
Pete Wilson, *Governor*

The Planning Commissioner's Book



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Introduction

The Planning Commissioner's Book



Welcome to the wonderful world of planning. If you are a new planning commissioner, you undoubtedly have lots of questions about the job. There's plenty to learn and this publication was prepared to help you get started.

Traditionally, the planning commission is made up of members of the public at large with little or no formal training in planning. They come to the commission with a public-spirited enthusiasm for community planning and a concern for the future of their community. Planning commission service often means late hours, little or no pay, and enough arguments to last a lifetime. Still, most commissioners wouldn't miss the experience for the world.

The Office of Planning and Research (OPR) receives numerous requests from local governments for instructional materials that can be used by planning commissioners to familiarize themselves with their jobs. We have written this book to meet that need. The Planning Commissioner's Book is designed to be both a training tool and a ready reference. It does not, however, cover everything that a commissioner must know. For one thing, there is a lot that can only be learned through experience. Instead, it focuses on the basics. For more detailed information about the subjects that are introduced here, please see the references listed in the back or ask your planning staff.

Part One

The Planning Commission



Four Basic Questions

1. What is the planning commission? It is a permanent committee of 5 or more citizens who have been appointed by the city council (or the mayor in some cities) or county board of supervisors to review matters related to planning and development. A commission holds public hearings on a regular schedule (in some jurisdictions, as often as once a week) to consider land use matters. These include such things as the local general plan, specific plans, rezonings, use permits, and subdivisions. Commissioners serve at the pleasure of the council or supervisors, so commission membership changes in response to changes in those bodies.

The commission is the city council's or county board of supervisors' advisor on land use planning. The council or board may choose to follow the recommendations of the commission or not. Accordingly, they may reverse or modify commission actions or send proposals back to the commission for further review. In addition, commission decisions are subject to appeal to the council or board. The council and board have the final say in all city and county matters, respectively.

Because the commission focuses on planning issues, it is a valuable intermediary between the public and the city council or county board of supervisors. When matters run smoothly, the commission has a low profile. However, when there is a controversy, it is there, in the thick of things, doing its best to sort through the facts and make a good decision.

2. Why have a planning commission? The idea of appointing a group of laymen to make decisions and recommendations about land use planning originated at the turn of the century. Government reformers, seeking to take local government out of the hands of party "machines," reorganized administrative procedures in an attempt to reduce political influence on decisions. One solution was to create a planning commission, made up of appointed citizens, that would be responsible for setting the community's development direction.

California law does not require each city and county to have a planning commission. Nonetheless, almost all do. In those jurisdictions that don't, Kern County for example, the city council or county supervisors considers planning matters directly. On the other hand, some jurisdictions, such as Sacramento County, think that planning commissions are so useful they have two.

3. How does it relate to the planning department?

The city or county planning department is the commission's research staff. The planners can advise the commission on the general plan, specific plans, zoning ordinance, subdivision ordinance and other land use regulations. In addition, they provide background information and recommendations on the proposals that are under the commission's consideration, answer technical questions, and make sure that meetings have been properly advertised in advance. A planning department staff member will always be in attendance at commission meetings. Other attendees may include representatives of the city attorney's or county counsel's office and of the public works department.

4. What does it do? Cities and counties "plan" in order to identify important community issues (such as the direction of growth, housing needs, and environmental protection), project future demand for services (sewers, roads, fire protection, etc.), address potential problems (such as overloaded sewers or crowded roads), and establish goals and policies for directing and managing future development.

The city council or county supervisors may assign any or all of the following tasks to its planning commission (Government Code sections 65103, 65401, 65402):

- ▶ Assist in writing the general plan and community or specific plans and hold public hearings on such plans;
- ▶ Hold hearings and act upon proposed amendments to the general plan and community or specific plans;
- ▶ Hold hearings and act upon proposed changes to the zoning ordinance and zoning maps;
- ▶ Hold hearings and act on tentative subdivision maps;
- ▶ Annually review the jurisdiction's capital improvement program and the public works projects of other local agencies for consistency with the general plan;
- ▶ Promote public interest in the general plan;
- ▶ Consult with and advise public officials and agencies, utilities, organizations and citizens regarding implementation of the general plan;
- ▶ Coordinate local plans and programs with those of other public agencies;
- ▶ Report to the legislative body on the conformity of proposed public land acquisition or disposal with the adopted general plan; and,
- ▶ Undertake special planning studies as needed.

Commissioners can learn about their commission's particular responsibilities by asking the planning department and referring to their local zoning and subdivision ordinances.

Meetings

The planning commission holds meetings – lots of them. State law requires public hearings before planning actions are taken. At its regularly scheduled hearings, the planning commission weighs planning proposals in light of state and local regulations and potential environmental effects and listens to testimony from interested parties. If necessary, the commission may continue a hearing to a later time to allow more information to be gathered or to take additional testimony. The commission usually considers several items at each hearing; considering each proposal separately and taking action before moving on to the next item on the agenda.

Depending upon local ordinance provisions, 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). The council or board will hold a noticed public hearing on the projects referred to it by the commission (or received on appeal).

Pursuant to the Ralph M. Brown Act (Government Code section 54950), all meetings, including study sessions and workshops, must be open and public. This means that a quorum of commissioners can only discuss commission business in a public meeting. Furthermore, meeting agendas must be posted at least 72 hours in advance and topics are limited to those on the agenda. For more information on the Brown Act see *California Land Use and Planning Law*, by Daniel J. Curtin, Jr., and *Open and Public: A Users Guide to the Ralph M. Brown Act*, published by the League of California Cities.

Notice

In counties and general law cities, the planning commission must publish advance notice of general plan, specific plan, zone change, conditional use permit, variance, and subdivision public hearings in a newspaper of general circulation. Notice of proposed general plan and specific plan adoption or amendment must be mailed directly to the involved property owners. When a zone change, conditional use permit, variance or subdivision is involved, notice must also be mailed to the owners of property within 300 feet of the project boundaries. Charter cities may adopt different notification procedures than the above.

The Chairperson

The commission chairperson is responsible for making sure that meetings proceed in a fashion conducive to rational decisionmaking. The chair must be familiar with the commission's procedures and with the agenda items to be discussed at each meeting. The chairperson sets the tone of the hearing, keeps the discussion on track, encourages fairness, moderates and contributes to discussions, and helps direct testimony to the issues at hand. The chairperson will usually:

► Open the meeting.

- Explain why the meeting is being held.
- Review the agenda and note any changes thereto.
- Review the procedures, rules and time limits to be in effect.

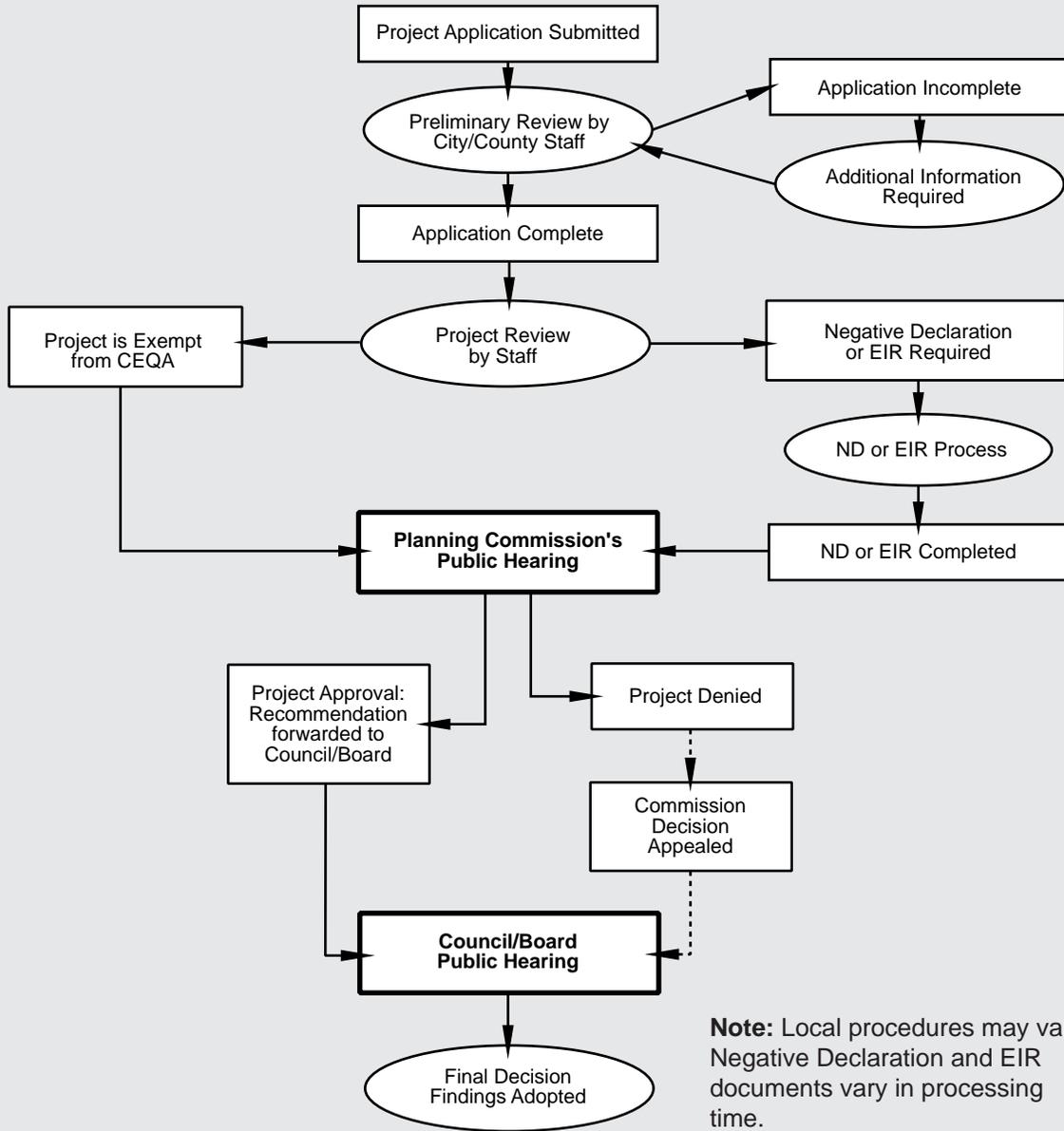
► Moderate discussion.

- Describe, or ask staff to describe, the item to be discussed.
- Ask that speakers identify themselves and take turns when giving testimony.
- Ask speakers to limit themselves to new testimony.
- Ask that commission members wait to be recognized prior to speaking.
- Intervene when necessary to prevent more than one speaker from talking at one time.
- Ask staff for information or clarification, as necessary.
- Intervene when speakers ramble or get away from the issues.
- Close the meeting to testimony prior to deliberations.

► Lead deliberations.

- Summarize the issues.
- Ask for input from the commission as a whole.
- Ask for more information from staff if necessary.
- When commissioners disagree, assist them in expressing their various concerns.
- When a motion is proposed, make sure that it is stated understandably and in full before a vote is taken.
- Encourage the commissioners to make timely decisions.
- Make sure that findings are adopted when required.

Figure 1
Development Project Flow Chart



An Important Lesson – “Be Prepared”

Prior to every hearing, each of the commissioners should have reviewed the items on the meeting agenda. This means reading the staff report and environmental assessment document, looking at the general plan and zoning ordinance sections pertinent to the particular project, and asking questions of the planning staff when necessary.

At the hearing, commissioners should be able to both ask and answer questions about the project, its relationship to the general plan and to the zoning or subdivision ordinances, and its potential impacts on the community. If legal questions arise, don't be afraid to ask the city attorney or county counsel for his/her opinion. Don't take legal advice from anyone but the city's or county's own lawyer.

Recipe for an Effective Planning Commission

Effective planning commissions share certain qualities. These include:

- ▶ Ability to focus on the subject under consideration. Focusing means not being distracted by personalities, groups or issues that do not have anything to do with the agenda item being discussed.
- ▶ A clear view of the big picture. A good commission has the aggregate ability to identify the main points of an issue and to concentrate on addressing those. Keeping the big picture in mind is important so that the commission doesn't bog down in excessive attention to minor detail.
- ▶ Established rules for conducting meetings. These needn't be as formal as Robert's Rules of Order, but they should define the responsibilities of the chairperson, the other commissioners, and the staff. They should also establish the rules for testimony, such as the length of time available, speaker identification, etc.
- ▶ Effective leadership. An effective chairperson assists the flow of ideas and helps keep the proceedings on track.
- ▶ Informed commissioners. Prior to the hearing, commissioners should have read the staff reports, reviewed the pertinent sections of the general plan, zoning ordinance or other codes, and looked through the environmental assessment pertinent to each agenda item.
- ▶ Attention to legal requirements. A commissioner must keep basic legal requirements in mind. Among them: Is the proposal consistent with the general plan? Does it meet all applicable zoning or subdivision ordinance requirements? Are the environmental impacts of the project, if any, being reduced or eliminated by the conditions of approval? Is the commission's decision supported by findings of fact based on substantial evidence in the record? When in doubt, ask the city attorney or county counsel for their advice.
- ▶ An open flow of ideas. The chairperson and the other commissioners share responsibility for seeing that there is a continuing flow of ideas and discussion among all parties, including applicants, staff, members of the public, and the commissioners themselves. Be objective and ask questions.
- ▶ A sense of pace. The chair should be able to recognize that point in time at which testimony must be closed off so the commission can deliberate. Commissioners should hold their motions until the discussion has reached its conclusion. Both the chair and the other commissioners should know whether to continue a hearing or to make a decision.

The Commissioner's "Survival Kit"

Commissioners should bring the following to every meeting:

- The meeting agenda.
- Staff reports and environmental documents for each of the projects to be considered.
- A copy of the general plan.
- A copy of the zoning ordinance.
- If subdivisions are to be considered, a copy of the subdivision ordinance.
- A pad of paper and pencils.

Part Two

The Legal Side of Planning



Countless volumes have been written about the legal basis for planning and all the court decisions on the subject. This paper is too brief to go into more than just the bare outline of some of planning's legal side. Commissioners should rely upon the city attorney or county counsel for detailed legal opinions. In addition, several books in the reference section of this publication have good discussions of planning law.

The Police Power

Planning and the regulation of land use are based upon local government's "police power." The courts have held that the police power may be used to regulate a wide and expanding variety of activities as long as it is exercised in a manner that is reasonably related to the protection of the public's health, safety, and welfare, is not preempted by federal or state law, and is within the framework of state statute. Community planning, zoning laws, subdivision regulations, rent controls, sign controls, community growth management regulations, and dedications of private land as a condition of development approval are some examples of the police power at work. Constitutional guarantees of equal protection, free speech, due process, and just compensation for the taking of private property define the boundaries of the police power. An illegal "taking" may occur as a result of either the public's acquisition of private property without just compensation or of excessively restrictive land use regulations that deprive a property owner of all uses of his/her land.

Findings

Planning commission decisions must be based on a rational decision-making process. Often, the commission must adopt written "findings" explaining the factual reasons for its decision. A finding is a statement of fact relating the information that the commission has considered to the decision that it has made. If a decision is challenged in court, the findings will be used to trace the commission's reasoning and to determine whether its action was legally justified.

Findings must be supported by evidence in the hearing record (i.e., testimony, reports, environmental documents, etc.) and should not contain unsupported statements. Complete findings should be included in the commission's resolution of approval or denial. Keep in

mind that findings will not rescue a decision if the commission has failed to follow the other procedures required by law.

Some actions requiring findings:

Zone change – finding of consistency with the general plan and any specific plans.

Subdivision – finding of consistency with the general plan and any specific plans; findings supporting approval/denial per state and local codes.

Specific plan adoption or amendment – finding of consistency with the general plan.

Conditional use permit – locally required findings (if any), findings supporting approval and conditions.

Variance – specific findings required by state statute.

Design review approval – locally required findings (if any), findings supporting approval and conditions.

General plan amendment limiting the number of newly constructed dwellings – specific findings required by state statute.

Adoption of a local ordinance affecting regional housing needs – specific findings required by state statute.

Approval of a housing project when density is lower than that which was allowed when application was accepted – specific findings required by state statute.

Projects involving an EIR – findings of overriding consideration, findings of significant effect.

*For a complete list, see OPR's publication, **Bridging the Gap**.*

Part Three

A Short Primer on State Planning Law



The state delegates most local land use and development decisions to the cities and counties. State law requires that each of the 452 incorporated cities and 58 counties adopt “a comprehensive, long-term general plan for [its] physical development.” This general plan lays the groundwork for community decisions that will affect the future location of housing, business, industry, roads, parks, and other land uses, protect the public from noise and other environmental hazards, and conserve natural resources. Each city council and county board of supervisors, upon recommendation of their planning commission, carries out its general plan through its zoning, subdivision and other ordinances.

There is no requirement that adjoining cities or counties have identical, or even similar, plans and ordinances. Each city and each county adopts its own general plan and development regulations. In turn, each is solely responsible for the planning decisions made within its jurisdiction.

The General Plan and Zoning Are Not the Same

A **general plan** is a set of long-term goals and policies that the community uses to guide development decisions. Although the plan establishes standards for population density, building intensity, and the distribution of land uses, it does not directly regulate land use.

Zoning, on the other hand, is regulatory. Under the zoning ordinance, development must comply with specific, enforceable standards such as minimum lot size, maximum building height, minimum building setback, and a list of allowable uses. Zoning applies lot-by-lot, whereas the general plan has a community-wide perspective.

Put another way, the general plan is a blueprint and zoning is a tool for making it a reality. The plan is the basis for programs such as the zoning and subdivision ordinances. In turn, zoning is a means of putting into action the plan’s long term goals.

THE GENERAL PLAN

The general plan is a community’s blueprint for future development. It describes a community’s development goals and policies. It also forms the basis for land use decisions made by the planning commission and city council or board of supervisors.

Contents

A general plan consists of at least two parts. There is a written text describing the community’s goals, objectives, and policies toward development. There is also a map (or maps) and diagrams illustrating the generalized distribution of land uses, the major road system, seismic and environmental hazard areas, the open space system, and other policy statements that can be illustrated (see Government Code Section 65302).

The general plan must contain at least seven components (called “elements”) addressing a set of basic planning issues (see Government Code section 65302). Each city and county determines the relative importance of these issues to their local circumstances and decides how they

are to be discussed in the local general plan. Jurisdictions may also adopt additional elements, at their option, covering subjects of local interest such as recreation, community design, or public facilities. See the General Plan Guidelines published by OPR for detailed information on plan contents.

State law does not require that a general plan have seven distinct and separate elements. It is quite common for a general plan to have only three or four “super-elements” which combine the essences of the seven elements. Along this same line, there is no requirement for the number of maps and diagrams that must be adopted as part of the plan. Each local government decides the specific format and organization of its general plan. Element Consolidation, by the Office of Planning and Research, gives examples of how elements may be merged and streamlined.

Although general plans are not required to follow a standard format, many contain similar features. Some of the things to look for in the written portion of your local plan are goals (abstract and general expressions of

The Seven Required Elements:

- 1 **Land use element:** designates the general location and intensity of housing, business, industry, open space, public buildings and grounds, waste disposal facilities, and other land uses.
- 2 **Circulation element:** identifies the general location and extent of existing and proposed major roads, transportation routes, terminals, and public utilities and facilities. It must correlate with the land use element.
- 3 **Housing element:** assesses current and projected housing needs for all economic segments of the community and region. It identifies local housing policies and the programs that implement those policies.
- 4 **Conservation element:** addresses the conservation, development, and use of natural resources including water, forests, soils, rivers, and mineral deposits.
- 5 **Open-space element:** details plans and measures for preserving open-space for natural resources, the managed production of resources, outdoor recreation, public health and safety, and the identification of agricultural land.
- 6 **Noise element:** identifies and appraises noise problems within the community and forms the basis for distributing land uses.
- 7 **Safety element:** establishes policies to protect the community from seismic, geologic, flood, and wildfire hazards.

community values), objectives (specific intermediate steps in attaining a goal), policies (specific statements that guide decision making), and implementation programs (descriptions of how the goals, objectives, and policies are to be put into action). Many plans also contain background information about the community, such as population projections, traffic levels, seismic hazards, community history, and housing characteristics. Appendices to general plans often contain technical studies of seismic hazards, housing surveys, and traffic studies and forecasts.

General plans use maps and diagrams to identify the locations of proposed and existing land uses, flood hazard areas, open space lands, roads, and other features. The maps and diagrams must work together with the written portions of the plan to establish a clear view of the community's future.

Consistency

The general plan is important because it is the basis for many local land use decisions. Zoning (except in most charter cities), subdivisions, and public works projects can only be approved when they are consistent with the general plan. An action, program or project is consistent with the general plan if, considering all its aspects, it will further the goals, objectives and policies of the plan and not obstruct their attainment.

Not only must governmental actions be consistent with the general plan, the plan itself must be internally consistent. Each part of the general plan, be it a goal, policy or map/diagram, must mesh with all of the other parts of the plan. For instance, the land use element must not contain statements or assertions that conflict with the housing element. Similarly, the maps and diagrams adopted as part of the plan must agree with one another. For example, the location of a major highway on the land use element diagram must match its location on the circulation element diagram as well.

Approving and Amending the Plan

The process of adopting or amending a general plan encourages public participation. Cities and counties must hold public hearings for such proposals. Advance notice of the place and time of the hearing must be published in the newspaper (when there is no paper, notice must be posted in the vicinity of the project site) and also mailed directly to the involved property owners. Copies of the adopted or amended plans must be available for public purchase within two days of a final decision.

Each of the general plan's seven required elements can be amended only four times per calendar year. More than one change may be considered at each of these four opportunities. Optional elements, on the other hand, can be amended at any time.

The planning commission and the city council or county board of supervisors must each hold at least one public hearing prior to approving or amending the plan. The commission will hold its hearing first and make specific recommendations to the council or board. A recommendation for approval must be made by a majority of the total membership of the commission.

The council or board will take final action on the proposals at their hearing. Approvals must be made by a majority of the total membership of the council or board. If they make substantial changes to any planning commission recommendations, those items must be sent back to the commission for further study and recommendations before a final decision is made. The commission will have 40 days in which to make any further recommendations.

Amendment Considerations

The general plan shouldn't be amended casually. In fact, state law requires that amendments only be made when "in the public interest." Commissioners should be able to answer all the following questions affirmatively when approving an amendment.

- ▶ Is the amendment in the public interest (i.e., it advances community goals, describes a community interest, etc.)?
- ▶ Is the amendment consistent with all other parts of the general plan (in other words, it doesn't conflict with any of the goals, objectives, policies maps or diagrams contained in any of the general plan's other elements)?
- ▶ If the amendment creates a "ripple effect," necessitating other changes to the plan, are those related changes being considered at the same time?
- ▶ Will the amendment necessitate changes in zoning or other ordinances and are those changes to be considered within a reasonable time?
- ▶ If a mitigated negative declaration or an EIR is adopted or certified for the amendment, have the mitigation measures been incorporated into the amendment?

Community Plans

"Community plans" focus planning efforts on a smaller area or neighborhood. A community plan is part of the local general plan. It addresses issues pertinent to a particular area or community within the city or county and supplements the policies of the general plan. Accordingly, it must be consistent with the general plan in all respects.

Specific Plans

A "specific plan" implements, but is not technically a part of, the local general plan. Specific plans describe allowable land uses, identify open space, and detail infrastructure availability and financing for a portion of the community. In some jurisdictions, specific plans also take the place of zoning. A specific plan must be consistent with the general plan. In turn, zoning, subdivision, and public works decisions must comply with the provisions of the specific plan. For a detailed discussion of specific plans and their contents, see OPR's *The Planner's Guide to Specific Plans* (see Part Five).

ZONING

The zoning ordinance regulates land uses within the community. It assigns each piece of property to a "zone" which describes the rules under which that land may be used. These classifications, such as "R-1" for single-family residences or "C-1" for commercial uses, cover in specific terms the range of uses that is discussed broadly in the general plan.

A typical zoning ordinance may describe 10 or more zone classifications. Each of these zones identifies allowable uses and sets standards such as minimum lot size, maximum building height, and minimum front yard depth. In most local ordinances, development of allowable uses does not require a public hearing. Increasingly, however, communities are requiring a public review of the project's design before a building permit is issued.

The distribution of residential, commercial, industrial, and other zones must be based on the pattern of land uses established by the community's general plan. Zoning maps illustrate how zones have been distributed.

Zoning is adopted by ordinance and carries the weight of local law. Land may be put only to those uses listed in

the zone assigned to it. For example, if a commercial zone does not allow 5-story office buildings, then no such building could be built on land which has been assigned that zone.

In many communities, the planning commission is not the only body 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 be subject to approval by a design review or architectural review board. Public notice of zoning hearings must be given at least 10 days before the hearing by advertisement in a newspaper of general circulation and by direct mailing to the owners of property located within 300 feet of the proposal's boundaries.

Rezoning

If a landowner proposes a use that is not allowed in that zone, then he/she must obtain a change of zone if that use is to occur. The local planning commission and the city council or county board of supervisors must hold

Rezoning Considerations

Commissioners should be able to answer the following questions affirmatively when approving a rezoning.

- ▶ Is the proposed zone consistent with all component parts of the general plan (including text and maps)?
- ▶ Is the proposed zone and its allowable uses compatible with existing and planned uses in the area?
- ▶ If significant environmental effects have been identified as a result of the proposed rezoning, are actions being required or programs initiated to mitigate those effects?
- ▶ If the proposal is part of a larger project, has the entire project been addressed in the environmental analysis?

public hearings, before property may be rezoned. The council or board is not obligated to approve requests for rezoning and, except in charter cities, must deny such requests when the proposed zone conflicts with the general plan. Typically, zoning ordinances also provide for limited waivers to zoning regulations (variances), subject to a public hearing.

Prezoning

Cities can “prezone” lands outside their corporate limits in the same way that they approve zoning. Prezoning is done before a city formally annexes a site in order to facilitate its transition into the city. Prezoning does not affect allowable uses, it is just a way for the city to show how the land will be zoned once it is annexed. County zoning regulations remain in effect until annexation is actually completed.

Variances

A variance is a limited waiver of development standards. It may be granted, after a public hearing, in special cases where: (1) strict application of the zoning regulations would deprive property of the uses enjoyed by nearby lands in the same zone; and (2) restrictions have been imposed to ensure that the variance will not be a grant of special privilege. A variance must not be granted if it would permit a use that is not otherwise allowed in that zone (for example, a commercial use may not be approved in a residential zone by variance). In addition, economic

hardship alone is not sufficient justification for approval of a variance.

Typically, variances are considered when the physical characteristics of the property make it difficult to use. For instance, in a situation where the rear half of a lot is a steep slope, a variance might be approved to allow a house to be built closer to the street than usually allowed.

See OPR’s publication *The Variance* for more information.

Conditional Use Permits (CUPs)

Some types of land uses are only allowed upon approval of a conditional use permit (also called a CUP or special use permit) after a public hearing. These uses might include community facilities (i.e., hospitals or schools), public buildings or grounds (i.e., fire stations or parks), temporary or hard-to-classify uses (i.e., Christmas tree sales), or uses with potentially significant environmental impacts (i.e., hazardous chemical storage or surface mining). The local zoning ordinance specifies the uses for which a conditional use permit is required, the zones they may be allowed in, and the public hearing procedure. When allowing a project, the CUP will impose special development requirements to insure that the use will not be detrimental to its surroundings. Requirements might include such things as additional landscaping, soundproofing, limited hours of operation, additional parking, or road improvements. A CUP does not rezone the land.

See OPR’s publication *The Conditional Use Permit* for more information.

Variance Considerations

Commissioners should be able to answer the following questions affirmatively when approving a proposed variance.

- ▶ Are there special circumstances applicable to the proposal site (such as size, shape, topography, location or surroundings) whereby strict application of the zoning ordinance would deprive it of privileges enjoyed by nearby properties with the same zoning? Identify them specifically.
- ▶ Do the proposed conditions ensure that the approval will not be a grant of special privilege?
- ▶ Is the use for which the variance is being granted already allowed in that zone? (A variance cannot be approved if the use isn’t already allowed.)
- ▶ Are the proposed conditions reasonably related to the use proposed by the variance?

Conditional Use Permit Considerations

Commissioners should be able to answer the following questions affirmatively when approving a conditional use permit.

- ▶ Is the site appropriate for the proposed use?
- ▶ Is the proposed use, as conditioned, compatible with its surroundings and with the uses of nearby lands?
- ▶ Is the project design, as conditioned, suited to the site?
- ▶ As conditioned, will adequate water (including fire flows), utilities, sewage disposal, drainage, roads, fire protection, and other services be provided to the project?
- ▶ If significant environmental effects have been identified as a result of the proposed CUP, have conditions been required (or the project redesigned) to mitigate those effects?

SUBDIVISIONS

In general, land cannot be subdivided in California without local government approval. Dividing land for sale, lease or financing is regulated by local ordinances based on the state Subdivision Map Act (commencing at Government Code section 66410). The local general plan and the zoning, subdivision, and other ordinances govern the design of the subdivision, the size of its lots, and the types of improvements that will be required as conditions of approval.

Subdivision Types

There are basically two kinds of subdivision: parcel maps, which are limited to divisions resulting in fewer than 5 lots (with certain exceptions), and final or tract map subdivisions, which create 5 or more lots. Local ordinances apply less stringent development standards to parcel maps than to tract maps.

Processing

Tract maps and, where provided by local ordinance, parcel maps are approved in two stages.

- I Consideration of a “tentative map.” Upon receiving an application for a tentative subdivision map, the city or county staff will examine the design of the subdivision to ensure that it meets the requirements of the general plan and the subdivision ordinance. An environmental impact analysis must be done and an advertised public hearing held before a tentative map is considered for approval. If approved, the map will

be subject to conditions that the subdivider must meet within a specific time period. At this stage, while conditions remain to be met, no lots have been officially approved.

- 2 Approval of the “final map.” When all of the conditions set out in the approved tentative map have been satisfied, and compliance certified by city or county officials, the city council or county board of supervisors will approve a final map. Unlike a tentative map, which can be denied if it does not meet city or county standards, the final map must be approved (with some exceptions) if it substantially complies with the previously approved tentative map. The subdivider may now record the map at the County Recorder’s office.

Subdivision approval is conditioned upon the subdivider providing public improvements such as streets, drainage facilities, water supply or sewer lines to serve the subdivision. They may also be required to dedicate park land to the community. These improvements must be installed or secured by bond before the city or county will grant final map approval and allow the subdivision to be recorded in the county recorder’s office.

Lots within the subdivision cannot be sold and are not legal divisions of land until a final map has been recorded. The subdivider has at least two years (and with extensions, usually more) in which to comply with the improvement requirements, gain final administrative approval, and record the final map.

Subdivision Considerations

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

- ▶ Is the proposed map consistent with the general plan and any applicable specific plans?
- ▶ Is the proposed design or improvement of the subdivision 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 type of 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 substantially and avoidably injure fish or wildlife or their habitat?
- ▶ Have adequate conditions been applied to the approval (or the project redesigned) to mitigate the environmental effects identified in the environmental analysis done for the project?
- ▶ Are all dedications and impact fees reasonably related to the impacts resulting from the subdivision?
- ▶ If a mitigated negative declaration or EIR have been adopted or certified for the project, have the mitigation measures identified therein been made conditions of approval or otherwise required as part of the approval?

THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The California Environmental Quality Act (commencing at Public Resources Code section 21000) requires local and state governments to consider the potential environmental effects of a project before making a decision on it. CEQA's purpose is to disclose the potential impacts of a project, suggest methods to minimize those impacts, and discuss project alternatives so that decision-makers will have full information upon which to base their decision. CEQA is a complex law and the following discussion is extremely general. Refer to the California Environmental Quality Act Guidelines or ask your planning staff for specific information. Information is also available online at the Resources Agency's website: <http://ceres.ca.gov/ceqa>.

The role of the planning commission in the environmental review process varies among jurisdictions depending upon local environmental review procedures. In some cities and counties, the commission conducts hearings on draft environmental impact reports (note: CEQA does not require public hearings during the preparation of an environmental impact report or negative declaration, however some jurisdictions choose to hold them). In others, the commission has no active role.

Lead Agency

The agency with the principal responsibility for issuing permits to a project (or for carrying out the project) is called the "lead agency." As such, it is responsible for

determining whether or not a project will significantly impact the environment and, when necessary, for analyzing the project's possible environmental impacts (or contracting for this work to be done under its direction). The planning department is usually lead agency in local planning matters.

Analysis

Analyzing a project's potential environmental effects is a multi-step process. Many minor projects, such as single-family homes, remodeling, and accessory structures are exempt from the CEQA requirements (for a complete list see the California Environmental Quality Act Guidelines). Exempt projects receive no environmental review.

When a project is subject to review, the lead agency prepares an "initial study" to assess the potential adverse environmental impacts. If the project will not cause a significant impact on the environment or if it has been redesigned to eliminate any impacts, a "negative declaration" is written. If significant environmental effects are identified, then an Environmental Impact Report (EIR) must be written before the project can be considered by decision makers. Upon approval of a project for which a negative declaration is adopted or an EIR certified, the city or county must also adopt a monitoring program to ensure that the mitigation measures will be completed as required.

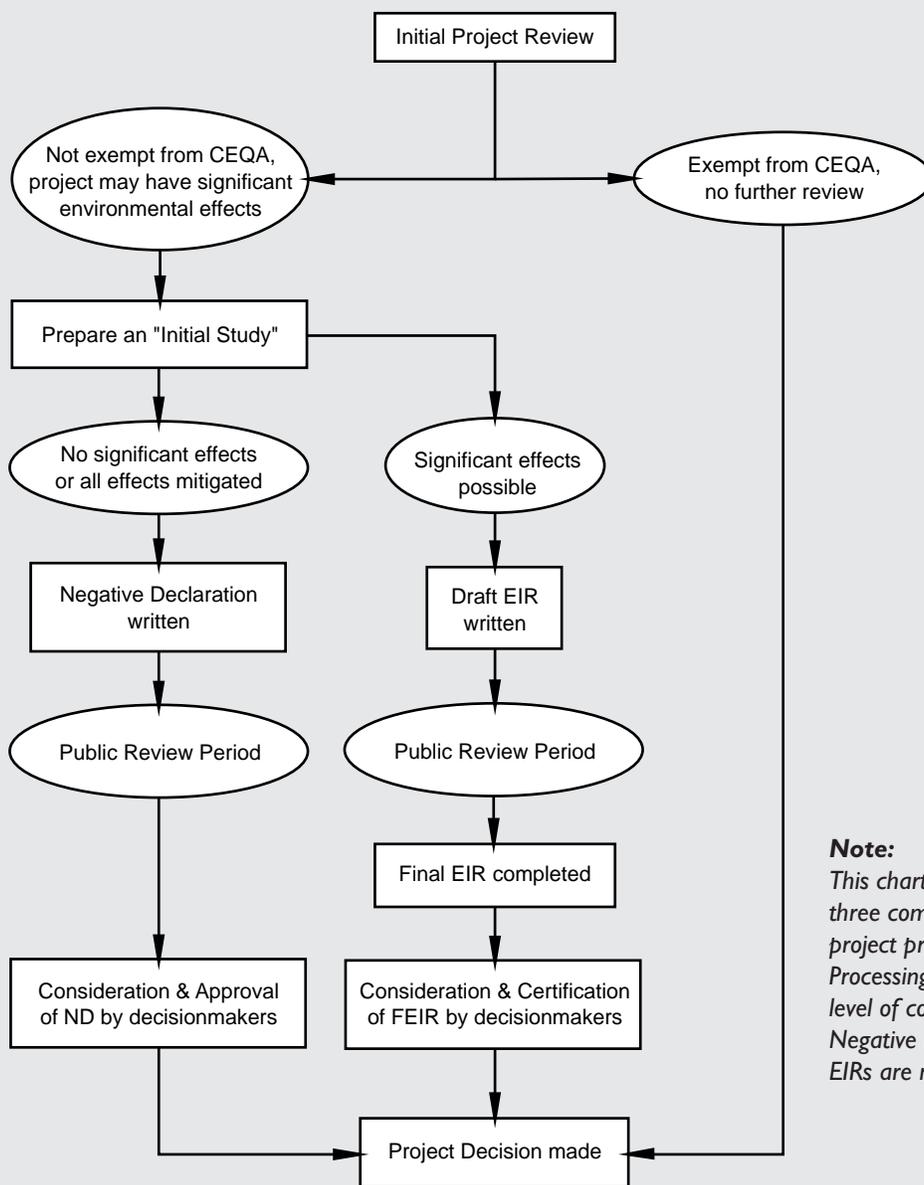
Negative Declaration

A negative declaration describes why a project will not have a significant impact and may require that the project incorporate a number of "mitigation measures" to ensure that there will be no significant impacts resulting from the project. A negative declaration cannot be used when significant impacts are not totally eliminated. Also, when a project consists of several parts, a negative declaration cannot substitute for an EIR if the total project will cause environmental impacts.

Environmental Impact Report (EIR)

An EIR discusses the proposed project, its environmental setting, its probable impacts, realistic means of reducing or eliminating those impacts, its cumulative effects in the context of other development, and realistic project alternatives. CEQA requires that Negative Declarations and draft EIRs be made available for review by the public and other agencies prior to consideration of the project. The review period (a minimum of 20 days for Negative Declarations and a minimum of 30 days for draft

Figure 2
Simplified CEQA Flowchart



Note:
This chart illustrates the three common paths for project processing. Processing times and the level of complexity of Negative Declarations and EIRs are not the same.

EIRs) allows concerned citizens and agencies to comment on the contents and adequacy of the environmental document prior to its completion. The final EIR must incorporate written responses to the comments submitted by reviewers.

In 1993, a master EIR was also included as a choice when completing an environmental assessment (AB 1888). Under this chapter, a master EIR may be prepared for a variety of projects to evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment. The review of each project is substantially reduced due to their impacts having been reviewed and mitigated in a certified master EIR.

When the city council or board of supervisors approves a project, it must certify the adequacy of the Negative Declaration or EIR. If its decision to approve a project will result in unavoidable significant impacts, as

identified in the EIR, the city council or board of supervisors must state, in writing, its overriding reasons for granting the approval. In addition, when mitigation measures are adopted as a result of a negative declaration or EIR, the council or board must enact a program for reporting on or monitoring the implementation of those measures.

Both negative declarations and EIRs are objective, informational documents. They neither approve nor deny a project. Environmental analysis must be done as early as possible in the process of considering a project and must address the entire project. The CEQA Guidelines describes the several different types of EIRs that may be prepared. Tracking CEQA Mitigation Measures Under AB 3180 (published by the Office of Planning and Research) can help design a mitigation reporting or monitoring program.

THE PERMIT STREAMLINING ACT

This law sets time limits for governmental action on some types of projects (see Government Code sections 65920–65963.1). Failure to act within those time limits can mean automatic approval of a project. The act applies to discretionary projects (those which the local government has the power to deny or conditionally approve) which are “adjudicative” in nature. An adjudicative decision applies existing policies and regulations to a particular situation. Use permits, subdivisions, and variances are all actions subject to the Permit Streamlining Act. The Act does not apply to the adoption or amendment of a general plan or of a zoning ordinance.

Generally speaking, local government must take action on administrative projects within 180 days of the date upon which the project’s final EIR is certified. This period is 60 days when a negative declaration is adopted or the project is exempt from CEQA. A project may be automatically approved under the Act if the jurisdiction fails to make a decision within the time limit and the developer takes certain actions to provide public notice.

If you have questions about how the Permit Streamlining Act applies to a particular project, check with your planning staff or city attorney/county counsel.

ANNEXATION AND INCORPORATION

The planning commission is not directly involved in the approval of annexations nor in the city incorporation process. However, these are subjects with which a planning commissioner should be generally familiar.

Annexation (the addition of territory to an existing city) and incorporation (creation of a new city) are controlled by the Local Agency Formation Commission (LAFCO) established in each county by state law. A LAFCO is made up of elected officials from the county, cities, and, in some cases, special districts. LAFCO duties include: establishing the “spheres of influence” that designate the ultimate service areas of cities and special districts; studying and approving requests for city annexations; and, studying and approving proposals for city incorporations. Following is a very general discussion of annexation and incorporation procedures. For detailed information on this complex subject, contact your county LAFCO.

Annexation

When the LAFCO receives an annexation request, it will convene a hearing to determine the worthiness of the proposal. Annexations may be requested by affected landowners or by a city. In cases where the proposed annexation is being initiated by a city, its planning commission may be asked to study the proposal before a formal application is filed with the LAFCO.

The LAFCO will deny, approve or conditionally approve annexation proposals based on its policies and state law (for example, annexation cannot occur unless the LAFCO has adopted a sphere of influence for the city and the area proposed to be annexed is within the city’s sphere). The LAFCO delegates tentatively approved annexation requests to the affected city for hearings and, if necessary, an election. Annexations which have been passed by vote of the inhabitants or which have not been

defeated by protest (in those instances where no election was required) must be certified by the LAFCO and meet all its conditions before they become final. The LAFCO, not the city, has final responsibility for the annexation process.

The Sphere of Influence

The sphere of influence is a plan for the probable ultimate physical boundaries and service area of a city or special district. The LAFCO is responsible for establishing a sphere for each city and special district in the county. The purpose of the sphere is to act as a benchmark for future annexation decisions.

Cities cannot establish their own sphere of influence. The LAFCO has sole responsibility for doing this. However, a city may request that the LAFCO amends its sphere.

Some cities use their sphere of influence as a convenient boundary for their general plan. These cities plan beyond their city limits although they usually have no

actual authority over land uses in county areas. This planning anticipates the eventual annexation of land into the city.

Incorporation

When a new city is proposed to be formed, the LAFCO studies the financial feasibility of the proposed city, its financial impact on the county and special districts, and the provision of public services. If the proposal cannot be shown to be feasible, the LAFCO can terminate the proceedings. If the proposed city appears to be feasible, LAFCO will refer the proposal (and a set of conditions to be met upon incorporation) to the county board of supervisors for a public hearing to be held. Incorporation proceedings are terminated if the supervisors receive protests from a majority of the voters residing within the proposed city boundaries. If they do not receive a majority protest, an election will be held on the question of whether to create the city and to elect city officials.

Part Four

Glossary of Common Planning Terms



Accessory Use

An activity or structure that is incidental to the main use of a site.

Building Envelope

The space remaining on a site for structures after all building setback, height limit, and bulk requirements have been met.

Capital Improvement Program

A timetable for the installation of permanent public structures, facilities, roads, and other improvements based upon budget projections.

CEQA

The California Environmental Quality Act (see Public Resources Code section 21000). CEQA requires that private and public projects' potential adverse effects upon the environment be reviewed by decision-makers.

Charter City

A city which has been incorporated under its own charter rather than under the general laws of the state. Charter cities have broader powers than do general law cities.

Cluster Development

Development which is clustered in a portion of a site, leaving the remainder in open-space. The amount of development allowed equals the amount that would have otherwise been allowed on the entire site.

COG

Council of Governments. California's 25 COGs 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 COG make up its governing board.

Community Plan

A portion of the local general plan that focuses on a particular area or community within the city or county. Community plans supplement the contents of the general plan.

Conditional Use Permit (CUP)

A permit authorizing a use not routinely allowed on a particular site, subject to a public hearing. If approval is

granted, the developer must meet certain conditions to harmonize the project with its surroundings.

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.

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. (see Government Code section 65915)

Density Averaging (or Transfer)

The density of development on a portion of a site is allowed to exceed usual limits provided that the overall density of the site does not do so. Density increases in one area are offset by a corresponding decrease in allowable density in another part of the site.

Design Review Committee

A group appointed by the city council to consider the design and aesthetics of development within all or a portion of the community.

Development Agreement

A binding contract between a developer and a city or county establishing the conditions under which a particular development may occur. The local government "freezes" the regulations applicable to the site for an agreed upon period of time. (see Government Code section 65864)

Development Fees

Fees charged as a precondition to construction or development approval. The most common are: (1) impact fees (such as parkland acquisition fees, school facilities fees, or street construction fees) related to funding public improvements necessitated in part or in whole by the development; (2) connection fees (such as water fees) to cover the cost of installing public services to the development; (3) permit fees (such as building permits or grading permits) for the administrative costs of processing development plans; and, (4) application fees (rezoning, variance, etc.) for the administrative costs of reviewing and hearing development proposals.

Downzone

A change of zoning to a more restrictive zone (for example, from multi-family residential to single-family residential).

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.

Easement

The right to use property owned by another for a specific purpose. Power line easements are a common example.

Eminent Domain

The right of government to take private property for public use upon the payment of just compensation to the owner. This is also called condemnation (condemnation can also mean the closing of an unsafe structure by a public agency to protect the community safety).

Exaction

A fee or dedication required as a condition of development permit approval.

Final Map Subdivision (also, tract map or major subdivision)

Land divisions creating 5 or more lots. They are generally subject to stricter standards than parcel maps. Requirements may include road improvements, the construction of drainage and sewer facilities, park land dedications, and more.

Findings

The legal “footprints” which an agency must leave to bridge the analytical gap between the raw data considered by the agency and its ultimate decision. They expose its mode of analysis of facts, regulations, and policies.

Floor Area Ratio (FAR)

A measure of development intensity. FAR is the ratio of the floor area of a building to the area of its site. For instance, both a two-story building that covers an entire lot and a four-story building that covers 1/2 of a lot have FARs of 2.

General Law City

A city incorporated under and subject to the general laws of the state.

General Plan

A statement of policies, including text and diagrams, setting forth objectives, principles, standards, and plan proposals, for the future physical development of the city or county. (see Government Code section 65300)

“Granny” Housing

An accessory dwelling for one or more elderly persons that is attached to or separate from a main residence. Government Code section 65852.1 allows cities and counties to approve such units in single-family neighborhoods.

Growth Management

A local program limiting the rate of community growth. Growth management strategies vary, but they can include capping the annual number of building permits, relating allowable development intensity to certain levels of infrastructure service or limiting the location of new development.

Impact Fees

See Development Fees.

Infrastructure

A general term for public and quasi-public utilities and facilities such as roads, bridges, sewer plants, water lines, power lines, fire stations, etc.

Initial Study

An analysis of a project’s potential environmental effects and their relative significance. An initial study is preliminary to deciding whether to prepare a negative declaration or an EIR.

Initiative

A ballot measure which has qualified for election as a result of voter petition. At the local level, initiatives usually focus on changes or additions to the general plan and zoning ordinance. The initiative power is reserved for the public by the California Constitution.

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.

LAFCO

The Cortese/Knox Act (see Government Code section 56000) establishes a Local Agency Formation Commission in each county. A LAFCO is made up of elected officials from the county, cities, and, in some cases, special districts. It administers the state law governing city incorporation and annexation proposals.

Mitigation Measure

The California Environmental Quality Act requires that when an environmental impact or potential impact will occur, measures must be proposed that will eliminate, avoid, rectify, compensate for or reduce that effect.

Moratorium

A halt to new development or the issuance of permits. Moratoria are often imposed while a new general plan or zoning ordinance is written or when sewer or water facilities are inadequate to serve additional development. (See Government Code section 65858)

Negative Declaration

A negative declaration is written when a project is subject to CEQA, but will not have a significant effect upon the environment. The negative declaration describes why the project will not have a significant effect and may propose measures that avoid all possible effects.

Nonconforming Use

A land use which does not meet current zoning requirements.

Overlay Zone

A zone which is superimposed upon other zoning. Overlay zones are used in areas which need special protection (as in a historic preservation district) or have special problems (such as steep slopes or flooding). Development of land subject to an overlay must comply with the regulations of both zones.

Parcel Map

A minor subdivision resulting in fewer than 5 lots.

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.

Referendum

A voter challenge to legislative action taken by a city council or county board of supervisors. If enough voters' signatures are filed before the legislative action becomes final, the council or board must either rescind its decision or call an election on the issue. The California Constitution guarantees the public's power of referendum.

School Impact Fees

Fees imposed on new developments to offset their impacts on area schools.

Setback

The minimum distance required by zoning to be maintained between two structures or between a structure and a property line.

Specific Plan

A plan addressing land use distribution, open space availability, infrastructure, and infrastructure financing for a

portion of the community. Specific plans put the provisions of the local general plan into action (see Government Code section 65450).

Sphere of Influence

A plan for the "probable physical boundary and service area of a local agency" as approved by the LAFCO. It identifies the area available to a city for future annexation. However, unless another arrangement has been made, the city has no actual authority over land outside its city limits.

Spot Zoning

The zoning of an isolated parcel in a manner which is inconsistent or incompatible with surrounding zoning or land uses, particularly if done to favor a particular landowner. A conditional use permit is not a spot zone.

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.

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.

Tract Map

See final map subdivision.

Transportation Systems Management (TSM)

A program coordinating many forms of transportation (car, bus, carpool, rapid transit, bicycle, etc.) in order to distribute the traffic impacts of new development. Instead of emphasizing road expansion or construction, TSM examines methods of increasing road efficiency.

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.

Zoning

Local codes regulating the use and development of property. The zoning ordinance divides the city or county into land use districts or "zones", illustrated on zoning maps, and specifies the allowable uses within each such zone. It establishes development standards such as minimum lot size, maximum structure height, building setbacks, and yard size.

Part Five

For Further Reference



Alternative Techniques for Controlling Land Use: A Guide to Small Cities and Rural Areas in California, by Irving Schiffman (Institute of Government Affairs, University of California, Davis), 1982, 88 pp. *Explains techniques such as cluster development, planned unit development, and the specific plan.*

Bridging the Gap: Using Findings in Local Land Use Decisions, by Robert Cervantes (Governor's Office of Planning and Research, Sacramento, CA), 1988, 108 pp. *A guide to the requirements for making findings to support land use decisions.*

California Environmental Quality Act: Statutes and Guidelines (Governor's Office of Planning and Research, Sacramento, CA), 1997, 179 pp. *The requirements for evaluating and assessing environmental impacts.*

California Land Use and Planning Law, 18th edition, by Daniel J. Curtin, Jr. (Solano Press, Pt. Arena, CA), 1998, revised annually. *The planning, zoning, subdivision, and environmental quality laws explained; with an emphasis on legal requirements and references to numerous court cases.*

The Conditional Use Permit (Governor's Office of Planning and Research, Sacramento, CA), 1997, 8 pp. *Legal requirements for conditional use permit processing.*

The General Plan Guidelines (Governor's Office of Planning and Research, Sacramento, CA), November 1990, 368 pp. *How to write or revise a general plan and how to implement that plan.*

Guide to the California Environmental Quality Act, by Michael H. Remy, Tina A. Thomas, James G. Moore, and Whitman F. Manley (Solano Press, Pt. Arena, CA), 1996, 447 pp. *A technical guide to CEQA statutes and case law.*

Guide to the Cortese/Knox Local Government Reorganization Act of 1985, by the Assembly Local Government Committee (Joint Publications Office, Sacramento, CA), 1996, 249 pp. *The annexation and incorporation law, with a flowchart for these procedures.*

The Job of the Planning Commissioner, 4th edition, by Albert Solnit (APA Planner's Press, Chicago, IL), 1987, 218 pp. *All about the job, from dealing with staff to conducting successful meetings and legal requirements.*

Open and Public: A User's Guide to the Ralph M. Brown Act (League of California Cities), 1994. *A discussion of the laws, court decisions, and attorney general's opinions relating to the requirements of the Ralph M. Brown Act.*

The Planner's Book of Lists (Governor's Office of Planning and Research, Sacramento, CA), issued yearly. *The address and phone number of each planning department in the state and information on local plans and ordinances.*

A Planner's Guide to Financing Public Improvements, by Antero Rivasplata (Governor's Office of Planning and Research, Sacramento, CA), revised 1997. *This is an introduction to some of the financing options available to local governments in California, including general taxes, special taxes, developer fees and exactions, special assessments, and leasing.*

The Planning Commissioner's Guide – Processes for Reasoning Together, by David J. Allor (APA Planner's Press, Chicago, IL), 1987. *A guide to understanding and improving the decision making process.*

Planning, Zoning, and Development Laws (Governor's Office of Planning and Research, Sacramento, CA), 1998, revised yearly. Available only through the Internet as a downloadable document at http://ceres.ca.gov/planning/pub_org.html. *A compilation of the various state codes relating to planning, including the Subdivision Map Act.*

"The Role and Responsibility of the Planning Commissioner" (Pappas Telecommunications, Fresno, CA), 1987, 40 minute videotape (available for purchase from the League of California Cities (916/444-5790)).

Sources: An Annotated Bibliography for California Planners, by Antero Rivasplata (Governor's Office of Planning and Research, Sacramento, CA), revised May 1995, 16pp. *A list of over 100 books and periodicals covering planning-related topics from developer fees to urban design.*

The Planner's Guide to Specific Plans, by Gregg McKenzie, et al. (Governor's Office of Planning and Research, Sacramento, CA), 1998, 51 pp. *Everything you could want to know about specific plans.*

Tracking CEQA Mitigation Measures Under AB 3180, by Robert Cervantes, et al. (Governor's Office of Planning and Research, Sacramento, CA), 1996. *This provides basic information on the mitigation monitoring or reporting requirements established by AB 3180 (Chap. 1232, Stats. of 1988) and local government programs developed in response to that bill.*

The Variance (Governor's Office of Planning and Research, Sacramento, CA), November 1997, 8 pp. *Background and detailed discussion of the variance and its legal requirements.*

"Why Plan: A Primer for the Concerned Citizen" (Pappas Telecommunications, Fresno, CA), 1987, 30 minute videotape (available for purchase from the League of California Cities (916/444-5790)).

Websites:

Cyburbia

<http://www.arch.buffalo.edu/pairc/index.htm>
This site of the architecture school at the State University of New York, Buffalo, links to sites from Architecture to Planning and everything in between.

The Land Use Planning and Information Network (LUPIN)

<http://ceres.ca.gov/planning>
A rich resource for information (including a free online source for most of OPR's planning publications). Links to many sites.