long periods of time (20 or more years) to provide greater certainty for both development and conservation goals.

Urban Heat Island (UHI)
Refers to the tendency for urban areas to have warmer air temperatures than the surrounding rural landscape, due to the low albedo of streets, sidewalks, parking lots, and buildings. These surfaces absorb solar radiation during the day and release it at night, resulting in higher night temperatures.

Urban Land Use
Residential, commercial or industrial land use in areas where urban services are available.

Urban Limit Line
A boundary, sometimes parcel-specific, located to mark the outer limit beyond which urban development will not be allowed. It has the aim of discouraging urban sprawl by containing urban development during a specified period, and its location may be modified over time.

Urban Reserve
An area outside of an urban service area but within an urban growth boundary, in which future development and extension of municipal services are contemplated but not imminent.

Urban Services Area
(1) An area in which urban services will be provided and outside of which such services will not be extended. (2) Developed, undeveloped or agricultural land, either incorporated or unincorporated, within the sphere of influence of a city, which is served or will be served during the first five years of an adopted capital improvement program by urban facilities, utilities, and services. The boundary around an urban service area is called the “urban service area boundary” and is to be developed in cooperation with a city and adopted by the county’s local agency formation commission. See California Government Code section 56080.

Urban Services
Utilities (like water, gas, electricity and sewer) and public services (like police, fire, schools, parks and recreation) provided to an urbanized or urbanizing area.

Urban Sprawl
See SPRAWL.

Use Permit
The discretionary and conditional review of an activity or function or operation on a site or in a building or facility.

Use Tax
The use tax is imposed on the user of a product whenever the sales tax does not apply, such as on goods purchased out-of-state and delivered for use in California and on long-term leases. Tax base is the total retail price. See AD VALOREM TAX, TAX, TAX BASE.

Use

The purpose for which a lot or structure is or may be leased, occupied, maintained, arranged, designed, intended, constructed, erected, moved, altered and/or enlarged in accordance with the city or county zoning ordinance and general plan land use designations.

Use, Nonconforming

See NONCONFORMING USE.

Utility Corridors

Rights-of-way or easements for utility lines on either publicly or privately owned property. See EASEMENT, RIGHT-OF-WAY.

Utility Users Tax

Tax imposed on the consumer (residential and/or commercial) of any combination of electric, gas, cable television, water, broadband and telephone services. See EXCISE TAX, TAX.

V

Vacant
Lands or buildings that are not actively used for any purpose.

Variance
A device which grants a property owner relief from certain provisions of a zoning ordinance when, because of the particular physical surroundings, shape or topographical condition of the property, compliance would result in a particular hardship upon the owner, as distinguished from a mere inconvenience or a desire to make more money. A variance may be granted, for example, to reduce yard or setback requirements, or the number of parking or loading spaces.

Variance
A limited waiver from the requirements of the zoning ordinance. Variance requests are subject to public hearing and may only be granted under special circumstances.

Vehicle-Miles Traveled (VMT)
The miles traveled by motor vehicles over a specified length of time (e.g., daily, monthly or yearly) or over a specified road or transportation corridor. VMT is a key measure of overall street and highway use. Reducing VMT is often a major objective in efforts to reduce vehicular congestion and achieve regional air quality goals.

Very-Low Income Household
A household with an annual income usually no greater than 50 percent of the area median family income adjusted by household size, as determined by a survey of incomes conducted by a city or a county, or in the absence of such a survey, based on the latest available eligibility limits established by the U.S. Department of Housing and Urban Development for the Section 8 housing program. See SECTION 8 RENTAL ASSISTANCE PROGRAM.

Vested Right
A right that has become absolute and fixed and cannot be denied by subsequent conditions or changes in regulations, unless it is taken and paid for. There is no vested right to an existing zoning classification. Once development has been started or completed, there is a right to maintain that particular use, regardless of the classification given the property.

View Corridor
The line of sight - identified as to height, width and distance - of an observer looking toward an object of significance to the community (like ridgelines, rivers and historic buildings, for example); the route that directs the viewer's attention.

Viewshed
The area within view from a defined observation point.

VLF
See MOTOR VEHICLE LICENSE FEE.

Volume-to-Capacity Ratio

A measure of the operating capacity of a roadway or intersection, in terms of the number of vehicles passing through, divided by the number of vehicles that theoretically could pass through when the roadway or intersection is operating at its designed capacity. Abbreviated as “V/C.” At a V/C ratio of 1.0, the roadway or intersection is operating at capacity. If the ratio is less than 1.0, the traffic facility has additional capacity. Although ratios slightly greater than 1.0 are possible, it is more likely that the peak hour will elongate into a peak period. See LEVEL OF SERVICE (TRAFFIC).

W

Walkability Audit
An unbiased examination/ evaluation to identify concerns for pedestrians related to the safety, access, comfort and convenience of the walking environment. The audit also assesses potential policy, educational or enforcement alternatives or solutions.

Walkable Community
Catering to non-motorized forms of transportation. Walkable communities make pedestrian activity possible, thus expanding transportation options, and creating streetscapes that better serves pedestrians, bicyclists, transit riders and automobiles. Walkable communities locate goods and services within an easy and safe walk for community residents and employees.

Water Table
The upper surface of groundwater, or that level below which the soil is seasonally saturated with water.

Watercourse
Natural or once natural flowing (perennially or intermittently) water including rivers, streams and creeks. Includes natural waterways that have been channelized, but does not include manmade channels, ditches and underground drainage and sewage systems.

Water-Efficient Landscaping
Landscaping designed to minimize water use and maximize energy efficiency.

Watershed
The total area above a given point on a watercourse that contributes water to its flow; the entire region drained by a waterway or watercourse that drains into a lake, or reservoir.

Waterway
See WATERCOURSE.

Weather
Atmospheric condition at any given time or place. It is measured in terms of such things as wind, temperature, humidity, atmospheric pressure, cloudiness and precipitation. See CLIMATE

Wetlands
Transitional areas between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by shallow water. Under a “unified” methodology now used by all federal agencies, wetlands are defined as “those areas meeting certain criteria for hydrology, vegetation and soils.”

Wildland Fire
A fire occurring in a suburban or rural area that contains uncultivated lands, timber, range, watershed, brush or grasslands. This includes areas where there is a mingling of developed and undeveloped lands.

Wildlife Refuge

An area maintained in a natural state for the preservation of both animal and plant life.

Williamson Act

Known formally as the California Land Conservation Act of 1965, it was designed as an incentive to retain prime agricultural land and open-space in agricultural use, thereby slowing its conversion to urban and suburban development. The program entails a ten-year contract between the city or county and an owner of land whereby the land is taxed on the basis of its agricultural use rather than its market value. The land becomes subject to certain enforceable restrictions, and certain conditions need to be met prior to approval of an agreement. See Government Code section 51200 and following.

Woodlands

Lands covered with woods or trees.

Y

Yard

The open space between a lot line and the buildable area within which no structure may be located, except as provided in the zoning ordinance.

Yield

The total amount of revenue a government expects to receive from a tax, determined by multiplying the tax rate by the tax base. Also, the annual rate of return on an investment, expressed as a percentage of the investment. See TAX, TAX BASE, TAX RATE.

Z

Zero Emission Vehicle (ZEV)
Vehicles which produce no emissions from the on-board source of power (e.g., an electric vehicle).

Zero Lot Line
A development approach in which a building is sited on one or more lot lines. Conceivably, three of the four sides of the building could be on the lot lines. The intent is to allow more flexibility in site design and to increase the amount of usable open space on the lot

Zone, Combining
A special purpose zone that is superimposed over the regular zoning map. Combining zones are used for a variety of purposes, such as airport compatibility, floodplain or wetlands protection, historic designation or special parking regulations. Also called “overlay zone.”

Zone, Interim
A zoning designation that temporarily reduces or freezes allowable development in an area until a permanent classification can be fixed; generally assigned during general plan preparation to provide a basis for permanent zoning.

Zone, Traffic
In a mathematical traffic model the area to be studied is divided into zones, with each zone treated as producing and attracting trips. The production of trips by a zone is based on the number of trips to or from work or shopping, or other trips produced per dwelling unit. AKA traffic analysis zone or TAZ.

Zoning
The division of a city or county by legislative regulations into areas, or zones, that specify allowable uses for real property and size restrictions for buildings within these areas; a program that implements policies of the general plan. See GENERAL PLAN, INCLUSIONARY ZONING, REZONING, SPECIFIC PLAN, SPOT ZONING.

Zoning Adjustment Board
A body appointed by the local legislative body to consider minor zoning adjustments such as conditional use permits and variances. It is empowered to conduct public hearings and to impose conditions of approval. Its decision may be appealed to the local legislative body. Not all jurisdictions utilize this model.

Zoning Administrator
A planning department staff member responsible for hearing minor zoning permits. Typically, the zoning administrator considers variances and conditional use permits and may interpret the provisions of the zoning ordinance when questions arise. His/her decision may be appealed to the local legislative body.

Zoning Amendment
An amendment to or a change in the zoning ordinance. Rezonings can take three forms. (1) a comprehensive revision or modification of the zoning text and map; (2) a text change in zoning requirements; and (3) a change in the zoning designation of a particular parcel or parcels of land.

Zoning District
A designated section of a city or county for which prescribed land use requirements and building and development standards are uniform.

Zoning Map
Government Code section 65851 permits a legislative body to divide a county, a city or portions thereof into zones of the number, shape, and area it deems best suited to carry out the purposes of the zoning ordinance. These zones are delineated on a map or maps called the zoning map.

Zoning, Exclusionary
Development regulations that result in the exclusion of low- and moderate-income and/or minority families from a community.

Zoning, Incentive
The awarding of bonus credits to a development in the form of allowing more intensive use of land if public benefits such as preservation of greater than the minimum required open-space, provision for low- and moderate-income housing, or plans for public plazas and courts at ground level are included in a project.

Zoning, Inclusionary
Regulations that increase housing choice by providing the opportunity to construct more diverse and economical housing to meet the needs of low- and moderate-income families. Often such regulations require a minimum percentage of housing for low- and moderate-income households in new housing developments and in conversions of apartments to condominiums.

