The Planning Commissioner Handbook

Chapter 3

The Planning and Development Framework

Institute for Local Government℠

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The General Plan

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

Mandatory Elements

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

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

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

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

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

Consistency Requirements

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

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

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

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

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

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

Amending the General Plan

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

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

6 Cal. Gov't Code § 65300.5.

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

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

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

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

11 Cal. Gov't Code § 65358.

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

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

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

Updating a General Plan

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

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

Paying for a General Plan Update

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

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

Ballot Box Planning: Initiatives & Referenda

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

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

13 Cal. Gov't Code § 65351.

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

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

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

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

Implementing the General Plan

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

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

Effects of a Deficient General Plan

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

Checklist for General Plan Adequacy

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

14 Cal. Gov't Code § 65400(b).

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

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

Resources Regarding the General Plan Update

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

Specific Plans

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

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

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

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

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

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

17 Cal. Gov't Code § 65451.

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

Zoning

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

Typically, zoning ordinances:

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

Zoning codes typically follow one of two overall formats:

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

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

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

"By Right" Uses

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

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

Statutory Limitation on Zoning Controls

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

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

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

Zoning vs. Building Codes

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

Conditional Land Uses

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

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

19 Article 11 (commencing with Section 65650)

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

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

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

Questions to Ask When Considering a Conditional Use Permit

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

Variances

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

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

Nonconforming Uses

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

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

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

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

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

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

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

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

Zone Change Checklist

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

Relationship to Community

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

Changed Conditions

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

Public Welfare

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

Reasonableness

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

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

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

Overlay Zones

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

Floating Zones

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

Floating Zone Example: Planned Unit Developments

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

Zoning Moratoria

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

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

27 Cal. Gov't Code § 65858.

Code Enforcement

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

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

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

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

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

28 Cal. Gov't Code § 53069.4.

29 Cal. Gov't Code § 36900(a).

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

31 Cal. Gov't Code § 36900(b).

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

33 Cal. Gov't Code § 38773.1.

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

35 Cal. Gov't Code § 66499.36.

The Subdivision Map Act

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

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

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

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

Checklist for Approving Subdivision Maps

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

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

36 Cal. Gov't Code § 66411.

37 Cal. Gov't Code § 66464.

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

Tentative Map Applications

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

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

Final Map Applications

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

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

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

Illegal Quartering

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

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

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

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

41 See Cal. Gov't Code § 66452.6.

42 Cal. Gov't Code § 66458.

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

Vesting Tentative Map Applications

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

Parcel Map Applications

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

43 Cal. Gov't Code § 66498.1.

44 Cal. Gov't Code § 66463.

Development Agreements

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

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

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

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

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

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

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

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

More on Development Agreements

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

Community Benefit Agreements

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

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

Dedications and Fees

Requirements for dedication of land and payment of fees (referred to collectively as "exactions") are often imposed as conditions of approval on development to offset new demands on public resources caused by the development. New development usually requires the extension of infrastructure, such as roads, parks, pathways, libraries and schools. At one time, local agencies could fund new infrastructure with property tax revenues, but such revenue has become more limited since the adoption of Proposition 13 in 1978. State legislation and voter-approved revenue limitations have further diminished local finances.[47] As a result, cities and counties rely heavily on dedications and fees to ensure that new development "pays its way."

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

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

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

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

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

49 Cal. Gov't Code §§ 66000-66025.

Environmental Review

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

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

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

NEPA and CEQA

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

Determining the Required Level of Review

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

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

50 Cal. Pub. Res. Code § 21060.5.

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

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

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

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

The Environmental Impact Report

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

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

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

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

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

53 Cal. Pub. Res. Code § 21091.

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

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

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

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

Certifying the CEQA Document

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

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

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

57 Cal. Pub. Res. Code § 21081.6.

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

Tiering, Master EIRs and Program EIRs

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

Permit Streamlining Act

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

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

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