



## AGENDA

### CITY OF GUADALUPE PLANNING COMMISSION

Tuesday, April 15, 2008

Regular Meeting 6:00 p.m.

City Hall, Council Chambers  
918 Obispo Street, Guadalupe, CA 93434

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a City meeting or other services offered by this City, please contact the City Clerk's office, (805) 356-3891. Notification of at least 72 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.*

*If you wish to speak concerning any item on the agenda, please complete the Request to Speak form that is provided at the rear of the Council Chambers prior to the completion of the staff report and hand the form to the City Clerk. **Note:** Staff Reports are available for inspection at the office of the City Administrator, City Hall, 918 Obispo Street, Guadalupe, California during regular business hours, 8:00 a.m. to 12:00 pm. and 1:00 p.m. to 5:00 p.m., Monday through Friday; telephone (805) 356-3891.*

**MEMBERS OF THE PLANNING COMMISSION:** Commissioners Monika Huntley, Carl Kraemer, Frances Romero and Chairman Alejandro Ahumada.

1. **CALL TO ORDER.**
2. **PLEDGE OF ALLEGIANCE.**
3. **ROLL CALL.** Commissioners Monika Huntley, Carl Kraemer, Frances Romero and Chairman Alejandro Ahumada.
4. **CONSENT CALENDAR.** The following routine items are presented for Planning Commission approval without discussion as a single agenda item in order to expedite the meeting. Should a Commissioner Member wish to discuss or disapprove an item, it must be dropped from the blanket motion of approval and considered as a separate item.
  - a. **Minutes** for the Planning Commission regular meeting of March 18, 2008 to be ordered filed.

5. **COMMUNITY PARTICIPATION FORUM.**

*Each person will be limited to a discussion of 3 minutes. Pursuant to provisions of the Brown Act, no action may be taken on these matters unless they are listed on the agenda, or unless certain emergency or special circumstances exist. The Planning Commission may direct Staff to investigate and/or schedule certain matters for consideration at a future Planning Commission meeting.*

6. **PLANNING COMMISSION WORKSHOP # 4 :THE PLANNING FRAMEWORK.**

That the Planning Commission conduct workshop # 4: The Planning Framework.

- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.
- c. It is Recommended that the Planning Commission conduct workshop # 4: The Planning Framework.

7. **GUADALUPE PLANT LIST.** That the Planning Commission receive an update on revision to the lists of Plants Suitable for Guadalupe. This is an informational item, no action other than receipt of the report is required.

- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.
- c. It is Recommended that the Planning Commission receive an update on revision to the list of Plants Suitable for Guadalupe.

8. **PLANNING DIRECTOR'S REPORT.** That the Planning Commission receive the Planning Director's Report.

9. **FUTURE AGENDA ITEMS.**

10. **ANNOUNCEMENTS.**

11. **ADJOURNMENT.**

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing Agenda was posted at the City Hall display case, the Water Department, the City Clerk's office, and Rabobank not less than 72 hours prior to the meeting. Dated this 11<sup>th</sup> day of April, 2008.

By:

  
\_\_\_\_\_  
Carolyn Galloway-Cooper, Deputy City Clerk



4a.

## MINUTES

### CITY OF GUADALUPE PLANNING COMMISSION

Tuesday, March 18, 2008

Regular Meeting 6:00 p.m.

City Hall, Council Chambers  
918 Obispo Street, Guadalupe, CA 93434

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**MEMBERS OF THE PLANNING COMMISSION:** Commissioners Monika Huntley, Daniel Rayas, Carl Kraemer, Frances Romero and Chairman Alejandro Ahumada.

1. **CALL TO ORDER.** Chairman Alejandro Ahumada 6:02 p.m.
2. **PLEDGE OF ALLEGIANCE.**
3. **ROLL CALL.** Commissioners Monika Huntley, Carl Kraemer, Frances Romero and Chairman Alejandro Ahumada.  
Absent: Daniel Rayas
4. **CONSENT CALENDAR.** The following routine items are presented for Planning Commission approval without discussion as a single agenda item in order to expedite the meeting. Should a Commissioner Member wish to discuss or disapprove an item, it must be dropped from the blanket motion of approval and considered as a separate item.
  - a. **Minutes** for the Planning Commission regular meeting of February 19, 2008 to be ordered filed.

**MOTION TO APPROVE ITEM 4: Kraemer / Romero**

**AYES: 3**

**NOES: 0**

**ABSTENTIONS: 1 (Huntley)**

Motion carried on a 3-0-1 vote.

**5. COMMUNITY PARTICIPATION FORUM.**

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Speaker #1: Ms. Shirley Boydston, expressing concern with the condition of the sidewalk at 4581 Tenth Street, outside the pharmacy and clinic.

The Commission asked for a response by staff. City Planner Rob Mullane indicated that he would inform Public Works staff of this situation and report back to the Commission.

Chair Ahumada reordered the agenda to take Item 7 before Item 6.

**6. DESIGN REVIEW PROCESS.** That the Planning Commission receive a presentation from staff, conduct a public hearing, and consider a Resolution recommending that the City Council amend the City's Zoning Code (Title 18 of the City's Municipal Code) to include a design review permitting process.

- a. Written Staff Report (Rob Mullane)
- b. Conduct a Public Hearing.
- c. Planning Commission discussion and consideration.
- d. It is Recommended that the Planning Commission receive a presentation from staff, conduct a public hearing, and consider a Resolution recommending that the City Council amend the City's Zoning Code (Title 18 of the City's Municipal Code) to include a design review permitting process.

City Planner Rob Mullane gave a staff report including changes to the draft Ordinance from the last time this item was heard. The Commission reiterated its support for setting up a Design Review Permit process and acknowledged that development should involve professions and that planning and permit costs are a normal part of the process. Commissioner Romero expressed concern that there currently are no structures in the City that are on the historic registers. The Commission also discussed and requested a change to the draft Ordinance to reduce the number of envelop sets at initial application submittal from 2 sets to 3 sets, with additional sets required for any 3<sup>rd</sup> or 4<sup>th</sup> review.

**MOTION TO APPROVE RESOLUTION PC 2008-02, AS REVISED WITH CHANGES TO THE DRAFT ORDINANCE REGARDING LABELS AND POSTAGE REQUIREMENTS: Romero / Kraemer**

**AYES: 4**

**NOES: 0**

Motion carried on a 4-0 vote.

7. **CASA BELLA DEVELOPMENT.** That the Planning Commission review and discuss the Casa Bella Development Project.
- a. Written Staff Report (Rob Mullane)
  - b. Planning Commission discussion and consideration.
  - c. It is Recommended that the Planning Commission review and discuss the Casa Bella Development Project, which is requesting a Planned Development Overlay pursuant to Section 18.33 of the Zoning Code.

City Planner Rob Mullane gave a brief staff report with an overview of the request and the project. Mr. Mullane noted that the applicant, Mr. Wes Bennion, is present and is prepared to present the project in more detail and that the Commission's role in this meeting is to provide comments on the conceptual project design.

Speaker #1: Wes Bennion, presented the Casa Bella Project, including various other design options that would meet parking requirements.

The Commission expressed general support for the proposed project design, but noted concern with the proposed request for a 33% reduction in on-site parking and adequacy of back-up distances. The Commission was not in favor of a 3-story alternative design. The Commission asked the applicant to study changes to the design that may allow for more on-site parking and possible changes to the circulation to reduce difficult turning movements. One Commissioner requested that an L-shape design be studied.

The Commission expressed some concern with having too much paving in the front portion of the site. The Commission requested that cars be shown in any future front elevations. The Commission also noted a possible issue with fire hose distances.

In response to this last issue, Mr. Bennion responded that the building would be served by fire-activated sprinklers, and that the adequacy of the existing hydrant across the street from the project has been discussed with the Fire Chief, and a new hydrant would be installed as part of this project.

The applicant was thanked for bringing forth the project and encouraged to continue to pursue a new development on this site.

# **MINUTES-PLANNING COMMISSION**

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**8. PLANNING COMMISSION WORKSHOP # 4 :THE PLANNING FRAMEWORK.**

That the Planning Commission conduct workshop # 4: The Planning Framework.

- a. Written Staff Report (Rob Mullane)
- b. Planning Commission discussion and consideration.
- c. It is Recommended that the Planning Commission conduct workshop # 4: The Planning Framework.

City Planner Rob Mullane gave a brief summary of the staff report. The Commission opted to continue the overview of the attached chapter to a future meeting, given the late hour.

**9. PLANNING DIRECTOR'S REPORT.** That the Planning Commission receive the Planning Director's Report.

City Planner Mullane announced that Commissioner Rayas had tendered his resignation and bade farewell to his colleagues on the Planning Commission.

Mr. Mullane reported that the Santa Barbara County Grand Jury's latest report has been released with a complimentary review of municipal services at the City of Guadalupe.

A report was also provided on planning-related items at recent City Council meetings, including the City Council's first reading of the parking restriction ordinance, and continued review of the D.J. Farms Revised Specific Plan.

The Commission requested a status report on the Ruiz stockpile, which was provided by Mr. Mullane.

**10. FUTURE AGENDA ITEMS.**

None noted.

**11. ANNOUNCEMENTS.**

None noted.

**12. ADJOURNMENT.**

Chair Ahumada adjourned the meeting at 8:30 p.m.

Submitted by:

Affirmed by:

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Planning Commission Secretary

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Alejandro Ahumada, Chairman

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**REPORT TO THE PLANNING COMMISSION**

**April 15, 2008**

151

**Prepared By:**  
Rob Mullane, City Planner

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**Approved By:**  
Carolyn Galloway-Cooper

**SUBJECT:** Planning Commission Workshop #4: The Planning Framework

**EXECUTIVE SUMMARY:**

This is fourth in a series of workshops for the Planning Commission. This workshop will provide an overview of The Planning Framework: the fourth chapter of the *Planning Commissioner's Handbook*, a resource produced by the League of California Cities.

This series of workshops will use the Planning Commissioner's Handbook as a guide for content. The goal of these workshops is to increase each Commissioner's comfort level with the role and responsibilities of the Planning Commission. This item was introduced at the March 11<sup>th</sup> Planning Commission meeting and continued to this evening's meeting.

**RECOMMENDATION:**

- 1) Receive a presentation from staff
- 2) Allow for questions and answers on topics presented by staff

**BACKGROUND:**

The provision of workshops or trainings for the Planning Commission has been a desire of City Management, City Council, and the Planning Commission. Such workshops are valuable all Commissioners, whether new to the Commission or not, as a review of key concepts or to introduce new changes to City procedures, regulations, and State law.

The September 18, 2007 Planning Commission meeting provided an introduction to the first section of the *Planning Commissioner's Handbook* and gave an overview of the Planning Commission's purview. The Planning Commission discussed Section 2 of the handbook on October 16, 2007. Section 3 was discussed on January 15, 2008. This workshop is intended to allow a free discussion of the concepts and issues presented.

**DISCUSSION:**

This workshop focuses on the topics covered in Section 4 of the *Planning Commissioner's Handbook*. Section 4 covers The Planning Framework, which includes:

- The General Plan

- Specific Plans
- Zoning and Permits
- Subdivisions and Maps
- Development Agreements
- Dedications and Fees
- Environmental Review
- Permit Streamlining Act.

The Commission previously received copies of the Planning Commissioner's Handbook, and having these handbooks at the meeting will be helpful to follow along with the staff presentation. For the benefit of the public, Chapter 4 of the handbook is included as Attachment 1 to this staff report.

The City's General Plan was distributed to the Commission at the January 15<sup>th</sup> meeting, and a brief overview of the General Plan discussed at that time. The City's Zoning Code (Title 18 of the City Municipal Code) is included as Attachment 2. Included with the Zoning Code are Ordinance No. CC 99-343, which amended the allowable versus conditional uses in the General Commercial (G-C) and Industrial Commercial (M-C) zoning districts, as well as Ordinance No. CC 2008-391, which created the Planned Residential Development Overlay District. The City's Subdivision Regulations (Title 17 of the City Municipal Code) are included as Attachment 3. Staff recommends that the Commission retain these codes along with your copies of the General Plan and the Zoning Map for future reference.

**ATTACHMENTS:**

1. Excerpt of Planning Commissioner's Handbook: Chapter 4
2. City of Guadalupe Zoning Code (including recent amendments)
3. City of Guadalupe Subdivision Regulations

**AGENDA ITEM:**

# **ATTACHMENT 1**

**EXCERPT OF THE PLANNING COMMISSIONER'S  
HANDBOOK: CHAPTER 4**



**SECTION 4**

# The Planning Framework

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## SECTION 4

# The Planning Framework



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

### THE GENERAL PLAN

The general plan is the foundation for local land use planning. The general plan provides a vision for the foreseeable planning horizon—usually 10 to 20 years—and translates it into goals and policies for the physical development of the community. All other land use

ordinances and policies flow from the general plan. Projects will not be able to proceed unless they are consistent with the general plan. The general plan covers all of the land within the jurisdiction and any additional land that, in the agency's judgment, bears relation to its planning.<sup>1</sup>

### Mandatory Elements

General plans are usually a combination of text, diagrams, and maps. Every general plan must address seven mandatory elements<sup>2</sup>:

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

<sup>1</sup> Cal. Gov't Code § 65300.

<sup>2</sup> Cal. Gov't Code § 65302.

## LEAGUE OF CALIFORNIA CITIES' SMART GROWTH PRINCIPLES

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

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

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

### Consistency Requirements

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

- **Consistency Between Elements.** All elements of the general plan must be consistent with one another. For example, if the land use element contains proposals that would increase population but the circulation element does not provide for ways to deal with traffic related to the population increase, the general plan would be inconsistent.<sup>8</sup>
- **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.<sup>9</sup>
- **Consistency Between Language and Maps.** The text of the general plan must be consistent with accompanying maps and diagrams. For example, if the text of the general plan includes a policy of conserving prime farmland while at the same time a map designates all or

most of existing prime farmland as an area for housing development, the plan would be inconsistent.

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

In addition, all other ordinances and policies must be consistent with the general plan. This is often called “vertical consistency.” For example, subdivision and development approvals must be consistent with the general plan. In counties and general law cities, zoning and specific plans must also be consistent with the general plan. Charter cities can require consistency through their own charter or by ordinance.<sup>10</sup> 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.<sup>11</sup>

### Amending the General Plan

The general plan is a living document, meaning that it should change as conditions in the community change. At the same time, it is also meant to provide some certainty for local planning. Mandatory elements cannot be amended more than four times per year.<sup>12</sup> 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.<sup>13</sup> Optional elements can be amended as often as the local agency chooses.

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

<sup>3</sup> Cal. Gov't Code § 65303.

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

<sup>5</sup> Cal. Gov't Code §§ 65301-65302.

<sup>6</sup> Cal. Gov't Code § 65300.5.

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

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

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

<sup>10</sup> Cal. Gov't Code § 65803.

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

<sup>12</sup> Cal. Gov't Code § 65358.

<sup>13</sup> 66 Cal. Op. Att'y Gen. 258 (1983).

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

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

### Updating a General Plan

Updating a general plan is a big deal. It takes a lot of time and effort, but it provides an excellent opportunity to involve the public in land use planning.<sup>14</sup>

Additionally, periodic updates ensure that the long-term vision presented in the plan truly reflects community wants and needs. A general plan update can be quite expensive—often exceeding several hundred thousand dollars in mid- to large-size communities—but a well thought-out plan that has broad public support will usually pay big dividends in the end.

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

## BALLOT BOX PLANNING: INITIATIVES & REFERENDA

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

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

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

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

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

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



### **Paying for the Update**

To pay for a major general plan update, cities and counties may use revenue from general development fees.<sup>15</sup>

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

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

### **Implementation and Follow-Through**

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

An annual reporting process provides a means of monitoring the implementation of the general plan.

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



### **For More Information**

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

### **Effects of a Deficient General Plan**

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

### **SPECIFIC PLANS**

Specific plans are a kind of detailed general plan for a defined area. They are often used for larger areas, such as a downtown or a major transportation corridor, to encourage comprehensive planning.<sup>21</sup> 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.

<sup>15</sup> Cal. Gov't Code § 66014.

<sup>16</sup> Cal. Gov't Code § 65360.

<sup>17</sup> Cal. Gov't Code § 65588.

<sup>18</sup> Cal. Gov't Code § 65354.

<sup>19</sup> Cal. Gov't Code § 65400(b).

<sup>20</sup> *Sierra Club v. Board of Supervisors*, 126 Cal. App. 3d 698 (1981).

<sup>21</sup> Cal. Gov't Code §§ 65450 and following.

A specific plan must include a statement of its relationship to the general plan as well as text and diagrams specifying:<sup>22</sup>

- 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.<sup>23</sup> The procedure for adopting a specific plan is

### CHECKLIST FOR GENERAL PLAN ADEQUACY

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

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

<sup>22</sup> Cal. Gov't Code § 65451.

<sup>23</sup> Cal. Gov't Code § 65456.



### For More Information

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

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

## ZONING

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

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

- Provide for administrative procedures for variances, conditional use permits, design review, and zone changes.

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

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

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



## STATUTORY LIMITATIONS

The state has imposed many specific limitations on the exercise of local zoning power. The following are some examples.<sup>24</sup>

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

## Conditional Use Permits

Conditional uses are land uses that are not automatically authorized but may be approved under the zoning code upon meeting specific conditions. The conditional use permit ("CUP"—also called a "special use permit")

allows a local agency to review individual projects that may potentially affect neighboring land uses negatively. The review process allows staff and the planning commission to develop a set of conditions to minimize the impact before allowing the development to proceed.

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

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

Common conditions on approval include limited hours of operation, road improvements, soundproofing, additional landscaping, and additional parking. A condition must bear a reasonable relationship to the public need created by the development. This should be supported by evidence on the record.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

## Variances

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

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

## ✓ Questions to Ask When Considering a Conditional Use Permit:

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

## Nonconforming Uses

There are two types of nonconforming uses: illegal and legal. Legal nonconforming uses—sometimes called grandfathered uses—are uses that were in place prior to the adoption of the zoning ordinance. Such uses are generally permitted for as long as they operate. However, the use typically is not allowed to expand or be replaced if voluntarily abandoned or accidentally destroyed.<sup>29</sup> 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.

<sup>25</sup> *Upton v. Gray*, 269 Cal. App. 2d 352 (1969).

<sup>26</sup> *Bank of America v. State Water Resources Control Bd.*, 42 Cal. App. 3d 198 (1974).

<sup>27</sup> *Garavatti v. Fairfax Planning Comm.*, 22 Cal. App. 3d 145 (1971).

<sup>28</sup> *Community Development Comm. v. City of Fort Bragg*, 204 Cal. App. 3d 1124 (1988).

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

Reasonableness depends upon such factors as the useful life of the structure, the extent of investment and present value, and the possibility and cost of relocation.<sup>30</sup>

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

### Interim Zoning or Zoning Moratoria

Interim zoning—or a zoning moratorium—is a temporary halt to all or a particular kind of development. A moratorium is enacted to prohibit any

uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the agency plans to study within a reasonable time. The adoption of a moratorium requires a four-fifths vote for an initial 45-day period and may be extended for a total period that does not exceed 22 months and 15 days.<sup>31</sup> Additional limitations apply to moratoria that affect projects that include a significant percentage of multifamily housing. (See Section 5, page 59).

### Floating and Overlay Zones

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

## ZONE CHANGE CHECKLIST

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

### Relationship to Community

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

### Changed Conditions

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

### Public Welfare

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

### Reasonableness

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

<sup>30</sup> *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).

<sup>31</sup> Cal. Gov't Code § 65858.

## CODE ENFORCEMENT

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

Enforcement will vary. A city ordinance may classify violations of the zoning code as infractions and authorize enforcement officials to issue citations similar to traffic tickets. Typically, a warning is the first step. If the condition persists, the ordinance may provide that a separate infraction can be charged for each day a violation continues.<sup>34</sup> 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.<sup>35</sup>

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

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

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

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

### Planned Unit Developments

Planned unit developments (“PUDs” or “planned communities”) are both a type of development and a zoning classification. As a development, they normally consist of individually owned lots with common areas for open space, recreation and street improvements.

They often set aside many conventional zoning standards to permit a more imaginative use of undeveloped property, such as clustering of residential uses and compatible commercial and industrial uses. The plan of development for a PUD is usually so specific that it meets or exceeds all of the typical zoning requirements. Any substantial alteration in the physical characteristics and configuration of the development usually requires that rezoning procedures be followed.<sup>40</sup>

### SUBDIVISIONS

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

<sup>32</sup> Cal. Gov’t Code § 53069.4.

<sup>33</sup> Cal. Gov’t Code § 36900(a).

<sup>34</sup> See *People v. Ratko Djekich*, 229 Cal. App. 3d 1213 (1991).

<sup>35</sup> Cal. Gov’t Code § 36900(b).

<sup>36</sup> *City of Stockton v. Frisbie & Lattin*, 93 Cal. App. 277 (1928).

<sup>37</sup> Cal. Gov’t Code § 38773.1.

<sup>38</sup> Cal. Rev. & Tax. Code §§ 17274, 24436.5.

<sup>39</sup> Cal. Gov’t Code § 66499.36.

<sup>40</sup> *Millbrae Ass’n. for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222 (1968).



### Zoning vs. Building Codes

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

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

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

### Tentative Map Applications

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

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.<sup>45</sup> The local agency may incorporate other conditions that are consistent with the general plan and the zoning code.<sup>46</sup>

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.<sup>47</sup> The applicant will then prepare a final map that incorporates the imposed conditions. All conditions must either be performed or guaranteed—by agreement, bond, letter of credit, or otherwise—before the final map can be approved. The final map must be filed before the tentative map expires. If not, then the process begins all over again. An engineer usually reviews of the final map. Approval of the final map is a ministerial act—meaning there is no discretion to reject the final map if all the conditions are met.<sup>48</sup> The approved final map is then recorded with the county and the applicant can proceed with the development.

<sup>41</sup> *Taschner v. City Council of the City of Laguna Beach*, 31 Cal. App. 3d 48 (1973).

<sup>42</sup> Cal. Gov't Code § 66411.

<sup>43</sup> Cal. Gov't Code § 66464.

<sup>44</sup> Cal. Gov't Code §§ 66452.1, 66452.2.

<sup>45</sup> See generally, Cal. Gov't Code §§ 66475–66498.

<sup>46</sup> Cal. Gov't Code §§ 66411, 66418–66419.

<sup>47</sup> See Cal. Gov't Code § 66452.6.

<sup>48</sup> Cal. Gov't Code § 66458.

## CHECKLIST FOR APPROVING SUBDIVISION MAPS

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

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

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

### Vesting Tentative Map Applications

Some tentative maps are filed as “vesting tentative maps.”<sup>49</sup> 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.<sup>50</sup> The primary difference between parcel maps and tentative maps is the number of conditions that can be applied. With a parcel map, a city or county can only impose requirements for the dedication of rights-of-way, easements, and the construction of

reasonable off-site and on-site improvements for the parcels that are being created. Additionally, absent urgent health and safety reasons, local agencies cannot require the installation of improvements until the development permit is issued, although the subdivider may agree to early installation voluntarily.

### ✓ *Illegal Quartering*

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

<sup>49</sup> Cal. Gov't Code § 66498.1.

<sup>50</sup> Cal. Gov't Code § 66463.

<sup>51</sup> Cal. Gov't Code § 66499.31; Cal. Bus. & Prof. Code §§ 11000 and following.

<sup>52</sup> *Bright v. Board of Supervisors*, 66 Cal. App. 3d 191 (1977).

## DEVELOPMENT AGREEMENTS

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

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

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

The development agreement constitutes a negotiated—and thus voluntary—deal. Once approved, the agreement works like any contract. The developer therefore cannot come back later and challenge the conditions as being excessive. On the other hand, the local agency is also bound to the terms of the deal. If the

agency wants to make changes, the developer will likely seek certain concessions if he or she agrees to modify the agreement at all.

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

## DESIGN REVIEW

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



### *More on Development Agreements*

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

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

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

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

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

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

## DEDICATIONS AND FEES

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

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

The basic rule when imposing dedications and fees is that they must be reasonably related in purpose and roughly proportional in amount to the impacts caused by the development.<sup>57</sup> 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

<sup>54</sup> *Novi v. City of Pacifica*, 169 Cal. App. 3d 678 (1985).

<sup>55</sup> See *Crown Motors v. City of Redding*, 232 Cal. App. 3d 173, 178 (1991).

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

<sup>57</sup> *Ehrlich v. City of Culver City*, 15 Cal. App. 4th 1737 (1993); Cal. Gov’t Code §§ 66000-66025.

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

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

## ENVIRONMENTAL REVIEW

Incorporating measures to protect the long-term health of the state’s environment has become an integral element of planning and project approvals. As a planning commissioner the environmental protection law you will likely deal with is the California Environmental Quality Act (usually called “CEQA”). CEQA is a complex law with a simple purpose: to assure that decision-makers understand and account for the environmental consequences of a project. The term “environment” includes natural and man-made conditions that will be directly or indirectly affected by a

proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance.<sup>60</sup>

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

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

## Determining the Required Level of Review

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

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



**NEPA and CEQA**

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

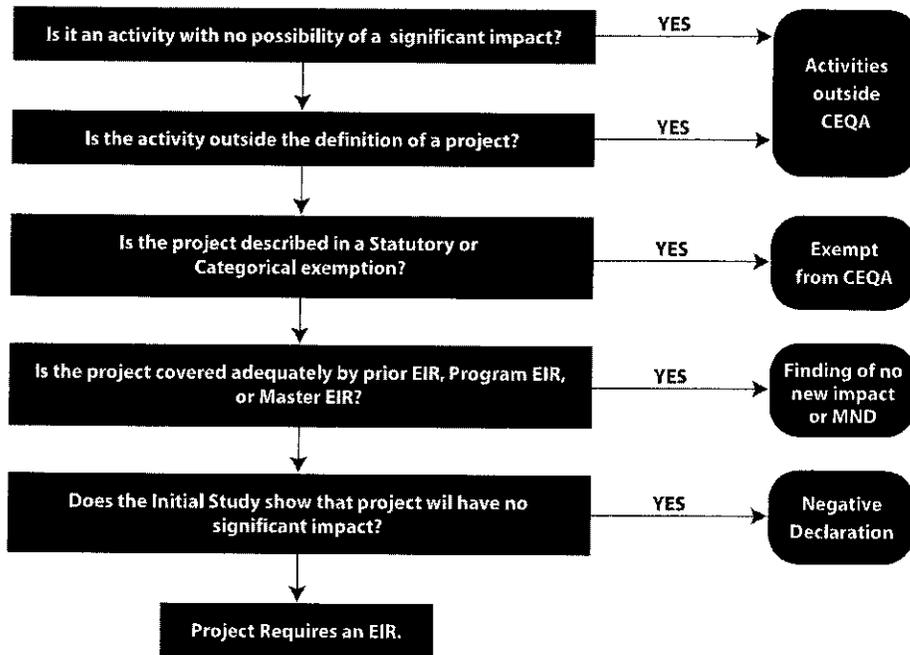
<sup>58</sup> Cal. Gov’t Code §§ 66000-66025.

<sup>59</sup> 42 U.S.C. §§ 4321 and following.

<sup>60</sup> Cal. Pub. Res. Code § 21060.5.

<sup>61</sup> Cal. Pub. Res. Code §§ 21002, 21081; 14 Cal. Code Regs. §§ 15091-15094.

## Screening for CEQA Applicability



*Courtesy of Jones & Stokes Associates*

review. Usually staff will determine whether an exemption applies.

- **Initial Review.** For projects that are not exempt, an initial study is prepared to determine whether the project may have a significant effect on the environment.
- **Negative Declaration.** If the initial study shows that the project will not have a significant effect on the environment, a negative declaration is prepared. A negative declaration briefly describes why a project will not have a significant impact.
- **Mitigated Negative Declaration.** If the initial study shows an environmental effect, a mitigated negative declaration may be prepared if revisions in project plans made or agreed to by the applicant before the proposed mitigated negative declaration is released for public review would clearly avoid or mitigate the effects.

- **Environmental Impact Report.** If the initial study identifies potential significant environmental effects that cannot be eliminated through redesign, then the lead agency (the agency that has ultimate approval over the project) must prepare an environmental impact report.

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

**✓ For More Information**

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

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

### The Environmental Impact Report

After deciding to do an EIR, the lead agency must solicit the views of responsible agencies (other agencies with some level of authority over the project) regarding the scope of the environmental analysis.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup>

There are several basic elements to the environmental impact report:<sup>65</sup>



### Tiering, Master EIRs, and Program EIRs

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

- **Table of Contents & Summary.** Required elements that assist in making EIRs—which are sometimes hundreds of pages long—more accessible to the public.
- **Project Description.** An accurate description of the project, including any reasonably foreseeable future phases of the project.<sup>66</sup>
- **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.

<sup>62</sup> 14 Cal. Code Regs. §§ 15082, 15083.

<sup>63</sup> Cal. Pub. Res. Code § 21091.

<sup>64</sup> 14 Cal. Code Regs. § 15132; Cal. Pub. Res. Code § 21092.5.

<sup>65</sup> See 14 Cal. Code Regs. §§ 15022-15029.

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

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

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

### Certifying the CEQA Document

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

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



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

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.<sup>68</sup> 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.

### PERMIT STREAMLINING ACT

The Permit Streamlining Act<sup>69</sup> 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

<sup>67</sup> Cal. Pub. Res. Code § 21081.6.

<sup>68</sup> Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15093.

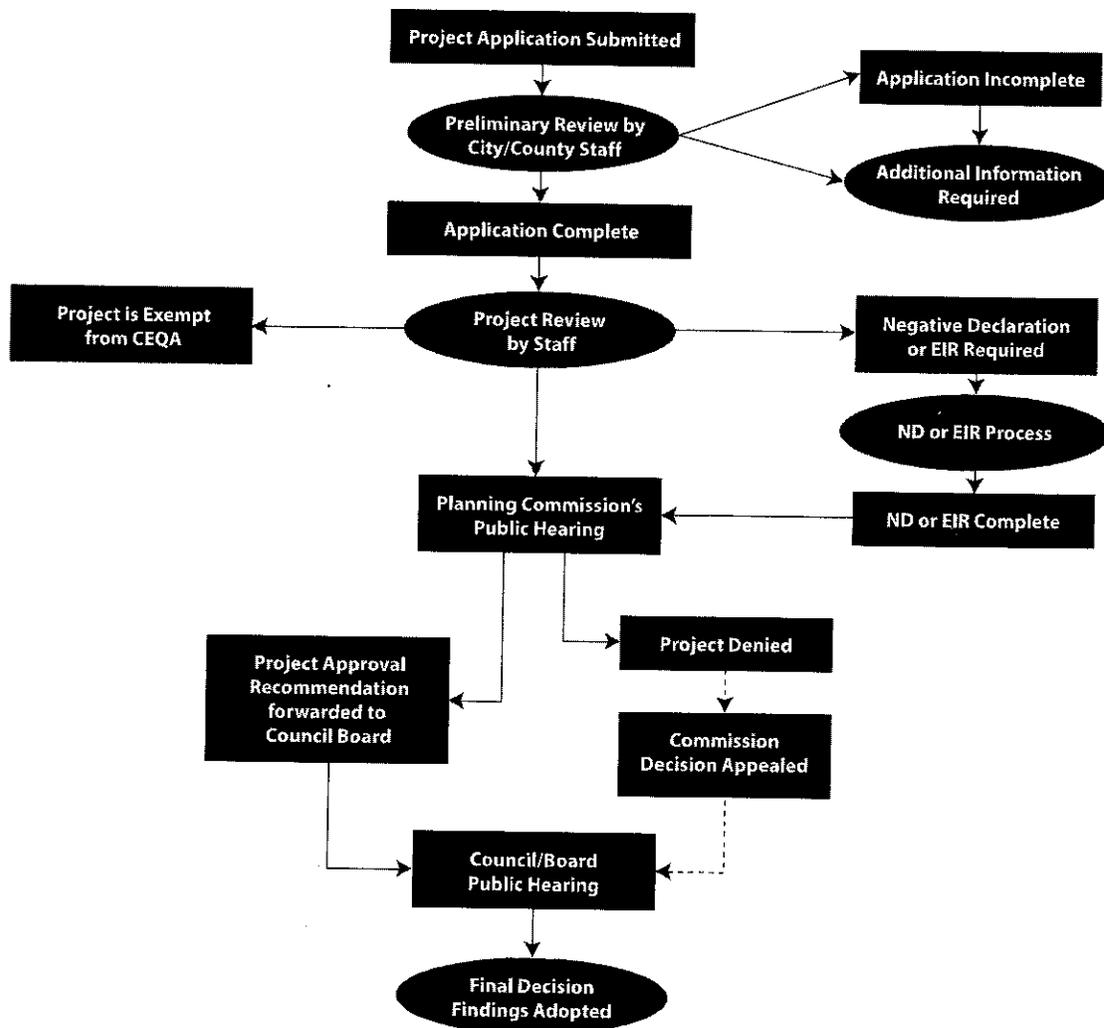
<sup>69</sup> Cal. Gov’t Code §§ 65920 and following.

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

Planning commissioners should keep this law in mind when making decisions on applicable projects near the end of the time limit. In circumstances when you are

making a decision that is contrary to staff's recommendation, you may need to articulate findings "on the fly" because there will not be time to ask staff to draft an alternative set of findings and present them at the next meeting. (See Section 2, page 22 for more information.)

## Typical Development Project Flow Chart



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