CHAPTER 9

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, the zoning ordinance, 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 the discretion of the city or county. 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 everyday decisions.

The typical zoning ordinance regulates land use by dividing the community into districts or "zones" and specifying the uses that are to be permitted, conditionally permitted, and prohibited within each zone. 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, 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, 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). Charter cities with a population of under two million are exempt from the zoning consistency requirement unless their charters provide otherwise. An in-depth discussion of zoning consistency can be found later in this chapter under the heading "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 that 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.
- **Conditional use permit (CUP)**: A discretionary permit that enables a city or county to consider, on an individual basis, specific land uses that might otherwise have undesirable effects upon an area and to approve such uses when conditions can be placed on them that 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 that 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 es-

tablishing a direct relationship between the degree of slope and minimum lot size. This can implement specific policies and standards that may be found in the land use, open-space, and safety elements.

- **Mixed-use zoning**: An ordinance provision that 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 that 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 that 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 a greater density. The California Coastal Commission has used this technique to "retire" antiquated subdivision lots in environmentally sensitive areas.
- **Tree preservation ordinance**: Regulations that limit the removal of specified types of trees and require replacement of trees that are removed.

Form-Based Codes

Conventional zoning divides municipalities into a series of mapped districts (zones), and then assigns a permitted use(s) to each zone. Critics of conventional zoning point out that it ignores the importance of design. One alternative to conventional zoning is known as the form-based code. Compared with traditional zoning, a form-based code doesn't focus on specific uses. Instead, you start with a question—what does the community want to look like—and then work back from there.

Physical patterns—the design of buildings, streetscapes, and civic infrastructure are the central issue. Form-based codes control only the most important physical attributes of a group of buildings. This often includes their alignment on a street, the disposition of space between them, and their overall height. Typically, such controls are not expressed as absolutes, but rather as ranges of acceptable values. Form-based codes are more visual in nature and are thus more understandable to the community than complicated zoning regulations.

The emphasis on design supports mixed-use development and allows uses to evolve as the market changes. One can study older towns and find that in their development over time, land use regulation was secondary to form. The mix of uses has responded to market forces and buildings have changed their uses any number of times since they were built.

A form-based code is a useful implementation measure for achieving certain general plan goals, such as walkable neighborhoods and mixed-use and transit-oriented development. As of this writing, no local government in California has entirely replaced its conventional zoning ordinance with a form-based code. However, form-based codes have been used in selected planning areas.

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 summarizes most of the requirements that apply to general law cities, charter cities with a population above two million, 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 general 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. Local agency formation commission (LAFCO) law requires prezoning as part of the annexation process.
- **Interim ordinance**: Cities and counties may enact interim ordinances prohibiting uses that 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. 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. A zoning ordinance limiting the number of new housing units must contain findings regarding the public health, safety, and welfare that justify reducing regional housing opportunities (§65863.6). 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. In addition, §65863 restricts the ability of a city or county to reduce, through administrative, quasi-judicial, or legislative action, the residential density of any parcel to a density lower than that used by the Department of Housing and Community Development (HCD) in determining compliance with housing element law.
- **Housing development projects:** Section 65589.5 restricts cities and counties from disapproving housing development project affordable to very low-, low- or moderate-income households except under certain circumstances. These circumstances include inconsistency with the general plan, specific unavoidable impacts on the public health and safety, and overconcentration of low-income households, among others. This code section further restricts the ability of cities and counties to disapprove or lower the density of a housing development project that is consistent with general plan and zoning standards unless there is an impact on the public health and safety that cannot otherwise be mitigated.
- **Density bonus**: Local governments must provide incentives to developers of specified housing developments. 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, seniors, or—for condominium projects only—moderate-income residents (§65915). In return, the developer must reserve these units for this purpose for a certain number of years. Incentives may include a reduction in site development standards or approval of mixed-use zoning. A bonus density must exceed the maximum allowable general plan or zoning density by at least 25 percent.
- **Second units**: Local governments may, by ordinance, provide for the creation of second residential units in single family and multifamily zoning districts (§65852.2). The ordinance may designate areas where second units are permitted, based on specified criteria, as well as impose certain zoning and design conditions. Second unit applications must be considered ministerially without discretionary review or a hearing. A local government cannot adopt an ordinance totally precluding second units unless it makes certain findings. In the absence of any local ordinance, state law provides for the approval of second units that meet the required standards.

SPECIFIC PLANS

A specific plan is a great tool for systematically implementing the general plan within all or a portion of the planning area (§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 sector, 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, a specific plan must include a statement of its relationship to the general plan (§65451(b)) and 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 that, in the judgment of the planning agency, are necessary or desirable for general plan implementation (§65452).

Requirements Related to General Plan Implementation

Pursuant to §65103, each planning agency shall perform all of the following functions:

- Prepare, periodically review, and revise, as necessary, the general plan.
- 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 improvements 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 of the Government Code (commencing with §65400).
- Endeavor to promote public interest in, comment on, and understanding of the general plan and regulations relating to it.
- Consult and advise with public officials and agencies; public utility companies; civic, educational, professional, and other organizations; and the general public concerning implementation of the general plan.
- Promote the coordination of local plans and programs with the plans and programs of other public agencies.
- Perform other functions as the legislative body provides, including conducting studies and preparing plans other than those required or authorized by Title 7 of the Government Code.

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 elements 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 an annual report to the legislative body of the city or county, 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 the jurisdiction's share of regional housing needs determined pursuant to §65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to paragraph (3) of subdivision (c) of §65583.

A specific plan is especially useful for large projects, as well as for 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 that 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 been 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 §11004.5) 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 improvements 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 publication *The Planner's Guide to Specific Plans*.

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 or any applicable specific 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 that may be articulated in the general plan.

Subdivisions provide infrastructure that 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)
- Local transit facilities, such as bus turnouts, benches, shelters, and landing pads. (§66475.2)
- Bicycle paths. (§66475.1)
- Parks and recreational facilities, if the city's general plan or specific plan contains policies and standards for such 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)
- 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). Lot line adjustments must also be consistent with the general plan (§66412). The local government must deny a proposed subdivision if it finds that the proposed subdivision map is inconsistent with the general plan or any applicable specific plan; the design or improvement of the subdivision is inconsistent with the general plan or any applicable specific plan; the site is physically ill-suited for either the type or proposed density of development; or 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 subdividers receive 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 a failure to do so would threaten community health or safety or 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, forms 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 lands.

The general plan should identify existing capital facilities and the need for additional improvements. The circulation element is the most obvious place to address 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" (§65302(g)).
- 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" (§65560(b)(3)). 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" (§65302(b)).

Local governments can underscore their interest in public services and facilities by adopting an optional public facilities element, as is discussed in Chapter 6. According to OPR's 2002 local government survey, over 20 percent of cities and counties have some form of public facilities element in their general plan.

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 govern-

mental agencies (including cities, counties, school districts, and special districts) that construct 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- to 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 those under the Clean Air Act and the 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 that conform to the SIP and will not fund those that 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 LAFCO exists to encourage the orderly provision of services within cities and special districts, it is seldom an effective substitute for every city and the county consulting and cooperating with its neighbors.

REDEVELOPMENT

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 a local government for implementing its general plan, and particularly its 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 healthier part of the community.

The city or county planning commission must review a 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. Any redevelopment plan must conform to the adopted general plan (Health and Safety Code §33302 and §33331). A 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 the 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 that 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 organizations (Health and Safety Code §33333.3(b)).

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, or 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. Thus, agency funding can play a crucial role in meeting regional fair share housing needs. Each redevelopment 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 can 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 area. The increased margin or increment of tax revenues from subsequent improvements goes to the redevelopment agency instead of being turned over to the usual taxing agency (i.e., city, county, or 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, 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 the duration of the agreement, the permitted uses of property, the density or intensity of use, the maximum height and size of proposed buildings, and the provisions for reservation or dedication of land for public purposes (§65865.2). In addition, development agreements may include the conditions, terms, restrictions, and requirements for subsequent discretionary actions; provide that such stipulations shall not prevent development of the land with regard to the uses, densities, and intensities set forth in the agreement; specify the timing of project construction or completion; and 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 that 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 that 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 an 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.

It is important to stipulate the existing rules, regulations, and policies that will be subject to a development agreement. In the absence of such specification, all development rules, regulations, and official policies noted in §65866 that are in force upon the execution of a development 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 a development agreement is one way to specify development details for a

site, including the regulations and policies that would apply under the development agreement. Specific plan preparation can 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.

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. State housing law applies to buildings such as apartments, hotels, motels, lodging houses, manufactured housing, and dwellings but not to mobilehomes. In addition to meeting the requirements of state housing law, local codes must also comply with other state requirements related fire safety, noise insulation, soils reports, earthquake protection, energy insulation, and access for the disabled.

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, the local building department can authorize the use of materials and construction methods other than those specified in the uniform codes where the department finds the proposed design satisfactory and the materials or methods at least equivalent to those prescribed by the uniform codes with regard to performance, safety, and the protection of life and health (Health and Safety Code §17951). These provisions 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. Health and Safety Code §17980(b)(2) 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 that 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 may acquire land for public rights-of-way (e.g., streets, sidewalks, bicycle paths, etc.), transit terminals, airports, etc. Cities and counties may advance open-space element policies and proposals through the acquisition of open-space and conservation easements.

Open-space acquisition has some advantages over purely regulatory approaches to implementation, such as zoning. Ownership ensures that the land will be controlled by either the city or county or another public agency. Acquiring an open-space or conservation easement rather than full ownership ensures that development will be limited, while the private landowner who continues to hold the underlying rights is compensated for lost development opportunities. This avoids the question of whether regulatory limitations 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 capi-

tal 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. Travelways and open space are the two most common uses of easements.
- **Leasing:** The lessee possesses and occupies 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 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 to receive just compensation through the payment of fair market value for the loss (California Constitution, Article I, §19). Cities and counties are authorized to exercise the power of eminent domain (§25350.5 for counties and §37350.5 for cities) in accordance with eminent domain law (Code of Civil Procedure, §1230.010 to §1230.020).

PREFERENTIAL PROPERTY TAX ASSESSMENTS

Preferential assessment programs provide landowners an economic incentive to keep their land in agricultural, timber, open-space, or recreational use. This can help implement the land use, open-space, and conservation elements by protecting areas designated for such uses from premature development. State law provides local governments with several preferential assessment programs, the most common of which are discussed below.

Williamson Act

The Legislature enacted the California Land Conservation Act (§51200, et seq.) in response to the rapid loss of agricultural land in areas of increasing land values. Typically, as development approaches an agricultural area, the price of land is driven upward by owners and buyers speculating on the future development potential of the land. The increase in prices leads 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 makes it uneconomical to continue farming and encourages 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. Such a cancellation requires the owner to pay penalty fees. 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 meant 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, which is 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 anticipated from 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 preventing 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 Williamson Act program, the Legislature added additional nonregulatory protection in the form of farmland security zones for specific classifications of farmland, including prime farmland, farmland of statewide importance, unique farmland, and farmland of local importance. Land can be entered into a farmland security zone contract for a 20-year term rather than the 10-year term of Williamson Act contracts. During this time, the land is assessed at 65 percent of either its Williamson Act valuation or its Proposition 13 valuation, whichever is lower, rather than on the actual use of the land for agricultural purposes as is required under the Williamson Act. Cities and special districts that provide non-agricultural services are generally prohibited from annexing land enrolled under a farmland security zone contract, with certain exceptions. Additionally, contracted land cannot 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 the urban service directly benefits the land or living improvements.

For more information on the Williamson Act and farmland security zone contracts, contact the Department of Conservation's Division of Land Resource Protection at (916) 324-0850 or go to their website at www.conservation.ca.gov/dlrp.

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 TPZs and have a land use category that provides for timber production. A city or county also may use TPZs to implement the conservation element's timber resource provisions.

Patterned after the Williamson Act, TPZs are rolling 10-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 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 could adopt TPZs on qualified parcels without approval of the property owner, provided that statutory procedures were followed. Currently, additions to local programs 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 generally must be deferred until expiration of the 10-year restriction. However, the local legislative body may, under special circumstances, approve immediate rezonings.

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 could provide coherent preserves of timberland. The primary disadvantage is that there is greater potential for conflict between property owners and local governments 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

Examples of Transportation System Management Techniques

Listed below are various transportation system management (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, each containing particular measures that 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

Provision for Pedestrians, Bicycles, and the Disabled
- Bicycle lanes/paths
- Bicycle storage
- Pedestrian and/or transit malls
- Pedestrian signals
- Bicycle-actuated signals
- Bicycle/transit integration
- Weather- and theft-resistant bicycle parking facilities at places of employment, shopping areas, etc.
- Shower and locker facilities at places of employment for bicycling employees
- Universal access improvements

Actions to Reduce Motor Vehicle Use
- Carpool/vanpool matching program
- Carpool public information
- Carpool/vanpool incentives
- Neighborhood ridesharing
- Highway surveillance
- Subsidized rideshare vehicles
- Guaranteed ride home for carpoolers, transit riders, etc.
- Transportation management associations
- Inter-city urban commuter rail

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 and HOVs
- Bus turnouts
- Bus-actuated signals
- Ramp meter bypass lanes for HOVs

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
- Telecommuting

Improved Public Transit
- Feeder services improvements
- Demand responsive system
- Shelters and other passenger amenities
- Rehabilitated/expanded bus fleet
- Passenger information system improvements
- Transit marketing

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
- Strict enforcement of on-street parking codes
- Graduated parking fees with higher fees for single-occupant vehicles
- Metered on-street parking

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 non-profit organization to acquire perpetual easements for the conservation of agricultural and open-space lands and for 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 non-profit organizations

for the purpose of conserving agricultural and open-space lands. These easements are established for a 10-year period and renew annually. They must be consistent with the general plan and are considered enforceable restrictions of land under a preferential taxation program. The local government is prohibited from granting building permits for land subject to such easements. Procedures for termination by nonrenewal and by abandonment are set out in 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 non-profit 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 through §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.

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, the Trust for Public Land, or the American Farmland Trust, to promote the 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 success, transportation and planning agencies, transit providers, developers, and employers should all coordinate in the planning and implementation of TSM.

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.

INFRASTRUCTURE FUNDING MECHANISMS

The timing, type, and quality of development is often directly related to the availability of infrastructure and public services. The principal funding sources for local government infrastructure are taxes, benefit assessments, bonds, 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.

Taxes

Taxes are either general or special. A general tax, such as the ad valorem property tax (which is capped at one percent of assessed valuation by Proposition 13), a utility tax, or a hotel tax, is collected and placed in

the city's or county's general fund. General taxes are not dedicated to any specific purpose and are usually imposed to pay for capital improvements or services that will used by the entire community.

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 (e.g., a school district a transit district, etc.) to finance its activities. Special taxes often finance specific projects or services, such as flood control or ambulance service.

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.

Proposition 218, approved by voters in November 1996, requires a popular election in order to levy a local general tax (with a simple majority needed for approval) or a special tax (with a two-thirds majority needed for approval). It also requires a simple majority election in order to levy certain service fees, although generally not development impact fees.The effect of Proposition 218 on local financing has been profound. Prior to its passage, an election usually was not required in order to impose or increase taxes, so a jurisdiction could more easily raise needed revenue.

Benefit Assessments

Benefit assessments (also known as special assessments) are among the oldest techniques for financing the 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 an assessment.

Unlike general taxes, benefit assessments are not subject to a two-thirds vote requirement. Instead, as a result of Proposition 218 of 1996, a proposed assessment is subject to a ballot procedure that 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.

A benefit assessment cannot be levied on a parcel that 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 created important limitations on the use of 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, 1997), *Understanding Proposition 218* (Office of the Legislative Analyst, 1996), and *A Planner's Guide to Financing Public Improvements* (OPR, 1997).

Bonds

Cities, counties, school districts, and other districts may issue general obligation (G.O.) bonds for the 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.

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 that are commonly financed by revenue bonds. The Revenue Bond Law of 1941 (§54300, et seq.) provides for 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 a non-profit corporation or a special authority that constructs a facility and leases it to the city or county. Lease payments provide the revenue to pay off the bond. 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. An exaction is levied to finance a specific activity, facility, or service and can only be levied once, at the time of project approval.

Exactions may only be imposed where they will advance a legitimate state interest (e.g., health, safety, and welfare issues, such as smooth traffic flow, availability of recreational facilities, sewer and water service, etc.) and are necessary to mitigate the adverse impact to that interest that 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 groundrules 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 law. The *Nollan* decision established that there must be a nexus between the exaction and the state interest being advanced. The U.S. Supreme Court, 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 the 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 (§66020).
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, which was 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, which links 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 not strictly a financing measure, privatization is a strategy that can help stretch limited public funds. Privatization has certain advantages: local governments need not purchase and maintain specialized machinery, personnel for specialized or seasonal tasks need not be maintained on salary, and the costs to local governments of providing services may be reduced. It also has disadvantages: special skills are needed to establish and manage the contract with the private-service provider, quality is beyond the direct control of the local government and elected officials, and, 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:

- Business license taxes, which are 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 the operation of its municipal railway.
- Parking regulations, such as neighborhood parking stickers, parking meters, and daily tickets, which 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 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 needed areawide improvements. In Thousand Oaks, the city requires traffic mitigation fees to pay for signals, the cost of paving adjacent arterials, and off-site improvements, all of which are 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, which 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, which involve developing agreements between the private and public sectors that split 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, which may reduce or eliminate the need for public funds for transportation infrastructure if the prospect of profit exists. California's first modern toll roads were 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 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 developing programs such as those mentioned above. Such 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 then, 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. Consistency statutes and legal precedents are detailed below.

In order for zoning and other measures to comply with consistency requirements, the general plan itself must first be complete and adequate (i.e., it must address all locally relevant issues and be internally consistent). In 1984, the Court of Appeal 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.Atty.Gen 21, 24 (1975)*). More recently, the appeals court ruled that a subordinate land use approval, such as a subdivision map, can only be challenged on the basis of an internal general plan inconsistency 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*).

In *Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board of Supervisors (1998) 62 Cal.App.4th 1332*, the court held that "[The] nature of the policy and the nature of the inconsistency are critical factors to consider." 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 room for interpretation (*Sequoayah Hills Homeowners Association v. City of Oakland, (1998) 23 Cal.App 4th 704 (1993)*).

Placer County's Online 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 a computer program. The program analyzes the proposal by checking for general plan and community plan consistency, identifying goals and policies by topic, and preparing a report of its results. The software can compare project characteristics to the goals and policies of the general plan and each of its elements, providing an unbiased consistency analysis.

ZONING CONSISTENCY

Counties, general law cities, and charter cities with populations 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 or the amendment of a zoning ordinance map, must be consistent with the general plan. A zoning ordinance that is inconsistent with the general plan at the time it is enacted is "invalid when passed" (*Lesher Communications v. City of Walnut Creek (1990) 52 Cal.3d 531; 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 re-establish 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 zoning changes be heard concurrently (§65862). When concurrent hearings are not feasible, OPR suggests the following time periods:

- For minor general plan amendments (those involving a relatively small area), six months.
- For extensive amendments to the general plan (such as a revision that 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 that sought to overturn a rezoning approval was invalidated because 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: uses and standards, spatial patterns, and timing. These are described below.

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.

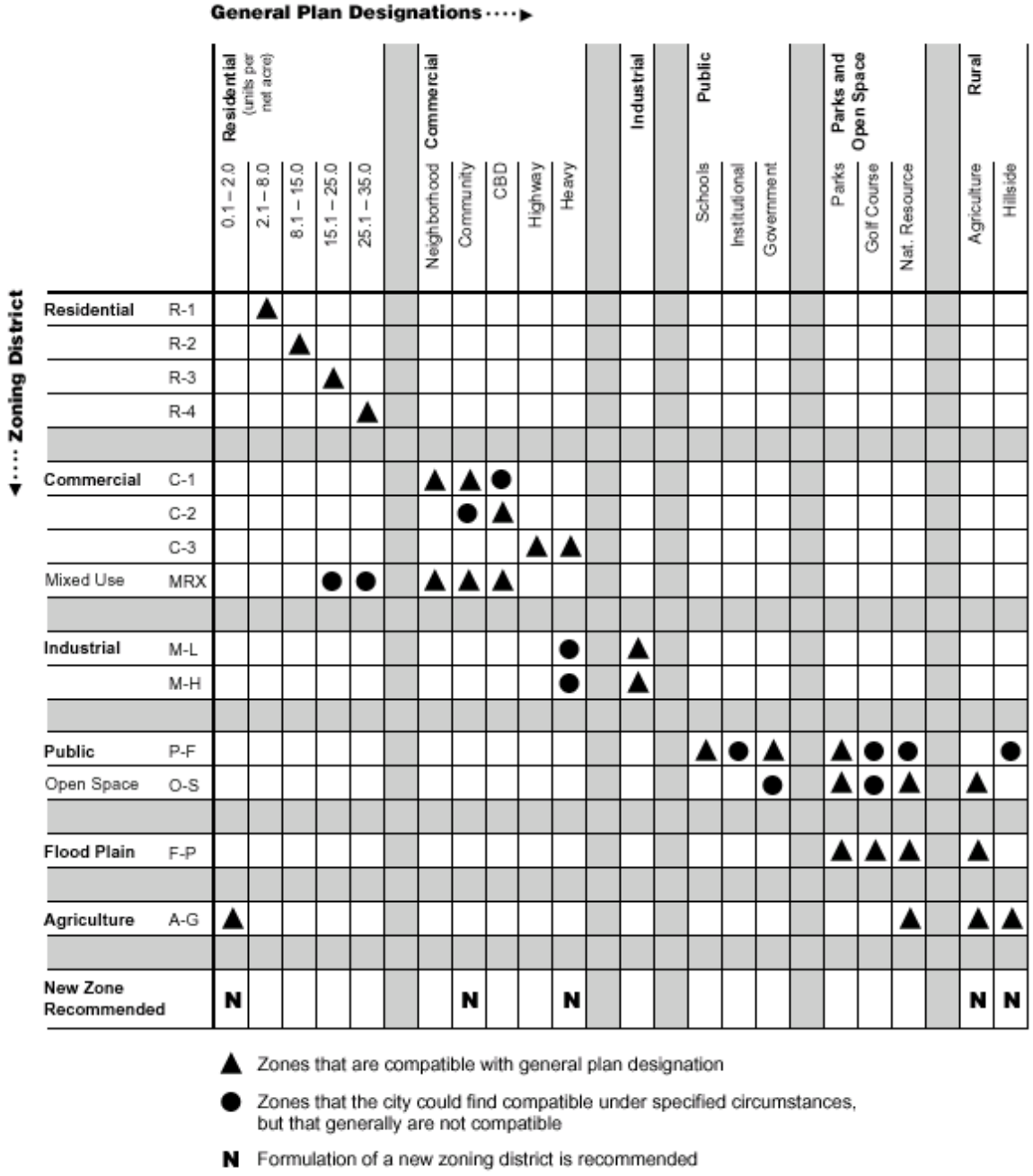
The zoning scheme, with its range of zoning districts and their associated development standards or regulations, must be broad enough to implement the general plan. For example, if a general plan contains three residential land use designations, each with its own residential intensity and density standard, 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 pat-

Hypothetical General Plan/Zoning Compatability Matrix



terns 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 residen-

tial 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 in nature, while zoning responds to shorter-term needs and conditions. 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 (e.g., agriculture) to a more intensive one (e.g., 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 chart on the previous page illustrates a hypothetical matrix. It may be modified to match local conditions.

The matrix approach 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 (e.g., "furthers," "deters," "no effect"). A point system that rates development projects by their level of consistency with the goals, objectives, and policies of the general plan is a similar approach.

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 the proposed subdivision map is consistent with the general plan and any applicable specific plans (§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: the proposed map is not consistent with applicable general and specific plans or the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

The checklist on the following page 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 raise their housing costs 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 adequate general plan. The courts also have general authority to issue an injunction to limit approvals of additional subdivision maps, parcel maps, rezonings, and public works projects or (under limited circumstances) the issuance of building permits pending adop-

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?

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?

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?

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?

tion 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.

ANNUAL PROGRESS REPORTS

After the general plan has been adopted, §65400(b) requires the planning agency to provide an annual report to their legislative body, OPR, and HCD on the status of the plan and progress in its implementation. The report

must detail progress in meeting the jurisdiction's share of regional housing needs determined pursuant to §65584 and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing pursuant to §65583(c)(3).

The annual progress report must be provided to the legislative body, OPR, and HCD on or before October 1 of each year. Some jurisdictions report on a calendar-year basis (January 1 through December 31), and others on a fiscal-year basis (July 1 through June 30). The October 1 deadline allows time to prepare an annual progress report regardless of the reporting period that is used.

There is no standardized format for the preparation of the annual progress report. The form and content of the report may vary based on the circumstances, resources, and constraints of each jurisdiction. This section is meant to provide general guidance to cities and counties in the preparation of their annual progress reports.

Purpose of the Report

- To provide enough information to allow local legislative bodies to assess how the general plan is being implemented in accordance with adopted goals, policies, and implementation measures.
- To provide enough information to identify necessary course adjustments or modifications to the general plan as a means to improve local implementation.
- To provide a clear correlation between land use decisions that have been made during the 12-month reporting period and the goals, policies, and implementation measurescontained in the general plan.
- To provide information regarding local agency progress in meeting its share of regional housing needs and local efforts to remove governmental constraints to the development of housing (as defined in §65584 and §65583(c)(3)).

Format of the Report

The following describes ways in which various cities and counties have organized and formatted their annual progress reports:

- **Focus on individual policies and implementation measures:** Provide a comprehensive listing of all general plan policies, categorized by element, with a commentary on how each policy was implemented during the reporting period (i.e., a description of the activities underway or completed for implementation of each policy). This listing can most easily be accomplished by using a table format. (Examples: Carlsbad, Citrus Heights)
- **Focus on development activities and projects approved:** Provide a comprehensive listing of all development applications that the planning agency received and processed with commentary on how the agency's actions on these development applications further the goals, policies, and/or implementation measures of the general plan. Link the major projects, including public projects, to the general plan using policy numbers or by element. (Examples: Placer County, Signal Hill)
- **Focus on general plan elements:** Provide a general summary of each of the mandatory and optional elements of the general plan with a brief description of various actions taken by the agency (e.g., development application approvals, adoption of ordinances or plans, agency-initiated planning studies, etc.) that advanced specific goals and policies of each element. (Examples: Camarillo, San Luis Obispo, Redlands)
- **Broad annual report format:** Incorporate the annual progress report into a broadly focused annual report on all of the activities and programs of the jurisdiction, drawing upon data and sources such as an annual performance report on budgeting, processing of land use entitlements, redevelopment activities, housing construction, or other programs or "state of the city/county" reports. (Example: Windsor)

Contents of the Report

Each jurisdiction should determine which locally relevant issues are important to include in the annual report. The following items may be useful in the annual progress report:

- Introduction.
- Table of contents.
- Date of presentation to and acceptance by the local legislative body.
- List of major agency-initiated planning activities that were initiated, in progress, or completed during the reporting period (i.e., master plans, specific plans, master environmental assessments, annexation studies, and other studies or plans carried out in support of specific general plan imple-

Consistency Provisions in State Law and Legal Precedents

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

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 held that governmental capital facilities projects must be consistent with the general plan.
- §53090, et seq., require that 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 to this consistency requirement (*Rapid Transit Advocates, Inc. v. Southern California Rapid Transit District (1986) 185 Cal.App.3d 996*).

Condominium Conversion

- §66427.2 requires that when the general plan contains objectives and policies addressing the conversion of rental units to condominiums, any 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 §4170 states that 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 states that 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

mentation measures). Include a brief comment on how each of these activities advances the goals, policies, and/or implementation measures contained in the general plan. Provide specific reference to individual elements where applicable.

- List each of the general plan amendments that have been processed, along with a brief description and the action taken (e.g., approval, denial, etc.). This listing should include agency-initiated as well as applicant-driven amendments.
- List each of the development applications that have been processed, along with a brief description, the action taken (e.g., approval, denial, etc.), and a brief comment on how each action furthers the goals, policies, and/or implementation measures of the general plan. Provide specific reference to individual elements where applicable.

Consistency Provisions in State Law and Legal Precedents, Continued

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

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 requires that, except as provided in Public Resources Code §41710(a), any area or areas identified for the location of a new solid waste transformation or disposal facility 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) states that 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 requires that a tentatively reserved area 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 requires that the countywide siting element submitted to the California Integrated Waste Management Board 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 Public Resources Code §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) states that 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 plan element.

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.
- Public Resources Code §2762 states that 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.

- Identify priorities for land use decision-making that have been established by the local legislative body (e.g., passage of moratoria, emergency ordinances, development of community or specific plans, etc.).
- Quantify, where appropriate, existing and projected housing needs for all income levels pursuant to housing element law (§65583) with regard to:
  - The appropriateness of the housing goals, objectives, and policies in contributing to the attainment of state housing goals.
  - The effectiveness of the housing element in attaining the community's housing goals and objectives.
  - The progress in implementing the housing element.
- The annual progress report should identify goals, policies, objectives, standards, or other plan pro-

Consistency Provisions in State Law and Legal Precedents, Continued

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

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 the payment of in lieu 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) (CEQA Guidelines) requires examination of projects subject to the provisions of CEQA for consistency with the general plan.
- Public Resources Code §21080.10 and 21080.14 exempt specified housing projects from the

posals that need to be added, deleted, amended, or otherwise adjusted.

- If the jurisdiction is in the process of a comprehensive general plan update, the progress report can be limited to a brief letter describing the scope of work and anticipated completion date.

Suggested Reporting Methods on Regional Housing Needs

HCD recommends the following step-by-step approach for cities and counties to report their progress in meeting their share of the regional housing needs.

First, determine the total net housing units added in the reporting year. If the progress report is based on the calendar year, one approach is to report the change in the Department of Finance's (DOF) total units estimate over the year. If the progress report is based on the fiscal year or other time period, local estimates will need to be prepared using DOF and local data. A local estimate of net units added should reflect the following:

- An estimate or records for total units completed.
- If unit completion data is not available, units completed may be estimated from permit issuance data with the use of an estimate of the average time lag between permit issuance and completion and an estimate of the percentage of permits issued that were not used.

Consistency Provisions in State Law and Legal Precedents, Continued

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

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 states that 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.

- An estimate or records for total units removed.
- A definition of what constitutes a new unit for regional share purposes.

On the latter point, for example, shared housing arrangements do not produce new dwelling units as the term is used in DOF estimates and in regional projected needs shares and should not be included. In general, a unit should be counted if it meets DOF's functional definition for inclusion in its annual unit estimates.

Second, determine affordability characteristics of units added in the reporting year. Third, compare units added to regional share objectives.

Submitting the Report to OPR and HCD

Annual progress reports can be submitted to OPR in either electronic or paper format. If you wish to submit your annual report to OPR electronically, e-mail it to state.clearinghouse@opr.ca.gov and limit the file size to 2 KB or less. Word, Excel, PowerPoint, text, RTF, PDF, or PageMaker are the only acceptable file formats. Printed copies of the annual report should be sent to Governor's Office of Planning and Research, State Clearinghouse and Planning Unit, P.O. Box 3044, Sacramento, CA 95812-3044.

A copy of the report must also be sent to the Department of Housing and Community Development, Housing Policy Division, 1800 Third St., Rm. 430, Sacramento, CA 95814.