STATE OF CALIFORNIA

General Plan Guidelines

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

State of California

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Message from the Director

The 1998 Edition of the *General Plan Guidelines* constitutes the most complete discussion of California's land use planning statutes that the Governor's Office of Planning and Research has ever published. It has been comprehensively updated, with new information on topics ranging from air quality to zoning, and new references to agencies and their internet sites. In this edition, the *Guidelines* is a comprehensive guide for preparing a practical and useful general plan.

Over the years, the planning staffs of cities, counties, and other planning agencies, as well as elected officials, planning consultants, and interested residents have relied upon the *General Plan Guidelines* for advice when preparing their local general plans. I am confident that the 1998 edition will be the most useful yet.

Paul F Miner
Director

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Introduction

CALIFORNIA is a land of diversity. From Alturas to Yorba Linda, California's numerous local governments reflect this diversity. Despite their different circumstances and needs, each city and county in California must prepare a comprehensive, long-term general plan for the development of its community. To assist local governments in meeting this responsibility, Government Code §65040.2 directs the Governor's Office of Planning and Research (OPR) to adopt and periodically revise guidelines for the preparation and content of local general plans.

The *Guidelines* is advisory, not mandatory. Nevertheless, it is the state's only official document interpreting and explaining California's legal requirements for general plans. Planners, decision making bodies, and the public depend upon the *Guidelines* for help when preparing local general plans. The courts have periodically referred to the *Guidelines* for assistance in determining compliance with planning law. For this reason, the *Guidelines* strictly interprets statute and case law. It also relies upon commonly accepted principles of contemporary planning practice. When the words "shall" or "must" are used in the Guidelines, they represent a statutory or other legal requirement. "May" and "should" are used when there is no such requirement.

With this edition, OPR has attempted to create a comprehensive guide to city and county planning in California. We have revised and reorganized the *Guidelines* from previous editions in order to make it easier to read, easier to use, and more comprehensive. Statutory and case law references are now up-to-date. New information is added covering air quality, congestion management, endangered species, wetlands, and other planning issues which are not explicitly discussed in California Planning Law, but are nonetheless vitally important to California planning.

Chapter 1 describes the general plan's role. Chapter 2 outlines how to prepare or revise the general plan within the framework of planning law. Chapter 3 elaborates on the statutorily required general plan elements, citing relevant court interpretations and Attorney General's Opinions, and offers some suggestions for how to consolidate elements**.** Chapter 4 reviews the California Environmental Quality Act's integral role in the general plan process. Chapter 5 discusses a wide range of general plan implementation techniques. Chapter 6 explains the local general plan's relationship to various special statutory planning requirements such as air quality, water quality, the California Coastal Act, and the endangered species acts. Chapter 7 offers suggestions on preparing selected optional elements.

For ease of presentation, the 1998 *Guidelines* continues to address general plan issues element-by-element. At the same time, the *Guidelines* strongly encourages localities to limit redundancy in their general plans by combining the elements whenever possible.

In its broadest context, planning is an approach to problem solving; a process by which a community makes informed decisions about its future. Like budgeting, planning is also a means of allocating scarce resources among competing demands. We sincerely hope that the General Plan Guidelines will shed light on what can be a confusing and contradictory process.

Legislative Milestones In California's Planning laws

1907 First Subdivision Map Act enacted.

1915 Cities authorized to create planning commissions.

1917 Initial zoning law enacted.

1927 Cities and counties authorized to prepare master plans (general plans).

1929 Adoption of master plans made mandatory for those cities and counties establishing planning commissions (based largely on the 1928 U.S. Department of Commerce Model Standard City Planning Enabling Act). Subdivision Map Act revised enabling local governments to require dedication of improvements.

1937 All cities and counties required to adopt master plans. Cities and counties authorized to prepare "precise plans" (similar to specific plans of today) to implement the master plan.

1953 Planning law recodified into Government Code §65000, et seq.

1955 Land use and circulation elements required in the general plan.

1965 Planning and Zoning Law reorganized. Cities and counties authorized to prepare "specific plans."

1967 Housing element required in the general plan (effective July 1, 1969).

1970 Conservation and open-space elements required in the general plan.

1971 Safety, seismic safety, noise, and scenic highway elements required in the general plan. Zoning and subdivision approvals required to be consistent with the adopted general plan.

1971 Statements of legislative intent clarify the internal consistency requirement of the general plan.

1974 Subdivision Map Act recodified from the Business and Professions Code into the State Planning and Zoning Law.

1980 Detailed content standards and adoption procedures added to the housing element requirement (effective October 11, 1981).

1984 Planning statutes substantially revised, seismic safety and scenic highways elements dropped as required elements, seismic safety merged with safety element (AB 2038, Chap. 1009).

This summary does not include other major planning and land use statutes that have been important in shaping local planning, such as the California Environmental Quality Act, the Williamson Act, the California Coastal Act, and the Cortese-Knox Local Government Reorganization Act of 1985.

CHAPTER 1

Content of the General Plan

All statutory references are to the California Government Code unless otherwise noted

INTRODUCTION

CALIFORNIA state law requires each city and county to adopt a general plan "for the physical development of the county or city, and any land outside its boundaries which… bears relation to its planning (§65300)." The role of a community's general plan is to act as a "constitution;" a basis for rational decisions regarding a city's or county's long-term physical development. The general plan expresses the community's development goals and embodies public policy relative to the distribution of future land uses, both public and private.

As will be discussed in Chapter 5, the policies of the general plan are intended to underlie most land use decisions. Pursuant to state law, subdivisions, capital improvements, development agreements, and many other land use actions must be consistent with the adopted general plan. In counties and general law cities, zoning and specific plans are also required to conform to the general plan.

Preparing, adopting, implementing, and maintaining a general plan serves to:

- Identify the community's land use, circulation, environmental, economic, and social goals and policies as they relate to land use and development.
- Provide a basis for local government decision making, including decisions on development approvals and exactions.
- Provide citizens with opportunities to participate in the planning and decision making processes of their community.
- Inform citizens, developers, decision makers, and other cities and counties of the ground rules that guide development within the community.

The general plan bridges the gap between community values, visions and objectives, and physical decisions such as subdivisions and public works projects.

COMPREHENSIVENESS

Every city and county must adopt "a comprehensive, long term general plan" (§65300). The general plan must cover a local jurisdiction's entire planning area, and address the broad range of issues associated with a city's or county's development.

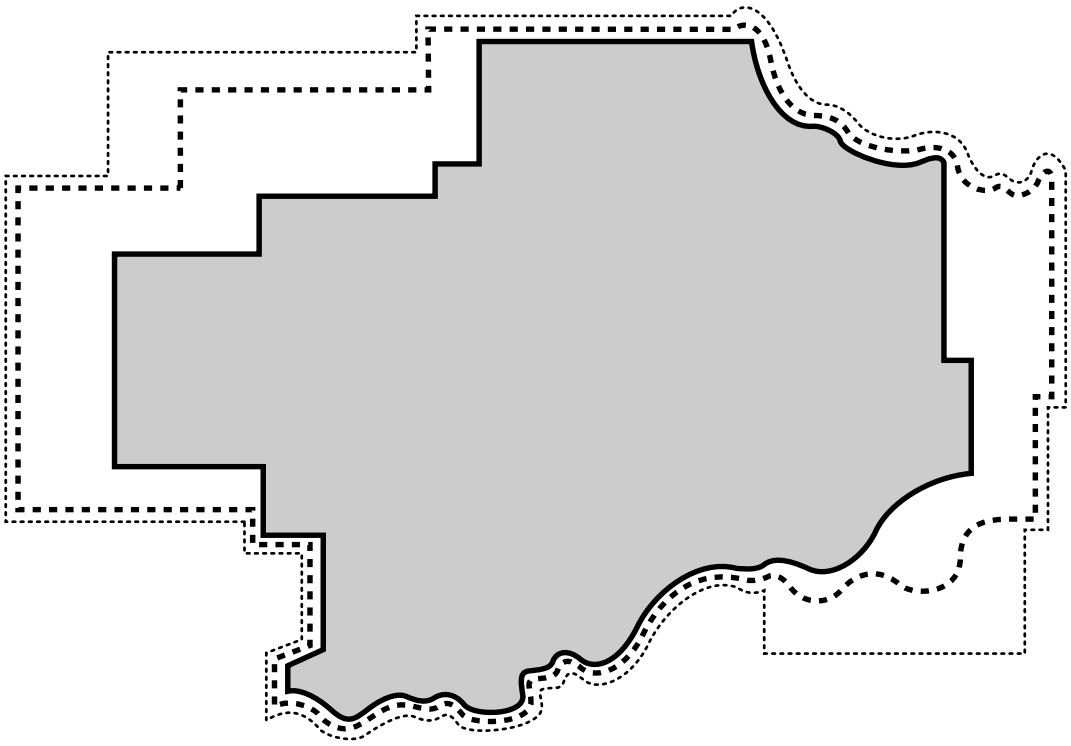
Geographic Comprehensiveness

The plan must cover the territory within the boundaries of the adopting city or county as well as "any land outside its boundaries which in the planning agency's judgment bears relation to its planning" (§65300). For cities, this means all territory within the city limits, both public and private. Counties must address all unincorporated areas.

When establishing its planning area, each city should consider using its sphere of influence as a starting point. The Local Agency Formation Commission (LAFCO) in every county adopts a sphere of influence for each city to represent "the probable physical boundaries and service area" of that city (§56076). Although there is no direct requirement that the sphere and the planning area match, the former provides a convenient measure of the city's region of interest.

> There are two types of cities in California—**charter** and **general law**. While state planning requirements apply equally to all counties and general law cities, the state constitution and statutes allow chartered cities greater leniency in satisfying their general plan responsibilities. Specifically, charter cities are exempt from the provision of state law that requires zoning to be consistent with the land use element of the general plan except where required by charter, ordinance or in cities with a population over 2 million. (§65803, 65860; *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal. App 4th 868).

Theoretical Relationship Between a City's Planning Area and Sphere of Influence



Current City Limits:
Encompasses incorporated territory where land use is controlled by the city.

City's "Sphere-of-Influence" adopted by the LAFCO:
Encompasses incorporated and unincorporated territory which is the city's ultimate service area.

City's Planning Area Boundary:
Encompasses incorporated and unincorporated territory bearing a relation to the city's planning. Where desirable the planning area may extend beyond the sphere-of-influence.

Counties should consider the general plans of their cities in their own plans. City planning policies may be reflected in the county plan in various ways. The county plan may discuss city policies in the broad context of countywide policy. It may summarize city policies while laying out the county policies for the surrounding unincorporated area. It may examine city policies in the context of community plans that it has adopted for the surrounding unincorporated areas.

In addition, since issues are not confined to political boundaries, the law provides for planning outside of the jurisdiction's territory. Cooperative extraterritorial planning can be used to guide the orderly and efficient extension of services and utilities, ensure the preservation of open-space, agricultural, and resource conservation lands, and establish consistent standards for development in the plans of adjoining jurisdictions.

Cities and counties should work together to delineate planning areas and may establish formal agreements for processing development proposals. For ex-

ample, Yolo County delegates a portion of its land use authority to the City of Davis within areas surrounding the city. As urbanization occurs and adjoining cities expand, the potential for conflict between cities competing for the same lands increases. Inter-city cooperation in establishing planning areas can proactively help to avoid such disputes.

Viewing the local general plan in its regional context is important. Traditionally, the concept of "community" encompassed only a local entity—the city or county. With increasing urbanization, the growing interdependence of local governments, particularly in metropolitan areas, and important issues such as transportation, air quality, and floodplain management that transcend local boundaries, the regional perspective should be considered. Cities and counties should identify risks from natural hazards which extend across jurisdictional boundaries, then use any available data from watershed-based floodplain management, mapped earthquake faults, or high fire hazard areas as planning tools to address any significant issues. Each local planning agency carries a responsibility to coordinate its general plan with regional planning efforts as much as possible.

Regional planning efforts typically address single issues or have indirect links to the local planning process. Plans prepared by councils of government and other designated regional agencies provide the basis for allocating federal and state funds used for specific items such as transportation facilities. Other regional plans, such as those for air or water quality, spell out measures which local governments must institute in order to meet federal or state standards for the region. Still others, such as regional housing allocation plans, measure each local government's responsibility for satisfying a specific share of regional needs. Some regional agencies have put together useful information on seismic safety and other planning issues that can be helpful.

The Legislature has mandated consideration of certain regional impacts. For example, if a city or county adopts or amends a mandatory general plan element limiting the number of residential units which may be constructed on an annual basis, it must explain that action. The city or county must make specific findings concerning: 1) the efforts it has made to implement its housing element, and 2) the public health, safety, and welfare considerations that justify reducing housing opportunities in the region (§65302.8). Further, cities and counties must balance the housing needs of the region against the needs of their residents for public services and the available fiscal and environmental resources (§65863.6, 66412.3). In addition, the Housing Element must provide actions programs to accommodate the locality's regional fair share of housing (§65583, 65584).

Local general plans should recognize the city's or county's regional role if regional needs are to be satisfied, federal and state standards met, and coordination achieved in the location of public facilities. Accordingly, general plans should include a discussion of the extent to which the general plan's policies, standards, and proposals correspond to regional plans and the plans of adjoining communities. A city or county may need to reexamine its own general plan when its neighbors make important changes to their plans.

> Some of the regional Councils of Government have undertaken major regional and subregional planning initiatives. San Diego County Association of Governments has adopted a comprehensive regional plan whose policies its constituent cities and county have adopted into their own general plans. The Association of Bay Area Governments has sponsored subregional planning efforts in Sonoma County and in the Tri-Valley Area that may eventually be reflected in local general plans.

Issue Comprehensiveness

A general plan must address a broad range of issues. Under the "shoe fits" doctrine discussed in Chapter 3, the plan should focus on those issues that are relevant to the planning area (§65301(c)). The plan must address the jurisdiction's physical development, such as general locations, appropriate mixtures, timing and extent of land uses and supporting infrastructure. The broad scope of physical development issues may range from appropriate areas for building factories to open-space for preserving endangered species (see Chapter 3 for examples). This may include not only those issues described in the planning statutes, but regional issues as well.

In the 1960s, planners began to assert that land use decisions have not only immediate and future physical environmental impacts, but social and economic impacts, as well. Because a general plan represents the most comprehensive local expression of the general welfare as it relates to land use regulation, recognizing social and economic concerns in the general plan may be quite appropriate. Social concerns are certainly recog-

nized in the mandatory housing element. Many communities have adopted optional economic development elements, showing their interest in economic issues. Many combinations of benefits can be derived from good planning. In particular, cost effective hazard mitigation activities reduce people and property's risk of exposure to the hazard, reduces governmental disaster assistance costs, and often increases societal and environmental benefits as well.

INTERNAL CONSISTENTENCY

In construing the provisions of this article, the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency. (§65300.5)

The concept of internal consistency holds that no policy conflicts exist, either textual or diagrammatic, between the components of an otherwise complete and adequate general plan. Different policies must be balanced and reconciled within the plan. The internal consistency requirement has five dimensions:

1. Equal Status Among Elements

All elements of the general plan have equal legal status. For example, the land use element policies are not superior to the policies of the open-space element.

A case in point: in *Sierra Club v. Board of Supervisors of Kern County* (1981) 126 Cal.App.3d 698, two of Kern county's general plan elements, land use and open-space, designated conflicting land uses for the same property. A provision in the general plan text reconciled this and other map inconsistencies by stating "if in any instance there is a conflict between the land use element and the open-space element, the land use element controls." The court of appeal struck down this clause because it violated the internal consistency requirement under §65300.5. No element is legally subordinate to another; the general plan must resolve potential conflicts among the elements through clear language and policy consistency.

2. Consistency Between Elements

All of the elements of a general plan, whether mandatory or optional, must be consistent with one another. The court decision in *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90 illustrates this point. In that case, the county land use element contained proposals expected to result in increased population. The circulation element, however, failed to provide feasible remedies for the predicted traffic congestion that would follow. The county simply stated that it would lobby for funds to solve the future traffic problems. The court held that this vague response was insufficient to reconcile the conflicts.

Also, housing element law requires local agencies to adopt housing element programs which achieve housing element goals and implement its policies. Such programs must identify the means by which consistency will be achieved with other general plan elements (§65583(c)).

A city or county may incorporate by reference into its general plan all or a portion of another jurisdiction's plan. When doing so, the city or county should make sure that any materials which are incorporated by reference are consistent with the rest of its general plan.

3. Consistency Within an Element

Each element's data, analyses, goals, policies, and implementation programs, must be consistent with and complement one another. Established goals, data, and analysis form the foundation for any ensuing policies. For example, if one portion of a circulation element indicates that county roads are sufficient to accommodate the projected level of traffic, while another section of the same element describes a worsening traffic situation aggravated by continued subdivision activity, the element is not internally consistent (*Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County* (1985) 166 Cal.App.3d 90).

4. Area Plan Consistency

All principles, goals, objectives, policies, and plan proposals set forth in an area or community plan must be consistent with the overall general plan.

The general plan should explicitly discuss the role of area plans if they are to be used. Similarly, each area plan should discuss its specific relationship to the general plan. In 1986, the court of appeal ruled on an area plan that was alleged to be inconsistent with the larger general plan. The court upheld both the area plan and general plan when it found that the general plan's "nonurban/rural" designation, by the plan's own description, was not intended to be interpreted literally or precisely, especially with regard to small areas. The court noted that the area plan's more specific "urban residential" designation was pertinent and that there was no inconsistency between the countywide general plan and the area plan (*Las Virgenes Homeowners Federa-*

tion, Inc. v. County of Los Angeles (1986) 177 Cal.App.3d 300). However, the court also noted that in this particular case the geographic area of alleged inconsistency was quite small.

5. Text and Diagram Consistency

The general plan's text and its accompanying diagrams are integral parts of the plan. They must be in agreement. For example, if a general plan's land use element diagram designates low density residential development in an area where the text describes the presence of prime agricultural land, and further contains written policies to preserve agricultural land or open-space, a conflict exists. The plan's text and diagrams must be reconciled, for "internal consistency requires that general plan diagrams of land use, circulation systems, open-space and natural resources areas reflect written policies and programs in the text for each element." (*Curtin's, California Land-Use and Planning Law*, 1998 edition, p. 18.)

Without consistency in all five of these areas, the general plan cannot effectively serve as a clear guide to future development. Decision makers will face conflicting directives; citizens will be confused about the policies and standards the community has selected; findings of consistency of subordinate land use decisions such as rezonings and subdivisions will be difficult to make; and land owners, business, and industry will be unable to rely on the general plan's stated priorities and standards for their own individual decision making. Beyond this, inconsistencies in the general plan can expose the jurisdiction to expensive and lengthy litigation.

LONG-TERM PERSPECTIVE

Since the general plan affects the welfare of current and future generations, state law requires that the plan take a "long-term" perspective (§65300). The general plan projects conditions and needs into the future as a basis for determining objectives. It also establishes long-term policy for day-to-day decision making based upon those objectives.

The time frames for effective planning vary among issues. The housing element, for example, specifically involves time increments of five years. Geologic hazards, on the other hand, persist for hundreds or thousands of years. Sewer, water, and road systems are generally designed with a 30 to 50-year lifespan. Capital improvement planning is typically based upon a five or seven year term. Economic trends may change rapidly in response to outside forces.

Differences in time frame also affect the formulation of general plan objectives, policies, and implementation measures. Objectives are long term goals, slowly evolving to suit changing community values or to reflect the success of action programs. Specific policies tend to be shorter term, shifting with the political climate or self-imposed time limits. Implementation programs tend to have the shortest span because they must quickly respond to the demands of new funding sources, the results of their own activities, and the jurisdiction's immediate needs and problems.

Most jurisdictions select 15 to 20 years as the long-term horizon for the general plan. The horizon does not mark an end point, but provides a general context in which to make shorter term decisions. The local jurisdiction may choose a time horizon that serves its particular needs. Remember that planning is a continuous process; the general plan should be reviewed regularly, regardless of its horizon, and revised as new information becomes available and as community needs and values change. For instance, new population projections which indicate that housing will be needed at a greater clip than anticipated, an unexpected major development in a neighboring jurisdiction that greatly increased traffic congestion, or a ballot initiative that establishes an urban growth boundary may all trigger the need to revise the general plan. A general plan based upon outdated information and projections is not a sound basis for day-to-day decision making and may be legally inadequate. It will be more susceptible to successful legal challenge.

THE GENERAL PLAN: DEFINING ITS PARTS

The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. (§65302)

A general plan is made up of a text containing objectives, principles, standards, and plan proposals, as well as a set of maps and diagrams. Together, these constituent parts paint a picture of the community's future development. The following discussions help to clarify the meanings of these terms.

Development Policy

A development policy is a general plan statement that guides action. In a broad sense, development poli-

cies include objectives, principles, policies, plan proposals and standards.

Diagram

A diagram is a graphic expression of a general plan's development policies, particularly its plan proposals. Many types of development policies lend themselves well to graphic treatment, such as the distribution of land uses, urban design, infrastructure, and geologic and other natural hazards.

A diagram must be consistent with the general plan text (§65300.5) and should have the same long-term planning perspective as the rest of the general plan. The Attorney General observed that "...when the Legislature has used the term 'map,' it has required preciseness, exact location, and detailed boundaries...." as in the case of the Subdivision Map Act. No such precision is required of a general plan diagram (67 Cal.Ops.Atty.Gen. 75,77).

As a general rule, a diagram(s), along with the general plan's text, should be detailed enough so that the users of the plan, whether staff, elected and appointed officials, and the public, can reach the same general conclusion on the appropriate use of any parcel of land at a particular phase of a city's or county's physical development. Decision makers should also be able to use a general plan, including its diagram(s), in coordinating day-to-day land use and infrastructure decisions with the city's or county's future physical development scheme.

At the same time, given the long-term nature of a general plan, its diagram or diagrams and text should be general enough to allow a degree of flexibility in decision making as times change. For example, a general plan may recognize the need for and desirability of a community park in a proposed residential area, but the precise location of the park may not be known when the plan is adopted. The plan would not need to pinpoint the location, but it should have a generalized diagram designation along with policies saying the park site will be selected and appropriate zoning applied at the time the area is subdivided. In this sense, while zoning must be consistent with a general plan, the plan's diagram or diagrams and the zoning map are not required to be identical.

Objective

An objective is a general direction-setter. It is a future goal or end related to the public health, safety or general welfare toward which planning and planning implementation measures are directed. An objective is a general expression of community values and, therefore, may be abstract in nature. Consequently, an objective may or may not be quantifiable or time-dependent.

Examples of Objectives:

- Quiet residential streets.
- A diversified economic base for the city.
- An aesthetically pleasing community.
- A safe community.

Objectives, by definition, should be expressed as ends and not as actions. For instance, the first example above expresses an end, namely, "quiet residential streets." It does not say, "Establish quiet residential streets" or "To establish quiet residential streets."

Principle

An assumption, fundamental rule or doctrine guiding general plan policies, proposals, standards and implementation measures. Principles are based on community values, generally accepted planning doctrine, current technology and the general plan's objectives. In practice, principles underlie the process of developing the plan but seldom need to be explicitly stated in the plan itself.

Examples of Principles:

- Mixed use encourages urban vitality.
- The residential neighborhoods within a city are to be within a convenient and safe walking distance of an elementary school.
- Parks provide recreational and aesthetic benefits.
- Risks from natural hazards will be identified and avoided to the extent practicable.

Policy

A policy is a specific statement that guides decision making. It indicates a commitment of the local legislative body to a particular course of action. A policy is based on and helps implement a general plan's objectives.

A policy is effectuated by implementation measures. For a policy to be useful as a guide to action it must be clear and unambiguous. Adopting broadly drawn and vague policies is poor practice. Clear policies are particularly important when it comes to judging whether or not zoning decisions, subdivisions, public works projects, etc., are consistent with the general plan.

When writing policies, be aware of the difference between "shall" and "should." "Shall" indicates an unequivocal directive. "Should" signifies a less rigid direc-

tive, to be honored in the absence of compelling or contravening considerations. Use of the word "should" to give the impression of more commitment than actually intended is a common, but unacceptable practice. It is better to adopt no policy than to adopt a policy with no backbone.

Solid policy is based on solid information. The analysis of data collected during the planning process provides local officials with a knowledge of trends, existing conditions and projections they need to formulate policy. If projected community conditions are not in line with a general plan's objectives, local legislative bodies may adopt policies that will help bring about a more desirable future.

Examples of Policies:

- The city shall not approve a parking ordinance variance unless the variance pertains to the rebuilding of an unintentionally destroyed non-conforming use.
- The city shall not approve plans for the downtown shopping center until an independently conducted market study indicates that the center would be economically feasible.
- The city shall give favorable consideration to conditional use permit proposals involving adaptive reuse of buildings that are designated as "architecturally significant" by the Cultural Resources Element.

Standards

A rule or measure establishing a level of quality or quantity that must be complied with or satisfied. Standards define the abstract terms of objectives and policies with concrete specifications.

The Government Code makes various references to general plan standards. For example, §65302(a) states in part that the land use element must "...include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan." Other examples of statutory references to general plan standards include those found in Government Code §66477 (the Quimby Act) and §66479 (reservations of land within subdivisions). Of course, a local legislature may adopt any other general plan standards it deems desirable.

Examples of Standards:

- A minimally acceptable peak hour level of service for an arterial street is level of service C.
- The minimum acreage required for a regional shopping center is from 40 to 50 acres.
- High-density residential: 15 to 30 dwelling units per acre and up to 42 dwelling units per acre with a density bonus.
- The first floor of all new construction will be at least two feet above the base flood elevation.

Plan Proposal

A plan proposal describes the development intended to take place in an area. Plan proposals are often expressed on the general plan diagram.

Examples of Plan Proposals:

- First Street and Harbor Avenue are designated as arterials.
- The proposed downtown shopping center will be located within the area bound by D and G Avenues and Third and Fourth Streets.
- A new parking structure shall be located in the vicinities of each of the following downtown intersections: First Street and A Avenue, and Fifth Street and D Avenue.

Implementation Measure

An implementation measure is an action, procedure, program or technique that carries out general plan policy. Each policy must have at least one corresponding implementation measure.

Examples of Implementation Measures:

- The city shall use tax increment financing to pay the costs of replacing old sidewalks in the redevelopment area.
- The city shall adopt a specific plan for the industrial park.
- Areas designated by the land use element for agriculture shall be placed in the agricultural zone.

Additional Examples of Development Policy Statements

The following examples show the relationships among objectives, policies, and implementation measures. The examples are arranged according to a hierarchy from the general to the specific – from objectives to implementation measures. In an actual general plan, there might be more than one policy under each objective, more than one implementation measure under each policy, etc.

Objective:

No motor vehicle traffic congestion on city streets.

Policy:

The city shall install left-turn lanes at arterial intersec-

tions with peak hour levels of service worse than C.

Policy:

For arterial intersections with peak hour levels of service of D, E, or F, the city shall install left turn signals whenever left turn lanes alone will not bring about a peak hour level of service C.

Implementation Measure:

Left turn lane improvements and signals shall be funded by means of exactions imposed in conjunction with the city's approval of conditional use permits, building permits or tentative tract or parcel maps.

Objective:

A thriving downtown that is the center of the city's retail and service commercial activities.

Policy:

The city shall not approve discretionary projects or building permits that could impede development of the downtown regional shopping center.

Implementation Measure:

The city shall adopt an interim zoning ordinance restricting further development in the general vicinity of the proposed downtown shopping center until a study has been completed which determines its exact configuration.

During the interim zoning period the city shall adopt a special regional shopping center zoning classification that permits the development of the proposed downtown mall.

Upon completion of the study, the city council shall select a site for the downtown mall and shall apply the shopping center zone to the property.

Objective:

500 additional dwelling units for low income households by 2010.

Policy:

When a developer of housing within the high-density residential designation agrees to construct at least 30 percent of the total units of a housing development for low-income households, the city shall grant a 40 percent density bonus for the housing project.

Implementation Measure:

The city shall amend its zoning ordinance to allow for a 40 percent density bonus in the multiple-family residential zone.

COMMUNITY PLANS, AREA PLANS AND SPECIFIC PLANS

Area and community plans are part of the general plan. A specific plan, on the other hand, is a tool for implementing the general plan, but it is not part of the general plan. In the following paragraphs, we'll look briefly at each of these types of plans.

"Area plan" and "community plan" are terms for plans that focus on a particular region or community within the overall general plan area. An area or community plan is adopted as an amendment to the general plan in the manner set out in §65350, et.seq. It refines the policies of the general plan as they apply to a smaller geographic area and is implemented by ordinances and other discretionary actions, such as zoning. The area or community plan process also provides a forum for resolving local conflicts. They are commonly used in large cities and counties where there are a variety of distinct communities or regions.

As discussed earlier, an area or community plan must be internally consistent with the general plan of which it is a part. To facilitate such consistency, the general plan should provide a policy framework for the detailed treatment of specific issues in the various area or community plans. Ideally, to simplify implementation, the area or community plans and the general plan should share a uniform format for land use categories, terminology, and diagrams. When adopting an area or community plan, make sure that it does not conflict with any part of the general plan.

Each area or community plan need not address all of the issues required by §65302 when the overall general plan satisfies these requirements. For example, an area or community plan need not discuss fire safety if the jurisdiction-wide plan adequately addresses the subject, and the area or community plan is consistent with those policies and standards. Keep in mind that while an area or community plan may provide greater detail to policies within its boundaries, adopting one or a series of such plans does not substitute for regular updates to the general plan. Many of the mandatory general plan issues are most effectively addressed on a jurisdiction-wide basis that ties together the policies of the individual area or community plans.

A specific plan is a hybrid that can combine policy statements with development regulations (§65450, et seq.). It is often used to address the development requirements for a single project such as urban infill or a planned community. As a result, its emphasis is on concrete standards and development criteria. Its text and

diagrams will address the planning of necessary infrastructure and facilities as well as land uses and open-space. In addition, it will specify those programs and regulations necessary to finance infrastructure and public works projects. Compounding its versatility, a specific plan may be adopted either by resolution, like a general plan, or by ordinance, like zoning.

Specific plans must be consistent with all facets of the general plan, including the policy statements. In turn, zoning, subdivisions, and public works projects must be consistent with the specific plan (§65455). See Chapter 5 for more about specific plans. OPR's publication A Planner's Guide to Specific Plans is a good source.

ELEMENTS, ISSUES, AND FLEXIBILITY

In statute, the general plan is presented as a collection of seven "elements" or subject categories (see §65302). These elements and the issues embodied by each, are briefly summarized below. They are discussed in detail in Chapter 3.

- **The land use element** designates the type, intensity, and general distribution of uses of the land for housing, business, industry, open-space, education, public buildings and grounds, waste disposal facilities, and other categories of public and private uses.
- **The circulation element** is correlated with the land use element and identifies the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities.
- **The housing element** is a comprehensive assessment of current and projected housing needs for all segments of the jurisdiction and all economic groups. In addition, it embodies policies for providing adequate housing and includes action programs for that purpose. By statute, the housing element must be updated every five years.
- **The conservation element** addresses the conservation, development, and use of natural resources including water, forests, soils, rivers, and mineral deposits.
- **The 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.
- **The noise element** identifies and appraises noise problems within the community and forms the basis for land use distribution.
- **The safety element** establishes policies and programs to protect the community from risks associated with seismic, geologic, flood, and wildfire hazards.

The level of discussion given to each issue in the local plan depends upon local conditions and the relative local importance of that issue. When a city or county determines that an issue specified in the law is not locally relevant, the general plan may briefly discuss the reason for that decision, but does not otherwise have to address that issue (§65301).

A local general plan may also include other topics of local interest. For instance, a city or county may choose to incorporate into its land use element a detailed program for financing infrastructure and timing capital improvements. The safety element of a city or county that suffers from wildfire hazards may contain strategic fire protection planning policies to mitigate such hazards.

In the statutory descriptions of the elements, a number of issues, such as floodplain management and open-space conservation, appear in more than one element. In order to minimize redundancies in the general plan, combining elements or organizing the plan by issue often makes practical sense. For example, conservation, open-space, and safety might be combined into an environmental resource management element. The authority to do so is provided in §65301, which allows a general plan to take any format. OPR's publication, *Element Consolidation* offers some ideas along this line.

There are a number of special requirements, such as the Surface Mining and Reclamation Act, Seismic Hazards Mapping Act, and other state and federal laws such as the Endangered Species Act, which can affect the content of the general plan. Communities whose other legislation is relevant may wish to address pertinent issues, such as mineral recovery, endangered species, and wetlands. These are discussed in detail in Chapter 6.

In addition to the statutory elements, a city or county may adopt any other elements which relate to its physical development (§65303). Once adopted, these **optional elements** become an integral part of the general plan with the same force and effect as the statutory elements. Accordingly, zoning, subdivisions, public works, specific plans and other actions which must be consistent with the general plan must be consistent with its optional elements.

Common themes for optional elements include recreation and parks, air quality, capital improvements, community design, and economic development. Suggestions for preparing several of the more common

optional elements are provided in Chapter 7.

An optional element may clarify how a local government exercises its police powers, and in some instances, can expand a local government's authority. For example, the California Energy Commission may delegate geothermal power plant licensing authority to counties with certified geothermal elements (See Appendix B for guidelines). In the more typical situation, an optional element will indicate how a local government will apply its existing police power or other authority. For example, a historic preservation element may lay the foundation for historic district regulations or participation in the California Main Street Program. A strategic fire prevention planning element could identify wildfire hazard areas, control new development within those areas, and provide the basis for zoning, subdivision, and brush clearance ordinances intended to minimize fire hazards.

ADOPTION OF ANOTHER JURISDICTION'S GENERAL PLAN AND JOINT ADOPTION

A city or county may adopt all or a portion of the general plan of another public agency (§65301(a)). Additionally, §65302(g) specifically provides that a city may adopt the county's safety element if the county's element "is sufficiently detailed containing appropriate policies and programs for adoption by a city." One of the benefits of this approach is that it eliminates duplication of effort in collecting data for the more technical elements.

A city and county may jointly prepare and separately adopt a general plan or individual elements. A city or county may adopt a functional plan such as a regional transportation plan prepared by a special district, regional planning agency, or some other public agency.

Although joint adoption of another jurisdiction's plan or elements may be advantageous, a city or county remains solely responsible for the legal adequacy of its general plan. The other jurisdiction's plan/elements or the jointly prepared plan/elements must be sufficiently detailed to address the concerns of the adopting agency and to provide adequate coverage of the issues required in the Government Code. A plan or element which is jointly prepared or adopted from another jurisdiction's general plan has the same legal standing as the rest of the adopting agency's general plan and internal consistency requirements continue to apply. Similarly, discretionary zoning, subdivision, and capitol improvement project decisions must be consistent with the joint plan or element.

Although options exist for the adoption of another jurisdiction's general plan and joint adoption between multiple agencies, each adopting agency must retain its sole and independent authority to make amendments to its general plan unless a joint powers agreement has been approved. In *Alameda County Land Use Association v. City of Hayward* (1995) 38 Cal.App.4th 1716, the appellate court overturned a memorandum of understanding (MOU) adopted by Alameda County and the cities of Hayward and Pleasanton to specify general plan goals and policies regarding the "Ridgelands Area." The MOU provided that any amendment to the applicable sections by one jurisdiction would not be effective unless "parallel amendments" were approved by the other two. The court held this arrangement to be an impermissible divestment of the police power, restricting the individual agencies' legislative authority to amend their general plans.

CHAPTER 2

Preparing and Amending a General Plan

All statutory references are to the California Government Code unless otherwise noted

INTRODUCTION

A LOCAL GOVERNMENT often faces one or more of the following tasks: (1) amending its general plan; (2) preparing or revising one or more elements; (3) completely revising its general plan; or, (4) in the case of a newly incorporated city, preparing an entire general plan for the first time. In this chapter, we will primarily focus on publicly-initiated general plan amendments—those described by items (2), (3) and (4) above. The most common sort of amendment, that initiated for a specific private development project, usually affects a limited area and does not require the type of detailed consideration afforded publicly-initiated changes. However, privately-initiated amendments are discussed briefly at the end of the chapter.

Section I describes the development of a general plan work program. Beginning with Section II, this chapter outlines a strategic approach to the process of preparing or revising a general plan. This is a suggested approach and is not mandatory. Simply put, Section II asks "where are we now?," Section III asks "where do we want to go?," and Section IV asks "how will we get there?" These are not necessarily discrete, sequential steps, but rather parts of the process. They may occur in different order as circumstances dictate.

I. THE WORK PROGRAM

Developing the work program should be one of the first tasks after deciding to prepare or amend a general plan. The program should define the responsibilities of each department and/or individual, the scope and direction in the work to be performed, the funding mechanisms, consultants, public participation, and budget. Here are some things to consider when putting together a general plan work program.

Early Policy Guidance

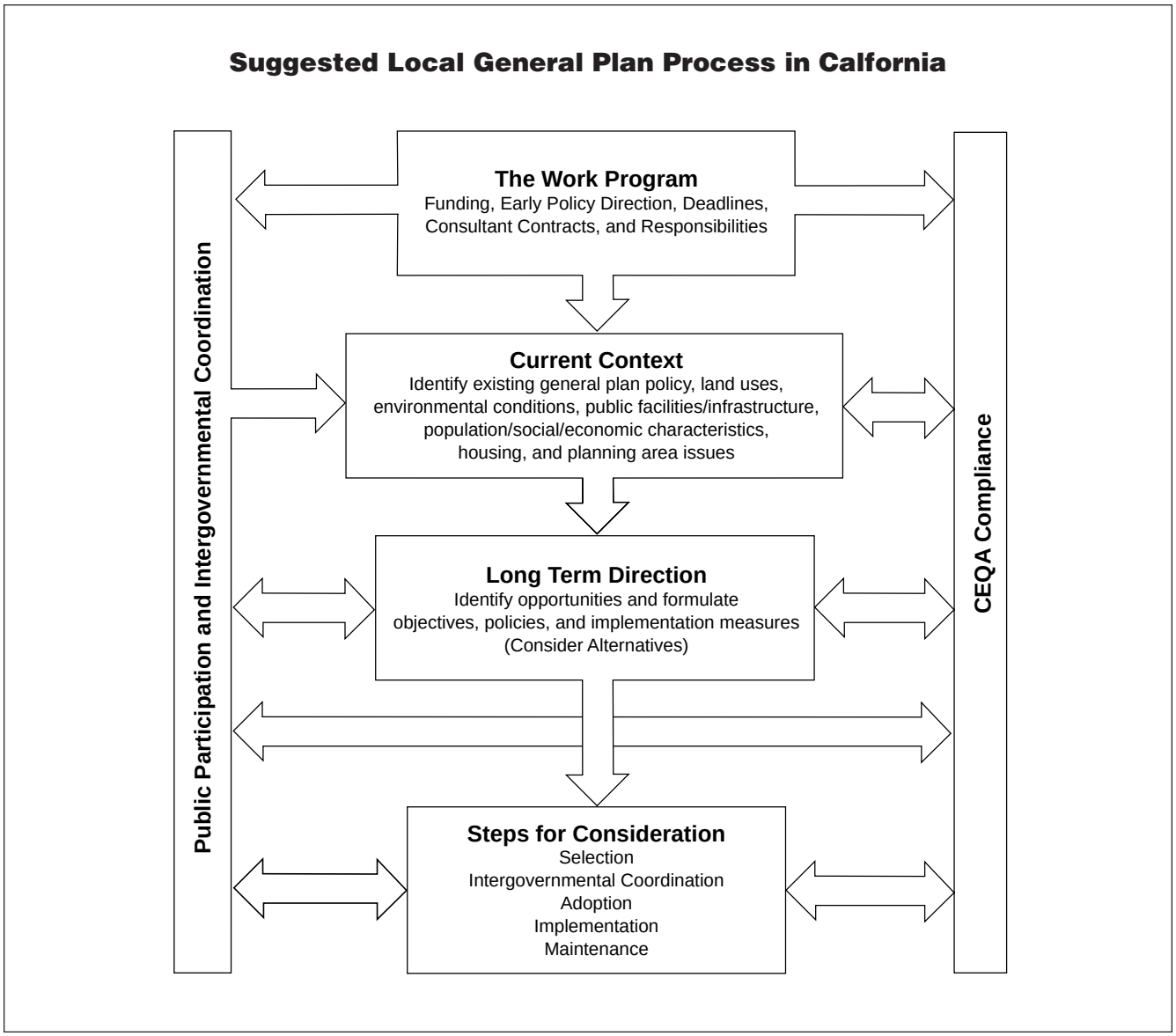
Receiving early policy direction from the legislative body is important to defining the program's scope of the work. The guidance may be as simple as a single purpose statement or as complex as a set of visions of how the planning area should be developed or how various population growth issues and public facility demands will be resolved.

Consultants

Due to the complexity of issues and demands upon local agency planning staff, most new general plans or comprehensive revisions are contracted to consultants. A consultant team may be hired to do the lion's share of drafting the general plan. Or, individual consultants may be hired to supplement planning staff in specific areas such as transportation, noise, biology, geology, environmental review, and public participation.

The decision whether to hire a consultant will depend upon considerations such as the scope of the work to be completed, the amount of staff time necessary for management and/or agency preparation, and the cost to the local agency in staff hours and/or consultant contracts. Talking to other jurisdictions that have recently gone through the process can offer insight into the role that consultants played and provide ideas for oversight and quality control. The American Planning Association's advisory *Selecting and Retaining a Planning Consultant* (1993) is a useful reference book.

The first step in selecting a consultant should be to send to prospective candidate firms a request for qualifications (RFQ) and a description of the consultants' expected role. The RFQ will help narrow the search for qualified consultants. After evaluating the responses, the agency should send a request for proposal (RFP) to the three to five firms which seem to be the best match. Responding to an RFP is costly for consultants, so RFPs should only be sent to those firms which the agency would consider hiring. The firms with the top responses to the RFP can be interviewed to select the firm best suited to the agency's needs, work program, and budget.



Adoption Deadlines

A commonly asked question is: Is there a statutory deadline for completing the new plan or plan update? In most cases, the answer is no. With the following exceptions, the jurisdiction can set its own deadline.

A newly incorporated city has 30 months after incorporation to prepare and adopt a complete general plan (§65360). During that time, it is not subject to the requirements that a general plan be adopted or that its decisions be consistent with the general plan. However, the jurisdiction must make the following findings for each decision that would otherwise be required to be consistent with the general plan (§65360(b)):

- There is a reasonable probability that the land use or action proposed will be consistent with the general plan proposal being considered or studied or which will be studied within a reasonable time.
- There is little or no probability of substantial detriment to or interference with the future adopted general plan if the proposed use or action is ultimately inconsistent with the plan.
- The proposed use or action complies with all other applicable requirements of state law and local ordinances.

Each city and county is required by law to revise its housing element at least every five years (§ 65588). The statutory deadlines for the next two revisions are as follows:

- Local governments within the regional jurisdiction of the Southern California Association of Governments: June 30, 2000 and June 30, 2005.
- The San Diego Association of Governments: June 30,

Examples Of Public Participation Techniques

Surveys:
- Opinion polls
- Direct, mass mailings with response coupons
- Mailings with local utility bills

Committees:
- Task forces
- Planning advisory committees
- Technical review committees

Meetings:
- Public hearings
- Town-hall meetings
- Neighborhood and community meetings
- Panel discussions
- Workshops and design "charrettes"

Media:
- Press releases
- Public meeting newsletters
- Topical newspaper articles
- Public service announcements
- Interviews and talk shows
- Presentations to community groups
- Newspaper supplements
- Informational displays in places of assembly

1999 and June 30, 2004.

- Local governments within the jurisdiction of the Association of Bay Area Governments: June 30, 2001 and June 30, 2006.
- Local governments within the jurisdiction of Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: June 30, 2002 and June 30, 2007.
- All other local governments: June 30, 2003 and June 30, 2008.

In order to help keep the planning process on track, the work program should establish realistic milestones for completion of its various stages (i.e., data gathering, workshops, draft plan completion, draft EIR completion, etc.). The work program should also set a projected completion date for the new plan or update. Most jurisdictions find that approximately two years is sufficient time to complete a new plan .

Environmental Review

Environmental review is fundamental to the planning process, so undertaking a concurrent CEQA document is usually more efficient than waiting until the plan is ready for adoption to begin the EIR. The work program should schedule sufficient time for the consultation and review periods mandated under CEQA. In addition, the program should block out sufficient time to respond to comments on the EIR. Chapter 4 discusses CEQA's requirements in detail.

Public Participation

Public participation plays an important role in formulating a general plan and opportunities for participation should be reflected in the work program. State law specifies that "[d]uring the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate" (§65351). When drafting the housing element, the law requires local governments to "make a diligent effort to achieve public participation of all economic segments of the community." (§65583) The Brown Act (§54950 et seq.) requires the meetings of appointed advisory committees, the planning commission, and the local legislative body to be open to the public (See *Open and Public: A User's Guide to The Ralph M. Brown Act*; in the Bibliography), so sufficient resources should be committed to these meetings.

A well-designed public participation program should do the following:

- Inform the public of the ongoing general plan preparation or update.
- Obtain public input regarding major issues, community objectives, and plan policies.
- Provide the public with opportunities to evaluate alternative plans and to participate in choosing the preferred alternative.
- Inform decision makers of public opinion.
- Work towards community consensus.

Keep in mind while drafting the work program that the schedule of meetings, workshops, and publications can be used to maintain public interest in the planning process. The work program should also provide other agencies and the public opportunities to comment on the draft environmental document (see Chapter 4). Adequate budget should be reserved for handouts, publications, public hall rental, and public notice as may be necessitated by the work program.

Advisory Committee

Prior to preparing its work program, the jurisdiction should decide whether it will form one or more advisory committees (besides the planning commission) to assist in drafting the general plan or plan update. There is no legal requirement that such groups be formed, however some cities and counties have found them useful to help identify issues, as well as to encourage public participation. The work program should map out the time that will be set aside for committee meetings and workshops. Employing an advisory committee usually adds substantial time to the overall work program.

Establishing an organizational framework for the committee and clearly defining its responsibilities is crucial to its effectiveness. A committee may be created in a number of ways, including appointment by elected officials or recruitment of volunteers. When selecting or recruiting committee members, individuals should be included from different income and employment groups, from different residential areas within the community, environmental proponents, business proponents and a range of other groups and interests identified or which request representation.

Problems may arise when committee members do not understand that their role is solely advisory and that their recommendations are subject to change by the planning commission and city council or board of supervisors. To help avoid these problems, provide the members a comprehensive orientation covering the requirements of planning law, meeting etiquette and requirements, and a description of both their role in the process and the legislative body's expectations and guidance. Each member should also receive a thorough description of the limitations of the committee's responsibilities.

Steering Committee

Appointing a steering committee made up of a small number of elected officials, planning commission members, and members of the public is another common approach. The steering committee primarily guides the development of objectives and policies. Actual drafting of the general plan is left to the staff, planning consultants, and the planning commission, under the periodic oversight of the steering committee. As with any appointed body, the meetings and workshops of the committee are subject to the Open Meeting Act (§54950 et seq), requiring public notice. Two advantages of establishing a steering committee rather than a planning advisory committee are that the steering committee is not duplicating the work of the planning commission and it keeps elected officials involved in the progress on the general plan. Holding to the old adage that "too many cooks spoil the broth," OPR does not recommend establishing both a steering committee and a planning advisory committee.

II. CURRENT CONTEXT

Where Are We Now?

The first step in a strategic approach to planning is to examine existing physical conditions, regulatory requirements, and plans (including plans of other agencies). Identify important local and regional issues that should be addressed in the general plan, as well as existing constraints and opportunities. These form the context within which the general plan will be prepared or updated.

Whether the jurisdiction is a city or county, rural or urban, mature or growing will color its analysis and define those issues which are of greatest importance. As discussed later, the general plan should focus on those issues that are relevant to the planning area.

Traditionally, counties have been concerned with the management of natural resources. Counties also have an important role in coordinating the plans and programs of cities and special districts and in directing urban development to areas with available services. The county plan should also provide information for city planning through studies of areawide concerns such as population and economic trends, seismic hazards, agricultural lands, natural resources, and environmental conditions. Cities control land use, provide urban services, and promote more localized community interests. Cities should operate within the context of the region, the county, and neighboring cities.

Differences also exist between rural and urban jurisdictions. The economies of rural jurisdictions generally rest on the use and development of natural resources, while the economies of urban jurisdictions normally revolve around industry, commerce, and services. Rural jurisdictions deal extensively with the federal government on matters relating to federal lands, while urban jurisdictions tend to work closely with regional planning agencies, particularly concerning air and water quality programs.

The following discussion suggests some areas to look at when analyzing the existing planning context.

Collecting Data

The general plan must be based on solid data if it is to serve as the primary source of community planning

policy. Identifying the issues, constraints, and opportunities, including a community vision, helps to set the direction for studies and establishes the range of information and the level of detail that will be needed to complete the plan. Collecting and analyzing data can be expensive and the capacity of any government agency to process and use information is limited. Jurisdictions must consider their general objectives and use their best judgment when determining the types and amount of information they need for policy making.

Background information for all of the elements should be referenced, or summarized in the general plan. Technical appendices are a good place in the adopted general plan for this information. Placing background information in an appendix enables users of the plan to more easily find the plan's policies when they need them.

Information collection and analysis is important throughout the planning process. For example, additional information regarding the state of the community may be needed during the fine tuning of draft policies by the city council.

After the plan has been adopted, evaluating its implementation and making course corrections relies upon the local agency's ability to continue collecting and analyzing information. The general plan is a long-term document. It must be regularly refreshed by new data, as available, in order that its long-term outlook does not become outdated. This ongoing renewal is particularly important where a Master EIR is certified for the plan as described in Chapter 4.

Existing Land Uses

When preparing or revising a general plan, planners need an accurate picture of the existing land uses in the planning area. There are a number of sources of land use information.

- Subdivision maps and assessor's maps provide information on existing lot sizes and land uses, an indicator of land use intensity.
- Field surveys are useful both for identifying generalized land use distributions and to catalog uses parcel-by-parcel.
- Low altitude aerial photography provides an overhead view that can be translated to land use categories.
- High altitude photography and satellite imagery can identify land uses at a broader scale. Satellite imagery, including LANDSAT and infrared photos, is available from the U.S. Geologic Service's National Cartographic Information Center in Menlo Park.

The California Department of Conservation's "Important Farmland Series" maps identify existing farmland in various areas of the state. Its oil and gas maps identify oil, gas, and geothermal fields and well locations, and its seismic and geologic hazard maps identify those hazard zones. These maps provide information useful for assessing and planning agricultural resources (web address: www.consrv.ca.gov/). The California Department of Water Resources maintains land use maps and aerial photos that can be of use to local planning agencies (http://www.dwr.water.ca.gov/).

The U.S. Geological Survey's (USGS) Land Use and Land Cover Classification System employs 1:250,000 and 1:100,000 scale base maps providing information on urban or developed land, agricultural land, rangeland, forests, water, and wetlands. The information is available on the Internet at http://edcwww.cr.usgs.gov/doc/edchome.ndcdb/ndcdb.html.

For organizing land uses in a standardized format, particularly if you will be revamping your zoning ordinance at the same time as your general plan, you may want to use the North American Industry Classification System (NAICS) to group residential, commercial, industrial, and many other land uses by category. The NAICS was developed by the US Census Bureau and its counterparts in Canada and Mexico to provide a common framework for collecting economic statistics within NAFTA. It replaces the Standard Industrial Classification system. To order the NAICS manual, contact the National Technical Information Service at 1-800-553-6847.

Planning Ideas

An important aspect of preparing a plan is incorporating new ideas. Throughout California, communities are adopting new general plans, plan elements and revising existing plans. Other jurisdictions of similar size to your own may have useful ideas on how to approach local issues. The Office of Planning and Research's *Book of Lists* can help to locate recently adopted elements. In addition, the yearly awards presented by the California Chapter of the American Planning Association recognize examples of "good" plans.

There are many current books on planning approaches, as well as technical subjects. The American Planning Association's Planner's Book Service and the Urban Land Institute sell books on subjects ranging from economic analysis to urban design. See the Bibliography for titles.

Recent court cases may provide insights that affect the general plan. Publications that track and analyze

Information from Other Governmental Agencies

Local

Public Works Department: roads, drainage, water supply, capital improvements, liquid and solid waste disposal, traffic counts

Fire Department: fire hazard assessment, fire flows, hazardous materials, emergency response

Building Department: water quality, septic tank usage, housing conditions

Assessor's Office: base maps, assessed valuation data

Police/Sheriff's Office: crime statistics, automobile accident rates, emergency response

Parks Department: park use, projected park needs, park design

Health Department: water quality standards, septic system percolation standards, environmental health hazards

Regional

Adjoining cities and counties: general plans, special studies, infrastructure

Council of Governments: transportation models and projections, population projections, housing need allocations, special studies

Local Agency Formation Commission: spheres of influence

Air Quality Management or Air Pollution Control District: air quality plans, air quality monitoring

Regional Transportation Planning Agency: road funding sources, traffic and transportation models, traffic projections, trip reduction ordinances, regional transportation improvement lists, congestion management plans, and transit statistics

School District: enrollment data, school facilities projections, population information

Special District: infrastructure, service consumption rates, demand projections, planned expansions of services, service limits

Regional Water Quality Control Board: wastewater management, waste discharge, surface and groundwater aquifer protection

State

Air Resources Board: air quality studies, data, and guidelines

California Coastal Commission: local coastal program

Trade and Commerce Agency: economic conditions, economic development, California Main Street

California Energy Commission: power plant and transmission line siting, energy conservation, environmental impacts and mitigation

California Highway Patrol: traffic accident statistics, hazardous materials transport

Department of Conservation: geologic and seismic hazards (Division of Mines and Geology), important farmlands maps (Farmland Mapping and Monitoring Program), Williamson Act, recycling (Div. of Recycling) oil, gas and geothermal well locations and conditions along with location of those natural resources

Office of Emergency Services: emergency response planning, dam failure inundation maps, earthquake preparedness, hazard mitigation grant program

Department of Employment Development: labor force statistics, employment statistics

Department of Finance: census information, population estimates and projections and special censuses, school enrollment projections (Demographic Research and Census Data Center)

Department of Fish and Game: game and non-game species, including threatened and endangered plants and animals, habitat, riparian areas, wetlands, and other wildlife topics (Natural Diversity Database)

Department of Forestry and Fire Protection: wildfire hazard assessment and control, regional soil and vegetation maps, watershed and resource management

Department of General Services: state buildings inventory

Department of Health Services: water system licensing, wastewater reclamation, hazardous materials, noise element and noise insulation assistance

Department of Housing and Community Development: housing element assistance, mobilehomes, mobilehome parks, low-moderate income housing, density bonuses, CDBGs, housing related issues

Integrated Waste Management Board: solid waste disposal and reduction

Mining and Geology Board: important mineral resources, Surface Mining and Reclamation Act (SMARA)

Department of Parks and Recreation: historic preservation, park use statistics, archeological resources, state parks

Information From Other Government Agencies continued

State Lands Commission: state lands inventory, navigable waters and tidelands

Department of Transportation: traffic counts and projections, transportation system design and management, road funding sources, freeway noise mitigation programs, freeway noise information, scenic highways, district system management plans, the Interregional Road System Plan, transportation corridor preservation plans, and the California Aviation System Plan

Cal-EPA: air and water quality, toxic and hazardous materials (Department of Toxic Substances Control)

Department of Water Resources: floodplains and floodplain management, urban and agricultural land use data, state water plan

Water Resources Control Board: water quality regulations

Federal

Army Corps of Engineers (Department of Defense): flood control, floodplain management, special flood studies, wetlands regulations

Bureau of Land Management: federal land inventory, resource information

Bureau of Reclamation: flood control and management, water projects

Environmental Protection Agency (EPA): grants and permits affecting air, water, solid waste, toxic and hazardous materials, wetlands, endangered species

Federal Emergency Management Agency (FEMA): flood hazard mapping, flood insurance rate maps

Fish and Wildlife Service: wetland survey, endangered species

Forest Service: biota and resource information, land inventory, National Forest Plans

Natural Resources Conservation Service: soils maps, soils and erosion control information

Park Service: biota and resource information, National Park plans

US Geological Survey: maps, remote sensing data, special studies and monographs (the National Cartographic Information Center has maps from numerous federal agencies)

planning-related litigation include:

- *Curtin's California Land-use and Planning Law* by Daniel J. Curtin, Jr. examines the California planning codes in the context of applicable court cases.
- *Longtin's California Land Use Regulations* by James Longtin is a detailed look at California's development codes and related litigation
- *California Zoning Practice*, published by the California Continuing Education of the Bar, is similar to the latter two books.

Information about planning, including cutting edge theory, is also available on the internet. Two notable sites of those cited in the Bibliography are:

- The Land Use Planning and Information Network (LUPIN) (http://ceres.ca.gov/planning/) website contains links to resource information, county general plans, and other useful tools.
- Cyburbia (http://www.arch.buffalo.edu), the internet site maintained by the State University of New York at Buffalo, is a treasure house of information about planning and links to hundreds of other sites.

Reviewing State planning and development laws is also beneficial. Each year, the Legislature enacts laws affecting local government planning activities. The Office of Planning and Research annually compiles these statutes under the title of *Planning, Zoning and Development Laws*, available on LUPIN.

The Natural Environment

Examining the jurisdiction's existing environment is a classic early step in preparing or revising a general plan. Information about environmental hazards such as wildland fires, floods and landslides; resources, such as mineral deposits; and natural phenomena, such as deer migration routes or critical habitats, can help determine the relative suitability of lands for development. Data gathered during this stage, whether in written or map form, will be useful during the concurrent preparation of the general plan's EIR. For future use, this data can be organized into a Master Environmental Assessment (MEA) inventorying the physical and biological characteristics of the planning area. Chapter 4 contains a detailed discussion of the MEA.

EIRs prepared for past projects are another source of environmental and resource data. Although this information is usually pertinent to a relatively small site, when taken together the EIRs can provide valuable resource and environmental data that is applicable jurisdiction-wide.

Regional, state, and federal agencies have topical information about environmental conditions. Regional air quality agencies have information on air quality trends, growth assumptions, meteorology, and land use/transportation control measures. Councils of government often have special studies and plans that discuss regional environmental attributes. The Association of Bay Area Governments, for example, has extensive information on seismic hazards available online (www.abag.ca.gov).

The State Geologist's Office has maps of earthquake faults and other seismic hazards useful to developing the safety element. The Department of Water Resources has flood hazard maps. The California Department of Fish and Game has compiled the Natural Diversity Data Base (NDDB - Rarefind Program) providing information concerning local rare, threatened, or sensitive species of plants, animals and natural communities (http://www.dfg.ca.gov/Nddb/nddb.html). The California Department of Forestry and Fire Protection has wildland fire hazard severity maps (http://frap.cdf.ca.gov/assessment/index.html) and the Office of Emergency Services has maps showing the potential for inundation from dam failure (http://www.oes.ca.gov).

The U.S. Fish and Wildlife Service has published a comprehensive set of maps inventorying wetlands throughout the state (http://www.nwi.fws.gov). The U.S. Natural Resources Conservation Service, has compiled detailed information on soil types and erosion control methods. More sources of information are cited in Chapter 4.

Infrastructure Capacity

One determinant of the amount and location of future development is the capacity of the physical "infrastructure" (i.e., capital facilities such as schools, fire stations, roads, sewer trunk lines, drainage systems, water and gas transmission lines, and other utilities). The current and projected capacities of these systems should be evaluated and compared to current levels of use, the levels projected by the existing plan, and the levels projected by the draft plan alternatives. The resulting analysis will help to identify available opportunities for development as well as potential constraints.

The location of infrastructure elements such as sewer and water trunk lines should be mapped as part of this study. Consult with affected public utilities and special districts, if any, for information on the location and capacity of their facilities. Contact local school districts for information regarding school capacities, projected needs, and surplus properties, if any.

Regional and state transportation, air quality, and water quality plans and regulations should also be reviewed. Will any of these plans affect the future operation and expansion of public and private facilities? Still another regional consideration involves the housing element. State law mandates that cities and counties recognize their share of their region's existing and projected housing needs (§65583(a)(1) and §65584).

The following basic questions should be answered:

- Is capacity sufficient to serve current planned demand?
- Are there any areas with acute shortages of service?
- Are there areas with excess capacity?
- Will additional infrastructure be necessary to accommodate future development?

This information will help decide where expansion will be needed and how soon, how infrastructure improvements and expansions will be funded, and estimate the cost of extending services for each of the plan alternatives. It will also inform decision makers about which of the general plan alternatives may be the most cost effective.

Existing Commitments and Policies

Your jurisdiction's past decisions—such as approval of a vesting tentative subdivision map, approval of development agreements, agricultural preserve boundaries or a commitment to provide certain services—influence future actions. Carefully review previous commitments to determine which are irreversible.

Also important are the plans and commitments of adjoining cities and counties, local school districts, and utilities, the COGs and other regional agencies, Caltrans and other state agencies, and federal agencies such as the Bureau of Land Management, US Forest Service, and others. Collect and review the plans of adjoining cities, counties and affected regional agencies. The information in these plans, as well as their objectives, policies and programs will be important when evaluating the regional context of the proposed general plan.

Those commitments which are irreversible will generally be among the "givens" that are included in the plan. These will be in the draft plan as a matter of course or carried over from the previous plan and probably will not be altered. Commitments must be consistent with the goals, objectives, and policies of the proposed general plan if they are to be included as part of that plan.

Current land use policies should be examined in similar fashion. If long-standing policies would be altered by the proposed plan, would this affect projects which have been previously approved and not com-

pleted? The general plan may provide a transition between new policies and those under projects which were previously considered.

Population and Social Characteristics

Identifying population trends is necessary to the development of realistic community goals. Population statistics are particularly important when preparing the land use, circulation, and housing elements. The California Department of Finance's Economic and Demographic Research Unit collects county-level information that is pertinent to local population projections. In addition to current information, a local government should analyze historic population trends documenting

State and Federal Agency Internet Sites

The Internet is an ever expanding source of information for planners. Following are the June 1998 internet addresses for many state and federal agencies. Most of these are home pages which link to several divisions within a given agency. Later in Chapters 3 and 6 we cite a number of topic-specific websites maintained by state and federal agencies.

California Agencies and Departments

Air Resources Board: www.arb.ca.gov
Coastal Commission: www.ceres.ca.gov/coastalcomm/web/
Conservation Department: www.consrv.ca.gov/
- Mining and Geology issues: www.consrv.ca.gov/smmm/index.htm
- Important Farmlands: www.consrv.ca.gov/dlrp/index.htm
- Oil and Gas: www.consrv.ca.gov/dog/index.htm
- Seismic issues: www.consrv.ca.gov/dmg/eq-index.htm

Employment Development Department: www.calmis.cahwnet.gov/
Energy Commission: www.energy.ca.gov/
Cal-EPA: www.calepa.ca.gov
Finance Department (Demographic Research): www.dof.ca.gov/html/Demograp/druhpar.htm
Fish and Game Department (DFG): www.dfg.ca.gov/
Forestry and Fire Protection Department (CDF): www.dfg.ca.gov/
General Services Department: oreds.ca.gov/
Health Services (DOHS): dhs.cahwnet.gov/org/ps/ddwem/ddwemindex.htm
Housing and Community Development Department (HCD): housing.hcd.ca.gov/
Integrated Waste Management Board: www.ciwmb.ca.gov/local.htm
Office of Emergency Services (OES): www.oes.ca.gov/
Office of Planning and Research: www.opr.ca.gov
Resources Agency –
- CERES: ceres.ca.gov/
- LUPIN: ceres.ca.gov/planning/

State Lands Commission: www.slc.ca.gov/
Toxic Substances Control (DTSC): www.calepa.ca.gov/dtsc/dtsc.htm
Trade and Commerce Agency: commerce.ca.gov/index.html
Transportation Department (Caltrans): www.dot.ca.gov/inworks.htm
Water Resources Department (DWR): www.dpla.water.ca.gov/cgi-bin/index

Federal Agencies and Departments

Army Corps of Engineers: www.usace.army.mil/whatwedo/statelocal/
Bureau of Land Management: www.blm.gov
Bureau of Reclamation (BOR): www.usbr.gov/main
Environmental Protection Agency (EPA Region IX): www.epa.gov/region9
Federal Aviation Administration (FAA): www.faa.gov
Federal Emergency Management Agency: www.fema.gov
Fish and Wildlife Service: www.fws.gov/r9endspp/endspp.html
Forest Service (USFS): www.fs.fed.us/links/topics.html
Housing and Urban Development (HUD): www.hud.gov
National Marine Fisheries Service: kingfish.ssp.nmfs.gov/tmcintyr/prot_res.html
National Park Service: www.aqd.nps.gov/
Natural Resources Conservation Service: www.nrcs.usda.gov/
U.S. Geological Survey (USGS): usgs.gov/usgs-on-web.html
- Western Region: walrus.wr.usgs.gov/docs/wrinfo.html

changes in total population composition (e.g., age structure and ethnic composition).

Before working on the development or revision of local population projections, local agencies should also contact the council of governments (COG) for their region. COGs frequently prepare population projections for regional traffic and housing studies.

Population projection requires making assumptions about demographic characteristics, housing, jobs, land use, environment, and infrastructure, based on current conditions and past trends. Some conditions and trends may be only temporary (such as sewer capacity shortage affecting housing starts), some trends depend on local policies (such as zoning), and some are not subject to local control (such as fertility rates). Projections help evaluate alternatives by quantifying the potential effects of the alternatives. Comparing current trends to projections relating to alternative plans is one method of analyzing alternative futures.

Projections change as assumptions change during the planning process and visa versa. Make sure that the basic assumptions that underlie population projections are realistic. For instance, if growth projections will exceed assumptions used in the Air Quality Management Plan (AQMP), the impact on regional air quality should be evaluated and additional measures may be desirable to maintain consistency with the AQMP.

Housing Stock and Needs

Under the housing element requirements (§65583), local governments must identify and analyze existing and projected housing needs and inventory the resources and constraints relevant to meeting those needs. The contents of the element must include the following:

- Population and employment trends, documentation of projections, and qualification of the existing and projected housing needs for all income levels. This needs analysis must include the locality's share of the regional housing need.
- Household characteristics, including level of housing costs compared to ability to pay, housing characteristics, including overcrowding, and housing stock conditions.
- Land suitable for residential development, including vacant sites and those with redevelopment potential; and the relationship of zoning and public facilities and services to these sites.
- Governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures.
- Non-governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.
- Special housing needs, such as those of the handicapped, elderly, large families, persons in need of emergency shelter, farmworkers, and families with female heads of households.
- Opportunities for energy conservation in residential development.

Projection of the city's or county's housing needs must, with certain exceptions, be consistent with the regional housing needs assessment prepared by the COG or the Department of Housing and Community Development (HCD) for the region within which the jurisdiction is located. Information and assistance in preparing the analyses and projections may be obtained from HCD or the COG. In large measure, the information and data evaluation methods used will be the same as those described in the preceding section.

Economic Conditions

Assessing economic trends is also important to preparing a realistic general plan. Jurisdictions may undertake one or more economic studies on such subjects as employment, market demand, and the benefit-cost ratio of development. The projections that result from these studies will form the basis for planning assumptions.

In a general plan program, local governments often undertake one or more formal economic studies. These may include studies of the local economy based on an input-output model or an economic base model, employment studies, market studies, and benefit-cost studies. The Bibliography contains several useful references.

The Federal Bureau of Economic Analysis and the Census Bureau collect national and state data. State information is also available from the Trade and Commerce Agency (Office of Economic Research), Employment Development Department, Department of Finance, and the State Board of Equalization. Data for small areas may be available from local special censuses or surveys.

III. ANALYSIS

Where are we Going?

With background information in hand, the jurisdiction can begin drafting objectives and policy. Formulating the general plan's objectives and policies demands care because they will become the jurisdiction's long-term guides to development. Analyzing opportunities and constraints, refining the issues identified previously, and making assumptions about future directions will begin the task of developing objectives, policies, and plan proposals.

Analysis

The planning staff must distill the mass of raw data that has been collected during the early stages of plan preparation into a usable form. The analysis of data serves as the bridge of logic from raw data to policy. The staff's methods and information base should be available for review by both the decision makers and the public. As part of the hearing process, it will be the task of the planning commission, the planning advisory body, and city council or board of supervisors to make further refinements to the preliminary work done by the staff.

At the conclusion of the analysis phase, the planning staff should have gathered not only enough information to complete the plan in accordance with the work schedule, but also to answer the pertinent questions of both the public and decision makers. Ideally, the planners will act as a central source of information about the community's history, environment, infrastructure, economy, and social characteristics.

Data collection, data analysis, and special studies should be coordinated with the needs of the CEQA document being written for the plan. In the interests of efficiency, data collection and analysis should be comprehensive enough to satisfy the needs of both the CEQA document and the general plan. For instance, the traffic analysis prepared for the land use and circulation elements must be complete enough to allow the evaluation of alternative plans, the final plan, and the project alternatives discussed in the general plan's final EIR.

Evaluating Issues

Issues define the general scope of the work planners must undertake and the course of action they must follow in the planning process. The full list of issues contained in §65302 and other statutes are not intended to apply in every jurisdiction. *Section 65301(c) provides that each state-mandated element need address only those issues that are relevant to the city's or county's planning area.* This is commonly referred to as the "shoe-fits" doctrine (from the old saying "If the shoe fits, wear it."). For example, an urbanized city need not discuss prime agricultural soils. Open-space issues in a rural county, where agricultural land and wildlife habitat are important, will be very different than those in an urbanized city which may have parks as their only open-space. The exception is the housing element, which must meet the specific requirements of §65580, et seq.

Several points should be kept in mind when evaluating issues:

- The elimination of a state-mandated issue from further consideration should be based on a reasonable assessment of the issue's relevance. For example, wildland fire hazard may be eliminated as irrelevant if the local government has examined the available information and consulted local and state fire agencies which are likely to have information and found no hazard to exist. When an issue is found to be irrelevant, the basis for this judgment may be briefly noted in the general plan.
- An issue which seems irrelevant in the short term, but which may be important in the long term, should be addressed in the general plan, even if only conceptually. This might include, for example, a major flood control system that is in a preliminary stage of planning.
- When new information becomes available indicating that a previously excluded issue is now relevant, the general plan must be revised to address the issue. The discovery of a previously unknown earthquake fault is an example. Another example is the increased potential fire hazard which follows growth in foothill and mountainous areas.

Assumptions

In preparing a general plan, a city or county will make certain assumptions about its future. For example, a jurisdiction with winter ski resorts might assume that tourism will continue to be important to its economy. Urbanized areas might assume continued population growth. Assumptions such as these will influence a local government's selection of its planning policies and its preferred general plan alternative.

To ensure that the assumptions list will be comprehensive and representative of the community, cities and counties should promote public participation in the enumeration process. Naturally, at this stage, the list will be preliminary. It may be refined at later stages as general plan background data is collected and analyzed.

Assumptions are essentially preliminary to the formulation of objectives, policies, and plan proposals. They need not be included in the final general plan, although they might be included in an appendix in order to document the basis for the plan.

Formulating Objectives and Policy

As noted in the definition of policy statements in Chapter 1, general plan objectives provide the direction for a community's physical development. These objectives help define the range and types of data necessary for preparing the plan. Consequently, cities and counties should draft their general plan objectives in the early stages of plan preparation once the issues, opportunities and assumptions have been determined.

State law mandates citizen involvement in general plan preparation "through public hearings and any other means the city or county deems appropriate" (§65351). The public should be involved in the formulation of objectives to help make sure that they reflect community values.

Developing objectives can be difficult. Objectives tend to be general and futuristic and their direct effects on individual citizens often are not readily apparent. Conversely, identifying objectives may also crystallize areas of disagreement. Nevertheless, a plan that is formulated without some type of community consensus may be headed for an early major revision. Ample publicity about the formulation process along with some specific examples of the potential effects of objectives may help stimulate public interest and allay concerns.

Even with good participation, problems may arise when:

- Objectives are not held in common by all community members.
- There are conflicts between the objectives of individuals and those of the community.
- There is disagreement about whether certain objectives are intermediate or ultimate in nature.
- There is disagreement about what ends the objectives serve.
- Objectives conflict with one another.
- There is disagreement about the relative value of objectives.
- Objectives are unrealistic or infeasible to attain, such as objectives that are contrary to law or beyond the jurisdiction's authority.

Here are some suggestions for working through issue-related conflicts:

- Establish the perimeter of concern for the issue. Decide the types of issues to be addressed by the general plan's objectives. This focuses discussion on a set of relevant issues.
- Establish a range of choice. Within the perimeter of concern the jurisdiction should select the major desirable objectives that have a chance of being realized.
- Consider the relationships between issues. Relationships will exist among the selected objectives. For example, some may be means to higher objectives. Others may be mutually exclusive. Directing effort toward certain objectives may draw resources from the work on others.
- Assign relative values to related issues. This evaluation can in part be carried out with the preceding step to eliminate unwanted or unnecessary objectives.
- Establish policy. At this point, the jurisdiction should be able to select a tentative set of objectives. These will guide subsequent work on the general plan and may be revised at later steps in the process.

Community Vision

A number of jurisdictions have begun their general plan process by defining a community vision of the community preferred future. This vision, a statement or statements of general objectives to be achieved by the plan, can lay the foundation for more specific objectives and policies. This has the advantage of providing early direction to data collection, as well as to the formulation of objectives and policies. If you choose to begin with "visioning," be sure to provide structure to the process so that the resulting product will be useful, and the process will be completed in a timely manner.

IV. LONG TERM DIRECTION

How will we get there?

The following section provides a general list of steps to consider during the development of the general plan. Further, it provides an analysis of the selection, adoption and implementation phases of the process. The actual steps necessary to prepare and adopt a general plan will vary from jurisdiction to jurisdiction. However, there are statutory requirements for coordination, review, adoption and amendment which must be met.

Developing and Evaluating Alternative Plans

For any set of objectives, there will be a number of possible courses of action a community may pursue. Alternative plan proposals should be developed and examined at this stage to enable a community to weigh

its possible directions. Besides the objectives, the varying plans should contain alternative sets of principles, policies, standards and plan proposals. To the extent possible, the alternatives should be developed with implementation measures in mind. This will help to ensure the feasibility of the basic policies of each alternative.

The nature and detail of the alternatives will depend upon the extent of the planning program. For new general plans and comprehensive general plan revisions, the alternatives may focus on population levels and on the scale, location, and type of development. The alternatives in a more limited planning program, such as for a single element, may deal with a narrower range of options. In some cases, alternative plans may differ only in their treatment of a particular region or issue. In these instances, take care that the alternative policies and implementation measures are consistent with other parts of the plan.

Alternatives need not be highly detailed. The idea is to look at possible futures. Detailed objectives and policies will be developed once the preferred plan is selected.

The alternatives need not be mutually exclusive. Ultimately, the decision makers may select an amalgam of two or more alternatives as the best choice.

Each alternative should be evaluated for its short- and long-term effects on the community. Three major areas should be examined: economic, social, and environmental. Performance in these areas will help select the preferred plan.

In this era of tight city and county budgets, the assessment of the economic effects of general plan proposals as well as of specific projects has become increasingly important. Economic impact assessment, focusing on both fiscal impacts and broader economic effects, tries to quantify the relative economic efficiency of alternative proposals. Books such as *Development Impact Analysis* (1990) by Robert W. Burchell and the *Development Impact Assessment Handbook* (1994) also by Robert W. Burchell (refer to the Bibliography) are helpful in calculating fiscal impacts of growth.

Social impact assessment has become fairly common in recent years. Unlike environmental and economic impact assessments, which focus primarily on the effects on systems and institutions, social impact assessment focuses on individuals and groups of people within the community. It attempts to identify and assess changes in people's well-being or quality of life.

CEQA Guidelines §15126 specifically requires that an EIR address feasible alternatives which will reduce or avoid one or more of the significant effects associated with the general plan. The EIR must also analyze the "no project" alternative. The level of detail in the analysis of the alternatives should correspond to the specificity of the planning document. The EIR's analysis should help local legislators select the most appropriate general plan alternative to adopt. For a more detailed discussion, see Chapter 4 and the references cited there.

Selecting The Preferred Plan

After the community thoroughly reviews the planning alternatives, decision makers should be able to select a preferred course of action, either one of the alternatives examined or a synthesis of parts of several alternatives. Whatever the decision, the basic direction must be set as clearly as possible.

The preferred alternative at this point may lack sufficient detail to meet all state requirements and community needs. This will be particularly true when preparing a new general plan or thoroughly revising an old one. Consequently, the objectives and policies will need adjustment and refinement, while standards, plan proposals, and implementation measures will require more detail. The result of this process will be a draft general plan that can be submitted to the public and to decision makers for formal review. Additional environmental assessment will be required if substantial changes are made to an alternative.

Adopting the General Plan or General Plan Update

Where possible, formal public review of the draft plan and the draft EIR should take place together. The entire general plan proposal must be considered by the planning commission at a public hearing before it takes formal action on a general plan or general plan amendment (§65353). A recommendation by the planning commission to approve a general plan or amendment must be made by not less than a majority of its total membership (§65354).

The legislative body (i.e., city council or board of supervisors) must likewise hold at least one public hearing on the general plan and the recommendations of the planning commission before taking formal action (§65355). At least 10 days prior to each of these hearings, the local government must give public notice of the time and place of the public hearing by publishing an ad in a newspaper of general circulation (§65353, 65355 and 65090). In addition, the proposal must be referred to the agencies listed in the next section under Intergovernmental Coordination.

Notice and Referral

Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency is required to refer the proposed action to all of the following entities, as locally relevant (§65352). This requirement is directory, not mandatory.

- Any city or county, within or abutting the area covered by the proposal, and any special district which may be significantly affected by the proposed action, as determined by the planning agency.
- Any elementary, high school, or unified school district within the area covered by the proposed action.
- The local agency formation commission.
- Any areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.
- Any federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.
- Any public water system, as defined in Health and Safety Code §4010.1, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system must have at least 45 days to comment on the proposed plan, in accordance with §4010.1 (b), and to provide the planning agency with the information set forth in §65958.1.
- The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.

The same referrals must be made once the plan or amendment is adopted (§65357(a)).

If a proposed general plan or amendment would affect the "permitted uses or intensity of uses of real property," notice of the public hearing must also be mailed directly to the affected property owners, local agencies expected to provide water, sewer, street, school, or other essential facilities or services to the project, and the owners of property which are within 300 feet of the project boundaries. If the number of landowners to whom notice must be provided exceeds 1,000, the agency has the option of placing a 1/8 page sized advertisement in a newspaper of general circulation at least ten days before the hearing (§65353).

The formal public review inevitably leads to changes in the draft. If the community and the decision makers, particularly the legislative body, have been actively involved from the beginning, there should be few major changes. If the legislative body makes substantial changes in the proposal not previously considered by the planning commission, such changes must be referred back to the planning commission for its consideration prior to final action by the legislative body (§65356). The change may need to be subjected to additional environmental review.

Pursuant to CEQA Guidelines §15090, the adopting agency must certify that the final EIR has been completed in compliance with CEQA and that it was presented to the decision-making body of the Lead Agency and that the decision-making body reviewed and considered the information contained in the final EIR prior to adopting the general plan (*City of Carmel-by-the Sea v. Board of Supervisors* (1977) 71 Cal. App. 3d 84; *Kliest v. City of Glendale* (1976) 56 Cal. App. 3d 770)

Planning is a political process. It is seldom possible to write a general plan that is all things to all people. However, the plan that emerges from the meetings and hearings should, to the extent practical, attempt to reconcile community interests. The ultimate success of the general plan will depend upon public acceptance. The general plan will be the community's basis for decision making, and as such, should reflect the views of the community as a whole.

Voters may also act directly to adopt or change a general plan. Because adoption of a general plan is a legislative act, it is subject to the initiative and referendum processes. (See *Yost v. Thomas* (1984) 36 Cal.3d 561 and *De Vita v. County of Napa* (1995) 9 Cal. 4th 763).

Inter-Governmental Coordination

State law requires local governments to work not only with citizens, but also with other governmental agencies and public utility companies in preparing and implementing their general plans (§65103(e)(f), 65351, and 65352). Intergovernmental coordination involves more than a formal exchange of information and plans. In the planning process, legitimate conflicts can crop up between agencies with different responsibilities, constituencies, and viewpoints.

Upon request, a city must refer a proposal to amend or adopt a general plan or zoning ordinance to a county whose planning review area would be affected by the action. A county must do the same for an affected city

(§65919 and 65919.3).

The affected county or city must be notified not later than the date upon which the city or county provides notice of the planning commission's hearing on the proposal. The hearing notice must be delivered by mail or hand, contain the information provided in general hearing notices, and must state the earliest date upon which the city council or county board of supervisors will act on the proposal (§65919.4). A city or county desiring referrals of this type must file a map or other documentation as specified in §65919.2 Alternatively, a city and county may agree on a referral procedure.

A local government that receives a referral has 45 days to review, comment and make recommendations regarding the plan proposal's consistency with the affected city's or county's general and specific plans and zoning ordinance. Before a city or county adopts or amends a plan, it must consider the affected jurisdiction's comments and recommendations. If a local legislative body modifies and sends the proposed action back to its planning commission, it must also refer the change to the affected city or county.

A local planning agency is entitled to review, for consistency with its general plan, real property acquisitions for public works, real property dispositions, and proposed public buildings or structures as specified by §65402(b)(c). These are actions and projects undertaken by another city, county or local agency within the reviewing agency's jurisdiction.

Submitting Plans To State Agencies

State laws and selected regulations require cities and counties to send copies of their general plan documents to selected state agencies for review. In only one case does a state agency actually have authority to approve general plans: the Coastal Commission certifies the adequacy of Local Coastal Programs, which include relevant portions of local general plans for jurisdictions lying in the coastal zone.

Cities and counties must send draft housing elements and proposed amendments to the Department of Housing and Community Development (HCD) for review prior to adoption (§65585(b)). State law requires local governments to send the drafts of new housing elements to HCD at least 90 days prior to adoption. When a city or county considers a housing element revision, the planning agency must send a draft of the proposal to HCD 45 days prior to adoption.

HCD is required to send its comments on a draft to a city or county planning agency within 90 days (for new housing elements) or 45 days (for a revision). The city council or county board of supervisors must consider those HCD comments which arrive on time. If the comments arrive late, local governments must consider them in conjunction with future housing element amendments. Furthermore, each city and county must send to HCD copies of the adopted housing element and any amendments (§65585(c)).

Each city and county must consult with the California Division of Mines and Geology (Department of Conservation) and with the California Office of Emergency Services before the adoption or revision of a safety element. Local governments must respond to the findings of these agencies as specified in §65302(g).

In addition, state law directs counties containing state responsibility areas for fire protection to seek and respond to safety element advice from: 1) the State Board of Forestry and 2) every local agency which provides fire protection to unincorporated territory in the county (Public Resources Code §4128.5). Similarly, cities and counties must submit proposed mineral resource management polices to the State Mining and Geology Board for review and comment. The same is true for subsequently proposed policy amendments. (Public Resources Code §2762(b) and (c))

Local governments must also send their open-space elements to the Secretary of the Resources Agency. Section 65563 provides in part that, "on or before December 31, 1973, every city and county shall prepare, adopt and submit to the Secretary of the Resources Agency a local open-space plan."

Jurisdictions may seek input from other state agencies besides those cited above. Agencies such as Caltrans, the Department of Fish and Game, the Department of Conservation, Office of Emergency Services, and the Regional Water Quality Control Board often have a major interest in the consequences of local planning. As a matter of intergovernmental coordination, cities and counties should send copies of their draft general plans to their state contacts.

As a final requirement, under the State CEQA Guidelines, local jurisdictions must submit draft EIRs for general plans, elements, and amendments to the State Clearinghouse within the Office of Planning and Research to allow review by state agencies. (Title 14, California Code of Regulations, §15161.6)

While not required by law, planning agencies may send a copy of a newly adopted or revised general plan and element, along with subsequent amendments, to the County Municipal Collection in the State Library's Government Publications Section. The library makes general plans available to the public for reference. Li-

brary users may also borrow plan documents through any local library's inter-library loan process. In addition, the Resources Agency, through its Land Use Planning Information Network (LUPIN) website has an electronic library of local general plans (http://ceres.ca.gov/planning/). They always appreciate getting electronic copies to add to the collection.

Implementing The General Plan

A person can determine a city's or county's commitment to its general plan by the manner in which local officials implement the plan's policies to achieve its objectives. The most successful plans are those which were written from the start with a concern for realistic and well-timed implementation measures.

Adopting infeasible planning policies or implementation measures is a waste of time. To avoid this, planners who implement the plan should be involved in its preparation. In addition, the general plan should identify, where appropriate, the local agencies responsible for carrying out implementation actions (i.e., the current planning division of the planning department or the development/traffic engineering division of the public works department).

While existing law specifically requires an identification of implementation actions in the open-space, housing, and noise elements, the general plan should identify such measures relative to every element. For example, the land use element might indicate that its provisions will be carried out by particular zoning measures, subdivision procedures, specific plans, development agreements, or the local building code. Chapter 5 contains a more detailed discussion of general plan implementation measures.

CEQA requires that the general plan policies and implementation program reflect the mitigation measures identified in the plan's EIR. In addition, the jurisdiction must adopt a mitigation monitoring or reporting program to ensure that the mitigation measures are implemented (Public Resources Code §21081.6(b)).

Monitoring Implementation

The general plan should be a dynamic document. It is based on a snapshot of community values, politics, and conditions at a particular moment in time – i.e., upon plan adoption. Since these factors are continually in flux, local governments should continually monitor the relevance of their plans to ensure that they remain in touch with their evolving communities.

Each city and county should establish formal procedures for regularly monitoring the effectiveness of their general plans. When a monitoring program reveals a plan inadequacy, the city or county should amend or, if necessary, totally revise the general plan to bring it up-to-date.

Those portions of the plan having a short-term focus, such as the implementation program, should be annually reviewed and amended as necessary. The review should take into account the availability of new implementation tools, changes in funding sources, and the feedback from the plan monitoring activities. Indeed, §65400(b) requires the planning agency to "[p]rovide an annual report to the legislative body on the status of the plan and progress in its implementation." The local agency must include as part of this report an evaluation of its progress toward meeting its share of regional housing needs (§65584) and local efforts to remove the governmental constraints which may serve as an obstacle to meeting those needs. (§65583)

At least once every five years, each local planning agency should thoroughly review its entire general plan and revise the document as necessary. State law actually requires every city and county to evaluate its housing element as frequently as necessary and to revise the element, as appropriate, not less than every five years (§65588).

Under CEQA, a local government must establish a mitigation monitoring or reporting program for its general plan whenever approving the plan involves either the adoption of a mitigated negative declaration or specified EIR-related CEQA findings. Logically, the program should be part of plan monitoring activities such as the annual planning report.

General Plan Amendments

The most common sort of revision to a general plan is an amendment associated with a privately-initiated development project. Generally, local governments may not amend any one of the mandatory elements of the general plan more than four times in one calendar year (§65358(b)). However, this limitation does not apply to:

- optional elements;
- amendments requested and necessary for affordable housing (§65358(c));
- any amendment necessary to comply with a court decision in a case involving the legal adequacy of the general plan (§65358(d)(1));
- amendments after January 1, 1984, to bring a general plan into compliance with an airport land use plan (§65302.3);
- amendments needed in connection with adoption of a comprehensive development plan under the Urban

Suggested Amendment Criteria

The general plan shouldn't be amended casually. Commissioners, council members, and supervisors should be able to answer all the following questions affirmatively before 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? They must be in order to maintain internal plan consistency.
- Will the amendment necessitate changes in zoning or other ordinances and are those changes to be considered within a reasonable time? They should be considered as practical in order to maintain external plan

Development Incentive Act (Health and Safety Code §56032(d)); or

- any amendments for the purpose of developing a certified Local Coastal Program. (Public Resources Code §30500(b))

Section 65358(b) provides that each amendment may include more than one change to the general plan. At four times during the year, many local governments group together several proposals for change, review them individually, and analyze their cumulative effects. Any one proposal in the package can be altered or deleted up until the time of adoption.

If the board or council finds itself making frequent piecemeal amendments, major defects may exist in the general plan. In these cases, the jurisdiction should consider a plan update or major plan revision to address these issues.

Amendment of a general plan is subject to the initiative and referendum processes. In *DeVita v. County of Napa* (1995) 9 Cal. 4th 763, the California Supreme Court held that Elections Code §9111 permits the adoption or amendment of a general plan by initiative and referendum (although the court left open the question of whether the housing element may be so adopted or amended). In addition, the court stated that initiative amendments must conform to the requirements of planning law, including consistency requirements.

For amendments other than those undertaken by initiative, local governments must follow the notice and hearing procedures outlined in §65350, et seq. The procedure is the same as for enactment of a general plan, including adoption of a resolution by the legislative body. Section 65354.5(a) requires cities and counties to establish procedures for any interested party to appeal a planning commission decision.

Additionally, general plan amendments are subject to CEQA. Pursuant to *Landi v. County of Monterey* (1983) 139 Cal.App.3d 934 and later case law, amendments are not subject to the Permit Streamlining Act (§65920 et seq.).

CHAPTER 3

The Required Elements of the General Plan

All statutory references are to the California Government Code unless otherwise noted

INTRODUCTION

A GENERAL PLAN is required to address the specified provisions of each of seven mandated elements listed in §65302 (i.e., land use, circulation, housing, etc.) to the extent that the provisions are locally relevant. The purpose of this chapter is to outline the content of each element as required by statute. This chapter also highlights the pertinent California code sections, as well as court and Attorney General interpretations. Further, it suggests ideas for data and analysis, and policy. These are statewide guidelines, so they offer a broad overview of what a general plan might contain. The following suggestions are just that – suggestions.

RELATIONSHIPS AMONG ELEMENTS AND ISSUES

Each of the seven mandatory elements are presented separately in this chapter, however there is no requirement that a plan consist of seven separate elements. A jurisdiction proposing a comprehensive or multi-element revision of its general plan may choose to consolidate elements so long as all of the relevant statutory issues are addressed (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App.3d 692). When revising a single element, local agencies should examine and revise all of the other elements (including optional elements) as necessary to avoid internal inconsistencies or conflicts. This chapter provides cross references between elements to help identify where statutory requirements overlap and consolidation may occur.

The statutory requirements for the elements overlap and intertwine. For example, conservation of open-space and agricultural land are topics under the open-space and conservation elements as well as the land use element. Similarly, the noise element is directly related to both the land use and circulation elements. Most general plans mix and consolidate some or all of their elements. The important thing is that the elements and issues form an integrated, internally consistent plan of which all parts are equally weighed in their application (*Sierra Club v. Board of Supervisors* (1981) 126 Cal. App. 3d 698. A concise general plan avoids repetitive discussions of topics by consolidating the statutory requirements into a few functional elements. In general plans, conciseness is a virtue.

General plan elements and issues interrelate functionally. For example, consideration given to the vegetation which supports an endangered wildlife species in the conservation element also involves analyzing topography, weather, fire hazards, availability of water, and density of development in several other elements. Thus, the preparation of a general plan must be approached on multiple levels and from an interdisciplinary point of view.

A general plan should be written as an integrated statement of policies. A basic understanding of the structural and functional interrelationships between issues and elements can help avoid the problems associated with treating issues in isolation, as well as focus planning efforts on the key issues. Cities and counties should design their general plan formats to suit the topographic, geologic, climatologic, political, socio-economic, cultural and historical diversities which exist within their communities.

Key to Abbreviations in Chapter 3

The following symbols are used in this chapter to identify elements which might also address a particular issue.

(LU) LandUse
(Cl) Circulation
(H) Housing
(CO) Conservation
(OS) OpenSpace
(N) Noise
(S) Safety

(Map) or **(diagram)** indicates information that can be shown on a map or diagram.

Land Use Element

Background

The land use element functions as a guide to planners, the general public, and decision makers as to the ultimate pattern of development for the city or county at buildout. The land use element has perhaps the broadest scope of the seven mandatory elements. In theory, it plays a central role in correlating all land use issues into a set of coherent development policies. Its objectives, policies, and programs relate directly to the other elements. In practice, it is the most visible and often used element in the local general plan. Although all general plan elements carry equal weight, the land use element is often perceived as being most representative of "the general plan."

The land use element has a pivotal role in zoning, subdivision, and public works decisions. The element's objectives and policies provide a long-range context for those short-term actions.

Court and Attorney General Interpretations

The following legal interpretations have addressed the land use element with regard to the land use diagram, population density, building intensity, the designation of solid waste disposal sites and its relationship to the circulation and noise elements.

A. The Land Use Diagram

Attorney General Opinion No. 83-804, March 7, 1984 addresses the required level of specificity of the land use diagram. In answer to the question of whether a parcel specific map is required for the land use element of a general plan, the Attorney General reasoned that the detail necessary for a parcel specific map may be developed at a later stage in the land use process (through specific plans, zoning ordinances and subdivision maps); therefore, a parcel specific map is not required, only a diagram of general locations illustrating the policies of the plan.

The California Supreme Court, in *United Outdoor Advertising Co. v. Business, Transportation and Housing Agency* (1988) 44 Cal.3d 242, briefly discussed the degree of precision which can be expected of a general plan. The high court held that when San Bernardino County used a circle to distinguish the community of Baker as a "Desert Special Service Center" the county did not delineate a well-defined geographic area. According to the opinion of the court, "the circle on the general plan no more represents the precise boundaries of a present or future commercial area than the dot or square on a map of California represents the exact size and shape of Baker or any other community."

The concept of the diagram as a general guide to land use distribution rather than a parcel specific map also figured in the case of *Las Virgenes Homeowners Association v. Los Angeles County* (1986) 177 Cal.App.3d 310. There, the Court of Appeal upheld the adequacy of a county plan which contained a generalized land use map and which delegated specific land use interpretations to community plans. See Chapter 1 for a discussion of consistency between the diagrams and the plan text .

B. Population Density

Camp v. County of Mendocino (1981) 123 Cal.App.3d 334 established that a general plan must contain standards for population density. It did not however, define such standards. The court in *Twain Harte Homeowners Association v. Tuolumne County* (1982) 138 Cal.App.3d 664 defined population density as the "numbers of people in a given area and not the dwelling units per acre, unless the basis for correlation between the measure of dwelling units per acre and numbers of people is set forth explicitly in the plan." Quantifiable standards of population density must be provided for each of the land use categories contained in the plan.

Population density standards need not be restricted solely to land use designations with residential development potential. As the court stated in *Twain Harte*: "it would not be unreasonable to interpret the term "population density" as relating not only to residential density, but also to uses of nonresidential land categories and as requiring an analysis of use patterns for all categories. …it appears sensible to allow local governments to determine whether the statement of population standards is to be tied to residency or, more ambitiously, to the daily usage [sic] estimates for each land classification."

Although applied differently from one jurisdiction to another, population density can best be expressed as the relationship between two factors: the number of dwellings per acre and the number of residents per dwelling. Current estimates of the average number of persons per household are available from the Demographic Research and Census Data Center of the State Department of Finance (http://www.dof.ca.gov/html/demograp/druhpar.htm).

C. Building Intensity

The *Camp* decision also held that an adequate general plan must contain standards for building intensity. Again, the *Twain Harte* court has provided the most complete interpretation of building intensity available to date. These are its major points: intensity should be defined for each of the various land use categories in the plan; general use captions such as "neighborhood commercial" and "service industrial" are insufficient measures of intensity by themselves; and, building intensity is not synonymous with population density. Intensity will be dependent upon the local plan's context and may be based upon a combination of variables such as maximum dwelling units per acre, height and size limitations, and use restrictions. Unfortunately, the court stopped short of defining what are proper measures of building intensity.

Local general plans must contain quantifiable standards of building intensity for each land use designation. These standards should define the most intensive use that will be allowed under each designation. While the land use designation identifies the type of allowable uses, the building intensity standard will define the concentration of use. Intensity standards can include provisions for flexibility such as density bonuses, cluster zoning, planned unity developments, and the like.

OPR recommends that each intensity standard include these variables: (1) permitted lands uses or building types; and (2) concentration of use. Permitted uses and building types is a qualitative measure of the uses that will be allowable in each land use designation. The concentration of use can be defined by one or more quantitative measures that relate directly to the amount of physical development that will be allowed. Maximum dwelling units per acre is a good residential standard. Floor area ratio (the ratio of building floor area to the total site area) is a useful measure of commercial and industrial intensity. The dual standard of maximum lot coverage and maximum building height is suitable for agricultural, open-space, and recreational designations where development is being limited. On the other hand, lot size, which has been widely used for agricultural and open-space designations, is an inadequate standard of building intensity because although it regulates lot area, it does not quantify the allowable concentration of development on each lot.

D. Solid Waste Sites

Concerned Citizens v. Calaveras County (1985) 166 Cal.App.3d 90, held that the general plan is not required to identify existing solid waste disposal sites. However, because the purpose of the land use element is to designate "the proposed general distribution and general location and extent" of land uses, the element must identify future sites.

The identification of future solid waste disposal sites is particularly important when preparing or implementing Integrated Waste Management Plans (IWMPs). Public Resources Code §41720 now requires that the IWMP's countywide siting element, including any areas identified for the location of a new or expanded solid waste transformation or disposal facility, be consistent with the applicable general plan.

E. Circulation

The *Twain Harte* and *Concerned Citizens* decisions also discussed the close relationship between the land use and circulation elements. Pursuant to the decisions of the *Concerned Citizens*, *Twain Harte*, and *Camp v. Mendocino* courts, the general plan must reflect both the anticipated level of land development (represented in the land use element) and the road system necessary to serve that level (represented in the circulation element). The road system proposed in the circulation element must be "closely, systematically, and reciprocally related to the land use element of the plan." (*Concerned Citizens*, supra, at p. 100)

F. Noise

According to §65302(f), the noise element is to be used as "a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise." When the noise element is inadequate, the land use element may be invalid, as in the *Camp* case.

Relevant Issues

This discussion offers a general guide to the contents of the land use element. Note that while the focus is on the minimum requirements for an adequate land use element, an effective general plan will focus on those issues of greatest relevance to the community.

The purpose of the land use element is to designate "the proposed general distribution and general location and extent of uses of the land." The land use element should focus on the future growth and physical development of the community and planning area.

A land use element should contain a sufficient number of land use categories to conveniently classify the various land uses identified by the plan. Land use categories should be descriptive enough to distinguish between levels of intensity and allowable uses and there

should be categories reflecting existing land use as well as projected development.

There need not be an equal number of land use designations and zoning classifications. In many cases, there may be more than one zone which would be consistent with each land use designation.

Ideas for Data and Analysis

The following consists of topics which should be considered during the preparation of the general plan and, if relevant, included in a land use element. These subjects are based upon a close reading of the statutes and case law. When the information collected for the land use element overlaps that needed for other elements, the related element has been noted in parenthesis.

> The land use element should, consistent with §65302(a), address each of the following issues to the extent that it is relevant:
>
> Distribution of housing, business, and industry;
> Distribution of open-space, including agricultural land;
> Distribution of mineral resources and provisions for their continued availability;
> Distribution of recreation facilities and opportunities;
> Location of educational facilities;
> Location of public buildings and grounds;
> Location of future solid and liquid waste facilities;
> Identification of areas subject to flooding;
> Identification of existing Timberland Preserve Zone lands and,
> Other categories of public and private uses of land.

Housing, Business, and Industry

- Inventory existing residential, commercial, and industrial land use in the planning area. (diagram) (CI)
- Assess local and regional housing needs based upon projected community growth trends and regional data and plans. (H)
- Project needs for specific land uses including residential, commercial, and industrial development, based upon projections of future population and economic conditions. (H)
- Identify programs for the implementation of the land use policies. (CI, H)
- Assess the capacity and availability of infrastructure necessary to support proposed land uses.
- Assess the general efficiency of movement of people, goods, and services. (CI)

Open-Space

- Inventory open-space lands, including agricultural, forest, grazing, recreational lands, and open-space for conservation. (diagram) (CO, OS)
- Assess local open-space needs based upon community goals and objectives, the existing open-space/population ratio, and the anticipated population growth. (OS)
- Delineate the boundaries of watersheds, aquifer recharge areas, floodplains, and the depth of groundwater basins (diagrams) (CO, OS, S)
- Delineate the boundaries and description of unique water resources (e.g., saltwater and freshwater marshes, wetlands, riparian corridors, wild rivers and streams, lakes). (CO)
- Describe the species, distribution, and population of wildlife and fish, including rare and endangered species. Normally, this will coincide with habitat inventory that includes: location and type of bodies of water; type, location and extent of plants, identified according to the Department of Fish and Game's classification system; and, identification of key wildlife habitats including winter range and migration routes for deer, wintering and nesting grounds for waterfowl and other birds, salmon spawning areas, and habitats of rare or endangered species. (diagram) (CO, OS)
- Describe species of rare, threatened, and endangered plants, their distribution, and rate of occurrence. (diagram) (CO, OS)

Inventory of:

Agricultural resources, including grazing land

- Identify the location, amount and ownership patterns of land in agricultural production and suitable for agricultural production. (diagram) (OS)
- Include location, acreage, and extent of classification of soils (including identification of prime and other farmland classifications) in the planning area by Land Capability Classification. (diagram) (CO)
- Generally describe agricultural production in the planning area by crop type. (OS)
- Identify land within the boundaries of Agricultural Preserves and identification of land subject to Williamson Act Contracts, or in other land conservation programs. (diagram) (CO)

Mineral resources including the following

- Identify the type, location, quality, and extent of mineral resources, including oil and gas. (diagram) (CO, OS)
- Inventory the location of significant mineral resource areas classified and designated by the State Mining and Geology Board pursuant to the Surface Mining and Reclamation Act (California Code of Regulations §2762(a)). (diagram) (CO, OS)

Other natural resources

- Inventory areas available for the management or utilization of natural resources such as wind energy generation, hydroelectric power, geothermal power, and large-scale solar power.

Assessment of the demand for public and private parks and recreational facilities and an inventory of areas suitable for parks and recreational purposes, including the following:

- Describe the type, location, and size of existing public and private parks and recreation facilities. (diagram)
- Assess present and future demands for parks and recreational facilities, including trails, river and lake access, and per capita supply of parks (acres/thousand inhabitants).
- Identify future park and recreation sites. (diagram)
- Review federal, state, and local plans for the acquisition and improvement of public parks. (diagram)
- Inventory areas of outstanding scenic beauty and scenic vistas. (diagram) (OS)
- Identify programs for protecting, conserving, and acquiring open-space lands. (OS,CO)

Enjoyment of scenic beauty

- Inventory scenic "viewsheds" and points of interest. (OS)
- Define community scenic values.
- Identify programs for protecting and promoting community aesthetics. (OS)
- Identify scenic highways and byways. (OS)

Education

- Inventory existing schools and school facilities. (diagram)
- Assess the adequacy of school facilities and the need, if any, for additional facilities, based upon existing and projected numbers of school aged children. The projections should correlate with projected residential development.
- Identify suitable undeveloped land for new school facilities based upon population projections and proposed land use.

Public buildings and grounds

- Inventory public buildings and grounds. (diagram)
- Assess the need for additional facilities, based upon projected increases in land use intensity and population and the correlated need for additional services.
- Inventory public and private historical landmarks pursuant to Public Resources Code §5020, et. seq.
- Inventory of existing public "surplus land" and disposition pursuant to Government Code §54220, et. seq. and 25539.4.

Solid and liquid waste facilities

- Inventory existing solid and liquid waste disposal facilities, correlated with the County Integrated Waste Management Plan and County Hazardous Waste Management Plan (diagram) (CI)
- Assess the need for additional facilities, based upon the projected levels of land use and population and correlated with the County Integrated Waste Management Plan.
- Inventory proposed solid and liquid waste disposal and transformation sites. (diagram)
- Identify land uses near existing solid waste and liquid waste facilities, waste to energy plants, and sites reserved for future such facilities. (OS)

Assessment of the potential for flooding, including the following:

- Collect historical data on flooding. (CO, OS, S)
- Identify areas subject to inundation by a 100-year flood. (diagram) (CO, OS, S)
- Identify floodways and flood channels. (diagram) (CO, OS, S)
- Identify areas subject to inundation as a result of dam failure. (S)
- Identify areas subject to flooding as a result of tidal action occurring in conjunction with river and stream runoff. (S)
- Identify areas subject to flooding due to tsunami, seiche, or flash flood(s)

Timber production

- Describe the location, type, amount, and ownership of land and timber resources subject to timberland preserve zoning. (diagram)

Other categories of public and private uses of land

- Redevelopment projects areas.
- Local Coastal Land Use Plan provisions.
- Inventory lands subject to regulation by other agencies (state land, federal land, etc.).
- Inventory lands designated under Habitat Conservation Plans and Natural Community Conservation Planning (NCCP) programs for the protection or restoration of threatened or endangered species and their habitat. (OS,CO)

Ideas for Development Policies

Policies contribute to a framework of plan proposals and implementation programs and in some instances provide the basis for requiring exactions and development fees of new projects (for example, park and recreation facilities under the Quimby Act (§66477)). The distribution of land use categories which is reflected in the plan diagram must conform to the plans policies. Existing development may not adhere to all of the development policies set forth by the plan, however, new and future development must be in uniform compliance.

The following subjects should be addressed through development policies in the land use element to the extent that they are relevant.

- The type, intensity, general distribution, and general location of each class of land use proposed by the plan. (CI, OS, CO, H, S, N)
- Establish categories and standards for establishing the allowable levels of residential, commercial, and industrial land use intensity. (CI)
- Establish population density standards for each land use category with residential potential. (CI,H)
- Density and intensity standards for areas to be served by transit. (CI)
- The location of new development allowed by the plan, including requirements for the consideration of impacts to the environment, surrounding land uses, and infrastructure. (CI, OS, CO, H, S, N)
- The spatial relationships between types of land use (housing, business, industry, open-space, etc.). This may include establishing community design principles. (H,OS)
- General standards for mixed use development.
- The type, location, and intensity of development (if any) to be allowed within flood hazard areas, including standards for allowable uses. (CO, S)
- Development regulations for open-space areas. (OS)
- The type and intensity of allowable development in areas with severe slopes.
- The evaluation and regulation of timberland preserve zones including standards for inclusion in the zones. (CO)
- The location of existing oil, gas, and geothermal resources as identified by the Department of Conservation, Division of Oil, Gas, and Geothermal Resources.
- The location, acquisition, development, and management of public and private parks and recreational areas, including access to lake shores, beaches, rivers, and streams. (OS)
- The evaluation and regulation of important wildlife habitats (such as HCP or NCCP lands, critical habitat, or deer wintering areas) including allowable uses and/or density of development.
- Preservation and protection of rare, threatened or endangered species within the planning area, including candidate species and species of special concern.
- Management of agricultural soil resources including prime and non-prime classifications and allowable uses and density of development.
- The promotion and protection of areas of scenic beauty, including policies regulating development
- The relationship between the land use element and the local zoning, subdivision, and building ordinances.
- The location, type, and height of development in the areas surrounding airports, correlated to the local Airport Land Use Plan.

Technical Assistance

The following state agencies may provide information or assistance for the preparation of the land use element:

Caltrans (including district offices), California Coastal Commission, State Coastal Conservancy, Trade and Commerce Agency, Department of Conservation (Division of Land Conservation, Division of Mines and Geology, and Division of Oil, Gas, and Geothermal Resources), Economic Development Commission, California Energy Commission, Department of Forestry and Fire Protection, Department of Health Services (Office of Drinking Water and Environmental Management), Department of Housing and Community Development, Public Utilities Commission, California Integrated Waste Management Board, Department of Water Resources, California Environmental Protection Agency, Office of Emergency Services, and Office of Planning and Research.

- The location of schools and the future use of surplus school facilities, coordinated with the plans of local school district(s).
- The development, maintenance, and siting of existing and projected public facilities, including buildings and infrastructure
- The analysis, approval, and regulation of future liquid and solid waste facilities. (CI)
- The compatibility of nearby land uses with existing solid waste and liquid waste facilities and with sites reserved for future facilities. (OS)
- The relationship between the distribution of land uses and the local capital improvements program and guidelines for the timing and siting of capital improvements.
- The protection and future productivity of mineral resource lands, including significant mineral deposits classified or designated by the Division of Mines and Geology.
- General plan designations to allow local governments to comply with Government Code §65583 regarding the provision of low and moderate income housing. (H)

Circulation Element

Background

The circulation element is not simply a transportation plan. It is an infrastructure plan addressing the circulation of people, goods, energy, water, sewage, storm drainage, and communications. By statute, the circulation element must correlate directly with the land use element. The circulation element also has direct relationships with the housing, open-space, noise and safety elements.

The provisions of a circulation element affect a community's physical, social and economic environment as follows:

- Physical: The circulation system is one of the chief generators of physical settlement patterns, and its location, design and constituent modes have major impacts on air quality, plant and animal habitats, environmental noise, energy use, community appearance and other environmental components.
- Social: The circulation system is a primary determinant of the pattern of human settlement. It has a major impact on the areas and activities which it serves, on community cohesion, and on the quality of human life. The circulation system should be accessible to all segments of the population, including the disadvantaged, the young, the poor, the elderly, and the handicapped.
- Economic: Economic activities normally require circulation for materials, products, ideas or employees, and thus the viability of the community's economy is directly affected by the circulation element. The efficiency of a community's circulation system can either contribute to or adversely affect that community's economy.

No city or county can ignore its regional setting. The local planning agency should coordinate its circulation element provisions with applicable state and regional transportation plans (see §65103(f) and 65080, et seq.). Likewise, the state must coordinate its plans with local governments (§65080(a)) and the federal government is under a similar obligation (§134, Title 23 of the U.S. Code).

Caltrans is particularly interested in the transportation planning roles of local general plans and suggests that the following areas be emphasized:

- Coordination of planning efforts between local agencies and Caltrans districts;
- Preservation of transportation corridors for future system improvements; and
- Development of coordinated transportation system management plans that achieve the maximum use of present and proposed infrastructure.

These emphasis areas are addressed through Caltrans' Advance Transportation System Development Program. One of the program's major purposes is to resolve transportation problems early enough in the local land use development process to avoid costly delays to development. Coordinating state and local transportation planning is a key to the success of a circulation element. Contact your district Caltrans for details.

Court Interpretations

Three California appellate cases have addressed the subject of correlation between the circulation and land use elements*: Concerned Citizens of Calaveras County*

v. Board of Supervisors of Calaveras County (1985) 166 Cal.App.3d 90, *Twain Harte Homeowners Association v. County of Tuolumne* (1982) 138 Cal.App.3d 664, and *Camp v. Mendocino County* (1981) 123 Cal.App.3d 334.

The *Concerned Citizens* court defined the term "correlated" as follows:

"'Correlated' means 'closely, systematically, or reciprocally related . . . .' [Webster's Third New Intn'l. Dict. (1981) p. 511]. Section 65302 [of the Government Code] therefore requires that the circulation element of a general plan, including its major thoroughfares, be closely, systematically, and reciprocally related to the land use element of the plan.

"In its more concrete and practical application, the correlation requirement in subdivision (b) of [Government Code] §65302 is designed to insure that the circulation element will describe, discuss and set forth "standards" and "proposals" respecting any change in demands on the various roadways or transportation facilities as a result of changes in uses of land contemplated by the plan. (See *Twain Harte Homeowners Assn. v. County of Tuolumne* (1982) 138 Cal.App.3d at p. 701; and *Camp v. Board of Supervisors* (1981) 123 Cal.App.3d at p. 363.) The statutory correlation requirement is evidently designed in part to prohibit a general plan from calling for unlimited population growth in its land use element, without providing in its circulation element, 'proposals' for how the transportation needs of the increased population will be met."

After defining "correlated," the *Concerned Citizens* court described a situation where correlation does not exist.

"We conclude the [Calaveras County] general plan cannot identify substantial problems that will emerge with its state highway system, further report that no known funding sources are available for improvements necessary to remedy the problems, and achieve statutorily mandated correlation with its land use element (which provides for substantial population increases) simply by stating that the county will solve its problems by asking other agencies of government for money. To sanction such a device would be to provide counties with an abracadabra by which all substance in §65302's correlation requirement would be made to disappear."

The *Concerned Citizens* decision appears to have limited its search for evidence of correlation to Calaveras County's circulation element. By contrast, the *Twain Harte* case (which originated in a different appellate district) indicates that the courts may look beyond the circulation element to supporting documents (e.g., other sections of the general plan) when such evidence is not readily apparent (*Twain Harte*, supra, at p. 701). To be on the safe side, local governments should provide explicit evidence of correlation in both their circulation and land use elements.

The *Twain Harte* case indicates that the courts will not automatically presume the existence of correlation simply because a local government has adopted both its circulation and land use elements. Although general plans, as legislative enactments of the police power, will be presumed valid by the courts (in the sense that they are not arbitrary and capricious, but instead are reasonably related to promoting or protecting the health, safety or welfare), such plans must nevertheless be in substantial compliance with state law. (See *Camp* at p. 348 and *Buena Vista Gardens Apartments Association v. City of San Diego Planning Department* (1985) 175 Cal.App.3d 289, 298.) In other words, the courts will review a plan for its actual compliance with the requirements of the state's general plan statutes. In this case, the court used the *General Plan Guidelines* to help determine compliance.

Another case, based on the U.S. Supreme Court's *Nollan* decision on regulatory "takings," discusses the limits on road exactions relating to the circulation element. The court in *Rohn v. City of Visalia* (1989) 214 Cal.App.3d 1463 overturned a street dedication requirement on the basis of inadequate nexus evidence. Since the dedication requirement was supported in part by the city's general plan (but not by empirical evidence of a need for the required dedication), this case shows that the general plan by itself is not armor against a takings claim. If the circulation element is to be an effective basis for exactions, it must be based upon traffic studies that are sufficiently detailed to link land uses and related demand to future dedications. Additionally, ad hoc road exactions must be roughly proportional to the project's specific impacts on the road system (*Erhlich v. City of Culver City* (1996) 12 C4th 854 and *Dolan v. City of Tigard* (1994) 114 SCt. 2309). The circulation element alone may be an insufficient basis for exactions otherwise. This issue is discussed in greater detail in Chapter 6.

Relevant Issues

Mandatory circulation issues are:

- Major thoroughfares
- Transportation routes
- Terminals
- Other local public utilities and facilities

In addressing the above mandatory issues, cities and counties may wish to consider the following topics. The list below was derived from the mandatory issues and also includes possible local optional issues. It is not meant to be all-inclusive.

- Streets and highways
- Public transit routes, stops and terminals (e.g., for buses, light rail systems, rapid transit systems, commuter railroads, ferryboats, etc.
- Private bus routes and terminals
- Bicycle and pedestrian routes and facilities
- Truck routes
- Railroads and railroad depots
- Paratransit plan proposals (e.g., for jitneys, car pooling, van pooling, taxi service, and dial-a-ride)
- Navigable waterways, harbors (deep-draft and small-boat), and terminals
- Airports (commercial, general and military)
- Parking facilities
- Transportation system management
- Air pollution from motor vehicles
- Alternate emergency routes

Ideas for Data and Analysis

The following suggestions are meant to stimulate thinking rather than encompass all the research possibilities that go into preparing or amending a circulation element. Not all of these suggestions will be relevant in every jurisdiction.

Major Thoroughfares and Transportation Routes

- Assess the adequacy of the existing street and highway systems and the need for expansion, improvements and/or transportation system management as a result of traffic generated by planned land use changes. (LU)
- Analyze existing street and highway traffic conditions. (N)
- Determine current street and highway capacities.
- Determine existing traffic volumes (using peak-rate flows).
- Determine the levels of service of existing streets and highways.
- Determine the abilities of streets and highways to accommodate local bus transit services. (N)
- Analyze projected street and highway traffic conditions. (N)
- Estimate the number of trips generated by proposed land uses.
- Make assumptions about the routes of such trips.
- Make assumptions about the modal split (i.e., estimate the percentages of trips by transit, passenger car, van pools, etc.).
- Project future traffic volumes on existing streets and highways (using peak-rate flows) by adding together current traffic volumes and the estimated marginal increase in volumes resulting from planned land use changes.
- Determine the effects of projected traffic volumes on existing street and highway capacities.
- Determine the future levels of service of existing streets and highways.
- Review traffic projects pertinent to local planning that are proposed within neighboring jurisdictions.
- Review pertinent regional transportation plan and project funding priorities under the regional transportation improvement program.
- Compare projected levels of service with desired levels.
- Analyze the potential effects of alternative plan proposals and implementation measures (related to transportation and/or land use) on desired projected levels of service.
- Historical data and trends with regard to automobile accidents.

Terminals

- Evaluate the use of existing transportation terminals. (LU)
- Evaluate the need for new or relocated transportation terminals. (LU)

Local Public Utilities and Facilities

- Assess the adequacy and availability of existing community water, sewer, and drainage facilities and the need for expansion and improvements. (LU)
- Assess existing and projected capacity of treatment plants and trunk lines.
- Examine trends in peak and average daily flows.
- Inventory and location of existing and proposed power plants, oil and natural gas pipelines, and major electric transmission lines and corridors. (LU)
- Assess current power plant development and potential future development. Consider such factors as the demand for transmission facilities, the transport and storage of hazardous materials, and local transportation impacts of current and future power plant developments. (LU, S)

Transit

- Assess the needs of people who depend on public transit.

- Assess the number and distribution of households without an automobile.
- Assess the transportation needs of special groups within the population and the extent to which such needs are being met (e.g., the handicapped and elderly).
- Assess the adequacy of existing transit routes, services and facilities and the need for expansion and improvements.
- Examine trends in transit use and estimates of future demand.
- Determine existing and projected levels-of-service for transit.
- Review the regional transportation improvement program.

Private Buses
- Evaluate private bus company services.
- Identify the private bus routes within the local jurisdiction.
- Evaluate the transportation needs that are or are not being met by private bus companies.
- Examine private bus company plans to provide bus service in the future.

Bicycles and Pedestrians
- Assess the adequacy of existing bicycle routes and facilities and the need for new ones.
- Examine trends in bicycle ownership and usage.
- Assess the level-of-service of pedestrian facilities (both current and future levels).
- Assess historical data and trends with regard to bicycle and pedestrian accidents.

Truck Routes
- Identify existing truck routes. (N)
- Determine needed changes in truck routes.

Railroads
- Inventory rail lines and facilities and assessment of plans for expansion and improvements. (LU, N)
- Determine transportation needs that are or are not being met by railroads.
- Identify abandoned railroad rights of way which could be preserved for future transportation corridor use. (LU)

Paratransit
- Inventory of paratransit services and routes.
- Inventory of existing paratransit services and uses.
- Identify the needs served by paratransit.
- Determine future paratransit needs.

Navigable Waterways, Ports and Harbors
- Assess the adequacy of navigable waterways and port and harbor facilities, including the need for expansion and improvements. (LU, OS)
- Examine historical data on the use of facilities and vessel registrations.
- Project future demand based on new or expanded economic activities and recreational trends.
- Project future needs for navigable waterways and port and harbor facilities.
- Review plans for improvements by harbor and port districts.

Airports
- Assess the adequacy of and safety hazards associated with existing aviation facilities (general, commercial and military) and the need for expansion and improvements.
- Inventory potential safety hazards posed by airport activities to surrounding land uses. (N)
- Inventory potential safety hazards to aircraft passengers posed by existing or proposed land uses near airports.
- Assess the provisions of any airport land use commission plan prepared pursuant to Public Utilities Code §21675. (N)
- Describe existing facilities

Parking Facilities
- Assess the adequacy of existing on- and off-street parking, particularly in urban and commercial areas. (LU)
- Assess the affects of parking policies (i.e., off-street parking standards, on-street parking restrictions, graduated parking fees, etc.) on congestion, energy use, air quality, and public transit ridership.

Transportation System Management
- Analyze existing and projected transportation system levels of service. (LU)
- Identify existing and proposed modes of transportation.
- Analyze the projected effects on the transportation system of construction improvements versus the projected effects of transportation system management.
- Compare the costs of construction improvements versus the costs of transportation system management.

- Analyze High Occupancy Vehicle (HOV) lane usage and vehicle occupancy counts

Air Pollution from Motor Vehicles
- Estimate air quality impacts (CO, LU)
- Analyze air quality trends
- Assess existing air quality, pursuant to air quality district plans
- Estimate air quality impacts of motor vehicle trips generated by land use changes and new thoroughfares, based on regional air quality and transportation plans.
- Identify and evaluate measures that will reduce the air quality impacts of motor vehicle trips, consistent with regional air quality and transportation plans. (CO, LU)

Ideas for Development Policies

The circulation element should contain objectives, policies, principles, plan proposals and/or standards for planning the infrastructure that supports the circulation of people, goods and communications. These development policies should be consistent with regional air quality and transportation plans. With this and the above ideas for data and analysis in mind, cities and counties may wish to consider development policies for:
- The location and design of major thoroughfares in new developments (N)
- The development and improvement of major thoroughfares, including future acquisitions and dedications, based on proposed land use patterns and projected demand. This may include a street and highway classification system. (LU)
- Level-of-service standards for transportation routes, intersections and transit
- Enhanced circulation between housing and work places (LU)
- Scheduling and financing of circulation system maintenance projects
- Locations and characteristics of transportation terminals (LU)
- Development, improvement, timing and location of community sewer, water, and drainage lines and facilities (LU, CO)
- Current and future locations of:
  - Oil and natural gas pipelines
  - Power plants
  - Major electric transmission lines and corridors (LU) (diagram)
- Acquisition of necessary public utility rights-of-way (LU)
- Preferences for financing measures to expand and improve public utilities
- Standards for transportation and utility-related exactions
- Assistance to those who cannot afford public utility services
- The mix of transportation modes proposed to meet community needs
- The development and improvement of transit and paratransit services
- Transit and paratransit assistance
- The roles of railroads and private bus companies in the transportation system (N)
- Development and improvement of rail and private bus facilities and services
- Encouragement of railroad and private bus company services
- Preservation of abandoned railroad rights of way for future transportation corridor use (LU)
- Development and improvement of bicycle routes and walkways
- Proposed truck routes (N)
- Policies supporting truck route regulations (N)
- Safety of the traveling public, including pedestrians and bicyclists
- Development and improvement of port, harbor, and waterway facilities. (LU, CO)
- Development and improvement of aviation facilities (LU)
- Mitigation of aviation-related hazards (including hazards to aircraft and hazards posed by aircraft) (LU, N)
- Consistency of the general plan with the provisions of an airport land use commission plan (§65302.3) (LU, N)
- Strategies for the management of parking supply such as increased parking fees, graduated parking fees, metered on-street parking, and staggered work schedules
- Strategies for the control of parking demand such as improved transit service, amenities for bicyclists, and subsidized rideshare vehicles
- Transportation system management policies
- Respective roles of the private sector and various public agencies in developing, improving and maintaining circulation infrastructure
- Measures that reduce motor vehicle air pollution, consistent with the regional air quality and transportation plan policies (LU, CO)

The following state agencies may provide information or assistance for the preparation of the *circulation*

Useful Transportation Element Definitions And Information

Levels-of-Service: According to the Transportation Research Board's 1985 Highway Capacity Manual Special Report 209, level-of-service is a qualitative measure describing the efficiency of a traffic stream. It also describes the way such conditions are perceived by persons traveling in a traffic stream. Levels-of-service measurements describe variables such as speed and travel time, freedom to maneuver, traffic interruptions, traveler comfort and convenience, and safety. Measurements are graduated ranging from level-of-service A (representing free flow and excellent comfort for the motorist, passenger or pedestrian) to level-of-service F (reflecting highly congested traffic conditions where traffic volumes exceed the capacities of streets, sidewalks, etc.). Levels-of-service can be determined for a number of transportation factors including freeways, multi-lane highways, two-lane highways, signalized intersections, intersections that are not signalized, arterials, transit and pedestrian facilities.

Paratransit: Transportation systems, such as jitneys, car pooling, van pooling, taxi service, and dial-a-ride arrangements.

Recreational Trails: Public areas that include pedestrian trails, bikeways, equestrian trails, boating routes, trails, and areas suitable for use by physically handicapped people, trails and areas for off-highway recreational vehicles, and cross-country skiing trails.

Major Thoroughfares: Although this term is not defined in statute, a jurisdiction's planning important streets and highways may involve the following terms:

- **Arterial:** A major street carrying the traffic of local and collector streets to and from freeways and other major streets, with controlled intersections and generally providing direct access to properties.
- **Collector:** A street for traffic moving between arterial and local streets, generally providing direct access to properties.
- **Expressway:** A highway with full or partial control of access with some intersections at grade.
- **Freeway:** A highway serving high-speed traffic with no crossings interrupting the flow of traffic (i.e., no crossings at grade). Streets and Highways Code §23.5, in part, states that "Freeway means a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access."
- **Local Street:** A street providing direct access to properties and designed to discourage through-traffic.
- **Scenic Thoroughfares:** The following are scenic thoroughfare terms that planners may encounter:
  - **Local Scenic Highway:** A segment of a state or local highway or street that a city or county has designated as "scenic."
  - **National Scenic Byway:** A segment or a state or Interstate highway route that the United States Forest Service has designated as a scenic byway or which another federal agency has designated as a national scenic and recreational highway.
  - **Official County Scenic Highway:** A segment of a county highway the Director of Caltrans has designated as "scenic."
  - **Official State Scenic Highway:** A segment of a state highway identified in the Master Plan of State Highways Eligible for Official Scenic Highway Designation and designated by the Director of the Department of Transportation (Caltrans).
  - **Scenic Highway Corridor:** The visible area outside the highway's right-of-way, generally described as "the view from the road."

Transit: Urban and suburban rail, bus systems and ferryboats.

element: Caltrans, Public Utilities Commission, Transportation Commission, and Office of Planning and Research.

Caltrans has the following sources of information:

- Assembly of Statistical Reports: California Public Road Data
- Directory of California Trip Reduction Ordinances
- District System Management Plans
- Interregional Road System Plan
- Regional Transportation Plan Evaluation Report
- Transportation Concept Reports
- Route Development Plans

- Route Segment Reports
- System Management Data Bases

References For Transportation Planning Computer Software

The *U.S. Department of Transportation* has prepared a comprehensive listing of microcomputer software for transportation entitled UTPS Microcomputers in Transportation Software and Source Book. Copies can be obtained by calling 202/366-4208 or by sending a self-addressed gummed label to:

Technology Sharing Program (I-30SS)
Office of the Assistant Secretary for Governmental Affairs
U.S. Department of Transportation
Washington, D.C. 20590

The *Institute of Transportation Studies*, University of California, Berkeley, maintains a data base called INFO TAP that lists and "downloads" (provides copies of) current public domain transportation software. Planners may obtain access to INFO TAP by using a modem and calling 415/642-7088. For more information contact the institute at:

Institute of Transportation Studies
University of California, Berkeley
107 McLaughlin Hall
Berkeley, CA 94720
415/642-1008

Planners can also obtain information about software by contacting:

Office of Travel Forecasting and Analysis
Transportation System Information Program
(916) 654-4702
and
Office of Advanced System Planing
Transportation Planning Program
California Department of Transportation
P.O. Box 942874
Sacramento, CA 94274-0001
(916) 653-4107

Information regarding software that estimates transportation-related air quality impacts of land use changes can be obtained by contacting the *California Air Resources Board* at:

Technical Support Division
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812
916/322-5350

Housing Element

Background

State law declares that housing is an issue of statewide concern.[1] Although the housing element had already been a component of mandated general plans, the Legislature made the housing element expressly mandatory in 1967, requiring local governments to adopt housing elements by January 1969. While the statute did not initially include detailed content requirements, housing element guidelines were published by State Department of Housing and Community Development (HCD) in 1970, and guidelines were adopted in 1971.

In 1975, HCD was authorized to review and comment on local housing elements and directed to formally adopt housing element guidelines. The prior guidelines were revised to require increased detail with regard to the content of local housing elements. The guidelines became the subject of controversy over whether they were advisory or binding upon cities and counties. The Legislature resolved the controversy in 1980 by enacting provisions of the housing element guidelines as statutory requirements, and by requiring cities and counties to consider the department's findings prior to adopting the element. All housing elements were to conform with the provisions of State law by October 1, 1981; a geographically-staggered housing element update cycle has been in effect since 1984 pursuant to Government Code Section 65588.

Several amendments regarding the content of local housing elements have been enacted since that time (requiring analyses of the special needs of homeless individuals and families, units at risk of converting to non-low-income uses, etc.). Legislative amendments

[1] In addition to Government Code, Article 10.6, see, for example, Health & Safety Code Sections 33250, 5001-5004, 5010; Stats. 1984, Ch. 1691; Stats. 1982, Ch. 1440, Sec. 1, subd. (a); Stats. 1981, Ch. 974, Sec. 1; Stats. 1987, Sec. 1; and Stats. 1979, Ch. 1043, Secs. 1, 2.

revised HCD review responsibilities as of 1991, eliminating the provision that HCD's findings were advisory, and instead required local governments to revise their housing elements pursuant to HCD's review of the draft element or to adopt specified findings responding to HCD's review. In addition, the law provided that adopted housing elements found by HCD to be in compliance are provided a presumption of validity in any action filed on or after January 1, 1991 challenging the validity of the housing element.

Regional Housing Needs Allocation Process

Housing element law (Section 65583) requires quantification of each jurisdiction's existing and projected housing needs for all income levels. The housing element's requirements to accommodate projected housing needs are a critical factor influencing the housing supply and availability statewide and within regional housing markets. The local regulation of the housing supply through planning and zoning powers affects the State's ability to achieve the State housing goal of "decent housing and a suitable living environment for every California family," and is an important influence on housing costs. The regional housing needs allocation process addresses this statewide concern, and reflects shared responsibility among local governments for accommodating the housing needs of all economic levels.

Shares of the regional housing need are determined for constituent cities and counties of the affected region(s) of the housing element update cycle. This involves an iterative process conducted among state, regional, and local levels of government which is driven by projected population growth. The Department of Finance's (DOF) Demographic Research Unit periodically prepares population projections by county, and current population, household, and housing unit estimates by city and county. DOF's population projections are prepared using the demographic methodology of cohort survival and net migration. Household projections are prepared using headship rates (historical rates of household formation relative to age and ethnic composition of population), along with adjustments of existing stock conditions, e.g., demographic and income factors from the most recent U.S. Census, DOF's annual E-5 report, etc. In consultation with the affected Council of Government (COG) and DOF, HCD submits to each COG projected housing needs. HCD also fulfills the functions of a COG in those counties for which there is no COG. While HCD forwards projections for the region, the distribution of the need within the region is subject to determination by the COG.

The COGs develop the distribution in draft regional housing need allocation plans based on regional population and economic models, and also incorporate consideration of factors such as market demand, commuting patterns, site and public facility availability, and type and tenure of housing need, needs of farmworkers, or the conversion of assisted units. During a 90-day period, each city and county has an opportunity to request revision of their need allocation by the COG. The COG may revise the initial allocations, subject to acceptance of the revised allocation plan by HCD. HCD is authorized to revise the COG's determination if necessary to be consistent with statewide housing needs. The needs allocations from an accepted COG RHNA plan are then incorporated into the city's/county's housing element as a basis for planning for adequate residential development sites and housing assistance programs.

Court Interpretations

Buena Vista Gardens Apartments Association v. City of San Diego Planning Dept. (1985) 175 Cal.App.3d 289, provides the most thorough judicial discussion of housing element law. It is the first appellate level decision to interpret Article 10.6 of the Government Code. The plaintiff and appellant in the case were tenants occupying a large apartment complex for which the city had approved a long-term plan to demolish the existing units and develop condominiums on the site. The tenants challenged the plan's final approval, alleging that the city's housing element failed to meet statutory requirements in seven respects.

The appellate court found that in six of the seven respects the element substantially complied with state law. The court did find, however, that the element lacked any programs encouraging the conservation of mobilehome parks or existing affordable apartment rental units. The fact that the city had no basis upon which to deny the developer a demolition permit demonstrated the city's lack of a program to conserve affordable rental housing. As a result, the court prohibited the permit's issuance until the city amended its housing element with conservation programs substantially conforming to statutory requirements.

Court review of a legislative act, such as adoption of a general plan element, is very narrow. The court may only review for literal compliance with statutory mandates and may not scrutinize the wisdom or merits of the content of the element. The role of the HCD, because it reviews housing elements, is broader. The court acknowledged, "(the) department reviews not only to ensure the requirements of 65583 are met, but also to

make suggestions for improvements." Furthermore, the court noted: "(while) this court may be of the opinion [that the] city should adopt department's recommendations, the Legislature has stated its recommendations are advisory (§65585, subd.(a))." This case was decided prior to the adoption in 1990 of amendments to Section 65585 which require the locality to consider the Department's findings prior to final adoption of an update and to take specified steps, including written findings, if the Department finds the element does not comply. No decision since has considered the effect of this change on the significance of HCD's review and determination of compliance.

Buena Vista Gardens is consistent with a number of cases that support the general plan's integrity and require "substantial" (i.e., actual) compliance with its statutorily stated content. For example, a project may be halted when the general plan either lacks a relevant element or the relevant element is inadequate, as many cases have demonstrated.

A number of subsequent cases have reiterated the substantial compliance test, with its application a matter of law subject to independent appellate review. A court will not usually disturb legislative action such as a housing element revision unless the action is arbitrary, capricious or entirely lacking in evidentiary support. However, the housing element will be judged as to its actual compliance with respect to the substance essential to every reasonable objective of the statute. See *Black Property Owners v. City of Berkeley* (1994) 22 Cal. App. 4th 974, where the court upheld the city's housing element update against a claim that it failed to adequately address the governmental constraint of a city-imposed rent control ordinance.

Despite agreement as to the formulation of the substantial compliance test, courts have diverged widely in their application of the test to particular circumstances. In *Hernandez v. City of Encinitas* (1994) 28 Cal. App. 4th 1048, the court rejected a wide-ranging challenge to virtually every aspect of the city's housing element. The decision revealed a "check list" approach to determining substantial compliance with the detailed statutory requirements: the mere mention or discussion of an issue was found sufficient. The court at times even recited topical headings in the housing element to demonstrate compliance.

In sharp contrast is the approach taken in *Hoffmaster v. City of San Diego* (1997) 55 Cal.App.4th 1098, where the court upheld a narrow challenge to the city's housing element for its failure to provide adequate sites for emergency shelters and transitional housing, despite considerable treatment of the issue in the element and amendments adopted under order of the trial court. The *Hoffmaster* court was willing to look at the circumstances behind the City's conclusions in order to give effect to the purpose and intent of the statute. In addition, the court adopted HCD's definition of adequate sites for homeless shelters as a logical extension of the legal requirement and, despite the lack of a specific statutory provision, held the City to this standard.

The ruling in *Building Industry Association v. City of Oceanside* (1994) 27 Cal. App.4th 744, demonstrates the effect housing element requirements may have on growth control measures. In that case, at the culmination of lengthy litigation, the court overturned the city's growth control initiative, in part because it conflicted with broad, general language in the housing element to "protect, encourage and, where feasible provide, low and moderate income housing opportunities…" In *DeVita v. County of Napa* (1995) 9 Cal. 4th 763, the issue was whether an initiative ordinance which prohibited the rezoning of agricultural land without a vote of the electorate conflicted with the County's ability to update its land use element in accordance with the law. The Court upheld the initiative. It expressly noted, however, that the status of an initiative that either amends or conflicts with the housing element has not been determined, and that the ordinance might be reconsidered if it poses an obstacle to the adequacy of future revisions. The Court emphasized that an initiative amendment must conform to all statutory specifications and may not cause the general plan to be internally inconsistent.

Another case, *Committee for Responsible Planning v. City of Indian Wells* (1989) 209 Cal.App.3d 1005, exemplifies the type of action a court may take after it invalidates a general plan. After holding Indian Well's general plan invalid for failure to achieve internal consistency and failure to address various statutorily required issues in the housing element, the trial court ordered the city to bring its general plan into compliance with state law and imposed a moratorium. The court order prevented the city from granting building permits and discretionary land use approvals such as subdivision maps, rezoning, and variances until it updated its general plan.

In the meantime, a developer sought approval to record a final tract map. Pursuant to §65755(b), the subdivider requested that the court waive the moratorium's restrictions. The court may do so when it finds that the project would "not significantly impair" the city's ability to adopt all or part of the new plan in compliance with statutory requirements. Recognizing

the Legislature's statutory guidance reflecting the housing element's "preeminent importance," the court disagreed with the developer's arguments that the tract map would not affect the city's ability to adopt an adequate housing element. The court refused to allow approval of the map until the general plan was adopted.

Relevant Issues

The housing element issues listed below are derived from Government Code §65583 and 65590. Local governments may address these matters in any format they deem appropriate. For example, they may group together issues having functional relationships or overlapping meanings such as "preservation," "maintenance," and "improvement" of housing. The important thing to remember is that a housing element, regardless of its format, should clearly identify and address, at a minimum, each of the following issues.

- Assessment of housing needs and an inventory of resources and constraints (§65583(a)(1-8))
- Quantified Objectives for construction, rehabilitation, and conservation of housing (§655836(b))
- Programs that set forth a 5-year schedule of actions to achieve the goals and objectives of the element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs and when available, funds in a low and moderate income housing fund of a redevelopment agency (§65583(c)(1-6))
- Improvement and conservation of housing, including affordable housing stock (§65583 1st para., (b) & (c)(4))
- Development of housing (§65583 (b))
- Assist in development of housing to meet the needs of low- and moderate-income households (§65583(c)(2))
- Address, and where possible, remove governmental constraints (§65583(c)(3))
- Adequate sites for housing (§65583 1st para. and (c) (1))
- Adequate provision of housing for existing and projected needs, including regional share, for all economic segments of the community (§65583)
- Promotion of equal housing opportunities for all persons (§65583(c)(5))
- Preserve assisted housing at risk of converting to non-low-income uses (§65583(c)(6))
- Coastal zone replacement housing (§65588(c)(d) and 65590(h)(2)) - applicable to jurisdictions which are partially or entirely within the Coastal Zone

Reviewing and Revising the Housing Element

Unlike the other elements of the general plan, state law explicitly requires that the housing element be reviewed and updated as frequently as appropriate, but not less than every five years (§65588). Cities and counties must review their housing elements as frequently as appropriate with regard to:

1. The appropriateness of their housing goals, objectives, and policies in contributing to the attainment of the state housing goal.
2. The effectiveness of the housing element in attaining the community's housing goals and objectives.
3. The progress in implementing the housing element.

Evaluations of the element's effectiveness and success in its implementation should include the following information:

- A comparison of the actual results of the element with its goals, objectives, policies and programs. The results should be quantified where possible, but may be qualitative where necessary.
- An analysis of the significant differences between what was projected or planned in the earlier element and what was achieved.
- A description of how the goals, objectives, policies and programs of the updated element incorporate what was learned from the results of the prior element.

The housing element must be comprehensively revised at least every five years to reflect the results of this periodic review. §65588 establishes the timetable for these revisions.

In coastal communities, the revision must take into account any low- or moderate-income housing that has been provided or required in the coastal zone in accordance with §65590. The review of coastal zone housing activity shall include at least the following information:

- The number of new housing units approved for construction within the zone after January 1, 1982.
- The number of units for persons and families of low or moderate income that have been required to be included in new housing developments either within the zone or within 3 miles thereof.
- The number of existing units occupied by low- or moderate-income residents that have been authorized to be demolished or converted to another use within the zone since January 1, 1982.
- The number of low- or moderate-income residential units that have been required for replacement or authorized for demolition or conversion as quantified

above. The review must also identify the location of any replacement units.

Ideas for Data and Analysis

The following aspects of data and analysis for housing elements are based on housing element law. For further guidance, consult the Department of Housing and Community Development (HCD).

Preservation of housing

- Analyze of assisted housing developments eligible for conversion to uses other than low-income housing during the next ten years due to termination of subsidy contracts, mortgage payments, or the expiration of use restrictions. The analysis must include:
  - A listing of each development project by name and address**
  - The type of governmental assistance received**
  - The earliest possible date of change from low-income use**
  - The total number of assisted housing units that could be lost from the locality's housing stock each year during the ten-year period, with regard to:
    - Units for the elderly**
    - Units for the non-elderly**

Data for the analysis of units at risk of converting to non-low-income uses may be available from the following sources:

California Department of Housing and Community Development, California Housing Partnership Corporation, Federal Housing and Urban Development Department (HUD), Rural Housing Services (formerly Farmer's Home Administration), California Debt Advisory Commission, local redevelopment agencies, and for density bonus or inclusionary units contact local housing or planning departments.

- Replacement of converted assisted housing units*
- Estimated the total cost of developing new replacement rental housing comparable in size and rent level to the convertible units
- Preserve assisted housing units*
- Estimated the cost of preserving assisted housing developments
- Identify public and private corporations having the legal and managerial capacity to acquire and manage assisted housing developments
- Identify and consider of all federal, state, and local financing and subsidy programs useful in preserving assisted housing for lower income households
- Identify the amounts of funds (under each such program) which could be available for preserving assisted housing developments

Maintenance, Improvement and conservation of housing

- Analysis and documentation of housing stock conditions, such as the number of households living in housing units needing rehabilitation or replacement, identified separately for owner-occupied and renter-occupied units

Data regarding the condition of the existing housing stock may be available from a recent survey or windshield samples, estimates by the local building department, knowledgeable builders, nonprofit housing organizations or redevelopment agencies, and estimates derived from census data such as percentage of units build before 1940, housing value, units without plumbing or heat, etc.

Adequate sites for housing

- Inventory land suitable for residential development, including:
  - Vacant sites
  - Sites having potential for redevelopment

The purpose of the inventory is to identify sites suitable for residential development in order to compare the total holding capacity with the locality's share of the regional housing need by income level. Land suitable for development should have characteristics that make the sites appropriate for housing construction within the planning period of the element. Vacant land or land suitable for redevelopment or recycling may be considered including underutilized residential land, publicly-owned and surplus land, aging non-residential uses that may be suitable for recycling to residential uses and areas suitable for mixed commercial and residential uses.

- Analyze these sites in relation to:
  - Zoning
  - Public facilities
  - Public services

The inventory should determine the availability of essential public facilities and services on sites identified for residential development, including existing capacity and capacity to be provided or planned over the planning period. The inventory should also evaluate the adequacy

* The analysis related to assisted housing development shall be adopted as part of the housing element by January 1, 1992 (§65583(d)).

****** For the purposes of state and federally funded projects, this analysis need only contain information available on a statewide basis.

of existing or planned zoning to accommodate the regional housing need by income level.

- Identify adequate sites for housing to meet existing and projected housing needs, including sites for:
  - Multifamily Rental housing
  - Factory-built housing
  - Mobilehomes
  - Emergency shelters
  - Transitional housing
- Evaluate the administration of zoning and subdivision ordinances with regard to the provision of adequate sites for housing

Adequate provision of housing for existing and projected needs, including regional share, for all economic segments of the community

- Include the local share of the regional housing need by income level (see next section for more information)
- Assess local housing needs, including:
  - Analysis of population trends
  - Analysis of employment trends
  - Documentation of population projections
  - Documentation of employment projections
- Quantify existing housing needs for all income levels
  - household characteristics:

    Analysis and documentation of household characteristics, including: level of payment compared to ability to pay: the number of very low and lower income households occupying units at a cost greater than 30 percent of their gross household income; and comparison of the income distribution of low and moderate income households in the community to the range of costs of housing units for sale and for rent in the community. Data for this analysis may be available from the U.S. Census, and local real estate agencies and newspaper advertisements.

    Analyze any special housing needs such as those of:
    - The handicapped or disabled
    - The elderly
    - Large families (5 or more members)
    - Farmworkers
    - Families with female heads of households
    - Families and persons in need of:

      Emergency shelter

      Transitional housing

    Data for special housing needs analyses may be available from U.S. Census, federal CHAS databook (contact HCD or HUD), Councils of Governments, State Department of Rehabilitation, Local Social Security offices, Social Services organizations, Welfare Departments, low and moderate income advocacy organizations, Area Agency on Aging offices, and for estimates of homeless information may be available from local social service agencies, shelter providers, churches, or the police or sheriff departments. Local State Employment Development Department can provide estimates of agricultural employment by county. Other resources for estimates of the number of farmworkers include
- Housing characteristics:

  Analysis and documentation of housing characteristics, such as the number of households living in overcrowded conditions (1.01 or more persons per room). Overcrowding data is available from Census data.

Resources for meeting existing and projected housing needs

- Inventory of resources relevant to meeting the identified housing needs, including:

  Land suitable for residential development, including:
  - Vacant sites
  - Sites having potential for redevelopment

  Inventory of these sites in relation to:
  - Facilitating housing through zoning
  - Available public facilities
  - Available public services

  Federal, state, and local financing and subsidy programs

  Available financing from the low and moderate-income housing fund established by the local redevelopment agency

Constraints on meeting existing and projected housing needs

- Inventory constraints relevant to meeting the identified housing needs, including:

  Housing sites in relation to:

  Zoning constraints

  Public facilities constraints

  Public service constraints

  Sites at risk from natural hazards (fire, flood, landslide, or earthquake)

  Potential and actual governmental constraints upon:

  The maintenance, improvement, and development of housing for all income levels, including:

  Land use controls (examples include zoning and density standards, development standards

(parking, height limits) open-space standards, growth controls, policies regarding second units, density bonuses, etc.)

Building codes and their enforcement(for example, any local amendments to State Housing Law and the degree or type of enforcement)

Site improvements (examples include street widths, curbing requirements, circulation improvements, etc.)

Fees and other exactions required of developers (for example, planning and development fees and land dedication or other exactions)

Local processing and permit procedures (for example, typical permit processing times, evaluation of discretionary permit requirements, standard approval processes, design review processes)

Potential and actual non-governmental constraints upon:

The maintenance, improvement, and development of housing for all income levels, including:

Availability of financing (consideration of whether financing is generally available, whether there are any mortgage deficient areas for new construction or rehabilitation loans)

Price of land (for example estimates of the average per unit cost of land or the range of costs for single-family and multifamily zoned areas.)

Construction costs (consideration of costs to developer exclusive of profit, including land, fees, material labor, and financing)

- Identify regulatory concessions which could reduce or eliminate constraints on needed housing
- Evaluate techniques for administering land use and development controls which reduce constraints on needed housing

Residential energy conservation

- Identify opportunities for energy conservation in the design and construction of individual units
- Identify opportunities for energy conservation in the design of subdivisions
- Examine proximity of proposed residential development to employment centers, retail commercial uses, schools, transit, and other services
- Identify incentives facilitating energy conservation

Promotion of equal housing opportunities for all persons

- Analyze U.S. Census data to determine the household characteristics of various areas or neighborhoods in the locality
- Identify those areas or neighborhoods which have homogeneous household characteristics
- Determine whether such homogeneous characteristics are the result of or influenced by local government policies or regulatory activities
- Analyze minimum residential lot size and other standards set forth in the land use element and in the zoning ordinance to ascertain whether there is an exclusionary effect on persons with regard to such factors as race, religion, ancestry, national origin, or color
- Consider the analysis of governmental constraints on housing supply
- Determine whether such homogeneous characteristics are the result of or influenced by nongovernmental actions
- Investigate local covenants, conditions, and restrictions (CC&Rs) to ascertain whether they produce an exclusionary effect with regard to such factors as race, religion, ancestry, national origin, or color
- Investigate the availability of housing purchase and improvement loans to all persons in all areas
- Determine whether there are governmental and nongovernmental constraints on the locality's meeting of its regional share of housing needs for all persons regardless of race, religion, sex, marital status, ancestry, national origin, or color
- Investigate the policies and regulations of other jurisdictions that promote housing opportunities for all persons
- Survey the literature regarding successful equal housing programs
- Use the *Book of Lists* published annually by the Office of Planning and Research to contact other jurisdictions about their housing programs
- Evaluate alternative techniques for administering land use and development controls which will encourage the provision of needed housing for all persons
- Establish a dialogue with and seek housing needs information from housing advocacy groups and the local housing authority
- Ask members of the community for ideas on promoting housing opportunities for all persons

Coastal zone replacement housing (§65588(c)(d) and §65590(h)(2))—applicable to jurisdictions which are partially or entirely within the Coastal Zone

- Any housing element review or revision pursuant to §65588 should take into account all low or moderate-income housing developed to replace coastal zone

low or moderate-income housing which was: 1) demolished; 2) converted to a condominium, cooperative, or similar form of ownership; or 3) converted to a nonresidential use. This accounting must include at least:

- The number of new housing units approved for construction within the coastal zone after January 1, 1982
- The number of housing units for persons and families of low or moderate income required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone
- The number of existing residential dwelling units occupied by persons and families of low or moderate income that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone
- The number of residential dwelling units for persons and families of low or moderate income that have been required for replacement
- The designation of the location of the replacement units, either on-site, or elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction

Ideas for Development Policies, Implementation, and Funding Programs

The housing element should contain a statement of development policies, including goals, quantified objectives, and policies for the preservation, maintenance, improvement, and development of housing. These policies should address the adequate provision of housing to meet the locality's existing and projected housing needs. The goals, objectives, and policies should also direct local decision making with regard to adequate sites for various types of housing, including rental and manufactured dwelling units.

Many of these policy issues overlap. For example, policies promoting housing for all economic segments of the community overlap similar directives addressing the replacement of converted assisted housing units. Furthermore, with regard to adequate housing supply, the statement of development policies should address a group of subordinate housing supply issues, such as those related to governmental constraints and special housing needs.

To meet needs and implement policies, the housing element must also include a five-year schedule of current and proposed implementation measures and identify the agencies or officials responsible for implementation (§65583(c)). Program actions should describe the specific action steps the locality will take to implements its policies and achieve is objectives. Programs should include a time frame for implementing each program action.

The following are ideas for a statement of development policies and implementation actions to illustrate the kinds of actions local governments may take to carry out the policies of their housing elements. These include programs that are statutorily required by housing element law, actions that are mandated by other laws, and other measures which are not mandated, but which may nevertheless address a particular program area.

*Preservation of assisted housing for lower-income households**

A program to preserve for lower income households of the assisted housing developments identified pursuant to paragraph (8) of subdivision (a) of §65583. (See the preceding "Ideas for Data and Analysis.") The program must utilize all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a) of §65583, except where a community has other urgent needs for which alternative funding sources are unavailable.

Possible financing and subsidy sources might include:

- Federal financing and subsidy sources
- State financing and subsidy sources
- Local financing and subsidy sources, such as:
  - Tax Increment Financing through the California Community Redevelopment Law
  - Local trust funds, etc.

The program may address local regulatory strategies. For example, the program might call for:

- Regulatory concessions
- Regulatory incentives
  Modifications to the administration of land use and development controls that facilitate the preservation of assisted housing for lower income households

Maintenance of housing and the improvement and conservation of housing, including affordable housing stock

- Administer land use and development controls to facilitate the maintenance, improvement and conser-

* The analysis related to assisted housing development shall be adopted as part of the housing element by January 1, 1992 (§65583(d)).

vation of housing
- Support the improvement and conservation of existing housing for all economic segments, including affordable housing stock such as:
  - Affordable rental housing stock
  - Mobilehome parks
  - Manufactured housing (e.g., factory-built housing and mobilehomes)
- Identify and describe the actions which the local government will undertake or facilitate in conserving and improving the condition of the existing affordable housing stock. Such measures could include:
  - Federal financing and subsidy programs
  - State Financing and subsidy programs
  - Local financing and subsidy programs, including the use of redevelopment funds
  - Offering regulatory incentives to projects which rehabilitate existing housing
  - Enacting an ordinance regulating demolition of housing units and conversion of housing units to other uses (e.g., office, commercial)
  - Establishing an equity-sharing program to provide affordable home ownership or rental housing opportunities for low and moderate income households
  - Enacting an ordinance requiring replacement of housing units demolished due to public or private action
  - Rehabilitating residential hotels for very low and low income households
  - Undertaking a program to enforce building and housing codes, financed in part with proceeds from denial of state tax benefits to code violators
  - Enacting an occupancy ordinance requiring presale code inspection and compliance before title to the property is transferred
  - Making zoning changes to conserve existing affordable housing uses, such as changing the zoning on an existing mobile home park from a conditional use to residential zoning.

Adequate sites for the provision of housing for existing and projected needs, including regional share, for all economic segments of the community
- Provide sites in suitable locations and with adequate services that can collectively accommodate a range of housing (type, size, and price) meeting the needs of all economic segments of the community. The provision of adequate housing accommodating existing and projected housing needs, including the local share of the region's housing needs, for all economic segments of the community:

  Among other things, development policies should address:
  - The criteria for zoning of land for single-family, multiple-family, and mixed-use residential developments.
  - Policies assuring local compliance with the residential zoning requirements of §65913.1.
  - The standards for:
    - Public facilities serving residential uses
    - Public services serving residential uses
  - The criteria for and provision of adequate sites for:
    - Housing in general
    - Multifamily rental housing
    - Factory-built housing
    - Mobilehomes
    - Emergency shelters for families and individuals
    - Transitional housing for families and individuals
  - Amendments to local ordinances governing conditional use permits, variances, tentative subdivision maps, parcel maps, etc., to facilitate the provision of adequate sites for housing
- Programs and policies to ensure the availability of:
  - Public services
  - Public services
  - Vacant land
  - Redeveloped land
- The use of local public financing mechanisms to finance public improvements and services for housing, including, but not limited to:
  - Special assessment districts
  - Mello-Roos community facilities districts
  - Tax increment financing revenues
  - General obligation bonds
  - Development impact fees
- The use of moneys in a low or moderate-income housing fund derived from redevelopment financing activities
- Remove unnecessary governmental constraints relating to the provision of adequate sites including
  - Overly restrictive land use controls (e.g., large-lot zoning)
  - Overly restrictive building code regulations
  - Excessive site improvements
  - Expensive fees and other exactions required of developers
  - Red tape in the administration of permit approvals and processing
- Zoning ordinance amendments or special regulatory concessions necessary to remove unwarranted con-

straints on the preservation, conservation, maintenance, improvement, and development of housing for all economic levels of households with regard to local housing needs and the locality's regional share of housing need and demand
- Standards for evaluating the suitability of individual sites for low and moderate-income (non-market-rate) housing
- Criteria for allowing and promoting the installation of second dwelling units and granny flats

Adequate sites for housing means the local government has identified sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory built housing, mobilehomes, emergency shelters and transitional housing. Where the inventory of sites does not identify adequate sites to accommodate the need for all income levels pursuant to the localities share of the regional housing need, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for lower income households. (§65583(c)). The housing element's program of implementation actions should:
- Identify sites that:
  - Are or will be appropriately zoned for various housing types, including vacant land zoned for residential use pursuant to §65913.1
  - Meet or will meet development standards appropriate for various housing types
  - Have or will have public services and facilities needed to facilitate and encourage these various housing types
- Specify measures in the administration of land use and development controls that will accommodate these various housing types. The administration of zoning, for example, includes the processing, approval, and enforcement of conditional use permits and zoning variances. Other measures might include:
  - Inventorying surplus public lands, including sites owned by federal, state and local agencies, to identify suitable sites for the development of low and moderate income housing
  - Establishing and utilizing a municipal housing finance agency to assist in the financing of public services and facilities.
- Describe the regulatory incentives and concessions that will be used to facilitate and encourage these various housing types. These might include:
  - A program to acquire land and sell it at a discounted price to developers of low and moderate income housing
  - Offering public improvements or reduced impact fees to projects which provide low- and moderate-income housing

Assistance in the development of housing for low and moderate income households
- Identify measures which the local government intends to undertake or facilitate that will assist in the development of adequate housing to meet the needs of low and moderate-income households. Such measures could include:
  - Regulatory incentives, such as density bonuses exceeding the state requirements
  - Zoning ordinance provisions for promoting development of second residential units on existing lots and/or provision of financial incentives (including fee waivers) to promote second units
  - Mixed-use zoning districts to encourage combining residential with other uses
  - Zoning ordinance provisions that encourage and promote mobilehome subdivisions and mobilehome parks
  - Development agreements that promote the availability of below-market priced homes in the project
  - Residential design that promotes energy conservation.
  - Federally funded programs for the construction of housing
  - State funded programs for the construction–of housing
- Utilize the required 20% set aside of redevelopment agency tax increment revenues to finance low and moderate income housing (Low and Moderate Income Housing Fund)
- Provide density bonuses and other incentives to developers who include units affordable to low- or very low-income households, or for senior households

Removal of governmental constraints
- Describe a program which the local government intends to use in systematically removing, where appropriate and legally possible, governmental constraints on the maintenance, improvement, and development of housing. Removal of constraints might involve:

  - Changes in the administration of land use and development controls that facilitate and encourage the maintenance, improvement, and development of housing
  - Reduction in permit requirements for projects providing low- and moderate-income housing.
  - Holding pre-application conferences and administering the local review process to streamline permit processing for developments that include low and moderate cost units.
  - Establishing a single administrative unit to coordinate processing of multiple permits for residential developments
- Allow manufactured homes on permanent foundation systems to be installed on all single-family zoned lots under the same approval process as for site-built homes
- Allow zero lot line development
- Reduce parking requirements
- Allow alternative building design and constructions materials and methods
- Reduce street widths and rights of way (where appropriate)
- Allow common trenching for utilities
- Reduce, waive, or defer fees to facilitate a particular type of housing (assisted housing, multifamily rental, etc.)
- Remove Conditional Use Permit requirements for multifamily housing in multifamily zones.

Promotion of equal housing opportunities for all persons

- Creation of the position of local ombudsman to further public and private sector compliance with local, state, and federal equal housing opportunity laws
- The elimination of exclusionary standards from local land use regulations and policies
- The administration of land use and development controls in a way that provides housing opportunities for all persons
- Equitable provision of housing-related public services regardless of race, religion, sex, marital status, ancestry, national origin, or color
- Describe actions which the local government is undertaking or intends to undertake to promote housing opportunities for all persons regardless of race, religion, sex, marital status, national origin, or color. Such actions might include:
  - Establishing a fair housing council to promote equal housing opportunities.
  - Distributing fair housing information and referring housing complaints to the local fair housing office.
  - Discouraging redlining practices in lending and insurance underwriting by withdrawing local funds from, or ceasing business relationships with, institutions that discriminate.
  - Establishing open housing programs, such as affirmative marketing, to expand housing opportunities for low income and minority households.
  - Translation of permit instructions into a commonly and locally used foreign language

Residential energy conservation

- Energy conservation features in new and existing housing
- Land use controls encouraging energy conservation (such as solar orientation of subdivision lots - see §66473.1)
- The use of incentives encouraging energy conservation

Consistency with the Rest of the General Plan

Section 65583(c) requires that the housing element describe "the means by which consistency will be achieved with other general plan elements and community goals." Among other things, the housing element must establish the locality's housing goals, policies and objectives, identify sites for new construction, and address governmental constraints. Thus, the housing element affects a locality's policies for growth and residential land uses.

This requirement exists to ensure that housing elements, which are often adopted and amended separately from the rest of the general plan, will maintain the mandated internal consistency of the plan. The housing element program therefore must evaluate any potential conflict between general plan elements and the housing element, and describe the means by which consistency will be achieved.

Public participation

The city or county must make a diligent effort to achieve the participation of all economic segments of the community in the development of the housing element. The program of actions for implementing the housing element must describe these public participation efforts.

In addition to holding public hearings at the planning commission and government body level, efforts should be made to encourage the participation of all economic segments of the community (including low- and moder-

ate-income households). Local citizen participation efforts could include a citizen's advisory group to assist in development of the element, circulation of draft elements to housing interest groups, and special advertising and outreach measures to inform citizens of all economic levels about the process and their opportunity to participate.

Technical Assistance and Information

The California Department of Housing and Community Development has extensive materials available to assist in the preparation of local housing elements. In addition to a variety of demographic data including Census Data, information about planning and community development laws and resources are available. The Department also operates a computerized database, the Clearinghouse for Affordable Housing and Community and Economic Development Finance, to provide up to date information about financial resources. Department staff are also available to consult with and assist local governments in the preparation and implementation of local housing elements. The following other state agencies may provide information or assistance for the preparation of the **housing element:** California Housing Finance Agency; Office of Planning and Research; Department of Finance; Employment Development Department; Fair Employment and Housing Department; Department of Aging; Department of Rehabilitation; and the Department of Community Services and Development.

Useful Housing Element Definitions

Assisted Housing Developments: Multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of §65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. The term also includes multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to §65915.

Income Levels: Income categories are defined with respect to the area median income and are adjusted for household size. For detailed definitions of these terms, the reader should consult Chapter 6.5 (commencing with §6910) of Title 25 of the California Code of Regulations. The income categories below are based on the following general parameters, but are adjusted for a number of factors, including household size, rent-income ratios, a statewide floor, and a national cap.

- **Very Low Income**: No more than 50 percent of the area median income.
- **Other Lower Income**: Between 50 and 80 percent of the area median income.
- **Lower Income**: No more than 80 percent of the area median income (i.e., combination of very low income and other lower income).
- **Moderate Income**: Between 80 and 120 percent of the area median income.
- **Above Moderate Income**: Above 120 percent of the area median income.

Quantified Objective: The housing element must include quantified objectives which specify the maximum numbers of housing units that can be constructed, rehabilitated, and conserved by income level within a five-year time frame, based on the needs, resources, and constraints identified in the housing element (§65583(b)). The number of units that can be conserved should include a subtotal for the number of existing assisted units subject to conversion to non-low-income uses which can be preserved for lower-income households. Whenever possible, objectives should be set for each particular housing program, establishing a numerical target for the effective period of the program.

Ideally, the sum of the quantified objectives will be equal to the identified housing needs. However, identified needs may exceed available resources and limitations imposed by other requirements of state planning law. Where this is the case, the quantified objectives need not equal the identified housing needs, but should establish the maximum number of units that can be constructed, rehabilitated, and conserved (including existing subsidized units subject to conversion which can be preserved for lower-income use), given the constraints. See the definition of "objective" in Chapter I of these guidelines.

Conservation Element

Background

The conservation element provides direction regarding the conservation, development, and utilization of natural resources. Its requirements overlap those of the open-space and land use elements, as well as the safety and circulation elements. The conservation element is distinguished by being primarily oriented toward natural resources.

Population growth and development continually require the use of finite non-renewable resources as well as those which are renewable. One role of the conservation element is to establish policies which reconcile conflicting demands on those resources. In recent years, some jurisdictions have adopted policies relating to mitigation banking and conservation easement programs, as well as the state and federal Endangered Species Acts in their conservation elements. Other local jurisdictions have incorporated policies relative to Natural Community Conservation Planning (NCCP) programs. NCCP is a broad-based approach to the regional and area-wide protection of plants and animals and their habitats while allowing for compatible and appropriate economic activity. This and other programs such as those under the Williamson Act (§51230 et. Seq.) and the Timberland Productivity Act (§51100 et. seq.) provide important implementation tools.

Court and Attorney General Interpretations

As of this writing the conservation element has not been the specific subject of either court decisions or legal opinions of the California Attorney General.

Relevant Issues

To the extent they are relevant, the following issues must be addressed with regard to the conservation, development, and utilization of natural resources:

- Water and its hydraulic force
- Forests
- Soils
- Rivers and other waters
- Harbors
- Fisheries
- Wildlife
- Minerals
- Other natural resources

The conservation element may also cover the following optional issues:

- The reclamation of land and waters;
- The prevention and control of the pollution of streams and other waters;
- Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan;
- Prevention, control, and correction of the erosion of soils, beaches, and shores;
- Protection of watersheds;
- The location, quantity and quality of rock, sand and gravel resources and other minerals of statewide or local significance;
- Flood control, floodplain management, and
- Biologic diversity and it implications for ecological sustainability of plant and wildlife habitats.

Ideas for Data and Analysis

Evaluating and quantifying a city's or county's natural resources, including the condition and sustainability of natural resources systems, is necessary for the preparation of a comprehensive conservation element. Analyses should be based upon sound ecological principals cognizant of the relationships between natural communities and the importance of the natural environment to land use planning. The following information represents ideas for data and analysis which should be given consideration in the development of locally relevant policies for the conservation, development and utilization of natural resources.

Water

- Inventory water resources, including rivers, lakes, streams, bays, estuaries, reservoirs, ground water basins (aquifers), and watersheds (Map) (LU, OS)
- Identify the boundaries of watersheds, aquifer recharge areas, and ground water basins (including depths) (Map) LU, OS)
  - Assess local and regional water supply and the related plans of special districts and other agencies
  - Analyze the existing land use and zoning within said boundaries and the approximate intensity of water consumption
- Map the boundaries and describe unique water resources (e.g., salt water and fresh water marshes and wild rivers) (LU, OS)
- Assess the current and future quality of various bodies of water, water courses, and ground water (LU, OS)

- Inventory existing and future water supply sources for domestic, commercial, industrial, and agricultural uses (LU, OS)
- Assess existing and projected demands upon water supply sources, in conjunction with water suppliers (LU, OS)
  - Including: agricultural, commercial, residential, industrial, and public use
- Assess the adequacy of existing and future water supply sources, in conjunction with water suppliers. (LU, OS)
- Map riparian vegetation (LU, OS)
- Assess the use of water bodies for recreation purposes (LU, OS)

Forests

- Inventory forest resources including a comprehensive analysis of conservation needs for forests, woodlands and the interrelationship they have with watersheds (Map) (LU, OS)
  - Describe the type, location, amount, and ownership of forests with a value for commercial timber production, wildlife protection, recreation, watershed protection, aesthetics, and other purposes
  - Project alternative land uses within resource areas including density and intensity of development
  - Describe the types, location, amount, and lot sizes of land and timber resources subject to Timberland Production Zoning (see Chapter 5)
  - Identify areas of five acres or more containing oak woodlands made up of Blue, Engelman, Valley or Coast Live oak species (map)

Soils

- Inventory soil resources (Map) (LU, OS)
  - General classification of soils (including identification of prime agricultural land) in the planning area by the Storie Index or the U.S. Natural Resources Conservation Service's Land Capability Classification System (See "Useful Definitions and Information: " in this chapter)
  - Identify areas subject to soil erosion, landslides
  - Map land within Agricultural Preserves and/or subject to Williamson Act Contracts
  - Identify additional areas potentially qualifying for inclusion in Agricultural Preserves

Harbors

- Assess the adequacy of port, harbor, and water-related transportation facilities and the need for expansion and improvements (LU, CI)
  - Historical data on the use of facilities
  - Projection of future demand based on new or expanded economic activities and recreational trends
  - Review harbor and port district plans for improvements

Fisheries

- Identify water bodies and watersheds that must be protected or rehabilitated to promote continued recreational and commercial fishing – including key fish spawning areas
- Evaluate water quality, temperature, and sources of contaminates
- Identify physical barriers (man-caused or natural) to fish populations within the watershed, then propose alternatives and set priorities

Wildlife

- Inventory natural vegetation, fish and wildlife and their habitats, including rare, threatened, and endangered species (Map) (OS, LU)
  - Inventory plants, natural communities and special animals using the California Department of Fish and Game's "Natural Diversity Data Base." The data base covers all areas of the state and produces overlay printouts for use with U.S.G.S. quadrangle maps. Contact the Natural Heritage Program of the California Department of Fish and Game (www.dfg.ca.gov/Nddb/rarefind.html)
  - Identify the types of animals that might be found in a particular habitat, the time of year they might be found there, and their activities (e.g., winter range, breeding, etc.) using information from the "Wildlife Habitat Relationships Program." Contact the Wildlife Management Division of the California Department of Fish and Game (www.dfg.ca.gov/wmd/cwhr/whrintro.html)
  - Consult with the California Department of Fish and Game and U.S. Fish and Wildlife Service regarding listed species
  - Analyze any adopted Habitat Conservation Plan or Natural Communities Conservation Plan for pertinent policies (OS)
- Assess the potential effects of development on the continuity of plant and wildlife habitats.
  - Analyze the potential for development patterns to fragment plant and wildlife habitat.
  - Analyze the regional trends in development to determine their effects on natural resources.

Minerals Including Rock, Sand and Gravel Resources

- Inventory mineral resources. (Map) (LU, OS)
  - Identify the type, location, extent, and quality of mineral resources, as well as oil, gas, and geothermal resources (OS)
  - Locate mineral resource areas classified or designated by the State Mining and Geology Board under the Surface Mining and Reclamation Act (Map) (LU, OS)
  - Identify existing mining areas and oil, gas and geothermal wells (and associated developments) (Map) (LU, OS)

Reclamation of Land

- Inventory lands adversely affected by mining, prolonged irrigation, landfill activities, the storage or disposal of hazardous materials, erosion, etc., for which reclamation may be feasible (Map) (LU, OS)
- Review existing mines for compliance with approved plans of operation (LU)
- Review previous reclamation projects for consistency with the approved standards of the reclamation plan
  - The Department of Conservation, Office of Mine Reclamation, may be contacted for information concerning mining activities, reclamation standards, and permitted mining sites (www.consrv.ca.gov/omr/index.html)

Pollution of Water Bodies

- Examine the existing water quality in aquifers, streams, and other bodies of water
- Identify existing and potential water pollution sources
  - Inventory hazardous materials dumps, ponds and storage sites (using information plans developed pursuant to Health and Safety Code §25500 et seq.)
  - Identify proposed, existing, and abandoned landfill sites (map)
  - Examine the results of groundwater tests conducted in the vicinities of landfills and hazardous materials dumps, ponds, tanks, and storage areas
  - Examine regulations regarding the use, storage and disposal of hazardous materials
  - Inventory existing and proposed land uses that could contribute to the pollution of streams and other waters
- Identify the need for community sewage collection and treatment
- Assess the capacities of sewers and the treatment capacities of sewage treatment plants
  - Information concerning water quality, wastewater management, and other water related topics may be obtained from any of California's nine Regional Water Quality Control Boards (www.swrcb.ca.gov/loc_link.htm)

Reclamation of Water

- Identify polluted water sources for which reclamation is feasible

Erosion

- Identify areas subject to erosion using soils data from the U.S. Natural Resources Conservation Service (map)
- Assess historical data regarding beach and shore erosion
- Identify areas subject to potential beach and shore erosion (map)

Flood Control

- Identify flood-prone areas using among other things: (Map) (LU, S)
  - National Flood Insurance Program maps published by the Federal Emergency Management Agency
  - Information available from the U.S. Army Corps of Engineers;
  - State Reclamation Board designated floodway maps
  - Dam failure inundation maps prepared pursuant to California Government Code §8589.5 (available from the Office of Emergency Services)
  - Locally prepared maps of flood-prone areas
  - Historic data on flooding including information from conversations with long-time local residents
- Identify present and possible flood control works, their effects and effectiveness and their costs including: (Map) (LU, S)
  - Dams
  - Reservoirs
  - Levees
  - Flood walls
  - Sea walls
  - Channel alterations
  - Diversion channels and weirs
- A description of federal, state and local agencies involved in flood control including information such as (LU, S):
  - Jurisdictions;
  - Regulatory powers;
  - Existing floodplain regulations such as presidential or gubernatorial executive orders, interstate compacts, and statutes

  - The Federal Emergency Management Agency's National Flood Insurance Program; and,
  - Available funding and technical assistance
- Identify existing and planned development in floodplains including:
  - Structures, roads, utilities;
  - Construction methods or designs to protect against flooding; and,
    Compliance with existing regulations for flood control
    (See Appendix C: Floodplain Management Guidelines)

Other Natural Resources (examples)
- Inventory agricultural resources, including grazing land (LU, OS)
  - Identify location, amount, and ownership of land in agricultural production (map)
  - Describe agricultural production in the planning area by crop type
  - Identify farmlands in accordance with the U.S. Natural Resources Conservation Service's land inventory and monitoring criteria, as shown on the Important Farmland Inventory Series Maps, prepared by the California Department of Conservation. (See "Definitions: Natural Resources" in this chapter.) (map)
  - Inventory irrigated versus non-irrigated agricultural land use
- General Inventory of wetlands
- Assess air quality, consistent with regional air quality and transportation plans (OS)(CI)
  - Analyze air quality trends
  - Assess existing air quality
  - Analyze potential impacts on air quality of alternative plan proposals and implementation measures
  - Identify air quality impacts from vehicle emissions
  - Identify air quality impacts from all other sources
- Inventory energy producing resources
  - Inventory resources, including wind, solar, hydroelectric, and biomass (using forest, domestic, and agricultural wastes)
  - Inventory energy conservation opportunities, including transportation economies, urban design (i.e., land use patterns), and residential, commercial, and industrial conservation programs

Ideas for Development Policies

The conservation element should contain objectives, policies, principles, plan proposals and standards for the conservation, development and utilization of a jurisdiction's natural resources. Policies should be specific enough to cover the individual resources yet broad and inclusive enough to include the natural systems from which they are produced. For example, the following information represents the subjects which should be considered during the preparation of the conservation element and included as development policies to the extent they are locally relevant:
- The protection, use, and development of bodies of water and water courses (i.e., rivers, lakes, streams, bays, harbors, estuaries, marshes, and reservoirs) (OS)
- The type and intensity of development in or adjacent to water bodies and courses (LU, OS)
- The protection of and development in watersheds and aquifer recharge areas (LU, OS)
- Enhancement and protecting the quality of surface water resources and preventing contamination
- General preservation of wetlands, including jurisdictional wetlands as well as salt water and fresh water marshes consistent with federal and state requirements (OS)
- Protection of wild rivers and their watersheds (OS)
- Protection or improvement of water quality (OS)
- Provision of domestic, industrial, and agricultural water (OS)
- Conservation of water supplies (ground and surface)
- Conservation of riparian vegetation (OS)
- Designation and utilization of hydroelectric power generating sites (map) (LU)
- Management and protection of forestry resources (LU, OS)
- Conservation of forests for wildlife protection, recreation, aesthetic purposes, etc. (LU, OS)
- Protection and preservation of oak woodlands (OS)
- Application of timberland production zoning (LU)
- Rezoning of land zoned for timberland production (LU)
- Minimize conflict between agricultural and urban land uses through transitions in land use designations(LU)
- Management and use of agricultural soils (LU, OS)
- Erosion control and prevention (OS, S)
- Encourage the use of public advisory committees to develop landscape level goals, standards and measures for protecting plant and wildlife communities, and sensitive watersheds. (OS)
- Development and improvement of port, harbor, and waterway facilities (CI)
- The protection of water bodies and watersheds that are important for the management of commercial and

recreational fishing (LU, OS)
- Protection of fish and wildlife and their habitats (OS)
- Protection of plant species and their habitats. (OS)
- Preservation and protection of rare, threatened, or endangered species within the planning area, including candidate species and species of special concern, consistent with state and federal regulations and law (OS)
- Promotion of congruency and cooperation with the management plans and policies of other local, state, or federal agencies, or non-profit foundations or groups involved with the preservation of resources
- Recognition and implementation of enacted Habitat Conservation Plans (including multi-species plans) and Natural Communities Conservation Programs (OS)
- The protection, use, and development of mineral deposits, including oil and gas and geothermal resources. (This should include policies developed under the Surface Mining and Reclamation Act (see Chapter 6)) (OS)
- Development adjacent to or near mineral deposits, mining sites, and oil, gas, and geothermal developments (LU, OS)
- Land reclamation in areas where mining, prolonged irrigation, landfill activities, hazardous materials storage or disposal, erosion, etc., have occurred (LU)
- Establishment of resource conservation areas. (OS)
- Protection of water quality
- Elimination of existing water pollution sources
- Development, improvement and timing of major sewer, water and storm drainage projects needed to maintain water quality (LU, CI)
- Siting of landfills in relation to water bodies (among other considerations)
- Siting of hazardous materials storage and disposal facilities with regard to nearby water bodies (and other considerations) (LU)
- Control of hazardous materials in areas where water pollution is possible
- Reclamation of polluted water bodies
- Erosion control (OS, S)
- Flood control (LU, OS, S)
- Conservation, development and utilization of other natural resources such as:
  - farm and grazing lands (LU, OS)
  - air quality (LU, CI, OS)
  - energy resources (H)
- Protection or improvement of air quality through coordinated efforts with other public agencies and jurisdictions (LU, CI, OS)
- Enhancement and protection of archaeological, historic, and paleontological resources

Technical Assistance and Information

The following state agencies may provide information or assistance for the preparation of the *conservation element:* California Environmental Protection Agency, Department of Boating and Waterways, California Coastal Commission, State Coastal Conservancy, Department of Conservation (Office of Mine Reclamation - Division of Land Conservation), Energy Resources-Conservation and Development Commission, Department of Fish and Game, Department of Food and Agriculture, Department of Forestry, Department of Parks and Recreation (Resource Protection Division), Reclamation Board, Department of Water Resources, Wildlife Conservation Board, Office of Emergency Services, and Office of Planning and Research.

Useful Definitions And Information

Conservation: The management of natural resources to prevent waste, destruction, or neglect.

Erosion: The process by which soil and rock are detached and moved by running water, wind, ice, and gravity.

Habitat: The natural environment of a plant or animal.

Important Farmland Series Maps: Maps maintained by the California Department of Conservation under the Farmland Mapping and Monitoring Program (www.consrv.ca.gov/olc/farmland.html) to show farmland and urban areas in California. These maps are based in part on modern soil surveys published by the Natural Resources Conservation Service, and initially cover all or part of 45 counties within California. The maps and associated acreage data are for information only, and do not constitute a state prescription for local land use. The maps use eight classifications: "Prime Farmland," "Farmland of Statewide Importance," "Unique Farmland," "Farmland of Local Importance," "Grazing Land," "Urban and Builtup Land," "Other Land," and a separate overlay category of "Land Committed to Non-agricultural Use," is also maintained. The Department of Conservation has detailed definitions of these classifications. Generally they are defined as follows:

Prime Farmland: Farmland with the best combination of physical and chemical features able to sustain long term production of agricultural crops. This land has the soil quality, growing season, and moisture supply needed to produce sustained high yields. The land must have been used for the production of irrigated crops at some time during the two update cycles prior to the mapping date.

Farmland of Statewide Importance: Farmland similar to "Prime Farmland," but with minor shortcomings, such as greater slopes, or with less ability to hold and store moisture. The land must have been used for the production of irrigated crops at sometime during the two update cycles prior to the mapping date.

Unique Farmland: Farmland of lesser quality soils used for the production of the state's leading agricultural crops. This land is usually irrigated, but may include nonirrigated orchards or vineyards as found in some climatic zones in California. The land must have been cropped at some time during the two update cycles prior to the mapping date.

Farmland of Local Importance: Land, of importance to the local economy, as defined by each county's local advisory committee and adopted by its Board of Supervisors. Farmland of Local Importance is either currently producing, or has the capability of production, but does not meet the criteria of Prime Farmland, Farmland of Statewide Importance, or Unique Farmland. Authority to adopt or to recommend changes to the category of Farmland of Local Importance rests with the Board of Supervisors in each county.

Grazing Land: Land on which the existing vegetation is suited to the grazing of livestock. This category is used only in California and was developed in cooperation with the California Cattlemen's Association, the University of California Cooperative Extension Service, and other groups interested in knowing the extent of grazing activities. The minimum mapping unit for Grazing Land is 40 acres.

Urban and Built - Up Land: Land occupied by structures with a building density of at least one unit to one and one-half acres, or approximately six structures to a ten-acre parcel.

Land Committed to Nonagricultural Use: Land that is permanently committed by local elected officials to nonagricultural development by virtue of decisions which cannot be reversed simply by a majority vote of a city council or county board of supervisors. "Land Committed to Nonagricultural Use" must be designated in an adopted local general plan for future nonagricultural development. he resulting development must meet the requirements of "Urban and Built-up Land" or "Other Land." County boards of supervisors and city councils have the final authority to designate lands in this category.

Water: Water areas with an extent of at least 40 acres.

Land Capability Classification (U.S. Natural Resources Conservation Service): A grouping of soils into classes (I-VIII), subclasses, and units according to their suitability for agricultural use, based on soil characteristics and climatic conditions.

Minerals: Any naturally occurring chemical ele-

ment or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum (Public Resources Code §2005). Gold, sand, gravel, clay, crushed stone, limestone, diatomite, salt, borate, potash, etc., are examples of minerals. Despite the statutory definition of "mineral," local governments may also want to consider geothermal, petroleum and natural gas resources along with their planning for minerals.

Non-Renewable Natural Resources: Inanimate resources that do not increase significantly with time and whose use diminishes the total stock (e.g., minerals, fossil fuels and fossil water).

Prime Agricultural Land: "Prime agricultural land" means the following:

(1) All land which qualifies for rating as Class I or Class II in the Natural Resources Conservation Service land use capability classifications.

(2) Land which qualifies for rating 80 through 100 in the Storie Index Rating.

(3) Land which supports livestock used for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the United States Department of Agriculture.

(4) Land planted with fruit- or nut-bearing trees, vines, bushes, or crops which have a non-bearing period of less than five years and which will normally return during the commercial bearing period on an annual basis from the production of unprocessed agricultural plant production not less than two hundred dollars ($200) per acre.

(5) Land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars ($200) per acre for three of the previous five years (§51201 (c)). (NOTE: This statutory definition may be somewhat dated.)

Renewable Natural Resources: Resources that can be replaced by natural ecological cycles or sound management practices (e.g., forests and plants).

Riparian Habitat: The land and plants bordering a watercourse or lake.

Storie Index: A numerical system (0-100) rating the degree to which a particular soil can grow plants or produce crops, based on four factors, including soil profile, surface texture, slope, and soil limitations.

Timber: " Trees of any species maintained for eventual harvest for forest products purposes, whether planted or of natural growth, standing or down, on privately or publicly owned land, including Christmas trees, but does not mean nursery stock" (§51104(e)).

Timberland Production Zone: An area which has been zoned pursuant to §51112 or §51113 and is devoted to and used for growing and harvesting timber, or for growing and harvesting timber and compatible uses.

Watershed: The total area above a given point on a watercourse that contributes water to the flow of the watercourse; the entire region drained by a watercourse.

Wetlands: Areas that are permanently wet or periodically covered with shallow water, such as saltwater and freshwater marshes, open or closed brackish marshes, swamps, mud flats, vernal pools, and fens. This also includes wetlands under the jurisdiction of the U.S. Army Corps of Engineers which encompasses vernal pools and other areas with hydrology, soils, and vegetation meeting federal regulatory standards.

Open-Space Element

Background

The open-space element guides the comprehensive and long-range preservation and conservation of "open-space land" (§65563). Open-space land is defined in the code as any parcel or area of land or water that is essentially unimproved and devoted to open-space use (§65560(b)).

Along with the housing element, the open-space element has the most detailed statutory intent (see §65561 and 65562) and, next to land use, is the broadest in scope. Because of this breadth, open-space issues overlap those of several elements and the open-space element is commonly combined with other elements.

For example, the land use element's issues of agriculture, natural resources, recreation, enjoyment of scenic beauty and (to a certain extent) public grounds are covered by open-space provisions. "Open-space for the preservation of natural resources" and "open-space used for the managed production of resources" encompass the concerns of the conservation element. "Open-space for public health and safety" covers issues similar to those found in the safety element.

Court Interpretations

Open-Space Plan Requirement:

The California Court of Appeal held in *Save El Toro Assn. v. Days* (1977) 74 Cal.App.3d 64 that because the City of Morgan Hill had not adopted an open-space plan, the city could not acquire, regulate or restrict open-space land or approve a subdivision map. Mere adoption, however, does not protect a local jurisdiction from the adverse consequences of a law suit challenging an open-space element. An open-space element must also meet the specifications of the Government Code.

Status of the Open-Space Element:

Open-space elements have equal legal status with all other elements. The California Court of Appeal in *Sierra Club v. Kern County* (1981) 126 Cal.App.3d 698, voided a precedence clause that gave a land use element priority over an open-space element on the grounds that it violated §65300.5 (requiring that elements of a general plan comprise an integrated, internally consistent and compatible statement of policy).

What is Open-Space:

No Oil, Inc. v. City of Los Angeles (1988) 196 Cal.App.3d 223 interprets the meaning of the term "open-space for the managed production of resources." A citizens' group challenged the city's approval of oil drilling zones in a coastal area designated as open-space by the Brentwood-Pacific Palisades district plan. Absent specific contradictory language in the district plan, the court held that because oil recovery is the managed production of a natural resource it was therefore consistent with the plan's open-space areas. In light of this decision, OPR strongly suggests that local general plans specify the types of land use which are intended to comprise open-space.

Relevant Issues

The following topics are to be addressed, to the extent that they are locally relevant:

Open-space for the preservation of natural resources including, but not limited to:

- Areas required for the preservation of plant and animal life including habitat for fish and wildlife;
- Areas required for ecologic and other scientific study; rivers, streams, bays and estuaries; and, coastal beaches, lake shores, banks of rivers and streams, and watersheds;

Open-space used for the managed production of resources including, but not limited to:

- Forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber;
- Areas required for recharge of ground water basins;
- Bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and,
- Areas containing major mineral deposits, including those in short supply.

Open-space for outdoor recreation including, but not limited to:

- Areas of outstanding scenic, historic and cultural value;
- Areas particularly suited for park and recreation purposes, including access to lake shores, beaches, and rivers and streams;
- Areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

Open-space for public health and safety including, but not limited to:

- Areas that require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, floodplains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.
- Open-space areas designed for fuel break and fuel reduction zones, helispots, and fire access. Open-space fire safety standards and policies can be implemented by the adoption of open-space zoning regulations. Such regulations would help eliminate the owner-by-owner agreements and public agency financing now necessary for construction and maintenance.
- Identify location of historic natural hazards boundaries such as, inundation areas, landslide paths, debris flows, past wildfires, and earthquake faults.

Demands for trail-oriented recreational use (Public Resources Code §5076). (Cities and counties must consider such demands in developing specific open-space programs.)

Retention of all publicly-owned corridors for the future use: i.e., abandoned rail line, utility corridors, or easements.

The feasibility of integrating city and county trail routes with appropriate segments of the California Recreational Trails System (Public Resources Code §5076). (See the California Recreational Trails Act, commencing with Public Resources Code §5070.)

Ideas for Data and Analysis

The following are suggested topics for the data collection and analysis necessary to the development of open-space policies.

Open-Space for the Preservation of Natural Resources

- Inventory of natural vegetation, fish and wildlife and their habitats, including rare and endangered species (Map) (CO, LU)
  - Inventory plants, natural communities and special animals using the California Department of Fish and Game's "Natural Diversity Data Base." The data base covers all areas of the state and produces overlay printouts for use with U.S.G.S. quadrangle maps. Contact the Natural Heritage Program of the California Department of Fish and Game.
  - List the types of animals that might be found in a particular habitat, the time of year they might be found there, and their activities (e.g., breeding) using information from the "Wildlife Habitat Relationships Program." Contact the Wildlife Management Division of the California Department of Fish and Game.
  - Inventory existing and proposed areas for ecologic and other scientific study
  - Examine any adopted Habitat Conservation Plans or Natural Communities Conservation Plans
  - Inventory oak woodlands (CO)
    - Identify existing oak woodlands where the density of trees is five or more oaks per acre and Blue, Engelman, Valley or Coast Live oak species dominate (map)
    - Assess the effects of past land use decisions upon oak woodlands and identification of factors causing any decline in the oak woodlands
- Consult with the Department of Fish and Game and the U.S. Fish and Wildlife Service regarding species on the threatened or endangered species lists
- Inventory water resources, including rivers, lakes, streams, bays, estuaries, reservoirs, ground water basins (aquifers), and watersheds (map) (CO)
  - Map water bodies
  - Identify the uses of waterways and other bodies of water (e.g., transportation, harbors, and domestic, industrial, agricultural, and recreational use)
  - Delineate the boundaries of watersheds, aquifer recharge areas and the depth of ground water basins
  - Analyze seasonal factors in water availability
- Assess the quality of various bodies of water, water courses, and ground water (CO)
  - Generally delineate the boundaries of and describe unique water resources (e.g., salt-water and fresh-water marshes and wild rivers)
  - Map beaches, lake shores and river and stream banks
  - Review plans prepared by the state for designated wild and scenic rivers (map)

Open-Space for Resource Management

- Inventory forest resources (LU, CO)
  - Describe the type, location, amount, and ownership of forests with a value for commercial timber production, wildlife protection, recreation, watershed protection, aesthetics, and other purposes (map)

  - Describe the type, location, amount, and ownership of land and timber resources subject to Timberland Production Zoning (map)
- Inventory agricultural resources, including rangeland (LU, CO)
  - Identify the location, amount, and ownership of land in agricultural production (map)
  - Describe the agricultural production in the planning area by crop type
- Inventory soil resources (CO)
  - Location, acreage, and extent of different soil types and farmland soils (including identification of prime farm land) in the planning area by U.S. Natural Resources Conservation Service's Land Capability Classification system or storie index ratings (see "Useful Definitions And Information" in the section of this chapter dealing with the conservation element) (map)
  - Identify areas subject to soil erosion
- Inventory ground water recharge areas (map) (CO)
- Inventory water bodies that are important for the management of commercial fisheries (map) (CO)
- Inventory mineral resources (LU, CO)
  - Identify the type, location, extent, and quality of mineral resources, including oil and gas (map)
  - Describe the location and extent of geothermal resources (map)
  - Describe the location of mineral resource areas, classified and designated by the State Mining and Geology Board under the Surface Mining and Reclamation Act (map)

Open-Space for Outdoor Recreation

- Inventory areas of outstanding scenic beauty (map) (LU)
- Inventory historic and cultural resources, including archaeological sites and historically and architecturally significant structures, sites, and districts (map) (Note: because of the possibility that archaeological sites may be vandalized, the exact locations of the sites must not be publicized.)
- Assess the demand for public and private parks and recreational facilities and inventory areas particularly suited to parks and recreational purposes (LU)
  - Describe the type, location, and size of existing public (federal, state, regional, and local) and private parks and recreational facilities (map)
  - Review federal, state, regional, and local plans and proposals for the acquisition and improvement of public parks (map)
  - Assess present and future demands for parks and recreational facilities
- Inventory points of public access to lake shores, beaches, rivers and streams (map) (LU)
- Inventory scenic highway corridors
  - Identify state highways included in the Master Plan of State Highways Eligible for Official State Designation as Scenic Highways, local highways of scenic significance, and National Scenic Byways and All-American Roads as designated by the U.S. Forest Service. (map)
  - Assess identified scenic highway corridors and their appropriate boundaries, scenic features, and relationship to surroundings, the incompatible, existing development within the corridor, the proposed realignments or improvements, and the potential for future public and private development within the corridor
- Inventory recreational trails and areas and an assessment of the demand for them (map) (LU)
- Inventory trails proposed by and developed under the California Recreational Trails Plan of 1978 (California Department of Parks and Recreation -- see Public Resources Code §5076 and 5070 et seq.)

Open-Space for Public Health and Safety

- Review the general geology and seismic history of the region and the planning area (S)
- Assess the potential for surface rupture (S)
  - Geological evaluation of the potential for displacement along active and potentially active faults in the planning area (map)
  - Location of Earthquake Fault Zones designated by the State Geologist under the Alquist-Priolo Earthquake Fault Zoning Act (see Chapter 5) (map)
- Assess the potential for ground shaking (S)
  - Identify active and potentially active faults in the region (map)
  - Review historical data on seismic ground shaking within the planning area
  - Geological evaluation of the potential for ground shaking based on a maximum credible earthquake (map)
- Assess the potential for ground failure (S)
  - Geological evaluation of the potential for seismically induced landslides, mudslides, liquefaction, and soil compaction (map)
- Assess slope stability (CO, S)
  - Review historical data on landslides and mudslides
  - Geological evaluation of the potential for landslides and mudslides (map)
- Assess the potential for cliff erosion (S)

  - Review historical data on cliff erosion
  - Geological evaluation of the potential for cliff erosion (map)
- Assess the potential for land subsidence (S)
  - Review historical data on land subsidence resulting from extraction of ground water, gas, oil and geothermal resources and from hydrocompaction and peat oxidation
  - Geological evaluation of the potential for further subsidence (map)
- Identify flood-prone areas using: (LU, CO, S)
  - National Flood Insurance Program maps published by the Federal Emergency Management Agency;
  - Information from the U.S. Army Corps of Engineers;
  - State Reclamation Board designated floodway maps (for the Sacramento and San Joaquin Valleys only);
  - Dam failure inundation maps prepared pursuant to §8589.5 (available from the Office of Emergency Services);
  - Locally prepared maps of flood-prone areas, repetitive flood damage sites; and/or,
  - Historical data on flooding including information from conversations with long-time local residents.
- Identify watersheds and key areas for the protection of water quality and reservoirs (map) (CO)
- Assess the risk of wild land fires (S)
  - Identify classify areas of varying fire hazard severity based on fuel loading (vegetation), weather and slope, and historical data (map)
  - Identify the developments, facilities, and people in and near hazardous areas
  - Evaluate the adequacy of access to hazardous areas (e.g., types of roads, dead-end roads)
- Identify areas necessary for the protection and enhancement of air quality (map)
- Identify areas with naturally occurring shallow gas deposits

Ideas for Development Policies

Here are some ideas for what might be covered by open-space element policies:

- Protection of fish and wildlife and their habitats, including rare and endangered species (CO)
- Policies promoting and consistent with, adopted HCPs and NCCPs (CO)
- Protect rare and endangered plants (CO)
- Development in or near existing and proposed areas of ecologic or other scientific study
- Protect and preserve oak woodlands and the mandatory replacement planting of native oaks where oak woodlands are proposed for alteration (CO)
- Protect, use, and develop water bodies and water courses (e.g., rivers, lakes, streams, bays, harbors, estuaries, marshes, and reservoirs) (CO)
- Land use characteristics in watersheds (LU, CO)
- Protect beaches, lake shores and river and stream banks (CO)
- Protection aquifer recharge areas, including specification of minimum parcel sizes (LU, CO)
- Protect water quality (CO)
- Protect designated wild and scenic rivers (CO)
- Protect forestry resources, including specifications for compatible uses and minimum parcel sizes (LU, CO)
- Protect, use and develop agricultural lands (e.g., field crops, orchards, grazing, etc.), including specifications for compatible uses and minimum parcel sizes (LU)
- Use of timberland production zoning (LU, CO)
- Encourage the use of public advisory committees to develop landscape level goals, standards and measures for protecting plant and wildlife communities, and sensitive watersheds (OS)
- Prevent soil erosion (CO, S)
- Preserve ground water recharge areas
- Protect water bodies and watersheds that are important for the management of commercial fisheries (CO)
- Land use relationships in areas containing major mineral deposits -- including policies, plan proposals, and standards developed under the Surface Mining and Reclamation Act (see Chapter 6) (LU, CO)
- Protect areas of outstanding scenic beauty (LU)
- Protect archaeological sites (LU)
- Preserve historically or culturally significant sites (LU)
- Type, location, acquisition, development, and management of public and private parks and recreational areas (LU)
- Framework for park exactions under the Subdivision Map Act (Quimby Act -- §66477(d)) (LU)
- Protect and improve access to lakeshores, beaches, rivers and streams (LU)
- Protect local scenic highway corridors
- Protect, improve, develop, and maintain recreational trails and related facilities
- Coordinate trails with access to waterways required under the Subdivision Map Act
- Integrate local trails with state and federal trail systems (see Public Resources Code §5076)

- The type, location, and intensity of development in areas of seismic hazards (LU, S)
- The type, location, and intensity of land uses in areas with unstable soils (LU, CO, S)
- Policies for non-structural floodplain management approaches (LU, CO)
- The type, location and intensity of land uses within flood-prone areas (LU, CO, S)
- The type, location and intensity of development in areas subject to inundation from dam failures (LU, S)
- The type, location, and intensity of land uses in fire-hazard areas (S)

Ideas for Open-Space Action Programs

Every local open-space element is required to contain a specific action program (§65564). What follows are some ideas for action programs to preserve open-space. While the first item on the list (i.e., open-space zoning) is a state requirement for counties and general law cities, the other ideas are suggestions only and are meant to stimulate thinking about action programs. More detailed suggestions can be found in OPR's publication *Putting Action into the Open-Space Element*.

- Open-space zoning pursuant to §65910 (e.g., exclusive agriculture zones, large-lot zones, overlay zones for hazards areas, etc.)
- Public acquisition of open-space (see Chapter 5)
- Private acquisition of open-space (e.g., non-profit land trusts or conservancies)
- Preferential assessments (see Chapter 5)
- Application of the Quimby Act to subdivision approvals (see §66477)
- Provisions for open-space in specific plans (see Chapter 5)
- Provisions for open-space in development agreements (see Chapter 5)
- Transfer of development rights
- Open-space in planned unit developments
- Action Programs for open-space within urbanized areas:
  1. Connect existing open-spaces to the population with the greatest necessity for these open-spaces. These can be facilitated by:
     a. Extending the hours of existing recreational facilities by lighting them at night
     b. Creating a "vacant lot" task force to examine ways to allow publicly owned vacant parcels to convert to interim, passive use parks and community gardens
     c. Expanding parks and schools and assist schools to convert asphalt to turf
     d. Funding and expanding various types of parks and recreation programs
  2. Impose impact fees on new development where justified:
     a. Include open-space acquisition in capital improvement programs
     b. Employ land use controls to impose reasonable and proportional impact fees to acquire open-space

Technical Assistance and Information

The following state agencies may provide information or assistance for the preparation of the *open-space element:* Air Resources Board, California Coastal Commission, State Coastal Conservancy, Department of Conservation (Division of Land Conservation, Division of Oil, Gas, and Geothermal Resources, and Division of Mines and Geology), Department of Fish and Game, Department of Forestry and Fire Protection, Department of Parks and Recreation, Seismic Safety Commission, Department of Water Resources, and Wildlife Conservation Board.

Noise Element

Background

The purpose of the noise element is to limit the exposure of the community to excessive noise levels. In 1976, the Department of Health Services issued Noise Element Guidelines (Health and Safety Code §46050.1) followed shortly thereafter by a model noise ordinance. In 1984, revisions to the general plan statutes made extensive changes to the noise element requirements (Chap. 1009, Stats. 1984). These revisions shortened the list of issues required by statute and gave flexibility to local governments in analyzing the issues and subjects pertinent to the local planning area.

Local governments must "analyze and quantify" noise levels and the extent of noise exposure through actual measurement or the use of noise modeling. Technical data relating to mobile and point sources must be collected and synthesized into a set of noise control policies and programs that "minimizes the exposure of community residents to excessive noise." Noise level contours must be mapped and the conclusions of the element used as a basis for land use decisions. The element must include implementation measures and possible solutions to existing and foreseeable noise problems. Furthermore, the policies and standards must be sufficient to serve as a guideline for compliance with sound transmission control requirements. The noise element directly correlates to the land use, circulation, and housing elements.

The noise element is to be used to guide decisions concerning land use and the location of new roads and transit facilities since they are commonly sources of excessive noise levels. The noise levels from existing land uses including mining, agricultural, and industrial activities must be closely analyzed to ensure compatibility, especially where residential and other sensitive receptors have encroached into areas previously occupied by these uses.

Caltrans administers several freeway noise control programs. In general, these are applied to residential and school uses that preexisted the particular freeway. For instance, noise attenuating walls are installed along the freeway frontages of qualified residential development under the "New Construction or Reconstruction" and "Community Noise Abatement" programs. In addition, there are still a number of schools adjacent to freeways which have qualified for the "School Noise Abatement Program" funds for the acoustical attenuation of classrooms.

Local airports are subject to the noise requirements of the Federal Aviation Administration and noise standards under Title 21, §5000 et. seq., of the California Code of Regulations. These standards are designed to cause the airport proprietor, aircraft operator, local governments, pilots, and the Department of Transportation to work cooperatively to diminish noise problems. The Federal Aviation Act however, preempts local regulations controlling noise at the airport itself, as well as limiting arrival and departure times of jet aircraft flights. (See *City of Burbank v. Lockheed Air Terminal* (1973) 93 S. Ct 1854 and 53 Ops.Cal.Atty.Gen 75 (1970)).

The Caltrans Office of Transportation Laboratory publishes the *Caltrans Noise Manual* and numerous reports on mitigating transportation noise. *The Airport Land Use Planning Handbook* published by Caltrans' Aeronautics program includes noise information relating to airports.

Court and Attorney General Interpretations

As of this writing, no noise element prepared since the statute's 1984 revision has been the subject of an appellate court decision or Attorney General opinion. However, three past appellate court cases remain germane.

The content of the noise element was one of the central issues in *Camp v. County of Mendocino* (1981) 123 Cal.App.3d 334. Mendocino County's element did not quantify noise levels, did not include an inventory of current and expected noise exposure (noise contours), and was apparently not supported by monitoring data. As a result, the court found the element to be inadequate. The county's argument that the existing element was sufficient for a quiet rural county was not persuasive of the court, since the statute was neither subjective nor geographical. The *Camp* decision underscores the importance of comprehensive data collection and analysis.

The decision in *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, highlights the importance of including the noise element in the land use decision making process. In this instance, where a conditional use permit for a surface mining operation was at issue, the appeal court stated: "a quantitative inventory of existing transportation noise must be compared with that added by a particular project. The aggregate noise level must be measured against policy statements and standards required to be in the general plan." It is apparent that the noise element must be

adequate to serve as the basis for analyzing projects which may potentially increase noise levels.

Pursuant to the decision in *Guardians of Turlock's Integrity v. City of Turlock* (1983) 149 Cal.App.3d 584, a general plan is invalid if it lacks a noise element. Furthermore, in the words of the court: "unless the general plan sets noise guidelines, an EIR addressing noise issues lacks meaning."

Relevant Issues:

The noise element should cover those issues and sources of noise relevant to the local planning area. The element should utilize the most accurate and up-to-date information available to reflect the noise environment, the stationary sources of noise, predicted levels of noise, and the impacts of noise on local residents. It should be as detailed as necessary to describe the local situation and offer solutions to local noise problems. The issues to be addressed by the noise element include the following:

- Identification and appraisal of major noise sources
  - Mobile Noise Sources
  - Stationary Noise Sources
- Existing and projected levels of noise and noise contours for major noise sources
- Inventory of existing and projected land use and locational relationship to existing and projected noise sources. (map)(LU)
- Inventory of existing and proposed sensitive receptors including,
  - Hospitals
  - Convalescent homes
  - Schools
  - Churches
  - Sensitive wildlife habitat including the habitat of rare, threatened, or endangered species
- Determination of the extent of "noise problems in the community"
  - Survey of community to determine location and extent
  - Review police records for noise related complaints and locations
- Selection and imposition of methods of noise attenuation and the protection of residences and other sensitive receptors from excess noise.
- Selection of implementation measures and possible solutions that address existing and foreseeable noise problems.

Ideas for Data and Analysis:

The following are suggested topics for data collection and analysis:

Identification and appraisal of major noise sources

- Identify major noise sources including:
  - Highways and freeways
  - Primary arterials and major local streets
  - Passenger and freight on-line railroad operations and ground rapid transit systems
  - Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation
  - Local industry, including, but not limited to, railroad classification yards
  - Other ground stationary noise sources identified by local agencies as contributing to the community noise environment
- Appraise major noise sources and the extent of the problems they create for the community currently and in the future

Analysis and quantification of the local noise environment

- Select the method of noise measurement or modeling to be used in the noise element
- Measure major sources of noise including, but not limited to, highways and freeways, arterial and major streets, railroads, railroad yards, ground rapid transit, airports and aviation-related sources, industrial plants, and other stationary ground sources
- Map noise level contours, expressed in CNEL or Ldn, for the area surrounding each of the identified noise sources
- Project future noise sources, noise levels, and anticipated impacts upon existing and proposed land uses
- Analyze the current and future impacts on community residents of noise emanating from the identified sources (LU)
- Analyze current and predicted levels of transportation noise consistent with the requirements of the Federal Intermodal Surface Transportation Efficiency Act (CI)

Minimizing Noise Exposure

- Identify local noise problems and areas of conflict between noise sources and sensitive uses.
- Adopt noise impact and attenuation standards, consistent with the Noise Element Guidelines and the Uniform Building Code.
- Adopt policies, plan proposals, and implementation programs for mitigating noise impacts on residential areas, correlated with the land use and circulation elements. (LU, CI)

Ideas for Development Policies:

The following are types of development policies that may be contained in a local noise element as relevant. The local agency should adopt policies for each of the issues identified in the element which:

- Guide zoning and development through the adoption of specified noise mitigation including provisions for increased building setbacks, buffer areas, compatibility zoning, and other land use strategies (LU)
- Establish local standards and guidelines for noise evaluation including baseline specifications
- Evaluate new residential and other sensitive uses for consistency with noise standards in areas adjacent to major sources of noise (LU)
- Review all land use and development proposals for compliance with noise and land use compatibility standards
- Evaluate the effects of noise on the community and provide efficient and effective means to mitigate or avoid future excessive exposure
- Protect existing developed areas from excessive noise levels
- Guide the location and design of transportation facilities to maintain acceptable noise levels (CI, LU)
- Control stationary noise at the source through the use of insulation, berms, building design/orientation, buffer strips, staggered operating hours, and other techniques (LU, OS)
- Minimize noise exposure around airports in correlation with the policies of the local Airport Land Use Plan and airport noise standards pursuant to Title 21, §5000 et. seq., California Code of Regulations (LU)
- Correlate noise element concerns with objectives, policies, and plan proposals of the land use, circulation, and open-space elements in order to minimize community noise exposure
- Establish noise standards for reviewing development which is sensitive to noise
- Achieve noise compatibility between residential, commercial, industrial and other surrounding land uses

Technical Assistance:

The following noise prediction models can be used to address transportation and aircraft noise in the noise element:

- Federal Highway Administration: Traffic Noise Model, Version 1.0. The noise model can calculate noise levels using new acoustical algorithms and emission levels for five standard vehicle types: automobiles, medium trucks, heavy trucks, buses, and motorcycles. For more information contact: Federal Highway Administration, Research and Development, Turner-Fairbank Highway Research Center, 6300 Georgetown Pike, McLean, Virginia 22101-2296, (202) 366-2073.
- Further information regarding these noise models may be obtained from the Federal Aviation Administration, Office of Environment and Energy, Technology Division 800 Independence Avenue, SW, Washington D.C. 205591 or (http://aee.hq.faa.gov/aee-100/)

The following state agencies may provide information or assistance for the preparation of the *noise element:* California Department of Transportation (Environmental Engineering http://www.dot.ca.gov/) and the Office of Planning and Research.

Safety Element

Background

The aim of the safety element is to reduce the potential risk of death, injuries, property damage, and the economic and social dislocation resulting from hazards such as fires, floods, earthquakes, landslides, and other hazards. Other locally relevant safety issues such as airport land use, emergency response, hazardous materials spills, and crime reduction may also be included. Some local jurisdictions have even chosen to incorporate their hazardous waste management plans into their safety elements.

The safety element overlaps topics also mandated in the land use, conservation, and open-space elements. When preparing a new general plan or undertaking a comprehensive revision of an existing general plan, OPR suggests addressing these common topics in a single place rather than scattered among four separate elements. The key concern should be to effectively integrate these common issues into the decision making process.

The safety element's identification of hazards and hazard abatement provisions are to guide local decisions related to zoning, subdivisions, and entitlement permits. The element should contain general hazard and risk reduction strategies and policies supporting hazard mitigation measures. Policies should address the identification of hazards and policies for emergency response, as well as mitigation through avoidance of hazards by new projects and reduction of risk in developed areas. Communities may use the safety element as a vehicle for defining "acceptable risk" and the basis for determining the level of mitigation necessary. Policies may not only address methods of minimizing risks, but also ways to minimize economic disruption and expedite recovery following disasters.

Seismic Hazards

The safety element must establish policies to minimize the loss of property and life as a result of earthquake. The Alquist-Priolo Earthquake Fault Zoning Act (Public Resources Code §2621, et seq.), the Seismic Hazards Mapping Act (Public Resources Code §2690, et seq.), the Unreinforced Masonry Law (Government Code §8875, et seq.), and the associated maps and regulations of the State Geologist and State Mining and Geology Board offer crucial information as well as a starting point for local policies. The Department of Conservation's Division of Mines and Geology, the Seismic Safety Commission (SSC), the Office of Emergency Services available on line at: www.oes.ca.gov, and the United States Geological Survey offer a number of publications that are very useful in identifying, analyzing, and addressing seismic hazards. The Division of Mines and Geology has hazard maps and other information available on-line at http://www.consrv.ca.gov/dmg. The SSC's *California Earthquake Loss Reduction Plan 1997-2001*, for example, is a strategic plan for state and local government actions to mitigate earthquake hazards. Technical information about earthquake hazards is available online from the USGS (maps and studies) at http://quake.wr.usgs.gov, the Northern California Earthquake Data Center (distribution center for technical earthquake data) at http://quake.geo.berkeley.edu/, and the Southern California Earthquake Center (earthquake modeling and probability) at www.scec.org. In the San Francisco Bay Area, the Association of Bay Area Governments offers a smorgasbord of earthquake hazard and mitigation information on its website at www.abag.ca.gov/bayarea/eqmaps/eqmaps.html.

The Alquist-Priolo Earthquake Fault Zoning Act (Public Resources Code §2621, et seq.) restricts development on the surface traces of known active faults. The State Geologist has produced maps which identify faults throughout the state and makes copies available to planning agencies. The Seismic Hazards Mapping Act (Public Resources Code §2690, et seq.) directs the State Geologist to map potential ground shaking, liquefaction, earthquake-triggered landslide and other identifiable earthquake-related hazards in California. At the present time, the program is focusing on the San Francisco Bay and Los Angeles urban areas. Information about both of these programs and the availability of maps, and an online version of Special Publication 117 *Guidelines for Evaluating and Mitigating Seismic Hazards in California* are available at the Department of Conservation, Division of Mines and Geology website at: www.consrv.ca.gov/dmg/index.html. Call (916) 445-5716 for more information.

The Unreinforced Masonry Law (Government Code §8875 et seq.) requires cities and counties within Seismic Zone 4 to identify hazardous unreinforced masonry buildings and consider local regulations to abate potentially dangerous buildings through retrofitting or demolition. The 1990 Loma Prieta quake graphically illustrated the advantages of abatement ordinances: although seismic retrofitting is primarily aimed at saving lives,

not protecting buildings, structual damage was substantially less in communities which had enacted abatement ordinances than in neighboring communities which had not. Information on the Unreinforced Masonry Law, including the status of compliance as of 1995 and a 1995 model seismic retrofit ordinance, is available online from the California Seismic Safety Commission at www.seismic.ca.gov/index.html. Call (916) 322-4917 for more information.

Flood Hazard

The safety element must also identify flood hazard areas and establish policies which will avoid unreasonable flood risks. A comprehensive approach should include mapping floodplains, establishing general policies to keep intensive new development out of floodplains or to mitigate and protect against flood impacts if development is to be located in such areas, minimizing impacts on existing development where possible, establishing policies regarding capital improvements or acquisitions necessary to ensure flood protection, and floodplain management policies (which may include both structural and non-structural approaches to flood control using a multi-objective watershed approach). Flooding is often a regional problem that crosses multiple jurisdictional boundaries. Policies should be developed cooperatively with local, state, and federal agencies, including special districts, to create feasible solutions. Guidelines for the preparation of an optional floodplain management element are provided in Appendix C.

The Department of Water Resources' Division of Flood Management (phone: 916/653-6880) can provide floodplain management and flood control information, including floodplain maps, where available. The Federal Emergency Management Agency (FEMA) also has helpful information on mitigation. It offers a flood insurance program for communities which enact zoning regulations to limit development within flood zones and prepares Flood Insurance Rate Maps which delineate those zones. FEMA maintains a web site at www.fema.gov/home/mit/fldmit.htm; the telephone number for the flood insurance program at FEMA's western regional office is (415) 923-7177. Another federal source of flood hazard information is the U.S. Army Corps of Engineers (telephone: (415) 977-8173). The Corps can develop or interpret data on flood depths or stages; the extent, duration and frequency of flooding; and obstructions to flooding. The Corps also offers special studies on all aspects of floodplain management planning. The Natural Resources Conservation Service of the U.S. Department of Agriculture offers an Emergency Watershed Protection program and can provide advice on erosion control (telephone: (530) 757-8200).

Fire Hazard

Similarly, the safety element must identify urban fringe and rural-residential areas that are prone to wildland fire hazards. It must also analyze systems, such as adequate evacuation routes and peakload water supplies, that can reduce fire hazards. The policies of the safety element should form the basis for adopting fire safe ordinances and strategic fire defense system zoning.

The Office of Emergency Services has prepared the *State of California Fire Hazard Mitigation Plan* which offers background on California's flood hazards as well as recommendations for reducing risk. The State Board of Forestry has adopted the *California Fire Plan* which describes the environment at risk and the State's activities to reduce that risk. It has also adopted "fire safe" regulations for counties with State Responsibility Areas (Title 14, §1270, et seq., California Code of Regulations) as a means of reducing pre-fire fuel loads. Although most of these regulations are too specific (and regulatory in nature) to include in a general plan, they offer useful ideas for local policies and can be adapted into local fire safe ordinances and regulations outside of State Responsibility Areas (SRAs). The statewide fire safe regulations include:

- Road standards, including width, surface, and grade, for emergency access and evacuation.
- Standards for signs identifying streets, roads, and buildings.
- Minimum water supply reserves for emergency fire use.
- Fuel breaks (i.e., "defensible space") around structures and greenbelts around new subdivisions.

With certain exceptions, after July 1, 1991 all new construction and subdivisions within SRAs must meet the Title 14 standards or equivalent local requirements which have been certified by the Board of Forestry. In addition, any city or county within an SRA is required to submit a copy of its draft safety element or any amendments to that element to the State Board of Forestry and to every local agency which provides fire protection in its jurisdiction for review and comment at least 90 days prior to adopting or amending the element (Public Resources Code §4128.5). If the city or county decides not to follow the Board's or the local agency's recommendations, it must advise the Board in writing as to its reasons for not doing so.

For state responsibility areas (SRAs), CDF and counties that contract with CDF for SRA fire protection can identify areas of high risk/high asset value under CDF's California Fire Plan. The objective is to reduce the costs and losses from catastrophic fire by fostering public/private partnerships for prevention, fuels management and other activities. The California Fire Plan may be obtained from CDF or viewed at http://frap.cdf.ca.gov/fire plan/ and individual data layers for counties can be obtained from local Ranger Unit offices.

Fire hazard severity zoning information developed by CDF pursuant to Government Code §51175-51179 is available from CDF's State Fire Marshal for adoption by local agencies.

Health and Safety Code §13143.5 allows local fire officials to change or modify the statewide minimums when findings are reasonable and necessary because of local climate, geological, or topographical conditions. Any changes cannot be less restrictive than the minimum state standard.

The State Fire Marshal of CDF, pursuant to Government Code §51189.5, has developed a model ordinance for space and structure defensibility linking hazard severity zoning or classification with building standards.

Information about fire safety, including vegetation (fuel load) maps and fire management maps, is available from the CDF's Fire and Resource Assessment Program at (916) 227-2651 and from its website: http://frap.cdf.ca.gov/assessment/index.html.

Landslides

The landslides generated by the El Nino storms of 1998 and 1992 illustrate the hazards to life and property posed by debris flows and landslides. Deep-seated landslides are caused by the infiltration of water, from rain or other origin, into unstable material. Fast-moving debris flows are triggered by intense rains that over-saturate pockets of soil on hillsides. Landslides are the result of both natural conditions and the works of man. The Division of Mines and Geology and the U.S. Geological Survey have published landslide inventory and landslide and debris-flow susceptibility maps (at a variety of scales) for selected areas of California. Areas prone to rainfall-triggered landslides overlap areas where earthquake-induced landslides, mapped under the Seismic Hazard Mapping Act, are likely.

Other Hazards

The State Office of Emergency Services administers the Standardized Emergency Management System (SEMS) which provides a framework for coordinating multi-agency emergency responses (Government Code §8607; Title 19, California Code of Regulations, §2400, et seq.). SEMS incorporates mutual aid agreements, establishes lines of communication during emergencies, and standardizes incident command structures, among other things. Local agencies are not required to participate in SEMS, however, they are not eligible for reimbursement of response costs under disaster assistance programs unless they do so. The safety element may include general policies for cooperation and assistance consistent with SEMS. For information about emergency response planning, contact the OES Planning and Technological Assistance Branch at (916) 464-3200.

The safety element may address any other subjects which, in the judgment of the legislative body, relate to the physical development of the county or city (§65303). A number of local jurisdictions have chosen to include the subject of crime safe community planning. The safety element may be used to establish programs and policies which promote neighborhood, institutional, governmental, and business safety. This need not be limited to protection against criminal activity, but may also include policies designed to avoid accidents throughout the community. These policies are commonly implemented through the design review process and address issues such as:

- Adequate lighting and landscaping for improved natural surveillance;
- Park and open-space usership, safety, and accident avoidance;
- Homelessness issues and residential shelters; and
- Safety and accident prevention through design

Prior to preparing or revising its safety element, a city or county must consult with the Office of Emergency Services and submit one copy of its draft safety element to the Division of Mines and Geology for review (Government Code §65302(g)). These agencies can provide safety element advice, particularly in the areas of emergency response, inundation resulting from dam failure, seismic hazards, and geologic hazards. Local governments must consider the findings of Division of Mines and Geology prior to final adoption of the safety element. In addition, the Department of Water Resources, pursuant to §65303.4, may develop site design and planning policies to assist local agencies which request help in implementing flood control objectives and other land management needs.

The Cities of Irvine and Los Angeles have each developed crime safe community programs designed to take steps to resolve existing and prevent future safety and crime issues through planning and community involvement. These programs are based upon the incorporation of design and crime prevention features into development projects. Cooperative relationships between the community, police, developers, and planners helps to persuade the interests involved to adopt crime safe principles to be considered in the project design and decision making processes. Information regarding these programs may be obtained from the individual agencies or from the National Crime Prevention Institute (505) 588-6987.

Court Interpretations

As of this writing, the provisions of a safety element have not been the subject of a decision by an appellate court or an interpretation by the California Attorney General.

Relevant Issues

The safety element must examine the issues related to protecting the community from any unreasonable risks associated with:

- Seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure;
- Slope instability leading to mudslides and landslides;
- Subsidence, liquefaction, and other seismic hazards identified on seismic hazard maps;
- Other known geologic hazards;
- Flooding; and
- Wildland and urban fires.

It must also address the following as they relate to known fire and geologic hazards:

- Evacuation routes and signage;
- Peakload water supply requirements;
- Minimum road widths and turnouts; and
- Clearances around structures.

The safety element must also contain a map or maps of known seismic and other geologic hazards. The official maps of the Alquist-Priolo earthquake fault zones and seismic hazard zones may be included or incorporated by reference.

Ideas for Data and Analysis

The following are suggested as topics for consideration during the data collection and analysis phase of preparing a safety element.

The general geology and seismic history of the region and the planning area (OS)

- Map known seismic and geologic hazards (map) (OS)

The potential for seismically induced surface rupture

- Location of Special Studies Zones designated by the State Geologist under the Alquist-Priolo Earthquake Fault Zoning Act (map) (OS)
- Geotechnical evaluation of the potential for displacement along active and potentially active faults in the planning area (map) (OS)

The potential for seismically induced ground shaking

- Identify active and potentially active faults in the region (map) (OS)
- Historical data on seismic ground shaking within the planning area
- Geotechnical evaluation of the potential for localized ground shaking based on the state probabilistic earthquake hazard map (map)
- Identify hazardous or substandard structures which may be subject to collapse in the event of an earthquake including, but not limited to, unreinforced masonry buildings (Government Code§8875 et seq.)

The potential for seismically induced ground failure

- Geotechnical evaluation of the potential for earthquake-triggered landslide, mudslide, liquefaction, and soil compaction (map) (OS)
- Location of zones of required investigations for liquefaction and earthquake-induced hazards on a seismic hazard zone map prepared by the State Geologist (map) (OS)

The potential for seismically induced seiches and tsunamis

- Historical data on the occurrence of tsunamis and seiches within the planning area (OS)
- Geotechnical evaluation of the potential “run-up” of tsunami and seiche waters (map) (OS)

The potential for seismically induced dam failure

- Identify the areas that would be inundated in the event of a dam failure (map) (OS). Dam inundation maps are available from the Office of Emergency Services.
- Identify the development, facilities, and people potentially at risk in areas subject to potential inundation (OS)

Slope instability and the associated risk of mudslides and landslides

- Historical data on landslides and mudslides (OS)
- Identify areas that are landslide-prone by using, among other sources, Division of Mines and Geology's seismic hazard zone maps, landslide hazard identification maps, watershed maps, and geology for planning maps, and landslide features maps produced by the U.S. Geological Survey (map) (OS)
- Geotechnical evaluation of the local potential for landslides and mudslides (map) (OS)

The potential for land subsidence, liquefaction and other seismic hazards

- Collect historical data on land subsidence resulting from extraction of groundwater, natural gas, oil, and geothermal resources and from hydrocompaction (OS)
- Identify areas of known risk from liquefaction, subsidence, or ground shaking (map)
- Evaluate potential risks associated with other known geologic hazards, such as volcanic activity, avalanche, or cliff erosion
- Refer to information from the state seismic hazards maps, when available

The potential for flooding

- Collect historical data on flooding, such as frequency and intensity (LU, CO, OS)
- Identify areas within floodplains or subject to inundation by a 100-year flood and the 500-year flood (map) (LU, CO, OS)

The risk of wildland fires

- Identify and classify areas of varying fire hazard severity based on degree of development, fuel loading (vegetation), weather and slope, accessibility to fire protection assistance (i.e., response time, availability of helispots, proximity of air tanker attack bases, etc.), historic data, and other pertinent information (map) (OS)
- Analyze the potential for fire to critically impact or eliminate habitat or open-space values. Identify the policy implications for fire safe or fuels reduction policies of both public and private conservation or open-space areas. (OS, CO)

The risk of fires in urban areas

- Identify and classify areas of varying fire hazard severity based on age, condition, size, occupancy and use of structures, spacing between them, access, fire flows, fire crew and equipment availability, response time, historical fire data, and other pertinent information (map)
- Assess the need for greenbelts, fuel breaks, fuel reduction, and buffer zones around communities for different levels or zones of fire hazard to mitigate potential losses.

Emergency evacuation routes, as they relate to known fire and geologic hazards

- Evaluate the adequacy of access routes to and from hazardous areas relative to the degree of development or use (e.g., road width, road type, length of dead-end roads, etc. (OS, CI)
- Identify potential improvements necessary to avoid unreasonable community risk

Peakload water supply requirements necessary to avoid unreasonable risks from known fire and geologic hazards

- Evaluate the adequacy of the existing peakload water supply
- Project future peakload water supply, demand, and needed improvements, if any, to ensure the provision of adequate water supplies

Minimum road widths and clearances around structures necessary to avoid unreasonable risks from known fire and geologic hazards

- Evaluate the adequacy of existing standards
- Analyze the need for revised standards
- Assess the potential for disruption to evacuation routes from landslide movement, fault ruptures, earthquake-triggered failures, and volcanic eruption

Emergency response

- Locate the service areas of emergency services including fire, police, ambulance, etc.
- Evaluate the adequacy of existing service and demand for additional service

Ideas for Development Policies

Here are some ideas for the general types of policies which may be incorporated into the safety element to the extent they are locally relevant. Policies may take the following forms:

- Development standards and restrictions within Alquist-Priolo Earthquake Fault Zones including limits on allowable development, development intensity, and setbacks from the fault trace to limit risk to acceptable levels (LU, OS)
- Determination of what constitutes an "acceptable

Useful Safety Element Definitions

Alquist-Priolo Earthquake Fault Zone: A regulatory zone, delineated by the State Geologist, within which site-specific geologic studies are required to identify and avoid fault rupture hazards prior to subdivision of land and/or construction of most structures for human occupancy.

Critical Facility: Facilities which either (1) provide emergency services or (2) house or serve many people who would be injured or killed in case of disaster damage to the facility. Examples include hospitals, fire stations, police and emergency services facilities, utility facilities, and communications facilities.

Fault: A fracture or zone of closely associated fractures along which rocks on one side have been displaced with respect to those on the other side. A fault zone is a zone of related faults which commonly are braided, but which may be branching. A fault trace is the line formed by the intersection of a fault and the earth's surface.

- **Active Fault:** A fault which has exhibited surface displacement within Holocene time (approximately the past 11,000 years).
- **Potentially Active Fault:** A fault which shows evidence of surface displacement during Quaternary time (the last 2 million years).

Flooding: A rise in the level of a water body or the rapid accumulation of runoff, including related mudslides and land subsidence, that results in the temporary inundation of land that is usually dry. Riverine flooding, coastal flooding , mud flows, lake flooding, alluvial fan flooding , flash flooding, levee failures, tsunamis, and fluvial stream flooding are among the many forms that flooding takes.

Ground Failure: Mudslide, landslide, liquefaction or soil compaction.

Hazardous Building: A building that may be hazardous to life in the event of an earthquake because of partial or complete collapse. Hazardous buildings may include:

1. Those constructed prior to the adoption and enforcement of local codes requiring earthquake resistant building design;
2. Those constructed of unreinforced masonry;
3. Those which exhibit any of the following characteristics:

- exterior parapets or ornamentation which may fall on passersby;
- exterior walls that are not anchored to the floors, roof or foundation;
- sheeting on roofs or floors incapable of withstanding lateral loads;
- large openings in walls that may cause damage from torsional forces;
- lack of an effective system to resist lateral forces; or
- non-ductile concrete frame construction.

Hazardous Material: An injurious substance, including pesticides, herbicides, toxic metals and chemicals, liquefied natural gas, explosives, volatile chemicals, and nuclear fuels.

Landslide: A general term for a falling, sliding, or flowing mass of soil, rocks, water, and debris. Includes mudslides, debris flows, and debris torrents.

Liquefaction: A process by which water-saturated granular soils transform from a solid to a liquid state during strong ground shaking.

Peakload Water Supply: The supply of water available to meet both domestic water and fire fighting needs during the particular season and time of day when domestic water demand on a water system is at its peak.

Seiche: An earthquake-induced wave in a lake, reservoir, or harbor.

Seismic Hazard Zone: A regulatory zone, delineated by the State Geologist, within which site-specific geologic, soils, and foundation engineering studies are required to identify and avoid earthquake-caused ground-failure hazards, or selected other earthquake hazards, prior to subdivision of land and for construction of most structures for human occupancy.

Subsidence: The gradual, local settling or sinking of the earth's surface with little or no horizontal motion (subsidence is usually the result of gas, oil, or water extraction, hydrocompaction, or peat oxidation, and not the result of a landslide or slope failure).

Seismically Induced Surface Rupture: A break in the ground's surface and associated deformation resulting from the movement of a fault.

Tsunami: A wave, commonly called a tidal wave, caused by an underwater seismic disturbance, such as sudden faulting, landslide, or volcanic activity.

Wildland Fire: A fire occurring in a suburban or rural area which contains uncultivated lands, timber, range, watershed, brush or grasslands. This includes areas where there is a mingling of developed and undeveloped lands.

risk" in the community (e.g., life safety—the statewide minimum—or some higher standard)
- Requirements for geologic evaluation, prior to site development, of the potential for displacement along identified active and potentially active faults to limit risk to acceptable levels (OS)
- Regular safety element revisions to incorporate new seismic hazard maps or other information as it becomes available
- Removal or rehabilitation of hazardous or substandard structures which may be expected to collapse in the event of an earthquake including, but not limited to, unreinforced masonry buildings, bridges, and critical facilities
- Development standards and restrictions such as limits on the types of allowable development, development intensity/density standards, and subdivision design policies for sites subject to seismically induced landslide, mudslide, liquefaction, or subsidence to limit risk to acceptable levels (LU)
- Requirements for geotechnical evaluation of the potential for earthquake-triggered landslide, mudslide, liquefaction, and subsidence prior to site development, in areas where such hazards have been identified, to limit risk to acceptable levels (LU, OS)
- Use of "geologic hazard abatement districts" to finance the prevention, mitigation, abatement or control of geologic hazards (Public Resources Code §s 26500 et seq.)
- Development standards and restrictions such as subdivision design policies and building setbacks within areas subject to inundation as a result of a tsunami or seiche to limit risk to acceptable levels (LU, OS)
- Development standards and restrictions to limit risk to acceptable levels within areas that would be inundated as a result of dam failure (LU, OS)
- Development standards and restrictions such as limits on development and restrictions on water wells in areas subject to subsidence (LU)
- Development policies, standards, and requirements which reduce the risk of geologic hazards to acceptable levels, including:
  - Evacuation routes (map)
  - Minimum road widths
  - Setback requirements and subdivision design within areas subject to other known geologic hazards, e.g., volcanic activity, avalanches, or cliff erosion
- Contingency plans for immediate post-earthquake response and longer term reconstruction activities in areas potentially subject to significant damage
- Requirements for evaluating the potential risks associated with other known geologic hazards, such as volcanic activity, avalanches or cliff erosion, and to limit risk to acceptable levels prior to development
- Requirements for geotechnical evaluation, prior to site development, of the potential for liquefaction and earthquake-triggered landslides in identified seismic hazard zone (OS)
- Development standards and restrictions within identified floodplains or areas subject to potential inundation by a 100-year flood or by levee failure to limit the risk of loss to acceptable levels. These might include subdivision design, setback requirements, and development intensity/density standards. (LU, CO, OS)
- Floodplain management policies, including both structural and non-structural approaches, and cooperative actions with other agencies. (LU, CO, OS)
- Policies to support the enactment of floodplain zoning necessary to qualify for FEMA's National Flood Insurance Program. (LU, CO, OS)
- Development policies, standards, and restrictions which reduce the risk of urban and wildland fires to an acceptable level, including:
  - Design, reservation, and requirements regarding evacuation routes
  - Peakload water supply requirements and performance standards for urban, suburban, and rural development
  - Minimum road widths
  - Clearances around structures (i.e., "defensible space").
  - Fire equipment response time
  - Land use intensity/density standards
  - Subdivision design for fire safety, including defensible space
  - Fire safe building materials
  - Standards conforming to the fire safety standards established by the State Board of Forestry for state responsibility areas (Public Resources Code §4290):
  - Road Standards for fire equipment access
  - Standards for signs identifying streets, roads, and buildings
  - Minimum private water supply reserves for emergency fire use
  - Land use policies and safety standards that take into account the recurrent nature of wildland fires
- Development of strategies for both structural fire protection and for preventing or mitigating wildland fire impacts that correspond to different fire hazard levels (e.g. high or very high fire severity in LRA or High Risk/High Value areas in SRA)

- Future service facilities (map)
- Emergency preparedness protocol and procedures, including SEMS.
- Develop crime safe community policies and programs encouraging community support and involvement in crime and accident prevention through planning.

Technical Assistance

The following state agencies can provide information or assistance for the preparation of the *safety element:* Department of Conservation's Division of Mines and Geology, State Geologist, Office of Emergency Services, Department of Forestry and Fire Protection, Seismic Safety Commission, Caltrans, Department of Water Resources, and Office of Planning and Research. There are a variety of online sources for pertinent safety information; the best single place to access these is the CERES website maintained by the Resources Agency. Its URL is: http://ceres.ca.gov.

Useful safety element references can be found in the Bibliography under Geologic, Seismic, and other Hazards.

Pertinent State Code Sections

The following statutes reflect the pertinent sections of the state law affecting each of the seven mandatory elements. Sections which are appurtenant to multiple elements are referenced separately in each. Further, other miscellaneous sections of the State Code are included where applicable. Each year, the statutes are revised as new bills are enacted. The following sections are subject to change.

All code sections refer to the Government Code unless otherwise stated.

Land Use Element

§65302(a): [The general plan shall include] a land use element which designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open-space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan. The land use element shall identify areas covered by the plan which are subject to flooding and shall be reviewed annually with respect to those areas. The land use element shall designate, in a land use category that provides for timber production, those parcels of real property zoned for timberland production pursuant to the California Timberland Productivity Act of 1982, Chapter 6.7 (commencing with §51100) of Part 1 of Division 1 of Title 5.

Public Resources Code §2762: (a) Within 12 months of receiving the mineral information described in [Public Resources Code] §2761, and also within 12 months of the designation of an area of statewide or regional significance within its jurisdiction, every lead agency shall, in accordance with state policy, establish mineral resource management policies to be incorporated in its general plan which will:

(1) Recognize mineral information classified by the State Geologist and transmitted by the [State Mining and Geology] board.

(2) Assist in the management of land use which affect areas of statewide and regional significance.

(3) Emphasize the conservation and development of identified mineral deposits.

(b) Every lead agency shall submit proposed mineral resource management policies to the board for review and comment prior to adoption.

(c) Any subsequent amendment of the mineral resource management policy previously

(d) If any area is classified by the State Geologist as an area described in paragraph (2) of subdivision (b) of Section 2761, and the lead agency either has designated that area in its general plans as having important minerals to be protected pursuant to subdivision (a), or otherwise has not yet acted pursuant to subdivision (a), then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare, in conjunction with preparing any envi-

ronmental document required by Division 13 (commencing with Section 21000), or in any event if no such document is required, a statement specifying its reasons for permitting the proposed use, and shall forward a copy to the State Geologist and the board for review.

If the proposed use is subject to the requirements of Division 13 (commencing with Section 21000), the lead agency shall comply with the public review requirements of that division. Otherwise, the lead agency shall provide public notice of the availability of its statement by all of the following:

(4) Publishing the notice at least one time in a newspaper of general circulation in the area affected by the proposed.

(5) Directly mailing the notice to owners of property within one-half mile of the parcel or parcels on which the proposed use is located as those owners are shown on the latest equalized assessment role.

The public review period shall not be less than 60 days from the date of the notice and shall include at least one public hearing. The lead agency shall evaluate comments received and shall prepare a written response. The written response shall describe the disposition of the major issues raised. In particular, when the lead agency's position on the proposed use is at variance with recommendations and objections raised in the comments, the written response shall address in detail why specific comments and suggestions were not accepted.

(e) Prior to permitting a use which would threaten the potential to extract minerals in an area classified by the State Geologist as an area described in paragraph (3) of subdivision (b) of Section 2761, the lead agency may cause to be prepared an evaluation of the area in order to ascertain the significance of the mineral deposit located therein. The results of such evaluation shall be transmitted to the State Geologist and the board.

Public Resources Code §2763: (a) If the area is designated by the board as an area of regional significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of §2762, or otherwise has not yet acted pursuant to subdivision (a) of §2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of §2762. Lead agency land use decisions involving areas designated as being of regional significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of these minerals to their market region as a whole and not just their importance to the lead agency's area of jurisdiction.

(b) If the area is designated by the board as an area of statewide significance, and the lead agency either has designated that area in its general plan as having important minerals to be protected pursuant to subdivision (a) of §2762, or otherwise has not yet acted pursuant to subdivision (a) of §2762, then prior to permitting a use which would threaten the potential to extract minerals in that area, the lead agency shall prepare a statement specifying its reasons for permitting the proposed use, in accordance with the requirements set forth in subdivision (d) of §2762. Lead agency land use decisions involving areas designated as being of statewide significance shall be in accordance with the lead agency's mineral resource management policies and shall also, in balancing mineral values against alternative land uses, consider the importance of the mineral resources to the state and nation as a whole.

Public Resources Code §2764: (a) Upon the request of an operator or other interested person and payment by the requesting person of the estimated cost of processing the request, the lead agency having jurisdiction shall amend its general plan, or prepare a new specific plan or amend any applicable specific plan, that shall, with respect to the continuation of the existing surface mining operation for which the request is made, plan for future land uses in the vicinity of, and access routes serving, the surface mining operation in light of the importance of the minerals to their market region as a whole, and not just their importance to the lead agency's area of jurisdiction.

(b) In adopting amendments to the general plan, or adopting or amending a specific plan, the lead agency shall make written legislative findings as to whether the future land uses and particular access routes will be compatible or incompatible with the continuation of the surface mining operation, and if they are found to be incompatible, the findings shall include a statement of the reasons why they are to be provided for, notwithstanding the importance of the minerals to their market region as a whole or their previous designation by the board, as the case may be.

(c) Any evaluation of a mineral deposit prepared by a lead agency for the purpose of carrying out this section shall be transmitted to the State Geologist and the [State Mining and Geology] board.

(d) The procedure provided for in this section shall not be undertaken in any area that has been designated pursuant to Article 6 (commencing with §2790) if mineral resource management policies have been established and incorporated in the lead agency's general plan in conformance with Article 4 (commencing with §2755).

Circulation Element

§65302(b): [The general plan shall include] a circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other local public utilities and facilities, all correlated with the land use element of the plan.

Housing Element

§65400: After the legislative body has adopted all or part of a general plan, the planning agency shall do both of the following:

(a) Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and the efficient expenditure of public funds relating to the subjects addressed in the general plan.

(b) (1) Provide an annual report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on the status of the plan and progress in its implementation, including the progress in meeting its share of regional housing needs determined pursuant to Section 65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of Section 65583.

(2) The annual report required to be provided to the Office of Planning and Research and the Department of Housing and Community Development pursuant to this subdivision shall be prepared through the use of forms and definitions adopted by the Department of Housing and Community Development pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of, Chapter 4 (commencing with Section 11370) of, and Chapter 5 (commencing with Section 11500) of, Part 1 of Division 3 of Title 2). This report shall be provided to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on or before July 1 of each year.

(Amended by Chapter 796, Statutes of 1998)

§65583: The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1) Analysis of population and employment trends and documentation of projections and a quantification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with §65584.

(2) Analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) Analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584.

(5) Analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) Analysis of any special housing needs, such as those of the handicapped, elderly, large families, farmworkers, families with female heads of households,

and families and persons in need of emergency shelter.

(7) Analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change to non-low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of use restrictions. "Assisted housing developments," for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of §65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. "Assisted housing developments" shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to §65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and non-elderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project by project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing development, identified in this paragraph, including, but not limited to, federal Community Development Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of the funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with §65300). Under these circumstances, the quantified objectives need not be identical to the identified existing housing needs, but should establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time frame.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a Low and Moderate Income Housing Fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with §33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) Identify adequate sites which will be made available through appropriate zoning and development standards and with public services and facilities needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, emergency shelters and transitional housing in order to meet the community's housing goals as identified in subdivision (b). Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate

and facilitate the feasibility of housing for very low and low-income households. For purposes of this paragraph, the phrase "use by right" shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing.

(4) Conserve and improve the condition of the existing affordable housing stock.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, or color.

(6) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

The program shall include an identification of the agencies and officials responsible for the implementation of various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by January 1, 1992.

(e) Failure of the department [of Housing and Community Development] to review and report its findings pursuant to §65585 to the local government between January 1, 1992, and the next periodic review and revision required by §65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to part 2 (commencing with §50400) of Division 31 of the Health and Safety Code.

§65583.1: (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for consistency with state law, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. Nothing in this section reduces the responsibility of a city or county to identify, by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 if the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program

shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been cited and found by the local code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated because of the existence for not less than 120 days of four of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation, except that if the period is less than 20 years, only one unit shall be credited as an identified adequate site for every three units rehabilitated pursuant to this section, and no credit shall be allowed for a unit required to remain affordable for less than 10 years.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located in a multifamily rental housing complex of 16 or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at a cost affordable to low- or very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The acquisition price is not greater than 120 percent of the median price for housing units in the city or county.

(vi) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low or very low income for not less than 30 years.

(C) Units that will be preserved at affordable housing costs to persons or families of low or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is multifamily rental housing that receives governmental assistance under any of the following state and federal programs: Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715l(d)(3) and (5)); Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement assistance under Section 101 of the Housing and Urban Develop-

ment Act of 1965, as amended (12 U.S.C. Sec. 1701s); under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485); and any new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f); any state and local multifamily revenue bond programs; local redevelopment programs; the federal Community Development Block Grant Program; and other local housing assistance programs or units that were used to qualify for a density bonus pursuant to Section 65916.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any such housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, "committed assistance" means that the city or county enters into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. "Committed assistance" does not include tenant-based rental assistance.

(5) For purposes of this subdivision, "net increase" includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, "the time the unit is identified" means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) On July 1 of the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

(Amended by Chapter 796, Statutes of 1998)

§65584: (a) For purposes of subdivision (a) of Section 65583, the share of a city or county of the regional housing needs includes that share of the housing need of persons at all income levels within the area significantly affected by a general plan of the city or county. The distribution of regional housing needs shall, based upon available data, take into consideration market demand for housing, employment opportunities, the availability of suitable sites and public facilities, commuting patterns, type and tenure of housing need, the loss of units

contained in assisted housing developments, as defined in paragraph (8) of subdivision (a) of Section 65583, that changed to non-low-income use through mortgage prepayment, subsidy contract expirations, or termination of use restrictions, and the housing needs of farmworkers. The distribution shall seek to reduce the concentration of lower income households in cities or counties which already have disproportionately high proportions of lower income households. Based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, and in consultation with each council of governments, the Department of Housing and Community Development shall determine the regional share of the statewide housing need at least two years prior to the second revision, and all subsequent revisions as required pursuant to Section 65588. Based upon data provided by the department relative to the statewide need for housing, each council of governments shall determine the existing and projected housing need for its region. Within 30 days following notification of this determination, the department shall ensure that this determination is consistent with the statewide housing need. The department may revise the determination of the council of governments if necessary to obtain this consistency. The appropriate council of governments shall determine the share for each city or county consistent with the criteria of this subdivision and with the advice of the department subject to the procedure established pursuant to subdivision (c) at least one year prior to the second revision, and at five-year intervals following the second revision pursuant to Section 65588. The council of governments shall submit to the department information regarding the assumptions and methodology to be used in allocating the regional housing need. As part of the allocation of the regional housing need, the council of governments, or the department pursuant to subdivision (b), shall provide each city and county with data describing the assumptions and methodology used in calculating its share of the regional housing need. The department shall submit to each council of governments information regarding the assumptions and methodology to be used in allocating the regional share of the statewide housing need. As part of its determination of the regional share of the statewide housing need, the department shall provide each council of governments with data describing the assumptions and methodology used in calculating its share of the statewide housing need. The councils of governments shall provide each city and county with the department's information. The council of governments shall provide a subregion with its share of the regional housing need, and delegate responsibility for providing allocations to cities and a county or counties in the subregion to a subregional entity if this responsibility is requested by a county and all cities in the county, a joint powers authority established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1, or the governing body of a subregional agency established by the council of governments, in accordance with an agreement entered into between the council of governments and the subregional entity that sets forth the process, timing, and other terms and conditions of that delegation of responsibility.

(b) For areas with no council of governments, the department shall determine housing market areas and define the regional housing need for cities and counties within these areas pursuant to the provisions for the distribution of regional housing needs in subdivision (a). If the department determines that a city or county possesses the capability and resources and has agreed to accept the responsibility, with respect to its jurisdiction, for the identification and determination of housing market areas and regional housing needs, the department shall delegate this responsibility to the cities and counties within these areas.

(c) (1) Within 90 days following a determination of a council of governments pursuant to subdivision (a), or the department's determination pursuant to subdivision (b), a city or county may propose to revise the determination of its share of the regional housing need in accordance with the considerations set forth in subdivision (a). The proposed revised share shall be based upon available data and accepted planning methodology, and supported by adequate documentation.

(2) Within 60 days after the time period for the revision by the city or county, the council of governments or the department, as the case may be, shall accept the proposed revision, modify its earlier determination, or indicate, based upon available data and accepted planning methodology, why the proposed revision is inconsistent with the regional housing need.

(A) If the council of governments or the department, as the case may be, does not accept the proposed revision, then the city or county shall have the right to request a public hearing to review the determination within 30 days.

(B) The city or county shall be notified within 30 days by certified mail, return receipt requested, of at least one public hearing regarding the determination.

(C) The date of the hearing shall be at least 30 days from the date of the notification.

(D) Before making its final determination, the council

of governments or the department, as the case may be, shall consider comments, recommendations, available data, accepted planning methodology, and local geological and topographic restraints on the production of housing.

(3) If the council of governments or the department accepts the proposed revision or modifies its earlier determination, the city or county shall use that share. If the council of governments or the department grant a revised allocation pursuant to paragraph (1), the council of governments or the department shall ensure that the current total housing need is maintained. If the council of governments or department indicates that the proposed revision is inconsistent with the regional housing need, the city or county shall use the share which was originally determined by the council of governments or the department.

(4) The determination of the council of governments or the department, as the case may be, shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

(5) The council of governments or the department shall reduce the share of regional housing needs of a county if all of the following conditions are met:

(A) One or more cities within the county agree to increase its share or their shares in an amount which will make up for the reduction.

(B) The transfer of shares shall only occur between a county and cities within that county.

(C) The county's share of low-income and very low income housing shall be reduced only in proportion to the amount by which the county's share of moderate- and above moderate-income housing is reduced.

(D) The council of governments or the department, whichever assigned the county's share, shall have authority over the approval of the proposed reduction, taking into consideration the criteria of subdivision (a).

(6) The housing element shall contain an analysis of the factors and circumstances, with all supporting data, justifying the revision. All materials and data used to justify any revision shall be made available upon request by any interested party within seven days upon payment of reasonable costs of reproduction unless the costs are waived due to economic hardship.

(d) (1) Except as provided in paragraph (2), any ordinance, policy, or standard of a city or county that directly limits, by number, the building permits that may be issued for residential construction, or limits for a set period of time the number of buildable lots that may be developed for residential purposes, shall not be a justification for a determination or a reduction in the share of a city or county of the regional housing need.

(2) Paragraph (1) does not apply to any city or county that imposes a moratorium on residential construction for a specified period of time in order to preserve and protect the public health and safety. If a moratorium is in effect, the city or county shall, prior to a revision pursuant to subdivision (c), adopt findings that specifically describe the threat to the public health and safety and the reasons why construction of the number of units specified as its share of the regional housing need would prevent the mitigation of that threat.

(e) Any authority to review and revise the share of a city or county of the regional housing need granted under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.

(f) A fee may be charged interested parties for any additional costs caused by the amendments made to subdivision (c) by Chapter 1684 of the Statutes of 1984 reducing from 45 to seven days the time within which materials and data shall be made available to interested parties.

(g) Determinations made by the department, a council of governments, or a city or county pursuant to this section are exempt from the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code.

(Amended by Chapter 796, Statutes of 1998)

§65584.3: [This Section relates solely to redevelopment issues in the City of Industry and is not included.]

§65584.5: (a) A city or county may transfer a percentage of its share of the regional housing needs to another city or county, if all of the following requirements are met:

(1) Both the receiving city or county and the transferring city or county comply with all of the conditions specified in subdivision (b).

(2) The council of governments or the department reviews the findings made pursuant to paragraph (2) of subdivision (c).

(3) The transfer does not occur more than once in a five-year housing element interval pursuant to subdivision (b) of Section 65588.

(4) The procedures specified in subdivision (c) are met.

(b) (1) Except as provided in paragraph (5) of subdivision (c) of Section 65584, a city or county transferring a share of its regional housing needs shall first have met, in the current or previous housing element cycle, at least 15 percent of its existing share of the region's affordable

housing needs, as defined in Section 65584, in the very low and lower income category of income groups defined in Section 50052.5 of the Health and Safety Code if it proposes to transfer not more than 15 percent. In no event, however, shall the city or county transfer more than 500 dwelling units in a housing element cycle.

(2) A city or county shall transfer its regional housing needs in the same proportion by income group as the jurisdiction has met its regional housing needs.

(3) The transfer shall be only between jurisdictions that are contiguously situated or between a receiving city or county that is within 10 miles of the territory of the community of the donor city or county. If both the donor community and receiving community are counties, the donor county shall be adjacent to, in the same council of governments region as, and in the same housing market as, the receiving county. The sites on which any transferred housing units will be constructed shall be in the receiving city or county, and within the same housing market area as the jurisdiction of the donor city or county.

(4) The transferring and receiving city or county shall have adopted, and shall be implementing, a housing element in substantial compliance with Section 65583.

(5) The transferring city or county and the receiving city or county shall have completed, and provided to the department, the annual report required by subdivision (b) of Section 65400.

(c) (1) The donor city or county and the receiving city or county shall, at least 45 days prior to the transfer, hold a public hearing, after providing notice pursuant to Section 6062, to solicit public comments on the draft contract, including its terms, conditions, and determinations.

(2) The transferring and the receiving city or county shall do all of the following:

(A) Adopt a finding, based on substantial evidence on the record, that the transfer of the regional housing need pursuant to the terms of the agreement will not cause or exacerbate racial, ethnic, or economic segregation and will not create a detrimental financial impact upon the receiving city or county.

(B) Adopt a finding, based on substantial evidence on the record, that the transfer of the regional housing need will result in the construction of a greater number of similar type dwelling units than if the transfer does not occur.

(3) (A) The transferring city or county and the receiving city or county shall enter into an agreement to transfer units eligible under subdivision (b). A copy of this agreement shall be sent to the council of governments and the department to be kept on file for public examination.

(B) The agreement shall include a plan and schedule for timely construction of dwelling units, including, in addition to site identification, identification of and timeframes for applying for sufficient subsidy or mortgage financing if the units need a subsidy or mortgage financing, and a finding that sufficient services and public facilities will be provided.

(4) At least 60 days prior to the transfer, the receiving city or county planning agency and the transferring city or county planning agency shall submit to the department a draft amendment to reflect the identified transferred units. A transferring agency may reduce its housing needs only to the extent that it had not previously reduced its housing needs pursuant to paragraph (2) of subdivision (b) of Section 65583. A county planning agency that has its share of the regional housing need reduced pursuant to paragraph (5) of subdivision (c) of Section 65584 shall comply with this section. A receiving city or county shall, in addition to any other provisions of the article, identify in its housing element sufficient sites to meet its initial low- and moderate-income housing needs and sufficient sites to meet all transferred housing needs.

(5) The department shall review the draft amendment and report its written findings to the planning agency within 45 days of its receipt.

(6) The department's review shall follow the same procedure, requirements, and responsibilities of Sections 65583, 65585, 65587, and 65589.3. The court shall consider any written findings submitted by the department.

(d) No transfer made pursuant to this section shall affect the plans for a development that have been submitted to a city or county for approval 45 days prior to the adoption of the amendment to the housing element.

(e) No transfer made pursuant to this section shall be counted toward any ordinance or policy of a locality that specifically limits the number of units that may be constructed.

(f) The Attorney General or any other interested person shall have authority to enforce the terms of the agreement and the provisions of this section.

(g) For a period of five years after the transfer occurs, the report required by subdivision (b) of Section 65400 shall include information on the status of transferred units, implementation of the terms and conditions of the transfer contract, and information on any dwelling units actually constructed, including the number, type, location, and affordability requirements in place for these units.

(h) (1) At least 60 days prior to the proposed transfer, the donor city or county shall submit the proposed agreement to the council of governments, or to the department if there is no council of governments that serves the city or county, for review. The governing board of the council

or the director shall determine whether there is substantial evidence to support the terms, conditions, and determinations of the agreement and whether the agreement complies with the substantive and procedural requirements of this section. If the council or the director finds that there is substantial evidence to support the terms, conditions, and determinations of the agreement, and that the agreement complies with the substantive and procedural requirements of this section, the participating jurisdictions may proceed with the agreement. If the governing board or the director finds that there is not substantial evidence to support the terms, conditions, and findings of the agreement, or that the agreement does not comply with the substantive and procedural requirements of this section, the board or the director may make recommendations for revising or terminating the agreement. The participating jurisdictions shall then include those revisions, if any, or terminate the agreement.

(2) The council or the director may convene a committee to advise the council or the director in conducting this review. The donor city or county and the receiving community shall pay the council's or the department's costs associated with the committee. Neither the donor city or county, nor the receiving city or county, may expend moneys in its Low and Moderate Income Housing Fund of its redevelopment agency for costs associated with the committee.

(3) Membership of the committee appointed pursuant to paragraph (2) shall include all of the following:

(A) One representative appointed by the director.

(B) One representative appointed by the donor agency.

(C) One representative appointed by the receiving community.

(D) Two low- and moderate-income housing advocates, appointed by the director, who represent those persons in that region.

(i) (1) The receiving city or county shall construct the housing units within three years of the date that the transfer contract is entered into pursuant to this section. This requirement shall be met by documenting that a building permit has been issued and all fees have been paid.

(2) Any portion of a regional share allocation that is transferred to another jurisdiction, and that is not constructed within the three-year deadline set forth in paragraph (1), shall be reallocated by the council of governments to the transferring city or county, and the transferring city or county shall modify its zoning ordinance, if necessary, and amend its housing element to reflect the reallocated units.

(3) If, at the end of the five-year housing element planning period, any portion of a regional share allocation that is transferred to another jurisdiction is not yet constructed, the council of governments shall add the unbuilt units to the normal regional fair share allocation and reallocate that amount to either of the following:

(A) The receiving city, if the three-year deadline for construction has not yet occurred; or

(B) The transferring city, if the three-year deadline for construction has occurred.

(4) If the transferred units are not constructed within three years, the nonperforming jurisdictions participating in the transfer of regional share allocations shall be precluded from transferring their regional shares, pursuant to this section, for the planning period of the next periodic update of the housing element.

(j) On or after January 1, 2000, no transferring city or county shall enter into an agreement pursuant to this section unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

(k) If Article XXXIV of the California Constitution is applicable, the receiving city or county shall certify that it has sufficient authority under Article XXXIV of the California Constitution to allow development of units transferred pursuant to this section.

(l) The receiving city or county shall not, within three years of the date of the transfer agreement entered into pursuant to this section, or until transferred units are constructed, whichever is longer, enter into a contract to transfer units outside the territorial jurisdiction of the agency pursuant to this section.

(m) Communities that have transferred a portion of their share of the regional housing need to another city or county pursuant to this section shall comply with all other provisions of law for purposes of meeting the remaining regional housing need not transferred, including compliance with the provisions of Section 65589.5.

(n) As used in this section, "housing market area" means the area determined by a council of governments or the department pursuant to Section 65584, and based upon market demand for housing, employment opportunities, the availability of suitable sites and public facilities, and commuting patterns.

(o) This section shall not be construed to interfere with the right of counties to transfer shares of regional housing needs pursuant to paragraph (5) of subdivision (c) of Section 65584.

(Added by Statutes 1994, Chapter 1235 (A.B. 51), Section 2.)

§65584.6: (a) The County of Napa may, during its current housing element planning period, identified in

Section 65588, meet up to 15 percent of its existing share of the regional housing need for lower income households, as defined in Section 65584, by committing funds for the purpose of constructing affordable housing units, and constructing those units in one or more cities within the county, only after all of the following conditions are met:

(1) An agreement has been executed between the county and the receiving city or cities, following a public hearing held by the county.

(2) The council of governments that assigned the county's share approves the request to meet up to 15 percent of the county's fair share housing allocation within one or more of the cities within the county.

(3) The city or cities in which the units are developed agree not to count the units towards their share of the region's affordable housing need.

(4) The county and the receiving city or cities find as follows:

(A) Adequate sites with appropriate zoning exist. The agreement shall demonstrate that the city or cities have identified sufficient sites in their housing elements to meet their existing share of regional housing need, as allocated by the council of governments pursuant to subdivision (a) of Section 65584, in addition to the sites needed to construct the units pursuant to this section.

(B) If needed, additional subsidy or financing for the construction of the units is available.

(C) The receiving city or cities have housing elements that have been found by the Department of Housing and Community Development to be in compliance with this article.

(b) The county shall only receive credit after the units have been constructed.

(c) Concurrent with the review by the council of governments prescribed by this section, the Department of Housing and Community Development shall evaluate the agreement to determine whether the city or cities are in substantial compliance with this section. If the council of governments or the department fails to satisfy this requirement within 30 days following a request by the county or receiving city or cities, the agreement shall be deemed approved by that entity.

(d) If at the end of the five-year period identified in subdivision (c) of Section 65583, any percentage of the regional share allocation has not been constructed as provided pursuant to subdivision (a), the council of governments shall add the unbuilt units to Napa County's regional share allocation for the planning period of the next periodic update of the housing element.

(e) Napa County shall not meet a percentage of its share of the regional share pursuant to subdivision (a) on or after June 30, 2004, unless a later enacted statute, that is enacted before June 30, 2004, deletes or extends that date.

(Added by Statutes 1996, Chapter 1018 (A.B. 3452), Section 2.)

Note: Statutes 1996, Chapter 1018 (A.B. 3452), Section 1, also reads:

SECTION 1. The Legislature finds and declares all of the following:

(a) In order to fulfill the purposes of Sections 65583 and 65584, housing should be developed in the jurisdictions to which the housing need is allocated.

(b) Due to circumstances unique to Napa County, and in order to provide additional and new housing for low- and moderate-income households, the county may meet a portion of its fair share housing needs allocation in one or more cities only within the county.

(c) Among the circumstances making it appropriate for Napa County to undertake this authority are both of the following:

(1) The county has 35,000 acres of world-famous vineyards and unincorporated area. The county's tourism industry relies on the vineyards and devotes its significant economic interests on those vineyards.

(2) The county has adopted a Housing Trust Fund program for residential development and a fee on industrial, commercial, and viticultural development in its unincorporated areas. The Housing Trust Fund currently generates approximately five hundred fifty thousand dollars ($550,000) per year to further affordable goals and strategies of the county's general plan, and these moneys can be effectively invested in partnership with the cities in the county in order to address affordable housing needs of county residents.

SECTION 3. The Legislature finds and declares that, because of the unique circumstances applicable to the County of Napa, as regards the availability of locations for affordable housing within the county, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

§65585: (a) In preparation of its housing element, each city and county shall consider the guidelines adopted by the department pursuant to Section 50459 of the Health and Safety Code. Those guidelines shall be advisory to each city or county in the preparation of its housing element.

(b) At least 90 days prior to adoption of its housing element, or at least 45 days prior to the adoption of an

amendment to this element, the planning agency shall submit a draft element or draft amendment to the department. The department shall review the draft and report its written findings to the planning agency within 90 days of its receipt of the draft in the case of an adoption or within 45 days of its receipt in the case of a draft amendment.

(c) In the preparation of its findings, the department may consult with any public agency, group, or person. The department shall receive and consider any written comments from any public agency, group, or person regarding the draft or adopted element or amendment under review.

(d) In its written findings, the department shall determine whether the draft element or draft amendment substantially complies with the requirements of this article.

(e) Prior to the adoption of its draft element or draft amendment, the legislative body shall consider the findings made by the department. If the department's findings are not available within the time limits set by this section, the legislative body may act without them.

(f) If the department finds that the draft element or draft amendment does not substantially comply with the requirements of this article, the legislative body shall take one of the following actions:

(1) Change the draft element or draft amendment to substantially comply with the requirements of this article.

(2) Adopt the draft element or draft amendment without changes. The legislative body shall include in its resolution of adoption written findings which explain the reasons the legislative body believes that the draft element or draft amendment substantially complies with the requirements of this article despite the findings of the department.

(g) Promptly following the adoption of its element or amendment, the planning agency shall submit a copy to the department.

(h) The department shall, within 120 days, review adopted housing elements or amendments and report its findings to the planning agency.

§65585.1: (a) The San Diego Association of Governments (SANDAG), if it approves a resolution agreeing to participate in the self-certification process, and in consultation with the cities and county within its jurisdiction, its housing element advisory committee, and the department, shall work with a qualified consultant to determine the maximum number of housing units that can be constructed, acquired, rehabilitated, and preserved as defined in paragraph (11) of subdivision (e) of Section 33334.2 of the Health and Safety Code, and the maximum number of units or households that can be provided with rental or ownership assistance, by each jurisdiction during the third and fourth housing element cycles to meet the existing and future housing needs for low and very low income households as defined in Sections 50079.5, 50093, and 50105 of the Health and Safety Code, and extremely low income households. The methodology for determining the maximum number of housing units that can be provided shall include a recognition of financial resources and regulatory measures that local jurisdictions can use to provide additional affordable lower income housing. This process is intended to identify the available resources that can be used to determine the maximum number of housing units each jurisdiction can provide. The process acknowledges that the need to produce housing for low, very low, and extremely low income households may exceed available resources. The department and SANDAG, with input from its housing element advisory committee, the consultant, and local jurisdictions, shall agree upon definitions for extremely low income households and their affordable housing costs, the methodology for the determination of the maximum number of housing units and the number each jurisdiction can produce at least one year before the due date of each housing element revision, pursuant to paragraph (3) of subdivision (e) of Section 65588. If SANDAG fails to approve a resolution agreeing to participate in this pilot program, or SANDAG and the department fail to agree upon the methodology by which the maximum number of housing units is determined, then local jurisdictions may not self-certify pursuant this section.

(1) The "housing element advisory committee" should include representatives of the local jurisdictions, nonprofit affordable housing development corporations and affordable housing advocates, and representatives of the for-profit building, real estate and banking industries.

(2) The determination of the "maximum number of housing units" that the jurisdiction can provide assumes that the needs for low, very low, and extremely low income households, including those with special housing needs, will be met in approximate proportion to their representation in the region's population.

(3) A "qualified consultant" for the purposes of this section means an expert in the identification of financial resources and regulatory measures for the provision of affordable housing for lower income households.

(b) A city or county within the jurisdiction of the San Diego Association of Governments that elects not to self-certify, or is ineligible to do so, shall submit its housing element or amendment to the department, pursuant to Section 65585.

(c) A city or county within the jurisdiction of the San Diego Association of Governments that elects to self-certify shall submit a self-certification of compliance to the department with its adopted housing element or amendment. In order to be eligible to self-certify, the legislative body, after holding a public hearing, shall make findings, based on substantial evidence, that it has met the following criteria for self-certification:

(1) The jurisdiction's adopted housing element or amendment substantially complies with the provisions of this article, including addressing the needs of all income levels.

(2) For the third housing element revision, pursuant to Section 65588, the jurisdiction met its fair share of the regional housing needs for the second housing element revision cycle, as determined by the San Diego Association of Governments.

In determining whether a jurisdiction has met its fair share, the jurisdiction may count each additional lower income household provided with affordable housing costs. Affordable housing costs are defined in Section 6918 for renters, and in Section 6925 for purchasers, of Title 25 of the California Code of Regulations, and in Sections 50052.5 and 50053 of the Health and Safety Code, or by the applicable funding source or program.

(3) For subsequent housing element revisions, pursuant to Section 65588, the jurisdiction has provided the maximum number of housing units as determined pursuant to subdivision (a), within the previous planning period.

(A) The additional units provided at affordable housing costs as defined in paragraph (2) in satisfaction of a jurisdiction's maximum number of housing units shall be provided by one or more of the following means:

(i) New construction.

(ii) Acquisition.

(iii) Rehabilitation.

(iv) Rental or ownership assistance.

(v) Preservation of the availability to lower income households of affordable housing units in developments which are assisted, subsidized, or restricted by a public entity and which are threatened with imminent conversion to market rate housing.

(B) The additional affordable units shall be provided in approximate proportion to the needs defined in paragraph (2) of subdivision (a).

(4) The city or county provides a statement regarding how its adopted housing element or amendment addresses the dispersion of lower income housing within its jurisdiction, documenting that additional affordable housing opportunities will not be developed only in areas where concentrations of lower income households already exist, taking into account the availability of necessary public facilities and infrastructure.

(5) No local government actions or policies prevent the development of the identified sites pursuant to Section 65583, or accommodation of the jurisdiction's share of the total regional housing need, pursuant to Section 65584.

(d) When a city or county within the jurisdiction of the San Diego Association of Governments duly adopts a self-certification of compliance with its adopted housing element or amendment pursuant to subdivision (c), all of the following shall apply:

(1) Section 65585 shall not apply to the city or county.

(2) In any challenge of a local jurisdiction's self-certification, the court's review shall be limited to determining whether the self-certification is accurate and complete as to the criteria for self-certification. Where there has not been a successful challenge of the self-certification, there shall be a rebuttable presumption of the validity of the housing element or amendment.

(3) Within six months after the completion of the revision of all housing elements in the region, the council of governments, with input from the cities and county within its jurisdiction, the housing element advisory committee, and qualified consultant shall report to the Legislature on the use and results of the self-certification process by local governments within its jurisdiction. This report shall contain data for the last planning period regarding the total number of additional affordable housing units provided by income category, the total number of additional newly constructed housing units, and any other information deemed useful by SANDAG in the evaluation of the pilot program.

(e) This section shall become inoperative on June 30, 2009, and as of January 1, 2010, is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

(Added by Statutes 1995, Chapter 589 (A.B. 1715), Section 2.)

Note: Statutes 1995, Chapter 589 (A.B. 1715), also reads:

SECTION 1. The Legislature hereby finds and declares all of the following:

(a) That the San Diego Association of Governments, the council of governments in the San Diego region, serving as the Regional Planning and Growth Management Review Board, has adopted a Regional Growth Management Strategy, based on a voter-approved measure, that contains a regional housing element consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(b) That the Regional Growth Management Strategy has provided a program for measuring local government housing needs performance.

(c) That for this reason the San Diego region is uniquely suited to undertake a pilot program authorizing the local governments within the jurisdiction of the San Diego Association of Governments, in conjunction with the council of governments, the housing element advisory committee, and the Department of Housing and Community Development to establish performance standards for self-certification, and, if eligible, to self-certify compliance of their adopted housing elements or amendments in accordance with the criteria for self-certification.

§65586: Local governments shall conform their housing elements to the provisions of this article on or before October 1, 1981. Jurisdictions with housing elements adopted before October 1, 1981, in conformity with the housing element guidelines adopted by the Department of Housing and Community Development on December 7, 1977, and located in Subchapter 3 (commencing with Section 6300) of Chapter 6 of Part 1 of Title 25 of the California Administrative Code [repealed in 1982], shall be deemed in compliance with this article as of its effective date. A locality with a housing element found to be adequate by the department before October 1, 1981, shall be deemed in conformity with these guidelines.

§65587: (a) Each city, county, or city and county shall bring its housing element, as required by subdivision (c) of Section 65302, into conformity with the requirements of this article on or before October 1, 1981, and the deadlines set by Section 65588. Except as specifically provided in subdivision (b) of Section 65361, the Director of Planning and Research shall not grant an extension of time from these requirements.

(b) Any action brought by any interested party to review the conformity with the provisions of this article of any housing element or portion thereof or revision thereto shall be brought pursuant to Section 1085 of the Code of Civil Procedure; the court's review of compliance with the provisions of this article shall extend to whether the housing element or portion thereof or revision thereto substantially complies with the requirements of this article.

(c) If a court finds that an action of a city, county, or city and county, which is required to be consistent with its general plan, does not comply with its housing element, the city, county, or city and county shall bring its action into compliance within 60 days. However the court shall retain jurisdiction through out the period for compliance to enforce its decision. Upon the court's determination that the 60-day period for compliance would place an undue hardship on the city, county, or city and county, the court may extend the time period for compliance by an additional 60 days.

(Amended by Statutes 1984, Chapter 1009; Amended Statutes 1990, Chapter 1441 (S.B. 2274), Section 6.)

§65588. (a) Each local government shall review its housing element as frequently as appropriate to evaluate all of the following:

(1) The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of the state housing goal.

(2) The effectiveness of the housing element in attainment of the community's housing goals and objectives.

(3) The progress of the city, county, or city and county in implementation of the housing element.

(b) The housing element shall be revised as appropriate, but not less than every five years, to reflect the results of this periodic review.

In order to facilitate effective review by the department of housing elements, the following local governments shall prepare and adopt the first two revisions of their housing elements no later than the dates specified in the following schedule, notwithstanding the date of adoption of the housing elements in existence on the effective date of the act which amended this section during the 1983-84 Session of the Legislature.

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments: July 1, 1984, for the first revision and July 1, 1989, for the second revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: January 1, 1985, for the first revision, and July 1, 1990, for the second revision.

(3) Local governments within the regional jurisdiction of the San Diego Association of Governments, the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: July 1, 1985, for the first revision, and July 1, 1991, for the second revision.

(4) All other local governments: January 1, 1986, for the first revision, and July 1, 1992, for the second revision.

(5) Subsequent revisions shall be completed not less often than at five-year intervals following the second revision.

(c) The review and revision of housing elements

required by this section shall take into account any low- or moderate-income housing provided or required pursuant to Section 65590.

(d) The review pursuant to subdivision (c) shall include, but need not be limited to, the following:

(1) The number of new housing units approved for construction within the coastal zone after January 1, 1982.

(2) The number of housing units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, required to be provided in new housing developments either within the coastal zone or within three miles of the coastal zone pursuant to Section 65590.

(3) The number of existing residential dwelling units occupied by persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been authorized to be demolished or converted since January 1, 1982, in the coastal zone.

(4) The number of residential dwelling units for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, that have been required for replacement or authorized to be converted or demolished as identified in paragraph (3). The location of the replacement units, either onsite, elsewhere within the locality's jurisdiction within the coastal zone, or within three miles of the coastal zone within the locality's jurisdiction, shall be designated in the review.

(e) Notwithstanding the requirements of paragraph (5) of subdivision (b), the dates of revisions for the housing element shall be modified upon the effective date of this provision as follows:

(1) Local governments within the regional jurisdiction of the Southern California Association of Governments : June 30, 2000, for the third revision, and June 30, 2005, for the fourth revision.

(2) Local governments within the regional jurisdiction of the Association of Bay Area Governments: June 30, 2001, for the third revision, and June 30, 2006, for the fourth revision.

(3) Local governments within the regional jurisdiction of the Council of Fresno County Governments, the Kern County Council of Governments, the Sacramento Area Council of Governments, and the Association of Monterey Bay Area Governments: June 30, 2002, for the third revision, and June 30, 2007, for the fourth revision.

(4) Local governments within the regional jurisdiction of the San Diego Association of Governments: June 30, 1999, for the third revision, and June 30, 2004, for the fourth revision.

(5) All other local governments: June 30, 2003, for the third revision, and June 30, 2008, for the fourth revision.

(6) Subsequent revisions shall be completed not less often than at five-year intervals following the fourth revision.

(Amended by Chapter 819, Statutes of 1998)

§65589.3: In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department has found that the element or amendment substantially complies with the requirements of this article.

§65589.3: In any action filed on or after January 1, 1991, taken to challenge the validity of a housing element, there shall be a rebuttable presumption of the validity of the element or amendment if, pursuant to Section 65585, the department has found that the element or amendment substantially complies with the requirements of this article.

(Added by Stats.1990, c. 1441 (S.B.2274), § 7.)

§65589.5: (a) The Legislature finds all of the following:

(1) The lack of affordable housing is a critical problem which threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments which limit the approval of affordable housing, increase the cost of land for affordable housing, and require that high fees and exactions be paid by producers of potentially affordable housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions which result in disapproval of affordable housing projects, reduction in density of affordable housing projects, and excessive standards for affordable housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible affordable housing devel-

opments which contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without meeting the provisions of subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands to urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project affordable to low- and moderate-income households or condition approval in a manner which renders the project infeasible for development for the use of low- and moderate-income households unless it finds, based upon substantial evidence, one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article and the development project is not needed for the jurisdiction to meet its share of the regional housing need of low-income or very low income housing.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a "specific, adverse impact" means a significant, unavoidable impact, as provided in written standards, policies, or conditions.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) Approval of the development project would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site, including those sites identified pursuant to paragraph (1) of subdivision (c) of Section 65583, without rendering the development unaffordable to low- and moderate-income households.

(5) The development project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or waste water facilities to serve the project.

(6) The development project is inconsistent with the jurisdiction's general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a housing element pursuant to this article.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with written development standards, conditions, and policies appropriate to, and consistent with, meeting the quantified objectives relative to the development of housing, as required in the housing element pursuant to subdivision (b) of Section 65583. Nor shall anything in this section be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law which are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities, because the Legislature finds that the lack of affordable housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Affordable to low- and moderate-income households" means at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, and the remaining units shall be sold or rented to either lower income households or persons and families of moderate

income, as defined in Section 50093 of the Health and Safety Code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(3) "Area median income" shall mean area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for the lower income households in accordance with the provisions of this subdivision for 30 years.

(4) "Neighborhood" means a planning area commonly identified as such in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(i) If any city, county, or city and county denies approval or imposes restrictions, including a reduction of allowable densities or the percentage of a lot which may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, which have a substantial adverse effect on the viability or affordability of a housing development affordable to low- and moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d).

(j) When a proposed housing development project complies with the applicable general plan, zoning, and development policies in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, unavoidable impact, as provided in written standards, policies, or conditions.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(Added by Stats.1982, c. 1438, § 2. Amended by Stats.1990, c. 1439 (S.B.2011), § 1; Stats.1991, c. 100 (S.B.162), § 1, eff. July 1, 1991; Stats.1992, c. 1356 (S.B.1711), § 1; Stats.1994, c. 896 (A.B.3735), § 2.)

Conservation Element

§65302(d): [The general plan shall include] a conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies which have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. Coordination shall include the discussion and evaluation of any water supply and demand information described in Section 65352.5, if that information has been submitted by the water agency to the city or county.

The conservation element may also cover:

(1) The reclamation of land and waters.

(2) Prevention and control of the pollution of streams and other waters.

(3) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

(4) Prevention, control, and correction of the erosion of soils, beaches, and shores.

(5) Protection of watersheds.

(6) The location, quantity and quality of the rock, sand and gravel resources.

(7) Flood control.

Open-Space Element

§65302(e): [The general plan shall include] an open-space element as provided in Article 10.5 (commencing with [Government Code] §65560).

§65560: (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to §65563.

(b) "Open-space land" is any parcel or area of land or water which is essentially unimproved and devoted to an open-space use as defined in this section, and which is designated on a local, regional or state open-space plan as any of the following:

(1) Open-space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; and coastal beaches, lake shores, banks of rivers and streams, and watershed lands.

(2) Open-space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.

(3) Open-space for outdoor recreation, including but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lake shores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.

(4) Open-space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, floodplains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.

§65561: The Legislature finds and declares as follows:

(a) That the preservation of open-space land, as defined in this article, is necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources.

(b) That discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of public interest and will be of benefit to urban dwellers because it will discourage noncontiguous development patterns which unnecessarily increase the costs of community services to community residents.

(c) That the anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods.

(d) That in order to assure that the interest of all its people are met in the orderly growth and development of the state and the preservation and conservation of its resources, it is necessary to provide for the development by the state, regional agencies, counties and cities, including charter cities, of statewide coordinated plans for the conservation and preservation of open-space lands.

That for these reasons this article is necessary for the promotion of the general welfare and for the protection of the public interest in open-space land.

§65562: It is the intent of the Legislature in enacting this article:

(a) To assure that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible.

(b) To assure that every city and county will prepare and carry out open-space plans which, along with state and regional open-space plans, will accomplish the objectives of a comprehensive open-space program.

§65563: On or before December 31, 1973, every city and county shall prepare, adopt and submit to the Secretary of the Resources Agency a local open-space plan for the comprehensive and long-range preservation and conservation of open-space land within its jurisdiction.

§65564: Every local open-space plan shall contain an action program consisting of specific programs which

the legislative body intends to pursue in implementing its open-space plan.

§65566: Any action by a county or city by which open-space land or any interest therein is acquired or disposed of or its use restricted or regulated, whether or not pursuant to this part, must be consistent with the local open-space plan.

§65567: No building permit may be issued, no subdivision map approved, and no open-space zoning ordinance adopted, unless the proposed construction, subdivision or ordinance is consistent with the local open-space plan.

Public Resources Code §5076: In developing the open-space element of a general plan as specified in subdivision (e) of §65302 of the Government Code, every city and county shall consider demands for trail-oriented recreational use and shall consider such demands in developing specific open-space programs. Further, every city, county, and district shall consider the feasibility of integrating its trail routes with appropriate segments of the state system.

Noise Element

§65302(f**):** [The general plan shall include] a noise element which shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practical, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (Ldn). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

Uniform Building Code: The Uniform Building Code includes Sound Transmission Control standards for building construction under Appendix 12, Division 2/2a.

Safety Element

§65302(g): [The general plan shall include a] safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence, liquefaction, and other seismic hazards identified pursuant to Chapter 7.8 (commencing with §2690) of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wild land and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. It shall also address evacuation routes, peakload water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards. Prior to the periodic review of its general plan and prior to preparing or revising its safety element, each city and county shall consult the Division of Mines and Geology of the Department of Conservation and the Office of Emergency Services for the purpose of including information known by and available to the department and the office required by this subdivision.

To the extent that a county's safety element is sufficiently detailed and contains appropriate policies and programs for adoption by a city, a city may adopt that portion of the county's safety element that pertains to the city's planning area in satisfaction of the requirement imposed by this subdivision.

At least 45 days prior to adoption or amendment of the

safety element, each county and city shall submit to the Division of Mines and Geology of the Department of Conservation one copy of a draft of the safety element or amendment and any technical studies used for developing the safety element. The division may review drafts submitted to it to determine whether they incorporate known seismic and other geologic hazard information, and report its findings to the planning agency within 30 days of receipt of the draft of the safety element or amendment pursuant to this subdivision. The legislative body shall consider the division's findings prior to final adoption of the safety element or amendment unless the division's findings are not available within the above prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available within those prescribed time limits or unless the division has indicated to the city or county that the division will not review the safety element. If the division's findings are not available with those prescribed time limits, the legislative body may take the division's findings into consideration at the time it considers future amendments to the safety element. Each county and city shall provide the division with a copy of adopted safety element or amendments. The division may review adopted safety elements or amendments and report its findings. All findings made by the division shall be advisory to the planning agency and legislative body.

§65302.5: With respect to the safety element required in the general plan, pursuant to subdivision (g) of §65302, each county which contains state responsibility areas, as determined pursuant to §4125 of the Public Resources Code, shall comply with §4128.5 of the Public Resources Code.

Public Resources Code §4102: "State responsibility areas" means areas of the state in which the financial responsibility of preventing and suppressing fires has been determined by the [State Board of Forestry] pursuant to [Public Resources Code] §4125, to be primarily the responsibility of the state.

Public Resources Code §4125: (a) The [State Board of Forestry] shall classify all lands within the state, without regard to any classification of lands made by or for any federal agency or purpose, for the purpose of determining areas in which the financial responsibility of preventing and suppressing fires in all areas which are not so classified is primarily the responsibility of local or federal agencies, as the case may be.

(b) On or before July 1, 1991, and every fifth year thereafter, the [Department of Forestry and Fire Protection] shall provide copies of maps identifying the boundaries of lands classified as state responsibility pursuant to subdivision (a) to the county assessor for every county containing any such lands. The department shall also notify county assessors of any changes to state responsibility areas within the county resulting from periodic boundary modifications approved by the board.

Public Resources Code §4128.5: (a) It is the intent of the Legislature that decisions affecting the use of land in state responsibility areas result in land uses which protect life, property, and natural resources from unreasonable risks associated with wild land fires.

(b) At least 90 days prior to the adoption or amendment to the safety element of its general plan, the planning agency of each county which contains state responsibility areas shall submit the draft element or draft amendment to the [State Board of Forestry] and to every local agency which provides fire protection to unincorporated territory in the county. The board shall, and a local agency may, review the draft and report its written recommendations to the planning agency within 60 days of its receipt of the draft. The board and local agency shall review the draft for consistency with the intent of this section. The board and local agency may offer written recommendations for changes to the draft which would make the draft consistent with the intent of this section.

(c) Prior to the adoption of its draft element or draft amendment, the board of supervisors of the county shall consider the recommendations made by the [State Board of Forestry] and any local agency which provides fire protection to unincorporated territory in the county. If the board of supervisors determines not to accept all or some of the recommendations, if any, made by the board or local agency, the board of supervisors shall communicate in writing to the board or local agency its reasons for not accepting the recommendations. The communication shall explain how its decisions affecting the uses of land and policies in state responsibility areas will protect lives, property, and natural resources from unreasonable risks associated with wild land fires.

(d) If the [State Board of Forestry] or local agency's recommendations are not available within the time limits set by this section, the board of supervisors may act without them. The board of supervisors shall take the recommendations into consideration at the next time it considers future amendments to the safety element.

§65303: The general plan may… address any other subjects which, in the judgment of the legislative body, relate to the physical development of the county or city.

Public Resources Code §2699: Each city and county, in preparing the safety element to its general plan pursuant to subdivision (g) of §65302 of the Government Code, and in adopting or revising land use planning and permitting ordinances, shall take into account the information provided in available seismic hazard maps.

Optional Elements

§65303: The general plan may include any other elements or address any other subjects which, in the judgment of the legislative body, relate to the physical development of the county or city.

Local and Regional Referrals

§65352.5: (a)The Legislature finds and declares that it is vital that there be close coordination and consultation between California's water supply agencies and California's land use approval agencies to ensure that proper water supply planning occurs in order to accommodate projects that will result in increased demands on water supplies.

(b) It is, therefore, the intent of the Legislature to provide a standardized process for determining the adequacy of existing and planned future demands on these water supplies.

(c) Upon receiving, pursuant to §65352, notification of a city's or a county's proposed action to adopt or substantially amend a general plan, a public water system, as defined in §4010.1 of the Health and Safety Code with, 3,000 or more service connections, shall provide the planning agency with the following information, as is appropriate and relevant:

(1) The current version of its urban water management plan, adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code

(2) The current version of its capital improvement program or plan, as reported pursuant to Section 31144.73 of the Water code.

(3) A description of the source or sources of the total water supply currently available to the water supplier by water right or contract, taking into account historical data concerning wet, normal, and dry runoff years.

(4) A description of the quantity of surface water that was purveyed by the water supplier in each of the previous five years.

(5) A description of the quantity of groundwater that was purveyed by the water supplier in each of the previous five years.

(6) A description of all proposed additional sources of water supplies for the water supplier, including the estimated dates by which these additional sources should be available and the quantities of additional water supplies that are being proposed.

(7) A description of the total number of customers currently served by the water supplier, as identified by the following categories and by the amount of water served to each category:

(a) Agricultural users

(b) Commercial users

(c) Industrial users

(d) Residential users

(8) Quantification of the expected reduction in total water demand, identified by each customer category set forth in paragraph (7), associated with future implementation of water use reduction measures identified in the water supplier's urban water management plan.

(9) Any additional information that is relevant to determining the adequacy of existing and planned future water supplies to meet existing and planned future demands on these water supplies.

§65352: (a) Prior to action by the legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

(1) Any city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action, as determined by the planning agency.

(2) Any elementary, high school, or unified school district within the area covered by the proposed action.

(3) The local agency formation commission.

(4) Any areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.

(5) Any federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.

(6) Any public water system, as defined in section 116275 of the Health and Safety Code, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system shall have at least 45 days to comment on the proposed plan, in accordance with subdivision (b), and to provide the planning agency with the information

set forth in Section 65352.5.

(7) The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.

(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

(c)(1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 659190), the requirements of Chapter 4.4 shall prevail.

CHAPTER 4

The California Environmental Quality Act and the General Plan

All statutory references are to the California Government Code unless otherwise noted

Adopting or amending a general plan or a general plan element, is subject to the California Environmental Quality Act (CEQA) and often requires preparation and consideration of an environmental impact report (EIR). The primary purpose of an EIR is to inform decisionmakers and the public of the potential significant environmental effects of a proposal, less damaging alternatives, and possible ways to reduce or avoid the possible environmental damage. This information enables environmental considerations to influence policy development, thereby ensuring that the plan's policies will address potential environmental impacts and the means to avoid them. This chapter discusses some aspects of the relationship between the general plan and its EIR. The Bibliography contains numerous references that offer more detailed information about CEQA and its requirements, including *A Guide to the California Environmental Quality Act* and *Practice Under the California Environmental Quality Act*.

EIR Preparation

The procedure for preparing and using an EIR is described in detail in the state CEQA Guidelines, so we will not review the entire process here. The following discussion highlights some of the key points that are particularly important when preparing an EIR for a new general plan, element, or comprehensive revision. Since the environmental document for a privately-initiated general plan amendment is usually project-specific and may not require an EIR, we will not discuss it at any length.

To the extent feasible, the planning process and environmental analysis should proceed concurrently, sharing the same information. The plan EIR, to a certain extent, can be seen as describing the relationship between the proposed density and intensity of land use described by the plan and the carrying capacity of the area.

The EIR must describe the existing local and regional physical environment, emphasizing those features that are likely to be affected by the plan and the environmental constraints and resources that are rare or unique to the area. It should describe existing infrastructure, such as roads, water systems, and sewage treatment facilities, along with their capacities and current levels of use. It should also discuss any inconsistencies between the proposed plan and adopted regional plans as they may relate to environmental issues.

The EIR must describe the significant environmental effects which may result from the plan's policies and proposals. Effects that are found to be insignificant need only a brief discussion in the EIR (CEQA Guidelines §15006(p)). When a new general plan or revision is being considered, the EIR must evaluate the proposed plan's or revision's effects on both the existing physical conditions of the actual environment and the environment envisioned by the existing general plan (*Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 354).

In addition to the direct impacts of any immediate projects which will occur under the general plan, the EIR must focus on the secondary effects that can be expected to follow from the plan's adoption, including cumulative and growth-inducing effects. The general plan EIR need not be as detailed as an EIR for the specific projects that will follow in its wake (CEQA Guidelines §15146). Its level of detail should reflect the level contained in the plan or plan element being considered (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351). At the same time, however, the lead agency cannot defer to later tiered EIRs its analysis of any significant effect of the general plan (*Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182).

The EIR must identify mitigation measures and alternatives to avoid or minimize potential impacts to the extent feasible. The general plan EIR is a particularly

useful tool for identifying measures to mitigate the cumulative effects of new development. For example, a general plan might anticipate a significant increase in industrial employment in the community. If this proposal would lead to increased automobile commuting, the EIR could identify measures to reduce peak-hour traffic volumes such as new transit routes or improved bicycle facilities. Where other agencies are responsible for mitigating the effects of the general plan, they should be identified in the EIR. Pursuant to Public Resources Code §21081.6, the general plan must incorporate the mitigation measures identified in the EIR into its policies and plan proposals.

Several alternative draft plans are typically considered en route to adopting a general plan. Similarly, the EIR for the plan must describe a reasonable range of alternatives and analyze each of their effects (CEQA Guidelines §15126). Consistent with CEQA, the alternative plans should share most of the same objectives. Each of the alternatives should avoid or lessen one or more of the significant effects identified as resulting from the proposed plan (in a situation where the proposal is yet to be selected from among the alternatives, the competing alternatives should not all have the same level of impacts). The EIR must also evaluate the "no project" alternative. This would describe what physical changes might reasonably be expected to occur in the foreseeable future if the general plan update were not adopted, based on the existing general plan and available infrastructure and services.

Special studies prepared for the general plan will yield information useful to the EIR. For example, the traffic model developed to analyze the circulation impacts of proposed land use intensities should be used during EIR preparation to evaluate traffic impacts and alternative approaches to minimizing those impacts.

The EIR must analyze the cumulative effects of the plan's policies and proposals on the environment. For example, a planning policy authorizing rural residential uses in or near wild lands could cumulatively increase the severity of fire damage by hindering wildfire suppression efforts. Growth-inducing impacts must also be analyzed. These may include any policies, proposals, and programs of the general plan likely to stimulate community growth and development. Obvious examples include plans for street and highway improvements in undeveloped areas, wastewater treatment plant expansion, and proposals for the expansion of employment in basic industries, any of which is likely to increase pressure for or facilitate residential and other development.

Public Review of the EIR

Prior to writing the draft EIR, the city or county must send a Notice of Preparation (NOP) describing the draft general plan proposal to all affected state responsible and trustee agencies, any large water agency that may provide domestic water to serve the plan area, and the other agencies listed under §65352, to solicit their input. Their responses will help identify important issues and focus the scope and content of the draft EIR.

The draft EIR (incorporating the comments from the NOP) must be circulated among interested local and regional agencies and the public for their review. Many cities and counties place copies in local libraries as well. Copies must also be sent to the State Clearinghouse for distribution to state agencies. The 45-day review period for a general plan's draft EIR offers a formal opportunity to comment on the potential environmental impacts of the proposed plan and the adequacy of the environmental analysis.

No public hearing is required on the draft EIR under CEQA, but many localities choose to hold one or more EIR hearings in conjunction with their consideration of the draft general plan. If a city or county does hold a separate hearing on the draft EIR, it should clearly advise attendees to direct their comments to the adequacy of that draft (as opposed to their opinions about the draft general plan). Some cities and counties choose to hold a hearing on the last day of the draft EIR's review period to provide the opportunity for public comment. At the end of the draft EIR's review period, the jurisdiction must prepare a final EIR containing the comments received during the period and its responses to those comments.

Adoption and Certification

Before adopting the general plan, element, or revision for which the EIR was prepared, the city council or county board of supervisors must consider the final EIR, certify its adequacy, and make explicit findings explaining how the significant environmental effects identified in the EIR have been or should be mitigated or explain why mitigation is not feasible (CEQA Guidelines §15091). The city or county cannot approve the general plan unless the plan, as approved, will not result in a significant effect on the environment, or, more commonly, the city or county has eliminated or substantially lessened all significant effects where feasible and made a written statement of overriding considerations explaining the reasons why any remaining unavoidable significant effects are acceptable (CEQA Guidelines §15093). The jurisdiction must also adopt a mitigation

monitoring or reporting program to ensure that the mitigation incorporated into the plan in accordance with the EIR will be implemented.

Timing

The CEQA process runs concurrently with the development, review, and approval of the general plan, element, or general plan revision. These parallel processes should be carefully synchronized so that neither time nor work will be wasted through unnecessary delay or duplication. When developing a draft work program for the general plan, staff should lay out the schedule for preparing the EIR. Pay particular attention to the point where sufficient information will be available to prepare an informative NOP. The draft EIR must reflect the draft plan and examine the various alternative plans being proposed, so it should not be released for review until the draft plan is at least nearing completion. Try to anticipate the amount of changes which may be made to the draft as it moves through the planning commission hearings. If major changes are expected, the draft EIR should probably not be completed and circulated until the plan is ready to be referred to the council or board of supervisors for its final hearings. Otherwise, if the major changes in the plan necessitate substantial changes in the draft EIR, the EIR may need to be recirculated. If the planning process works as it should, with all levels of decisionmakers well informed and the political atmosphere smooth, this level of uncertainty can be avoided.

Program and Master EIRs

In order to minimize the need to reanalyze a series of related projects, CEQA and the State CEQA Guidelines encourage using a general plan EIR to address subsequent discretionary projects such as adopting zoning ordinances and approving specific capital improvement or development projects which are consistent with that general plan. This streamlined and simplified approach to environmental review is commonly called "tiering" (CEQA Guidelines §15152). By way of tiering, the environmental review for a subsequent project is limited to those project-specific significant effects which either were not examined or not examined fully in the general plan EIR.

Tiering Methods

Later environmental analysis can be tiered upon the EIR prepared for a general plan in any of several ways. In the following paragraphs we'll briefly discuss program EIRs, Master EIRs, and tiering under Public Resources Code §21083.3.

The program EIR prepared for a general plan examines broad policy alternatives, considers the cumulative effects and alternatives to later individual activities, where known, and contains plan level mitigation measures. Later activities which have been adequately described under the program EIR will not require additional environmental documents. When necessary, new environmental documents such as a subsequent or supplemental EIR or negative declaration will focus on the project-specific impacts of later activities, filling in the information and analysis missing from the program EIR.

The "project" being examined in the program EIR is the general plan, element, or revision. The CEQA Guidelines recommend that program EIRs deal with the potential effects of a general plan, element, or revision "as specifically and comprehensively as possible." A good rule of thumb is that the program EIR's level of detail should be commensurate with the level of detail contained in the general plan element (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351).

Two alternative circulation schedules

High Certainty Scenario:
- Issue the NOP prior to workshops on the plan and completion of the draft general plan.
- Issue the draft EIR prior to the planning commission's public hearings on the draft plan; complete the review period prior to the end of the commission's deliberations.
- Complete the final EIR prior to the legislative body's final decision on the plan.

Uncertainty Scenario:
- Issue the NOP after workshops and upon completion of the draft plan.
- Issue the draft EIR and complete the review period after completion of the planning commission hearings on the draft plan.
- Complete the final EIR prior to the legislative body's final decision on the plan.

A program EIR should pay particular attention to the following EIR components:

- The significant environmental effects, including cumulative effects of anticipated later activities under the plan or element.
- Mitigation measures, including plan-wide measures.
- Alternatives to the basic policy considerations set forth by the plan or element.

When evaluating a later activity to determine whether it is eligible for consideration under a program EIR, OPR suggests the following sequential approach.

First, the lead agency must determine whether the activity meets both of the following criteria and, if so, adopt findings to that effect.

(1) It is consistent with the plan or element for which the program EIR was certified. A general plan amendment obviously would not qualify (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307).

(2) It incorporates the feasible mitigation measures and alternatives developed in the program EIR. (Additional mitigation measures and alternatives will also be applied when a subsequent or supplemental EIR is prepared.)

Second, the lead agency must evaluate the later activity and its site to determine whether the environmental effects of that activity were adequately examined in the program EIR. If there are any new significant effects, the lead agency must prepare an initial study to determine the significance of those effects. No subsequent EIR is necessary for a project which is essentially part of the "project" described by the general plan's program EIR unless:

(1) the later project would propose substantial changes in the plan which was described in the program EIR, requiring revisions to the EIR due to the involvement of a new significant effect or a substantial increase in the severity of a previously identified effect;

(2) substantial changes have occurred in the circumstances under which the general plan was undertaken, requiring revisions to the EIR due to the involvement of a new significant effect or a substantial increase in the severity of a previously identified effect; or

(3) new information of substantial importance which was not known and could not have been known at the time the program EIR was certified indicates that significant effects were not adequately analyzed or that mitigation measures or alternatives should be revisited. (CEQA Guidelines §15162).

If no subsequent EIR is required, the project is deemed to be within the scope of the program and the program EIR can be certified for that project. No additional environmental document would be required.

A subsequent EIR is subject to the standard EIR content requirements (i.e., project description, environmental setting, significant effects, mitigation measures, etc.). However, the subsequent EIR need not duplicate information and analysis which is already included in the program EIR. This may include such areas as environmental setting, project alternatives, and cumulative impacts. Pertinent discussions from the program EIR, to the extent that it examines regional influences, secondary effects, cumulative effects, broad alternatives, and other factors that apply to the later project, should be incorporated by reference.

Another option is to prepare and certify a Master EIR (MEIR) (see Public Resources §21157, et seq.; CEQA Guidelines §15175, et seq.). The MEIR is intended to be the foundation for analyzing the environmental effects of subsequent projects. Those projects which have been described in some detail in the MEIR may avoid the need for a later EIR or negative declaration. Other projects will be analyzed by a "focused EIR" that aims at project-specific impacts while referencing the MEIR's analysis of cumulative and growth-inducing impacts.

Section 15178 of the CEQA Guidelines specifically allows an MEIR to be re-certified for later projects which are consistent with the land use designations and the permissible densities and intensities of use described in the general plan. This avoids the need for another EIR or negative declaration. OPR's publication *Focusing on Master EIRs* offers detailed technical information about using MEIRs.

> The City of Modesto is one example of a jurisdiction which uses a general plan MEIR to analyze later projects, including specific plans and capital improvement projects. By design, this enables the city to focus the EIRs for those anticipated projects on a discreet set of issues that were not previously covered in the MEIR. The focused EIR prepared for each of these major projects relies upon the general plan MEIR's analysis of cumulative and growth-inducing impacts as well as endangered species and wetlands issues.

In practice, an MEIR is similar to a program EIR. However, there are at least three differences worth noting. First, the requirements for preparing and applying an MEIR and its associated focused EIRs are de-

scribed in detail in both statute and the CEQA Guidelines – the program EIR is less specifically described in the CEQA Guidelines. Second, once a subsequent project is determined to be "within the scope" of the MEIR, a focused EIR must be prepared whenever it can be fairly argued on the basis of substantial evidence in the record that the project may have a significant effect, even if evidence exists to the contrary. In contrast, when a program EIR has been certified, a subsequent EIR is required only when the evidence of a significant effect is incontrovertible. Third, MEIRs must be reexamined and, if necessary supplemented, at least once every five years. This ensures that the analysis contained in an MEIR remains topical. There is no "freshness date" on program EIRs, however agencies that are using a program EIR must be just as careful not to rely on outdated analysis.

A more generic approach to tiering is found at Public Resources Code §21083.3. When an EIR has been certified for a general plan, the CEQA analysis of later projects can be limited to those significant effects which "are peculiar to the project" and which either were not addressed as significant effects in the plan's EIR, or which new information shows will be more significant than when the plan's EIR was certified. The requirements of this option are detailed in CEQA Guidelines §15183.

The State CEQA Guidelines specify that any EIR or negative declaration using the tiering principle must refer to the prior EIR, state where a copy of that document may be examined, and state that tiering is being used. Tiering cannot be employed when the project is inconsistent with the general plan or zoning (CEQA Guidelines, §15152(c)). Overall, tiering can result in significant cost savings to local governments because it reduces the processing time for projects and simplifies the environmental review process.

Combining the General Plan and its EIR

Because a general plan and its EIR overlap in content and are prepared as part of a single planning process, a few local governments have combined them into a single document or set of documents as authorized under CEQA Guidelines §15166.

A local government may prepare a combined general plan and EIR as a set of three documents. The first document would contain information on the physical and environmental setting, including inventories of soils, geology, hydrology, air quality, vegetation, wildlife, energy, cultural heritage, ambient noise, existing land use, transportation, population, public services, and water quality. It might also describe federal and state laws and regional plans concerning these issues. This document would provide the data and analysis out of which general plan policies would evolve and constitute the "environmental setting" section of the EIR. The second document would consist of the policies, plan proposals, standards, and implementation program of the draft general plan. In essence it would constitute the "project description" for purposes of CEQA. The third document would consist of the environmental assessment — that is, the discussion of effects, mitigation measures, and alternatives needed to satisfy the requirements of an EIR.

Revisions to the three documents would occur throughout the planning process. The first would change as new data became available. The second would change to reflect the public's comments, as well as decisions by the planning commission and elected officials. It would also be revised to reflect the analysis of effects in the third document, the environmental assessment. The environmental assessment would be modified in response to input from the public and other agencies and to ongoing revisions in the proposal itself.

The three documents would be circulated together for review as the draft EIR and ultimately certified as the EIR. The city council or board of supervisors would adopt the policy document and perhaps the data and analysis by resolution to become the general plan.

A cautionary note: combining the general plan and its EIR is often impractical. The draft combined plan/EIR can be unwieldy for reviewers to analyze and expensive to revise and reproduce. Also unless the final plan is carefully purged of those mitigation measures and alternatives identified in the EIR which were rejected upon plan approval, it will contain extraneous policies and plan proposals which were not intended to be carried out. In addition, where an inconsistency exists between the plan and its EIR section (essentially this would be an internal inconsistency in the general plan), the statute of limitations would not be the usual 30 - 180 days under CEQA, but may be extended to such time as a land use decision is made, based on the general plan.

Findings

Upon certifying a general plan EIR, the city or county must make findings pursuant to CEQA Guidelines §15091 for each of the significant effects identified in the EIR. These findings require the jurisdiction to state which mitigation measures or alternatives are to be imposed on the plan, which are the responsibility of other agencies to carry out, and which are infeasible.

These findings must be supported by substantial evidence in the record.

In addition, CEQA Guidelines §15093 requires the city or county to make a statement of overriding considerations for any significant effects which cannot be mitigated. This statement must describe the specific economic, legal, social, technological, or other benefits of the project which outweigh the unavoidable significant effects identified in the EIR. This statement of reasons must be based on the information that is in the EIR or part of the record. The record includes all of the information that was available to decision makers during the course of considering the general plan.

Mitigation Monitoring and Implementation

When a general plan is enacted or amended based upon an EIR or a mitigated negative declaration, the city council or board of supervisors must also adopt a reporting or monitoring program for ensuring compliance with the adopted mitigation measures (Public Resources Code §21081.6). The city or county should coordinate general plan policies and environmental mitigation measures during the planning process so that the mitigation measures will be reflected in the plan policies and those policies can realistically be implemented.

The city or county must adopt a specific program that will enable it to track compliance with the mitigation measures. One approach is to use the yearly "state of the plan" report prepared for the city council or board of supervisors pursuant to Government Code §65400(b) as the reporting program for a new general plan. See OPR's book *Tracking Mitigation Measures Under AB 3180* for more information about designing a program.

A general plan can be measured by how well it's objectives, policies, and programs are implemented. The same is true for the mitigation measures identified in the plan's EIR. When drafting mitigation measures, consider how they can be reflected in plan objectives, policies, and programs, and how they will be implemented. The mitigation measures should be an integral part of the plan, not an afterthought.

Master Environmental Assessment

A local government may prepare a Master Environmental Assessment (MEA) inventorying the physical and biological characteristics of an area, discussing air and water quality and supply, the capacities and levels of use of existing services and facilities, and the effects of different development projects by type, scale, and location (CEQA Guidelines, §15169). The MEA is essentially a collection of environmental data—a resource which simplifies the data gathering for future negative declarations or EIRs. Unlike a master EIR, it does not analyze environmental effects.

An MEA may be put together from the information gathered during the process of preparing the general plan and its EIR. In this case, it will be available for later, project-specific environmental analyses.

The bulk and cost of project-level environmental documents can be reduced by referencing the applicable data from the MEA into an EIR or negative declaration. This approach necessitates regularly updating the MEA with new information as it becomes available.

CHAPTER 5

Implementing the General Plan

All statutory references are to the California Government Code unless otherwise noted

A good plan goes to waste if it isn't implemented. For its implementation, the general plan primarily relies upon regulations, such as specific plans, zoning ordinances, and subdivision ordinances; and public project consistency requirements. State law requires cities and counties to have subdivision and building regulations and open-space zoning, while most of the other measures described in this chapter are adopted at local option. If the objectives, policies, and proposals of the general plan are to be served effectively, implementing measures must be carefully chosen, reflective of local needs, and carried out as an integrated program of complementary and mutually reinforcing actions.

Zoning

Zoning is one of the primary means of implementing a general plan. In contrast to the long-term outlook of the general plan, zoning classifies the specific, immediate uses of land. The success of a general plan, and in particular the land use element, rests in part upon the effectiveness of a consistent zoning ordinance in translating the long-term objectives and policies contained in the plan into every day decisions.

The typical zoning ordinance regulates land use by dividing the community into districts or "zones" and specifying the uses which are to be permitted, conditionally permitted, and prohibited within each zone. A text and map(s) describe the distribution and intensity of land uses in such categories as residential, commercial, industrial, and open-space. On the zoning maps, compatible land uses of compatible intensity are usually grouped together and obnoxious or hazardous uses are separated from residential areas to the extent possible. Written regulations establish procedures for considering projects, as well as standards for minimum lot size, building height and setback limits, fence heights, parking, and other development parameters within each land use zone.

In counties, general law cities, and charter cities with a population of more than two million, zoning provisions must be consistent with the general plan (§65860).

Implementation of the General Plan

Pursuant to §65103, each planning agency shall perform all of the following functions:

- Implement the general plan through actions including, but not limited to, the administration of specific plans and zoning and subdivision ordinances.
- Annually review the capital improvement program of the city or county and the local public works projects of other local agencies for their consistency with the general plan, pursuant to Article 7 (commencing with §65400).
- After the legislative body has adopted all or part of a general plan, §65400 requires the planning agency to do both of the following:
- Investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for orderly growth and development, preservation and conservation of open-space land and natural resources, and efficient expenditure of public funds relating to the subjects addressed in the general plan.
- Provide to the legislative body an annual report on the status of the plan and progress of its implementation.

Charter cities are exempt from the zoning consistency requirement unless their charters provide otherwise. An in-depth discussion of zoning consistency may be found in this chapter's section on Consistency in Implementation.

Zoning Tools

The following are some common examples of zoning provisions that can be used to further general plan objectives and policies.

- Cluster zoning: a district which allows the clustering of structures upon a given site in the interest of preserving open-space. Cluster zones typically have a low standard for gross residential density and a high minimum open-space requirement to encourage the clustering of structures and relationship of open areas.
- Conditional use permit (CUP): a discretionary permit which enables a city or county to consider, on an individual basis, specific land uses which might otherwise have undesirable effects upon an area and to approve such uses when conditions can be placed on them which would avoid those effects.
- Design review: required review of project design and/or architectural features for the purpose of ensuring compatibility with established standards. It is often used in historic districts or areas that have a distinct character worthy of protection. Design review is a means of enforcing aesthetic standards.
- Floating zone: a district described in the zoning ordinance but not given a specific location on the zoning maps until a property owner or developer applies for it. Planned Unit Development (PUD) zoning is a common example of a floating zone. Floating zones can implement development standards established in the general plan.
- Floodplain zone: a district which restricts development within delineated floodplains in order to avoid placing people and structures in harm's way and obstructing flood flows. The zone may allow for agricultural, open-space or similar low-intensity uses.
- Hillside development ordinance: provisions regulating development on steep slopes, often by establishing a direct relationship between the degree of slope and minimum lot size. This can implement specific policies and standards which may be found in the land use, open-space, and safety elements.
- Mixed-use zoning: an ordinance provision which authorizes several land uses to be combined in a single structure or project. It is often used for office/commercial/high-density residential projects, such as San Francisco's Embarcadero Center, and increasingly for urban projects which combine ground floor retail/commercial with residential units above.
- Open-space Zoning: Section 65910 specifically requires the adoption of open-space zoning to implement the open-space element. Similarly, the Timberland Productivity Act (§51100 et seq.) requires local governments with qualifying timberlands to adopt Timberland Productivity Zoning (TPZ) for qualifying timberlands.
- Overlay zone: additional regulations superimposed upon existing zoning in specified areas. Subsequent development must comply with the requirements of both the overlay zone and the base district. Historic districts, airport height restrictions, and floodplain regulations are commonly established by overlay zones.
- Planned unit development (PUD) zoning: a type of floating zone designed to provide flexibility in project design and standards. It is usually characterized by comprehensive site planning, clustering of structures, and a mixture of land uses. A PUD can implement specific density, open-space, community design, and hazard mitigation standards contained in the general plan.
- Specific plan zone: a district which mandates the preparation of a specific plan prior to development. The specific plan establishes zoning regulations tailored to that site, consistent with the general plan.
- Transfer of development rights (TDR): a device by which the development potential of a site is severed from its title and made available for transfer to another location. The owner of a site within a transfer area retains property ownership, but not approval to develop. The owner of a site within a receiving area may purchase transferable development credits, allowing a receptor site to be developed at greater density. The California Coastal Commission has used this technique to "retire" antiquated subdivision lots in environmentally sensitive areas.
- Tree preservation ordinance: regulations which limit the removal of specified types of trees and require replacement of trees which are removed.

Zoning-Related Statutes

Although local governments have broad discretion in zoning matters, there are a number of state-mandated zoning requirements that directly relate to the general plan. The following paragraphs summarize most of the requirements that apply to general law cities and counties.

- Surplus school sites: School districts may request the rezoning of certain surplus school sites (§65852.9). The city or county must then zone the site consistently with the local plan. The local government may not rezone surplus school sites to open-space, recreational or park uses unless surrounding lands are similarly zoned or the school district agrees to the rezoning.
- Prezoning: Section 65859 allows a city to prezone adjacent unincorporated territory. The prezoning action is subject to the requirements applicable to zoning in the city, including the requirement for consistency with the general plan. Prezoning has no regulatory effect until the property is annexed to the city. A local agency formation commission (LAFCO) may require prezoning as part of the annexation process.
- Interim ordinance: Cities and counties may enact interim ordinances prohibiting uses which may conflict with a contemplated general plan, specific plan or zoning proposal (§65858). Interim zoning may be imposed for an initial period of 45 days and extended for up to two years. It can be used effectively when the general plan is being revised or when major rezonings are being undertaken in order to achieve general plan consistency. Of course, local governments should exercise caution when imposing land use controls or moratoriums, even if they are only temporary. Excessive restrictions may constitute a regulatory taking entitling affected landowners to just compensation. City and county officials should consult with their legal counsel to determine what degree of development control is reasonable.
- Regional housing needs: Local governments must consider the effects of proposed ordinances on regional housing needs and balance them against the availability of public services, fiscal resources, and environmentally suitable sites. Zoning ordinances limiting the number of new housing units must contain findings regarding the public health, safety, and welfare which justify reducing regional housing opportunities (§65863.6). In addition, pursuant to §65913.1, the local government must zone a sufficient amount of vacant land for residential use to maintain a balance with land zoned for nonresidential use and to meet the community's housing needs as projected in the housing element.
- Low and Moderate Income Housing: §65589.5 restricts cities and counties from denying a development project for low and moderate income residents except under specified circumstances. These circumstances include inconsistency with the general plan, specific unavoidable impact on the public health and safety, and over concentration of low income households, among other things.
- Density bonus: Local governments must provide incentives to developers proposing to include low- and very low-income housing in their projects. In return, the developer must reserve these units for this purpose for at least 30 years. A density bonus and at least one other regulatory incentive must be provided when a developer pledges to set aside specific percentages of the total amount of housing for low- or very low-income residents or seniors (§65915). Incentives may include a reduction in site development standards or approval of mixed use zoning. A bonus may exceed the density limits of the applicable zoning and general plan by up to 25 percent.

Specific Plans

A specific plan is a great tool for systematically implementing the general plan within all or a portion of the planning area (See §65450, et seq). Any interested party may request the adoption, amendment or repeal of a specific plan. A plan may be prepared by either the public or private sectors, however, responsibility for its adoption, amendment, and repeal lies with the city council or county board of supervisors. As a legislative act, a specific plan can also be adopted by voter initiative and is subject to referendum.

At a minimum, the specific plan must include a statement of its relationship to the general plan (§65451(b)) and a text and diagram(s) specifying all of the following in detail:

- The 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 proposed to be located within the area covered by the plan and needed to support the land uses described in the plan.
- Standards and criteria by which development will proceed and standards for the conservation, development, and utilization of natural resources, where applicable.
- A program of implementation measures including regulations, programs, public works projects and financing measures necessary to carry out the provisions of the preceding three paragraphs (§65451(a)).
- Any other subjects which in the judgment of the

planning agency are necessary or desirable for general plan implementation (§65452).

A specific plan is especially useful for planning large projects, as well as sites with environmental and fiscal constraints. A specific plan may be adopted by resolution (like a general plan) or ordinance (like a zoning ordinance). Some jurisdictions have chosen to adopt the policy portions of their specific plans by resolution and the regulatory portions by ordinance. This enables a city or county to assemble, in one package, a set of land use specifications and implementation programs tailored to the unique characteristics of a particular site.

A regulatory specific plan often has advantages over zoning. A community's control of development phasing provides a good example. The regulatory effects of zoning are immediate while the provisions of a general plan are long-term. If a general plan's implementation is limited to zoning, phasing a long-term development so that it meets the general plan's objectives can be difficult. The one time adoption of a specific plan which stipulates development timing or schedules infrastructure installation can solve the problem.

Statutory provisions allow streamlined permitting once a specific plan is in place. For example, residential development projects are exempt from CEQA if they implement and are consistent with a specific plan for which an EIR or supplemental EIR has was prepared (§65457).

A specific plan can reduce development costs. For example, the specific plan's land use specifications, in combination with its capital improvements program, can eliminate uncertainties as to future utility capacities and help avoid costly oversizing.

A specific plan must be consistent with the jurisdiction's general plan (§65454). In turn, zoning ordinances, subdivisions (including tentative tract and parcel maps), public works projects, development agreements and land projects (as defined in Business and Professions Code §11000.5) must be consistent with any applicable specific plan (§65455, 66473.5, 66474(a), 66474.5(b), 66474.61(a), and 65867.5). Furthermore, a special district, school district, or joint powers authority may not carry out its capital improvement program (prepared pursuant to §65403) if the affected city or county finds the program or any part inconsistent with a specific plan. The district or local agency may carry out an inconsistent project only if it explicitly overrules the city's or county's finding (§65403(c)).

A specific plan is prepared, adopted and amended in the same manner as a general plan, except that it may be adopted by resolution or ordinance and it may be amended as often as the local legislature deems necessary (§65453(a)). A specific plan is repealed in the same manner as it is amended (§65453(b)). To defray the cost of specific plan preparation, a city or county may impose a fee upon persons whose projects must be consistent with the plan. The fee must be prorated according to the benefit a person receives from the specific plan (§65456).

For more information about specific plans, see OPR's *The Planner's Guide to Specific Plans*.

Transit Village Plan

The Transit Village Development Planning Act of 1994 (§65460, et seq.) authorizes cities and counties to prepare "transit village plans" to encourage mixed use development in close vicinity to transit stations. A transit village is intended to be a neighborhood that contains a mix of housing types, including apartments, a retail district oriented to the transit station, attractive pedestrian and bicycle access to the transit station from the surrounding neighborhood, and civic uses, including a day care center and library. To encourage pedestrian use, the entire village is to be contained within a one-quarter mile radius of a transit station.

A transit village plan must be consistent with the city or county general plan (§65460.8). It can be used to promote general plan policies such as urban infill, compact development, transit-oriented development, air quality improvement, increased transit ridership, and reduced traffic generation. A transit village plan is adopted by resolution, like the general plan, and becomes the policy foundation for village zoning provisions, public works projects, and future subdivision activity.

To encourage the adoption of transit village plans, the Act provides that a city or county adopting a plan will be eligible for State transportation funds, will receive priority help from the Office of Permit Assistance in establishing a streamlined permitting process, and may be excluded from conformance with county Congestion Management Plan level of service standards with the approval of the Congestion Management Agency. However, it does not indicate that areas with such plans will receive priority funding.

Transit development plans occupy a niche similar to the community plans described in Chapter 1. What distinguishes them is their specific role in encouraging high-density, pedestrian-oriented development around transit stations.

Subdivision Regulations

Land cannot be subdivided for sale, lease or financing in California without local government approval. The Subdivision Map Act (§66410, et seq.) establishes statewide uniformity in local subdivision procedures, while giving cities and counties the authority to regulate the design and improvement of subdivisions, require dedications of public improvements or related impact fees, and require compliance with the objectives and policies of the general plan. This includes the authority to approve and design street alignments, street grades and widths, drainage and sanitary facilities, lot size and configuration, traffic access, and other measures "as may be necessary or convenient to insure consistency with, or implementation of the general plan." (§66418 and §66419).

These regulatory powers can promote the usual array of land use, circulation, open-space, and safety element objectives, policies, and plan proposals. Good subdivision design can encourage pedestrian access, residential street calming, urban forestry, tree preservation, floodplain management, wildland fire safety, and other principles or policies which may be articulated in the general plan.

Subdivisions provide infrastructure which will serve the new lots being created. Local governments can require dedications of public improvements or the payment of in-lieu fees for:

- Streets, alleys, drainage, public utility easements, and public easements (§66475);
- Bicycle paths (limited to subdivisions containing 200 or more parcels) (§66475.1);
- Local transit facilities, such as bus turnouts, benches, shelters, and landing pads (applies to subdivisions with 200 dwelling units or more, or 100 acres or more) (§66475.2);
- Parks and recreational facilities if the city's general plan or specific plan contains policies and standards for park and recreation facilities (Quimby Act — §66477);
- School sites (this is actually a reservation with a right to purchase at a later date) (§66478);
- Access to waterways, rivers, and streams (§66478.11);
- Access to coastline or shoreline (§66478.11);
- Access to public lakes and reservoirs (§66478.12);
- Drainage and sanitary sewer facilities (§66483); and
- Bridges and major thoroughfares (§66484).

No tentative subdivision map or parcel map can be approved unless the city or county finds that the subdivision, together with design and improvement provisions, is consistent with all aspects of the general plan or any applicable specific plan (§66473.5, 66474, and 66474.61). The local government must deny a proposed subdivision if it finds that: (1) the proposed subdivision map is inconsistent with the applicable general and specific plans; (2) the design or improvement of the subdivision is inconsistent with the applicable general and specific plans; (3) the site is physically ill-suited for either the type or proposed density of development; or (4) the subdivision's design or types of improvements are likely to cause substantial environmental damage, substantially and avoidably injure fish or wildlife or their habitat, or cause public health problems. Cities and counties must make written findings of fact supported by substantial evidence for each of these matters when deciding upon a subdivision.

The special rules applicable to "vesting tentative maps" are worth noting, as detailed in §66498.1 et seq. When a subdivider receives city or county approval of a vesting tentative map, they also obtain a limited right to develop the subdivision in substantial compliance with those ordinances, policies and standards (§66498.1(b)) in effect at the time the application was deemed complete (*Kaufman and Broad v. City of Modesto* (1994) 25 Cal.App.4th 1577). If, however, a local agency has initiated formal proceedings to amend applicable plans or regulations prior to the application being deemed complete, the amendments, if adopted, will apply to the vesting map. The local agency may condition or deny building permits for parcels created under a vesting tentative map if the agency determines that: (1) a failure to do so would threaten community health or safety, or (2) the condition or denial is required by state or federal law. The vesting tentative map law applies to all subdivisions, including commercial and industrial tracts.

Capital Facilities

Capital facilities must be consistent with the general plan (*Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988). The network of publicly-owned facilities, such as streets, water and sewer facilities, public buildings, and parks form the framework of a community. Although capital facilities are built to accommodate present and anticipated needs, some (most notably water and sewer facilities and roads) play a major role in determining the location, intensity, and timing of development. For instance, the availability of sewer and water connections can have a profound impact upon the feasibility of preserving agricultural or open-space land.

The general plan should identify existing capital facilities and the need for additional improvements. The circulation element is the most obvious locale for ad-

dressing infrastructure issues, but it is not the only element where capital improvements come into play. For example:

- the housing element implementation program must identify adequate sites for various housing types based in part on public services and facilities.
- the safety element must "address evacuation routes, peakload water supply requirements, and minimum road widths … as those items relate to fire and geologic hazards."
- the land use element must include education-related land uses, open-space for recreation, public buildings and grounds (the placement of public buildings may play an important role in urban design), and solid and liquid waste disposal facilities.
- the open-space element may consider "Open-space for outdoor recreation, … areas particularly suited for park and recreation purposes…." It may also address open-space areas for protecting water quality and for water reservoirs.
- the conservation element can address flood control measures and is required to be developed in coordination with any countywide water agency and with all district and city agencies that have "developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared."

Local governments can underscore their interest in public services and facilities by adopting an optional public facilities element, as discussed in Chapter 7. According to OPR's 1997 local government survey, nearly 20 percent of cities and counties have some form of public facilities element in their general plans.

Each year, the local planning agency is required to "review the capital improvement program of the city or county and the local public works projects of other local agencies for consistency with their general plan" (§65103(c)). To fulfill this requirement, all departments within the city or county and all other local governmental agencies (including cities, counties, school districts, and special districts) constructing capital facilities must submit a list of proposed projects to the planning agency (§65401).

In lieu of considering individual projects or only those projects to be undertaken in a single year, many cities and counties prepare and annually revise a 5 - 7 year capital improvement program (CIP). The CIP projects annual expenditures for acquisition, construction, maintenance, rehabilitation, and replacement of public buildings and facilities including sewer, water, and street improvements; street lights; traffic signals; parks; and police and fire facilities. In rapidly developing areas, a CIP coordinated with a general plan can help shape and time growth according to adopted policies. In an older city with a declining tax base and deteriorating capital facilities, a CIP can help stimulate private investment or stabilize and rehabilitate older neighborhoods by demonstrating a public commitment to the provision of key public facilities on a predetermined schedule.

Many federal grant programs, including the Clean Air Act and Transportation Equity Act for the 21st Century (TEA 21), require or promote consistency between federally assisted capital projects and local, regional, and state plans. For example, the Clean Air Act requires that the population projections used in planning capital facilities conform to the assumptions contained in the regional air quality management plan adopted as part of the State Implementation Plan (SIP) when federal funding or approval is sought. The federal government gives priority to implementing those programs which conform to the SIP and will not fund those which do not.

Capital improvements also have regional implications. The growing interrelatedness of planning issues among local governments applies directly to local capital improvement projects. The location of major roads, sewer facilities, water trunk lines, and emergency service buildings within the city or county can affect surrounding communities by encouraging or deflecting the direction of growth. Although the county LAFCO exists to encourage the orderly provision of services within cities and special districts, it is seldom an effective substitute for each city and the county consulting and cooperating with its neighbors.

Redevelopment

The State Community Redevelopment Law (Health and Safety Code §33000 et seq.) authorizes cities and counties to carry out redevelopment projects in blighted areas. Redevelopment is one of the most powerful tools available to local governments for implementing their general plans, and particularly their land use and housing elements. Where the private sector alone is unable or unwilling to assemble land and invest the necessary capital for revitalizing blighted areas, redevelopment is a means of focusing resources to transform a deteriorating area into a more productive part of the community.

The city or county planning commission must review the redevelopment plan before it is adopted by the city council or board of supervisors. The law requires that a city or county have an adequate general plan before it adopts a redevelopment plan, and the redevelopment plan must conform to the adopted general plan (Health

and Safety Code §33302 and 33331). The detailed redevelopment plan must include, among other things, plans for streets, buildings, and open-space; a statement of the effect of the plan on existing residents of the area; a description of the proposed financing methods; and a plan for participation of affected property owners.

Only predominantly urban areas that are physically and economically blighted qualify for inclusion in a redevelopment area. "Physical blight" includes any of the following: unsafe or unhealthy buildings; factors that prevent or hinder economically viable use of buildings or lots; proximate incompatible uses which prevent economic development; or lots of irregular shape and form in multiple ownership that are not useful or developable. "Economic blight" includes one of the following: depreciated or stagnant property values or impaired investments; abnormally high business vacancies; low lease rates; high turnover rate; abandoned buildings or excessive numbers of vacant lots; a lack of necessary commercial facilities; residential overcrowding or an excess of bars and liquor stores; or a high crime rate.

Agricultural and open-space lands that are enforceably restricted, such as land enrolled in Williamson Act contracts, may not be included within a redevelopment project area. Nonrestricted agricultural land larger than two acres may not be included unless specified findings are made. If a project area contains agricultural land, the project's draft EIR must be circulated to the Department of Conservation, specified agricultural entities, and general farm organization (Health and Safety Code §3333.3).

Redevelopment agency powers may be put to use to meet land use element objectives such as revitalizing a depressed urban center. Within the project area, the agency may acquire land, manage property, relocate people and businesses, prepare sites, build facilities, sell land, and rehabilitate buildings and structures. A redevelopment agency may acquire land by purchase, lease, gift, or by eminent domain (Health and Safety Code §33391). It may construct public improvements alone or in cooperation with other public authorities (Health and Safety Code §33421). It may clear and grade land for lease or resale to people who agree to develop the land in accordance with the redevelopment plan (Health and Safety Code §33432). The agency is required to prepare a relocation plan for people and local community institutions that a redevelopment project temporarily or permanently displaces (Health and Safety Code §33411).

Redevelopment agencies also have the power to improve and develop housing. So, agency funding can play a crucial role in meeting regional fair share housing needs. Each agency is required to set aside 20 percent of its tax increment revenues in a special Low and Moderate Income Housing Fund (L&M Fund) unless the agency makes certain findings. Reports filed with HCD for fiscal year 1995-96 indicated that ending balances in L&M Funds statewide totaled over $515 million. These funds could be an important source of financing for housing element initiatives.

Most redevelopment agencies rely primarily on tax increment financing to fund their activities. The "tax increment" is the growth in property tax revenue above the level that existed prior to creation of the redevelopment. The increased margin or increment of tax revenues from subsequent improvements go to the redevelopment agency instead of being turned over to the usual taxing agency (e.g., city, county, special district). This lasts until the project is completed and any project bonds repaid.

In addition to using tax increment financing, the agency may accept loans or grants from agencies of the federal government, the state government, or any other public agency. One of the main funding sources for redevelopment has been the federal Community Development Block Grant Program.

Development Agreements

A development agreement is a contractual agreement between a city or county and a developer that identifies vested rights that apply to a specific development project. By its nature, it offers opportunities for a city or county to assure that general plan objectives, policies, and plan proposals will be implemented as development occurs within an area.

A development agreement provides that, for a specified time period, the rules, regulations, and policies that are applicable to a particular development will not change. This gives developers who have otherwise yet to attain a vested right to develop a degree of assurance that their project preparations will not be nullified by some future local policy or regulation change (e.g., the rezoning of a commercial project site to residential), with limited exceptions. In exchange for the privilege of a regulation "freeze," the city or county usually will obtain certain concessions from the developer. For example, the developer might provide extra affordable housing, open-space, or public facilities.

Development agreements *must* specify: (1) the duration of the agreement, (2) the permitted uses of property, (3) the density or intensity of use, (4) the maximum height and size of proposed buildings, and (5) the provisions for reservation or dedication of land for public purposes (§65865.2). In addition, development agree-

ments *may*: (1) include the conditions, terms, restrictions, and requirements for subsequent discretionary actions; (2) provide that such stipulations shall not prevent development of the land with regard to the uses, densities, and intensities set forth in the agreement; (3) specify the timing of project construction or completion; and (4) set forth the terms and conditions relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

One advantage of development agreements is that the developer may be asked to obligate the project to improvements which exceed the usual legal limits on exactions. The limits do not apply when the developer has voluntarily entered into a contract with the city or county. A disadvantage of development agreements is that a city or county may be unable to respond to a changing market or apply new regulations to a project which is controlled by a long-term development agreement.

A city can enter into a development agreement covering unincorporated territory that is within its sphere of influence. This allows for planning in advance of the actual annexation. Such an agreement is not operative unless annexation proceedings are completed within the period of time specified by the agreement (§65865). If territory covered by a county development agreement becomes part of a newly incorporated city or is annexed to a city, the agreement is valid for its original duration or eight years from the date of incorporation, whichever is earlier.

Therefore, stipulating those existing rules, regulations and policies that will be subject to the agreement is important. In the absence of such specification, all development rules, regulations, and official policies noted in §65866 that are in force upon the execution of an agreement will be frozen. This could result in unanticipated consequences for both a developer and a city or county. A detailed specific plan prepared and adopted prior to an agreement is one way to specify the development details for a site, including the regulations and policies that would apply under the agreement. Specific plan preparation would also facilitate further citizen participation in planning a development.

Building and Housing Codes

A community's building and housing codes implement primarily the land use, housing, noise, and safety elements. Building and housing codes have their greatest effect on new construction and rehabilitation, but certain parts of the codes apply to the use, maintenance, change in occupancy, and public health and safety hazards of existing buildings.

The State Housing Law (Health and Safety Code §17910 et seq.) requires cities and counties to adopt regulations imposing substantially the same requirements as those contained in the various uniform industry codes: the Uniform Housing Code, the Uniform Building Code, the Uniform Plumbing Code, the National Electrical Code, and the Uniform Mechanical Code. The State Housing Law applies to buildings such as apartments, hotels, motels, lodging houses, factory-built housing, and dwellings, but not to mobile homes. In addition to meeting state housing law, local codes must also comply with other state requirements applicable to fire safety, noise insulation, soils reports, earthquake protection, energy insulation, and access for the physically handicapped.

State law allows a city or county, when adopting the uniform codes, to make such changes "as it determines ... are reasonably necessary because of local climatic, geological or topographical conditions" (Health and Safety Code §17958.5). Further, local building departments can authorize the use of materials and construction methods other than those specified in the uniform codes where the departments find the proposed design satisfactory and the materials or methods at least equivalent to that prescribed by the uniform codes with regard to quality, strength, effectiveness, fire resistance, durability, safety, and the protection of health and safety (Health and Safety Code §17951). This can be used to promote the construction of affordable housing and the rehabilitation of substandard housing.

Other provisions are particularly useful where a community intends to encourage historic preservation. Health and Safety Code §17958.8 allows the use of original materials and construction methods in older buildings. Section 17980 (b) (3) requires local enforcement agencies to consider needs expressed in the housing element when deciding whether to require abandonment or repair of a substandard dwelling. In the reconstruction of older buildings that would be hazardous in the event of an earthquake, the law allows cities and counties to use building standards that provide for the protection of the occupants, but that are less rigorous in other respects than current building standards (Health and Safety Code §19160 et seq.).

Code enforcement and abatement procedures are another means of implementing the general plan, particularly the housing and safety elements. Various state laws and regulations spell out abatement procedures which local government may enforce upon buildings that, because they are substandard or unsafe, constitute

a public nuisance. The most common procedures involve citation and misdemeanor action on the part of the city or county to mandate abatement by repair, abandonment, or demolition.

Acquisition

City and county acquisition of real property rights can help to implement the plan proposals of the land use, circulation and open-space elements. In implementing the land use element, cities and counties may acquire land designated for government offices, police and fire stations, parks, access easements, etc., or for public purposes such as urban redevelopment. With regard to the circulation element, local governments acquire land for public rights-of-way (e.g., streets, sidewalks, and bicycle paths), transit terminals, airports, etc. The open-space element can be advanced by the acquisition of open-space and conservation easements.

Open-space acquisition has some advantages over purely regulatory approaches to implementation such as zoning. Acquiring ownership ensures that the land will either be controlled by the city, county, or other public agency. Acquiring an open-space or conservation easement rather than full ownership, for example, ensures that development will be limited, while the private landowner who continues to hold the underlying rights is compensated for their lost development opportunities. This avoids the question of whether regulatory limitations such as zoning have unconstitutionally "taken" private property without just compensation.

The primary disadvantage to acquisition is its cost. Land often is expensive, particularly when urbanization is imminent or where the supply of potentially developable land is limited Funding sources such as taxes and assessments are limited in this post-Proposition 13 and post-Proposition 218 environment. A successful acquisition program often involves the resourceful blending of several funding sources.

Acquisition can take various forms. An overall program can be tied to general plan consistency or a capital improvements program. A city or county, in consultation with its legal counsel, may wish to consider the following:

- *Fee Simple Absolute Interests*

A fee simple absolute estate in land consists of all the real property interests associated with the land including the rights to sell, lease and develop the property. Consequently, fee simple absolute ownership entitles a city or county to develop, or not develop, the land as it chooses.

- *Easement Interests*

An easement consists of a portion of the rights to real property such as the right to travel over the property or the right to build structures. The seller retains all property rights not stipulated in the easement. Travel ways and open-space are the two most common uses of easements.

- *Leasing*

The lessee possesses and occupies the leased real property for a determinable time period although the landlord retains full ownership. A city or county may lease land from a property owner for access purposes, open-space preservation, etc.

- *Lease-Purchase Agreements*

Real property may be leased by a city or county and rental payments may be put toward purchasing the property. If a local jurisdiction does not have enough capital to buy the land outright, the lease-purchase method can spread payments over time.

- *Purchase and Resale or Lease*

Once a city or county has purchased a parcel of land or the parcel's development rights, the jurisdiction may preserve open-space (or otherwise control land use) by selling the land or the development rights with deed restrictions specifying permitted land uses. A local jurisdiction may also lease out property subject to a rental contract specifying permitted uses. These techniques enable the jurisdiction to recover at least a portion of its purchasing expenses.

- *Joint Acquisition*

Two or more local governments may combine their funding resources to acquire joint ownership of real property rights. Joint acquisition allows local governments to share the financial burden of purchasing land.

- *Land Swapping*

Local governments may exchange some of their land for parcels owned by private landowners or other jurisdictions in order to obtain desirable open-space, park sites, etc.

- *Eminent Domain*

Eminent domain involves the compensated taking of property for a public use or purpose such as the acquisition of open-space for a city greenbelt. This may include fee simple interest, and less-than-fee interests such as easements. An owner whose property is taken is entitled

Here are some ways for local governments to finance land acquisitions:

Local General Obligation Bonds

Local governments may, subject to a two-thirds voter approval, secure general obligation bonds by raising property taxes above the one percent limit set by Proposition 13. The money raised from bond sales may be used for purchasing and improving real property.

State General Obligation Bonds

The sale of state general obligation bonds enables state agencies to grant money to local governments for specific purposes such as acquiring and improving local and regional parks, open-space, beaches, and recreation areas. Local governments may be required to contribute matching funds.

Special Taxes

Local special taxes may be levied to fund or to secure bond funding for acquisition. Special taxes require a two-thirds voter approval.

Mello-Roos Community Facilities Act

Local governments may use this act in levying special taxes to fund acquisitions, maintenance, and other purposes. Bonds secured by such taxes may be issued for the same purpose. Mello-Roos special taxes require a two-thirds voter approval or, in some areas, approval by two-thirds of the property owners.

Special Assessments

Cities and counties may levy special assessments to finance the acquisition of real property rights. Bonds secured by such assessments may be used for the same purpose. Pursuant to Proposition 218, assessments can only be levied on properties which receive a particular benefit from the land to be purchased. This may severely limit the use of assessments for financing open-space purchases.

Tax Increment Financing

The tax increment collected as part of a redevelopment project may be used, along with bonds secured by the increment, to purchase or lease real property rights.

Grants

Park or open-space funding is sometimes granted to local governments by the state, private foundations, community-minded citizens, and by nonprofit land trusts. The State Coastal Conservancy also provides open-space grants.

For additional information and details regarding funding sources, see the following section of this chapter entitled “Financing Implementation of the General Plan.” Additional funding information may be obtained by reviewing the Catalog of California State Grants Assistance or by contacting the following agencies:

The State Information and Reference Center

California State Library
P.O. Box 942837
Sacramento, CA 94237-0001
916/654-0261

The Center serves as a central location for materials useful in identifying funding sources and preparing grant proposals.

California Department of Transportation District Offices

Local Assistance Engineers
(check local directory for location of nearest district office)

Local assistance engineers in each of the twelve Caltrans district offices help local agencies apply for federal assistance to finance urban transportation projects.

The Foundation Center

312 Sutter Street
San Francisco, CA 94108
415/397-0902

The Foundation Center is a nonprofit organization providing a reference library with materials on foundations and grants, corporate philanthropy, nonprofit organization management and fund raising techniques. It serves the public including local governments, private nonprofit organizations, and individuals.

to receive just compensation by the payment of fair market value for his/her loss (California Constitution Article I, §19). Cities and counties are authorized to exercise the power of eminent domain (§25350.5 (counties) and 37350.5 (cities)) in accordance with the Eminent Domain Law (Code of Civil Procedure §1230.010 - 1230.020).

Preferential Property Tax Assessments

Preferential assessment programs provide landowners an economic incentive to keep their land in agricultural, timber, or open-space uses. This implements the land use, open-space, and conservation elements by protecting areas designated for agriculture, open-space, timber, and recreational uses from premature development. State law provides local government with several preferential assessment programs, the most common of which are discussed below.

Williamson Act

The California Land Conservation Act (§51200 et. Seq.) was enacted in response to the loss of agricultural land that was occurring in areas of increasing land values. Typically, as development approached an agricultural area the price of land was driven upward by owners and buyers speculating on the future development potential of the land. The increase in prices led to a corresponding increase in the assessed value of the land and to the owner's property taxes. At some point, the increased tax burden made it uneconomic to continue farming and encouraged the sale of the land for development.

The Williamson Act allows counties and cities to establish agricultural preserves and to assess agricultural and open-space land on the basis of its agricultural, rather than market, value. Owners of qualified land located in an agricultural preserve contract with the county or city to continue agricultural or compatible activities for a period of at least ten years. The state annually reimburses the local agency for a portion of its resultant tax losses.

A Williamson Act contract automatically renews itself each year. Termination of the contract may be accomplished by one of three methods. The landowner or local government can file a notice of "nonrenewal." The notice halts the yearly contract renewal, resulting in its expiration at the end of ten years. Alternatively, a local government may immediately cancel a contract after making certain strict findings. Cancellation requires the owner's payment of penalty fees. Or, a contract may be rescinded without penalty when the city or county has entered into an agreement with the landowner to simultaneously place an equal or greater amount of equally suitable agricultural land into an agricultural conservation easement (§51256). The value of the proposed conservation easement must be at least 12.5 percent of the land subject to contract rescission and other restrictions apply. Nonrenewal is intended to be the normal route for ending a Williamson Act contract, cancellation is to be reserved for special circumstances (*Lewis v. City of Hayward* (1986) 177 Cal.App.3d 103), and rescission is intended to provide more flexibility.

Williamson Act contracts are voluntary and therein lies both their greatest strength and weakness. On the positive side, voluntary contracts lessen the potential for litigation over the uncompensated "taking" of land that is sometimes alleged when land uses are restricted. Also, because the owner is directly involved in entering the program, responsibility is imparted to the landowner for ensuring that the program works. On the other hand, the potential profits of future development on the urban fringe may outweigh the tax advantages of the contract. Thus, in the very areas where it could be most effective in restricting the premature conversion of farmland, there are strong economic incentives not to join the program.

In 1998, in response to the perceived weaknesses of the program, the Legislature added additional nonregulatory protection to specific classifications of prime farmland already enrolled in Williamson Act contracts. Land can be entered into "Farmland Security Zone" contracts for 20 year terms, as opposed to the 10 year term of Williamson Act contracts, during which the land is assessed at 65% of its value or the full cash value based upon the 1975 lien date, rather than assessing the actual use of the land for agricultural purposes as is currently required under the Williamson Act. The land also receives additional protection from development pressure through an exemption from annexation to cities, except when located within an area designated by the voters as a limit for urban facilities and services, is consented to, or is needed for the placement of public improvement. Contracted land is also protected from being included in a special district which provides urban services, unless agreed to or specifically allowed by the contract, and can not be used for school facility purposes or acquired by school districts.

Farmland Security Zone contracts also provide that any voter-approved special taxes, levied after January 1, 1999, for urban-related services be levied upon the contracted land or the trees, vines, or crops on the land at a reduced rate, unless that urban service directly

benefits the land or the living improvements.

For more information on the Williamson Act and Farmland Security Zone Contracts, contact the Division of Land Conservation in the State Department of Conservation at (916) 324-0850.

Timberland Productivity Act

The Timberland Productivity Act of 1982 requires all counties and cities with productive private timberland to establish Timberland Production Zones (TPZs) to discourage the premature conversion of timberland to other uses (§51100 et seq.). The land use element must reflect the distribution of existing TPZ zoning and have a land use category that provides for timber production. A city or county also may use TPZ zoning to implement the conservation element's timber resource provisions.

Patterned after the Williamson Act, TPZs are rolling ten-year contracts that provide preferential tax assessments to qualified timberlands. Under this program, assessments on timber are based on the value of the timber at the time of harvest, rather than an annual assessment on the market value of standing timber. Assessment of zoned timberland is based on a statutory value of land that is related to site capability, and is annually indexed to changes in the periodic immediate harvest value.

During the first two years of the Act, local governments adopted TPZ zoning on qualified parcels without approval of the property owner, provided that the statutory procedures were followed. Currently, additions to the local program are limited to requests from property owners. Subject to approval by the local legislative body, land may be removed from a TPZ by rezoning. The effective date of the new zone will be deferred, however, until expiration of the ten-year restriction. The local legislative body may, under special circumstances, approve immediate rezonings as well.

The Timberland Productivity Act did not rely on voluntary inclusion during its beginning stages. This was advantageous because restrictions could be applied in a more comprehensive manner than Williamson Act contracts and provide coherent preserves of timberland. Its primary disadvantage is that there is greater potential for conflict between property owners and local government over the designation of lands.

Conservation, Open-Space and Scenic Easements

State law provides several means of conserving open-space through easements. Easements are attractive because they are less expensive than full fee rights, can be more effective than zoning, do not displace property owners, and may yield property or inheritance tax advantages to the grantor. Recording the easement in the office of the County Recorder places future owners on notice of the easement's provisions.

The Conservation Easement Act (Civil Code §815-816) enables a local government or a nonprofit organization to acquire perpetual easements for the conservation of agricultural and open-space lands and historic preservation. Granting of a conservation easement may qualify as a charitable contribution for tax purposes. The easement may also qualify as an "enforceable restriction" for purposes of preferential assessment.

The Open-Space Easement Act of 1974 (§51070-51097) authorizes local governments to accept easements granted to them or to nonprofit organizations for the purpose of conserving open-space or agricultural lands. These easements are established for a ten year period and renew annually. They must be consistent with the general plan. The local government is prohibited from granting building permits for land subject to such easements and they are considered "enforceable restrictions" of land under a preferential taxation program. Procedures for termination by nonrenewal and by abandonment are set out in the statute.

The Agricultural Land Stewardship Program (ALSP) Act of 1995 (Public Resources Code §10200-10277) authorizes the Department of Conservation to provide grants to local governments and qualified nonprofit land trusts, to assist in the voluntary acquisition of agricultural conservation easements. In order to be eligible for consideration, the ALSP requires that a parcel be large enough and be located in an area that is conducive to sustained commercial agricultural production. In addition, the local government within whose jurisdiction the parcel is located must support the easement acquisition and have a general plan that demonstrates a long-term commitment to agricultural land conservation. Finally, there must be evidence that without protection, the parcel is likely to be converted to a nonagricultural use in the foreseeable future.

There are other noteworthy open-space provisions in the Government Code. The Scenic Easement Deed Act (§6950-6954) authorizes a local government to purchase fee rights or scenic easements, but does not promote a specific mechanism for obtaining them. Sections 65870-65875 enable local governments to adopt an ordinance for the purpose of establishing open-space covenants with property owners. These are deed restrictions regulating land uses.

In recent years, counties and cities are depending more heavily on land trusts and conservancies to help stretch scarce public funds. For example, Marin County implements the agricultural preservation objectives of its general plan in part through the activities of the Marin Agricultural Land Trust (MALT). As a result of MALT's purchase of development rights, many lands within the county's "inland rural corridor" have been freed from development pressure. Similar trusts are at work in Sonoma, Napa, and other counties.

Land Trusts

A land trust is a private, non-profit organization established for the purpose of preserving or conserving natural resource and agricultural lands through acquisition. A city or county may establish cooperative policies with a local land trust or one of the national trusts, such as the Nature Conservancy, Trust for Public Land, or American Farmlands Trust, to promote objectives and policies of the land use, open-space, conservation, and safety elements of its general plan. Land trusts, whether local, statewide, or national, are often funded through membership dues and donations from individuals, businesses, and foundations. Working in cooperation with landowners and governmental agencies, but outside of the structure of government, a land trust can quickly, flexibly, and confidentially obtain land or development rights that would otherwise enter the open market. In many cases, particularly where natural lands are being preserved, after obtaining the land or development rights, the trust transfers its rights to a governmental agency at below-market rate for the agency to manage.

Transportation System Management

Transportation system management (TSM) is a means of improving the efficiency of the existing transportation system through more effective utilization of facilities and selective reduction of user demand. TSM strategies, either individually or as a package of supportive programs, attempt to reduce existing traffic congestion and vehicle miles traveled and increase the person-carrying capacity of the transportation system. Other benefits of TSM include improved air quality, conservation of energy resources, reduction of new transportation and parking facility needs, and prolonged life of existing transportation facilities.

Generally, TSM strategies cost less than traditional capacity increasing capital projects. To achieve the highest degree of TSM success possible, the planning and implementation of TSM should be coordinated among transportation and planning agencies, transit providers, developers, and employers.

TSM policies can be used to help correlate the land use and circulation elements by assuring that planned street and highway capacities will adequately accommodate traffic generated by planned land uses. TSM programs that discourage-single passenger car commutes and that promote flexible hours at places of employment may improve the levels of service of area streets and highways by reducing peak hour flows. If a jurisdiction's conservation element includes clean air or energy conservation policies, such provisions may be implemented through TSM programs that reduce motor vehicle trips and thereby air pollution and energy use.

For further information regarding transportation system management contact:

Caltrans Division of Transportation Planning
Technical Assistance Branch
P.O. Box 942874
Sacramento, CA 94274-0001

Infrastructure Funding Mechanisms

Local Funding by Taxes, Assessments, and Bonds

The timing, type, and quality of development is often directly related to the availability of infrastructure and public services. There are three principal funding sources for local government infrastructure: taxes, benefit assessments, and exactions (including impact fees). The following discussion briefly describes each of these. For more information, consult *A Planner's Guide to Financing Public Improvements*, published by OPR.

Proposition 218, enacted by voters in November 1996, requires popular elections on the questions of imposing local general taxes (simple majority) and special taxes (two-thirds majority), and landowner balloting on the question of imposing a benefit assessment. It also requires a simple majority election before the levying of certain service fees (although generally not development impact fees). The effect of Proposition 218 on local financing is profound because prior to its passage, no election was usually required prior to imposing or increasing general taxes, and property owner opposition to benefit assessments could be overridden. Proposition 218 also contains provisions which restrict the use of benefit assessments from that previously

Listed below are various TSM techniques aimed at improving the efficiency of circulation on highway and transit systems by improving flow, reducing congestion, and increasing the carrying capacity of existing facilities. Caltrans has divided these techniques into seven categories containing particular measures which may be applied to specific TSM cases.

- **Programs to Improve Traffic Flow**
  - Signalization
  - Traffic signal synchronization
  - One-way streets
  - Changeable message signs
  - Computerized traffic systems
  - Integrated single-system traffic operations systems
  - Reversible lanes
  - Ramp meters
  - Intersection widening

- **Preferential Treatment for Transit and Other High Occupancy Vehicle (HOV) Strategies**
  - Exclusive Highway Bus or Bus/Carpool Lanes
  - Contra-flow HOV Lanes
  - Reserved Lanes or Dedicated Streets for Buses/HOV
  - Bus Turnouts
  - Bus Actuated Signals
  - Ramp meter bypass lanes for HOVs

- **Provision for Pedestrians/Bicycles/Handicapped**
  - Bicycle Lanes/Paths
  - Bicycle Storage
  - Pedestrian/Transit Malls
  - Pedestrian Signals
  - Bicycle Actuated Signals
  - Bicycle/Transit Integration
  - Weather and theft resistant bicycle parking facilities at employment sites, shopping areas, etc.
  - Shower and locker facilities at places of employment for bicycling employees
  - Handicapped Access Improvements

- **Management/Control of Parking**
  - On-Street parking controls
  - Increased parking fees
  - Park and ride facilities
  - Preferential parking for carpools/vanpools
  - Residential permit parking
  - Removal of on-street parking
  - Stricter enforcement of on-street parking codes
  - Graduated parking fees with higher fees for single occupant vehicles
  - Metered on-street parking

- **Changes in Work Schedules, Fares and Tolls**
  - Work hour management (compressed work week, flexible work hours)
  - Transit/HOV bypass at toll plazas
  - Bus fare restructuring/subsidies
  - Peak period truck restrictions
  - Telecommuting

- **Actions to Reduce Motor Vehicle Use in Congested Areas**
  - Carpool/vanpool matching program
  - Carpool public information
  - Carpool/vanpool incentives
  - Neighborhood ridesharing
  - Driver advisory
  - Highway surveillance
  - Subsidized rideshare vehicles
  - Guaranteed ride home for carpoolers, transit riders, etc.
  - Work location alternatives
  - Transportation management associations
  - Inter-city urban commuter rail

- **Improved Public Transit**
  - Feeder services improvements
  - Demand responsive system
  - Shelters and other passenger amenities
  - Rehabilitated/expanded bus fleet
  - Passenger information system improvements
  - Transit marketing

allowed. For references on Proposition 218's requirements, see the list following benefit assessments.

- Taxes are either general or special taxes. A ***general tax***, such as the ad valorem property tax (which is capped at one percent of assessed valuation by Proposition 13), utility tax, or a hotel tax, is collected and placed in the city or county general fund. It is not dedicated to any specific purpose. A general tax can only be imposed if approved by a simple majority of the voters within the jurisdiction. General taxes are usually imposed to pay for capital improvements or

services that will used by the entire community since their proceeds must be placed into the general fund.

- A ***special tax*** is a non-ad valorem tax that is either levied by a city or county and dedicated to a particular use, or levied by a special district (a school district or transit district, for example) to finance its activities. A special tax requires approval by a two-thirds majority. Special taxes often finance specific projects or services such as flood control or ambulance services.

- The ***Mello-Roos Community Facilities Act of 1982*** authorizes a special tax that is primarily intended and commonly used to finance the infrastructure needs of new development. Under the Mello-Roos Act, cities, counties, and special districts create "community facilities districts" and levy special taxes within those districts to finance new public improvements, police and fire protection, and school construction (§53311 et seq.). The Mello-Roos Act also authorizes the issuance of bonds.

- Cities, counties, school districts and other districts may issue ***"general obligation" (G.O.) bonds*** for acquisition or improvement of real property such as buildings, streets, sewers, water systems, and other infrastructure, upon approval by two-thirds of the voters casting ballots. G.O. bonds are secured by local governments' ability to levy property taxes, but may also be repaid from other revenue sources as available.

- ***Benefit assessments*** (also known as special assessments) are among the oldest techniques for financing construction and maintenance of such physical improvements as sidewalks, sewers, streets, storm drains, lighting, and flood control that benefit distinct areas. Most of the numerous assessment acts authorize the use of bonds, paid for by the assessment. Benefit assessments are not subject to a two-thirds vote requirement. Instead, a proposed assessment is subject to a ballot procedure which enables property owners to reject the proposal by majority protest among those returning ballots. Property owners' ballots are weighted: those who would pay a larger assessment have a greater vote. Unlike taxes, assessments cannot be levied on a parcel which does not receive a direct benefit from the improvement or service being financed. The amount assessed to a parcel is strictly limited to the pro-rata share of benefit being received. The improvement must provide a special benefit to each assessed parcel, above and beyond any general benefit that might accrue. Proposition 218 (enacted in November 1996) has created important limitations on benefit assessments. Prior to levying any such assessment, OPR recommends reviewing Proposition 218 and any implementing statutes. For more information, see the following sources: "Proposition 218 Implementation Guide," League of California Cities, Sacramento, CA, 1997; *Understanding Proposition 218*, Office of the Legislative Analyst, 1996; and *A Planner's Guide to Financing Public Improvements*, OPR, 1997.

- ***"Revenue bonds"*** are secured by the future revenues of the facility or enterprise they are financing. Stadiums, wastewater treatment facilities, and parking facilities are three examples of the types of revenue producing facilities which are commonly financed by revenue bonds. The Revenue Bond Law of 1941 (§54300 et seq.) is a source of funds for the construction of hospitals, water facilities, sewer plants, parking facilities, bridges, auditoriums, and other such public facilities. Because revenue bonds are secured by the proceeds from the enterprise they fund, they generally carry higher interest rates than general obligation bonds.

- ***Lease revenue bonds*** are a similar tool. Instead of being issued by the city or county, lease revenue bonds are issued by the nonprofit corporation or special authority which constructs a facility and leases it to the city or county. Lease payments provide the revenue to pay off the bond and when the bond is retired the facility is turned over to the city or county. Some local agencies have used this method to finance administrative centers and schools.

Exactions

Exactions are dedications of land, improvements, or impact fees imposed on new development to fund the construction of capital facilities (they cannot be used for operations and maintenance). The authority to impose exactions on development derives from the police power and statute. Unlike taxes, which are levied to raise general revenues, an exaction is levied to finance a specific activity, facility, or service. Furthermore, exactions can only be levied once – at the time of project approval.

Exactions may only be imposed where they will advance a legitimate a state interest (i.e., health, safety, and welfare issues such as smooth traffic flow, availabil-

ity of recreational facilities, sewer and water service, etc.) and are necessary to mitigate the adverse impact to that interest which would otherwise result from the project (*Nollan v. California Coastal Commission* (1987) 107 S.Ct. 3141). This principle is reflected in the Mitigation Fee Act (§66000 et seq.) which lays out the ground rules for imposing development impact fees and other exactions.

While the general plan may form a policy basis for exactions, keep in mind that it does not preempt constitutional limits on regulatory "takings" or enable any exaction that would conflict with State laws. The *Nollan* decision established that there must be a "nexus" between the exaction and the state interest being advanced. The U.S. Supreme Court case in *Dolan v. City of Tigard* (1994) 114 S.Ct. 2309 added a second step to the analysis – there must be a "rough proportionality" between the exaction being imposed and the relative need created by the project. Reducing *Dolan* to its simplest terms, the court overturned the city's requirements for bicycle path and floodway dedications because they were out of proportion to the impact on flooding and contribution to bicycle traffic that would have resulted from the proposed expansion of a plumbing supply store, even though Tigard's comprehensive plan contained definitive policies relating to such dedications.

The California Supreme Court clarified the *Nollan* and *Dolan* principles in *Ehrlich v. City of Culver City* (1996) 12 C4th 854. The court made two key points:

(1) Developers who wish to challenge a development fee on either statutory or constitutional grounds must do so under provisions of the Mitigation Fee Act (§66000, et seq.).

(2) The two part *Nollan/Dolan* test applies only to ad hoc fees and dedications of land (as opposed to legislatively-enacted fee ordinances). The "rough proportionality" component does not apply to legislatively-enacted fees such as Culver City's Art in Public Places (here the court also held that this ordinance enacted to enhance aesthetics was a reasonable use of the city's police power under *Nollan*).

In some jurisdictions, where development may adversely affect the availability of low and moderate-income housing, exactions are levied upon developers to finance the construction of sufficient housing to alleviate that impact. San Francisco, for example, has an inclusionary housing program that mandates the construction of affordable housing or payment of in-lieu fees in accordance with a prescribed formula (linking projected employment to the number of housing units) as a condition of new downtown office development.

Public Needs and Private Dollars by William Abbott, Marian E. Moe, and Marilee Hansen (see the Bibliography) discusses the legal basis for development exactions and offers practical, California-specific advice about calculating and imposing them.

Privatization

Recent years have seen a growth in the popularity of "privatization" (the use of private contractors or private ownership) to provide local services such as garbage collection, fire protection, and street maintenance. Although it is not strictly a financing measure, it is a strategy that can help stretch limited public funds. Privatization has certain advantages: (1) local governments need not purchase and maintain specialized machinery, (2) personnel for specialized or seasonal tasks need not be maintained on salary, and (3) the costs to local governments of providing services may be reduced. It also has disadvantages: (1) special skills are needed to establish and manage the contract with the private service provider, (2) quality control is beyond the direct control of the local government and elected officials, and (3) if it is necessary to replace the contractor, residents may face a period of interrupted service.

Transportation Financing Methods

Caltrans' Division of Transportation Planning has provided the following descriptions of general categories, and examples of measures to generate additional funds for transportation projects.

- Cities may impose business license taxes (often based upon gross receipts or number of employees) since business activity and employment concentration affect traffic congestion. San Francisco has used this method to provide funds for operation of its municipal railway.
- Parking regulation. Neighborhood parking stickers, parking meters, and daily tickets can bring in substantial funds in urban areas. These revenues can be used for a variety of local transportation programs.
- Transportation impact fees (also called "traffic impact mitigation fees," "system development charges" and "adequate public facilities fees") based upon the traffic projected to be generated by development and/or the cost estimates of public transportation facilities necessitated by development. In the Westchester area of Los Angeles, a one-time fee is collected for each p.m. peak hour trip generated by new commercial and office development to cover areawide improvements needed. In Thousand Oaks, traffic mitigation fees are

required for signals, for the cost of paving adjacent arterials and for off-site improvements, all made necessary by the traffic resulting from new development. To offset development impacts on the local transit system, San Francisco charges a transit impact fee based on building square footage.

- Airspace leasing taps the value of public rights-of-way in urban areas. A governmental agency may capitalize on that value by leasing to the private sector unoccupied space over, under, or within the right-of-way. This has been used for a variety of purposes including parks, parking lots, cellular communications, office buildings, restaurants, and public facilities.
- "Public/private partnerships," "development agreements," and "cost-sharing" involve developing an agreement between the private and public sectors that splits responsibilities for the cost of infrastructure provision, operation and maintenance. This technique tends to be more flexible and less bound by legal constraints than other measures.
- Privatization may reduce or eliminate the need for public funds for transportation infrastructure if the prospect of profit exists. California's first modern toll roads have been built in Orange County by private funds. Private provision of transit services is becoming more common as it is connected to specific developments. Individual developers and employers have designed and initiated such traffic mitigation programs such as traffic flow improvements, flexible work hours, and bicycle facilities. In addition, recent trends show groups of developers, employers and businesses banding together in transportation management associations to address mutual traffic concerns in a specific area and setting up programs such as those mentioned above. Measures have been established in the cities of El Segundo, Pleasanton, and Berkeley (in cooperation with the University of California).

Consistency In Implementation

The general plan is largely implemented through zoning and subdivision decisions. In 1971, the Legislature made consistency with the general plan a determinative factor for subdivision approvals. Since that time, lawmakers have continued to add consistency requirements to California's planning and land use laws. Other statutes, while not mandating consistency, require findings or a report on whether various local actions conform to the general plan. (Please refer to the chart on the following pages.)

In order for zoning and other measures to comply with the consistency requirements, the general plan itself must first be complete and adequate – i.e., it must address all local relevant issues and it must be internally consistent. For example, in 1984, a court ruled that a finding of consistency based on an inadequate general plan was a legal impossibility *(Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184 (based on 58 Opps. Cal.Att'y.Gen 21, 24 (1975)). More recently, however, a court has ruled that a subordinate land use approval such as a subdivision map can only be challenged on the basis of an internal general plan in consistency when there is a "nexus" between the particular approval and the claimed inconsistency in the general plan (*Garat v. Riverside* (1991) 2 Cal.App.4th 259).

The California Attorney General has opined that "the term 'consistent with' is used interchangeably with 'conformity with'" (58 Ops.Cal.Atty.Gen. 21, 25 (1975). A general rule for consistency determinations can be stated as follows:

> *An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.*

The city or county is responsible for determining whether an activity is consistent with the general plan. A city council's finding of a project's consistency with the plan would be reversed by a court if, based on the evidence before the council, a reasonable person could not have reached the same conclusion. (*No Oil, Inc. v. City of Los Angeles* (1987) 196 Cal.App.3d 223)

"[The] nature of the policy and the nature of the inconsistency are critical factors to consider" (*Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors* (1998) 62 Cal.App.4th 1332). A project is clearly inconsistent when it conflicts with one or more specific, fundamental, and mandatory policies of the general plan *(Families Unafraid,* supra). However, any given project need not be in perfect conformity with each and every policy of the general plan if those policies are not relevant or leave the city or county some room for interpretation *(Sequoayah Hills Homeowners Association v. City of Oakland,* (1998) 23 Cal.App 4th 704 (1993)).

Placer County's "On-line General Plan" is one method to help ensure consistency. Upon receiving a development proposal or other entitlement request,

county staff enters distinguishing project features into the county's computer program. The program analyzes the proposal by checking for general plan and community plan consistency, identifying goals and policies by topic, and prepares a report of its results. The software can compare project characteristics to the goals and policies of the plan and each of its elements, providing a consistent and unbiased consistency analysis.

Zoning Consistency

Counties, general law cities, and charter cities with a population of more than two million are required to maintain consistency between their zoning ordinance and their adopted general plan (§65860). Charter cities with populations under two million are not subject to this mandate, but may choose to enact their own code requirements for consistency (§65803 and 65860).

Where the consistency requirement applies, every zoning action, such as the adoption of new zoning ordinance text provisions or zoning ordinance map amendments, must be consistent with the plan. A zoning ordinance that is inconsistent with the general plan at the time it is enacted is "invalid when passed" (*Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698). By the same token, when a general plan amendment makes the zoning inconsistent, the zoning must be changed to reestablish consistency "within a reasonable time" (§65860(c)). According to the California Supreme Court, "[t]he Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog." (*Lesher Communications v. City of Walnut Creek*, supra).

State law does not prescribe what constitutes "a reasonable time" for reconciling the zoning ordinance with the general plan. OPR suggests that when possible, general plan amendments and necessary related zone changes be heard concurrently (§65862). When concurrent hearings are not feasible, OPR suggests the following time periods:

(1) for minor general plan amendments (i.e., those involving a relatively small area), six months.

(2) for extensive amendments to the general plan (such as a revision which results in the inconsistency of large areas), two years.

Zoning-related initiatives and referenda must also maintain general plan consistency. An initiative seeking to impose growth management regulations was invalidated when it was found to be inconsistent with the general plan (*Lesher Communications v. City of Walnut Creek*, supra). A referendum which sought to overturn a rezoning approval was invalidated where the rezoning was necessary to maintain or achieve consistency with the general plan (*deBottari v. City of Norco* (1985) 171 Cal.App.3d 1204; *City of Irvine v. Irvine Citizens Against Overdevelopment* (1994) 25 Cal.App.4th 868).

Assessing and Achieving Zoning Consistency

Zoning consistency can be broken down into three parts: (1) uses and standards, (2) spatial patterns, and (3) timing.

The local agency's general plan and zoning ordinance contain text and maps that specify development standards and the proposed location of uses for the community. The development standards and uses specified for all land use categories in the zoning ordinance – density, lot size, height, and the like – must be consistent with the development standards and uses specified in the general plan's text and diagram of proposed land use. This has several implications.

The zoning scheme, with its range of zoning districts and their associated development standards or regulations, must be broad enough to implement the general plan. For example, if a general plan contains three residential land use designations, each with its own residential intensity and density standard, then the zoning ordinance should have at least as many zoning districts with appropriate standards. Similarly, if the general plan identifies seismic hazard areas and calls for zoning measures to implement safety policies, the zoning ordinance must contain appropriate provisions such as a hazard overlay zone or specific development standards.

When a new element or major revision to a general plan is adopted, the zoning scheme should be thoroughly reviewed for consistency. It must be amended if necessary to ensure that it is adequate to carry out the new element or revisions.

When rezoning occurs, the newly adopted zoning must be appropriate and consistent with all elements of the general plan. This includes not only the land uses and development standards, but also the transportation, safety, open-space, and other objectives and policies contained in the plan.

Both the general plan diagram of proposed land use and the zoning map should set forth similar patterns of land use distribution. However, the maps need not be identical if the general plan text provides for flexibility of interpretation, or for future development (*Las Virgenes Homeowners v. County of Los Angeles* (1986) 177 Cal.App.3d 312). For example, a land use diagram may designate an area for residential development while the

zoning map may show the same area as predominantly residential, with a few pockets of commercial use. Despite the residential designation, the commercial zoning could be consistent with the general plan if the plan's policies and standards allow for neighborhood commercial development within residential areas. Likewise, more than one zoning classification may be consistent with any one of the general plan's land use categories. For example, both R-1 (residential) and PUD (planned unit development) may be consistent zoning for a low-density residential category in the plan.

The timing of development is closely linked to the question of consistency of spatial patterns. A general plan is long-term, while zoning responds to shorter-term needs and conditions. Therefore, in many cases zoning will only gradually fulfill the prescriptions of the general plan. Timing may be particularly important in rural areas designated for future urbanization. If the general plan contains policies regarding orderly development, adequate public services, and compact urban growth, rezoning a large area from a low-intensity use (i.e., agriculture) to a more intensive one (i.e., residential) before urban services are available would be inconsistent with the general plan. Conversely, an inconsistency may be created when general plan policies promote high-intensity development in an area, but the jurisdiction instead permits low-intensity uses.

Since timing can be a problem, general plans should provide clear guidance for the pace of future development, perhaps by using five-year increments or by establishing a set of conditions to be met before consistent zoning would be considered timely.

Local governments have devised a number of ways to evaluate and achieve zoning consistency. A fairly common approach is to employ a matrix comparing the general plan's land use categories and associated development standards with the zoning districts and their corresponding zoning ordinance development standards. To indicate the degree of zoning consistency with the plan, many matrices feature categories ranging from "highly compatible" to "clearly incompatible." An intermediate category, "conditionally compatible," could reflect zoning that by itself is not compatible, but could become compatible if measures such as a PUD overlay were imposed to reduce or eliminate potential conflicts.

The matrix approach however, has its limitations. By itself, a matrix cannot answer questions about the zoning's compatibility with the objectives, policies, and programs of the general plan, nor can it answer questions about timing. A number of local governments use a checklist to evaluate the consistency of individual zoning proposals. The checklist repeats the major goals and policies of the general plan and rates the degree to which the proposed zoning conforms to each of them (i.e., "furthers," "deters," "no effect"). A point system which rates development projects by their level of consistency with the goals, objectives, and policies of the general plan is a similar approach.

The figure on page 128 illustrates a hypothetical matrix. It may be modified to match local conditions.

Subdivision Consistency

Before a city or county may approve a subdivision map (including parcel maps) and its provisions for design and improvement, the city or county must find that a proposed subdivision map is consistent with the general plan and any applicable specific plan (§66473.5). These findings can only be made when the local agency has officially adopted a general plan and the proposed subdivision is "compatible with the objectives, policies, general land uses and programs specified in such a plan."

Section 66474 and 66474.61 require a city or county to deny approval of a tentative map if it makes either of the following findings: (a) the proposed map is not consistent with applicable general and specific plans; or, (b) the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

The checklist on page 132 demonstrates one way to evaluate subdivision consistency.

Enforcement and Remedies

Any resident, property owner, or other aggrieved party, including a public agency, may sue to enforce the requirements for the adoption of an adequate general plan (58 Ops.Cal.Atty.Gen. 21 (1975)). The same is true for zoning consistency with the general plan (§65860(b)), and for subdivisions (§66499.33). As the state's chief law enforcement officer, the Attorney General may do the same (§12606 and California Constitution Article V, §13). Additionally, persons living outside a city have standing to sue if the city's zoning practices exclude them from residing in the city or raised their housing costs outside the city by adversely affecting the regional housing market (*Stocks v. City of Irvine* (1981) 114 Cal.App.3d 520).

The courts may impose various remedies for failure to have a complete and adequate general plan or for inconsistency of zoning and subdivision actions and public works projects (§65750, et seq.). One is a writ of mandate to compel a local government to adopt a legally

Hypothetical General Plan/Zoning Compatibility Matrix

General Plan Designations ····▶

◀···· Zoning District

		Residential (units per net acre)					**Commercial**					**Industrial**	**Public**			**Parks and Open Space**			**Rural**	
		0.1 – 2.0	2.1 – 8.0	8.1 – 15.0	15.1 – 25.0	25.1 – 35.0	Neighborhood	Community	CBD	Highway	Heavy		Schools	Institutional	Government	Parks	Golf Course	Nat. Resource	Agriculture	Hillside
Residential	R-1		▲																	
	R-2			▲																
	R-3				▲															
	R-4					▲														
Commercial	C-1						▲	▲	●											
	C-2							●	▲											
	C-3									▲	▲									
Mixed Use	MRX				●	●	▲	▲	▲											
Industrial	M-L										●	▲								
	M-H										●	▲								
Public	P-F												▲	●	▲	▲	●	●		●
Open Space	O-S														●	▲	●	▲	▲	
Flood Plain	F-P															▲	▲	▲	▲	
Agriculture	A-G	▲																▲	▲	▲
New Zone Recommended		**N**						**N**			**N**								**N**	**N**

▲ Zones that are compatible with general plan designation

● Zones that the city could find compatible under specified circumstances, but that generally are not compatible

N Formulation of a new zoning district is recommended

Sample Checklist For Subdivision Consistency With The General Plan

When the following questions can be answered in the affirmative, the subdivision will normally be consistent with the general plan.

- **Land Use**
  Do land uses proposed in conjunction with the subdivision conform to the general plan's land use designations?

- **Density and Intensity**
  Are the proposed lot sizes appropriate for the uses prescribed for the area by the general plan and consistent with the applicable general plan standards for population density and building intensity? This is more than consistency with the general plan diagram: the subdivision must also be consistent with the plan's written policies and standards regarding uses, density, and intensity.

- **On-Site Improvements**
  Does the subdivision provide adequate on-site improvements consistent with the general plan, including street design, drainage and sanitary facilities, and easements?

- **Off-Site Improvements**
  Does the subdivision include provisions for off-site improvements or the payment of fees for off-site improvements consistent with the general plan, including temporary school facilities, road and bridge improvements, parks, and sewers?

- **Circulation**
  Does the map respond to projected traffic levels indicated in the circulation element? Does the design of the subdivision take into account thoroughfares identified in the circulation element, such as major arterials, expressways, collectors, etc.?
  Does the subdivision design effectively correlate circulation element policies with those of the land use element, pursuant to the court's decision in *Concerned Citizens of Calaveras County v. Board of Supervisors* (1985) 166 Cal.App.3d 90.

- **Environmentally Sensitive Areas**
  Is the subdivision designed to accommodate and protect environmentally sensitive areas identified in the general plan? Environmentally sensitive areas are ones susceptible to flooding and to geologic or seismic hazards and fires, areas of special biological significance, areas of special cultural significance, such as archaeological sites, and the like.

- **Timing**
  Does the subdivision conform to the schedule for growth or phasing set forth in the general plan?

- **Other General Plan Provisions**
  Does the subdivision's design take into account noise attenuation standards set forth in the noise element?
  Does the subdivision's design accommodate the recovery of important mineral resources?
  Does the subdivision's design conform to the open-space element's policies and designations?
  Is the subdivision consistent with all other general plan policies pertaining to subdivisions, possibly including policies for a mixture of housing types, lot orientation for solar heating, limitations on congestion of public facilities, and the like?

adequate general plan. The courts also have general authority to issue an injunction to limit approvals of additional subdivision and parcel maps, rezonings, public works projects, or (under limited circumstances) the issuance of building permits, pending adoption of a complete and adequate general plan (58 Ops.Cal.Atty.Gen. 21 (1975), *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, *Camp v. Mendocino* (1981) 123 Cal.App.3d 334). Where a court finds that specific zoning or subdivision actions or public works projects are inconsistent with the general plan, it may set aside such actions or projects. Under certain circumstances, the court may impose any of these forms of relief prior to a judicial determination of a general plan's inadequacy (§65757). These provisions, however, do not limit the court's authority to impose other appropriate remedies.

Other Consistency Provisions In State Law And Legal Precedents

Agricultural Preserves

- §51234: requires that agricultural preserves established under the Williamson Act be consistent with the general plan.
- §51282: requires a city or county, when approving a Williamson Act contract cancellation, to make a finding that the proposed alternate use is consistent with the general plan.

Capital Improvements

- §65401 and 65402: require planning agencies to review and report on the consistency with the applicable general plan of proposed city, county, and special district capital projects, including land acquisition and disposal.
- §65103(c): requires planning agencies to review annually their city or county capital improvement programs and other local agencies' public works projects for consistency with the general plan.
- *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988: Governmental capital facilities projects must be consistent with the general plan.
- §53090, et seq.: most public works projects undertaken by special districts, including school districts, must be consistent with local zoning, which in turn must be consistent with the general plan (a special district governing board may render the zoning ordinance inapplicable if it makes a finding after a public hearing that there is no feasible alternative to the project (§53096)). State entities are an exception (*Rapid Transit Advocates, Inc. v. Southern California Rapid Transit District* (1986) 185 Cal.App.3d 996).

Condominium Conversion

- §66427.2: when the general plan contains objectives and policies addressing the conversion of rental units to condominiums, the conversion must be consistent with those objectives and policies.

Development Agreements

- §65867.5: requires development agreements to be consistent with the general plan.

Housing Authority Projects

- Health and Safety Code §34326: declares that all housing projects undertaken by housing authorities are subject to local planning and zoning laws.

Integrated Waste Management

- Public Resources Code §41701: If a county determines that the existing capacity of a solid waste facility will be exhausted within 15 years or if the county desires additional capacity, then the countywide siting element of the county's hazardous waste management plan must identify an area or areas, consistent with the applicable general plan, for the location of new solid waste transformation or disposal facilities or for the expansion of existing facilities.
- Public Resources Code §41702: An area is consistent with the city or county general plan if:
  (1) The city or county has adopted a general plan.
  (2) The area reserved for the new or expanded facility is located in, or coextensive with, a land use area designated or authorized by the applicable general plan for solid waste facilities.
  (3) The adjacent or nearby land use authorized by the applicable general plan is compatible with the establishment or expansion of the solid waste facility.
- Public Resources Code §41703: Except as provided in subdivision (a) of §41710, any area or areas identified for the location of a new solid waste transformation or disposal facility shall be located in, coextensive with, or adjacent to a land use area authorized for a solid waste transformation or disposal facility in the applicable city or county general plan.
- Public Resources Code §41710(a): A county may tentatively reserve an area or areas for the location of a new or expanded solid waste transformation or disposal facility even though that reservation is inconsistent with the applicable city or county general plan. A reserved area is tentative until it is made consistent with the applicable general plan.
- Public Resources Code §41711: A tentatively reserved area shall be removed from the countywide siting element if a city or county fails or has failed to find that the area is consistent with the general plan.
- Public Resources Code §41720: The countywide siting element submitted to the California Integrated Waste Management Board

shall include a resolution from each affected city or the county stating that any areas identified for the location of a new or expanded solid waste transformation or disposal facility pursuant to §41701 is consistent with the applicable general plan.

Interim Classroom Facilities

- §65974(a)(5): specifies that when local governments obtain the dedication of land, the payment in-lieu thereof, or a combination of both, for interim elementary or high school classroom facilities, such facilities must be consistent with the general plan.

Local Coastal Programs

- Public Resource Code §30513: requires the zoning ordinances of the Local Coastal Program to conform to the certified coastal land use plan (a portion of the general plan).

Low and Moderate Income Housing

- §65589.5(d): A city or county may disapprove a low or moderate-income housing project if the jurisdiction finds that the development is inconsistent with the general plan land use designation, as specified in any element of the plan.

Mineral Resources

- Public Resources Code §2763: requires that city and county land use decisions affecting areas with minerals of regional or statewide significance be consistent with mineral resource management policies in the general plan. §2762: the general plan must establish mineral resource management policies if the State Geologist has identified resources of statewide or regional significance within the city or county.

On-Site Wastewater Disposal Zones

- Health and Safety Code §6965: requires a finding that the operation of an on-site wastewater disposal zone created under Health and Safety Code §6950 et seq. will not result in land uses that are inconsistent with the applicable general plan.

Open-Space

- §65566: requires that acquisition, disposal, restriction, or regulation of open-space land by a city or county be consistent with the open-space element of the general plan.
- §65567: prohibits the issuance of building permits, approval of subdivision maps, and adoption of open-space zoning ordinances that are inconsistent with the open-space element of the general plan.
- §65910: specifies that every city and county must adopt an open-space zoning ordinance consistent with the open-space element of the general plan.
- §51084: requires cities and counties accepting or approving an open-space easement to make a finding that preservation of the open-space land is consistent with the general plan.

Park Dedications

- §66477: enables local governments to require as a condition of subdivision and parcel map approval the dedication of land or a payment of fees for parks and recreational purposes if the parks and recreational facilities are consistent with adopted general or specific plan policies and standards.

Parking Authority Projects

- Streets and Highway Code §32503: specifies that parking authorities, in planning and locating any parking facility, are “subject to the relationship of the facility to any officially adopted master plan or sections of such master plan for the development of the area in which the authority functions to the same extent as if it were a private entity.”

Planning Commission Recommendations

- §65855: requires that the planning commission’s written recommendation to the legislative body on the adoption or amendment of a zoning ordinance, include a report on the relationship of the proposed adoption or amendment to the general plan.

Project Review Under CEQA

- Title 14, California Code of Regulations, §15125(b) (Refer to the State CEQA Guidelines): requires examination of projects subject to the provisions of the California Environmental Quality Act for consistency with the general plan.
- Public Resources Code §21080.10 and 21080.14: exempt specified housing projects from the requirements of CEQA, but only when consistent with the general plan and meeting other criteria.

Redevelopment Plans
- Health and Safety Code §33331: requires every redevelopment plan to conform to the adopted general plan.

Reservations of Land Within Subdivisions
- §66479: specifies that reservations of land for parks, recreational facilities, fire stations, libraries, and other public uses within a subdivision must conform to the general plan.

Special Housing Programs
- Health and Safety Code §50689.5: specifies that housing and housing programs developed under Health and Safety Code §50680 et seq. for the developmentally disabled, mentally disordered, and physically disabled must be consistent with the housing element of the general plan.

Specific Plans
- §65359: requires that a specific plan be reviewed and amended as necessary to make it consistent with the applicable general plan.
- §65454: specifies that a specific plan may not be adopted or amended unless the proposed plan is consistent with the general plan.

Street, Highway, and Service Easement Abandonments
- Streets and Highways Code §8313: Specifies that prior to vacating a street, highway, or public service easement, the legislative body must consider the applicable general plan.

Transit Village Development Plan
- §65460.8: A transit village plan prepared under the Transit Village Development Planning Act of 1994 must be consistent with the city or county general plan.

Transmission Lines
- Public Utilities Code §12808.5: requires cities and counties approving electrical transmission and distribution lines of municipal utility districts to make a finding concerning the consistency of the lines with the general plan.

Use Permits
- *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, provides that conditional use permits must be consistent with the local general plan. While state statutes do not expressly require such consistency, the court found an implicit requirement since use permits are struck from the mold of local zoning, and zoning must conform to the adopted general plan.

CHAPTER 6

Special General Plan Considerations

All statutory references are to the California Government Code unless otherwise noted

INTRODUCTION

OTHER STATUTES and regulatory programs can have a direct bearing on the general plan. This chapter summarizes a number of these statutes and programs.

The **California Coastal Act** requires each community within the coastal zone to prepare a local coastal program (LCP), including a coastal land use plan. The **Surface Mining and Reclamation Act** (SMARA) requires cities and counties containing minerals of regional or statewide significance to adopt policies protecting mineral resources from incompatible uses. The **California Integrated Waste Management Act** requires counties, with the concurrence of a majority of the cities containing a majority of the incorporated county population, to prepare and adopt solid waste management plans. The **Alquist-Priolo Earthquake Fault Zoning Act** requires cities and counties with designated fault zones to limit new development within those zones. The **Airport Land Use Commission Law** requires cities and counties to amend their general plans to conform with adopted airport land use plans.

Regional Transportation Planning (§65080 et seq.) identifies regional transportation and road projects and provides a basis for obtaining federal and state funding. As part of this, **Congestion Management Plans** (CMPs) must be prepared within each of the 31 counties containing an urbanized area. Although these CMPs are not necessarily prepared by local planning agencies, because they affect the transportation system, they will directly affect local planning efforts.

Environmental regulations have a direct impact on the location, intensity, and types of land uses which may be allowed. Just as a general plan should reflect regional planning efforts, it should recognize pertinent state and federal environmental regulations. The **California and Federal Endangered Species Acts** prohibit the killing, disturbing, or harassing of endangered species of plants and animals, except under limited circumstances and with express permission from the Department of Fish and Game and the U.S. Fish and Wildlife Service. The state and federal **Clean Air Acts** mandate regional air quality planning through the air quality management and air pollution control districts, as well as enforceable air basin regulations to reduce the production of specified air pollutants. The federal **Clean Water Act** empowers the U.S. Army Corps of Engineers to review and regulate land use activities which would fill or otherwise disturb jurisdictional wetlands.

CALIFORNIA COASTAL ACT

Background

The California Coastal Act of 1976 (Public Resources Code §30000 et seq.) was enacted to "protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources" (Public Resources Code §30001.5). The Act applies to the coastal zone, a strip along the California coast generally "extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea" (Public Resources Code §30103). The actual coastal zone boundary is delineated on a set of maps adopted by the Legislature and located at the Coastal Commission's San Francisco office. The coastal zone excludes the area of jurisdiction of the San Francisco Bay Conservation and Development Commission. The Coastal Act otherwise applies to all those portions of cities, counties, and charter cities that lie within the coastal zone (70 Ops.Cal.Atty.Gen. 220 (1987)).

The Coastal Commission regulates development within portions of the coastal zone and oversees coastal planning efforts along the entire coast. The Act's policies (Public Resources Code §30200 et seq., and 30702 et seq.) are implemented through cooperative action between the Commission and local governments. A central feature of this joint action is the local coastal program (LCP). With certain exceptions, development within the coastal zone is subject to a coastal development permit issued either by a local government pursuant to a certified

LCP or, where no certified LCP exists, by the Coastal Commission. A city or county which lacks a certified LCP surrenders a good deal of planning authority within the coastal zone.

Each city or county lying in whole or in part within the coastal zone is supposed to prepare an LCP for that part of its jurisdiction within the zone. However, any local government may request, in writing, that the commission prepare an LCP for them (Public Resources Code §30500(a)). An LCP adopted by the local government may be certified by the Coastal Commission as advancing the policies of the Coastal Act. Once an LCP has been certified, the local government takes over the issuance of coastal development permits (Public Resources Code §30519(a) and 30600(d)). Decisions made under an LCP may be appealed to the Commission (Public Resources Code §30603). The Commission retains permanent jurisdiction over development on coastal zone tidelands, submerged lands, and public trust lands (Public Resources Code §30519(b)).

An LCP consists of a coastal land use plan, (i.e., portions of a city's or county's general plan), zoning ordinance, zoning district maps, and where required, other programs necessary to implement the Coastal Act. In addition, it must contain a specific public access component to assure that maximum public access to the coast and public recreation areas is provided (Public Resources Code §30500).

The Coastal Act provides that the precise content of each LCP shall be determined by the local government, consistent with §30501, in full consultation with the Commission and with full public participation (Public Resources Code §30500(c)). The Commission's methodology for preparing LCPs can be found at Title 14, Division 5.5, of the California Code of Regulations, §13506 through 13514.

Amendments to certified LCPs must be submitted to the Commission for review and, in the case of major amendments, certification (70 Ops.Cal.Atty.Gen. 220 (1987)). LCP amendments that are minor in nature or that require rapid or expeditious action are reviewed by the Commission's executive director (Public Resources Code §30514; Title 14 of the California Code of Regulations, §13554 and 13555).

The Coastal Act has special requirements for the coastal zone portions of the Ports of Hueneme, Long Beach, Los Angeles, and the San Diego Unified Port District. Rather than preparing LCPs, these ports must prepare master plans and have them certified by the Coastal Commission (Public Resources Code §30711 and 30714). With certain exceptions, each development within a port requires a development permit and must conform to the port's master plan (Public Resources Code §30715(a) and 30715.5). The cities and counties that have these ports within their jurisdictions must, for informational purposes, incorporate the master plan into their LCPs (Public Resources Code §30711(a)).

Definitions: California Coastal Act

Land Use Plan: The relevant portions of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions (Public Resources Code §30108.5)

Local Coastal Element: That portion of a general plan applicable to the coastal zone which may be prepared by local government pursuant to the California Coastal Act, or any additional elements of the local government's general plan prepared pursuant to §65303 of the Government Code, as the local government deems appropriate. (Public Resources Code §30108.55)

Local Coastal Program: A local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coastal resources areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of, the California Coastal Act at the local level. (Public Resources Code §30108.6)

Relation to the General Plan

Coastal cities and counties are subject to both the Planning and Zoning Law and the California Coastal Act. Ideally, an LCP links Coastal Act policies to local planning. The contents of coastal land use plans overlap some of the required provisions of general plans. For instance, the Coastal Act requires policies concerning diking, dredging, filling, and shoreline structures (Public Resources Code §30233 and 30235), while the Planning and Zoning Law does not. Conversely, the Planning and Zoning Law requires the general plan to address noise, while the Coastal Act does not. To simplify implementation, coastal zone communities should integrate both sets of requirements into a coherent and internally consistent local general plan

There are many ways to integrate the general and coastal plan policies. Some communities have adopted "coastal elements" within their general plans. Another option is to incorporate coastal plan policies, plan proposals, and standards directly into the general plan's land use, open-space, and conservation elements. A third option is to adopt a specific plan or community plan for urbanized areas within the coastal zone. A community plan focuses the general plan's policies on coastal issues. A specific plan may do that, as well as enact coastal land use regulations.

If a jurisdiction wants to submit its general plan as part of the LCP, it must describe how coastal policies are addressed therein. In many cases, new coastal plans or elements will be needed to address the Coastal Act's specific requirements. In order to encourage the general plan amendments necessary to preparing a certified LCP, such actions don't count toward the limit of four general plan amendments per year (Government Code §65358(d)).

A general plan need not be parcel-specific. The Coastal Act, however, specifies that coastal land use plan provisions be sufficiently detailed to indicate the kinds, location, and intensity of land uses (Public Resources Code §30108.5). According to the commission's legal staff, this standard may require that the coastal land use plan specify the principal permitted use, the specific conditional uses, and the specific standards that will be used in reviewing development proposals for the various land use categories.

Pursuant to Public Resources Code §30108.5 and 30108.55, a coastal land use plan is incorporated into the community's general plan, therefore it must be consistent with the rest of the plan. For instance, proposed development within the coastal zone must conform to community-wide policies for concerns not prescribed by the Coastal Act, such as noise. Likewise, development proposed within the coastal zone that would be permissible elsewhere within the community may be subject to unique policy considerations under the Coastal Act. For example, a commercial development within the coastal zone may need to provide visitor-serving commercial uses rather than, or in addition to, general commercial uses.

There is a special situation where a community has a certified coastal land use plan only, but has not prepared the necessary implementing measures to obtain full LCP certification. If such communities adopt general plan amendments without updating the land use plan (through amendments that must be certified by the Coastal Commission), discrepancies may arise between land uses and densities authorized under the general plan and those authorized in the coastal land use plan. If the general plan and coastal land use plan diverge significantly, problems will arise when the project applies to the Commission for a coastal development permit. Communities may avoid these problems by reviewing all general plan amendments affecting the coastal zone for consistency with their coastal land use plan. Communities can more efficiently control their planning process, and obtain the authority to issue coastal development permits locally, by completing their LCPs and seeking full certification from the Coastal Commission.

Special Requirements for Housing in the Coastal Zone

In 1981 the Legislature deleted housing policies from the Coastal Act and established within the Government Code special requirements for the protection and provision of low- and moderate-income housing within the coastal zone (§65590). These requirements supplement the housing element requirements. They apply only to cities and counties whose LCPs were certified on or after January 1, 1982. Any amendments to the housing provision in previously certified LCPs must be consistent with the 1981 requirements (§65590(f)).

Section 65588, subdivisions (c) and (d), states that when coastal jurisdictions update their housing elements they must document the number of low- and moderate-income housing units converted or demolished and the number of replacement units provided. This helps the locality determine whether affordable housing stock in the coastal zone is being protected and provided as required by §65590.

SURFACE MINING AND RECLAMATION ACT

Background

The Surface Mining and Reclamation Act (SMARA) is California's answer to two seemingly contradictory demands—the need for a continuing supply of mineral resources and the assurance that the significant adverse impacts of surface mining will be mitigated. SMARA requires that local governments address mineral recovery activities at two levels: through direct regulation of mining operations (including reclamation) and through planning policies that harmonize the mineral resource needs of the state and region with the maintenance of local environmental quality. SMARA also contains strong policies for the conservation of known mineral deposits

in the face of competing development so that they will be available for extraction and use.

SMARA requires cities and counties to adopt ordinances in accordance with state policy for the review and approval of reclamation plans and for the issuance of permits to conduct surface mining operations (Public Resources Code §2774). With certain exceptions, issuance of a surface mining permit is conditional upon approval of a reclamation plan and financial assurances for reclamation (Public Resources Code §2770). Local ordinances adopted to implement this requirement must be reviewed and certified by the State Mining and Geology Board for conformity with state law and the Board's policies and procedures (Public Resources Code § 2774.3 and 2774.5). The Division of Mines and Geology's "Note 26" describes SMARA in detail.

Classification/Designation

SMARA establishes a two step mineral lands inventory process called "classification-designation," intended to ensure that important mineral deposits are identified and protected for continued and further extraction.

Definitions: Surface Mining And Reclamation Act

Area of Regional Significance: An area which has been designated by the Mining and Geology Board pursuant to §2790 which is known to contain a deposit of minerals that are of prime importance in meeting future area mineral needs and which, if developed in a non-compatible use, would result in the permanent loss of regionally significant minerals.

Area of Statewide Significance: An area which has been designated by the Board pursuant to §2790 which is known to contain a deposit of minerals that are of prime importance to meeting the future needs of the state and which, if developed with non-compatible uses, could result in the loss of minerals that are of statewide significance.

Compatible Land Uses: Land uses inherently compatible with mining and/or that require a minimum public or private investment in structures, land improvements, and which may allow mining because of the relative economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, very low density residential, geographically extensive but low impact industrial, recreational, agricultural, silvicultural, grazing, and open-space. (California Code of Regulations, Title 14, §3675)

Incompatible Land Uses: Land uses inherently incompatible with mining and/or that require public or private investment in structures, land improvements, and landscaping, and that may prevent mining because of the greater economic value of the land and its improvements. Examples of such uses may include, but shall not be limited to, high density residential, low density residential with high unit value, public facilities, geographically limited but impact intensive industrial, and commercial. (California Code of Regulations, Title 14, §3675)

Minerals: "Any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum." (California Code of Regulations, Title 14, §3502)

Reclamation: "… the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a usable condition which is readily adaptable for alternate land uses and create no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures." (Public Resources Code §2733)

Surface Mining Operations: "…all, or any part of, the process involved in the mining of minerals on mined lands by removing the overburden and mining directly from the mineral deposits, open-pit mining of minerals naturally exposed, mining by the auger method, dredging and quarrying, or surface work incident to an underground mine. Surface mining operations shall include, but are not limited to:
"(a) In place distillation or retorting or leaching;
"(b) The production and disposal of mining waste; and,
"(c) Prospecting and exploring activities."
(Public Resources Code §2735)

Classification

During the classification phase, the State Geologist prepares a geological inventory of selected important mineral commodities within defined study regions. The objectives of a classification report include: (1) identifying the market area of the commodity; (2) projecting the future needs for the commodity within the study region; and, (3) geologically classifying the lands within the region as to the presence or absence of mineral resources. Classification is based solely on geological factors and does not consider existing land uses. The priority by which areas are classified is based upon an evaluation of which potential mineral lands are most likely to be converted to uses that are incompatible with mining or which would preclude mining.

Under the Act and the Board's 1979 Guidelines, the State Geologist classified mineral areas as one of four Mineral Resource Zones (MRZ) or a Scientific Zone (SZ):

- MRZ-1: Areas where adequate information indicates that no significant mineral deposits are present or where it is judged that little likelihood exists for their presence.
- MRZ-2: Areas where adequate information indicates that significant mineral deposits are present or where it is judged that a high likelihood for their presence exists.
- MRZ-3: Areas containing mineral deposits the significance of which cannot be evaluated from available data.
- MRZ-4: Areas where available information is inadequate for assignment to any other MRZ zone.
- SZ: Areas containing unique or rare occurrences of rocks, minerals, or fossils that are of outstanding scientific significance shall be classified in this zone (State Board Guidelines).

As the classification of each area is completed and approved, the state board sends copies of the State Geologist's report and maps classifying the mineral lands to the affected cities and counties. Within twelve months of receiving the maps and report, the city or county must, as part of its general plan, adopt mineral resource management policies which:

- Recognize the mineral classification information, including the classification maps, transmitted to it by the board and include the classification maps in its general plan.
- Assist in the management of land use which affect areas of statewide and regional significance.
- Emphasize the conservation and development of identified significant mineral deposits. (Public Resources Code §2762)

Proposed city or county policies must be submitted to the Board for review and comment prior to adoption. The same is true of any subsequent amendments to these policies. If a use is proposed which might threaten the potential recovery of minerals from an area which has been classified MRZ-2, the city or county must specify its reasons for permitting the use, provide public notice of those reasons, and forward a copy of its statement of reasons to the State Geologist and Board. (Public Resources Code §2762(d))

Designation

In contrast to classification, which disregards land use, the purpose of designation is to identify those deposits which are of prime importance to the future needs of the study region and which are available from a land use perspective. Designation fine tunes the findings of the classification report.

Following a public hearing and consultation with the affected cities and counties, the State Board may designate all or part of the areas classified MRZ-2 or SZ as areas containing significant mineral resources of statewide or regional significance. As is the case following state classification, the Mining and Geology Board must transmit a report of its action to the affected city or county. Within twelve months of receiving this report, the city or county must:

- Recognize and include in its general plan the designated areas of statewide or regional significance transmitted to it by the board.
- Develop and adopt policies for the management of land use of areas classified MRZ-2 or SZ and designated by the board as areas of statewide and regional significance to protect those areas from premature development incompatible with mining.
- Emphasize the conservation and development of mineral deposits designated by the board to be of statewide or regional significance.

Prior to adopting its mineral resource management policies, the city or county must submit them to the Board for review and comment. It must also submit subsequent amendments prior to adoption (Public Resources Code §2762(c)).

While SMARA describes the classification and designation process as two separate steps, designation usually closely follows classification. Thus, a city or county should have to amend its general plan only once to incorporate the information and policies for both the classification and the designation.

Relation to the General Plan

An affected city or county must amend its general plan to recognize classification or designation information, assist in the management of land uses which affect areas with minerals of statewide and regional significance, and adopt policies which emphasize the conservation and extraction of identified mineral deposits (Public Resources Code §2762) The land use, conservation, and open-space elements are the most common locations for such policies. Alternatively, several jurisdictions have adopted mineral resources elements.

The criteria to be used by affected cities and counties in developing their own mineral resource management policies are laid out by the Mining and Geology Board (California Code of Regulations, Title 14, §3676). Local policies should include:

- A summary of the data and analysis provided in the classification and/or designation reports, incorporation of Public Resources Code §2710 et seq. and state policy by reference (together with maps of the identified mineral deposits), or incorporation by reference of the classification and/or designation reports and maps.
- Policies that recognize the mineral information transmitted by the state Board, assist in the management of land uses affecting areas of regional and statewide significance, and emphasize the conservation and development of the identified mineral deposits.
- Implementation measures, including:
  - Reference in the general plan to the location of identified mineral deposits and a discussion of those areas targeted for conservation and possible future resource extraction.
  - Use of maps to clearly delineate identified mineral deposits and those areas targeted for conservation and possible future resource extraction.
  - At least one of the following:
    (1) Special purpose overlay zones, mineral resource/open-space zoning, or any other appropriate zoning that identifies the presence of mineral deposits and restricts the encroachment of incompatible land uses in those areas that are to be conserved.
    (2) Requirements for recording notice of the presence of identified mineral deposits in the chain of property title.
    (3) Conditions placed upon incompatible land uses within and next to any areas containing identified mineral deposits for the purpose of mitigating any significant land use conflicts.

Once policies have been incorporated into the general plan to protect areas containing minerals of regional or statewide significance, all of the city's or county's land use decisions affecting the designated areas must be in accordance with those policies. When making land use decisions involving identified mineral deposits, the jurisdiction must consider the importance of the mineral resource to the market region (for deposits of regional significance) or to the state and nation (for deposits of statewide significance), rather than simply their importance within the jurisdiction (Public Resources Code §2763).

If a city or county intends to approve a use that would threaten the potential to extract minerals from an area designated as either of regional or statewide significance, the city or county must submit a statement specifying its reasons to the State Mining and Geology Board (Public Resources Code §2762 and 2763). Unless the project is subject to CEQA, which has its own public notice requirements, the city or county must also provide notice of the availability of this statement, make the statement available for public review for at least 60 days, and hold a public hearing for the purpose of receiving public comments. Prior to approving the use, the agency must evaluate all comments received and make a written response to each explaining its reasons for approval (Public Resources Code §2762).

Undesignated lands

Public Resources Code §2764 requires that when an area has not been designated as having mineral deposits of statewide or regional significance, and where the local jurisdiction has not adopted mineral resource policies in its general plan, the local agency must amend its general plan or the applicable specific plan or adopt a new specific plan whenever so requested by the operator of an existing surface mine or other interested person (the party requesting the designation is responsible for paying its estimated cost).

The affected city or county must "plan for future land uses in the vicinity of, and access routes serving, the [existing] surface mining operation in light of the importance of the minerals to their market region as a whole, not just their importance to the lead agency's area of jurisdiction" (Public Resources Code §2764). Evaluations prepared for the purpose of making amendments to the general plan or adopting a new specific plan must be sent to the State Geologist and the State Mining and Geology Board.

When adopting such amendments or a new specific plan, the city or county must make written findings relative to the compatibility of the land uses and access

routes to the continuing surface mining operation. If the land uses and access routes are not compatible with the continuation of surface mining, the city or county must also state why incompatible uses are to be provided for in the face of the regional importance of the operation (Public Resources Code §2764).

CALIFORNIA INTEGRATED WASTE MANAGEMENT ACT

Background

In 1989, the State comprehensively revised its approach to solid waste management and established the goal of reducing the state's production of solid waste by 25 percent as of 1995 and 50 percent by the year 2000. The California Integrated Waste Management Act of 1989 (Public Resources Code §40000 et seq.) embodies this approach.

At the state level, the Integrated Waste Management and Recycling Board ensures that the Act is enforced (Public Resources Code § 40400 et seq.). The Board reports biennially to the Legislature on the progress of the integrated waste management program, writes county waste management planning guidelines, and provides technical assistance to local agencies. The Act gives the Integrated Waste Management Board sweeping powers to oversee local waste management programs.

Each county must prepare a County Integrated Waste Management Plan (CoIWMP) promoting the policies of the Act and establishing local waste management policies, to be adopted cooperatively by the county and its cities. The CoIWMP must provide: a summary of the significant waste management problems facing the county; an overview of the specific steps that its local agencies will take to meet the goals of the Act; and a statement of countywide goals and objectives relative to waste management. These plans and the related elements are intended to complement, but stand separate from, the local general plan. References to "element" in the Act are not intended to mean a general plan element.

Upon completion, each CoIWMP and each of the individual source reduction and recycling elements must be submitted to the Integrated Waste Management Board for review and approval or disapproval. Once it has been certified by the Board, a CoIWMP or source reduction and recycling element must be reviewed at least every 5 years for adequacy (Public Resources Code §41822). If any revisions are made, they must also be submitted to the Board for its approval or disapproval. In addition, each year after approval of a city source reduction and recycling element or CoIWMP, the city or county must submit a progress report to the Board (Public Resources Code §41821).

The CoIWMP is, in effect, a cooperative statement of policies by the county and its cities (or a regional agency and its constituent counties and cities) regarding solid waste management issues of countywide or regional concern; the need for solid waste collection systems, processing facilities, and marketing strategies; and the development of multi-jurisdictional arrangements for marketing recyclable materials. To the extent possible, the CoIWMP mediates conflicts and inconsistencies among city source reduction and recycling elements. The CoIWMP must include:

(1) The county's and all cities' source reduction and recycling elements.

(2) The county's and all cities' household hazardous waste elements.

(3) The countywide siting element.

(4) The county's and all cities' nondisposal facility elements. (Public Resources Code §41750)

The CoIWMP and any amendments to it, except for the individual city and county source reduction and recycling elements, must be approved by the county board of supervisors and by the councils of a majority of the cities containing a majority of the county's population (Public Resources Code §41760). Upon receiving the draft plan for consideration, a city must ratify or reject it within 90 days. Failure to act within that time period constitutes approval.

Countywide Siting Element

The county must prepare a countywide siting element describing the areas to be developed as disposal or waste management facilities (Public Resources Code §41700). The siting element must be based on the information provided by the individual county and city source reduction and recycling elements. The countywide siting element must contain:

- Goals and policies for the environmentally safe transformation or disposal of solid waste which cannot be reduced, recycled or composted.
- An estimate of the total capacity that will be needed for a 15-year planning period to handle solid wastes generated within the county which cannot be reduced, recycled or composted.
- A statement of the remaining capacity of existing solid waste transformation and disposal facilities at the time that the element was prepared or revised.
- Specified areas for new or expanded solid waste transformation or disposal facilities, consistent with

Definitions: Integrated Waste Management

Disposal Facility: Any facility or location where the disposal of solid waste occurs (Public Resources Code §40121).

Disposal Site: The place, location, tract of land, area, or premises in use, intended to be used, or which has been used for the landfill disposal of solid wastes, including a solid waste landfill (Public Resources Code §40121).

Hazardous Waste: A waste or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may either:
(a) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.
(b) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored transported, or disposed of, or otherwise managed (Public Resources Code §40141).

Recycling: The process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste and returning them to the economic mainstream in the form of raw material for products which meet the quality standards to be used in the marketplace (Public Resources Code §40480).

Solid Waste: All putrescible and nonputrescible solid, semisolid, and liquid wastes, including: garbage; trash; refuse; paper; rubbish; ashes; industrial wastes; demolition and construction wastes; abandoned vehicles and parts thereof; discarded home and industrial appliances; dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste; manure, vegetable or animal solid and semisolid wastes; and other discarded solid and semisolid wastes (Public Resources Code §40191). Solid waste does not include hazardous waste.

Solid Waste Facility: A disposal facility, disposal site, and a solid waste transfer/processing station (Public Resources Code §40194).

Source Reduction: Any action which causes a net reduction in the generation of solid waste. This includes, but is not limited to: reducing the use of nonrecyclable materials; replacing disposable materials and products with reuseable materials and products; reducing packaging; reducing the amount of yard wastes generated; establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce; and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials in the manufacturing process. Source reduction does not include steps taken after the material becomes solid waste or action that would impact air or water resources in lieu of land (Public Resources Code §40196).

the applicable county or city general plan. This is only required if the county determines that existing capacity will be exhausted within the 15-year planning horizon.

Source Reduction and Recycling Elements

The county and each of its constituent cities must prepare their own source reduction and recycling elements (Public Resources Code § 41000 et seq. for cities and § 41300 et seq. for counties). These elements must:

- Identify the constituents of solid waste by volume, type of material, and source;
- Describe the methods, including recycling and composting, by which the city will reduce the amount of solid waste being generated;
- Identify and describe projected costs, revenues, and revenue sources necessary to implement the element; and
- describe existing handling and disposal practices for special wastes such as asbestos and sewage sludge.

The source reduction, recycling, and composting components of the element must contain specific action programs, as well as schedules for meeting the Act's diversion goals. The same reduction component must also describe necessary new or expanded waste handling facilities and economic incentives to encourage waste reductions.

Household Hazardous Waste Elements

The county and its cities must each prepare and adopt a household hazardous waste element identifying a program for the safe collection, treatment, and disposal of hazardous wastes generated by residences and which should be separated from the rest of the solid waste stream. (Public Resources Code §41500 (cities) and 41510 (counties)).

Nondisposal Facility Elements

The county and its cities each must prepare and adopt a nondisposal facility element (Public Resources Code §41730 (cities) and 41731 (counties)). This element describes any new solid waste facilities and expansions of existing solid waste facilities needed to implement the jurisdiction's source reduction and recycling element. Facilities which will recover or recycle at least five percent of the total volume of materials which they receive need not be included in the element.

Relation to the General Plan

Sound planning practice suggests close coordination of waste management planning with local general plans. General plans contain information, assumptions, and projections which should serve as the basis for county waste management planning. General plans, for example, project future population growth and economic activity and designate areas proposed for residential, commercial, industrial, agricultural, and institutional land uses. General plans also contain information regarding transportation routes, existing land uses, and environmental conditions. This information is critical to developing estimates in the integrated waste management plans.

The countywide siting element of the CoIWMP and the land use elements of the affected city and county general plans are the primary vehicles for planning the location of solid waste disposal or transformation sites. The siting element must correlate with local general plans. Accordingly, all siting elements submitted to the Integrated Waste Management Board as part of a CoIWMP must contain a resolution from each affected city and the county stating that any area identified for location of new or expanded facilities is consistent with the applicable general plan (Public Resources Code §41720). Furthermore, the Act establishes standards for determining consistency (Public Resources Code §41702).

A siting element may tentatively reserve an area for a new or expanded waste facility even though the area is not consistent with the applicable general plan. However, the designation will not become permanent unless the affected city or county expressly finds that the area is consistent with its plan. The designation will not become permanent if the affected agency finds that the area should not be used for a facility (Public Resources Code §41710-41712).

The land use element is required to designate future locations for solid waste disposal facilities (§65302(a)). Similarly, the countywide siting element must identify and reserve sites for the establishment or expansion of solid waste transformation or disposal facilities consistent with applicable city or county general plans (Public Resources Code §41702).

An area is consistent with the city or county general plan when the adopted general plan complies with state planning law, the area being reserved for a new or expanding solid waste facility is located in or adjacent to an area designated for that use on the applicable general plan, and the land uses authorized in the area adjacent or near the area being reserved for a solid waste transformation or disposal facility are compatible with the establishment or expansion of such a facility. (Public Resources Code §41702)

The law provides no direction for what constitutes compatible land uses or how much area around a site is subject to the compatibility requirement. Cities and counties, therefore, must make their own determinations. Their land use elements should contain goals, objectives and policies addressing the question of compatibility. When developing policies for allowable uses near solid waste facilities, cities and counties should pay special attention to particularly sensitive uses, such as schools, hospitals and health care facilities, residential development, and commercial and office developments.

COUNTY HAZARDOUS WASTE MANAGEMENT PLANS

Background

A county may, at its discretion, prepare and adopt a hazardous waste management plan (HWMP) for managing all hazardous wastes produced in the county (Health and Safety Code §25135, et seq.). State law creates a strong incentive for doing so by giving the state authority to supersede local land use powers over the siting and permitting of new hazardous waste facilities if the county does not have an approved HWMP (Health and Safety Code §25199, et seq.). As a result, most counties have adopted a HWMP.

County hazardous waste management planning is a cooperative effort. The county, the cities within the county, the public, and industry jointly develop a county or regional HWMP. The HWMP must discuss the volume of the waste stream, existing and projected additional facilities, facility siting policies, and implementation actions, among other things (Health and Safety Code §25135.1(d)). In addition, it may include a description of any other local programs which the county determines to be necessary to provide for the proper

management of hazardous wastes.

A HWMP must be prepared with the assistance of a locally appointed advisory committee (Health and Safety Code §25135.2) and it must be adopted by the sponsoring county. In addition, it must be approved by a majority of the cities within the county which contain a majority of the population of the incorporated area. The plan must be submitted to the state Department of Health Services for review and final approval before it becomes effective. The state will review the plan for its compliance with statute and the Department of Health Services' guidelines for preparing and adopting hazardous waste management plans (Health and Safety Code §25135.5 and 25135.7). The schedules for preparing and adopting an HWMP are specified in Health and Safety Code §25135.6 and 25135.7.

Relation to the General Plan

The HWMP must either be incorporated, by reference, into a county's general plan or a county must enact an ordinance requiring that all applicable zoning, subdivision, conditional use permit, and variance decisions be consistent with its HWMP (Health and Safety Code §21135.7(b)). Obviously, consistency with the land use element is important in order to avoid policy conflicts. The safety element may also be involved if, for example, the element addresses hazardous waste handling and transport.

ALQUIST-PRIOLO EARTHQUAKE FAULT ZONING ACT

Background

The Legislature originally enacted the Alquist-Priolo Act in 1972 (Public Resources Code §2621 et seq.) to assure that homes, offices, hospitals, public buildings, and other structures for human occupancy are not built on active faults. The Act requires a geological investigation before a local government can approve most development projects in the vicinity of known earthquake faults.

The State Geologist maps earthquake fault zones along the traces of known potentially and recently active major faults. These zones usually are one-quarter mile or less in width (Public Resources Code §2622). The State Geologist periodically revises these maps and designates new zones as studies identify hazardous faults. Before the zones are designated officially by the Mining and Geology Board, preliminary maps are sent to all affected cities, counties, and state agencies for review and comment (Public Resources Code §2622). Within 90 days of final approval of an earthquake fault zones map by the Board, the State Geologist must send copies to affected cites and counties. The State Mining and Geology Board provides specific policies and criteria to guide cities and counties in implementing the law.

The affected city or county must inform the public of the locations of all designated earthquake fault zones. Disclosure can be made by reference in general plans, specific plans, property maps, or other appropriate local maps (Title 14, California Code of Regulations, §3603(b)). The city or county must also adopt procedures for reviewing and approving permits for new buildings located within fault zones. For example, before the city or county can approve a project within an earthquake fault zone, the applicant must submit a registered geologist's report which describes any possibility of a surface rupture. If the city or county finds that no undue hazard exists, it can waive the requirement for a geologic report, with the approval of the State Geologist (Public Resources Code §2623).

The Division of Mines and Geology's *Special Publication 42 Fault-Rupture Hazard Zones in California* contains guidelines for evaluating hazards, a suggested outline for geologic reports on faults, and other useful items. For more information, contact the DMG at (916) 445-5716 or visit its web site at: www.consrv.ca.gov/dmg/index.html.

Relation to the General Plan

The Alquist-Priolo Act states that its purpose is to provide for "the adoption and administration of zoning laws, ordinances, rules, and regulations by cities and counties in implementation of the general plan." (Public Resources Code §2621.5). The Act's provisions should be reflected in the plan's land use, safety, and open-space elements. As with other planning issues, the Alquist-Priolo program should be addressed at three levels: data and analysis; policy; and implementation.

The data on the State Geologist's maps, including the approximate location of the faults and the boundaries of the earthquake fault zones, should be transferred to the hazard maps already included in the general plan. The general plan should incorporate Alquist-Priolo Act policies restricting building within fault zones. A city or county may also establish policies and criteria more restrictive than those of the Act or adopted by the State Mining and Geology Board. Implementation may occur through disclosure requirements, as well as zoning and subdivision requirements.

Definitions: Earthquake Fault Zoning Act

Active Fault: A fault that has had surface displacement within Holocene time (approximately the past 11,000 years). (California Code of Regulations, Title 14, §3601(a))

Fault Trace: That line formed by the intersection of a fault and the earth's surface. It is the representation of a fault as depicted on a map, including maps of earthquake fault zones. (California Code of Regulations, Title 14, §3601(b))

Project: (a) As used in this chapter, project means:
(1) Any subdivision of land which is subject to the Subdivision Map Act, Division 2 (commencing with §66410) of Title 7 of the Government Code, and which contemplates the eventual construction of structures for human occupancy.
(2) Structures for human occupancy, with the exception of:
(A) Single-family wood frame dwellings to be built on parcels of land for which geologic reports have been approved pursuant to the provisions of paragraph (1) of this subdivision.
(B) A single-family wood frame dwelling not exceeding two stories when such dwelling is not part of a development of four or more dwellings.
(b) For the purposes of this chapter, a mobilehome whose body width exceeds eight feet shall be considered to be a single-family wood frame dwelling not exceeding two stories. (Public Resources Code §2621.6)

Structure for Human Occupancy: Any structure used or intended for supporting or sheltering any use or occupancy, which is expected to have a human occupancy rate of more than 2,000 person hours per year. (California Code of Regulations, Title 14, §3601(e))

SEISMIC HAZARDS MAPPING ACT

Background

The Seismic Hazards Mapping Act (Public Resources Code §2690, et seq.) complements the Alquist-Priolo Act by requiring the State Geologist to compile maps identifying seismic hazard zones — those areas which during an earthquake are susceptible to ground shaking, landslides, or liquefaction. Where official seismic hazard maps exist, cities and counties must require that the developer prepare a geotechnical report delineating any seismic hazard and proposing mitigation measures before they may approve any project in a seismic hazard zone (Public Resources Code §2697). The minimum level of mitigation for a project should be to reduce the acceptable risk of ground failure in an earthquake to a level that does not cause the collapse of buildings for human occupancy (note that this level would not preclude ground failure or major damage to structures short of collapse). Further, before real estate may be sold, the seller must disclose to the prospective buyer the existence of a seismic hazard zone.

Highest priority for mapping goes to the coastal urbanized areas of California. As the State Geologist completes them, the hazard maps are made available in preliminary form to the affected cities, counties, and state agencies for review and comment. The mapping process is in its early stages in 1998: only a handful of preliminary maps have been released for the San Francisco Bay Area and Los Angeles metropolitan area. After the Mining and Geology Board has considered any comments and approved the maps, the State Geologist will provide the cities, counties, and state agencies copies of the official maps. The transmitted information will also be recorded with the County Recorder.

Relation to the General Plan

The Seismic Hazards Mapping Act specifically requires cities and counties to take into account the information available in Seismic Hazard Maps when preparing their safety elements and when adopting or revising land use planning regulations such as zoning (Public Resources Code §2699). Policies may also be included in the open-space and land use elements when not redundant. The Mining and Geology Board's *Special Publication 117, Guidelines for Evaluating and Mitigating Seismic Hazards in California,* offers useful suggestions for compliance.

For more information, including *Guidelines for Evaluation and Mitigation of Seismic Hazards,* and the most recent Seismic Hazard Zone official maps, refer to the Seismic Hazard Mapping Program's home page at: www.consrv.ca.gov/dmg/shezp/.

Definitions: Seismic Hazards Mapping Act

Acceptable level of risk means that level that provides reasonable protection of the public safety, though it does not necessarily ensure continued structural integrity and functionality of the project. (CCR, Title 14, §3721)

Project has the same meaning as in the Alquist-Priolo Act, except as follows:
(1) A single-family dwelling otherwise qualifying as a project may be exempted by the city or county having jurisdiction.
(2) "Project" does not include alterations or additions to any structure within a seismic hazard zone which do not exceed either 50 percent of the value of the structure or 50 percent of the existing floor area of the structure. (Public Resources Code §2693)

COBEY-ALQUIST FLOODPLAIN MANAGEMENT ACT

Background

This act encourages local governments to plan, adopt, and enforce floodplain management regulations (Water Code §8400, et seq.). Where a federal flood control project report has been issued which designates floodway boundaries, the Department of Water Resources or the State Reclamation Board will not appropriate money in support of the project unless the applicable agency has enacted floodplain regulations. Those regulations must provide that:

(1) Construction of structures in the floodway which may endanger life or significantly reduce its carrying capacity shall be prohibited.

(2) Development will be allowed within the "restrictive zone" between the floodway and the limits of the floodplain as long as human life and the carrying capacity of the floodplain are protected. (Water Code §8410).

Relation to the General Plan

The Act supports restrictive general plan policies and zoning provisions with respect to floodplain management. Policies and programs providing for protection and prevention of community flood hazards should be incorporated into the safety element. Further, floodways and floodplain boundaries should be designated and a consistent land use designation given to affected lands in the land use element (including its diagram).

AIRPORT LAND USE COMMISSION LAW

Background

Each county containing one or more public use airports is required to either establish an airport land use commission (ALUC) or, in cooperation with affected cities and Caltrans' Aeronautics Program, adopt processes and designate an alternative agency, for the purpose of preparing an airport land use plan for each such airport (Public Utilities Code § 21670 and 21670.1). Adjoining counties may also establish an inter-county ALUC when there is an airport that straddles county lines (Public Utilities Code §21670.4). The airport land use plan (ALUP) provides for the orderly growth of each public use airport over a 20-year span and minimizes land use conflicts over height and noise with the surrounding area. The ALUP may include building height restrictions, specify allowable land uses, and determine building standards within the planning area of each airport.

Public Utilities Code §21674 empowers the ALUC to:

- Assist local agencies in ensuring compatible land uses in the vicinity of all new airports and in the vicinity of existing airports to the extent that the land in the vicinity of those airports is not already devoted to incompatible uses;
- Coordinate planning at the state, regional and local levels so as to provide for the orderly development of air transportation, while at the same time protecting the public health, safety, and welfare;
- Prepare and adopt an ALUP pursuant to Public Utilities Code §21675; and,
- Review the plans, regulations, and other actions of local agencies and airport operators pursuant to Public Utilities Code §21676.

The ALUC does not, however, have the power to regulate airport operations.

Until an ALUC adopts an ALUP, a city or county considering a project within the vicinity of a public use airport must submit the proposal to the ALUC for review and approval. (Public Utilities Code §21675.1) In effect, the ALUC is making land use decisions in place of the city or county during this period. Projects may only be approved when the ALUC finds that (1) it is making progress toward completing its plan; (2) the action will probably be consistent with that plan; and (3) there is little probability that the project will interfere with the future plan, even if the action is ultimately inconsistent with that plan. If a project is denied by the ALUC, the city's or county's legislative body may overrule that

decision by two-thirds vote.

In some counties which chose not to establish an ALUC or delegate its duties, the county and affected cities can prepare an ALUP for each airport and adopt processes for the amendment of general and specific plans to be consistent with the comprehensive ALUPs. These processes are subject to review and ratification by Caltrans' Aeronautics Program. Other exceptions to the rule on establishing an ALUC are described in Public Utilities Code §21670.1.

Relation to the General Plan

Once an ALUP has been adopted, pertinent city and county general plans and other local land use and building regulations must be made consistent with it unless the city council or county board of supervisors votes by two-thirds majority to overrule the airport plan and makes specific findings to justify not amending their regulations and plans (Public Utilities Code §21676). The findings must show that the action of the legislative body:

- Provides for the orderly development of each public use airport and the area surrounding such airports in such a manner as to promote the overall goals and objectives of the California airport noise standards adopted pursuant to Public Utilities Code §21669 (Title 21, California Code of Regulations, §5000 et seq.), and prevent the creation of new noise and safety problems.
- Protects public health, safety, and welfare by ensuring the orderly expansion of airports and the adoption of land use measures that minimize the public's exposure to excessive noise and safety hazards within areas around public airports to the extent that such areas are not already devoted to incompatible uses (Public Utilities Code §s 21670 and 21676(b)).

Subsequent changes to the general plan, specific plans, zoning ordinance or building regulations affecting areas covered by an ALUP must also be referred to the ALUC before being adopted by the city or county (Public Utilities Code §21676(b)). The ALUC has 60 days to determine whether the proposed action is consistent with the airport land use plan. If the ALUC determines that the proposed action is inconsistent with its plan, the city council or board of supervisors must either modify the proposed action or overrule the ALUC's determination by a two-thirds vote after a public hearing. Where an alternative approach to airport land use planning has been approved by the Aeronautics Program, consistency protocols will be as established by the county and affected cities and ratified by the Program.

Definition: Airport Land Use Commission Law

Public Use Airport: A publicly or privately owned airport that offers the use of its facilities to the public without prior notice or special invitation or clearance, and that has been issued a California Airport Permit by the Aeronautics Program of the California Department of Transportation.

ALUPs apply to land use, noise, and other development issues that also are addressed in the local general plan. The local general plan should incorporate, at least in summary form, essential background data from the ALUPs such as information regarding safety zones and areas affected by aircraft noise. The noise contours for each airport in the planning area should be part of the noise element.

The general plan should contain development policies, plan proposals, and standards for land use and development around airports, including:

- Policies consistent with the purposes of the Airport Land Use Commission Law;
- Land use designations specifying allowable uses that are compatible with identified hazards and noise problems;
- Standards for building heights that minimize hazards from aircraft;
- Standards for noise insulation at least as rigorous as those required by the state and the airport land use plans; and,
- Objective criteria for determining when it may be appropriate to override the recommendations of the land use commission or alternative body in accordance with the policies of §21670.

The *Airport Land Use Planning Handbook* prepared by the Caltrans' Aeronautics Program is the state's primary reference for airport land use planning. This book discusses the requirements of the state statutes, overriding findings, noise compatibility planning, safety aspects of airport planning, height restrictions and airport master plans.

REGIONAL TRANSPORTATION PLANNING

Background

Transportation planning is much more than mapping future freeway alignments. It involves planning for various modes of transportation, complex traffic modeling, conformity with air quality standards, congestion management, and many other factors. Regional transportation planning is a complex field populated by multitudinous state and federal laws and regulations. Effective in 1998, California revised its local transportation planning process to give greater authority to regional transportation planning agencies and to specify that most state transportation funds allocated through the regional transportation planning process must go to regional projects (SB 45 — Chapter 622, Statutes of 1997). The following is a brief discussion of the major points, but is not intended to be a comprehensive review of the requirements and processes involved in this branch of planning.

State law requires each of California's Regional Transportation Planning Agencies (RTPAs) to prepare a Regional Transportation Plan (RTP) and a Regional Transportation Improvement Program (RTIP) which coordinate and balance the regional transportation system, addressing such topics as highways, railroads, mass transportation, bicycle and pedestrian facilities, aviation facilities, and ships (§65080 et seq.).

The RTP and RTIP, as part of the California Transportation Commission's process of selecting projects for the state transportation improvement program, establish the basis for State funding of local and regional transportation projects. Federal law also requires an RTP as a perquisite to funding such projects. Under federal requirements, a Transportation Improvement Program (TIP) identifies individual projects which may be eligible for available funding.

Most of the state's regional councils of government, function as RTPAs (most are also designated as Metropolitan Planning Organizations under federal law). The Metropolitan Transportation Commission and the Tahoe Regional Planning Agency are designated as the RTPAs for the nine-county San Francisco Bay Area and the Lake Tahoe region, respectively. The RTPAs coordinate with the public, advocacy groups, local governments, transit operators, congestion management agencies, air quality districts, Caltrans and other state agencies, and federal transportation and environmental protection agencies while preparing their plans and programs.

Pursuant to §65080 et seq., the RTP must include:

- A policy element setting out the area's transportation objectives and policies, consistent with the financial element.
- An action element describing the programs and actions necessary for specified agencies to implement the plan over its 20-year lifespan and integrating the county congestion management programs.
- A financial element summarizing the cost of plan implementation, including a comparison of available revenues to expected costs, and recommendations for the allocation of funds and development of new revenue sources. The element is based on Caltrans' four-year estimate of available state and federal funding.

Each RTPA whose planning area includes a primary air carrier airport must include within its RTP an airport ground access improvement program (§65081.1). The program must address the development and extension of mass transit lines to the airport.

The RTIP identifies and prioritizes specific transportation projects within the region on a four-year schedule, updated every two years (§65082). A project study must be done for each project included in the RTIP (§14527). The RTIP is submitted to Caltrans and the California Transportation Commission which consider it for inclusion in the State TIP (STIP). The Commission may reject an RTIP which does not meet commission guidelines or which is not cost-effective, but cannot reject individual projects within an RTIP. Projects included in the STIP are eligible for state funding of project planning, programming, and monitoring. State law now provides that 25 percent of the funds made available through the State TIP must be programmed and expended for interregional improvements and mandates that 75 percent go to regional improvements (Streets and Highways Code §164). The State TIP must specify the funding for permits and environmental studies, planning, right-of-way acquisition, and construction for each project in the program (§14529).

Under state law, each county containing an urbanized area must establish a congestion management agency (CMA) to prepare and adopt a Congestion Management Plan (CMP) (§65088 et seq.). The CMP establishes programs for mitigating the traffic impacts of new development, including deficiency programs where congestion is extreme, and monitoring the performance of system roads relative to established Level of Service standards. The CMP is expected to link land use, transportation, and air quality concerns. At minimum it must include all state highways and all principal arterial roads.

The CMP must contain the following components:

- An element defining the CMP transportation system and level of service (LOS) standards for the highway portion of the system.
- A performance element evaluating system performance across several modes.
- A travel demand element.
- A program for analyzing the impact of land use decisions.
- A seven-year capital improvement program (§65089)

In addition to these components, the CMA must develop a traffic data base for use in a county-wide traffic model.

CMPs are integrated into the RTP's action element and their projects are included in the RTIP. If the CMA finds that a local agency has not complied with the adopted CMP, it must so inform the state Controller and California Transportation Commission. The state will then withhold the local agency's share of state transportation funds.

A county may exempt itself from the CMP requirements when a majority of the cities and county representing a majority of the population of the county adopt resolutions of exemption (§65088.3). In that case, the requirements for incorporating the CMP into the RTIP do not apply (§65082(i)).

Federal law also imposes planning requirements. The Clean Air Act requires the MPOs to prepare a State Implementation Plan or SIP which requires "conformity" between transportation projects embodied by the transportation improvement program and air quality standards in air quality non-attainment areas (the California Transportation Commission also prepares a SIP, integrating the metropolitan SIPs). The federal Transportation Equity Act for the 21st Century (TEA 21) offers flexible funding of a multimodal range of projects, subject to planning requirements such as the Congestion Mitigation and Air Quality improvement programs.

Relation to the General Plan

The policies and plan proposals contained in the land use and circulation elements should reflect the RTP and RTIP. Clearly, transit standards, congestion management measures, proposed facilities, and transportation-related funding may directly affect land use patterns and capital improvements. Although there is no explicit requirement that the RTP and RTIP be consistent with local general plans, good practice dictates that cities and counties should address these regional goals, policies, and programs to the extent they are relevant. The city or county should consult with the RTPA and CMA when updating or adopting a circulation element or when considering changes to the land use element which would involve traffic or transportation issues.

THE STATE AND FEDERAL ENDANGERED SPECIES ACT

Background

Although there are several laws and regulations that protect animals and plants in California (see Other Laws), the two which have the most impact are the federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA).

Enacted in 1973, the federal Endangered Species Act (16 USC 1531 et seq.) is one of the most powerful environmental laws to date. The United States Supreme Court has described the ESA as "the most comprehensive legislation for the preservation of endangered species ever enacted by any nation...The plain intent of Congress was to halt and reverse the trend toward species extinction, whatever the cost" (*Tennessee Valley Authority v. Hill*, (1973) 437 U.S. 153, 180,184 (1973)). The purpose of the act is not only to protect endangered and threatened species and the ecosystems upon which they depend, but also to facilitate the recovery of these species (16 USC 1531(2)(b)).

The California Endangered Species Act (Fish and Game Code §2050 et seq.), was first enacted in 1970 and substantially revised in 1984. The revised act was modeled after the ESA and is intended to provide additional protection to endangered and threatened species in California. The CESA does not supersede the ESA, but rather operates in conjunction with it. Species may be listed as endangered or threatened under one act and not the other, or under both acts, in which case the provisions of the act that provides greater protection for the species in question would apply (16 USC 1535(f)).

Jurisdiction

The U.S. Secretary of the Interior and the U.S. Secretary of Commerce (acting through the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, respectively) are responsible for the administration of the ESA. The Secretary of Commerce has jurisdiction over all but a few marine species. The Secretary of the Interior is responsible for all other species (16 USC 1532(15), 1533(a)(2); 50 CFR 402.01(b)). Herein the term "Secretary" will be used to refer to the Secretary who has jurisdiction over the species in question.

Under the CESA, the California Fish and Game Commission is responsible for the listing of species (Fish and Game Code §2070) and the California Department of Fish and Game (DFG) is responsible for administering and enforcing of all other aspects of the Act.

Listing

The cornerstone of both the ESA and the CESA is the listing of species. Once a species is placed on either the endangered or threatened list it is granted the substantial protections of the act (see Prohibitions below). In California, CESA protections are also extended to those species that the Fish and Game Commission has formally noticed as a *candidate species* (Fish and Game Code §2085).

Several factors are considered in the decision to place a species on the list, including the current status of the species, and the nature of the threat (50 CFR 424.10, 424.11; 14 California Code Regulation §670.1(b)). Listing decisions must be based on the best available scientific data and the status of listed species must be reviewed every five years to determine if the conditions leading to the original listing are still present (16 USC 1533(c)(2)(A); Fish and Game Code §2077). Economic impacts are not taken into consideration in the listing process (16 USC 1533(b)(1)(A); Fish and Game Code §2074.2).

Both the ESA and the CESA provide that individuals, organizations, or other agencies may petition the administering agency to add, delete, or change the listing status of any species (16 USC 1533(b); Fish and Game Code §2071). Both acts also contain emergency listing provisions, allowing normal listing procedures to be bypassed and a species to be immediately placed on the endangered or threatened list if there is a serious risk of the species becoming extinct before other adequate measures can be taken (16 USC 1533(b)(7); Fish and Game Code §2076.5).

Critical Habitat

Under the federal ESA, in addition to listing a species, the Secretary is required to designate *critical habitat*. This may include areas of land, water, and air space required by a listed species for its survival and recovery. Although critical habitat may be designated on private or state lands, activities on these lands are not restricted by the ESA unless direct harm to a listed species would result or a federal agency is involved, directly or indirectly, in the activity. If a federal agency is involved, the activities can proceed only if the Secretary determines that they will not result in the destruction or adverse modification of the habitat (16 USC 1536(a); see Agency Consultation following.

Economic impacts are considered when designating critical habitat. The Secretary may exclude any area from critical habitat determination if he finds, based on the best scientific and commercial data available that the benefits of such an exclusion outweigh the benefits of inclusion and the exclusion will not result in the extinction of the species concerned (16 USC 1533(b)(2)).

Recovery Plans

Besides listing and the designation of critical habitat under the ESA, the Secretary is also responsible for the development and implementation of *recovery plans* (16 USC 153(f)(1)). The intention of these plans is not only to stem the decline of the species, but to facilitate its recovery. Either single species or multi-species plans may be prepared, but the Secretary is required to give priority to those endangered or threatened species that are most likely to benefit from such plans, especially those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity (16 USC 1533(f)(1)(A)).

Recovery plans must contain the following:

- a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;
- objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and
- estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal. (16 USC 1533(f)(1)(B)).

Prohibitions

The ESA makes it illegal to import, export, take, possess, purchase, sell, deliver, or transport any endangered fish or wildlife species (16 USC 1538(a)(1)). With respect to endangered plants, the prohibitions are the same, except that take prohibitions apply only to areas under Federal jurisdiction or when done in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law. (16 USC 1538(a)(2)) Threatened species of fish, wildlife, and plants have similar, but slightly weaker, protections (50 CFR 17.31, 17.71).

The CESA provides similar protections to endangered and threatened species, making it illegal to import, export, take, possess, purchase, or sell any endangered

or threatened species (Fish and Game Code §2080). Additionally, the CESA extends these protections to *candidate species* (Fish and Game Code §2085).

Although both the ESA and CESA prohibit the taking of a listed species, a significant difference lies in their definitions of *take*. The broader ESA definition includes the terms *harass* and *harm* (see Glossary). The Fish and Wildlife Service's regulatory definition of *harm* includes any action that "…may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." (50 CFR 17.3)

In contrast, CESA does not recognize habitat modification or degradation or any act as a taking unless it is the "proximate cause of death of an individual of a listed species or the natural and probable consequences of which would lead to the death of any listed species." The California State Attorney General further clarified the relationship between habitat modification and taking in a May 15, 1995 opinion stating that unlike the ESA, the CESA "does not prohibit indirect harm to a state-listed endangered or threatened species by way of habitat modification." (78 Op. Cal.Atty Gen. 137 (1995)).

Agency Consultation

Both the ESA and CESA impose a number of procedural requirements to ensure that federal and state agencies do not carry out any actions that would jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat essential to its existence.

Under Section 7 of the ESA, any federal agency proposing to authorize, fund, or carry out a major construction activity, any action that will "significantly affect the quality of the human environment" as referred to in the National Environmental Policy Act (NEPA) (42 USC 4332(2)(c)), must first inquire of the Secretary whether any federally listed species, or designated critical habitat may be present in any area directly or indirectly affected by the proposed action (16 USC Section 1536(c)(1); 50 CFR 402.02, 402.12(c)).

If any federally listed species, or designated critical habitat may be present in the area, the agency must prepare a *biological assessment* to determine whether the action is likely to affect the species (16 USC 1536(c)(1); 50 CFR 402.12(d)(2)). The purpose of a biological assessment is three fold:

- To evaluate the effects of the action on listed and proposed species and critical habitat.
- To determine the need for consultation or conference with the Secretary.
- To achieve compliance with the ESA and the NEPA.

Biological assessments are combined with environmental review documents required by NEPA (16 USC 1536(c)(1); 50 CFR 402.06(a)). For instance, in cases where the agency's action may affect a federally listed species, both a biological assessment and an environmental impact statement (EIS) will be required, and may be combined into one document (50 CFR 402.06(b)). However, a federal agency's compliance with other laws does not relieve the agency of its duty to comply with all other requirements of the ESA (50 CFR 402.06(a)).

If the biological assessment determines that the proposed federal agency action may affect the listed species, the agency must formally consult with the Secretary (16 USC 1536(a)(4); 50 CFR 402.12(k)(1)). During the formal consultation period all relevant information concerning the species and/or critical habitat must be reviewed, the proposed action's direct and indirect impacts must be evaluated, and the Secretary must formulate conservation recommendations concerning the species and/or critical habitat (50 CFR 402.14(g)).

After consultation between the parties is complete, the Secretary must provide the agency with a written *biological opinion* evaluating the proposed action's impact on the species or critical habitat (50 CFR 402.02). If the opinion finds that the proposed action may jeopardize the species' continued existence or destroy or adversely modify critical habitat, the opinion must also include reasonable and prudent alternatives to the proposed action (16 USC 1536(b)(3)(A); 50 CFR 402.14(h)).

The CESA has similar provisions for formal consultations under the CEQA process. Consultation is triggered when a state lead agency under CEQA proposes to authorize, fund, or carry out any project that is likely to jeopardize the continued existence of any state listed species (Fish and Game Code §2090(a); Public Resources Code §21104.2). Formal consultation is typically initiated at the time the state lead agency has determined to prepare an environmental impact report (EIR) or a mitigated negative declaration under CEQA, and is completed upon certification of the EIR or approval of the negative declaration.

During consultation, the DFG reviews all relevant information regarding species potentially present in the project area and evaluates the proposed project's effects on state listed species and their essential habitats. At the end of the process, the DFG will issue a written finding evaluating the proposed action's impact on the species

and essential habitat (Fish and Game Code §2090(b)). If the DFG finds that the proposed action will have an adverse impact on either the species or its habitat, the DFG must also include reasonable and prudent alternatives to the proposed action (Fish and Game Code §2091).

Exemptions

Both the ESA and the CESA provide for a number of exemptions to the above prohibitions. The ESA contains provisions for incidental takings through the agency consultation process (16 USC 1536(b)(4); 50 CFR 402.14(i)(1)), takings in conjunction with *cooperative agreements* (16 USC 1535(g)(2)(A)), and the regulated taking of specific threatened species (16 USC 1533(d)). The ESA also provides economic hardship (16 USC 1539(b)(2); 50 CFR 17.23,17.63,1732(a)(1), 17.72); scientific (16 USC 1539(a)(1)(A), 50 CFR 17.22(a), 1732(a), 17.62, 17.72, and 222.23), and Endangered Species Committee exemptions (16 USC 1536(o)(1)).

For private, local, and state government projects that do not require any kind of federal agency involvement, the ESA also provides for *incidental take permits* (16 USC 1539(a)). These permits, issued in conjunction with an approved habitat conservation plan (see below), allow for the otherwise prohibited taking of a species listed under the ESA if:

- the taking will be incidental;
- the applicant will, to the extent practical, minimize and mitigate the impacts of the taking and will ensure that adequate funding is available to do so;
- the taking will not appreciably reduce the likelihood of the survival and recovery of the species; and
- the applicant will ensure that other measures that are deemed necessary or appropriate by the Secretary will be provided (16 USC 1539(a)(2)(B); 50 CFR 17.22(b)(2), 17.32(b)(2)).

To help minimize and mitigate the impacts of the anticipated take, the incidental take permit applicant must submit a *Habitat Conservation Plan* (HCP). HCPs vary in size, scope, and the activities that they address, from small scale, single species plans to large, multi-species, multi-jurisdictional arrangements. Regardless of size, all HCPs must contain the following:

- the likely impacts of the proposed take;
- the steps the applicant will undertake to monitor, minimize, and mitigate such impacts, the funding that will be made available to implement these steps, and the procedures to deal with any unforeseen circumstances;
- any alternatives to the taking that the applicant considered and why they were rejected; and
- any additional measures the Secretary requires to be addressed (16 USC 1539(a)(2)(A); 50 CFR 17.22(b)(1)(iii), 17.32(b)(1)(iii)(c).

Pursuant to CESA, the DFG may similarly excuse state agencies from the incidental take of an endangered, threatened, or candidate species through the consultation process. The Department may, under Fish and Game Code §2081, issue permits or memoranda of understanding (MOU) that authorize individuals, public agencies, universities, zoological gardens, and scientific or educational institutions, to import, export, take, or possess any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

The DFG's authority to issue §2081 permits for incidental take is specified in subdivision (b) of that section as amended and provided for by Senate Bills 231and 879 of 1997 (chapter 567, Stats.of 1997). The department may issue permits when the incidental take:

- is in conjunction with an otherwise lawful activity;
- is minimized and fully mitigated;
- the permit is consistent with DFG regulations; and
- the applicant commits to adequate funding of mitigation and monitoring compliance and effectiveness.

No permit can be issued where it would jeopardize the continued existence of the species.

Farm and Ranch Activities

The CESA contains special provisions for the take of species in the course of ranch or farm activities (Article 3.5 (commencing with §2086) of Chapter 1.5 of Division 3 of the Fish and Game Code). Until December 31, 2002 the accidental take of candidate, threatened, or endangered species resulting from inadvertent or ordinary negligent acts that occur on a farm or a ranch in the course of otherwise lawful routine and ongoing agricultural activities is not prohibited (Fish and Game Code §2087). Further, Fish and Game Code §2086 directs DFG to adopt regulations (to be developed in cooperation with the Department of Food and Agriculture and other interested parties) for locally designed, voluntary programs for habitat conservation on farms and ranches. The programs must: (1) include management practices to avoid or minimize the take of species while enhancing habitat; (2) be based on the best available scientific information; (3) be consistent with CESA; (4) be designed to be flexible enough to encourage participation; and (5) contain provisions allowing farmers or ranchers to withdraw from the program without penalty. DFG would be required to reauthorize such programs every five years.

At this writing, the Department of Fish and Game is drafting regulations to implement the 1997 revisions to CESA. Readers should consult with DFG for information about the most current regulations.

OTHER LAWS

In California there are several additional laws and regulations that, directly and indirectly, protect fish, wildlife, and plant species including: the National Forest Management Act, the Marine Mammal Protection Act, the Migratory Bird Treaty Act, section 404 of the Clean Water Act, the California Native Plant Protection Act, the California Z'Berg/Nejedly Forest Practice Act of 1973, certain provisions of the Fish and Game Code, and local and state government land use and permitting processes.

Natural Community Conservation Planning Act

Enacted in 1991, the Natural Community Conservation Planning Act (NCCPA) represents a shift from the traditional single-species protection approach to a broader, multi-species approach centered on ecosystems. The Act is intended to minimize the conflicts between land use development and endangered species protection by protecting species and their habitats in advance of listing and encouraging cooperation between often competing interests.

The NCCPA (Fish and Game Code §2800) achieves these goals through the development and implementation of Natural Community Conservation Plans (NCCPs). These plans, which may be undertaken by local, state, and federal agencies independently or in cooperation with other persons, identify and provide for regional or areawide protection and perpetuation of natural wildlife diversity, while allowing compatible and appropriate development and growth. The plans are required to provide comprehensive management and conservation of multiple wildlife species and may include any wild animals, birds, plants, amphibians, and related ecological communities, including the habitat which the wildlife depends upon.

Plan implementation often includes, but is not limited to, the following elements:

- Conservation Strategy: The strategy might include such techniques as habitat reserve assembly or watershed management designed to: promote biodiversity; provide for high likelihoods for persistence for covered species and ecosystem function; and provide for no net loss of habitat values from the present, taking into account management and enhancement. This means no net reduction in the ability of the planning region involved to maintain viable populations of target or indicator species over the long term.
- Adaptive Management: Adaptive management allows for changes in management strategies that may be necessary to reach long-term goals. This recognizes that environmental conditions and scientific information evolve over time.
- Monitoring: Implementation of the plan includes a monitoring program to ensure that data will be properly collected, analyzed, and used to adjust management strategies as appropriate, and to measure compliance with plan implementation mechanisms and biological performance.

NCCPA requirements do not supplant the requirements of the ESA and CESA. NCCPs are required to be developed and implemented consistent with the ESA, CESA, NEPA, and CEQA (Fish and Game Code §2825(a)(6), (b)). Compliance with the NCCPA, however, is designed to meet some of the requirements of these other laws. For instance, the approval of an NCCP constitutes authority to take any identified species whose conservation and management is provided for in the plan, whether or not the species is listed under the ESA or CESA (Fish and Game Code §2830).

Pilot Program

Begun in late 1991, the NCCPA pilot program, known as the Coastal Sage Scrub Natural Community Conservation Plan (CSS NCCP), focuses on the coastal sage scrub habitat area of Southern California. The area is home to the endangered California gnatcatcher and approximately 90 other potentially threatened or endangered species of plants and animals. The planning area covers over 6,000 square miles and includes large portions Orange, San Diego, and Riverside counties and smaller portions of Los Angeles and San Bernardino counties. Approximately 60 local government jurisdictions, scores of landowners and developers, state and federal wildlife authorities, and environmental groups are actively participating in the program.

The program's goal is the development and implementation of 10 to 15 subregional NCCPs within the CSS planning area, and will include the acquisition of lands, the creation of conservation banks, and the incorporation of HCP's. To date the achievements of the pilot program include:

- the San Diego Multiple Species Conservation Pro-

Central Coastal NCCP, Orange County

In July of 1996, the Central Coastal Natural Community Conservation Plan (CC NCCP) was signed. It provides protection for a multitude of species in a region of the nation that not only has some of the nation's most expensive real-estate but also contains the greatest number of endangered, threatened, and sensitive species.

The plan, which provides protection for 39 species, including the federally listed California gnatcatcher, and 12 different habitat types, was developed with a multitude of participants including: Orange County, 12 incorporated cities, the USFWS, the DFG, the Department of Defense (El Toro Marine Corps Air Station), Transportation Corridor Agencies, local utilities, and several large landholders.

The planning area encompasses approximately 208,000 acres, and establishes a 38,738 acre "Nature Reserve of Orange County." Management of this reserve is overseen by a nonprofit corporation comprised of representatives of the participating landowners, the USFWS and the DFG, as well as three public members. The management activities will be funded by a $10 million endowment of mitigation moneys. The money will be generated by a $50,000 per acre fee levied on development inside the planning area but outside of the reserve.

The participating landowners will also receive assurances that they will have complied fully with the ESA and CESA no matter how the species fare in the future. This "No Surprises" policy guarantees that no additional fees or land may be exacted from the property owners even if the reserve plans fail to meet ecological expectations.

gram (MSCP), a 582,000 acre habitat plan that establishes a 172,000 acre preserve system, protecting 85 species and 23 vegetation types;

- the Orange County Central-Coastal NCCP Subregional Plan, a 37,380 acre wildlife preserve that includes 12 major habitat types and 39 sensitive plant and animal species;
- the Poway HCP/NCCP Subarea Plan, a 25,000 acre plan, establishing a 13,300 acre Mitigation Area and providing incidental take coverage for 43 species; and
- the San Diego Gas and Electric Company (SDG&E) NCCP Subarea Plan, providing a combination of land, easements, mitigation measures, and habitat connectivity in areas where little natural habitat remains. The plan project covers 110 species and extends south from southern Orange County to the Mexican Border.

Official Policy on Conservation Banks

In April 1995, the California Secretary for Resources and the Secretary for Environmental Protection established the Official Policy on Conservation Banks. Built on the concept of mitigation banking, which has been used in California since the mid-1970's, the policy officially recognizes mitigation banking and provides a state-sanctioned approach to the establishment and maintenance of these banks.

A conservation bank is a parcel or series of parcels of land whose natural resource values – habitat types or species present – are sold or traded as credits to individuals, firms, or agencies that are required under law to compensate for adverse environmental impacts of a development or other activity. These credits fund habitat restoration at the site of the conservation bank and provide a permanent endowment for operation of the bank as a wildlife preserve.

Any individual or entity, public or private, can establish a conservation bank. There is no minimum or maximum size for the bank. However, the bank and each of its subparcels, if it contains any, must be large enough to be self sustaining or be part of a larger conservation strategy that has a "reasonable expectation of being accomplished." (Policy Section 3).

Although the creation of the banks is established pursuant to a regulatory agreement between the bank developer and the appropriate regulatory agency (Policy Section 2), the price of credits and the financial arrangements surrounding their sale are determined by bankers and buyers.

Before selling bank credits, a proposed conservation bank should be approved by the appropriate resource management agency(s). Basic elements in any approvable bank proposal should include, but are not limited to:

- Identification of a bank manager;
- Identification of the geographical boundaries of the bank and the service area of the bank;
- Provision for fundamental property protection measures (e.g., fencing some or all of the bank property if deemed appropriate, control of off-road vehicle use, etc.);

At this writing, there are three conservation banks in Northern California, ten in Central California (including six in metropolitan Sacramento), and 27 in Southern California (including 20 in San Diego County). These include:

- The San Vicente Conservation Bank in San Diego County. A 1,500-acre former cattle ranch now owned by the Boys and Girls Clubs of East County Foundation. The wildlife preserve is being developed consistent with the Multiple Species Conservation Program (MSCP) NCCP in San Diego;
- The Wildlands Inc. conservation bank, a 315-acre preserve in western Placer County established through the sale of credits for the mitigation of Sacramento area development projects;
- The Carlsbad Highlands Conservation Bank in Carlsbad, a 260-acre preserve created in 1995 by the Bank of America which directly supports the Carlsbad Habitat Management Plan, an element of the Multiple Habitat Conservation Plan, which itself is a component of the State's NCCP pilot program;
- The Coles Levee Ecosystem Reserve in Kern County, a 6,000-acre reserve established by ARCO. The bank facilitates ARCO's continuing oil and gas operations, selling credits to other landowners in the Southern San Joaquin County, and helping implementation of the Metropolitan Bakersfield Habitat Conservation Plan.

- Provisions for the resolution of current or prospective land use conflicts involving the bank lands (e.g., rights-of-way issues, existing use issues, adjacent land-use issues);
- Provisions requiring an annual report by the bank manager to be submitted to the appropriate regulatory agency(s).

Natural Diversity Database

The Natural Diversity Database (NDDB) is a computerized inventory of information on the general location and condition of California's sensitive populations of plants, animals, and natural communities, including all federal and state listed plants and animals, and all species that are candidates for listing.

The NDDB, which was initiated by the Nature Conservancy in 1979 and incorporated into the DFG Natural Heritage Division in 1981, is used by developers, local government planners, state and federal agencies, and conservation groups to determine where declining species and natural communities are located and if planned projects will affect them. The information is also used to identify biologically rich areas which can be targeted for protection through land conservation actions.

As of April 1994, the NDDB contained over 22,800 records for nearly 1,200 native species and natural communities. The data for the NDDB comes from several different sources. Locational information comes from private consultants, biologists from other state and federal agencies, academians, and DFG field biologists.

Information from the NDDB is made available in three formats:

- *Text* – which can be generated by 7.5 minute quad, 1:100,000 scale map, by county, or custom area, at a price of between $140 and $270 each for commercial clients;
- *Overlay* – computer generated for any scale base map, at around $40 per overlay; and
- *Rarefind* – a microcomputer database application program that can include the entire state or be customized to include just one or several counties, for $1,250 government rate or $2,500 commercial rate for the entire state (California Department of Fish and Game).

Information may be obtained from the California Department of Fish and Game, Information Services Unit, 1416 9th Street Sacramento, California 95814, (916)324-3812 or its website: http://www.dfg.ca.gov/Nddb/nddb.html.

Relation to the General Plan

The requirements of the various endangered species laws affect the general plan in two ways. First there should be objectives, policies, principles, plan proposals, and standards within the plan that will address the preservation and protection of any endangered, threatened, or candidate species. Most often these will be located within the conservation, open-space, and land use elements.

Section 65302(d) requires that the general plan include a conservation element for "the conservation, development, and utilization of natural resources including fisheries [and] wildlife" (see Conservation Element, Chapter 3). Development policies concerning the preservation and protection of endangered, threatened, or candidate species should therefore be addressed within this element, including the promotion of congruency and cooperation with the management plans and policies

of other agencies or organizations, and recognition and implementation of enacted HCPs and NCCPs.

Development policies designed to protect endangered, threatened, or candidate species may also be included in the open-space element. Government Code §65560(b)(1) provides that land designated in the open-space element may include "open-space for the preservation of natural resources including areas required for the preservation of plant and animal life, including habitat for fish and wildlife species" (see Open-Space Element, Chapter 3). Open-space development policies are often used to preserve and protect habitat, or provide land to mitigate for the destruction or adverse modification of habitat by development in other areas (see Conservation Banks). As with the conservation element, congruency and cooperation with management plans and policies of other agencies or organizations should be part of the open-space element.

Areas designated for the preservation and protection of endangered, threatened, or candidate species, such as HCP and NCCP planning areas, conservation banks, and areas determined as critical habitat, should be identified within the land use element. Government Code §65302(a) requires that the land use element designate "the proposed general distribution and general location and extent of the uses of land" (see Land Use Element, Chapter 3). Other important wildlife habitats, such as migration routes, breeding grounds, and nesting areas for endangered, threatened, or candidate species may also be identified. The evaluation and regulation of these areas, as well as the impacts to endangered, threatened, or candidate species from new development allowed by the plan, should also be addressed.

The second way in which endangered species laws may affect the general plan is through the CEQA requirements. Adopting or amending a general plan, or an element of a general plan is a project under CEQA (see Chapter 4). According to §15064(a)(1) of the CEQA Guidelines, "if there is substantial evidence, in light of the whole record before the lead agency, that a project

Definitions

Candidate Species: Under the CESA, any native species of fish, wildlife, or plant that the Fish and Game Commission has "formally noticed as being under review by the department for addition to either the list of endangered species or the list of threatened species, or a species for which the commission has published a notice of proposed regulation to add the species to either list." (Fish and Game Code §2068)

Critical Habitat: Under the ESA, "the specific areas within the geographical area occupied by the species… which are… essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species…upon determination by the Secretary [of the Interior] that such areas are essential for the conservation of the species." (16 USC 1532(5)(A))

Endangered Species: Any species that is in danger of extinction throughout all or a significant portion of its range. (16 USC 1532(6) and Fish and Game Code §2062)

Federal Action Agency: Any department, agency, or instrumentality of the U.S. proposing to authorize, fund, or carry out an action.

Incidental Take: "any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity."(50 CFR 17.3)

Species: Under the ESA, "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature."(16 USC 1532 (16)) Under the CESA, "a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant." (Fish and Game Code §6072)

Take: Under the ESA, "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 USC 1532(19)). The CESA defines *take* as "[to] hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (Fish and Game Code §86)

Threatened Species: Any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. (16 USC Section 1532(20); Fish and Game Code §2067)

Trustee Agency: A state agency having jurisdiction over natural resources affected by a project which are held in trust for the people of California. The DFG is the trustee agency with regard to the fish and wildlife of the state and those plants designated as threatened or endangered. (CEQA Guidelines §15386)

may have a significant effect on the environment, the agency shall prepare a draft EIR." A project is usually considered to have a significant effect on the environment if it will substantially affect an endangered, rare, or threatened species of animal or plant or the habitat of the species. Where a significant effect is found to exist, CEQA obligates the city or county to incorporate mitigation measures into the policies of the general plan (Public Resources Code §21081.6). The city or county must also adopt a reporting or monitoring program for ensuring compliance with these mitigation measures (see Mitigation Monitoring, Chapter 4). The CEQA process should be informed by existing HCPs and similar plans.

WETLANDS PROTECTION

Background

Wetlands are the subject of federal, state, and local regulation due to their importance as a natural resource and the historic loss of a large percentage of California's pre-European era wetlands. Wetlands represent important wildlife habitat, are natural filters of water contaminates, and act to regulate the temperature and levels of water bodies including bays, estuaries, and river deltas. Wetland regulations are implemented by a number of agencies, and are typically triggered by development proposals.

Federal Regulatory Programs

The Clean Water Act provides federal agencies the authority to monitor and restrict discharges of pollution into waters of the United States. Under §404 of this act, the U.S. Army Corps of Engineers regulates by permit the placement of fill or dredged material into water bodies (broadly interpreted to include wetlands). The U.S. Army Corps of Engineers also has permitting authority pursuant to §10 of the federal Rivers and Harbors Act.

Other Federal Acts which influence wetland regulations include the federal ESA, National Environmental Policy Act (NEPA), Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Coastal Zone Management Act. The requirements are triggered by projects undertaken or funded by federal agencies which often involve wetlands. Projects affecting wetlands in the coastal zone must be consistent with the Coastal Zone Management Act. The Act requires state agencies to adopt management programs for coastal resources. The ESA is particularly pertinent where wetlands provide habitat for endangered species.

The distinction between federal and state programs is not always clear cut. The next section discusses regulatory activities established under federal law, but operated by state agencies, in addition to regulatory programs established solely under state law.

State Regulatory Programs

California's Wetlands Conservation Policy includes the goal to achieve no overall net loss and a long-term net gain in wetlands acreage and values. This goal is in part through combined federal and state agency implementation of §401 and §404 of the federal Clean Water Act, as well as through the California Coastal Act and California's Fish and Game Code, and the Porter-Cologne Water Quality Control Act. Additional restrictions are imposed under CESA and CEQA.

The Water Quality Certification Program is established by §401 of the federal Clean Water Act, it is run by the individual states. Applicants for federal licenses or (e.g. §404) permits involving activities which may result in a pollutant discharge to national jurisdictional waters must seek state certification that any such discharge will comply with state and federal water quality standards. In California certifications are issued by the State Water Resources Control Board (State Board) in close consultation with the Regional Water Quality Control Boards (Regional Boards). This is addressed in more detail in the water quality section that follows.

Another federal program managed by the states may also help protect wetlands. Point sources of pollution are regulated through Clean Water Act (§402) National Pollutant Discharge Elimination System (NPDES), municipal storm water permits, and construction general permits. In California, these permits are issued by the Regional Boards and the State Board.

Not all regulatory programs originated at the federal level. California Water Code §13000 et seq., known as the Porter-Cologne Water Quality Control Act, establishes various regulatory authorities under which the State Board and Regional Boards protect beneficial uses of surface and ground waters, including wetlands. Beneficial use categories listed in water quality control plans include uses of water related directly to wetlands protection. The water quality agencies may choose to regulate discharges to wetlands and other surface waters under the Clean Water Act program or by using their Porter-Cologne authorities (e.g., through waste discharge requirements, a state permitting program).

The Coastal Act is implemented through the Cali-

fornia Coastal Commission which has jurisdiction over wetlands within the coastal zone. Pursuant to Public Resources Code §30233(a), the Coastal Commission requires that development within the coastal zone include measures which minimize or avoid adverse impacts to wetlands. (see *Procedural Guidance for Evaluating Wetland Mitigation Projects in California's Coastal Zone,* California Coastal Commission, September 1995)

The Department of Fish and Game (DFG) is a Trustee Agency with respect to the natural resources of California and in particular, the wetland communities associated with lakes, rivers, and other water bodies. The Department's Fish and Game Code §1603 Stream Bed and Bank Alternation Agreements may allow for the modification of stream channels or banks provided that there is no net loss of wetlands or adequate mitiga-

Federal Agencies:

U.S. Fish and Wildlife Service (USFWS) (www.fws.gov/laws):
Responsible for the implementation of the Endangered Species Act. Actions under §404 of the Clean Water Act where endangered species may be present in wetland habitat requires consultation with the USFWS.

U.S. Army Corps of Engineers (wetland.usace.mil/):
Authorized under §404 of the Clean Water Act to regulate the placement of dredged or fill material into wetlands. Delineates wetlands under its jurisdiction.

U.S. Environmental Protection Agency (www.epa.gov/):
Enforcement and commenting authority under §404 of the Clean Water Act, Endangered Species Act, and the National Environmental Policy Act concerning wetlands and habitat protections.

Other federal agencies with indirect wetlands authority:
– National Marine Fisheries Service
– Natural Resources Conservation Service
– National Park Service

State Agencies:

California Coastal Commission (ceres.ca.gov/coastalcomm/web/index.html):
Permitting authority pursuant to the Coastal Act and Public Resources Code for projects within the coastal zone including permit requirements involving wetlands and associated habitat.

California Department of Fish and Game (www.dfg.ca.gov/):
A Trustee Agency for California's natural resources with permitting authority for the alteration of water bodies including wetlands under §1603 of the Fish and Game Code. Requirements for consultation under the California Endangered Species Act where wetland habitat supports rare, threatened, or endangered species.

San Francisco Bay Conservation and Development Commission (BCDC):
The BCDC is the state coastal management agency for San Francisco Bay and has jurisdiction to administer the State McAteer-Petris Act pursuant to §66651, the San Francisco Bay Plan, and the Suisun Marsh Preservation Act. Its primary role is the protection, enhancement, and restoration of wetlands. All projects proposed in tidal wetlands in the planning area require an approved BCDC permit.

Delta Protection Commission (www.regis.berkeley.edu/dpcdocs/adptpln.html):
Pursuant to Public Resources Code §29760 and the Delta Protection Act of 1992, the Delta Protection Commission's *Land Use And Resource Management Plan For The Primary Zone Of the Delta* (February 23,1995), established policies and programs for the preservation and restoration of wetlands and associated habitat in a 500,000 acre area of central California. Local agencies within the planning area are required to maintain consistency between the policies of the management plan and their respective general plans.

Other state agencies with indirect wetlands authority:
– California Environmental Protection Agency / Regional Water Quality Control Board
– State Lands Commission
– State Coastal Conservancy
– Department of Water Resources
– Wildlife Conservation Board
– Department of Parks and Recreation

tion. Projects involving wetlands habitat which support rare, threatened, or endangered species are subject to review by DFG for consistency with CESA and the State Fish and Game code.

For a detailed discussion wetlands and pertinent regulations see: *Wetlands Regulation*, by Cylinder, Bogdan, Davis, and Herson, Solano Press Books, 1995. For more information regarding specific programs see the California Wetlands Information System via the internet at http://ceres.ca.gov/wetlands/.

Relation to the General Plan

As a long-term plan for the physical development of the community, the general plan should reflect the value and importance of wetlands and their associated habitat. Wetlands are a natural resource which can be dramatically affected by the physical development within a planning area and should be an important consideration in the development of the general plan and its policies. Policies, especially those of the land use element, should proactively promote the identification and protection of wetlands.

Policies should address the preservation and protection of wetlands through the conservation and open-space elements or as a limitation on development in the land use element. Wetlands may be broadly identified in the general plan diagrams of the land use, open-space and conservation elements as natural resource communities, or potential development constraints. This helps to inform landowners that their properties may be subject to the stringent requirements of federal wetlands laws.

Although the general plan should provide protective policies, it must also recognize that the precise delineation of wetlands and specific mitigation that will be applied to development projects lies within the statutory responsibilities of federal and state agencies such as the USFWS and DFG. Accordingly, the general plan should refrain from policies which dictate specific standards for replacement ratios and site-specific mitigation measures. Similarly, there is no need for the general plan to attempt to precisely delineate all wetlands—that will be done by the federal and state regulatory agencies. Where adoption of the general plan may adversely impact wetlands, protection and mitigation should be addressed by the CEQA document and mitigation measures identified. These measures must be incorporated into the policies of the general plan (Public Resources Code §21081.6).

The general plan may establish programs and general standards for the implementation of wetlands policy. For example, areas may be designated and set aside for wetlands banking purposes. Policies for open-space and park lands may also designate areas for the protection or revitalization larger areas.

Adopting or amending a general plan is a project subject to CEQA and often requires the preparation and consideration of an environmental impact report (EIR). The effect that the plan's policies and programs may have on wetlands must be taken into consideration in the plan EIR. Mitigation or alternatives selected to avoid, reduce, compensate for, or otherwise lessen the effects of the plan must be adopted as plan policies (Public Resources Code §21081.6).

AIR QUALITY

Background

There are 35 air pollution control districts (APCDs) and air quality management districts (AQMDs) in California. These cover one or more counties and are governed by locally elected officials. These air districts have regulatory control over stationary sources of air pollutants, such as industrial and manufacturing facilities. They are also responsible for local plans and programs to reduce emissions from transportation sources, such as cars, trucks, motorcycles, and buses. In addition, air districts prepare air quality plans that specify how federal and state air quality standards will be met. In some areas, Councils of Government (COGs) also carry out certain components of air quality planning. In addition, COGs with transportation planning responsibilities must address air quality in order to ensure that regional transportation plans and programs conform to air quality plans.

The California Air Resources Board (ARB) sets standards for the amount of pollutants that can be emitted by new motor vehicles sold in California. California's motor vehicle emission standards have resulted in dramatic decreases in the amount of pollutants produced by motor vehicles throughout the state. Today's new cars pollute about 90 percent less than models sold in California 25 years ago. By 2003, the average new car in California will pollute 75 percent less than 1994 models. Although these standards will continue to greatly improve air quality, especially in areas where motor vehicle emissions are a significant source of air pollution, continuing increases in population and driving partially offset the benefits of cleaner motor vehicles.

National ambient air quality standards (NAAQS) were established in 1970 by the federal Clean Air Act for

six pollutants: carbon monoxide, ozone, particulates, nitrogen dioxide, sulfur dioxide, and lead. The Act requires states with air pollution that exceeds the NAAQS to prepare air quality plans demonstrating how the standards would be met. The federal Clean Air Act was amended in 1977, and again in 1990, to extend deadlines for compliance and the preparation of revised State Implementation Plans (SIPs).

The 1990 Amendments also established categories of severity for nonattainment areas ("marginal" to "extreme"). Air quality program requirements vary depending on the degree of severity. In 1994, the California Air Resources Board adopted a revised State Implementation Plan for ozone to meet the requirements of the 1990 amendments. The 1994 SIP is California's blueprint for achieving the federal ozone standards by the applicable dates (which vary for different parts of the state). It contains commitments to adopt regulations and implement programs that significantly reduce pollutants from stationary, mobile, and area sources to be implemented by federal, state, and local agencies. The U.S. Environmental Protection Agency (U.S. EPA) approved California's SIP in September 1996.

In July 1997, U.S. EPA revised the NAAQS for ozone and total inhalable particulate matter (PM10). In addition, U.S. EPA also adopted new standards for fine particulate matter 2.5 microns in size and smaller (PM2.5). The creation of PM2.5 standards represents a significant increase in nationwide health protection from the smallest fraction of "fine" particles. The 1994 California SIP, and local plans to reduce PM10 levels, lay the foundation for meeting the new federal PM2.5 standard. Some areas (such as the South Coast and San Joaquin Valley) may need additional emission reductions to meet this standard.

The 1988 California Clean Air Act (CCAA), which was amended in 1992 and again in 1996, requires attainment of California's ambient air quality standards which are more health protective than the national standards. In general, the CCAA requires regions whose air quality exceeds state standards to reduce pollutants by five percent or more per year, or to implement all feasible measures to meet the state air quality standards as expeditiously as possible.

Relation to the General Plan

Land use and air quality are linked by automobile use. During the past 20 years, the total number of vehicle miles traveled (VMT) in the state has increased at a much faster rate than population growth. Between 1970 and 1995, total annual VMT in California more than doubled, increasing from 103 billion miles to over 270 billion miles of travel per year. During the same time period, the state's population grew by about 60 percent, increasing from 20 to 32 million people. Relationships between land use patterns, traffic circulation, and accessibility can have an impact on the amount and type of travel, which in turn affects air quality. Urban design and location that reduces the need for vehicle trips or the distances people need to drive, or that provide ready access to pedestrians can have a positive impact on air quality.

Cities and counties have an opportunity to address air quality issues in their general plans, development and zoning ordinances, circulation systems, and other local programs. Especially important is the inclusion of strategies that are beneficial to air quality in the land use and circulation elements of general plans. In addition, optional air quality elements may be adopted that include additional strategies and programs.

The staff at the California Air Resources Board has created a computer program called *Urbemis (*Urban Emissions Model*)*, which can be used to estimate emissions associated with land use development projects in California. Urbemis 7G is the updated version of this program and is more visually oriented and user-friendly. It uses vehicle emissions model, *Emfac 7G*, to calculate motor vehicle emissions. For more information on these programs, please see the Bibliography under Air Quality.

Reference: See the Bibliography under Air Quality for useful reference books.

WATER QUALITY

Background

California is divided into nine water quality regions, each under the regulatory authority of a Regional Water Quality Control Board (RWQMB). Under §208 of the federal Clean Water Act Amendments of 1982, COGs or other regional agencies also carry out water quality planning in metropolitan areas. In all other areas, the state has assumed these responsibilities. Section 208 plans include control measures for improving water quality and institutional and financial mechanisms to implement the control measures for municipal and industrial wastewater, storm runoff, and similar sources. All permits for liquid waste discharge must be consistent with the plan. Only those water pollution control facilities consistent with the plan may receive federal grants.

The National Pollution Discharge Elimination System (NPDES) requires permits for point source pollution, such as that from sewage treatment plants, as well as non-point source pollution, essentially pollutants introduced by water runoff into streams, storm drains, and sewer systems. Although NPDES permitting is the responsibility of the State Water Resources Control Board and the RWQCBs, the nature of non-point source pollution practically necessitates local participation if polluted runoff is to be minimized.

Besides the federal plan, there are state water quality planning requirements. Each RWQCB must prepare a "regional water quality control plan" for its jurisdiction (Water Code §13240 et seq.). The plan is similar in function to the §208 document.

Relation to the General Plan

Water quality is an issue that is required to be addressed in the conservation element. Local general plans should incorporate water quality policies from regional plans to the extent that they are relevant. Policies may address wetlands and stream protection and stormwater run-off controls, for example. In addition, a general plan should reflect the water quality regulatory framework so that property owners, decision makers, and the public have an accurate picture of the permitting requirements and development limitations which may exist as a result.

Other Sources of Information

Improving our Bay-Delta Estuary Through Local Plans and Programs: A Guidebook for City and County Governments (Association of Bay Area Governments, Oakland, CA), 1995, 21 pp.

CHAPTER 7

Optional Elements

All statutory references are to the California Government Code unless otherwise noted

INTRODUCTION

STATE LAW offers considerable flexibility to go beyond the mandatory elements. Section 65303 enables a county or city to adopt "any other elements or address any other subjects, which, in the judgment of the legislative body, relate to the physical development of the county or city." Once adopted, an optional element carries the same legal weight as any of the seven mandated elements. At the same time, it must be consistent with the other elements, as required by §65300.5.

Localities have adopted all kinds of optional elements on topics ranging from aesthetics to water resources. The flexibility of content and format offered by the Government Code allows cities and counties to fashion elements which uniquely address subjects of particular concern to them. The following section offers some advice on several of the most common and useful optional elements: Air quality, capital improvements/public facilities, community design, economic development, and parks and recreation. Of course, these are only suggestions: the actual scope and level of detail contained in the element is left to the city or county to decide.

AIR QUALITY

Introduction

Chronic exposure to air pollutants is a serious health risk to millions of California residents, particularly the young, the elderly, and people with heart disease and respiratory problems. Safeguarding public health has been the primary focus of federal and state air quality legislation and activities for many years. Air pollution also impacts local economies by damaging agricultural crops, natural vegetation, buildings, and other exposed materials. And, it can impair visibility and obscure views. In addition, the economic health of an area can be adversely affected if insufficient air quality improvement triggers more stringent federally-mandated air pollution controls on business. For these reasons, cities and counties should strive to reduce emissions for the health and welfare of their own residents, as well as those of other communities in their region and the state as a whole.

Local jurisdictions have responsibility for land use planning, and can also significantly affect the design, development, and management of development and local circulation systems. Local governments have an opportunity to address air quality issues through general plans, development ordinances, local circulation systems, transportation services, and other plans and programs. No other level of government has such responsibility, including air districts.

The general plan, as the foundation for all local planning and development, can be an important tool for implementing policies and programs beneficial to air quality. Currently, approximately 66 cities and counties in California have adopted air quality elements. Communities may choose to adopt a separate air quality element, or to integrate air quality-beneficial objectives, policies, and strategies in other elements of the plan, such as the land use, circulation, conservation, and community design elements. Whichever method is selected, consistency between elements and policies within the plan is essential for successful implementation. In addition, cooperation between localities is important, since air pollution does not respect political boundaries.

Relevant Issues

Motor vehicles are a major source of carbon monoxide, fine particulates, and pollutants that combine to form ground-level ozone in the state's metropolitan areas. The dispersed growth patterns prevalent in many metropolitan areas of California have resulted in longer travel distances and increased the need for reliance on motor vehicles. Land use and transportation planning and development patterns over the last 50 years have generally emphasized the use of the automobile. Other less-polluting alternative modes of transportation, such as walking, bicycling, and public transit, have not been

emphasized in many areas.

Land use patterns and transportation facilities can affect the number of vehicle trips, miles traveled, and related vehicle emissions per household. The location, density, accessibility, and design of buildings, shopping and employment centers, streets, and other land uses in part determine the distances people need to travel to reach employment sites, stores, and other destinations. These factors also influence which mode of transportation can be provided and used (i.e., car, vanpool, bus, train, walking, or bicycling). Recent research conducted in California has found that land uses and transportation infrastructure that are more friendly to alternative travel modes are associated with reduced per-household driving rates and related pollutant emissions, while still affording people the mobility they need (especially in congested metropolitan areas).

Each community contains a unique combination of existing and planned land uses, transportation infrastructure, employment sites, open-spaces, and other features. Therefore, strategies must be tailored to fit each area — there is no one size fits all solution to land use, transportation, and air quality issues. In addition, the severity of local air pollution problems may also affect the number and scope of strategies that communities may select.

Jurisdictions may also wish to address other activities related to air quality, such as: energy conservation; cleaner-fuel vehicles; the siting of facilities that emit toxic air pollutants; measures to reduce particulate emissions from roads, construction sites, and fireplaces; and public education programs.

Ideas for Data and Analysis

Air quality elements typically include many of the following items:

- *Local Environment:* Brief description of the local setting, including location within a region, and meteorological conditions which may affect air quality.
- *Air Quality Designation*: Brief description of the area's current air quality designation, as well as projected attainment dates if applicable.
- *Ambient Air Quality*: Air quality data from local monitoring stations, if available, including the number of days that federal or state standards were exceeded.
- *Air Quality Laws and Requirements*: A summary of applicable federal and state standards and laws pertaining to air pollution.
- *Sources of Air Pollution*: A summary of the types of sources located in the jurisdiction or county. These typically include: stationary sources, such as factories and power plants; mobile sources, including cars, trucks, buses, motorcycles, and off-road vehicles; area sources, such as lawn and garden equipment, construction activities, and consumer products; and sources of toxic air contaminants, which may include certain incinerators, landfills, and various manufacturing facilities. (Air districts can provide this information.)
- *Inventory of Emissions*: A summary of the amounts of emissions produced by categories of sources of air pollution. (Air districts can also provide this data.) Emissions typically include the criteria pollutants for which there are currently national ambient air quality standards: carbon monoxide, ozone, particulates, nitrogen dioxide, and sulfur dioxide.
- *Air Quality Plans and Programs*: Reference to applicable local or regional air quality plans which often contain policies, regulations, and programs that may affect local government activities. These may include: transportation control measures (TCMs), such as voluntary ridesharing programs; stationary source permitting requirements; and regulations related to major sources of toxic air contaminants.
- *Transportation: Local, regional, and state transportation programs* (such as regional transportation planning mandated by the federal Transportation Equity Act (TEA 21), and congestion management programs) affect the type and location of transportation facilities, and therefore also relate to air quality. The federal Transportation Conformity Rule requires that Regional Transportation Plans (RTPs) conform to motor vehicle emission budgets in the applicable air quality management plan. In addition, vehicle registration fee surcharges provide funding in many areas for local projects and programs that reduce emissions from motor vehicles. (These funds are distributed by air districts, except in the South Coast where a portion of the funds is allocated directly to local governments.)

Ideas for Strategies

Air quality elements may also contain goals, objectives, and policies related to: the density and location of land uses; the transportation and circulation system; community design; and other strategies that can help reduce per-household rates of driving and related vehicle emissions. Or, alternatively, these strategies could be placed in the other parts of the general plan, such as the land use, circulation, conservation, and community design elements.

Research has shown that certain land use and transportation strategies can lead to a fewer per-household motor vehicle emissions from driving. These strategies include:

- Concentrated activity centers, including downtowns, with mixed commercial, office, and residential land uses that can serve as focal points for transit and encourage pedestrian activity;
- Consolidated growth patterns, such as infill development within existing urban areas, higher-density housing within walking distance of transit stations, and clustered employment centers that enable alternative travel modes;
- Mixed land uses that bring destinations closer and make walking, bicycling, and transit use feasible and more attractive;
- Interconnected street networks that provide numerous routes for autos, pedestrians, and bicyclists rather than focusing traffic onto fewer major arterials;
- Pedestrian and bicycle pathways that provide attractive and safe alternatives to driving; and
- Transit service that provides convenient alternatives to single-occupant automobile travel, especially in congested metropolitan areas.

Several air districts have developed guidelines that suggest a number of strategies that jurisdictions may consider. Some of these include land use and transportation-related strategies, such as those listed above, that can help reduce the need for reliance on vehicles. Jurisdictions are encouraged to contact their air districts for additional suggestions and information.

The staff at the California Air Resources Board has created a computer program called *Urbemis* (Urban Emissions Model), which can be used to estimate emissions associated with land use development projects in California. *Urbemis 7G* is the updated version of this program and is more visually oriented and user-friendly. It uses vehicle emissions model, *Emfac 7G*, to calculate motor vehicle emissions. For more information on these programs, please see the Bibliography under Air Quality.

Reference: See the Bibliography under Air Quality for useful reference books.

CAPITAL IMPROVEMENT/PUBLIC FACILITIES

Introduction

Numerous cities and counties accentuate the importance of planning for capital improvements and public facilities by adopting a separate capital improvements or public facilities element. Capital improvements such as roads, drainage facilities, sewer and water lines, treatment plants, and transit lines are the framework that supports development. Their availability plays an important part in determining the pattern of land uses within the community, as well as the direction and intensity of growth. Public facilities such as police and fire stations, city or county offices, libraries, and parks are important to residents' safety as well as their quality of life. The practical ability to provide these facilities is important to the well-being of the community.

Capital improvements and public facilities are subjects that are listed under the land use and circulation elements in §65302. In addition, §65401 requires that proposed public works projects be reviewed annually for conformity with the general plan. Further, §65402 prohibits acquisition or disposal of public property without a finding of conformity with the plan from the planning commission.

A capital improvements/public facilities element provides the policy basis which will guide shorter-term documents such as the capital improvements program and annual capital budget. The element therefore offers generalized, long-term policies grounded in realistic analyses of existing capacity, future demand, and financing options. If facilities and services are to be provided to existing and future development in an efficient and cost-effective way, then the element must discuss the location of future facilities and improvements, acceptable levels of service, funding priorities, and the timing of availability

Public facilities can also be important community design features. Although seldom done, it makes sense to incorporate general community design principles into the element. Community design attempts to create interesting and attractive spaces which invoke positive experiences for those who live, work, or play there. The configuration, location, and orientation to their surroundings of public buildings, such as libraries, city halls, community centers, and schools, can define public space, create community focal points, foster neighborhood integrity, and generally help establish community identity. The capital improvements and public facilities element should encourage public structures and facili-

The City of Woodland's 1996 General Plan, for example, devotes its Chapter 4 to "public facilities and services." The concise discussion of goals, policies, and implementation measures links this chapter to the city's separate capital improvement program (called the "Major Projects Financing Plan") and its growth management principles. Accordingly, the chapter contains goals relating to the timely development of public facilities and maintenance of specified service levels, as well as fair share funding of new facilities. Related policies include: limiting development in the absence of adequate facilities, encouraging regular updates to the financing plan, mandating that new development fund its share of the new facilities or services it requires, fiscal analyses of all specific plans and major general plan amendments, specific water supply actions and promoting efficient water use, requiring that new development connect to city sewers and that drainage systems meet state and federal non-point water pollution discharge requirements, references to the county Integrated Waste Management Plan and city source reduction and recycling ordinance, minimum standards for police response and fire protection, and cooperation and consultation with utility companies over major development plans. Appendix D of the Woodland General Plan Policy Document establishes general guidelines for service levels that the City will strive to maintain.

ties that benefit community form.

Consultation with the city or county departments responsible for capital improvements and facilities (i.e., public works, roads, and solid waste, for example) is one key to realistic planning. The city or county should also consult with other service providers such as school districts, public water systems (required pursuant to Government Code §65352.5), special districts (fire, drainage, sewer, flood control, etc.), adjoining cities and counties, the Regional Transportation Planning Agency (re: RTP and RTIP), and public utilities. Along these same lines, the element should consider the provisions of the city's or county's present and future capital improvement program or other programs for funding, maintaining, and installing specific capital improvements.

Although discussed here in the context of a separate element, a city or county need not adopt a separate "capital improvements/public facilities element." In a general plan which has blended and consolidated the mandatory elements, capital improvements/public facilities might be addressed as one component of a land use and circulation section.

Relevant Issues

As always, the issues covered in a general plan element should be limited to those which are relevant to the community. Clearly, the subjects covered in a capital improvements/public facilities element will depend on the size of the community, the age and adequacy of existing infrastructure and facilities, its fiscal situation, projected demand, the ability of other agencies to provide infrastructure and facilities, and many other factors. The following are some basic suggestions for the kinds of issues which may be important. This is by no means intended to be an all inclusive list.

- General distribution, location, and extent of existing and proposed infrastructure (i.e., water treatment and distribution facilities, wastewater distribution and treatment facilities, streets and roads, drainage facilities, public utilities, flood control structures, etc.)
- General distribution, location, and extent of existing and proposed public facilities (i.e., police and fire stations, schools, parks, libraries, city hall, public buildings and grounds, etc.)
- General extent of the existing and proposed service capacity of infrastructure and public facilities
- Plans of other entities providing public services or facilities, including service capacities
- Schedule or timetable for improvements, expansion, and replacement of infrastructure and facilities
- Sources of funding for improvements, expansion, retirement, and maintenance
- Consultation/coordination with other service providers and public utilities.

Ideas for Data and Analysis

This expands upon the general issues listed above. Again, it is not intended to be a complete listing. The city or county may add or subtract items as relevant to their situation and the format and contents of their general plan.

General distribution, location, and extent of existing and proposed infrastructure

- Inventory existing: water distribution and treatment facilities (CI)
  wastewater collection and treatment facilities (LU)
  streets and roads (LU, CI)

drainage facilities
public utilities (CI)
flood control structures (LU, OS, S)

- Analyze, in correlation with the land use element, projected demand for infrastructure and facilities
- Inventory the condition of existing infrastructure and analyze the estimated need for maintenance and improvement to meet projected demand.

General distribution, location, and extent of existing and proposed public facilities

- Inventory existing: water distribution and treatment facilities
  police and fire stations,
  parks
  libraries
  community centers
  city hall/county courthouse
  schools
  other public buildings and grounds
- Analyze, in correlation with the land use element, projected demand for public facilities
- Inventory the condition of existing facilities and analyze the estimated need for maintenance and improvement to meet projected demand
- Consider community design standards, where applicable

Plans of other entities providing public services or facilities

- Collect and review capital improvement and other plans of cities/counties, public utilities, water suppliers, special districts (including fire protection, flood protection, wastewater treatment, and school districts), and other entities which may provide services
- Review the Regional Transportation Improvement Program

Schedule or timetable for improvements, expansion, and replacement of facilities

- Identify needs of existing facilities
- Estimate demand for new facilities
- Review capital improvements programs, including those of other affected agencies

Sources of funding for improvements, expansion, retirement, and maintenance

- Estimate costs of needed improvements, expansion, and maintenance
- Identify viable sources of funding, correlated with pace of improvement

Consultation/coordination with other service providers and public utilities

- Contact other service providers and public utilities regarding service capacities, planned expansions, financing, and other common interests

Ideas for Development Policies

These suggestions are intended to stimulate ideas; they are not an exclusive list of possible policies.

- Identify the locations of existing and proposed major roads and interchanges (map) (CI)
- Identify the locations of existing and proposed major water transmission and sewer collection lines, as well as treatment facilities (map) (LU)
- Identify the locations of existing and general locations of proposed police and fire protection facilities and their service area boundaries (map) (LU)
- Identify the locations of existing and proposed community facilities such as libraries, community centers, auditoriums, and city hall/county courthouse (map) (LU)
- Specify the location, acquisition, development, and management of public parks and recreational areas, including level of service standards (LU)
- Identify the location of schools and school facilities, coordinated with the plans of local school district(s) (map) (LU)
- Specify the relationship between the distribution of land uses and the local capital improvements program, including the timing and siting of capital improvements (LU)
- Specify level of service standards for specific types of infrastructure and of facilities to guide the timing and siting of future capital improvements
- Recognize and coordinate with the plans and programs of other cities/counties, public utilities, public water systems (urban water management plan and capital improvement program or plan), special districts (including fire protection, flood protection, and wastewater treatment, as relevant), and other entities which may provide services
- Coordinate with the plans and programs of other public agencies which fund public improvements, such as the Regional Transportation Planning Agency (Regional Transportation Plan and Regional Transportation Improvement Program)
- Provide for the development, maintenance, and siting of existing and projected public facilities, including buildings and infrastructure

- Specify the relationship between the element, the city's or county's local capital improvements program, if any, and the capital budget
- Establish linkages with economic development programs and redevelopment agency activities, if any
- Identify a menu of preferred financing methods for infrastructure (i.e., general fund, special tax measure, general obligation bond measure, benefit assessment, tax increment financing, impact fees, etc.), if any
- Identify the type of capital improvements to be obtained through development exactions, the relative public/private cost share, and the basis for such exactions (this is expected to be only a general guide to exactions, not the sole basis for such exactions)
- Establish standards for addressing capital improvements/capital facilities in specific plans and community plans
- Adopt an energy resources plan including conservation measures, alternative energy sources, and cost-effective supplies
- Establish design standards for public facilities and grounds

References: See the Bibliography under Funding and Financial Impact, Infrastructure Planning and Urban Design for useful references.

COMMUNITY DESIGN

Introduction

A community design element may provide additional direction, beyond that of the land use element, to the planning area's development pattern, form, structure, and sense-of-place. A community design element may provide the basis for aesthetic regulation of public as well as private land and structures; a valid exercise of the police power (see *Ehrlich v. Culver City*, (1996) 12 Cal. 4th 854). OPR's 1996 Local Government Survey identified 83 jurisdictions with adopted community design elements.

The policies and programs of a community design element may provide specific guidance to enhance the sense-of-place and quality of life in the planning area. It should bring together the principals of the other elements into an overall set of qualitative policies. It may be used to establish principles which guide the form and appearance of neighborhoods, streets, parks, public facilities, new development, and may also be used to establish design standards as accompaniment to redevelopment.

One example of the development and implementation of a community design element is the City of Dana Point's Urban Design Element in its 1991 General Plan. The intent of the element is to "...provide proposals and policies to improve the image, character, and quality of life of the city." The element includes urban design issues, goals, and policies for its viewsheds, civic center, beaches, and other related public and private spaces. The element is implemented through design guidelines which contain specific standards for public and private projects subject to discretionary design review. These guidelines are intended to "promote higher quality design that is sensitive to Dana Point's natural setting, surrounding environment and community design goals."

Relevant Issues

The issues covered by the community design element should be relevant to the physical development of the planning area. The subjects analyzed should reflect those which are important to public as well as private interests. The issues should reflect the changing community and the factors which form its existing identity. The following basic issues should be covered, but this is not an all inclusive list.

Community Form: Elements which define the character of the community (i.e. viewsheds, parks, open-space, airport, freeways, ridgelines, rivers, etc.).

Neighborhood Structure: Favorable features which characterize the neighborhoods in the planning area. Street types, parks, landscaping, lot sizes, boundary elements, and architectural types all contribute to the sense-of-place.

Community Conservation: Patterns of open-space, circulation and landmarks provide identity to the planning area and neighborhoods which make them more livable. The attributes of existing neighborhoods should be preserved and utilized in planning for revitalization with common or related themes.

Commercial/Industrial Connections: Corporate office buildings and office and industrial parks may reflect patterns and features which enhance or detract from the existing community or the general plan vision of the future. Specific design policies should be developed with the input of public and business interests.

Ideas For Data And Analysis

The following list of ideas for data and analysis expands upon the relevant issues to provide some broad topics for consideration. Topics may be added or removed depending upon relevance and consistency with the issues pertinent to the planning area.

- *Transition Areas:* Identify areas in transition. These may include commercial or industrial areas which use is declining or has been abandoned. Consider implementing zoning and land use designations to allow for adaptive reuse. Analyze the possible causes of the loss of vitality.
- *Commercial and Industrial Sites:* Analyze criteria for measuring compatibility between proposed development and existing land uses. Formulate flexible development standards which promote solutions to common problems (i.e. unused parking, parking as dominate features, noise, incompatible uses etc.).
- *New Residential Development:* Residential design concepts should be developed and features of the undeveloped land identified which will provide continuity with and connections to the existing neighborhoods and other areas of new development.
- *Landmarks:* Identify public places, buildings and open-spaces (including landmark trees) which distinguish the planning area and give it a sense-of-place. Encourage the placement of art within areas used for public gatherings. Consider the use of area history and cultural background as defining factors for public art and displays.
- *Spatial Definition:* Identify community features which define space (i.e., building mass, landscaping, streets, walls, etc.). Identify those community spaces which are "attractive" (i.e., small shopping districts, parks, landscaping, etc.). Analyze how the good features may be duplicated through design requirements.
- *Continuity and Connection:* Identify existing features (i.e. creeks, trails, bike paths, streets) which provide continuity and connection throughout the planning area. Identify neighborhood or community attributes which can be strengthened to establish connections to the entire planning area.
- *Landscape and Trees:* Analyze street landscaping and trees as well as the informal planting and types of landscaping on private residential and commercial lots for visual relief and shade effectiveness. Landscaping and trees provide energy conservation benefits as well as a sense of quality, distinctiveness, spatial definition, and focal breaks to otherwise monotonous streetscapes.
- *Historic Preservation:* Identify historic and architecturally significant buildings and evaluate their condition. Inventory those structures or landmarks which have been or should be designated as historic resources and establish policies for their preservation, protection, and maintenance.
- *Street Design:* Analyze the relationships between existing streets and the areas and uses which they serve. Streets are not only used for transportation but, when thoughtfully designed, also establish boundaries, provide focal relief, and contribute to the livability and safety of the community.
- *Public Art:* Identify existing public art, its location, and the public's reaction to its ability to enhance the community. Classify types of art and the suitable locations for its display. Public art may provide a focal point or social aspect to parks, public facilities, and structures enhancing the aesthetic environment.
- *Signage:* Inventory signs which are unique and reflective of the community. Size, shapes, and designs should be identified which are considered to be characteristic of the specific areas or commercial districts. For example, commercial strips may be characterized by neon signs whereas the downtown core may be synonymous with natural colors and wooden signs.

Ideas for Development Policies

The following list of broad development policies is intended to provide general guidance in the development of more specific policies oriented to the particular issues facing local jurisdictions. Many of these policies should be correlated with the land use and circulation elements to ensure that decisions incorporate community design principals.

- Define the urban extent of the community. Identify transitional spaces between the urban limits and the edge of the planning area (LU,OS)
- Encourage community based rehabilitation and neighborhood improvements, particularly in transition areas
- Promote neighborhood cohesiveness through neighborhood-based design guidelines consistent with existing or proposed architectural themes, considering spatial definition, continuity, and building scale.
- Pursue loan programs specific to the rehabilitation of existing neighborhoods
- Foster new development which is consistent with the type, intensity, character and scale of the area
- Encourage the development of pedestrian friendly neighborhoods and communities

- Encourage higher density housing near transit (LU)
- Adopt historic preservation ordinances to preserve and protect historic or cultural resources
- Adopt development guidelines for central commercial and shopping areas which encourage pedestrian access and increased pedestrian traffic, as well as compact (as opposed to strip) form (LU)
- Design focal points and architectural features into the development or rehabilitation of existing neighborhoods
- Establish siting and design criteria for public buildings and parks to enhance spatial definition, create focal points, and provide landscape and trees
- Design and install entry landscapes at the major entrances to the community and along transportation routes
- Encourage cooperative efforts to provide art in public buildings and private businesses permanently or as part of a rotation of works of art
- Streamline permit processes for the addition of public art and landmarks to exiting locations. Provide incentives to development with provisions for the display of art and favorable structural design
- Amend or adopt a sign ordinance which regulates the size, type, material, height, location, and lighting consistent with the policies and objectives of the community design element (LU)
- Finance and construct gateway structures at the major entrances to the community which are reflective of the community
- Assist private business in the aesthetic improvement of buildings in the downtown business district
- Preserve and protect the natural land forms such as rivers, ridgelines and their viewsheds which contribute to the identity of the community (OS,CO)
- Encourage new development projects to incorporate natural amenities (i.e. landmark trees and rock outcrops) into their design
- Require connections between neighborhoods, parks, and open-space areas for bicycle and jogging paths (LU,CI)
- Incorporate flexibility in design and architectural features into development standards
- Encourage and assist in the placement of overhead utilities underground
- Adopt a cellular tower ordinance which promotes flexibility and creative design for placement on exiting public and private buildings and structures (i.e. light poles)

References: See the Bibliography under Transportation and Circulation, and Urban Design for references on this topic.

ECONOMIC/FISCAL DEVELOPMENT

Introduction

The structure of a city or county's economy plays an important role in the physical development of a planning area and the stability of the local tax base. The purpose of adopting an economic/fiscal element varies by jurisdiction. However, most are based upon a desire to maintain and enhance the economic character of the community while providing for a stable annual budget. An effective element will establish a consistent set of policies which provide general direction to local government on how the community can focus resources to retain local business, attract new industries, support the tax base, and sustain the ability to provide public services for existing and future residents.

Economic development elements can function beyond mere statements of policy. An effective element may be used as the basis for a more specific economic development strategy. Consideration should be given to the cumulative effectiveness of the integration of policies central to land use, circulation, and public facilities during its preparation.

One example of the development and implementation of an Economic/fiscal development element is Marin County's Economic Element in its 1994 Countywide Plan. The intent of the element is to "promote a sustainable local economy which will benefit present and future generations without detrimentally affecting resources or biological systems and which will result in balanced communities where residents have opportunities to enjoy the components of a high quality of life: employment, housing which is affordable, transportation services, and physical development..." As part of plan implementation, the Board of Supervisors established the Marin Economic Commission which facilitates economic activities and provides a forum for cooperative economic development in the cities and the county.

Relevant Issues

The contents of an economic/fiscal element may vary widely between local jurisdictions as there are no mandated content requirements for optional elements. The issues may include any which are locally or regionally relevant, however, the element must take into account those issues identified in the other elements.

- *Business Retention and Development by Sector:* Identification of the needs, limitations and alternatives to existing businesses. Identification of potential improvements and strategies which would encourage business retention.
- *Employment Development:* Areas of employment growth, shortages, and needs.
- *Business Recruitment:* Relevant issues concerning the types, number, and success of existing and potential recruitment strategies. Identification of those businesses which would be compatible with the objectives of the general plan and consistent with the carrying capacity of the land and infrastructure.
- *Fiscal Stability:* Includes existing and potential revenue resources, costs of services and facilities and economic forecasts.
- *Budgetary Structure:* Existing outlays to departments, services and comparable revenue recoupment mechanisms and levels. Comparison of facility and services versus efficiency of providing the programs.

Ideas for Data and Analysis

Background Analysis

- Historical Perspective of the Local Economy: Identify the major developments and trends in the local economy over time to provide a basis for future growth.
- Current Economic Conditions: Identify economic trends by sector to identify strengths, weaknesses and opportunities. Use this information to formulate policies and objectives for the retention and attraction of business and employment.
- Projected Economic Conditions: Identify growing sectors of the economy to facilitate and plan for future development. Inventory weak sectors to plan for change or allocation of low interest funding or other assistance for viable enterprises.
- Employment Characteristics / Demographics: An economic development strategy must be based upon the internal capacity of the population to provide labor in different stages and sectors of the economy. An analysis of existing and predicted employment characteristics and demographics will provide insight into the development of a successful strategy.

Land Use

- Land Use Inventory and Analysis: The type, location and intensity of land uses designated by the general plan and the ability to support existing and proposed uses consistent with the economic development strategy.
- Infrastructure Analysis: The capacity of existing and planned infrastructure to accommodate growth (this directly affects the viability of economic development). The ability of the systems to support existing demand and the plans for future increases in capacity and extensions must be based upon accurate and up-to-date information.

Financing

- Capital Improvement Financing: Identify the viability, estimated costs and potential funding sources for each project prior to its submission for approval. Identify effective programs for the replacement of structures and equipment.
- Fee Studies: Conduct comprehensive fee studies to identify the relative amount of recovery for the service provided as compared with other jurisdictions. Prepare long-term comprehensive fee structures and proposed changes, consistent with Proposition 218 of 1996.

Fiscal Analysis

- Fiscal Stability: Identify programs that will maintain a diverse and stable revenue system. Evaluate the viability of revenue sources to identify those which enhance or limit tax burdens to residents and businesses.
- Historical and Projected General Fund Trends: Identify past, current and future general fund revenue sources to plan for effective asset management and revenue collection. Provide for the cost effective supply of services and recovery of costs.
- Balanced Budget: Identify current and prospective sources of revenue to establish funding programs in anticipation of future capital outlays. Identify the steps necessary to maintain a balanced budget to ensure that future obligations can be met by adding to reserves. Evaluate services to identify cost cutting measures and efficient delivery systems.

Economic Development and Implementation

- Economic Objectives: Identify the objectives for the

local economy and develop economic indicators to measure the success of the implementing programs and policies.

- Economic Strategy: Identify a general strategy (process) for accomplishing economic objectives and a local agency with the ability to procure funding and provide implementation.
- Business Recruitment: Identify areas which could support a variety of industrial, commercial, and professional businesses (consistent with the Land Use Element) in a business park setting that will produce tax revenue. Identify areas within older, established business districts which could similarly support new businesses.
- Business Retention: Identify strategies which include provisions for adequate infrastructure, qualified employees, funding resources, and regulatory policy designed to foster the competitiveness of existing businesses.
- Welfare to Work Programs: Local agencies should act to develop strategies to encourage the business community to form partnerships with state and local efforts for job placement opportunities and training for welfare recipients.
- Influencing Factors and Trends: The economy of the state is in a period of transition which is redefining the role of the workforce in the new economy. The change is being influenced by an evolution in the perceived value of quality of life and an emphasis in child welfare and family values. Consideration should be given to the increasing trend for home based offices, "telecommuting," and flexible work schedules. Designing flexibility into zoning and land use designations to encourage alternative office/living space arrangements should be considered. Policies and programs may directly influence the assumptions made in the housing and circulation elements of the general plan.

Ideas For Development Policies

This is a shopping list of ideas which may lead to useful economic development policies.

- Develop and maintain public facilities and infrastructure to encourage business recruitment, support future demand and ensure an adequate future supply
- Encourage long-term partnerships between local government, businesses, business organizations and the educational, arts, and environmental communities
- Enhance recruitment and retention factors which draw employers such as ambiance, educational, cultural, recreational and environmental resources
- Encourage development of housing at prices which are consistent with the housing requirements of employees
- Develop a business recruitment program including permit assistance and other incentives
- Hire or retain an Economic Development Coordinator
- For older, established business areas, hire an economic development coordinator, provide support for merchant organizations, and promote business district marketing strategies
- Apply for inclusion in the California Mainstreet Program to develop a public/private strategy for revitalizing older downtowns through design, economic restructuring, organization, and promotion (contact the State Trade and Commerce Agency)
- Recover the cost of new facilities and infrastructure necessary for new development
- Apply for and establish an Enterprise Zone (contact the State Trade and Commerce Agency)
- Maintain a stable revenue base that is promoted by a diversified economic base (diversity yields stability)
- Adopt a balanced budget
- Establish an assistance program to aid businesses in the fulfillment of their employment objectives
- Avoid short-term borrowing and long-term debt
- Promote cultural amenities and facilitate community based events
- Develop incentive programs for business retention and recruitment in targeted areas
- Encourage mutually reinforcing businesses to locate near one another
- Adopt an Economic Development Strategic Plan; consider smaller scale strategic plans for older business areas
- Aggressively pursue grants from state and federal sources
- Achieve sustainable economic development by limiting growth to that which is compatible with the carrying capacity of the environment and the service infrastructure
- Identify and implement ways in which workforce preparation can be improved and create training programs for welfare recipients to meet employers' needs

References: See the Bibliography under Economic Development and Redevelopment for useful references on this topic.

Agency Resources:

California Trade and Commerce Agency
Online: www.commerce.ca.gov
801 K Street, Suite 1600, Sacramento, CA 95814
(916) 322-1394
Office of Economic Development (916)322-8730
California Main Street Program – revitalization of older downtowns (916) 322-3536

California Employment Development Department
Online: www.edd.cahwnet.gov/eddhome.html
800 Capitol Mall, Sacramento, CA 95814
(916) 653-0707

California Department of Housing and Community Development
1800 Third Street, Sacramento, CA 95814
(916) 445-4782

California Department of Finance
Online: www.dof.ca.gov/
915 L Street, Sacramento CA 95814, (916) 322-2263

Other Resources:

California Association For Local Economic Development
1010 F Street, Suite 100, Sacramento, CA 95814
(916) 448-8252
On-line: www.caled.org

Institute of Urban and Regional Development, University of California, Berkeley
316 Wurster Hall #1870, Berkeley Ca 94720-1870
(510)642-4874
On-line: www.ced.berkeley.edu/iurd/index.html

PARKS AND RECREATION

Introduction

Public parks, and the passive and active recreation opportunities they provide, are important contributors to a community's quality of life. About one-third of the cities and 40 percent of the counties in California have adopted a parks and recreation element, according to OPR's 1996 local government planning survey. This number illustrates the importance placed upon parks and recreation facilities by local jurisdictions.

The Quimby Act (§66477) authorizes cities and counties to require the dedication of parks and recreation land, or the payment of in-lieu fees, as a condition of tentative subdivision map approval. The Quimby Act can only be invoked when the city or county "has adopted a general plan...containing policies and standards for parks and recreation facilities." A parks and recreation element can be used to meet this requirement. Keep in mind that these exactions are limited to the impacts caused by new residential development, and they must bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the area (§66477(e)).

Parks and recreation facilities provide a variety of benefits. Urban parks can offer a soothing contrast to high-density office, commercial, and residential places. Parks can provide active (i.e., baseball, basketball, soccer, horseback riding, etc.) and passive (i.e., picnicking, fishing, bird watching, open-space, etc.) recreational activities for a neighborhood, city, or region. Parks can preserve areas of beauty or historical significance. They can house facilities such as nature centers, zoos, and historical displays which educate residents about natural

Santa Clara County's 1995-2010 General Plan dedicates Chapters G (countywide level) and N (rural unincorporated areas) to parks and recreation strategies, policies, and implementation measures. As a county, Santa Clara takes a regional (as opposed to a neighborhood) approach that focuses on regional parks and open-space, trails, and scenic highways. The County has long worked toward the goal of creating a "necklace of parks" encompassing important hillsides, environmentally sensitive lands, bay lands, and stream corridors, linked by a system of multi-use trails. To that end, its strategies, policies, and implementation measures address development standards, accessibility, the balance between recreational and environmental objectives, inter-jurisdictional cooperation relative to planning, acquisition, and operation (with the cities and Midpeninsula Open-Space District), involvement of the private and non-profit sectors in acquisition and operation, the planned trail network, and the designation of scenic highways and protection of scenic corridors. The General Plan pragmatically recognizes that projects such as linear parks and trail systems can take years to complete and involve give and take among agencies, the public, and landowners.

history or allow them to learn about the past.

The utility of parks can transcend simple recreational and educational uses. Bicycle paths offer a non-motorized alternative for commuters which pays traffic and air quality benefits. Urban parks can frame vistas, balance hard structures with massed plantings, and otherwise contribute to effective urban design. Managed open-space lands may also protect watersheds from development or provide habitat for threatened or endangered species. River parkways and golf courses can offer non-structural flood protection or high-water bypasses as part of a floodplain management strategy.

Relevant Issues

The subjects covered in a parks and recreation element and the level of detail at which they are addressed vary greatly among jurisdictions. The size of the jurisdiction, its level of urbanization, location, and funding base all direct the issues that should be included. The user base and the demands it makes on park and recreation facilities also helps define the important issues. Counties issues often include regional parks, open-space or habitat preserves, watershed management, and trail systems. Cities, on the other hand, often address neighborhood parks and playgrounds, community parks, recreation facilities, school facilities joint use, and pocket parks. Some issues such as river parkways and other inter-jurisdictional resources can be important in both city and county plans.

The following are some basic suggestions for the kinds of issues which may be important. This is not intended to be an all inclusive list.

— The general distribution, location, and extent of existing public park, recreation, and open-space land and facilities (including regional, community, and neighborhood parks, recreational open-space, trails, greenways, regional/state/federal parks)
— Adjacent cities' parks and recreation plans; plans of regional/state/ federal agencies
— Projected future demand for facilities, by user group and type of facility
— Existing zoning and land uses
— General plan land use designations and transportation plans (LU, CI)
— The general location and availability of school district properties for joint use
— Natural resource areas (i.e., habitat, natural land and water areas, floodplains, groundwater recharge areas, etc.) amenable to recreational open-space (i.e., passive recreational) use (OS)
— Park and recreation facility policies and standards (including level of service standards and support for Quimby Act exactions)
— Recreational trail systems (i.e., pedestrian, equestrian, bicycle)
— Interagency coordination (for example, open-space districts, parks and recreation districts, other cities and counties, state parks, national parks (including monuments and recreational areas), national forests)
— Schedule or timetable for improvements, expansion, and retirement of infrastructure and facilities
— Funding sources, including non-governmental sources (i.e., non-profit organizations, private donations, exactions, etc.)

Ideas for Data and Analysis

These are some ideas for data and analysis to support the development of objectives, policies, and implementation measures for the parks and recreation element. The suggestions are loosely based on the framework for park planning contained in the National Recreation and Park Association's publication *Park, Recreation, Open-Space, and Greenway Guidelines*. They are only suggestions, local circumstances and preferences may dictate broadening or narrowing the scope of inquiry.

Inventory the general distribution, location, and condition of existing public park, recreation, and open-space land and facilities, including:

- neighborhood and community parks
- recreation centers/playgrounds
- recreational open-space
- parkways and greenways
- trails/trail systems
- regional/state/federal parks
- equipment/facilities (i.e., playground equipment, pools, tennis courts, sports fields, etc.)

Review adjacent cities' parks and recreation plans, as well as the plans of regional/state/federal agencies (i.e., parks districts, open-space districts, state parks, National Park Service, etc.)

Project future demand for facilities, by user group and type of facility

- Inventory existing facilities, types of facilities, and levels of use
- Identify major user groups and their park and recreation needs
- Project future demand for facilities, changes in demand, and capacity to meet future demand

Review existing land uses for potential sites and land use plans for compatible sites and policies, including:

- General plan land use, conservation, and open-space designations
- Relative accessibility (circulation/transportation plans)
- The general location and availability of school district properties for joint use as parks or recreation facilities
- Natural resource areas (i.e., habitat, natural land and water areas, floodplains, groundwater recharge areas, etc.) amenable to recreational open-space (i.e., passive recreational) use
- Park and recreation facility policies, standards, and principles

Identify feasible sources of funding for improvements, expansion, and maintenance

- governmental funding (i.e., general obligation bonds, special tax, impact fees)
- non-profit organization funding
- private sector funding

Ideas for Development Policies

Here are some very general ideas for development policies. These are intended to stimulate discussion; clearly, actual policies would be more focused.

- Identify the locations of existing and future public parks and recreational areas. (LU) (map)
- Establish standards for park acreage, by type of park (acres/1000 residents)
- Establish standards for providing active and passive recreational facilities
- Describe a range of park types (i.e., regional, areawide, neighborhood, pocket, etc.) to serve in specified situations and establish principles (i.e., access, service area, timing, parking, etc.) to guide the location of each type (LU).
- Establish policies for park and recreation facility accessibility consistent with the Americans with Disabilities Act.
- Establish policies for the dedication of public parks and recreational areas (or payment of in-lieu fees) in conjunction with new subdivisions, including standards for the amount and the type or quality of park land required consistent with the Quimby Act. (LU)
- Establish a policy framework for trails plans, balancing trail needs with environmental and landowner concerns (CI)
- Establish policies for the use of utility corridors, reclaimed solid waste facilities, abandoned railroad rights of way, etc. for parks and trails
- Establish general acquisition criteria/priorities for natural resources, historical resources, habitat, and watershed lands
- Establish principles for preserving natural resources, historical resources, habitat, and watershed lands within parks (OS)
- Preserve visually and environmentally significant open-spaces (OS)
- Provide for joint use of school properties as neighborhood parks/recreation centers (LU)
- Coordinate planning and standards with other agencies such as cities, counties, regional parks districts, open-space districts, state parks, and national parks and forests
- Establish policies to guide parks and recreational facilities funding, identifying preferable funding sources and general spending priorities
- Encourage involvement by the non-profit and private sectors in acquisition, maintenance, and programs
- Establish neighborhood, community, and regional park planning committees for consultation and input regarding park policy
- Establish policies requiring linkages between past and future development projects through a network of parks, open-space, and bike/walking paths.

References: See the Bibliography under Parks and Recreation for references on this topic.

CHAPTER 8

Other Planning Subjects

INTRODUCTION

When preparing a general plan, local agencies should include analyses of issues and subjects relevant to the planning area. In this chapter, we will briefly discuss popular subjects which may be addressed in a general plan such as growth management, sustainable development, "new urbanism," and jobs/housing balance. These are not comprehensive discussions, so readers may wish to avail themselves of the listed reference sources.

GROWTH MANAGEMENT

Growth management is commonly organized into a set of goals, objectives, policies, and performance standards which guide the physical development of a community. Since the late 1960s, many California communities have developed growth management systems to promote a variety of environmental, social, and economic goals. Among these are balancing the service costs and revenues associated with development, protecting environmental and aesthetic quality, encouraging efficient land and water use, preserving community identity, and protecting the economic base of the community. The enactment of local growth management policies has tended to shift the direction of growth toward jurisdictions which either have no growth management or have limited growth management policies. By pushing growth toward the path of least resistance, local controls have often dramatically failed to produce desired results on a regional level (i.e., low traffic congestion, adequate public facilities, preservation of open-space, etc.). As a cumulative result of individual local measures, in the 1980s development spilled out of the San Francisco Bay Area and Los Angeles Basin. Rates of growth in the Central Valley and Sierra Nevada foothill counties increased rapidly, feeding rates of agricultural land conversion.

Housing prices in growth-restricted areas tend to be significantly higher, pushing new home buyers farther from work places, and creating new long distance commuter congestion. Accordingly, OPR recommends that growth management techniques be used with caution due to their potential regional impacts.

Most growth management techniques fall into three major categories — planning and regulatory power, expenditure programs, and other measures, as illustrated in the following chart. Most local growth management programs employ one or more of these techniques to shape development.

Examples Of Growth Management Techniques

- Establishment of geographic limits to growth (i.e., urban limit lines and urban growth boundaries)
- Annexation policies (i.e., preservation of agricultural land, urban service areas, etc.)
- Adequate public facilities requirements
- Environmental performance standards
- Zoning requiring large minimum parcel sizes for open-space or steep lands
- Limits on the annual number of development permits
- Transfer of development rights/credits
- Public acquisition of open-space lands or purchase of development rights
- Housing subsidies
- Development impact fees
- Preferential assessment of agricultural, timber, and other open-space lands to encourage preservation (agricultural preserves, timberland preservation zoning, conservation easements, etc.)

Over the years, growth management has raised a number of legal questions. The most prominent case is *Construction Industry v. City of Petaluma* (1975) 522 F.2d 897. There the Ninth District U.S. Court of Appeals upheld the city's 500-unit yearly limit on new housing. State and federal courts have defined several principles that must be observed in establishing a growth management system:

- Local governments must act within the powers delegated to them by the California Constitution and

state statutes;

- Regulations using the police power must promote the public's welfare;
- A local government's actions cannot discriminate against individuals or groups on the basis of race, religion, age, or economic status;
- Local governments cannot enact regulations which directly prohibit immigration or discriminate against newcomers;
- Land use controls must allow for some reasonable economic use of private property; and
- A landowner whose property is subject to an overly restrictive land use regulation may be entitled to monetary compensation, even if the restriction is a temporary one.

Publications cited in the Bibliography discuss these legal considerations in detail.

The Legislature has enacted a number of requirements which try to ensure that local land use practices do not become exclusionary. For example, when a city or county adopts or amends a mandatory general plan element limiting the number of housing units that may be constructed on an annual basis, it must support its action with specific findings describing the locality's efforts to implement its housing element and the specific public health, safety and welfare considerations that justify reducing regional housing opportunities (§65302.8).

In addition, §65589.5 prohibits the disapproval of affordable housing projects or application of conditions that make affordable housing infeasible unless at least one of the following findings can be made:

(1) the development project is not needed for the jurisdiction to meet its share of the regional housing need of low-income or very low income housing per its adopted housing element;

(2) the project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the impact without rendering the development unaffordable to low- and moderate-income households;

(3) denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households;

(4) approval would increase the concentration of lower income households in a neighborhood that already has a disproportionately high number of lower income households and there is no feasible method of approving the development at a different site without rendering the development unaffordable to low- and moderate-income households;

(5) the project is proposed on land zoned for agriculture or resource preservation which is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or waste water facilities to serve the project; or

(6) the development project is inconsistent with the jurisdiction's general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete.

Furthermore, when enacting zoning ordinances and other actions, cities and counties must consider the effects of those actions upon the housing needs of the region (§65863.6, 65913.2, and 66412.3). Cities and counties must also balance the housing needs of the region against the needs of their residents for public services and the available fiscal and environmental resources (§65863.6 and 66412.3).

General Plan Considerations

Most growth management programs are part of a city's or county's general plan or its implementing ordinances. Many of these have been enacted through voter-approved initiatives. The California Constitution guarantees the right to initiative and referendum and places only minor limitations on the use of such powers (*Yost v. Thomas* (1984) 36 Cal.3d 561). Through the initiative, voters effectively take the place of elected officials in enacting legislation. California courts have held that voters cannot adopt by initiative or referendum any ordinance or plan that the legislative body would not have the power to enact. For example, a zoning ordinance intended to limit growth on the basis of traffic congestion was struck down because it was inconsistent with the city general plan (*Lesher Communications v. Walnut Creek* (1990) 52 Cal.3d 531), while a general plan amendment limiting development in agricultural areas, consistent with other aspects of the general plan, was held to be valid (*DeVita v. County of Napa* (1995) 9 Cal.4th 763).

As a practical matter, a growth management program will be more effective and, perhaps, subject to fewer successful legal challenges if it is tied directly to the general plan rather than adopted independently. There are several important legal reasons for a growth management/general plan link.

First, all regulations based on police power and used in a growth management system must promote the

public's health, safety, or general welfare (*Berman v. Parker* (1954) 348 U.S. 26). The general plan represents the most comprehensive statement of the community's general welfare as it relates to environmental and land use matters.

Second, the general plan uses population projections to establish the basis for proposed land uses and facilities. When growth management systems seek to manage population either by setting an absolute limit on growth or by regulating the annual growth rate, population projections developed in the context of the general plan provide a factual basis for those systems.

Third, the general plan is a forum for balancing competing interests and objectives in deciding the future of the community. For example, the community's desire to regulate growth may conflict with its obligation to provide adequate housing opportunities. The general plan is a most appropriate mechanism for conforming these competing objectives.

Fourth, various provisions of state law require local governments to implement the general plan in a consistent manner. Zoning and subdivision regulations and capital improvements, all of which are commonly used growth management techniques, must be consistent with the general plan in most cities and counties.

There are any number of growth management systems being used by California cities and counties. Until 1987, Petaluma had a quantified rating system which awarded points to proposed residential developments according to their compliance with specific City standards. A number of cities continue to use a point system (often termed a "beauty contest") to award building allocations to prospective development. The City of San Francisco, for example, applies this concept to downtown office towers. In 1987, Petaluma revamped its pioneering program for greater flexibility. The city council now sets development objectives each year relative to the housing mix, needed infrastructure, and other criteria which form the basis for evaluating development proposals. Although the City still makes a yearly allocation of residential development to individual projects and limits the total number of units which will be allotted, that total can be averaged over a three year period.

Another example of a common growth management technique is the City of Pleasanton's incorporation of an urban growth boundary into its 1996 general plan update. This boundary designates the edge of land planned for urban development at general plan buildout. It distinguishes areas generally suitable for development from areas suited for the protection of natural resources, agriculture, parks and recreation, public health and safety, significant wetlands, buffers, and scenic ridge line views. The boundary is intended to be permanent and define the line beyond which development will not occur. As has often been the case, the boundary and implementation policies were adopted by initiative and may be revised only by popular vote.

Woodland, just north of Sacramento, has incorporated policies into its general plan establishing an urban growth boundary and requiring new development to provide its fair share of any additional public improvements necessary to maintain specified levels of services such as drainage, water supply, wastewater treatment, fire protection, and traffic circulation. These long-standing policies have enabled the city to maintain a compact urban form, a resilient central core, and attractive downtown residential neighborhoods.

Similar to Woodland, but applied in much greater detail, Carlsbad in San Diego County uses an adequate public facilities approach. It has enacted a "citywide facilities and improvements plan" which establishes specific level of service standards and development impact fees to ensure that new development will pay for its share of new public facilities and services. No development may occur absent meeting the standards of the plan.

For additional information, see the Bibliography under Land Use Controls.

SUSTAINABLE DEVELOPMENT

Sustainable development is an integrated, systems approach to development, which attempts to maximize the efficient and effective long-range management of land, community, and resources. Sustainable development principles may be applied to the overall development, specific policies and programs, and/or the implementation of the general plan.

Definition and Concepts

Although a precise description of "sustainable development" is elusive, its basic principle is to provide for today's needs while ensuring that future generations have the resources available to meet their own needs. To achieve this, sustainable development must balance economic prosperity, and environmental integrity.

At the local level, proponents of sustainable development seek to improve public health and quality of life for residents by promoting equity, conservation of resources, reductions in waste and pollution, increased

civic engagement, and sound economic opportunities. Advocates of sustainable development have identified a wide range of goals as promoting sustainability, including:

- Decreasing urban sprawl;
- Preserving open and prime agricultural land;
- Creating strong economies;
- Creating compact, integrated communities;
- Ensuring the availability of affordable housing;
- Promoting alternative, less polluting modes of transportation;
- Promoting energy and resource efficient industry;
- Promoting waste reduction programs, such as recycling; and
- Developing community-driven strategic planning and collaborative regional planning.

General Plan Considerations

The comprehensive, integrated, and long-term nature of the general plan make it an ideal vehicle for implementing local sustainable development goals. While preparing or amending a general plan, sustainable development policies or programs may be addressed within the various elements of the plan. For example: policies on minimizing urban sprawl through limitations to development may be addressed in the land use element; policies for prime agricultural land preservation may be introduced in the open-space element; and the transportation element may be used to address public transportation concerns.

The principles of sustainable development may also guide the overall goals of the general plan. For example, Santa Clara County's general plan addresses four themes of sustainable development in the organization of its general plan vision: (1) social and economic well-being; (2) managed and balanced growth; (3) livable communities; and (4) responsible resource conservation. The general plan's goals for social and economic well-being include achieving "a healthy, diverse economy and adequate employment opportunities" by reaching "sustainable levels of growth and job formation consistent with planned improvements in housing, transportation, urban services and maintenance of environmental quality." Goals for the other themes also reflect the necessary balance among the social, environmental, and economic goals of sustainable development.

General plans may also be combined with other documents to promote sustainability. For instance, the City of Pasadena uses a quality of life index to identify, measure, and set quality of life indicators for a healthier, more sustainable city. "The Quality of Life in Pasadena" index combines information from the city's general plan and other documents and addresses such topics as the environment, health, education, transportation, and the economy and employment.

The concept and application of sustainable development is evolving through creative interpretation and use. There are a variety of resources available for additional information.

Resources for Sustainable Development

U.S. Environmental Protection Agency (EPA)

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Local Government Commission
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Sacramento, CA 95814
Phone:(916) 448-1198
Fax: (916) 448-8246
Center Hotline: (800) 290-8202
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THE NEW URBANISM

The "new urbanism" advocates returning to traditional principles of urban design to address today's problems. Proponents of this approach argue, with some justification, that planning has neglected certain basic principles of good urban design that are commonly reflected in the layout of pre-WWII neighborhoods, and in older European cities. As a result, new projects tend to be generic in form; land uses are separated in ways that encourage automobile access and circulation at the cost of simple pedestrian access; communities lack an identifiable center or focal point; and development occurs without regard to transit needs. In general, new urbanism principles emphasize: compact development at urban densities; clustered, mixed-use commercial districts; distinct, cohesive neighborhoods with a mixture of residential densities and other compatible land uses; pedestrian scale (including narrow roadways and pedestrian access); urban open-spaces, parks, and civic buildings as community foci; and transit connections. New urbanism principles can be integrated into the objectives and policies of the land use, circulation, and open-space elements.

There are a number of examples of projects which incorporate some or all of the principles of new urbanism. The County of Sacramento adopted "transit oriented development" (TOD) standards as part of its 1993 general plan. These standards call for high-density, mixed use development nodes to be developed within a _ mile radius of transit stops. The Laguna West project in Sacramento's southern suburbs is an example of this type of development and served as the model for the County's standards. The City of Mountain View "Crossings" infill project replaced a defunct shopping mall with single-family residences and townhouses, a grid street pattern, a centralized neighborhood shopping area, and eventually a commuter train station in close proximity. The City of San Diego's "West Mission" project is another example of urban density, mixed-use development. On a larger scale, San Jose's ongoing downtown revitalization, including the construction of offices, a convention center, three museums, and a sports arena, and refurbishing a hotel and the public plaza, is bolstering the area as a regional center for cultural and sporting activities, as well as a transportation (light rail) hub.

Despite its name, the new urbanism has not been limited to urban infill – most of the best-known projects such as Kentlands, Maryland and Seaside, Florida are in suburban or rural settings. An argument can be made that these non-urban approaches do not address larger issues such as encouraging compact urban form, slowing regional traffic demand, and lack of investment in central cities. The best places to practice new urbanism may be the cities, where it can be used to mend or strengthen the urban fabric.

One facet of this movement is land use/transportation/air quality linkage. Community design which minimizes the need for motor vehicle trips, simplifies pedestrian access, places neighborhood shopping and schools within walking distance of residents, and encourages transit options can have beneficial effects on traffic and air quality. Unlike regulatory approaches, which restrict personal choice, these benefits follow relatively painlessly from well-designed projects.

Other Sources of Information

The non-profit Local Government Commission has a variety of publications and sponsors workshops on this subject. They can be reached in Sacramento at (916) 448-1198 or online at: http://www.lgc.org/. In addition, there are now numerous reference books containing information on the new urbanist approach to community design.

For more information, see the Bibliography under Air Quality, General Planning, and Urban Design.

JOBS/HOUSING BALANCE

Relying on the automobile as our primary means of transportation has encouraged patterns of development and employment that are often inefficient. Suburbanites routinely commute 25 miles or more from their homes to their places of employment. Jobs are dispersed throughout employment regions making public transit impractical for most people. Car trips between home and the grocery store (or the bank, the dentist, the restaurant, etc.) are longer than necessary because residential and commercial areas are not convenient to each other.

"Jobs/housing balance" is based on the premise that commuting, the overall number of vehicle trips, and the resultant vehicle miles traveled can be reduced when sufficient jobs are available locally to balance the employment demands of the community and when commercial services are convenient to residential areas.

Planning for a jobs/housing balance requires in-depth analyses of employment potential (existing and projected), housing demand (by income group and corrected for regional housing opportunities), new housing production, and the relationship between employment opportunities and housing availability. Other factors such as housing cost and transportation systems must also be evaluated.

Achieving a jobs/housing balance requires controlling the location, intensity, and nature of jobs and housing in order to encourage a reduction in vehicle trips and miles traveled and a corresponding increase in the use of mass transit and alternative transportation methods such as bicycles, carpools, and walking. Strategies include locating higher density housing near employment centers, promoting infill development, actively recruiting businesses that will utilize the local work force, and providing affordable housing opportunities within the community. Jobs-housing provisions most directly affect the land use, circulation, and housing elements.

The automobile makes it relatively simple for employees to commute beyond the city limits or over the county line to jobs in other communities. The willingness to accept a longer drive to work in order to find affordable housing is illustrated by the influx of people who are employed in the Santa Clara and Livermore Valleys (San Francisco Bay Area) to new homes in Manteca, Tracy, Modesto, and other San Joaquin Valley communities. The free flow of employees across political boundaries complicates the attempts of individual communities at balancing jobs and housing, and paying for public facilities and services. In the end, the benefits of a local jobs/housing balance may be illusory at best.

APPENDIX A

Guidelines for the Preparation and Content of the Noise Element of the General Plan

OUTLINE

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I. INTRODUCTION

The Noise Element of the General Plan provides a basis for comprehensive local programs to control and abate environmental noise and to protect citizens from excessive exposure. The fundamental goals of the Noise Element are:

- To provide sufficient information concerning the community noise environment so that noise may be effectively considered in the land use planning process. In so doing, the necessary groundwork will have been developed so that a community noise ordinance may be utilized to resolve noise complaints.
- To develop strategies for abating excessive noise exposure through cost-effective mitigating measures in combination with zoning, as appropriate, to avoid incompatible land uses.
- To protect those existing regions of the planning area whose noise environments are deemed acceptable and also those locations throughout the community deemed "noise sensitive."
- To utilize the definition of the community noise environment, in the form of CNEL or Ldn noise contours as provided in the Noise Element for local compliance with the State Noise Insulation Standards. These standards require specified levels of outdoor to indoor noise reduction for new multi-family residential constructions in areas where the outdoor noise exposure exceeds CNEL (or Ldn) 60 dB.

The 1976 edition of the Noise Element Guidelines, prepared by the State Department of Health Services (DOHS), was a result of SB 860 (Beilenson, 1975), which became effective January 1, 1976. SB 860, among other things, revised and clarified the requirements for the noise element of each city and county general plan and gave the DOHS authority to issue guidelines for compliance thereto. Compliance with the 1976 version of these guidelines was mandated only for those noise elements which were not submitted to the Office of Planning and Research by the effective date of SB 860 and to subsequent revisions of previously submitted noise elements.

A comparison between the 1976 Noise Element Guidelines and this revised edition will not reveal substantial changes. The basic methodology advanced by that previous edition remains topical. Where necessary, code references have been updated and the text revised to reflect statutory changes.

II. DEFINITIONS

Decibel, dB: A unit of measurement describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

A-Weighted Level: The sound level in decibels as measured on a sound level meter using the A-weighting filter network. The A-weighting filter de-emphasizes the very low and very high frequency components of the sound in a manner similar to the response of the human ear and gives good correlation with subjective reactions to noise.

L10: The A-weighted sound level exceeded ten percent of the sample time. Similarly, L50, L90, etc.

Leq: Equivalent energy level. The sound level corresponding to a steady state sound level containing the same total energy as a time varying signal over a given sample period. Leq is typically computed over 1, 8, and 24-hour sample periods.

CNEL: Community Noise Equivalent Level. The aver-

age equivalent A-weighted sound level during a 24-hour day, obtained after addition of five decibels to sound levels in the evening from 7 p.m. to 10 p.m. and after addition of 10 decibels to sound levels in the night from 10 p.m. to 7 a.m.

Ldn: Day-Night Average Level. The average equivalent A-weighted sound level during a 24-hour day, obtained after addition of 10 decibels to sound levels in the night after 10 p.m. and before 7 a.m.

Note: CNEL and Ldn represent daily levels of noise exposure averaged on an annual or daily basis, while Leq represents the equivalent energy noise exposure for a shorter time period, typically one hour.

Noise Contours: Lines drawn about a noise source indicating equal levels of noise exposure. CNEL and Ldn are the metrics utilized herein to describe annoyance due to noise and to establish land use planning criteria for noise.

Ambient Noise: The composite of noise from all sources near and far. In this context, the ambient noise level constitutes the normal or existing level of environmental noise at a given location.

Intrusive Noise: That noise which intrudes over and above the existing ambient noise at a given location. The relative intrusiveness of a sound depends upon its amplitude, duration, frequency, and time of occurrence, and tonal or informational content as well as the prevailing noise level.

Noisiness Zones: Defined areas within a community wherein the ambient noise levels are generally similar (within a range of 5 dB, for example). Typically, all other things being equal, sites within any given noise zone will be of comparable proximity to major noise sources. Noise contours define different noisiness zones.

III. NOISE ELEMENT REQUIREMENTS

Government Code Section 65302(f):

A noise element shall identify and appraise noise problems in the community. The noise element shall recognize the guidelines established by the Office of Noise Control in the State Department of Health Services and shall analyze and quantify, to the extent practicable, as determined by the legislative body, current and projected noise levels for all of the following sources:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary sources identified by local agencies as contributing to the community noise environment.

Noise contours shall be shown for all of these sources and stated in terms of community noise equivalent level (CNEL) or day-night average level (Ldn). The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques for the various sources identified in paragraphs (1) to (6), inclusive.

The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise.

The noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any. The adopted noise element shall serve as a guideline for compliance with the state's noise insulation standards.

IV. PROCESS OF NOISE ELEMENT DEVELOPMENT

The sequential steps for development of a noise element as an integral part of a community's total noise control program are illustrated in the flow diagram of figures 1A and 1B. The concept presented herein utilizes the noise element as the central focus of the community's program and provides the groundwork for all subsequent enforcement efforts. The process may be described in terms of four phases:

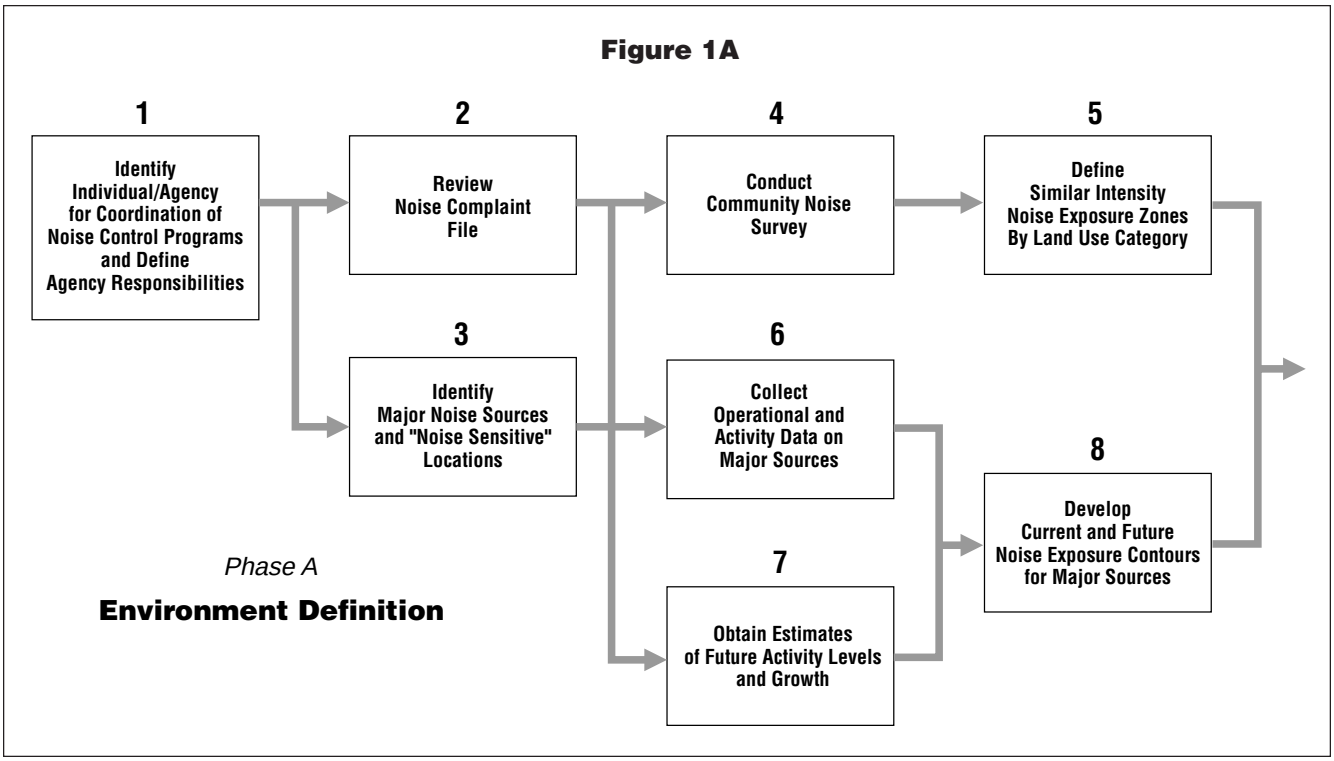
A. Noise Environment Definition

B. Noise Compatible Land Use Planning

C. Noise Mitigation Measures

D. Enforcement

These phases encompass a total of eighteen defined tasks, the first thirteen of which relate directly to the statutory requirements contained in §65302(f), while the remainder relate to critical supportive programs (noise ordinances, etc.). Citations from §65302(f) are contained within quotation marks.



A. Noise Environment Definition

The purpose of this phase is to adequately identify and appraise the existing and future noise environment of the community in terms of Community Noise Equivalent Level (CNEL) or Day-Night Average Level (Ldn) noise contours for each major noise source and to divide the city or county into noise zones for subsequent noise ordinance application.

Step 1:

Identify a specific individual or lead agency within the local government to be responsible for coordination of local noise control activities. This individual or agency should be responsible for coordinating all intergovernmental activities and subsequent enforcement efforts.

Step 2:

Review noise complaint files as compiled by all local agencies (police, animal control, health, airport, traffic department, etc.) in order to assess the following:

(1) Location and types of major offending noise sources.

(2) Identification of noise sensitive areas and land uses.

(3) Community attitudes towards specific sources of noise pollution.

(4) Degree of severity of noise problems in the community.

(5) Relative significance of noise as a pollutant.

Step 3:

Specifically identify major sources of community noise based upon the review of complaint files and interagency discussion and the following statutory subjects:

(1) Highways and freeways.

(2) Primary arterials and major local streets.

(3) Passenger and freight on-line railroad operations and ground rapid transit systems.

(4) Commercial, general aviation, heliport, helistop, and military airport operations, aircraft overflights, jet engine test stands, and all other ground facilities and maintenance functions related to airport operation.

(5) Local industrial plants, including, but not limited to, railroad classification yards.

(6) Other ground stationary noise sources identified by local agencies as contributing to the community noise environment. (Government Code §65302(f))

In addition, the land uses and areas within the community that are noise sensitive should be identified at the same time.

Step 4:

Given the identification of major noise sources and an indication of the community's attitude toward noise pollution (when available), it is advisable to conduct a

community noise survey. The purposes of the survey are threefold:

First and foremost, to define by measurement the current noise levels at those sites deemed noise sources and to establish noise level contours around them. The noise contours must be expressed in terms of CNEL or Ldn.

Second, the collected data will form the basis for an analysis of noise exposure from major sources.

Finally, the survey should define the existing ambient noise level throughout the community. Intrusive noises, over and above this general predetermined ambient level, may then be controlled through implementation of a noise ordinance.

Step 5:

Given the definition of existing ambient noise levels throughout the community, one may proceed with a classification of the community into broad regions of generally consistent land use and similar noise environments. Because these regions will be varying distances from identified major noise sources, the relative levels of environmental noise will be different from one another. Therefore, subsequent enforcement efforts and mitigating measures may be oriented towards maintaining quiet areas and improving noisy ones.

Step 6:

Directing attention once again to the major noise sources previously identified, it is essential to gather operations and activity data in order to proceed with the analytical noise exposure prediction. This data is somewhat source specific, but generally should consist of the following information and be supplied by the owner/operator of the source:

(1) Average daily level of activity (traffic volume, flights per day, hours of operation, etc.).

(2) Distribution of activity over day and night time periods, days of the week, and seasonal variations.

(3) Average noise level emitted by the source at various levels of activity.

(4) Precise source location and proximity to noise impacted land uses.

(5) Composition of noise sources (percentage of trucks on highway, aircraft fleet mix, industrial machinery type, etc.).

Step 7:

In addition to collecting data on the variables affecting noise source emission for the existing case, future values for these parameters need to be assessed. This is best accomplished by correlating the noise element with other general plan elements (i.e. land use, circulation, housing, etc.) and regional transportation plans and by coordination with other responsible agencies (Airport Land Use Commission, Caltrans etc.).

Step 8:

Analytical noise exposure modeling techniques may be utilized to develop source-specific noise contours around major noise sources in the community.

"The noise contours shall be prepared on the basis of noise monitoring or following generally accepted noise modeling techniques..."

(§65302(f))

Simplified noise prediction methodologies are available through the State Department of Health Services for highway and freeway noise, railroad noise, simple fixed stationary and industrial sites, and general aviation aircraft (with less than twenty percent commercial jet aircraft activity — two engine jet only). Noise contours for larger airport facilities and major industrial sites are sufficiently complex that they must be developed via sophisticated computer techniques available through recognized acoustical consulting firms. (Airport contours, generally, have already been developed in accordance with requirements promulgated by the Division of Aeronautics: Noise Standards — Sections 5000, et seq. of Title 21, California Code of Regulations.)

Although considerable effort may go into developing noise contours which, in some instances, utilize rather sophisticated digital programming techniques, the present state-of-the-art is such that their accuracy is usually no better than +/- 3 dB. In fact, the accuracy of the noise exposure prediction decreases with increasing distance from the noise source. In the near vicinity of the source, prediction accuracy may be within the range of +/- 1 dB, while at greater distances this may deteriorate to +/- 5 dB or greater. At greater distances, meteorological and topographic effects, typically not totally accounted for in most models, may have significant influence. Thus, while dealing with the concept of noise contours, it is best not to think of them as absolute lines of demarcation on a map (such as topographical contours), but rather as bands of similar noise exposure.

In addition to assessment of the present day noise environment, it is recommended that the noise exposure data be projected through the time horizon of the general plan. The noise element should be updated and corrected every five years, or sooner as is necessary, and, at that time, the forecasted noise exposure be projected an additional five years.

Phase B. Noise Compatible Land Use Planning

A noise planning policy needs to be rather flexible and dynamic to reflect not only technological advances in noise control but also economic constraints governing application of noise control technology and anticipated regional growth and demands of the community. In the final analysis, each community must decide the level of noise exposure its residents are willing to tolerate within a limited range of values below the known levels of health impairment.

Step 9:

Given the definition of the existing and forecasted noise environment provided by the Phase A efforts, the locality preparing the noise element must now approach the problem of defining how much noise is too much. Guidelines for noise compatible land use are presented in Figure 2. The adjustment factors given in Table 1 may be used in order to arrive at noise acceptability standards which reflect the noise control goals of the community, the particular community's sensitivity to noise (as determined in Step 2), and their assessment of the relative importance of noise pollution.

Step 10:

As a prerequisite to establishing an effective noise control program, it is essential to know, in quantitative terms, the extent of noise problems in the community. This is best accomplished by determining, for each major noise source around which noise contours have

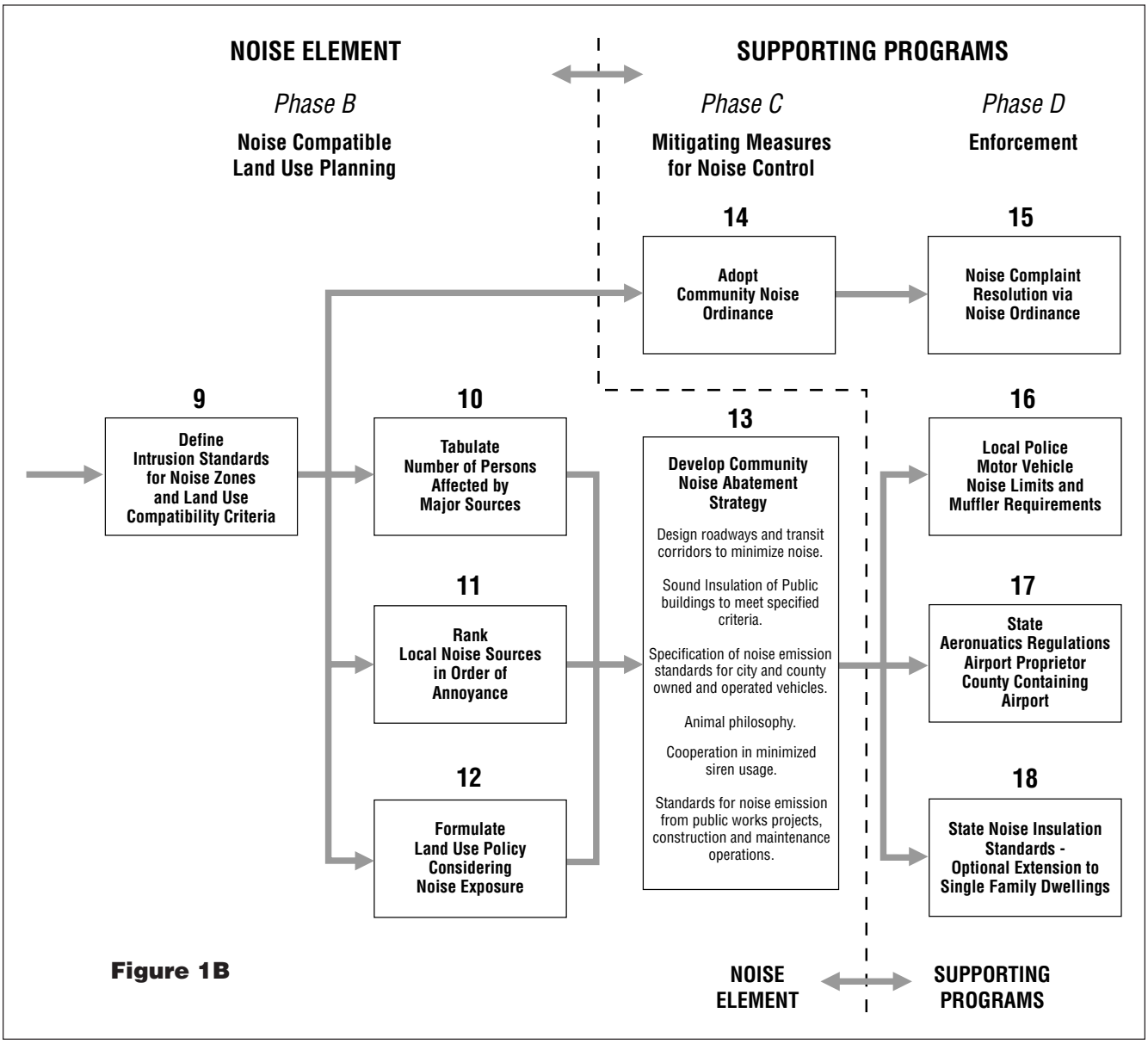


Figure 1B

been developed, the number of community residents exposed and to what extent. It is also useful to identify those noise sensitive land uses whose noise exposure exceeds the recommended standards given in Figure 2. The exposure inventory can be accomplished by using recent census data, adjusted for regional growth, and tabulating the population census blocks within given noise contours.

Step 11:

Once the noise exposure inventory is completed, the relative significance of specific noise sources in the community (in terms of population affected) will become apparent. The local agencies involved may wish to use this information to orient their noise control and abatement efforts to achieve the most good. Clearly, control of certain major offending sources will be beyond the jurisdiction of local agencies; however, recog-

FIGURE 2

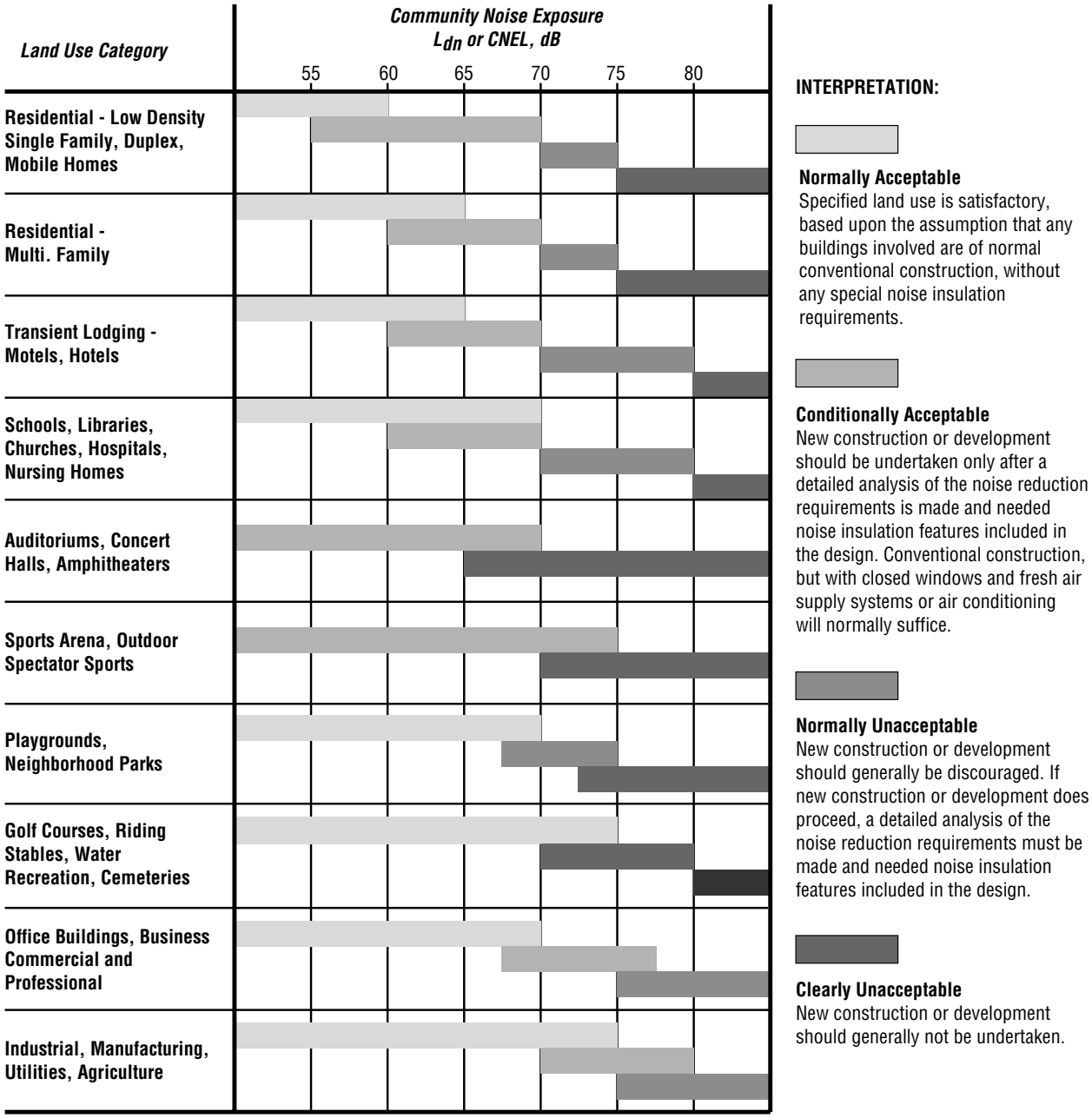


Table 1

Type of Correction	*Description*	*Amount of Correction to be Added to Measured CNEL in dB*
Seasonal Correction	Summer (or year-round operation)	**0**
	Winter only (or windows always closed)	**- 5**
Correction for Outdoor Residual Noise Level	Quiet suburban or rural community (remote from large cities and from industrial activity and trucking).	**+ 10**
	Quiet suburban or rural community (not located near industrial activity).	**+ 5**
	Urban residential community (not immediately adjacent to heavily traveled roads and industrial areas).	**0**
	Noisy urban residential community (near relatively busy roads or industrial areas.	**- 5**
	Very noisy urban residential community.	**- 10**
Correction for Previous Exposure and Community Attitudes	No prior experience with the intruding noise.	**+ 5**
	Community has had some previous exposure to intruding but little effort is being made to control the noise. This correction may also be applied in a situation where the community has not been exposed to the noise previously, but the people are aware that bona fide efforts are being made to control the noise.	**0**
	Community has had considerable previous exposure to the intruding noise and the noise maker's relations with the community are good.	**- 5**
	Community aware that operation causing noise is very necessary and it will not continue indefinitely. This correction can be applied for an operation of limited duration and under emergency circumstances.	**- 10**
Pure Tone or Impulse	No pure tone or impulsive character.	**0**
	Pure Tone or impulsive character present.	**+ 5**

nition of these limitations should prompt more effective land use planning strategies.

Step 12:

A major objective of the noise element is to utilize this information to ensure noise compatible land use planning:

"The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise." (§65302(f))

The intent of such planning is to:

(1) Maintain those areas deemed acceptable in terms of noise exposure.

(2) Use zoning or other land use controls in areas with excessive noise exposure to limit uses to those which are noise compatible and to restrict other less compatible uses.

Phase C. Noise Mitigation Measures

Step 13:

Based upon the relative importance of noise sources in order of community impact and local attitudes towards these sources, "[t]he noise element shall include implementation measures and possible solutions that address existing and foreseeable noise problems, if any" (§65302(f)).

Selection of these noise mitigating measures should be coordinated through all local agencies in order to be most effective. Minimization of noise emissions from all local government-controlled or sanctioned activities should be a priority item. This includes low noise specifications for new city or county owned and operated vehicles (and noise reduction retrofitting where economically possible) and noise emission limits on public works projects. Local governments should insure that public buildings (especially schools) are sufficiently insulated to allow their intended function to be uninterrupted by exterior noise. Local agencies can work with State and Federal bodies to minimize transportation noise, primarily through transit way design, location or configuration modifications.

Additional measures might include such policies as limitation of siren useage by police, fire, and ambulance units within populated areas. Animal control units may be encouraged to minimize barking dog complaints through use of an improved public relations campaign termed "Animal Philosophy." This involves working with pet owners to determine why the dog barks and attempting solutions rather than just issuing citations. Local zoning and subdivision ordinances may require the use of noise reducing building materials or the installation of sound insulating walls along major roads in new construction and subdivisions.

In general, local noise reduction programs need to address the problems specific to each community, with the ultimate goals being the reduction of complaint frequency and the provision of a healthful noise environment for all residents of the community.

The following steps are beyond the scope of the noise element requirements, but pertain to coordination with other state noise control programs and achievement of the goals set forth in the noise element through development of an active local noise control effort.

Step 14:

While the noise element identifies problem areas and seeks to develop medium and long-range solutions to them, a community noise ordinance is the only viable instrument for short-term or immediate solutions to intrusive noise. A model noise ordinance which may be tailored to the specific needs of a given community by simply incorporating those sections deemed most applicable has been developed by the Department of Health Services. The model ordinance also suggests a cure for non-stationary or transient types of noise events, for which noise contours are generally meaningless.

Phase D. Enforcement

To adequately carry out the programs identified in the noise element and to comply with State requirements for certain other noise control programs, specific enforcement programs are recommended at the local level.

Step 15:

Adopt and apply a community noise ordinance for resolution of noise complaints.

Step 16:

Recent studies have shown that the most objectionable feature of traffic noise is the sound produced by vehicles equipped with illegal or faulty exhaust systems. In addition, such hot rod vehicles are often operated in a manner that causes tire squeal and excessively loud exhaust noise. There are a number of statewide vehicle noise regulations that can be enforced by local authorities as well as the California Highway Patrol. Specifically, §23130, 23130.5, 27150, 27151, and 38275 of the California Vehicle Code, as well as excessive speed laws may be applied to curtail this problem. Both the Highway Patrol and the State Department of Health Services (through local health departments) are available to aid local authorities in code enforcement and training pursuant to proper vehicle sound level measurements.

Step 17:

Commercial and public airports operating under a permit from the Caltrans Aeronautics Program are required to comply with both the State Aeronautics standards governing aircraft noise and also all applicable legislation governing the formation and activities of a local Airport Land Use Commission (ALUC). The function of the ALUC is, among other things, to develop a plan for noise compatible land use in the immediate proximity of the airport. The local general plan must be reviewed for compatibility with this Airport Land Use Plan and amended if necessary (Public Utilities Code §21676). Therefore, the developers of the noise element will need to coordinate their activities with the local

ALUC to ensure that compatible standards are utilized throughout the community and that the noise element develops as part of a coherent master plan, of which the ALUP forms an integral component.

Step 18:

"The adopted noise element shall serve as a guideline for compliance with the State's noise insulation standards." (§65302(f))

Recognizing the need to provide acceptable habitation environments, State law requires noise insulation of new multi-family dwellings constructed within the 60 dB (CNEL or Ldn) noise exposure contours. It is a function of the noise element to provide noise contour information around all major sources in support of the sound transmission control standards (Appendix, Chapter 2-35, Part 2, Title 24, California Code of Regulations).

V. RELATIONSHIP OF THE NOISE ELEMENT TO OTHER GENERAL PLAN ELEMENTS

The noise element is related to the land use, housing, circulation, and open-space elements. Recognition of the interrelationship of noise and these four mandated elements is necessary in order to prepare an integrated general plan. The relationship between noise and these four elements is briefly discussed below.

Land Use — A key objective of the noise element is to provide noise exposure information for use in the land use element. When integrated with the noise element, the land use element will show acceptable land uses in relation to existing and projected noise contours. Section 65302(f) of the Government Code states that: "The noise contours shall be used as a guide for establishing a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise."

Housing — The housing element considers the provision of adequate sites for new housing and standards for housing stock. Since residential land use is among the most noise sensitive, the noise exposure information provided in the noise element must be considered when planning the location of new housing. Also, State law requires special noise insulation of new multi-family dwellings constructed within the 60 dB (CNEL or Ldn) noise exposure contour. This requirement may influence the location and cost of this housing type. In some cases, the noise environment may be a constraint on housing opportunities.

Circulation — The circulation system must be correlated with the land use element and is one of the major sources of noise. Noise exposure will thus be a decisive factor in the location and design of new transportation facilities and the possible mitigation of noise from existing facilities in relation to existing and planned land use. The local planning agency may wish to review the circulation and land use elements simultaneously to assess their compatibility with the noise element.

Open-Space — Excessive noise can adversely affect the enjoyment of recreational pursuits in designated open-space. Thus, noise exposure levels should be considered when planning for this kind of open-space use. Conversely, open-space can be used to buffer sensitive land uses from noise sources through the use of setback and landscaping. Open-space designation can also effectively exclude other land uses from excessively noisy areas.

VI. SELECTION OF THE NOISE METRIC

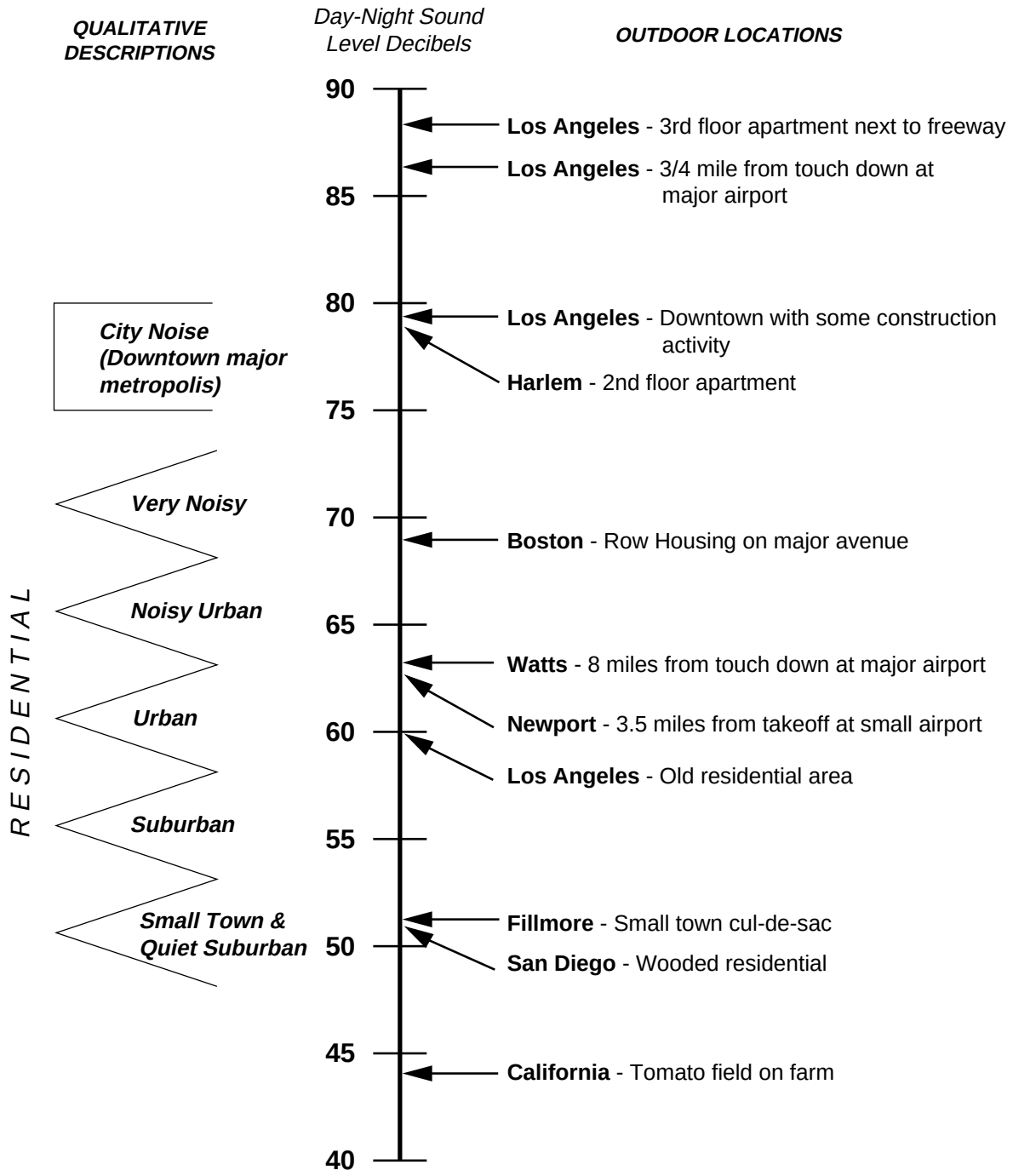
The community noise metrics to be used in Noise Elements are either CNEL or Ldn (as specified in §65302(f)). A significant factor in the selection of these scales was compatibility with existing quantifications of noise exposure currently in use in California. CNEL is the noise metric currently specified in the State Aeronautics Code for evaluation of noise impact at specific airports which have been declared to have a noise problem. Local compliance with the state airport noise standards necessitates that community noise be specified in CNEL. The Ldn represents a logical simplification of CNEL. It divides the day into two weighted time periods (Day — 7a.m. to 10 p.m. and Night — 10 p.m. to 7a.m.) rather than the three used in the CNEL measure (Day — 7a.m. to 7p.m., Evening — 7p.m.to 10 p.m., and Night — 10 p.m. to 7a.m.) with no significant loss in accuracy.

VII. CRITERIA FOR NOISE COMPATIBLE LAND USE

Figure 2 summarizes the suggested use of the CNEL/Ldn metrics for evaluating land use noise compatibility. Such criteria require a rather broad interpretation, as illustrated by the ranges of acceptability for a given land use within a defined range of noise exposures.

Denotation of a land use as "normally acceptable"

Figure 3



on Figure 2 implies that the highest noise level in that band is the maximum desirable for existing or conventional construction which does not incorporate any special acoustic treatment. In general, evaluation of land use which falls into the "normally acceptable" or "normally unacceptable" noise environments should include consideration of the type of noise source, the sensitivity of the noise receptor, the noise reduction likely to be provided by structures, and the degree to which the noise source may interfere with speech, sleep, or other activities characteristic of the land use.

Figure 2 also provides an interpretation as to the

suitability of various types of construction with respect to the range of outdoor noise exposure.

The objective of the noise compatibility guidelines in Figure 2 is to provide the community with a means of judging the noise environment which it deems to be generally acceptable. Many efforts have been made to account for the variability in perceptions of environmental noise which exist between communities and within a given community.

Beyond the basic CNEL or Ldn quantification of noise exposure, one can apply correction factors to the measured or calculated values of these metrics in order to account for some of the factors which may cause the noise to be more or less acceptable than the mean response. Significant among these factors are seasonal variations in noise source levels, existing outdoor ambient levels (i.e., relative intrusiveness of the source), general societal attitudes towards the noise source, prior history of the source, and tonal characteristics of the source. When it is possible to evaluate some or all of these factors, the measured or computed noise exposure values may be adjusted by means of the correction factors listed in Table 1 in order to more accurately assess local sentiments towards acceptable noise exposure.

In developing these acceptability recommendations, efforts were made to maintain consistency with the goals defined in the Federal EPA "Levels Document" and the State Sound Transmission Control Standards for multifamily housing. In both of these documents, an interior noise exposure of 45 dB CNEL (or Ldn) is recommended to permit normal residential activity. If one considers the typical range of noise reduction provided by residential dwellings (12 to 18 dB with windows partially open), the 60 dB outdoor value identified as "clearly acceptable" for residential land use would provide the recommended interior environment.

Figure 3 has been included in order to better explain the qualitative nature of community noise environments expressed in terms of Ldn. It is apparent that noise environments cover a broad range and that, in general, if may be observed that the quality of the environment improves as one moves further away from major transportation noise sources.

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APPENDIX B

Geothermal Element Guidelines

INTRODUCTION

The Public Resources Code offers counties (but not cities) the opportunity to exert local control over some aspects of geothermal energy exploration, recovery, and power production. Counties which have adopted geothermal elements may be delegated lead agency responsibilities (defined in the California Environmental Quality Act) for exploratory geothermal well projects and primary permitting powers for large geothermal plants (Public Resources Code §3715.5 and 25540.5). Absent such delegation, these duties are otherwise administered by the Department of Conservation (Division of Oil, Gas, and Geothermal Resources) and the State Energy Resources Conservation and Development Commission (California Energy Commission), respectively.

To put this into perspective, under usual circumstances the Division of Oil, Gas, and Geothermal Resources (DOG) regulates geothermal well drilling (Public Resources Code §3700, et seq. and Title 14, Chapter 4, Subchapter 4, California Code of Regulations). The California Energy Commission (CEC) regulates the siting of geothermal power plants over 50 megawatts to the exclusion of local land use control. Counties may regulate exploratory wells and development-field wells through zoning and other land use controls, provided that their regulations do not conflict with those of the state (59 Ops.Cal.Atty.Gen. 461 (1976)).

The administrative regulations adopted by the CEC for delegating authority to counties require that the Office of Planning and Research (OPR) review proposed geothermal elements for adequacy (Title 20, California Code of Regulations, §1862). OPR is responsible for developing geothermal element guidelines as a basis for this review. The following geothermal element guidelines are in addition to the General Plan Guidelines and are meant to be used in conjunction with those guidelines for the purpose of preparing a specialized geothermal element.

GUIDELINES FOR GEOTHERMAL ELEMENTS

Relationship to the General Plan

A county geothermal element is an optional element under §65303 of the Government Code. Once adopted, it becomes an integral part of the county general plan; its objectives, policies, plan proposals, and implementation measures must be consistent with the entire general plan (§65300.5). A geothermal element addresses land use, circulation, open-space, safety, housing, noise, and conservation issues. Consequently, its provisions affect each of the seven mandatory general plan elements. It may be necessary for the county to amend its mandatory elements (and any affected optional ones) concurrent with adoption of the geothermal element in order to maintain the internal consistency of its general plan.

Care must be taken to ensure that subsequent amendments to the geothermal element do not conflict with the general plan as a whole or with any other individual element. In cases where a proposed amendment to the geothermal element would conflict with the general plan, the county must either deny the proposed amendment or make related changes to the general plan.

Methodology

The process of adopting a geothermal element is the same as that for any other element of the general plan and the county must follow the procedures established by §65350 through §65400 of the Government Code. Public hearings must be held and the county must provide opportunities for involvement by community groups, residents, public agencies, and utilities. The board of supervisors may appoint a planning advisory committee or other similar body in order to assist in preparation of the element if it so desires.

Not all counties have reached the same stage in developing their geothermal energy resources. Consequently, variations will inevitably occur in the content of geothermal elements. In any case, preparation of the local geothermal energy element should follow the basic methodology established in Chapter 2 of the General Plan Guidelines, with a few additional considerations. When formulating objectives, for example, the county

must recognize the alternative energy goals of the state as expressed in §25008 of the Public Resources Code. During data gathering, it should contact the California Energy Commission, Division of Mines and Geology, and Division of Oil, Gas and Geothermal Resources, for information on geothermal energy resources in the area. The element should enable the county to assume permit responsibilities, including adoption of any necessary ordinances. Furthermore, the element must discuss "environmental damages and identification of sensitive environmental areas, including unique wildlife habitat, scenic, residential, and recreational areas" (Public Resources Code §25133).

A county with existing geothermal exploration and development activities should be able to discuss issues in depth, presenting a detailed program for processing proposals. Counties without such background will be expected to proceed in a more anticipatory and prospective manner. In either case, the geothermal element must include policies which are consistent with the adopted policies of the State Energy Resources Conservation and Development Commission "with respect to the development of geothermal resources for the generation of electrical energy" (Title 20, California Code of Regulations, §1860(b)).

In addition, the element must provide for the following:

- Certification of geothermal areas as potential multiple facility sites, if so applied for.
- Processing of and decision upon geothermal power plant applications within twelve months of filing of applications.
- Periodic review and updating as may be required by law and the California Energy Commission.
- Opportunity for input and review of proposed projects by the public and interested public agencies.
- Distribution of all applications to the CEC and responsible federal, state, and local agencies and provisions for the receipt of and response to the comments and recommendations of each agency.
- Public hearings and notice as required for general plan amendments. Hearings must include provisions for adjudication of disputed issues of fact through testimony taken under oath and refutation by cross-examination.
- Formal intervention by any person with a legally recognizable interest in the outcome of the proceedings.
- Distribution of a written decision on each power plant application. The decision shall contain each of the findings and conclusions required by §1752 through §1753 of Title 20 of the California Code of Regulations and shall be based upon the formal record of the proceedings.
- Appeal procedures, including appeals to the Energy Commission on substantive issues. (Public Resources Code §25540.5 and Title 20, California Code of Regulations, §1863)

In addition, the element should:

- Identify areas of potential geothermal resources.
- Identify other land uses including those which will be affected by geothermal resource exploration and recovery.
- Establish policies for minimizing conflicts between geothermal resource exploration and recovery activities and sensitive land uses (i.e., residential, scenic, habitats, schools, etc.)

Relationship to CEQA

The CEQA requirements for general plan elements are described in Chapter 4 of the General Plan Guidelines. In recognition of Public Resources Code §25133, the environmental analysis must place special emphasis on assessing the potential for environmental damage and identifying sensitive environmental areas including, but not limited to, unique wildlife habitat, scenic areas, residential development, and recreational areas.

Ideas for Data and Analysis

In the process of preparing a geothermal element, the county will have to collect a good deal of information on a specialized subject. This will include information on the geothermal energy regulatory scheme. Federal and state reports, as well as plans and environmental impact reports prepared for surrounding areas, should be the starting point in describing the environmental setting and the potential for geothermal development. If there is little such information available, the county may have to contract for a report on geothermal potential. The California Energy Commission's Siting and Environmental Division and the California Department of Conservation's Division of Oil, Gas, and Geothermal Resources can provide help in understanding the regulations surrounding geothermal energy exploration and recovery.

The analysis should include, but is not limited to the following information. If any of this information appears in other parts of the general plan, the geothermal element may simply refer to the appropriate sections.

A description of geothermal resources, including:

- The location of reservoirs (known and potential)

Definitions: Geothermal Element

Development Well: "...a well, other than an exploratory well, drilled for the purpose of producing either high-temperature or low-temperature geothermal fluids in commercial quantities" (Title 14, California State Code of Regulations, §1920.1(c)).

Equivalent Certification Program: "...a program, as further defined in §25540.5, administered by a county and approved by the [California Energy] commission, which may substitute for the site and related facility certification procedures established pursuant to this division." (Public Resources Code §25115)

Exploratory Geothermal Well: "...a well, other than a development well, drilled to discover or evaluate the presence of either low- or high-temperature geothermal fluids, including steam, where the surface location of the well is at least .8km or one-half mile from the surface location of an existing well capable of producing geothermal fluids in commercial quantities." (Title 14, California Code of Regulations, §1920.1(b))

Geothermal Element: "'Geothermal element' means an element of a county general plan consisting of a statement of geothermal development policies, including a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals, including a discussion of environmental damages and identification of sensitive environmental areas, including unique wildlife habitat, scenic, residential, and recreational areas, adopted pursuant to §65303 of the Government Code." (Public Resources Code §25133)

Geothermal Exploratory Project: "...a project...composed of not more than six wells and associated drilling and testing equipment, whose chief and original purpose is to evaluate the presence and characteristics of geothermal resources prior to commencement of a geothermal field project as defined in §65928.5 of the Government Code. Wells included within a geothermal exploratory project must be located at least one-half mile from geothermal development wells which are capable of producing geothermal resources in commercial quantities." (Public Resources Code §21065.5)

Geothermal Field Development Project: "...a development project...composed of geothermal wells, resource transportation lines, production equipment, roads, and other facilities which are necessary to supply geothermal energy to any particular heat utilization equipment for its productive life, all within an area delineated by the applicant." (Government Code §65928.5)

Geothermal Resources: "...the natural heat of the earth, the energy in whatever form below the surface of the earth present in, resulting from, created by, or from which may be extracted natural heat, and all minerals in solution or other products in whatever form obtained from naturally heated fluids, brines, associated gases and steam, excluding oil, hydrocarbon gas or other hydrocarbon substances." (Title 14, California Code of Regulations, §1920(e))

Thermal Power Plant: "Any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. Exploratory, development, and production wells, resource transmission lines, and other related facilities used in connection with a geothermal field development project are not appurtenant facilities for the purposes of this division." (Public Resources Code §25120)

- The location of existing and proposed wells
- An estimate of the ultimate magnitude of geothermal resources
- A brief history of local geothermal development
- The types of geothermal resources (i.e., steam, hot water, etc.), temperature, potential use (i.e., electric, non-electric), and deleterious materials that limit use
- A description of each phase in developing the geothermal resource:
  - The exploratory phase
  - The development field phase
  - The power plant phase, if the geothermal energy will be used to generate electricity

A description of areas sensitive to geothermal energy activities, including:

- Unique wildlife and/or plant habitats, migration routes, wintering grounds
- Scenic areas
- Recreational areas
- Residential areas
- Hospital, school, rest home, and other uses that are

sensitive to traffic and noise impacts.
- Areas subject to subsidence, slope instability, and earthquakes
- Archaeological and other cultural sites

A description of the potential environmental, economic, and social effects of each phase of the geothermal development process, including:
- Potential conflicts with other land uses (e.g., agriculture, forestry, mineral extraction, fish and wildlife habitats, recreation, and residential)
- Water use
- Water quality, both surface and ground water
- Noise and nuisance problems
- Demand for emergency services
- Disposal of hazardous and non-hazardous wastes
- Housing and employment
- Air quality
- Traffic
- Land subsidence
- Slope stability
- Seismic stability
- Soil erosion
- Community attitudes
- Costs and revenues to local governments

A description of the impacts of geothermal development on incorporated, state and federal lands within the county.

Ideas for Policy, Plan Proposals and Standards (Development Policies)

The geothermal element's level of specificity will largely depend on the available data and the state of geothermal development in the county. Policies, plan proposals and standards must be consistent with those found elsewhere in the general plan. At minimum, the geothermal element should include the following:
- Policies, plan proposals, and standards for dealing with constraints and minimizing conflicts between geothermal development and other land uses, such as agriculture, forestry, mineral extraction, fish and wildlife habitat, recreation, and residential
- Policies and standards for minimizing environmental damage from geothermal development (for example, environmental performance standards for each of the three phases of development)
- Policies and standards for minimizing aesthetic impacts resulting from facility and transmission line development
- Policies, plan proposals, and standards for the disposal and recovery of resources from hazardous and non-hazardous geothermal wastes
- Policies, plan proposals, and standards for evaluating the feasibility of proposed geothermal power plant sites
- Policies, plan proposals, and standards for locating power line transmission corridors
- Policies and standards for monitoring the environmental effects of geothermal development and mitigating adverse effects as necessary

Ideas for Implementation Measures

Geothermal element implementation measures should be specified, such as:
- Adoption of an ordinance which establishes a permit system for geothermal projects
- Appointment of a planning body for the purpose of administering the geothermal permit program (for counties that process numerous permits annually)
- Adoption of geothermal overlay zoning for plant sites and buffer zoning for surrounding lands
- Adoption of performance standards governing the environmental effects of geothermal development (e.g., air quality, water quality, waste disposal, noise, aesthetic, soil erosion, slope stability, and subsidence)
- Establishment of a program to monitor the effects of geothermal development (e.g., subsidence, increase in seismic activity, air quality changes, and erosion) and the mitigation measures adopted to lessen the significant effects identified in the EIR
- Amendment of the county's capital improvement program to include improvements to roads and facilities supporting geothermal development

APPENDIX C

Floodplain Management

INTRODUCTION

Floodplain management is a program of corrective and preventative measures which reduce and avoid future flood damage. Floodplain management, whether it employs structural approaches such as levees and dams, non-structural approaches such as setbacks from rivers and streams, or a combination of both, is intended to minimize the property damage and personal injury that result from flooding. The general plan law calls for the consideration of flood hazards, flooding, and floodplains in the land use, open-space, conservation, and safety elements.

Floodplain management may be approached as a stand alone program or as one component of the broader notion of watershed planning, which also includes objectives such as improved water quality, erosion control, flood management and habitat conservation and enhancement. Where possible, a community should take a broader watershed approach to floodplain management which would result in a coordinated regional approach to land use planning and flood loss reductions. When incorporated into the general plan, either as an optional element or as a section in the land use, open-space, conservation, or safety element, floodplain management principles will be reflected as long-term development policies.

Land use decisions directly influence the function of floodplains and may either reduce or increase potential flood hazards. The functions of floodplains include, but are not limited to, water supply, improved water quality, flood and erosion control, and fish and wildlife habitat. Development within floodplains may not only expose people and property to floods, but increase the potential for flooding elsewhere. Land use regulations such as zoning and subdivision ordinances are the primary means of implementing general plan policies established to minimize flood hazards. In addition to including floodplain management policies in the general plan, making related changes to zoning and subdivision ordinances is crucial to the success of a floodplain management program.

The following floodplain management element guidelines will discuss floodplain management at both the individual community level and the regional level. They are equally useful in situations where a city or county has unilaterally included floodplain management in its general plan, or where an individual jurisdiction's floodplain management element is part of a larger regional strategy to be implemented by more than one agency.

GUIDELINES FOR FLOODPLAIN MANAGEMENT PROGRAMS

Relationship to the General Plan

Floodplain management may be addressed in an optional element pursuant to §65303 of the Government Code. Once adopted, the floodplain management element becomes an integral part of and carries the same weight as the other elements of the general plan. Its objectives, policies, plan proposals, and implementation measures must be consistent with the entire general plan (§65303.5). The objectives and policies which are adopted as part of the floodplain management element must not conflict with the general plan as a whole, nor with any individual element. A floodplain management element should provide direction and specific policies correlated with the land use, housing, conservation, safety, and open-space elements. For example, policies limiting development within the floodplain to compatible agricultural uses must also be reflected in the land use, open-space, and conservation elements. Policies regarding levee and channel maintenance might be reflected in the safety element. Many of the provisions under floodplain management will affect other elements of the general plan, and they should be cross-referenced as necessary.

Where a regional approach is being taken, the policies of a city's or county's floodplain element should also correlate to the regional floodplain management plan. That plan should be specific enough to recognize the differing characteristics of the involved cities and counties and identify the respective roles of each. The regional plan may stipulate that participating cities and counties self-certify the consistency of their floodplain elements with the regional plan.

City of Roseville Floodplain Management

The City of Roseville has incorporated floodplain management goals, policies, and implementation measures into its general plan safety element based upon a regional approach to flood issues involving coordinated efforts with the community and other agencies. The City regulates floodplain areas through land use and zoning designations as well as with restrictions on development within specified areas of the floodplain. As part of its implementation measures, the City has established mitigation fees for the purpose of financing flood prevention and maintenance programs. The element's policies focus on minimizing potential loss of life and property damage through the pursuit of solutions which are cost effective and minimize environmental impacts.

Relationship to CEQA

The adoption or amendment of a floodplain management element is subject to the requirements of CEQA (described in Chapter 4). The element may have direct physical consequences on residential development, wildlife habitat, anadromous fish migration, agricultural resources, and other environmental resources common to rivers and their floodplains.

Flood Insurance

The most common means of planning to avoid or at least mitigate flood damage is participation in the federal flood insurance program. The Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program (NFIP) which makes flood insurance available to those communities which have enacted local ordinances restricting development within the 100-year floodplain. The local floodplain ordinances must meet or exceed FEMA's regulations. As part of its program, FEMA prepares a Flood Insurance Rate Map (FIRM) delineating the theoretical boundaries of the 100-year floodplain (the area within which the statistical frequency of flooding is believed to be 1 in 100 in any given year). These maps form the basis for regulating floodplain development and the rating of flood insurance policies.

The responsibilities of cities and counties participating in the NFIP include requiring that all new construction have its lowest floor elevated to or above the "base flood elevation" (this is calculated in conjunction with the 100-year floodplain delineation) and keeping records of development occurring within the designated floodplain. Under federal law, flood insurance must be purchased when obtaining a federally-backed loan for a home within the FIRM 100-year floodplain. The city or county must submit a biennial report to FEMA describing any changes in the community's flood hazard area, development activities which have taken place within the floodplain, and the number of floodplain residents and structures. As of April 1998, all but 20 of the cities and 1 of the counties in California participate in the NFIP.

Participating in the NFIP is no guarantee that a community will escape flood damage, or that floods will not occur outside the boundaries of mapped floodplains. The program has a number of recognized shortcomings: FEMA maps tend to underestimate the extent of the floodplain (for example, FEMA does not take into account the effects of future development when estimating flood potential) and are not updated frequently enough to reflect changes in the watershed or floodplain. FIRM maps do not provide for consideration of "buildout" for either upstream or downstream areas which may affect local flood levels. If these maps are to be used as a planning tool, they should be updated using locally collected data to identify existing and future flood levels. The Department of Water Resources (DWR) is currently working to update many of these maps, in cooperation with FEMA.

Residents and decision-makers are not always aware of the actual level of flood risk. The 100-year floodplain is a theoretical construct – in many cases there is simply insufficient historical flood data to accurately judge flood frequency. In addition, the 100-year floodplain designation is commonly misunderstood by the public – it is simply a statistical probability, meaning that in reality severe flooding may occur even more than once in any year, and any number of years over a 100 year span. The NFIP and related floodplain mapping should be viewed as the foundation on which to build floodplain management policies. The general plan may augment this program by providing long-range guidance to avoid and reduce flood hazards.

Floodplain Management on a Regional Basis

Rivers, creeks, and other potential sources of flooding often cross jurisdictional boundaries and a regional, watershed-based approach may be the most effective means of floodplain management. The broader scope offers the advantage of involving local governments, other public agencies, interest groups, landowners, and

the general public throughout the watershed in a comprehensive, multi-jurisdictional program for reducing flood risk and potential damages and restoring and enhancing floodplain functions. The larger area may offer a wider range of potential policy and regulatory options than would be available in a single jurisdiction. Nonetheless, regional floodplain management is also more politically and logistically difficult than management undertaken within a single jurisdiction.

No two situations are alike, and the dynamics of regional floodplain management are very situation-specific. For that reason, we will limit our discussion of regional approaches to generalities. For additional advice, see the reference sources listed later in the appendix.

Successfully developing a regional floodplain management plan depends on the existence of several basic prerequisites. There must be:

- general recognition that there is a regional flooding problem that requires a solution;
- some impetus for the involvement of critical agencies and interest groups in the search for a solution;
- a willingness among the involved agencies and interest groups to work toward a consensus solution;
- at least one person, group, or agency that will sponsor or champion the process;
- a range of feasible and practical solutions available;
- a reasonable possibility that funding exists to pay for the necessary planning, as well as follow-up funding to implement the accepted plan; and
- specific criteria to measure the effectiveness of plan implementation.

Few of the regional floodplain management efforts currently being implemented around the state, including watershed management programs, are directly linked to city and county general plans. In fact, city and county land use planning agencies are often conspicuously low on the list of participants. When possible, city and county planners should take an active, lead part in any regional floodplain management planning process. The local general plans, as well as zoning and subdivision ordinances, can play an important part in a comprehensive, multi-jurisdictional program for flood management. Cities and counties should amend their general plans and revise their zoning and subdivision ordinances when agreed to as part of a regional effort.

Some tips for Tackling a Regional Floodplain Management Plan (adapted from U.S. EPA's "Top 10 Watershed Lessons Learned")

- Be sure that a watershed based or risk based planning process is needed and has broad community support.
- Invite all those with a stake in the outcome (landowners, residents, cities, counties, etc.) to participate.
- Establish a steering committee of community opinion leaders.
- Inform participants of the issues, problems, and a range of possible solutions.
- Identify sources of funding early in the process to help focus the range of potential actions.
- Respect the opinions of residents and other participants.
- Encourage a consensus approach, maintaining good communication among participants.
- Establish clear, measurable goals and feasible objectives.
- Assign responsibility, and funding, for specific aspects of the plan to each agency.
- Where possible, integrate floodplain management policies and regulations with local general plans, zoning ordinances, and subdivision ordinances.

METHODOLOGY

The process of adopting a floodplain management element is essentially the same as any other element of the general plan and must follow the procedures set forth by §65350 and §65400 of the Government Code. Under state law, the planning agency must provide opportunities for involvement by residents, public agencies, public utility companies, and other community groups through public hearings and any other means found to be necessary or desirable. The planning agency should include in its process affected cities and counties, FEMA, the U.S. Army Corps of Engineers, the California Department of Water Resources (DWR), levee districts, resource conservation districts, and interest groups including environmentalists, farmers, builders, as well as any non-governmental organization (i.e. land trust, local or other conservancy, etc.) which might have an interest in floodplains.

Establishing a steering committee may be useful. The committee can help identify floodplain issues and community objectives, develop policies, and draft the element. Members of the committee should be selected from among representatives of interested groups, agencies, organizations, and residents. Alternatively, a separate technical advisory group may also be established

Useful Definitions:

Area of Shallow Flooding: A designated AO or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood: The flood having a one percent chance of being equaled or exceeded in magnitude in any given year. (Also known as the 100-Year Flood). This is the flooding event that is used by and the Federal Emergency Management Agency (FEMA) to calculate flood risk for the National Flood Insurance Program (NFIP).

Base Flood Elevation: The height (above sea-level) that flood waters will reach at a given location in the event of the base (100-year) flooding event.

Conveyance: A measure of the water carrying capacity of a stream reach.

Encroachment: The advance or infringement of uses, plan growth, fill excavation, buildings, permanent structures, or development into a floodplain which may impede or alter the flow capacity of a floodplain.

Flood Boundary and Floodway Map: A floodplain management map issued by FEMA that shows, based on detailed and approximate analyses, the boundaries of the 100-year and 500-year floodplains and the 100-year floodway.

Floodway Fringe: That portion of the 100-year floodplain adjoining the floodway in which limited encroachment is permissible.

Flood Hazard Boundary Map (FHBM): The initial insurance map issued by FEMA that identifies approximate areas of 100-year flood hazard in a community.

Flood Insurance Rate Map (FIRM): The official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood Insurance Study (FIS): The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

Floodproofing: Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Regulatory Floodway: The channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot.

Floodplain Management: The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plan, flood control works, floodplain management regulations, and open-space plans.

Floodplain: Any area susceptible to inundation by floodwater from any source.

NFIP: The National Flood Insurance Program that is managed and implemented through the Federal Emergency Management Agency in cooperation with local governments and property owners.

100-Year Flood: (also called the Base Flood) is the flood having a one percent chance of being equaled or exceeded in magnitude in any given year. Contrary to popular belief, it is not a flood occurring once every 100 years.

100-Year Floodplain: The area adjoining a river, stream, or watercourse covered by water in the event of a 100-year flood. **100-Year Floodplain Schematic**.

Reach: A continuous segment of a watercourse.

Sheet Flood Hazard: A type of flood hazard with flooding depths of 1 to 3 feet that occurs in areas of sloping land. The sheet flow hazard is represented by the zone designation AO on the Flood Insurance Rate Map (FIRM).

Special Flood Hazard Area: The darkly shaded area on the Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM) which identifies an area that has a one percent chance of being flooded in any given year (100-year floodplain). The FIRM identifies these shaded areas as Zones A, AO, AH, A1-A30, AE, A99, AR, V, V1-30, and VE.

Watershed: A geographic area from which water and transported materials are drained by a river and its tributaries to a common outlet.

Watershed Management: A comprehensive approach to addressing issues which affect the

function of a river system, including measures taken to improve water quality, erosion control, flood hazards, and habitat conservation.

Zone A (Unnumbered): Special Flood Hazard Areas subject to inundation from the 100-Year flood. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown. Mandatory flood insurance purchase requirements apply.

Zone AE and A1-30: Special Flood Hazard Areas subject to inundation by the 100-Year flood determined in a Flood Insurance Study by detailed methods. Base flood elevations are shown within these zones. Mandatory flood insurance purchase requirements apply. (Zone AE is used on new and revised maps in place of Zones A1-30.)

Zone AH: Special Flood Hazard Areas subject to inundation by 100-Year shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base flood elevations derived from detailed hydraulic analyses are shown in this zone. Mandatory flood insurance purchase requirements apply.

Zone AO: Special Flood Hazard Areas subject to inundation by 100-Year shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.

Zone AR: Areas in the process of restoring flood protection where a flood protection system has been decertified.

Zone B, C, and X: Areas that have been identified in the community flood insurance study as areas of moderate or minimal hazard from the principal source flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C.)

Zone D: Unstudied areas where flood hazards are undetermined but flooding is possible. No mandatory flood insurance purchase requirements apply, but coverage is available in participating communities.

from among agency representatives. See Chapter 2 for a discussion of advisory committees.

The general plan may be adopted in any format deemed necessary or appropriate. A well-written general plan will serve as a constant reference for decisions regarding the physical development of the community including its floodplains. Floodplain management is interrelated with most, if not all, of the other required elements. The Office of Planning and Research recommends taking particular care to correlate floodplain management objectives and policies with those of the land use, open-space, conservation, and safety elements.

RELEVANT ISSUES

When a floodplain management element is being prepared, the issues covered should be limited to those which are relevant to the community, the floodplain, and the watershed. Clearly, the subjects covered by the floodplain management element will depend upon the community's location in relation to rivers and streams, past or future potential for flood events, and the potential to be affected by upstream or to impact downstream land use decisions and flood potential. Following are a variety of issues, not all of which will be relevant in every jurisdiction. These are simply some common ideas; they are not intended to be an all-inclusive list.

- The FEMA NFIP program and community rating system
- Land use designation and flood hazard overlay designations
- Structural approaches to flood control
- Non-structural approaches to floodplain management
- Conformity with federal, state, and local regulations
- Regulatory relationships, including permitting
- Multi-jurisdictional coordination and watershed planning
- Downstream impacts as consequences of land use decisions
- Downstream land use planning considerations (flood hazards and infrastructure) as consequences of upstream actions
- Alternative non-structural allowable floodplain land uses
- Balancing floodplain management objectives with regional share housing needs, existing land uses, conservation of agricultural land, and habitat restoration

- Funding of management activities

Ideas For Data and Analysis

In the process of preparing a floodplain management element, the city or county will have to collect a substantial amount of information concerning its floodplains. There are a variety of sources for this information. FEMA maps are available for most communities. The U.S. Army Corps of Engineers will do floodplain delineation on a cost-sharing basis and has information on floodplains and project levees. DWR also has floodplain information and a floodplain management program, as does the State Reclamation Board in the Central Valley. The Office of Emergency Services and DWR have information on past flooding. Local levee districts and Resource Conservation Districts may also have information to share.

The following are ideas for data and analysis to support the development of objectives, policies, and implementation measures for this element.

- Comprehensively define the floodplain (FEMA v. Army Corps of Engineers v. State Reclamation Board v. local agency definition)
- Extent and depth of historic flooding (maps)
- Historical flooding data
  - frequency
  - intensity
  - duration
- Inventory land and land uses with the floodplain(s)
  - open-space
  - habitat
  - agricultural
  - flood control
  - developed (i.e., residential, commercial, industrial
- Identify existing and future problems and opportunities
  - Development within hazard areas
  - Undeveloped land suitable for bypass construction
  - Loss of productive farmland and opportunities for conjunctive farming and floodplain management activities
  - Community apathy or support
  - Funding shortfalls
- Boundaries of floodplains (FEMA v. U.S. Army Corps of Engineers v. DWR v. local agency)
- Inventory flood control structures and areas managed for flood control, and their controlling agencies
  - levees
  - flood walls
  - bypasses
  - dams/reservoirs
- Inventory pertinent regulations of federal, state, and local agencies
  - regulatory authority
  - existing land use and zoning restrictions
- Inventory ongoing floodplain or watershed management and planning activities
  - local/regional, including those of non-governmental organizations
  - state
  - federal
- Inventory past, and planned management activities
  - Local agencies
  - Reclamation Districts
  - State and federal agencies

Technical Assistance

At this writing, the California Department of Water Resources Floodplain Management Branch and the Interagency Floodplain Management Coordination Group (with representatives of local, state, and federal agencies) are preparing an informational program designed to provide technical assistance to local agencies for the management of floodplains and their resources. The program will include a floodplain management training manual describing the multi-objective floodplain management planning process, implementation strategies and guidelines, economic (benefit/cost) analysis including non-market valuation techniques, and a database of public and private technical and funding assistance programs. An educational package will include computer modeling, video, presentation formats, written informational materials, and statewide workshops. In addition, economic support staff may be available within DWR to provide technical assistance to local agencies. For more information, contact DWR at the address listed in the technical assistance section.

Also, DWR has a proactive floodplain management program. Activities under this program include floodplain mapping, community assistance visits to audit compliance with federal floodplain management regulations, assistance to communities on preparation of floodplain management and repetitive loss plans, public officials workshops, publication of a floodplain management newsletter, and review of community floodplain management ordinances.

- Identify sources of funding for planning efforts, as well as for potential implementation activities
- Benefit/cost analysis of alternative floodplain management strategies

Ideas for Development Policies

A floodplain management element should conform to the pertinent policies, objectives, plans, and proposals central to the land use, conservation, open-space, and safety elements. Policies should recognize existing floodplain management programs as well as existing regulations. As always, policies must conform to constitutional prohibitions on "regulatory takings." Further, the policies selected should be physically and economically feasible to implement.

Following are ideas for the general types of policies which may be incorporated into the floodplain management element.

- Specify allowable uses within the floodway fringe
- Specify limits on development and encroachment within mapped floodplains (land use density, intensity, elevations, location), including areas of shallow flooding
- Establish policies, plan proposals, and standards for dealing with constraints and minimizing land use and floodplain conflict
- Retain and preserve floodplains for open-space and recreation
- Encourage compatible agricultural uses and practices with habitat banking where compatible with floodplains
- Mitigate for impacts such as loss of agricultural land or changes in flood characteristics
- Cooperate with the programs of other agencies and non-governmental organizations, where applicable
- Establish consultation procedures with other affected agencies and jurisdictions
- Identify criteria for public agency acquisition of development rights in flood prone areas
- Encourage cooperation with non-governmental organizations to acquire development rights

Ideas for Implementation

Local agencies should select a combination of implementation measures or strategies that best address the unique characteristics of the specific community and establish an effective long-term approach to floodplain management. The following examples illustrate the kinds of actions local governments may take to implement the floodplain management element.

- Adopt flood hazard zoning
- Enact floodplain management standards as part of the subdivision ordinance
- Adopt transfer of development rights programs
- Adopt other land use development regulations
- Reconnect the river and its floodplain through public land acquisition and structural modification of existing flood control devices
- Develop a program for preventative maintenance of active floodplains, control structures, river banks, and channels to ensure continued flood capacity and stability
- Identify and utilize floodplain management grants and assistance to develop and implement floodplain management plans and programs
- Develop public outreach programs and information
- Incorporate floodplain mapping, from several sources if available, into the city or county Geographic Information System (GIS)
- Regularly review floodplain maps, and update when new information becomes available ˘Public development and redevelopment policies
- Prepare and update emergency preparedness plans
- Direct local emergency services offices to develop and implement flood warning systems
- Establish resources and provide funding for public acquisition of private lands and structures within the floodplain and subject to flood hazards.
- Institute a planning mechanism and institutional framework to coordinate flood control and environmental management activities with local, state, federal agencies, and other stakeholders.
- Initiate actions to avoid inadequate or unclear responsibilities between agencies
- Enter cooperative agreements (JPA, MOU) with other entities specifying relative roles ˘Facilitate the coordination of responsibilities and activities among agencies and the public for floodplain management
- Develop aquatic and terrestrial habitat restoration plans consistent with floodplain and river channel use guidelines
- Develop information and coordination plans with other agencies to educate the public and all planning agencies about floodplain management objectives

Technical and Funding Assistance

The following entities may provide technical and funding assistance in preparing and adopting a floodplain management element or incorporating its objectives, plans, policies, and implementation measures into other elements of the general plan. Contact these agencies directly for information about their funding programs.

Floodplain Management Association
4145 Maybell Way
Palo Alto, CA 94306
http://floodplain.org

United States Army Corps of Engineers
Floodplain Management Services
South Pacific Division
630 Sansome Street, Room 720
San Francisco, CA 94111
(415) 556-0914
http://www/usace.army.mil/inet/functions/cw/cwfpms
Funding Mechanisms: Congressionally Authorized Civil Works Projects, Floodplain Management Services, Small Flood Control Projects, Snagging and Clearing for Flood Control, Streambank and Shoreline Protection for Public Facilities

Federal Emergency Management Agency (FEMA)
Building 105, Presidio of San Francisco
San Francisco, CA 94129
(415) 923-7177
http://www.fema.gov/home
Funding mechanisms: Hazard Mitigation Grant Program, Public Assistance Section 406, National Flood Insurance Program, Performance Partnership Program, Community Assistance Program-State Support Services Element, Individual and Family Grant Program, Disaster Housing Assistance Program

Governor's Office of Emergency Services
Planning and Technological Assistance Branch
P.O. Box 419047
Rancho Cordova, CA 95741-9047
(916) 464-3200
or
Disaster Assistance Programs Branch
Hazard Mitigation Section
P.O. Box 419023
Rancho Cordova, CA 95741-9023
http://www.oes.ca.gov
Funding Mechanisms: Hazard Mitigation Grant Program

California Department of Water Resources
Floodplain Management Branch
P.O. Box 942836
Sacramento, CA 94236-0001
(916) 653-9902
http://www.dwr.water.ca.gov

United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105
http://www.epa.gov
Funding under the Clean Water Act: 104(b)(3) State Wetland Protection Development Grant; 104(b)(3) NPDES demonstration projects

United States Department of Agriculture
Natural Resource Conservation Service
2121-C 2nd Street, Suite 102
Davis, California 95616
http://www.nrcs.usda.gov

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A Multi-Objective Planning Process for Mitigating Natural Hazards, Federal Emergency Management Agency, Denver, CO, 1994 (a step-by-step method for organizing a week-long session to develop local natural hazards mitigation plans)

Multi-Objective Flood Mitigation Plan, Vermillion River Basin, South Dakota, Federal Emergency Management Agency, Denver, CO, 1994

Watershed Protections: A Statewide Approach, U.S. Environmental Protection Agency, San Francisco, CA, 1995

Managing Floodplain Development In Approximate Zone A Areas, Federal Emergency Management Agency, Denver, CO, 1995

Cost Effectiveness Analysis For Environmental Planning: Nine Easy Steps, U.S. Army Corps of Engineers, Alexandria VA, 1994

Community Flood Mitigation Planning Guidebook, Wisconsin Department of Natural Resources, Madison WI, 1995

Investing In A Safer Future: Proceedings Of The Second Annual Congress On Natural Disaster Loss Reduction, Insurance Institute For Property Loss Reduction, Boston MA, 1995

Subdivision Design in Flood Hazard Areas, PAS Report 473, Marya Morris, American Planning Association, Chicago IL, 1997

APPENDIX D

General Plan Format and Style

GENERAL PLAN FORMAT

While state law specifies the basic content of the general plan, §65301(a) provides that the general plan may be adopted in any format the city or county chooses. A key consideration should be that the plan is clear, concise, and easy to use.

As discussed in the General Plan Guidelines, the various issues identified in the seven mandatory elements overlap to a great extent. For example, simply following the statute would mean that flooding would have to be discussed separately in the land use, open-space, conservation, and safety elements. A good general plan avoids this sort of repetitiveness. Combining related elements, such as land use and circulation or open-space, conservation, and safety, is one effective way to do this. Organizing the general plan by issue area, such as community development, environmental resources management, and hazards, rather than by the mandated elements, is another effective approach. OPR's booklet, *Element Consolidation* offers some suggestions.

The general plan should clearly distinguish its objectives, policies, and plan proposals from background information and discussions. Although data and analysis are important to the preparation of the plan and help put the objectives and policies in context, including them in main body of the general plan can obscure the primary purpose of the plan – to provide "a statement of development policies." A preferable approach is to include that information in technical appendices or to split the general plan into separate development policy and background documents. The general plans of the Cities of San Rafael and Woodland and the County of Santa Clara, for example, are models of clarity. Their policies are easy for users of the plan to find. Policies flow coherently from objectives. Implementation is clearly described.

Local agencies may choose to combine the general plan and its EIR into a single document (*CEQA Guidelines* §15166). However, OPR does not generally recommend this approach because it loads a great deal of information in the single document and may make revisions difficult. See Chapter 4 for a discussion of this subject.

General plan diagrams should be clear and concise. They should be of a convenient size for easy reference. Whenever possible, the diagrams should share a common base map. Designations and symbols should be consistent between diagrams.

The general plan should be available for anyone to study or review. Accordingly, the format should neither hinder nor make it prohibitively expensive to reproduce. Designing the format so that it is amenable to eventually being placed on-line is worth considering.

STYLE

A general plan is intended to be used by decision makers and the public, as well as professional planners, so it should be written with this audience in mind. To the extent possible, the text should be free of jargon, acronyms, and overly technical language. A concise glossary can help in this regard.

When drafting the plan, the staff or consultants, should encourage the advisory committee or planning commission or city council/board of supervisors to avoid writing in a bureaucratic style. Objectives and policies should be written in the active (as opposed to the passive) voice. Avoid policies that either provide little in the way of guidance for decision making (i.e., "pursue an organized system of open-spaces") or pass the buck (i.e., "encourage the preparation of a city-wide parking study"). Try to stick to objectives and policies that are both feasible and concrete (i.e., "acquire open-space along the north side of Alphabet Creek between Lincoln Park and Monroe Avenue for a Class I bike path" or "parking in the Central Business District shall comply with the provisions of the 1997 CBD parking study").

As statements of development policy, general plans should be functional and easily interpreted. Readers should be able to quickly reference objectives, policies, and programs without having to wade through technical data, explanations of methodology, or other miscellaneous information which should be placed in the appen-

dices. **Ideally, any user of the plan, whether a staff member, decision maker, member of the public, developer, or other person, should reach the same understanding when reviewing a given objective, policy, or plan proposal**.

Text boxes enclosing short discussions or explanations of particular points can provide information without detracting from the flow of the text. Illustrations, whether a photo of preferred commercial development types or renderings of multi-purpose trail profiles, for example, enliven the text.

APPENDIX E

Court Cases and Opinions of the California Attorney General

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GENERAL PLAN CASES AND OPINIONS OF THE ATTORNEY GENERAL

This section identifies major planning-related litigation and pertinent opinions of the state Attorney General. The following brief summaries highlight one or more pertinent principles, but are by no means comprehensive discussions of each case or opinion. Our intent is simply to bring these cases to your attention. Readers should refer to the full text of the cases and opinions for in-depth information. For advice regarding the applicability of a case to specific situations, particularly those cases involving "takings," consult your counsel.

CASES OF THE U.S. SUPREME COURT

Dolan v. City of Tigard (1994) 114 S.Ct. 2309

As conditions of approval for a building permit, the City of Tigard required that the owners of a plumbing supply store dedicate a strip along their street frontage for a bicycle lane and dedicate the drainage ditch along the side of their property for flood control purposes. Tigard cited its land use plan as the basis for these exactions. The owners sued, alleging that the dedication requirements amounted to regulatory takings for which just compensation was due.

The US Supreme Court reversed the lower court's decision and overturned Tigard's exactions. The Court held that in addition to the essential "nexus" described in the Court's *Nollan* decision, the extent of an exaction must have a "rough proportionality" to the demand or impact of the project. The Court found that the city's exactions exceeded the proportional impact which the enlarged store would contribute to bicycle traffic and flooding.

Comments: This case demonstrates the Supreme Court's concern over regulations which attempt to place an unfair burden on a single property owner. A general plan can provide the broad basis for ordinances which impose exactions to implement the plan, but may not be specific enough to be the sole basis for exactions.

Nollan v. California Coastal Commission (1987) 107 S.Ct. 3141

The Nollans wished to demolish and rebuild their single family residence in the coastal zone. The Coastal Commission approved a permit for the new residence, conditional upon the Nollans dedicating a strip of land along the property's beach frontage for public access. The purpose of the dedication was to carry out the goals of the Coastal Act in preserving the public's view of the ocean from Highway 1. The Nollans sued, alleging that the dedication was a regulatory "taking," unconstitutional under the Fifth Amendment of the U.S. Constitution which prohibits governmental taking of private property without just compensation.

The Supreme Court overturned the lower court's decision and held for the Nollans. Government's power to regulate land uses is well established in law. However, such regulations must advance a legitimate public purpose and be linked to the land use's impacts on that public purpose. In this case, the Commission may legitimately regulate development along the coast in a manner which protects public views of the ocean from Highway 1. However, the dedication of beach front land for public access is not necessary, nor is it related to this purpose.

Comments: This case introduced the word "nexus" to the lexicon of exactions. Nollan instructs that governments must document the link or nexus between the exactions being imposed, the legitimate public purpose being served, and the necessity of the exaction to remedy projects' impacts on that public purpose.

CASES OF THE CALIFORNIA SUPREME COURT

DeVita v. Napa County (1995) 9 Cal.4th 763

In 1990, Napa County voters approved an initiative amending the County's general plan to limit development in agricultural areas for a 30 year period and to restrict the ability of the Board of Supervisors to consider (with certain exceptions) general plan amendments which would change agricultural designations. Proposed general plan amendments in agricultural areas would be subject to a countywide election. DeVita challenged the initiative, arguing that the measure rendered the general plan internally inconsistent and that amending the general plan is the responsibility of the County Board of Supervisors and not properly undertaken by initiative. The trial court and the court of appeal held for the county.

The Supreme Court affirmed, holding that the reference to "legislative body" in §65356 and 65358 does not limit the authority to amend a general plan solely to a city council or county board of supervisors. The initiative power reserved to the voters by the California Constitution allows them to take any legislative action that is otherwise within the power of their elected legislative body to adopt, unless such power is specifically restricted to the legislative body. In this case, the Court concluded that the statute was not so specific as to exclude the electorate from acting as the legislative

body. As a valid amendment to the general plan, the measure did not create any internal inconsistency.

Lesher Communications v. City of Walnut Creek (1990) 52 Cal.3d 531

Walnut Creek voters approved an initiative which linked the level of allowable office development to the level of service on key roads within the city. Its effect was to limit future development throughout the city. Lesher Communications sued, alleging in part, that the initiative failed to amend that general plan and so was inconsistent with that plan.

The Supreme Court agreed. Although its nature was difficult to discern, the Court finally concluded that the voter initiative was a zoning change rather than a general plan amendment and, because of its inconsistency with the plan, was invalid when passed. Simply because a measure is passed by the voters rather than adopted by the city council does not absolve it from meeting the consistency requirement.

Yost v. Thomas (1984) 36 Cal.3d 561

The Park Plaza Corporation filed several applications, including a specific plan, to authorize construction of a 360-room hotel and conference center under the City of Santa Barbara's certified Local Coastal Program (LCP). After the council had approved the project, a local citizens' group attempted to file a referendum petition to reverse the council's action. The petition was rejected by city clerk Thomas. The City argued that its approval was ministerial under the Coastal Act and not subject to referendum. The citizens group sued and the trial court found for the City, holding that City's actions were administrative under the Act and that the powers of initiative and referendum apply only to legislative actions by a local governing body.

The Supreme Court reversed. The Court cited the established principle that a referendum applies only to legislative acts. Since adopting or amending a general plan and rezoning are legislative acts, the Court reasoned that specific plans are likewise legislative. The Court also concluded that in enacting the Coastal Act the Legislature had not intended to limit local authority to a point beyond the reach of referendum. While the Coastal Commission may disapprove an LCP which is inconsistent with state policy or too weak to effectively implement it, the Commission may not specify the precise content of the LCP. Furthermore, local governments may choose the means of implementing the Coastal Act and may be more restrictive of particular development than state policies require.

Arnel Development Company v. City of Costa Mesa (1980) 28 Cal.3d 511 (California Court of Appeal (1981) 126 Cal.App.3d 330)

Arnel Development Company (Arnel) proposed to develop a 50-acre parcel in Costa Mesa. The city approved a specific plan and rezoned the Arnel property to planned development residential low-density and planned development residential-medium density. A final development plan and a tentative subdivision map were also approved.

After the city's action, city voters approved an initiative measure rezoning the Arnel property and adjacent agricultural parcels to single-family residential. Thereafter, the city refused to process Arnel's applications for a final subdivision map and building permits. In response, Arnel sought to have the initiative invalidated, arguing that the rezoning of specific, relatively small parcels was an adjudicative, rather than a legislative act, and thus could not be enacted by initiative.

The Supreme Court ruled for the city that enactment or amendment of a zoning ordinance is a legislative act, regardless of the size or ownership of the land involved, subject to enactment by initiative. It noted that an initiative may be declared invalid because it is arbitrary or unreasonable; it bears no reasonable relationship to the regional welfare; or it deprives property owners of substantially all use of their land. Furthermore, zoning changes, even those adopted by initiative, must conform to the general plan.

The Supreme Court remanded the case to the California Court of Appeal to address the other arguments made by Arnel contesting the validity of the initiative. The California Court of Appeal ruled for Arnel, holding that the initiative ordinance was arbitrary and unreasonable and, therefore, invalid. In contrast to the zoning adopted by the city after 18 months of planning and 30 public hearings, the zoning initiative was not based on any significant change in circumstances, but enacted for the sole purpose of thwarting the Arnel project. Further, the zoning initiative was invalid because it failed to meet the regional welfare test set out in *Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582. By precluding development of multi-family residences in the area, the initiative ordinance did not effect a reasonable accommodation of the competing interest on a regional basis and was, therefore, an invalid exercise of the police power.

Youngblood v. Board of Supervisors of San Diego County (1978) 22 Cal.3d 644;

In 1974, the Santa Fe Company filed a tentative map for 131 lots based on the adopted San Dieguito Community Plan. The Planning Commission and the Board of Supervisors determined that the map was consistent with the plan and granted approval. Shortly thereafter, the Board of Supervisors adopted an amended San Dieguito Community Plan. The board denied a request by Youngblood and other neighboring property owners to rezone Santa Fe's property to the lower density called for in the amended plan. Santa Fe filed a final map in 1975 which the county approved.

Youngblood sued to force the board to rezone the property "within a reasonable time" to the reduced density specified in the amended general plan. Youngblood alleged that the board abused its discretion by refusing to rezone the property to conform to the amended plan and by approving final subdivision maps that did not conform to the amended plan. Youngblood claimed that the Subdivision Map Act requirement for consistency of final subdivision maps with general and specific plans should be interpreted to mean the general and specific plans in effect, at the time of review of the final map, even if different from the plans in effect at the time of the tentative map approval.

Youngblood argued alternatively that if consistency with the general plan is determined upon approval of the tentative map, a tentative map is not actually approved until all the conditions placed on the map are met. Thus, consistency with the plan would not be determined until the conditions are satisfied, not when the map was submitted. This would subject the tentative map to any changes in the general plan or specific plans occurring in the interim.

The California Supreme Court ruled for the county, holding that "approval" of a tentative map occurs when it is approved by the local body, not upon fulfillment of the imposed conditions. In addition, since the 1967 Plan did not specify a minimum lot size, only a density range of 0-to-0.75 dwelling units per acre, a subdivision map allowing 0.6 dwelling units per acre was consistent with that plan. The appropriate general plan for determining consistency, then, was the general plan in effect at the time of the tentative map's approval.

Associated Homebuilders v. City of Livermore (1976) 18 Cal.3d 582

Livermore voters enacted an initiative ordinance in April 1972 which restricted the issuance of building permits. No permits were to be issued unless it could be shown by the developer that his/her project would not lead to school overcrowding or double sessions in the local school district and would not exceed sewage treatment and water supply capacity as regulated by the Regional Water Quality Control Board.

Associated Homebuilders (Builders) sued, arguing that the ordinance was vague, and that its effect would be to unconstitutionally bar immigration. The trial court issued an injunction against the city on the basis that the ordinance was unconstitutionally vague and precluded by *Hurst v. City of Burlingame* (1929) 207 Cal.3d 134 (which held that state statutes requiring notice and hearing to precede enactment of zoning ordinances also applied to initiatives). The City appealed.

The Supreme Court held in favor of the City. The Court reversed its earlier *Hurst* decision, concluding that to require notice and hearing would preclude the use of initiatives in general law cities and unconstitutionally limit the electorate's constitutional right to the initiative process. Further, it held that the ordinance was not vague. By interpreting the ordinance to incorporate standards established by the Livermore Valley Joint School District and the Regional Water Quality Control Board, the Court found its terms to be sufficiently specific to allow their implementation. The failure to designate a person or agency to determine when the standards are met was likewise not unconstitutionally vague. The duty to enforce the ordinance lies with the City's building inspector.

Finally, the Court rejected the claim that the ordinance unconstitutionally barred immigration. The Court established a standard based not upon sustainability by a compelling state interest, but rather upon a reasonable relationship to "the welfare of the region affected by the ordinance." In other words, the City does not exceed its police powers when they are "reasonably related" not only to the welfare of the City's residents, but also those of the surrounding region

CASES OF THE CALIFORNIA COURT OF APPEAL

Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors (1998) Cal.App.4th 1332

In March of 1998, the 3rd District California Court of Appeal considered allegations that the El Dorado County Board of Supervisors failed to comply with the County's Draft General Plan and the California Environmental Quality Act in approving a residential subdivision encompassing 566 lots on 7,868 acres.

The appellate court found that the project was submitted at the time when the County was preparing a general plan update and was subject to the conditions of a General Plan Extension as approved by the Office of Planning and Research (OPR). As it was authorized to do, OPR required the County to make specific findings reasonably supported by evidence in the record, that any development approved be consistent with the County's draft general plan, and that there be little or no probability that the development would be detrimental to or interfere with the future adopted general plan. The draft general plan included a policy stating that designations for developments the size of the subject proposal only be assigned to lands contiguous to "Community Regions and Rural Centers." The project was not contiguous to any such lands. In reviewing this matter, the court relied on *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985 in which the court, quoting the State General Plan Guidelines, held that a project is consistent with the general plan "if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." The court concluded that the project was inconsistent with clear and essential policies of the land use element of the draft general plan, and the County's finding of consistency was not supported by substantial evidence.

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

In 1994, Mr. And Mrs. Hoffmaster, as class representatives for the homeless of the city, sued San Diego asserting that its general plan housing element did not identify adequate sites for homeless emergency shelters and transitional housing as required by §65583(c)(1) and that the element had not been revised in a timely manner.

The trial court found that the city failed to adopt a housing element meeting the statutory requirements of §65588(b)(3) and ordered the city to adopt an adequate element within 120 days. The city adopted a revised element in March of 1995 which prompted the filing of a subsequent amended complaint that the revised element was again not adequate. The trial court again found that the city had not identified adequate emergency shelters or transitional housing. Finding again for the plantiffs, the court ordered the city to revise its housing element and ordered it to approve all use permits for emergency shelters and transitional housing until compliance was achieved.

The Court of Appeal also found that the revised element failed to "substantially comply" with housing element law (65583(c)(1)) requiring agencies to identify adequate sites designed to facilitate the development of emergency shelters and transitional housing. The Court of Appeal directed the trial court to stay its order for 60 days that the City approve all use permit applications for emergency shelters and transitional housing until compliance is reached giving the city additional time to adopt an element consistent with statutory requirements.

Chandis Securities Co. v. City of Dana Point (1997) 52 Cal.App.4th 475

The council approved Chandis' general plan amendment and specific plan for a hotel and 370-unit residential development on the Headlands. Petitions were filed forcing a voter referendum on the project and, as a result of voters' denial the council's action was reversed.

The court held that although the city council acted reasonably to approve the project, the electorate is empowered to reverse that action, particularly since reversal did not conflict with the general plan and maintained the status quo. The court held that the restriction on denying a "development project" under Government Code 65589.5 does not apply to legislative projects.

City of Santa Cruz v. Superior Court of Santa Cruz County (Bombay Corp.) (1995) 40 Cal.App.4th 1146

Santa Cruz adopted a new general plan after numerous public hearings. The plan included an area identified as greenbelt which was to restricted to open-space uses. During deliberations on the plan, Bombay Corp. had unsuccessfully requested that the city exclude its property from the greenbelt. Bombay sued to overturn the city's general plan adoption, charging that city officials had failed to proceed as required by law because they had allegedly predetermined not to allow development of the city greenbelt, regardless of the evidence presented to them. The trial court ordered depositions from

city officials, seeking to define their motives in ignoring Bombay's request.

The Court of Appeal reversed, holding that judicial inquiry into the motives of officials is prohibited by the separation of powers doctrine, absent some evidence of illegal activity. The city's decision was upheld.

Alameda County Land Use Assoc. v. City of Hayward (1995) 38 Cal.App.4th 1716

Hayward, Pleasanton, and Alameda County entered into a Memorandum of Understanding (MOU) pledging to use their "best efforts" to adopt common open-space designations for the 13,100 acre Ridgelands Area which lay, in part, in each of their jurisdictions. The MOU prohibited any change in these general plan designations without the approval of all three entities. ACLUA sued, alleging that the MOU invalidly restrained the cities and counties from acting independently, even when an amendment would be in the public interest. The jurisdictions countered that these claims were not ripe for review and the trial court dismissed the case on those grounds.

The court of appeal reversed. The court found that the MOU impaired the jurisdictions' future exercise of their exclusive power to amend their respective general plans. This would have effectively provided outside jurisdictions veto power over future general plan amendments - a power that each jurisdiction may exert.

San Mateo County Coastal Landowners Association v. County of San Mateo (1995) 38 Cal.App.4th 523

In 1986, San Mateo County voters approved initiative Measure A amending the county's local coastal program (LCP). The initiative, with minor exceptions, did not amend the substance of the LCP, but rather identified a number of LCP land use policies and provided that those policies could only be amended by voter approval. These amendments were subsequently certified by the Coastal Commission. The Coastal Landowners Association sued, alleging that, among other things, Measure A dealt with a matter of statewide concern that could not be addressed by local initiative and that it conflicted with the Coastal Act by circumventing the statutory requirements for public hearings, participation, and involvement by the Coastal Commission otherwise applicable to LCP amendments. The trial court held for the county.

The court of appeal affirmed as follows. Under *Yost v. Thomas* (1984) 36 Cal.3d 561 and the Coastal Act, local governments have broad discretion to determine the content of the land use plan portion of their LCPs. Accordingly, Measure A was not preempted by the Coastal Act. In addition, *DeVita v. County of Napa* (1995) 9 Cal.4th 763 supported amendment of the county general plan, of which the land use plan was a part, by initiative. Based on *DeVita*, the court opined that none of the procedural requirements of the Coastal Act can limit proper exercise of the initiative power. The county's coastal protection initiative did not conflict with and was not preempted by the California Coastal Act.

Hernandez v. City of Encinitas (1994) 28 Cal.App.4th 1048

Low-income and homeless residents brought suit against the city claiming that, among other things, in quantifying its housing needs and goals for low-income residents the city had not used "regional fair share" data in identifying adequate housing opportunities for low income and homeless people.

The court reviewed the general plan based upon the well established standard for determining adequacy of a general plan, being that it must be in "substantial compliance" with the statute (law) and the review can not be based upon the "merits" of the plan.

The court upheld the city's land use and housing elements finding actual compliance with the law, describing many of the arguments as being based on the "merits" of the general plan and thus beyond the scope of the review.

Marblehead v. City of San Clemente (1991) 226 Cal.App.3d 1504

In 1988, San Clemente voters approved Measure E which established traffic levels of service intended to serve as standards by which future general plan amendments, specific plans, rezonings, and other land use decisions were to be judged. Measure E purported itself to be a general plan amendment, and directed the city to revise its zoning ordinance accordingly. Marblehead sued.

The Court of Appeal concluded, after examining Measure E, that the initiative was not a general plan amendment, but rather a resolution by voters that the general plan and zoning should be amended to reflect the Measure's principles. Although the electorate is empowered to enact legislation such as a general plan amendment or rezoning, the initiative power does not enable voters to direct the city council to amend the plan or effectuate a rezoning.

No Oil, Inc. v. City of Los Angeles (1988) 196 Cal.App.3d 223

Occidental Petroleum (Occidental) filed applications with the City of Los Angeles to establish three oil drilling districts and a drill site in Pacific Palisades. The proposed drilling zones were designated for open-space use on the city's Brentwood-Pacific Palisades district plan. The city planning commission considered the applications and project EIR and denied the rezonings. Occidental appealed to the city council, which reversed the commission's decision. When the ordinances were referred back to the planning commission, the commission denied them again and Occidental made another appeal to the council, which granted final approval.

No Oil, an association of area landowners, filed suit. The trial court held for No Oil and this appeal ensued. No Oil cross-appealed contending, in part, that the drilling ordinances were inconsistent with the city's district plan and with the open-space and conservation elements of its general plan. Their argument rested on two main points: that oil drilling is an exclusively industrial use and that the project site's open-space designation precludes industrial uses.

The Court of Appeal reversed and held that under the provisions of the city's plans and §65560, "open-space land" may include open-space used for "the managed production of resources" in areas containing major mineral deposits. Since oil recovery is managed production of a natural resource, the project could reasonably be found consistent with the policies of the city general and district plans. With regard to zoning, the city did not act in an arbitrary manner or reach a conclusion that could not reasonably be made given the evidence before it. The city's zoning scheme did not limit oil drilling exclusively to industrial zones. It was apparent that drilling and production could be approved in any zone upon approval of a supplemental use district.

Comments: Under this interpretation of §65560(b), open-space uses could be construed to include such resource recovery operations as oil production facilities. In light of this, it behooves local governments to specify the types of open-space land being designated in their open-space elements (e.g., is it open-space for the preservation of natural resources, for the managed production of resources, for outdoor recreation, or for public health and safety).

Las Virgenes Homeowners Federation, Inc. v. County of Los Angeles (1986) 177 Cal.App.3d 300

Los Angeles County approved a project proposing 1,192 dwelling units, one million square feet of light industrial space, and various public uses on 516 rural acres located south of the Ventura Freeway in the Santa Monica Mountains. The Las Virgenes Homeowners Federation (Homeowners) filed suit against the county and the developer alleging, among other things, that the Malibu/Santa Monica Mountains Area Plan (MSMMAP) was inconsistent with the county plan, and that the project was inconsistent with both plans. The trial court held for the county and the developer. Homeowners appealed.

The Court of Appeal affirmed the lower court decision and found the following. Los Angeles County's plan consists of general elements that set countywide policy and community plans which deal with local issues. The MSMMAP's purpose is "to identify specific land uses, determine actual boundaries between land use categories, and establish specific residential density ranges within the parameters established by the countywide goals and policies." Although a 35-acre portion of the project was not literally consistent with the densities shown on the county's planning maps, the Court held that the project was consistent when the maps were read with the text of the MSMMAP. Since the general plan map did not apply at a small scale, the MSMMAP was the pertinent land use policy document and there was no inconsistency between the countywide plan and the MSMMAP. As a result, the Court held that project density did not exceed the overall ceiling set by the MSMMAP and was consistent with both the MSMMAP and the county general plan.

Elysian Heights Residents Association v. City of Los Angeles (1986) 182 Cal.App.3d 21

Morton Park Associates (Morton) intended to construct a 46-unit apartment complex as allowed by existing city zoning. Morton obtained the necessary city permits, demolished existing structures, and began site preparation. The Elysian Heights Residents Association (Elysian) attempted to halt construction by appealing the issuance of the building permit. They claimed that the project density exceeded the twelve-unit maximum prescribed by the city's Silver Lake-Echo Park district plan and, by inference, the city general plan.

While Elysian's administrative appeals were in progress, as a result of an unrelated lawsuit, the Superior Court ordered the city to bring its zoning into consistency with its general plan. To demonstrate its good faith, the city enacted an ordinance prohibiting further issuance of permits for projects which were incompatible with the general plan. This ordinance exempted previously issued permits such as Morton's.

Elysian filed suit against the city claiming that the building permit issued by the city was inconsistent with the district and citywide plans. The trial court dismissed Elysian's case, ruling that Morton had a vested right to proceed. Elysian appealed.

The California Appeal Court affirmed. It opined that "neither the language of [Government Code] Section 65860 nor the statutory scheme in general mandates that building permits be scrutinized for plan consistency...[H]ad the legislature intended to fashion such a requirement, it clearly had the power to do so." In dismissing Elysian's central argument, that case law had established a link between the general plan and all land use decisions, the court held that *Neighborhood Action Group v. County of Calaveras* was distinguishable from this case because it was based upon an alleged inadequacy of the Calaveras County general plan. Elysian had not claimed that the city general plan was inadequate.

Furthermore, there was no local requirement for consistency between the plan and building permits. The ordinance in effect at the time Morton's permit was issued required only consistency between the zoning and the use. The city's interim ordinance, which required consistency with the plan, was not applicable in the instant case because it took effect after Morton had obtained permits.

Buena Vista Garden Apartments Association v. City of San Diego Planning Department (1985) 175 Cal.App.3d 289

The 56-acre Buena Vista Gardens Apartments complex represented approximately 34 percent of the available rental housing in the San Diego community of Clairemont Mesa. At the request of the developers, the City Council conditionally approved a planned residential development permit allowing demolition of 1,023 apartments and their replacement with 2,287 condominiums over a ten-year period. The Buena Vista Gardens Apartments Association and others (together Association) brought suit. The Association claimed that San Diego lacked the authority to approve the development permit because portions of the City's housing element failed to comply with the requirements of the Government Code.

San Diego countered Association's challenges to its housing element by maintaining that the standard of review for a housing element was found in *Bownds v. City of Glendale* (1980) 113 Cal.App.3d 875 ("Absent a complete failure or at least substantial failure on the part of a local governmental agency to adopt a plan which approximates the Legislature's expressed desires, the courts are ill-equipped to determine whether the language used in a local plan is 'adequate' to achieve the broad general goals of the Legislature."). Further, the City claimed that the housing element requirements interfered with San Diego's charter city status. In the City's view, the statute wrongfully required San Diego to use its legislative and administrative authority to accomplish the state's housing goal. The trial court decided in favor of the City and Association appealed.

The California Court of Appeal affirmed in part; and reversed in part, holding as follows. San Diego's housing element lacked necessary programs for conserving existing affordable housing opportunities and, therefore, did not substantially comply with §65583(c)(4). The Court granted a writ directing the lower court to refuse approval of the development permit until the housing element was brought into compliance. The Court rejected use of *Bownds*, noting that "the *Bownds* decision no longer accurately reflects the state of the legislatively mandated housing element nor its standard of review. The standard of review is not limited to whether there is a 'complete' or 'substantial' failure of a city to adopt a plan which 'approximates the Legislature's expressed desires' (*Bownds v. City of Glendale*, supra) but whether there is 'actual compliance' (*Camp v. Board of Supervisors*, 123 Cal.App.3d 334, 348) with specified requirements. *Bownds* retains validity to the extent it prohibits a court from examining the 'merits' of an element."

The Court observed that both the Legislature and the judiciary have found housing to be a matter of statewide concern. As a result, "if a matter is of state-wide concern, then charter cities [such as San Diego] must yield to the applicable general state laws regardless of the provisions of its [sic] charter."

DeBottari v. City Council of Norco (1985) 171 Cal.App.3d 1204

The Norco City Council approved a general plan amendment which redesignated a parcel of land from residential/agricultural (up to two units per acre) to residential-low density (three to four units per acre). The council also rezoned the site accordingly.

Louis deBottari circulated referendum petitions challenging the zone change ordinances. After the Norco city clerk certified the correctness of the petitions, they were presented to the Norco City Council pursuant to the California Elections Code §4055, which requires the council to either repeal the rezoning ordinances or call a referendum. The council refused to do either contending

that a repeal of the ordinances would result in zoning that was inconsistent with the city's general plan. deBottari then sought a writ of mandate to compel the council to act. The trial court denied the writ and deBottari appealed.

The California Court of Appeal affirmed. Normally, Norco's city council would have been required by the Election Code to act on the referendum. And, court review of a challenged referendum is usually more appropriate after the election than before. However, two exceptions exist to this general rule. First, a court will intervene before an election if the voters are not empowered to adopt the disputed proposal. The Court noted, for example, that election officials have been required to withhold initiative and referendum proposals from the ballot when such measures were not legislative in nature. Secondly, preelection review would be warranted if the substantive provisions of a ballot measure were legally invalid. The Court agreed with the city that a repeal of the challenged ordinances would have violated California §65860, making the city's zoning ordinance inconsistent with its general plan.

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

In 1982, the Calaveras County Board of Supervisors adopted a new general plan. Subsequently, Concerned Citizens of Calaveras County (Citizens) filed suit alleging that the general plan was inadequate because the circulation and the land use elements were internally inconsistent and insufficiently correlated, solid and liquid waste disposal facilities were not designated, and the plan omitted population density standards for three areas of the county.

The trial court concluded that the circulation element was adequate and areas for waste disposal need not be designated in the general plan until they were identified by the county. However, the land use element's omission of population density standards rendered it legally inadequate. Citizens appealed.

The Court of Appeal reversed the trial court on the adequacy of the circulation element. Section 65300.5 of the Government Code requires that a general plan and its elements comprise an integrated, internally consistent and compatible statement of policies. Section 65302 (b) requires that a general plan contain a circulation element which addresses transportation infrastructure and which is correlated with the land use element. The Court found that one portion of the element indicated that county roads were sufficient to accommodate the projected traffic, while another described a worsening traffic situation aggravated by continued subdivision activity and development in areas with inadequate roads. The Court concluded that the circulation element was internally inconsistent.

On the issue of correlation between the land use and the circulation elements, the Court interpreted §65302 (b) to mean that the circulation element must describe, discuss, and set forth standards and proposals reflecting any change in demands on the various roadways or transportation facilities of the county as a result of changes in uses of land contemplated by the plan. The Court noted that the land use element, which provided for substantial growth, neither discussed the potential inadequacy of the roadways, nor contained proposals by which growth would be restricted in the event the road system were overwhelmed. At the same time, the circulation element pointed out current and expected deficiencies in the state highways serving the county. Further, the element's only policy for rectifying the situation was to "lobby for funds." No other funding sources were identified. The Court concluded that the land use and the circulation elements were not sufficiently correlated and violated §65302 (b).

Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176

The Calaveras County Planning Commission approved a conditional use permit (CUP) to allow processing of sand and gravel from hydraulic mine tailings near the town of Jenny Lind and certified a final environmental impact report (EIR). The Neighborhood Action Group (NAG), an association of neighbors, appealed the matter to the Board of Supervisors which subsequently upheld the commission's decision. NAG filed suit claiming that the CUP was invalid because the county's general plan did not comply with state statute and the CUP did not conform to the current general plan. The trial court ruled for the county and NAG appealed.

The California Court of Appeal reversed. Upon reviewing relevant law, the Court held that although there is no explicit requirement that a CUP be consistent with an adequate general plan, it's validity is derived from compliance with the hierarchy of planning laws — a CUP is governed by the zoning law, which in turn must comply with the adopted general plan, which in turn must conform to state law. According to the Court, a general plan that fails to provide the required statutory criteria relevant to the use being sought, will not provide a valid measure by which a CUP can be evaluated. The Court also found the county noise element lacking. The

EIR prepared for the CUP could not adequately assess the potential noise impacts of the project without the noise standards that should have been provided by the noise element.

Twain Harte Homeowners Association, Inc. v. County of Tuolumne (1982) 138 Cal.App. 3d 664

The Tuolumne County Board of Supervisors certified an EIR for a new general plan. At the same hearing, the board made several wording changes to the draft plan, referring it back to the planning commission for consideration. When the planning director later declared the wording changes to be consistent with the EIR, the board adopted the modified plan.

The Twain Harte Homeowners Association (Association), filed suit to compel the county to rescind certification of the EIR (claiming that the wording changes created potential environmental impacts not addressed) and prepare a new plan (alleging the land use, circulation, and housing elements to be inadequate). The trial court ruled for the county, except to require the county to reconsider including certain timberlands in the general plan. Association appealed.

The California Court of Appeal reversed. The court found that the EIR was an adequate, reasoned analysis, and a good faith effort at full disclosure; however, it was deficient in addressing the wording changes made to the draft plan after certification of the EIR. These changes deleted provisions restricting heavy industrial development in a certain area, and amended a policy statement regarding seismic safety. The court held that these changes, without further analysis in the EIR, constituted an abuse of the county's authority.

Regarding the general plan, the housing element was adequate, but not the land use and circulation elements. The land use element failed to include standards of population density and building intensity as required by §65302 (a). The Court reasoned that population density refers to numbers of people in a given area, and not to dwelling units per acre, unless the basis for correlation between the measure of dwelling units per acre and numbers of people is set forth in the plan. Tuolumne County's plan contained no such correlation. Further, the plan contained no standards for building intensity for the nonresidential areas of the county. In addition, the Court could not discover whether in fact the circulation element was correlated with the land use element as required by §65302 (b), and so concluded that it was not.

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

The Kern County Board of Supervisors approved a zoning change from agricultural to residential use on property owned by the Ming Center Investment Company. At the time of the zoning approval, the residential zoning was consistent with the land use element of the general plan, but inconsistent with the open-space/conservation element. Anticipating possible conflicts between elements of the general plan, the board adopted a statement as part of the land use element that its policies would take precedence over those of the adopted open-space/conservation element where conflicts existed.

The Sierra Club filed suit to set aside the zoning approval, arguing that the zoning change was invalid on several grounds, including inconsistencies between the land use and open-space/conservation elements. After the trial court ruled against the Sierra Club, the county adopted the Rosedale Community Plan which eliminated the inconsistency between elements.

The California Court of Appeal ruled in part for the Sierra Club, holding that the general plan, at the time the zoning ordinance amendment for Ming Center was adopted, was internally inconsistent. Accordingly, the zoning ordinance amendment was invalid when passed. The use of a precedence clause subordinating the open-space element to another element violated the general plan internal consistency requirement, as well as specific requirements of the Open-Space Lands Act. However, the issue of internal consistency was moot as applied to the Ming Center zoning because adoption of the Rosedale Community Plan had eliminated the problem. Since the zoning was consistent with the community plan and the general plan was now internally consistent, no purpose would be served by setting aside the zoning ordinance and requiring the board of supervisors to rezone the property.

Camp v. Mendocino County Board of Supervisors (1981) 123 Cal.App.3d 334

The Mendocino County Board of Supervisors adopted its general plan as a collection of elements over the period between 1967 and 1977. In 1978 the county approved several tentative subdivision maps, including two for projects known as Eden Valley Ranch and Waunita Meadows. Walter Camp filed a writ of mandate to set aside the tentative map approval for Waunita Meadows. Other local residents and the State Attorney General filed additional writs to overturn the board's approval of the Eden Valley Ranch map. In each suit, the plaintiffs alleged that the general plan was inadequate

and, as a result, tentative subdivision maps could not be approved.

The plaintiffs sought several remedies, including a declaratory order that the general plan was legally inadequate, an order compelling the county to set aside the Waunita Meadows and the Eden Valley Ranch approvals, an order requiring the county to adopt an adequate general plan, and an injunction against future subdivision activity until an adequate plan was prepared. The county challenged the authority of the court to examine the plan for its adequacy, alleging that this constituted an impermissible inquiry into the merits of the plan.

The Court of Appeal combined the three cases and ruled for the plaintiffs. Courts have the authority to review a general plan for substantial compliance with the requirements of the Government Code. The land use element failed to comply with the requirements of §65302 (a) because it did not identify population and building density standards. In addition, the circulation element was legally deficient because it was not correlated with the land use element. The housing element was inadequate because it did not include standards and plans for improving housing and for the provision of adequate sites for housing. It also lacked adequate provisions for the housing needs of all economic segments of the community and a comprehensive problem solving strategy. The noise element was inadequate because it contained no noise exposure information, and the county failed to monitor areas deemed noise sensitive. The county's argument that the existing element was adequate for a quiet rural county did not persuade the Court, since the statutory requirement is neither subjective nor geographical.

Prohibiting the processing of zoning changes and certificates of compliance was an appropriate court remedy where the county failed to adopt an adequate general plan. However, the county could not be enjoined from approving final maps that were in substantial compliance with a tentative map approved prior to the injunction and not subject to court challenge (approval of a final map is ministerial under *Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644).

Karlson v. City of Camarillo (1980) 100 Cal.App.3d 789

Camarillo amended its land use element in October 1977, changing a 132-acre parcel from agricultural to low-density residential. Two months later, the city amended its land use element for a 10-acre parcel, changing it from agricultural to commercial use. This parcel was adjoined by agricultural land on three sides, which would remain agricultural. An amendment for a third parcel was considered, but rejected by the council.

Mr. Karlson sued alleging that the city failed to comply with the internal consistency requirement in §65300.5 because the two amendments were inconsistent with general plan policies on leapfrog development and conversion of agricultural lands; violated the former §65361 (now §65358) by exceeding the allowable number of yearly general plan amendments; and violated §65356 by failing to return the set of general plan amendments to the planning commission for recommendation after revising the commission's recommendations.

The Court of Appeal ruled for the city, holding that a general plan amendment, regardless of the size or ownership of the parcel affected, is a legislative act. Therefore, the appropriate standard for judicial review is Code of Civil Procedure §1085 which limits the scope of review to an examination of the proceedings before the local agency to determine whether its actions were arbitrary or capricious or entirely lacking in evidentiary support and whether it has proceeded in the manner prescribed by law. The internal consistency requirement does not modify this scope of review. A difference of opinion over changes in the general plan does not warrant a court's rejection of a city's action if opposing viewpoints were presented, extensively considered, and on the basis of the evidence, the city council selects one of the alternatives.

Section 65361 limited the number of occasions on which amendments to a general plan could be considered to three per calendar year [now four]. The court opined that there is no limit on the number of parcels that can be considered on each of those occasions.

Friends of 'B' Street v. City of Hayward (1980) 106 Cal.App.3d 988

Hayward approved a city project to widen B Street and construct a bridge. The project would have removed existing residences and businesses as well as 153 mature trees. Friends of "B" Street, a citizens' group, filed suit seeking to set aside the decision to improve B Street. The group also sought an injunction on the grounds that the public works project was inconsistent with the city's general plan, and that the city's general plan lacked a noise element.

The Court of Appeal ruled for the Friends of "B" Street, holding that in requiring cities and counties to prepare general plans, it must have been the Legislature's intent that all local decisions involving future growth, including decisions by a city to undertake public works

projects, be consistent with the general plan. An injunction against a public works project is an appropriate remedy until the local government adopts a complete and adequate general plan. Any appropriate legal or equitable remedy, including an injunction or writ of mandate, is available as relief for the failure of a general plan to contain a mandatory element.

Save El Toro Association v. Days (1977) 74 Cal.App.3d 64

Morgan Hill adopted its open-space element in 1973. Later that year it adopted a policy stating that all lands on El Toro Mountain above the 800-foot elevation would remain in permanent open-space. In 1976, the city approved final subdivision maps for 52 acres of land below the 800-foot elevation and created an assessment district to fund necessary improvements. Save El Toro Association (El Toro) sued the city to halt the proposal and to annul approval of the maps and the resolution creating the district. El Toro alleged that the city's actions were unlawful because any action which restricted the use of open-space land must be consistent with the open-space plan and the city had not adopted a legally valid open-space element or general plan.

The Court of Appeal ruled for El Toro, holding that for the open-space element to be adopted as a part of the general plan, there must be a general plan. Although the city offered a number of ordinances that it claimed fulfilled the statutory requirements for a general plan, these ordinances did not approach satisfying the requirements of state law. Of the nine elements then required, the plan lacked five. As the city did not have a general plan, it could not have adopted an open-space element as part of that plan. Further, without an inventory of available open-space resources, there cannot be a plan as contemplated in the Open-Space Lands Act. Instead, only isolated, uncoordinated projects would occur — the type of development the Act specifically intended to prevent. Morgan Hill had also failed to adopt the open-space zoning ordinance required by the Act. In light of the above, the court concluded, the city could not take any action to acquire or regulate open-space land or to approve a subdivision map.

OPINIONS OF THE CALIFORNIA ATTORNEY GENERAL

78 Ops.Cal.Atty.Gen. 327 (1995)

Subject: Posting of Public Hearing Agenda.

Question: Are weekend hours counted as part of the 72-hour period for posting an agenda prior to the regular meeting of a local agency? Does posting within a public building that is locked during evening hours count toward the 72-hour posting?

Conclusion: The Ralph M. Brown Open Meeting Act (Government Code 54950, et seq.) requires that the agenda of a regular public meeting of a local agency be posted 72 hours in advance of that meeting. Weekend hours do count as part of the notice period. However, posting within a building which is inaccessible for a portion of the 72-hour period does not meet the requirements of the Brown Act. The notice must be posted in a location where it may be read by the public at any time during the 72 hours prior to the meeting.

75 Ops.Cal.Atty.Gen 89 (1992)

Subject: Public Testimony at Public Hearings

Question: May the legislative body of a public agency limit public testimony on particular issues at its meetings to five minutes or less for each speaker, depending upon the number of speakers?

Conclusion: Yes, it may, depending upon the circumstances, such as the number of speakers.

67 Ops.Cal.Atty.Gen. 75 (1984)

Subject: City and County General Plan Diagrams

Question: Is a parcel-specific map required for the land use element of a general plan adopted by a city or county, as described in §65302?

Conclusion: A parcel-specific map is not required. The Legislature used the word "diagram" in §65302 rather than "map." When the Legislature recodified the statutory requirements for general plans in 1965, it substituted the word "diagram" for the term "map" previously used. When the Legislature has used the term "map," it has required preciseness, exact location, and detailed boundaries (for example, a subdivision map). A diagram, on the other hand, is defined in Webster's as "a graphic design that explains rather than represents: a drawing that shows arrangement and relations."

Various commentators have concluded that the purpose of the general plan is to provide general guidance for land use decision making. A specific mapping of land uses should not be necessary for this purpose if the plan's policies are detailed in reflecting community objectives

for the spatial relationships among land uses. Use of a parcel-specific map can hinder the making of logical connections between various land use decisions and the community's goals and objectives as presented in the plan text. This may lead to over reliance upon a precise map in place of the plan as an integrated whole.

This does not mean, however, that the owner of a specific parcel of land may not be able to determine the range of possible uses of his or her property. Although the diagram locations are general, the plan's policies should be detailed enough when applied to a particular parcel to identify the possible uses.

97-815 (1998)

Subject: Combined general plan and zoning land use designations.

Question: May a county adopt a single set of land use designations to serve both the general plan and zoning ordinance? If that is done, may it then repeal its zoning ordinances and replace them with a single ordinance that requires all land use activity to conform to the general plan?

Conclusion: Yes to both questions. The California Codes provide sufficient flexibility to allow a general plan to be parcel-specific and to address issues of local importance, such as zoning. Similarly, the Codes allow flexibility in zoning schemes, so a county may repeal its zoning ordinances and replace them with a single ordinance that requires all land use activity in the county to conform to its general plan, including the incorporated zoning ordinances. The opinion points out possible pitfalls of a combined general plan/zoning approach, such as loss of long-term perspective.

The California General Plan Glossary

The terms in this glossary are adapted from the California General Plan Glossary, 1997, published by the California Planning Roundtable, Naphtali H. Knox, AICP, and Charles E. Knox, Editors. Any errors are the responsibility of the Governor's Office of Planning and Research.

Abbreviations

ADT: Average daily trips made by vehicles or persons in a 24-hour period
ALUC: Airport Land Use Commission
BMR: Below-market-rate dwelling unit
CBD: Central Business District
CC&Rs: Covenants, Conditions, and Restrictions
CDBG: Community Development Block Grant
CEQA: California Environmental Quality Act
CFD: Mello-Roos Community Facilities District
CHFA: California Housing Finance Agency
CIP: Capital Improvements Program
CMP: Congestion Management Plan
CNEL: Community Noise Equivalent Level
COG: Council of Governments
CRA: Community Redevelopment Agency
dB: Decibel
EIR: Environmental Impact Report (State)
EIS: Environmental Impact Statement (Federal)
FAR: Floor Area Ratio
FAUS: Federal Aid to Urban Systems
FEMA: Federal Emergency Management Agency
FHWA: Federal Highway Administration
FIR: Fiscal Impact Report
FIRM: Flood Insurance Rate Map
FmHA: Farmers Home Administration
GMI: Gross Monthly Income
GOPR: Governor's Office of Planning and Research, State of California
HAP: Housing Assistance Plan
HCD: Housing and Community Development Department of the State of California.
HOV: High Occupancy Vehicle
HUD: U.S. Department of Housing and Urban Development
JPA: Joint Powers Authority
LAFCO: Local Agency Formation Commission
LHA: Local Housing Authority
LOS: Level of Service
LRT: Light-duty Rail Transit
NEPA: National Environmental Policy Act
PUD: Planned Unit Development
UBC: Uniform Building Code
UHC: Uniform Housing Code
UMTA: Urban Mass Transportation Administration
SRO: Single Room Occupancy
TDM: Transportation Demand Management
TDR: Transfer of Development Rights
TOD: Transit-oriented Development
TSM: Transportation Systems Management
VMT: Vehicle Miles Traveled

Acceptable Risk: A hazard that is deemed to be a tolerable exposure to danger given the expected benefits to be obtained. Different levels of acceptable risk may be assigned according to the potential danger and the criticalness of the threatened structure. The levels may range from "near zero" for nuclear plants and natural gas transmission lines to "moderate" for open-space, ranches and low-intensity warehouse uses.

Acres, Gross: The entire acreage of a site. Most communities calculate gross acreage to the centerline of proposed bounding streets and to the edge of the right-of-way of existing or dedicated streets.

Acres, Net: The portion of a site that can actually be built upon. The following generally are not included in the net acreage of a site: public or private road rights-of-way, public open-space, and flood ways.

Adaptive Reuse: The conversion of obsolescent or historic buildings from their original or most recent use to a new use. For example, the conversion of former hospital or school buildings to residential use, or the conversion of an historic single-family home to office use.

Affordable Housing: Housing capable of being purchased or rented by a household with very low, low, or moderate income, based on a household's ability to make monthly payments necessary to obtain housing. "Affordable to low- and moderate-income households" means that at least 20 percent of the units in a development will be sold or rented to lower income households, and the remaining units to either lower or moderate income households. Housing units for lower income households must sell or rent for a monthly cost not greater than 30 percent of 60 percent of area median income as periodically established by HCD. Housing units for moderate income must sell or rent for a monthly cost not greater than 30 percent of area median income.

Agricultural Preserve: Land designated for agriculture or conservation. (See "Williamson Act.")

Agriculture: Use of land for the production of food and fiber, including the growing of crops and/or the grazing of animals on natural prime or improved pasture land.

Air Rights: The right granted by a property owner to a buyer to use space above an existing right-of-way or other site, usually for development.

Airport-related Use: A use that supports airport operations including, but not limited to, aircraft repair and maintenance, flight instruction, and aircraft chartering.

Ambient: Surrounding on all sides; used to describe measure-

ments of existing conditions with respect to traffic, noise, air and other environments.

Annex, *v.*: To incorporate a land area into an existing district or municipality, with a resulting change in the boundaries of the annexing jurisdiction.

Approach Zone: The air space at each end of a landing strip that defines the glide path or approach path of an aircraft and which should be free from obstruction.

Aquifer: An underground, water-bearing layer of earth, porous rock, sand, or gravel, through which water can seep or be held in natural storage. Aquifers generally hold sufficient water to be used as a water supply.

Arable: Land capable of being cultivated for farming.

Architectural Control; Architectural Review: Regulations and procedures requiring the exterior design of structures to be suitable, harmonious, and in keeping with the general appearance, historic character, and/or style of surrounding areas. A process used to exercise control over the design of buildings and their settings. (See "Design Review.")

Arterial: Medium-speed (30-40 mph), medium-capacity (10,000-35,000 average daily trips) roadway that provides intra-community travel and access to the county-wide highway system. Access to community arterials should be provided at collector roads and local streets, but direct access from parcels to existing arterials is common.

Assessment District: See "Benefit Assessment District."

Assisted Housing: Generally multi-family rental housing, but sometimes single-family ownership units, whose construction, financing, sales prices, or rents have been subsidized by federal, state, or local housing programs including, but not limited to Federal §8 (new construction, substantial rehabilitation, and loan management set-asides), Federal §s 213, 236, and 202, Federal §221(d)(3) (below-market interest rate program), Federal §101 (rent supplement assistance), CDBG, FmHA §515, multi-family mortgage revenue bond programs, local redevelopment and *in lieu* fee programs, and units developed pursuant to local inclusionary housing and density bonus programs. By January 1, 1992, all California Housing Elements are required to address the preservation or replacement of assisted housing that is eligible to change to market rate housing by 2002.

Attainment: Compliance with State and federal ambient air quality standards within an air basin. (See "Non-attainment.")

Base Flood: In any given year, a 100-year flood that has a one percent likelihood of occurring, and is recognized as a standard for acceptable risk.

Below-market-rate (BMR): (1) Any housing unit specifically priced to be sold or rented to low- or moderate-income households for an amount less than the fair-market value of the unit. Both the State of California and the U.S. Department of Housing and Urban Development set standards for determining which households qualify as "low income" or "moderate income." (2) The financing of housing at less than prevailing interest rates.

Benefit Assessment District: An area within a public agency's boundaries that receives a special benefit from the construction of one or more public facilities. A Benefit Assessment District has no independent life; it is strictly a financing mechanism for providing public infrastructure as allowed under various statutes. Bonds may be issued to finance the improvements, subject to repayment by assessments charged against the benefiting properties. Creation of a Benefit Assessment District enables property owners in a specific area to cause the construction of public facilities or to maintain them (for example, a downtown, or the grounds and landscaping of a specific area) by contributing their fair share of the construction and/or installation and operating costs.

Bicycle Lane (Class II facility): A corridor expressly reserved for bicycles, existing on a street or roadway in addition to any lanes for use by motorized vehicles.

Bicycle Path (Class I facility): A paved route not on a street or roadway and expressly reserved for bicycles traversing an otherwise unpaved area. Bicycle paths may parallel roads but typically are separated from them by landscaping.

Bicycle Route (Class III facility): A facility shared with motorists and identified only by signs, a bicycle route has no pavement markings or lane stripes.

Bikeways: A term that encompasses bicycle lanes, bicycle paths, and bicycle routes.

Biotic Community: A group of living organisms characterized by a distinctive combination of both animal and plant species in a particular habitat.

Blight: A condition of a site, structure, or area that may cause nearby buildings and/or areas to decline in attractiveness and/or utility. The Community Redevelopment Law (Health and Safety Code, Sections 33031 and 33032) contains a definition of blight used to determine eligibility of proposed redevelopment project areas.

Blueline Stream: A watercourse shown as a blue line on a U.S. Geological Service topographic quadrangle map.

Bond: An interest-bearing promise to pay a stipulated sum of money, with the principal amount due on a specific date. Funds raised through the sale of bonds can be used for various public purposes.

Brownfield: An area with abandoned, idle, or under-used industrial and commercial facilities where expansion, redevelopment, or reuse is complicated by real or perceived environmental contamination. (See "Greenfield.")

Buffer Zone: An area of land separating two distinct land uses that acts to soften or mitigate the effects of one land use on the other.

Buildout; Build-out: Development of land to its full potential or theoretical capacity as permitted under current or proposed planning or zoning designations. (See "Carrying Capacity (3)")

Busway: A vehicular right-of-way or portion thereof—often

an exclusive lane—reserved exclusively for buses.

California Environmental Quality Act (CEQA): A State law requiring State and local agencies to regulate activities with consideration for environmental protection. If a proposed activity has the potential for a significant adverse environmental impact, an Environmental Impact Report (EIR) must be prepared and certified as to its adequacy before taking action on the proposed project.

California Housing Finance Agency (CHFA): A State agency, established by the Housing and Home Finance Act of 1975, which is authorized to sell revenue bonds and generate funds for the development, rehabilitation, and conservation of low-and moderate-income housing.

Caltrans: California Department of Transportation.

Capital Improvements Program (CIP): A program established by a city or county government and reviewed by its planning commission, which schedules permanent improvements, usually for a minimum of five years in the future, to fit the projected fiscal capability of the local jurisdiction. The program generally is reviewed annually, for conformance to and consistency with the general plan.

Carrying Capacity: Used in determining the potential of an area to absorb development: (1) The level of land use, human activity, or development for a specific area that can be accommodated permanently without an irreversible change in the quality of air, water, land, or plant and animal habitats. (2) The upper limits of development beyond which the quality of human life, health, welfare, safety, or community character within an area will be impaired. (3) The maximum level of development allowable under current zoning. (See "Buildout.")

Central Business District (CBD): The major commercial downtown center of a community. General guidelines for delineating a downtown area are defined by the U.S. Census of Retail Trade, with specific boundaries being set by the local municipality.

Channelization: (1) The straightening and/or deepening of a watercourse for purposes of storm-runoff control or ease of navigation. Channelization often includes lining of stream banks with a retaining material such as concrete. (2) At the intersection of roadways, the directional separation of traffic lanes through the use of curbs or raised islands that limit the paths that vehicles may take through the intersection.

Clear Zone: That section of an approach zone of an airport where the plane defining the glide path is 50 feet or less above the center-line of the runway. The clear zone ends where the height of the glide path above ground level is above 50 feet. Land use under the clear zone is restricted.

Clustered Development: Development in which a number of dwelling units are placed in closer proximity than usual, or are attached, with the purpose of retaining an open-space area.

Collector: Relatively-low-speed (25-30 mph), relatively-low-volume (5,000-20,000 average daily trips) street that provides circulation within and between neighborhoods. Collectors usually serve short trips and are intended for collecting trips from local streets and distributing them to the arterial network.

Community Care Facility: Elderly housing licensed by the State Health and Welfare Agency, Department of Social Services, typically for residents who are frail and need supervision. Services normally include three meals daily, housekeeping, security and emergency response, a full activities program, supervision in the dispensing of medicine, personal services such as assistance in grooming and bathing, but no nursing care. Sometimes referred to as residential care or personal care. (See "Congregate Care.")

Community Development Block Grant (CDBG): A grant program administered by the U.S. Department of Housing and Urban Development (HUD) on a formula basis for entitlement communities, and by the State Department of Housing and Community Development (HCD) for non-entitled jurisdictions. This grant allots money to cities and counties for housing rehabilitation and community development, including public facilities and economic development.

Community Facilities District: Under the Mello-Roos Community Facilities Act of 1982 (§53311, et seq.), a legislative body may create within its jurisdiction a special tax district that can finance tax-exempt bonds for the planning, design, acquisition, construction, and/or operation of public facilities, as well as public services for district residents. Special taxes levied solely within the district are used to repay the bonds.

Community Noise Equivalent Level (CNEL): A 24-hour energy equivalent level derived from a variety of single-noise events, with weighting factors of 5 and 10 dBA applied to the evening (7 PM to 10 PM) and nighttime (10 PM to 7 AM) periods, respectively, to allow for the greater sensitivity to noise during these hours.

Community Park: Land with full public access intended to provide recreation opportunities beyond those supplied by neighborhood parks. Community parks are larger in scale than neighborhood parks but smaller than regional parks.

Community Redevelopment Agency (CRA): A local agency created under California Redevelopment Law (Health & Safety Code §33000, et. seq.), or a local legislative body that has been elected to exercise the powers granted to such an agency, for the purpose of planning, developing, replanning, redesigning, clearing, reconstructing, and/or rehabilitating all or part of a specified area with residential, commercial, industrial, and/or public (including recreational) structures and facilities. The redevelopment agency's plans must be compatible with adopted community general plans.

Community Service District (CSD): A geographic subarea of a city or county used for the planning and delivery of parks, recreation, and other human services based on an assessment of the service needs of the population in that subarea. The CSD is a taxation district with independent

administration.

Concurrency: Installation and operation of facilities and services needed to meet the demands of new development simultaneous with the development.

Condominium: A structure of two or more units, the interior spaces of which are individually owned; the balance of the property (both land and building) is owned in common by the owners of the individual units.

Congestion Management Plan (CMP): A mechanism employing growth management techniques, including traffic level of service requirements, standards for public transit, trip reduction programs involving transportation systems management and jobs/ housing balance strategies, and capital improvement programming, for the purpose of controlling and/or reducing the cumulative regional traffic impacts of development.

Consistency; Consistent With: Free from significant variation or contradiction. The various diagrams, text, goals, policies, and programs in the general plan must be consistent with each other, not contradictory or preferential. The term "consistent with" is used interchangeably with "conformity with." The courts have held that the phrase "consistent with" means "agreement with; harmonious with." Webster defines "conformity with" as meaning harmony, agreement when used with "with." The term "conformity" means in harmony therewith or agreeable to (Sec 58 Ops.Cal.Atty.Gen. 21, 25 [1975]). California State law also requires that a general plan be internally consistent and also requires consistency between a general plan and implementation measures such as the zoning ordinance. As a general rule, an action program or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.

Covenants, Conditions, and Restrictions (CC&Rs): A term used to describe restrictive limitations that may be placed on property and its use, and which usually are made a condition of holding title or lease.

Critical Facility: Facilities housing or serving many people, that are necessary in the event of an earthquake or flood, such as hospitals, fire, police, and emergency service facilities, utility "lifeline" facilities, such as water, electricity, and gas supply, sewage disposal, and communications and transportation facilities.

Cul-de-sac: A short street or alley with only a single means of ingress and egress at one end and with a large turnaround at its other end.

Cumulative Impact: As used in CEQA, the total impact resulting from the accumulated impacts of individual projects or programs over time.

dB: Decibel; a unit used to express the relative intensity of a sound as it is heard by the human ear. See the noise element guidelines in Appendix A for a technical definition.

dBA: The "A-weighted" scale for measuring sound in decibels; weighs or reduces the effects of low and high frequencies in order to simulate human hearing. Every increase of 10 dBA doubles the perceived loudness though the noise is actually ten times more intense.

Dedication: The turning over by an owner or developer of private land for public use, and the acceptance of land for such use by the governmental agency having jurisdiction over the public function for which it will be used. Dedications for roads, parks, school sites, or other public uses often are made conditions for approval of a development by a city or county.

Dedication, **In lieu of:** Cash payments that may be required of an owner or developer as a substitute for a dedication of land, usually calculated in dollars per lot, and referred to as in lieu fees or in lieu contributions.

Defensible space: (1) In fire-fighting and prevention, a 30-foot area of non-combustible surfaces separating urban and wildland areas. (2) In urban areas, open-spaces, entry points, and pathways configured to provide maximum opportunities to rightful users and/or residents to defend themselves against intruders and criminal activity.

Deficiency Plan: An action program for improving or preventing the deterioration of level of service on the Congestion Management Agency street and highway network.

Density, R1esidential: The number of permanent residential dwelling units per acre of land. Densities specified in the General Plan may be expressed in units per gross acre or per net developable acre. (See "Acres, Gross," and "Developable Acres, Net.")

Density Bonus: The allocation of development rights that allows a parcel to accommodate additional square footage or additional residential units beyond the maximum for which the parcel is zoned. Under Government Code Section 65915, a housing development that provides 20 percent of its units for lower income households, or ten percent of its units for very low-income households, or 50 percent of its units for seniors, is entitled to a density bonus and other concessions.

Density, Employment: A measure of the number of employed persons per specific area (for example, employees/acre).

Density Transfer: A way of retaining open-space by concentrating densities—usually in compact areas adjacent to existing urbanization and utilities—while leaving unchanged historic, sensitive, or hazardous areas. In some jurisdictions, for example, developers can buy development rights of properties targeted for public open-space and transfer the additional density to the base number of units permitted in the zone in which they propose to develop. (See "Transfer of Development Rights.")

Design Review; Design Control: The comprehensive evaluation of a development and its impact on neighboring properties and the community as a whole, from the standpoint of site and landscape design, architecture, materials, colors, lighting, and signs, in accor-

dance with a set of adopted criteria and standards. "Design *Control*" requires that certain specific things be done and that other things not be done. Design Control language is most often found within a zoning ordinance. "Design *Review*" usually refers to a system set up outside of the zoning ordinance, whereby projects are reviewed against certain standards and criteria by a specially established design review board or committee. (See "Architectural Control.")

Detachment: Withdrawal of territory from a special district or city; the reverse of annexation.

Detention Dam/Basin/Pond: Dams may be classified according to the broad function they serve, such as storage, diversion, or detention. Detention dams are constructed to retard flood runoff and minimize the effect of sudden floods. Detention dams fall into two main types. In one type, the water is temporarily stored, and released through an outlet structure at a rate that will not exceed the carrying capacity of the channel downstream. Often, the basins are planted with grass and used for open-space or recreation in periods of dry weather. The other type, most often called a **Retention Pond**, allows for water to be held as long as possible and may or may not allow for the controlled release of water. In some cases, the water is allowed to seep into the permeable banks or gravel strata in the foundation. This latter type is sometimes called a **Water-Spreading Dam** or **Dike** because its main purpose is to recharge the underground water supply. Detention dams are also constructed to trap sediment. These are often called **Debris Dams**.

Developable Acres, Net: The portion of a site that can be used for density calculations. Some communities calculate density based on gross acreage. Public or private road rights-of-way are not included in the net developable acreage of a site.

Developable Land: Land that is suitable as a location for structures and that can be developed free of hazards to, and without disruption of, or significant impact on, natural resource areas.

Development Agreement: A legislatively-approved contract between a jurisdiction and a person having legal or equitable interest in real property within the jurisdiction (California Government Code §65865 et. seq.) that "freezes" certain rules, regulations, and policies applicable to development of a property for a specified period of time, usually in exchange for certain concessions by the owner.

Development Fee: See "Impact Fee."

Dwelling Unit: A room or group of rooms (including sleeping, eating, cooking, and sanitation facilities, but not more than one kitchen), that constitutes an independent housekeeping unit, occupied or intended for occupancy by one household on a long-term basis.

Easement: Usually the right to use property owned by another for specific purposes or to gain access to another property. For example, utility companies often have easements on the private property of individuals to be able to install and maintain utility facilities.

Easement, Conservation: A tool for acquiring open-space with less than full-fee purchase, whereby a public agency buys only certain specific rights from the land owner. These may be positive rights (providing the public with the opportunity to hunt, fish, hike, or ride over the land) or they may be restrictive rights (limiting the uses to which the land owner may devote the land in the future.)

Easement, Scenic: A tool that allows a public agency to use an owner's land for scenic enhancement, such as roadside landscaping or vista preservation.

Elderly: Persons age 62 and older. (See "Seniors.")

Elderly Housing: Typically one- and two-bedroom apartments or condominiums designed to meet the needs of persons 62 years of age and older or, if more than 150 units, persons 55 years of age and older, and restricted to occupancy by them.

Emergency Shelter: A facility that provides immediate and short-term housing and supplemental services for the homeless. Shelters come in many sizes, but an optimum size is considered to be 20 to 40 beds. Supplemental services may include food, counseling, and access to other social programs. (See "Transitional Housing.")

Eminent Domain: The right of a public entity to acquire private property for public use by condemnation and the payment of just compensation.

Emission Standard: The maximum amount of pollutant legally permitted to be discharged from a single source, either mobile or stationary.

Endangered Species: A species of animal or plant is considered to be endangered when its prospects for survival and reproduction are in immediate jeopardy from one or more causes.

Environment: CEQA defines environment as "the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, mineral, flora, fauna, noise, and objects of historic or aesthetic significance."

Environmental Impact Report (EIR): A report required pursuant to the California Environmental Quality Act which assesses all the environmental characteristics of an area, determines what effects or impacts will result if the area is altered or disturbed by a proposed action, and identifies alternatives or other measures to avoid or reduce those impacts. (See "California Environmental Quality Act.")

Environmental Impact Statement (EIS): Under the National Environmental Policy Act, a statement on the effect of development proposals and other major actions that significantly affect the environment.

Erosion: (1) The loosening and transportation of rock and soil debris by wind, rain, or running water. (2) The gradual wearing away of the upper layers of earth.

Exaction: A contribution or payment required as an autho-

rized precondition for receiving a development permit; usually refers to mandatory dedication (or fee in lieu of dedication) requirements found in many subdivision regulations.

Expansive Soils: Soils that swell when they absorb water and shrink as they dry.

Expressway: A divided multi-lane major arterial street for through traffic with partial control of access and with grade separations at major intersections.

Exurban Area: The region that lies beyond a city and its suburbs.

Fair Market Rent: The rent, including utility allowances, determined by the United States Department of Housing and Urban Development for purposes of administering the Section 8 Existing Housing Program.

Family: (1) Two or more persons related by birth, marriage, or adoption [U.S. Bureau of the Census]. (2) An individual or a group of persons living together who constitute a *bona fide* single-family housekeeping unit in a dwelling unit, not including a fraternity, sorority, club, or other group of persons occupying a hotel, lodging house or institution of any kind [California].

Farmers Home Administration (FmHA): A federal agency providing loans and grants for improvement projects and low-income housing.

Fault: A fracture in the earth's crust forming a boundary between rock masses that have shifted.

Feasible: Capable of being accomplished in a successful manner within a reasonable time taking into account economic, environmental, social, and technological factors.

Field Act: Legislation, passed after a 1933 Long Beach earthquake that collapsed a school, which established more stringent structural requirements and standards for construction of schools than for other buildings.

Fire Hazard Zone: An area where, due to slope, fuel, weather, or other fire-related conditions, the potential loss of life and property from a fire necessitates special fire protection measures and planning before development occurs.

Fiscal Impact Analysis: A projection of the direct public costs and revenues resulting from population or employment change to the local jurisdiction(s) in which the change is taking place. Enables local governments to evaluate relative fiscal merits of general plans, specific plans, or projects.

Flood, 100-Year: The magnitude of a flood expected to occur on the average every 100 years, based on historical data. The 100-year flood has a 1/100, or one percent, chance of occurring in any given year.

Flood Insurance Rate Map (FIRM): For each community, the official map on which the Federal Insurance Administration has delineated areas of special flood hazard and the risk premium zones applicable to that community.

Floodplain: The relatively level land area on either side of the banks of a stream regularly subject to flooding. That part of the floodplain subject to a one percent chance of flooding in any given year is designated as an "area of special flood hazard" by the Federal Insurance Administration.

Floodplain Fringe: All land between the floodway and the upper elevation of the 100-year flood.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the "base flood" without cumulatively increasing the water surface elevation more than one foot. No development is allowed in floodways.

Floor Area, Gross: The sum of the horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including any space where the floor-to-ceiling height is less than six feet. Some cities exclude specific kinds of space (*e.g.*, elevator shafts, parking decks) from the calculation of gross floor area.

Floor Area Ratio (FAR): The gross floor area permitted on a site divided by the total net area of the site, expressed in decimals to one or two places. For example, on a site with 10,000 net sq. ft. of land area, a Floor Area Ratio of 1.0 will allow a maximum of 10,000 gross sq. ft. of building floor area to be built. On the same site, an FAR of 1.5 would allow 15,000 sq. ft. of floor area; an FAR of 2.0 would allow 20,000 sq. ft.; and an FAR of 0.5 would allow only 5,000 sq. ft. Also commonly used in zoning, FARs typically are applied on a parcel-by-parcel basis as opposed to an average FAR for an entire land use or zoning district.

Freeway: A high-speed, high-capacity, limited-access road serving regional and county-wide travel. Such roads are free of tolls, as contrasted with "turnpikes" or other "toll roads" now being introduced into Southern California. Freeways generally are used for long trips between major land use generators. At Level of Service "E," they carry approximately 1,875 vehicles per lane per hour, in both directions. Major streets cross at a different grade level.

Granny Flat: See "Second Unit."

Ground Failure: Ground movement or rupture caused by strong shaking during an earthquake. Includes landslide, lateral spreading, liquefaction, and subsidence.

Ground Shaking: Ground movement resulting from the transmission of seismic waves during an earthquake.

Groundwater: Water under the earth's surface, often confined to aquifers capable of supplying wells and springs.

Groundwater Recharge: The natural process of infiltration and percolation of rainwater from land areas or streams through permeable soils into water-holding rocks that provide underground storage ("aquifers").

Growth Management: The use by a community of a wide range of techniques in combination to determine the amount, type, and rate of development desired by the community and to channel that growth into designated areas. Growth management policies can be implemented through growth rates, zoning, capital improvement programs, public facilities ordinances, urban limit lines, standards for levels of service, and other programs. (See "Congestion Management Plan.")

Guideway: A roadway system that guides the vehicles using it as well as supporting them. The "monorail" is one such system. The most familiar and still most used guideway is the railroad. Most guideway transit systems make use of wayside electrical power for propulsion.

Habitat: The physical location or type of environment in which an organism or biological population lives or occurs.

Hazardous Material: Any substance that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. The term includes, but is not limited to, hazardous substances and hazardous wastes.

High-Occupancy Structure: All pre-1935 buildings with over 25 occupants, and all pre-1976 buildings with over 100 occupants.

High Occupancy Vehicle (HOV): Any vehicle other than a driver-only automobile (*e.g.*, a vanpool, a bus, or two or more persons to a car).

Historic Preservation: The preservation of historically significant structures and neighborhoods until such time as, and in order to facilitate, restoration and rehabilitation of the building(s) to a former condition.

Household: All those persons—related or unrelated—who occupy a single housing unit. (See "Family.")

Households, Number of: The count of all year-round housing units occupied by one or more persons. The concept of *household* is important because the formation of new households generates the demand for housing. Each new household formed creates the need for one additional housing unit or requires that one existing housing unit be shared by two households. Thus, household formation can continue to take place even without an increase in population, thereby increasing the demand for housing.

Housing and Community Development Department (HCD): The State agency that has principal responsibility for assessing, planning for, and assisting communities to meet the needs of low- and moderate-income households.

Housing and Urban Development, U.S. Department of (HUD): A cabinet-level department of the federal government that administers housing and community development programs.

Housing Authority, Local (LHA): Local housing agency established in State law, subject to local activation and operation. Originally intended to manage certain federal subsidies, but vested with broad powers to develop and manage other forms of affordable housing.

Housing Unit: The place of permanent or customary abode of a person or family. A housing unit may be a single-family dwelling, a multi-family dwelling, a condominium, a modular home, a mobile home, a cooperative, or any other residential unit considered real property under State law. A housing unit has, at least, cooking facilities, a bathroom, and a place to sleep. It also is a dwelling that cannot be moved without substantial damage or unreasonable cost. (See "Dwelling Unit," "Family," and "Household.")

Impact Fee: A fee, also called a development fee, levied on the developer of a project by a city, county, or other public agency as compensation for otherwise-unmitigated impacts the project will produce. Section 66000, et seq., specifies that development fees shall not exceed the estimated reasonable cost of providing the service for which the fee is charged. To lawfully impose a development fee, the public agency must verify its method of calculation and document proper restrictions on use of the fund.

Impacted Areas: Census tracts where more than 50 percent of the dwelling units house low- and very low-income households.

Impervious Surface: Surface through which water cannot penetrate, such as roof, road, sidewalk, and paved parking lot. The amount of impervious surface increases with development and establishes the need for drainage facilities to carry the increased runoff.

Inclusionary Zoning: Provisions established by a public agency to require that a specific percentage of housing units in a project or development remain affordable to very low- and low- income households for a specified period.

Incorporation: Creation of a new city.

Incubator Space: Retail or industrial space that is affordable to new, low-margin businesses.

Industrial: The manufacture, production, and processing of consumer goods. Industrial is often divided into "heavy industrial" uses, such as construction yards, quarrying, and factories; and "light industrial" uses, such as research and development and less intensive warehousing and manufacturing.

Infill Development: Development of vacant land (usually individual lots or left-over properties) within areas that are already largely developed.

Infrastructure: Public services and facilities, such as sewage-disposal systems, water-supply systems, other utility systems, and roads.

In Lieu Fee: (See "Dedication, In lieu of.")

Institutional Uses: (1) Publicly or privately owned and operated activities such as hospitals, convalescent hospitals, intermediate care facilities, nursing homes, museums, and schools and colleges; (2) churches and other religious organizations; and (3) other non-profit activities of a welfare, educational, or philanthropic nature that cannot be considered residential, commercial, or industrial. (See "Public and Quasi-public Facilities.")

Intensity, Building: For residential uses, the actual number or the allowable range of dwelling units per net or gross acre. For non-residential uses, the actual or the maximum permitted floor area ratios (FARs).

Inter-agency: Indicates cooperation between or among two or more discrete agencies in regard to a specific program.

Interest, Fee: Entitles a land owner to exercise complete control over use of land, subject only to government land

use regulations.

Interest, Less-than-fee: The purchase of interest in land rather than outright ownership; includes the purchase of development rights via conservation, open-space, or scenic easements. (See "Easement, Scenic," "Lease," and "Leasehold Interest.")

Intermittent Stream: A stream that normally flows for at least thirty (30) days after the last major rain of the season and is dry a large part of the year.

Issues: Important unsettled community matters or problems that are identified in a community's general plan and dealt with by the plan's objectives, policies, plan proposals, and implementation programs.

Jobs/Housing Balance; Jobs/Housing Ratio: The availability of affordable housing for employees. The jobs/housing ratio divides the number of jobs in an area by the number of employed residents. A ratio of 1.0 indicates a balance. A ratio greater than 1.0 indicates a net in-commute; less than 1.0 indicates a net out-commute.

Joint Powers Authority (JPA): A legal arrangement that enables two or more units of government to share authority in order to plan and carry out a specific program or set of programs that serves both units.

Land Banking: The purchase of land by a local government for use or resale at a later date. "Banked lands" have been used for development of low- and moderate-income housing, expansion of parks, and development of industrial and commercial centers. Federal rail-banking law allows railroads to bank unused rail corridors for future rail use while allowing interim use as trails.

Landmark: (1) A building, site, object, structure, or significant tree, having historical, architectural, social, or cultural significance and marked for preservation by the local, state, or federal government. (2) A visually prominent or outstanding structure or natural feature that functions as a point of orientation or identification.

Landslide: Downslope movement of soil and/or rock, which typically occurs during an earthquake or following heavy rainfall.

Land Use Classification: A system for classifying and designating the appropriate use of properties.

Lateral Spreading: Lateral movement of soil, often as a result of liquefaction during an earthquake.

Ldn: Day-Night Average Sound Level. The A-weighted average sound level for a given area (measured in decibels) during a 24-hour period with a 10 dB weighting applied to night-time sound levels. The Ldn is approximately numerically equal to the CNEL for most environmental settings.

Leapfrog Development: New development separated from existing development by substantial vacant land.

Lease: A contractual agreement by which an owner of real property (the lessor) gives the right of possession to another (a lessee) for a specified period of time (term) and for a specified consideration (rent).

Leasehold Interest: (1) The interest that the lessee has in the value of the lease itself in condemnation award determination. (2) The difference between the total remaining rent under the lease and the rent the lessee would currently pay for similar space for the same time period.

Leq: The energy equivalent level, defined as the average sound level on the basis of sound energy (or sound pressure squared). The Leq is a "dosage" type measure and is the basis for the descriptors used in current standards, such as the 24-hour CNEL used by the State of California.

Level of Service (LOS) Standard: A standard used by government agencies to measure the quality or effectiveness of a municipal service, such as police, fire, or library, or the performance of a facility, such as a street or highway.

Level of Service (Traffic): A scale that measures the amount of traffic that a roadway or intersection can accommodate, based on such factors as maneuverability, driver dissatisfaction, and delay.

Level of Service A: Indicates a relatively free flow of traffic, with little or no limitation on vehicle movement or speed.

Level of Service B: Describes a steady flow of traffic, with only slight delays in vehicle movement and speed. All queues clear in a single signal cycle.

Level of Service C: Denotes a reasonably steady, high-volume flow of traffic, with some limitations on movement and speed, and occasional backups on critical approaches.

Level of Service D: Designates the level where traffic nears an unstable flow. Intersections still function, but short queues develop and cars may have to wait through one cycle during short peaks.

Level of Service E: Represents traffic characterized by slow movement and frequent (although momentary) stoppages. This type of congestion is considered severe, but is not uncommon at peak traffic hours, with frequent stopping, long-standing queues, and blocked intersections.

Level of Service F: Describes unsatisfactory stop-and-go traffic characterized by "traffic jams" and stoppages of long duration. Vehicles at signalized intersections usually have to wait through one or more signal changes, and "upstream" intersections may be blocked by the long queues.

Life-cycle Costing: A method of evaluating a capital investment that takes into account the sum total of all costs associated with the investment over the lifetime of the project.

Light (duty) Rail Transit (LRT): "Street cars" or "trolley cars" that typically operate entirely or substantially in mixed traffic and in non-exclusive, at-grade rights-of-way. Passengers typically board vehicles from the street level (as opposed to a platform that is level with the train) and the driver may collect fares. Vehicles are each electrically self-propelled and usually operate in one or two-car trains.

Linkage: With respect to jobs/housing balance, a program

designed to offset the impact of employment on housing need within a community, whereby project approval is conditioned on the provision of housing units or the payment of an equivalent *in-lieu* fee. The linkage program must establish the cause-and-effect relationship between a new commercial or industrial development and the increased demand for housing.

Liquefaction: The transformation of loose, wet soil from a solid to a liquid state, often as a result of ground shaking during an earthquake.

Live-work Quarters: Buildings or spaces within buildings that are used jointly for commercial and residential purposes where the residential use of the space is secondary or accessory to the primary use as a place of work.

Local Agency Formation Commission (LAFCO): A five- or seven-member commission within each county that reviews and evaluates all proposals for formation of special districts, incorporation of cities, annexation to special districts or cities, consolidation of districts, and merger of districts with cities. Each county's LAFCO is empowered to approve, disapprove, or conditionally approve such proposals. The LAFCO members generally include two county supervisors, two city council members, and one member representing the general public. Some LAFCOs include two representatives of special districts.

Local Coastal Program (LCP): A combination of a local government's land use plans, zoning ordinances, zoning district maps, and (within sensitive coastal resources areas) other implementing actions that together meet the local requirements of, and implement the provisions and policies of, the California Coastal Act of 1976.

Local Coastal Program Land Use Plan: The relevant portion of a local government general plan or coastal element that details type, location, and intensity of land use, applicable resource protection and development policies, and, where necessary, implementation actions.

Low-income Household: A household with an annual income usually no greater than 80 percent of the area median family income adjusted by household size, as determined by a survey of incomes conducted by a city or a county, or in the absence of such a survey, based on the latest available eligibility limits established by the U.S. Department of Housing and Urban Development (HUD) for the §8 housing program.

Low-income Housing Tax Credits: Tax reductions provided by the federal and State governments for investors in housing for low-income households.

L10: A statistical descriptor indicating peak noise levels—the sound level exceeded ten percent of the time. It is a commonly used descriptor of community noise, and has been used in Federal Highway Administration standards and the standards of some cities and counties.

Manufactured Housing: Residential structures that are constructed entirely in the factory, and which since June 15, 1976, have been regulated by the federal Manufactured Home Construction and Safety Standards Act of 1974 under the administration of the U.S. Department of Housing and Urban Development (HUD). (See "Mobile Home" and "Modular Unit.")

Mean Sea Level: The average altitude of the sea surface for all tidal stages.

Median Strip: The dividing area, either paved or landscaped, between opposing lanes of traffic on a roadway.

Mello-Roos Bonds: Locally issued bonds that are repaid by a special tax imposed on property owners within a "community facilities district" established by a governmental entity. The bond proceeds can be used for public improvements and for a limited number of services. Named after the program's legislative authors.

Mercalli Intensity Scale: A subjective measure of the observed effects (human reactions, structural damage, geologic effects) of an earthquake. Expressed in Roman numerals from I to XII.

Microclimate: The climate of a small, distinct area, such as a city street or a building's courtyard; can be favorably altered through functional landscaping, architecture, or other design features.

Mineral Resource: Land on which known deposits of commercially viable mineral or aggregate deposits exist. This designation is applied to sites determined by the State Division of Mines and Geology as being a resource of regional significance, and is intended to help maintain the quarrying operations and protect them from encroachment of incompatible land uses.

Minipark: Small neighborhood park of approximately one acre or less.

Mixed-use: Properties on which various uses, such as office, commercial, institutional, and residential, are combined in a single building or on a single site in an integrated development project with significant functional interrelationships and a coherent physical design. A "single site" may include contiguous properties.

Mobile Home: A structure, transportable in one or more sections, built on a permanent chassis and designed for use as a single-family dwelling unit and which (1) has a minimum of 400 square feet of living space; (2) has a minimum width in excess of 102 inches; (3) is connected to all available permanent utilities; and (4) is tied down (a) to a permanent foundation on a lot either owned or leased by the homeowner or (b) is set on piers, with wheels removed and skirted, in a mobile home park. (See "Manufactured Housing" and "Modular Unit")

Moderate-income Household: A household with an annual income between the lower income eligibility limits and 120 percent of the area median family income adjusted by household size, usually as established by the U.S. Department of Housing and Urban Development (HUD) for the §8 housing program. (See "Area" and "Low-income Household.")

Modular Unit: A factory-fabricated, transportable building

or major component designed for use by itself or for incorporation with similar units on-site into a structure for residential, commercial, educational, or industrial use. Differs from mobile homes and manufactured housing by (in addition to lacking an integral chassis or permanent hitch to allow future movement) being subject to California housing law design standards. California standards are more restrictive than federal standards in some respects (*e.g.,* plumbing and energy conservation). Also called **Factory-built Housing** and regulated by State law of that title. (See "Mobile Home" and "Manufactured Housing.")

Multiplier Effect: The recirculation of money through the economy multiplies its impact on jobs and income. For example, money paid as salaries to industrial and office workers is spent on housing, food, clothes and other locally-available goods and services. This spending creates jobs in housing construction, retail stores (*e.g.,* grocery and drug stores) and professional offices. The wage paid to workers in those industries is again re-spent, creating still more jobs. Overall, one job in basic industry is estimated to create approximately one more job in non-basic industry.

Municipal Services: Services traditionally provided by local government, including water and sewer, roads, parks, schools, and police and fire protection.

National Ambient Air Quality Standards: The prescribed level of pollutants in the outside air that cannot be exceeded legally during a specified time in a specified geographical area.

National Environmental Policy Act (NEPA): An act passed in 1974 establishing federal legislation for national environmental policy, a council on environmental quality, and the requirements for environmental impact statements.

National Flood Insurance Program: A federal program that authorizes the sale of federally subsidized flood insurance in communities where such flood insurance is not available privately.

National Historic Preservation Act: A 1966 federal law that established a National Register of Historic Places and the Advisory Council on Historic Preservation, and that authorized grants-in-aid for preserving historic properties.

National Register of Historic Places: The official list, established by the National Historic Preservation Act, of sites, districts, buildings, structures, and objects significant in the nation's history or whose artistic or architectural value is unique.

Natural State: The condition existing prior to development.

Neighborhood: A planning area commonly identified as such in a community's planning documents, and by the individuals residing and working within the neighborhood. Documentation may include a map prepared for planning purposes, on which the names and boundaries of the neighborhood are shown.

Neighborhood Park: City- or county-owned land intended to serve the recreation needs of people living or working within one-half mile radius of the park.

Neighborhood Unit: According to one widely-accepted concept of planning, the neighborhood unit should be the basic building block of the city. It is based on the elementary school, with other community facilities located at its center and arterial streets at its perimeter. The distance from the school to the perimeter should be a comfortable walking distance for a school-age child; there would be no through traffic uses. Limited industrial or commercial would occur on the perimeter where arterials intersect. This was a model for American suburban development after World War II.

Neotraditional Development: An approach to land use planning and urban design that promotes the building of neighborhoods with a mix of uses and housing types, architectural variety, a central public gathering place, interconnecting streets and alleys, and edges defined by greenbelts or boulevards. The basic goal is integration of the activities of potential residents with work, shopping, recreation, and transit all within walking distance.

Noise: Any sound that is undesirable because it interferes with speech and hearing, or is intense enough to damage hearing, or is otherwise annoying. Noise, simply, is "unwanted sound."

Noise Attenuation: Reduction of the level of a noise source using a substance, material, or surface, such as earth berms and/or solid concrete walls.

Noise Contour: A line connecting points of equal noise level as measured on the same scale. Noise levels greater than the 60 Ldn contour (measured in dBA) require noise attenuation in residential development.

Non-attainment: The condition of not achieving a desired or required level of performance. Frequently used in reference to air quality. (See "Attainment.")

Non-conforming Use: A use that was valid when brought into existence, but by subsequent regulation becomes no longer conforming. "Non-conforming use" is a generic term and includes (1) non-conforming structures (by virtue of size, type of construction, location on land, or proximity to other structures), (2) non-conforming use of a conforming building, (3) non-conforming use of a non-conforming building, and (4) non-conforming use of land. Thus, any use lawfully existing on any piece of property that is inconsistent with a new or amended general plan, and that in turn is a violation of a zoning ordinance amendment subsequently adopted in conformance with the general plan, will be a non-conforming use. Typically, non-conforming uses are permitted to continue for a designated period of time, subject to certain restrictions.

Notice (of Hearing): A legal document announcing the opportunity for the public to present their views to an official representative or board of a public agency concerning an official action pending before the agency.

Official County Scenic Highway: A segment of state highway identified in the Master Plan of State Highways Eligible for Official Scenic Highway Designation and

designated by the Director of the Department of Transportation (Caltrans).

Open-Space Land: Any parcel or area of land or water that is essentially unimproved and devoted to an open-space use for the purposes of (1) the preservation of natural resources, (2) the managed production of resources, (3) outdoor recreation, or (4) public health and safety.

Ordinance: A law or regulation set forth and adopted by a governmental authority, usually a city or county.

Outdoor Advertising Structure: Any device used or intended to direct attention to a business, profession, commodity, service, or entertainment conducted, sold, or offered elsewhere than upon the lot where such device is located.

Outdoor Recreation Use: A privately or publicly owned or operated use providing facilities for outdoor recreation activities.

Outer Approach Zone: Airspace in which an air-traffic controller initiates radar monitoring for incoming flights approaching an airport.

Overlay: A land use designation on the General Plan Land Use Map, or a zoning designation on a zoning map, that modifies the basic underlying designation in some specific manner.

Parcel: A lot in single ownership or under single control, usually considered a unit for purposes of development.

Park Land; Parkland: Land that is publicly owned or controlled for the purpose of providing parks, recreation, or open-space for public use.

Parking, Shared: A public or private parking area used jointly by two or more uses.

Parking Area, Public: An open area, excluding a street or other public way, used for the parking of automobiles and available to the public, whether for free or for compensation.

Parking Management: An evolving TDM technique designed to obtain maximum utilization from a limited number of parking spaces. Can involve pricing and preferential treatment for HOVs, non-peak period users, and short-term users. (See "High Occupancy Vehicle" and "Transportation Demand Management.")

Parking Ratio: The number of parking spaces provided per 1,000 square of floor area, *e.g.*, 2:1 or "two per thousand."

Parking Space, Compact: A parking space (usually 7.5 feet wide by 16 feet long when perpendicular to a driveway or aisle) permitted in some localities on the assumption that many modern cars are significantly smaller, and require less room, than a standard automobile. A standard parking space, when perpendicular to a driveway or aisle, is usually 8.5 feet wide by 18 feet long.

Parks: Open-space lands whose primary purpose is recreation. (See "Open-Space Land," "Community Park," and "Neighborhood Park")

Parkway: An expressway or freeway designed for non-commercial traffic only; usually located within a strip of landscaped park or natural vegetation.

Parkway Strip: A piece of land located between the rear of a curb and the front of a sidewalk, usually used for planting low ground cover and/or street trees, also known as "planter strip."

Performance Standards: Zoning regulations that permit uses based on a particular set of standards of operation rather than on particular type of use. Performance standards provide specific criteria limiting noise, air pollution, emissions, odors, vibration, dust, dirt, glare, heat, fire hazards, wastes, traffic impacts, and visual impact of a use.

Plan Line: A precise line that establishes future rights-of-way along any portion of an existing or proposed street or highway and which is depicted on a map showing the streets and lot line or lines and the proposed right-of-way lines, and the distance thereof from the established centerline of the street or highway, or from existing or established property lines.

Planned Community: A large-scale development whose essential features are a definable boundary; a consistent, but not necessarily uniform, character; overall control during the development process by a single development entity; private ownership of recreation amenities; and enforcement of covenants, conditions, and restrictions by a master community association.

Planned Unit Development (PUD): A description of a proposed unified development, consisting at a minimum of a map and adopted ordinance setting forth the regulations governing, and the location and phasing of all proposed uses and improvements to be included in the development.

Planning Area: The area directly addressed by the general plan. A city's planning area typically encompasses the city limits and potentially annexable land within its sphere of influence.

Planning Commission: A body, usually having five or seven members, created by a city or county in compliance with California law (§65100) which requires the assignment of the planning functions of the city or county to a planning department, planning commission, hearing officers, and/or the legislative body itself, as deemed appropriate by the legislative body.

Pollution, Non-Point: Sources for pollution that are less definable and usually cover broad areas of land, such as agricultural land with fertilizers that are carried from the land by runoff, or automobiles.

Pollution, Point: In reference to water quality, a discrete source from which pollution is generated before it enters receiving waters, such as a sewer outfall, a smokestack, or an industrial waste pipe.

Poverty Level: As used by the U.S. Census, families and unrelated individuals are classified as being above or below the poverty level based on a poverty index that provides a range of income cutoffs or "poverty thresholds" varying by size of family, number of children, and age of householder. The income cutoffs are updated each year to

reflect the change in the Consumer Price Index.

Prime Agricultural Land: (1) Land used actively in the production of food, fiber, or livestock. (2) All land which qualifies for rating as Class I or Class II in the Natural Resources Conservation Service land use compatibility classifications. (3) Land which qualifies for rating 80 through 100 in the Storie Index Rating. (See "Storie Index.")

Prime Farmland: Land which has the best combination of physical and chemical characteristics for the production of crops. Prime Farmland must have been used for the production of irrigated crops within the last three years. Prime Farmland does not include publicly-owned lands for which there is an adopted policy preventing agricultural use.

Private Road/Private Street: Privately owned (and usually privately maintained) motor vehicle access that is not dedicated as a public street. Typically the owner posts a sign indicating that the street is private property and limits traffic in some fashion. For density calculation purposes, some jurisdictions exclude private roads when establishing the total acreage of the site; however, aisles within and driveways serving private parking lots are not considered private roads.

Pro Rata: Refers to the proportionate distribution of something to something else or to some group, such as the cost of infrastructure improvements associated with new development apportioned to the users of the infrastructure on the basis of projected use.

Public and Quasi-public Facilities: Institutional, academic, governmental and community service uses, either owned publicly or operated by non-profit organizations, including private hospitals and cemeteries.

Public Services: See "Municipal Services."

Ranchette: A single dwelling unit occupied by a non-farming household on a parcel of 2.5 to 20 acres that has been subdivided from agricultural land.

Reclamation: The reuse of resources, usually those present in solid wastes or sewage.

Reconstruction: As used in historic preservation, the process of reproducing by new construction the exact form and detail of a vanished structure, or part thereof, as it appeared during a specific period of time. Reconstruction is often undertaken when the property to be reconstructed is essential for understanding and interpreting the value of an historic district and sufficient documentation exists to insure an exact reproduction of the original.

Recreation, Active: A type of recreation or activity that requires the use of organized play areas including, but not limited to, softball, baseball, football and soccer fields, tennis and basketball courts and various forms of children's play equipment.

Recreation, Passive: Type of recreation or activity that does not require the use of organized play areas.

Redevelop: To demolish existing buildings; or to increase the overall floor area existing on a property; or both; irrespective of whether a change occurs in land use.

Regional: Pertaining to activities or economies at a scale greater than that of a single jurisdiction, and affecting a broad geographic area.

Regional Housing Needs Plan/Share: A quantification by a COG or by HCD of existing and projected housing need, by household income group, for all localities within a region.

Regional Park: A park typically 150-500 acres in size focusing on activities and natural features not included in most other types of parks and often based on a specific scenic or recreational opportunity.

Rehabilitation: The repair, preservation, and/or improvement of substandard housing.

Retrofit: To add materials and/or devices to an existing building or system to improve its operation, safety, or efficiency. Buildings have been retrofitted to use solar energy and to strengthen their ability to withstand earthquakes, for example.

Rezoning: An amendment to the map and/or text of a zoning ordinance to effect a change in the nature, density, or intensity of uses allowed in a zoning district and/or on a designated parcel or land area.

Richter Scale: A measure of the size or energy release of an earthquake at its source. The scale is logarithmic; the wave amplitude of each number on the scale is 10 times greater than that of the previous whole number.

Ridgeline: A line connecting the highest points along a ridge and separating drainage basins or small-scale drainage systems from one another.

Right-of-way: A strip of land occupied or intended to be occupied by certain transportation and public use facilities, such as roads, railroads, and utility lines.

Riparian Lands: Riparian lands are comprised of the vegetative and wildlife areas adjacent to perennial and intermittent streams. Riparian areas are delineated by the existence of plant species normally found near freshwater.

Sanitary Landfill: The controlled placement of refuse within a limited area, followed by compaction and covering with a suitable thickness of earth and other containment material.

Sanitary Sewer: A system of subterranean conduits that carries refuse liquids or waste matter to a plant where the sewage is treated, as contrasted with storm drainage systems (that carry surface water) and septic tanks or leech fields (that hold refuse liquids and waste matter on-site). (See "Septic System")

Scenic Highway Corridor: The area outside a highway right-of-way that is generally visible to persons traveling on the highway.

Scenic Highway/Scenic Route: A highway, road, drive, or street that, in addition to its transportation function, provides opportunities for the enjoyment of natural and man-made scenic resources and access or direct views to areas or scenes of exceptional beauty or historic or cultural interest. The aesthetic values of scenic routes often are

protected and enhanced by regulations governing the development of property or the placement of outdoor advertising. Until the mid-1980s, general plans in California were required to include a Scenic Highways element.

Second Unit: A self-contained living unit, either attached to or detached from, and in addition to, the primary residential unit on a single lot. "Granny Flat" is one type of second unit intended for the elderly.

Section 8 Rental Assistance Program: A federal (HUD) rent-subsidy program that is one of the main sources of federal housing assistance for low-income households. The program operates by providing "housing assistance payments" to owners, developers, and public housing agencies to make up the difference between the "Fair Market Rent" of a unit (set by HUD) and the household's contribution toward the rent, which is calculated at 30 percent of the household's adjusted gross monthly income (GMI). "Section 8" includes programs for new construction, existing housing, and substantial or moderate housing rehabilitation.

Seiche: An earthquake-generated wave in an enclosed body of water such as a lake, reservoir, or bay.

Seismic: Caused by or subject to earthquakes or earth vibrations.

Seniors: Persons age 62 and older. (See "Elderly.")

Senior Housing: See "Elderly Housing."

Septic System: A sewage-treatment system that includes a settling tank through which liquid sewage flows and in which solid sewage settles and is decomposed by bacteria in the absence of oxygen. Septic systems are often used for individual-home waste disposal where an urban sewer system is not available. (See "Sanitary Sewer.")

Settlement: (1) The drop in elevation of a ground surface caused by settling or compacting. (2) The gradual downward movement of an engineered structure due to compaction. *Differential* settlement is uneven settlement, where one part of a structure settles more or at a different rate than another part.

Siltation: (1) The accumulating deposition of eroded material. (2) The gradual filling in of streams and other bodies of water with sand, silt, and clay.

Single Room Occupancy (SRO): A single room, typically 80–250 square feet, with a sink and closet, but which requires the occupant to share a communal bathroom, shower, and kitchen.

Solar Access: The provision of direct sunlight to an area specified for solar energy collection when the sun's azimuth is within 45 degrees of true south.

Solar System, Active: A system using a mechanical device, such as a pump or a fan, and energy in addition to solar energy to transport a conductive medium (air or water) between a solar collector and the interior of a building for the purpose of heating or cooling.

Solar System, Passive: A system that uses direct heat transfer from thermal mass instead of mechanical power to distribute collected heat. Passive systems rely on building design and materials to collect and store heat and to create natural ventilation for cooling.

Solid Waste: Any unwanted or discarded material that is not a liquid or gas. Includes organic wastes, paper products, metals, glass, plastics, cloth, brick, rock, soil, leather, rubber, yard wastes, and wood, but does not include sewage and hazardous materials. Organic wastes and paper products comprise about 75 percent of typical urban solid waste.

Specific Plan: A tool authorized by Government Code §65450 et seq. for the systematic implementation of the general plan for a defined portion of a community's planning area. A specific plan must specify in detail the land uses, public and private facilities needed to support the land uses, phasing of development, standards for the conservation, development, and use of natural resources, and a program of implementation measures, including financing measures.

Sphere of Influence: The probable physical boundaries and service area of a local agency, as determined by the Local Agency Formation Commission of the County.

Standards: (1) A rule or measure establishing a level of quality or quantity that must be complied with or satisfied. Government Code §65302 requires that general plans spell out the objectives, principles, "standards," and proposals of the general plan. Examples of standards might include the number of acres of park land per 1,000 population that the community will attempt to acquire and improve, or the "traffic Level of Service" (LOS) that the plan hopes to attain. (2) Requirements in a zoning ordinance that govern building and development as distinguished from use restrictions—for example, site-design regulations such as lot area, height limit, frontage, landscaping, and floor area ratio.

State Responsibility Areas: Areas of the state in which the financial responsibility for preventing and suppressing fires has been determined by the State Board of Forestry (pursuant to Public Resources Code §4125) to be primarily the responsibility of the State.

Stock Cooperative Housing: Multiple-family ownership housing in which the occupant of a unit holds a share of stock in a corporation that owns the structure in which the unit is located.

Storie Index: A numerical system (0–100) rating the degree to which a particular soil can grow plants or produce crops, based on four factors: soil profile, surface texture, slope, and soil limitations. (See "Prime Agricultural Land.")

Street Tree Plan: A comprehensive plan for all trees on public streets that sets goals for solar access, and standards for species selection, maintenance, and replacement criteria, and for planting trees in patterns that will define neighborhood character while avoiding monotony or maintenance problems.

Streets, Local: See "Streets, Minor."

Streets, Major: The transportation network that includes a hierarchy of freeways, arterials, and collectors to service through traffic.

Streets, Minor: Local streets not shown on the Circulation Plan, Map, or Diagram, whose primary intended purpose is to provide access to fronting properties.

Streets, Through: Streets that extend continuously between other major streets in the community.

Structure: Anything constructed or erected that requires location on the ground (excluding swimming pools, fences, and walls used as fences).

Subdivision: The division of a tract of land into defined lots, either improved or unimproved, which can be separately conveyed by sale or lease, and which can be altered or developed. "Subdivision" includes a condominium project as defined in §1350 of the California Civil Code and a community apartment project as defined in §11004 of the Business and Professions Code.

Subdivision Map Act: Section 66410 et seq. of the California Government Code, this act vests in local legislative bodies the regulation and control of the design and improvement of subdivisions, including the requirement for tentative and final maps.

Subregional: Pertaining to a portion of a region.

Subsidence: The sudden sinking or gradual downward settling and compaction of soil and other surface material with little or no horizontal motion. Subsidence may be caused by a variety of human and natural activity, including earthquakes. (See "Settlement")

Subsidize: To assist by payment of a sum of money or by the granting of terms or favors that reduce the need for monetary expenditures. Housing subsidies may take the forms of mortgage interest deductions or tax credits from federal and/or state income taxes, sale or lease at less than market value of land to be used for the construction of housing, payments to supplement a minimum affordable rent, and the like.

Substandard Housing: Residential dwellings that, because of their physical condition, do not provide safe and sanitary housing.

Sustainability: Community use of natural resources in a way that does not jeopardize the ability of future generations to live and prosper.

Sustainable Development: Development that maintains or enhances economic opportunity and community well-being while protecting and restoring the natural environment upon which people and economies depend. Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs. *(Source: Minnesota State Legislature)*

Tax Increment: Additional tax revenues that result from increases in property values within a redevelopment area. State law permits the tax increment to be earmarked for redevelopment purposes but requires at least 20 percent to be used to increase and improve the community's supply of very low- and low-income housing.

Telecommuting: An arrangement in which a worker is at home or in a location other than the primary place of work, and communicates with the workplace and conducts work via wireless or telephone lines, using modems, fax machines, or other electronic devices in conjunction with computers.

Traffic Model: A mathematical representation of traffic movement within an area or region based on observed relationships between the kind and intensity of development in specific areas. Many traffic models operate on the theory that trips are produced by persons living in residential areas and are attracted by various non-residential land uses. (See "Trip")

Transfer of Development Rights: Also known as "Transfer of Development Credits," a program that can relocate potential development from areas where proposed land use or environmental impacts are considered undesirable (the "donor" site) to another ("receiver") site chosen on the basis of its ability to accommodate additional units of development beyond that for which it was zoned, with minimal environmental, social, and aesthetic impacts.

Transit: The conveyance of persons or goods from one place to another by means of a local, public transportation system.

Transit, Public: A system of regularly-scheduled buses and/or trains available to the public on a fee-per-ride basis. Also called "Mass Transit."

Transit-dependent: Refers to persons unable to operate automobiles or other motorized vehicles, or those who do not own motorized vehicles. Transit-dependent citizens must rely on transit, para-transit, or owners of private vehicles for transportation. Transit-dependent citizens include the young, the handicapped, the elderly, the poor, and those with prior violations in motor vehicle laws.

Transit-oriented Development (TOD): A mixed-use community within an average 2,000-foot walking distance of a transit stop and core commercial area. TODs mix residential, retail, office, and public uses in a walkable environment, making it convenient for residents and employees to travel by transit, bicycle, foot, or car.

Transition Zone: Controlled airspace extending upward from 700 or more feet above the ground wherein procedures for aircraft approach have been designated. The transition zone lies closer to an airport than the outer approach zone and outside of the inner approach zone. (See "Approach Zone" and "Outer Approach Zone")

Transitional Housing: Shelter provided to the homeless for an extended period, often as long as 18 months, and generally integrated with other social services and counseling programs to assist in the transition to self-sufficiency through the acquisition of a stable income and permanent housing. (See "Homeless" and "Emergency Shelter")

Transportation Demand Management (TDM): A strategy

for reducing demand on the road system by reducing the number of vehicles using the roadways and/or increasing the number of persons per vehicle. TDM attempts to reduce the number of persons who drive alone on the roadway during the commute period and to increase the number in carpools, vanpools, buses and trains, walking, and biking. TDM can be an element of TSM (see below).

Transportation Systems Management (TSM): A comprehensive strategy developed to address the problems caused by additional development, increasing trips, and a shortfall in transportation capacity. Transportation Systems Management focuses on more efficiently utilizing existing highway and transit systems rather than expanding them. TSM measures are characterized by their low cost and quick implementation time frame, such as computerized traffic signals, metered freeway ramps, and one-way streets.

Trees, Street: Trees strategically planted—usually in parkway strips, medians, or along streets—to enhance the visual quality of a street.

Trip: A one-way journey that proceeds from an origin to a destination via a single mode of transportation; the smallest unit of movement considered in transportation studies. Each trip has one "production end," (or origin—often from home, but not always), and one "attraction end," (destination). (See "Traffic Model.")

Trip Generation: The dynamics that account for people making trips in automobiles or by means of public transportation. Trip generation is the basis for estimating the level of use for a transportation system and the impact of additional development or transportation facilities on an existing, local transportation system. Trip generations of households are correlated with destinations that attract household members for specific purposes.

Truck Route: A path of circulation required for all vehicles exceeding set weight or axle limits, a truck route follows major arterials through commercial or industrial areas and avoids sensitive areas.

Tsunami: A large ocean wave generated by an earthquake in or near the ocean.

Uniform Building Code (UBC): A national, standard building code that sets forth minimum standards for construction.

Uniform Housing Code (UHC): State housing regulations governing the condition of habitable structures with regard to health and safety standards, and which provide for the conservation and rehabilitation of housing in accordance with the Uniform Building Code (UBC).

Urban: Of, relating to, characteristic of, or constituting a city. Urban areas are generally characterized by moderate and higher density residential development (*i.e.*, three or more dwelling units per acre), commercial development, and industrial development, and the availability of public services required for that development, specifically central water and sewer, an extensive road network, public transit, and other such services (*e.g.*, safety and emergency response). Development not providing such services may be "non-urban" or "rural." (See "Urban Land Use.") CEQA defines "urbanized area" as an area that has a population density of at least 1,000 persons per square mile - (Public Resources Code §21080.14(b)).

Urban Design: The attempt to give form, in terms of both beauty and function, to selected urban areas or to whole cities. Urban design is concerned with the location, mass, and design of various urban components and combines elements of urban planning, architecture, and landscape architecture.

Urban Growth Boundary: An officially adopted and mapped line dividing land to be developed from land to be protected for natural or rural uses. Urban growth boundaries are regulatory tools, often designated for long periods of time (20 or more years) to provide greater certainty for both development and conservation goals. (*Source: Greenbelt Alliance)*. (Also called Urban Limit Line)

Urban Land Use: Residential, commercial, or industrial land use in areas where urban services are available.

Urban Reserve: An area outside of an urban service area but within an urban growth boundary, in which future development and extension of municipal services are contemplated but not imminent.

Urban Service Area: (1) An area in which urban services will be provided and outside of which such services will not be extended. (2) Developed, undeveloped, or agricultural land, either incorporated or unincorporated, within the sphere of influence of a city, which is served or will be served during the first five years of an adopted capital improvement program by urban facilities, utilities, and services. The boundary around an urban service area is called the "urban service area boundary" and is to be developed in cooperation with a city and adopted by a Local Agency Formation Commission Government Code §56080.

Urban Services: Utilities (such as water, gas, electricity, and sewer) and public services (such as police, fire, schools, parks, and recreation) provided to an urbanized or urbanizing area

Urban Sprawl: Haphazard growth or outward extension of a city resulting from uncontrolled or poorly managed development.

Utility Corridors: Rights-of-way or easements for utility lines on either publicly or privately owned property. (See "Right-of-way" or "Easement")

Vehicle-Miles Traveled (VMT): A key measure of overall street and highway use. Reducing VMT is often a major objective in efforts to reduce vehicular congestion and achieve regional air quality goals.

Very Low-income Household: A household with an annual income usually no greater than 50 percent of the area median family income adjusted by household size, as determined by a survey of incomes conducted by a city or a county, or in the absence of such a survey, based on the

latest available eligibility limits established by the U.S. Department of Housing and Urban Development (HUD) for the §8 housing program.

View Corridor: The line of sight – identified as to height, width, and distance – of an observer looking toward an object of significance to the community (*e.g.*, ridgeline, river, historic building, *etc.*); the route that directs the viewers attention.

Viewshed: The area within view from a defined observation point.

Volume-to-Capacity Ratio: A measure of the operating capacity of a roadway or intersection, in terms of the number of vehicles passing through, divided by the number of vehicles that theoretically could pass through when the roadway or intersection is operating at its designed capacity. Abbreviated as "V/C." At a V/C ratio of 1.0, the roadway or intersection is operating at capacity. If the ratio is less than 1.0, the traffic facility has additional capacity. Although ratios slightly greater than 1.0 are possible, it is more likely that the peak hour will elongate into a "peak period." (See "Level of Service")

Water-efficient Landscaping: Landscaping designed to minimize water use and maximize energy efficiency.

Watercourse: Natural or once natural flowing (perennially or intermittently) water including rivers, streams, and creeks. Includes natural waterways that have been channelized, but does not include manmade channels, ditches, and underground drainage and sewage systems.

Watershed: The total area above a given point on a watercourse that contributes water to its flow; the entire region drained by a waterway or watercourse that drains into a lake, or reservoir.

Waterway: See "Watercourse."

Wetlands: Transitional areas between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is covered by shallow water. Under a "unified" methodology now used by all federal agencies, wetlands are defined as "those areas meeting certain criteria for hydrology, vegetation, and soils."

Wildlife Refuge: An area maintained in a natural state for the preservation of both animal and plant life.

Williamson Act: Known formally as the California Land Conservation Act of 1965, it was designed as an incentive to retain prime agricultural land and open-space in agricultural use, thereby slowing its conversion to urban and suburban development. The program entails a ten-year contract between the City or County and an owner of land whereby the land is taxed on the basis of its agricultural use rather than its market value. The land becomes subject to certain enforceable restrictions, and certain conditions need to be met prior to approval of an agreement.

Woodlands: Lands covered with woods or trees.

Zero Lot Line: A detached single family unit distinguished by the location of one exterior wall on a side property line.

Zone, Combining: A special purpose zone that is superimposed over the regular zoning map. Combining zones are used for a variety of purposes, such as airport compatibility, floodplain or wetlands protection, historic designation, or special parking regulations. Also called "overlay zone."

Zone, Interim: A zoning designation that temporarily reduces or freezes allowable development in an area until a permanent classification can be fixed; generally assigned during general plan preparation to provide a basis for permanent zoning.

Zone, Traffic: In a mathematical traffic model the area to be studied is divided into zones, with each zone treated as producing and attracting trips. The production of trips by a zone is based on the number of trips to or from work or shopping, or other trips produced per dwelling unit.

Zoning: The division of a city or county by legislative regulations into areas, or zones, that specify allowable uses for real property and size restrictions for buildings within these areas; a program that implements policies of the General Plan.

Zoning District: A designated section of a city or county for which prescribed land use requirements and building and development standards are uniform.

Zoning, Exclusionary: Development regulations that result in the exclusion of low- and moderate-income and/or minority families from a community.

Zoning, Incentive: The awarding of bonus credits to a development in the form of allowing more intensive use of land if public benefits—such as preservation of greater than the minimum required open-space, provision for low- and moderate-income housing, or plans for public plazas and courts at ground level—are included in a project.

Zoning, Inclusionary: Regulations that increase housing choice by providing the opportunity to construct more diverse and economical housing to meet the needs of low- and moderate-income families. Often such regulations require a minimum percentage of housing for low- and moderate-income households in new housing developments and in conversions of apartments to condominiums.

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