

DuaneMorris

Land Use 101



American Planning Association
California Chapter
San Diego

Making Great Communities Happen

David Watson, Esq.

Duane Morris LLP

©2017 Duane Morris LLP. All Rights Reserved. Duane Morris is a registered service mark of Duane Morris LLP.
Duane Morris – Firm Offices | New York | London | Singapore | Philadelphia | Chicago | Washington, D.C. | San Francisco | Silicon Valley | San Diego | Shanghai | Taiwan | Boston | Houston | Los Angeles |
Hanoi | Ho Chi Minh City | Atlanta | Baltimore | Wilmington | Miami | Boca Raton | Pittsburgh | Newark | Las Vegas | Cherry Hill | Lake Tahoe | Myanmar | Oman | Duane Morris – Affiliate Offices | Mexico City | Sri Lanka |
Duane Morris LLP – A Delaware limited liability partnership

www.duanemorris.com

LOCAL LAND USE REGULATION

Laws governing real estate development are complex and ever-changing, with federal, state and local statutes regulating use of land

General Plan/Community Plan Designation of Property

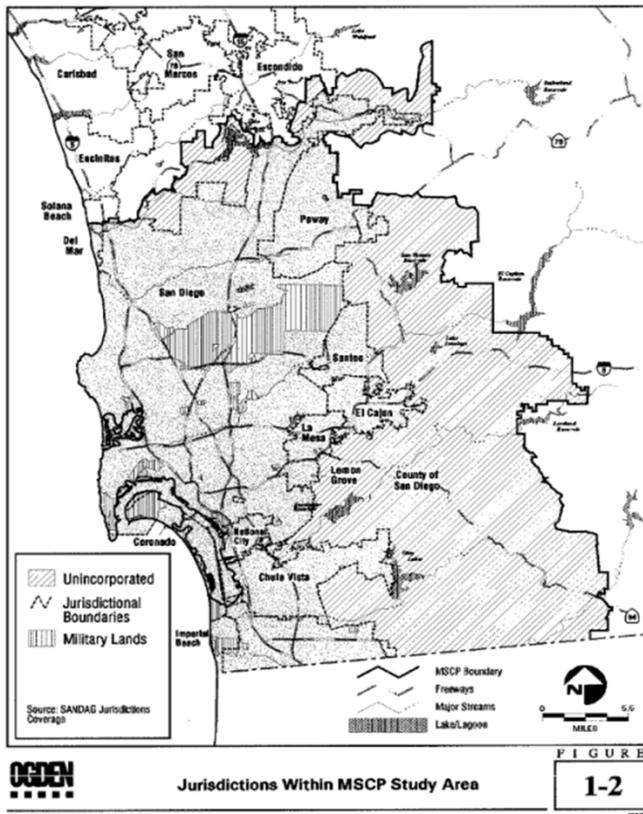
- **General Plan** – “constitution” of local jurisdiction land development regulations
 - *Highest in hierarchy*
 - *All local jurisdictions must adopt General Plans*
- **What’s in a General Plan?**
 - *Text & diagrams of property designations*
 - *Policies & regulations affecting property*
 - *7 adequate elements mandated by law (land use, circulation, housing, conservation, open-space, noise safety)*

Specific Plan

- Under California law, local jurisdictions may adopt Specific Plans for certain development proposals.
- Specific Plans usually contain detailed regulations, requirements and design guidelines to supplement, or sometimes supersede, more general zoning and other requirements.

Multiple Species Conservation Plan/Multi-Habitat Planning Areas

- Authorized by federal and state laws.
- Protect areas of sensitive lands, while designating other areas for development.



Pictured left: The City of San Diego's MSCP study area as of 2016 [Credit Source](#)

Zoning

- Intended to regulate the use of land.
- Provide for public safety, such as prohibiting heavy industrial uses next to residences and schools.
- Except for charter cities and the City of Los Angeles, zoning must be consistent with the General Plan.
 - *As a matter of good planning principles, most local jurisdictions attempt to conform zoning with the general plan.*

Zoning Rules

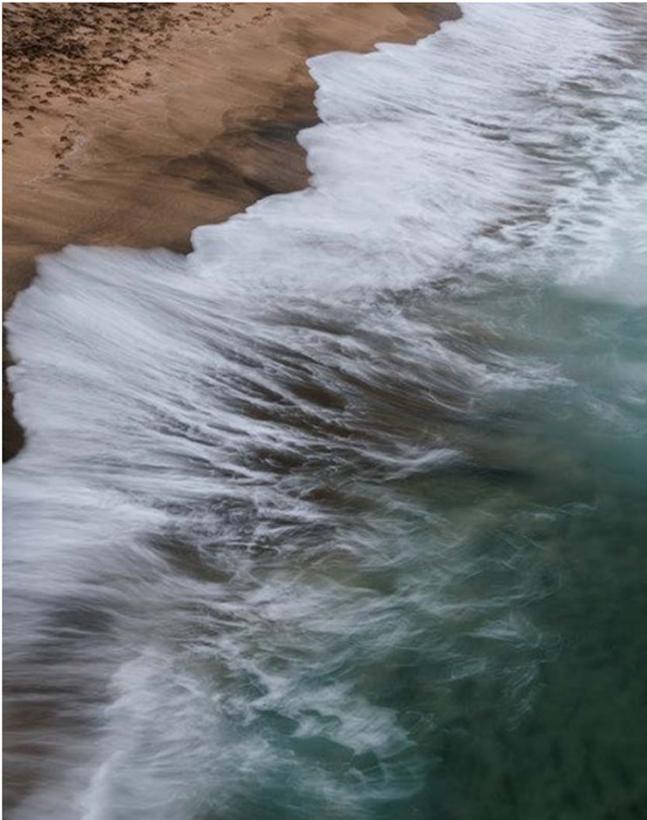
- **Deviation/Variance:** Mechanisms for allowing certain deviations from applicable zoning rules.
- **Nonconforming/Previously Conforming Use:** Occurs when property was previously development consistent with the then-current zoning, but the zoning was changed after the development was constructed.
- **Typical Zoning Development Regulations:** Rules for height, floor area ratio, setbacks, signage, parking, landscaping, etc.
- **Special Overlay Zones:** Zones that “overlay” the regular zone.
 - *Could deal with nearby airports, parking, sensitive resources or other special or unique issues.*
- **Affordable Housing/Inclusionary Zoning:** Typically require certain percentages of below market rate units for moderate or low income residents.

Redevelopment



- Although the state's formal redevelopment process has been abolished by recent state statutes, certain vestiges remain as part of the "wind down" process mandated by statutes.
 - *It is possible that property within former redevelopment areas and owned by former redevelopment agencies could be subject to special regulations.*
- This complex regulatory "wind down" process is under way through the state.
- Generally, Redevelopment Agencies have been replaced by Successor Agencies.
 - *Overseen by local Redevelopment Oversight Boards and the State Department of Finance.*

Coastal Zone



- All development within the state's Coastal Zone must comply with the state Coastal Act, any Local Coastal Program (if enacted) and coastal development permit requirements.
- **Local Coastal Programs (LCPs):** Planning documents intended to provide policy guidance for development compliance with the Coastal Act.
- All land within the state Coastal Zone is subject to an additional set of Coastal Act development regulations, in addition to those imposed by any local jurisdiction.

Subdivision Map Act

- Any land division sold, leased or financed must be approved by the local jurisdiction in accordance with the Subdivision Map Act.
- Ensures proper design of subdivisions and protect property owners and purchasers.
 - *Requirements include a **two-step process**:*
 - Approval of a tentative map
 - *Numerous conditions which must be satisfied in a timely manner.*
 - *Generally have a deadline within which the final map must be recorded.*
 - Approval of a final map → recorded against the property.
- Also provides for **Vesting Maps**, which ensure new regulations may not later be imposed on a previously approved Map.
- Compliance with a Map's conditions is usually ensured by a Subdivision Improvement Agreement and posting of financial security

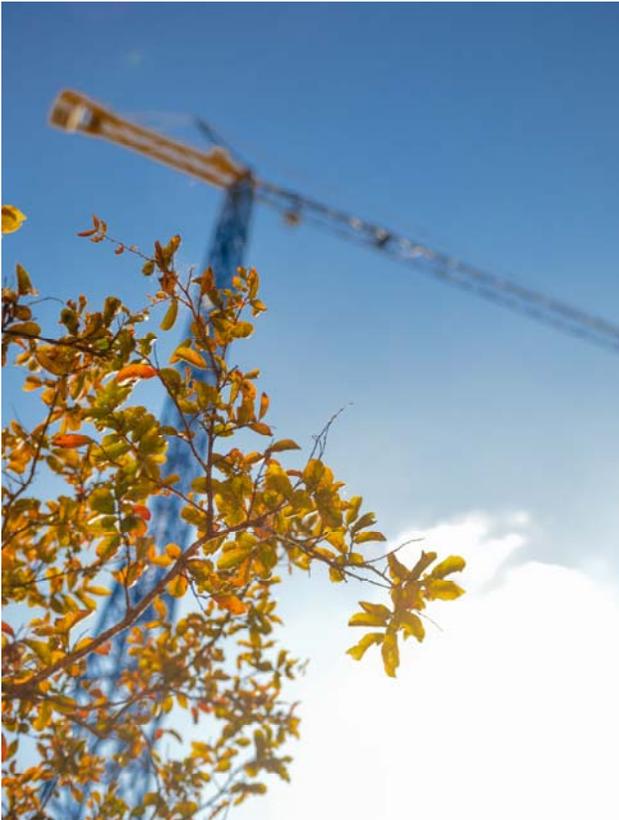
Site Development Permit or Equivalent

- Uses considered desirable and necessary, but need conditions and review in addition to those found in the underlying zoning regulations.
- Examples of such permits include:
 - ***Conditional Use Permit***
 - ***Planned Development Permits (PIP, PRD, PCD, etc.)***
 - ***Coastal Development Permits***
 - ***Neighborhood Development Permits***

Other Agreements

- State Land Use laws provide for several different types of contracts between a property owner and a local jurisdiction.
- Agreements may vest development rights
 - *Development Agreement*
 - *Subdivision Agreement*

Williamson Act



Tax relief for agricultural lands

- The state recently stopped providing funding to local jurisdictions to compensate for the lost tax revenue.
- Significant amounts of property throughout the state remain subject to Williamson Act contracts.
 - *May be ended only through the statutory procedures for non-renewal of the contract or cancellation.*
 - *Non-renewal takes 10 years.*
 - *Cancellation requires restrictive findings be made.*

California Environmental Quality Act (CEQA)



Requires that any public agency, state or local, conduct an analysis of the environmental impacts of a proposed development project before approving that project.

- If impacts are considered potentially significant → **environmental impact report (EIR).**
- If the impacts are not significant or can be fully mitigated
 - **Negative Declaration** (there are no impacts and explains why) or
 - **Mitigated Negative Declaration** (there are potential impacts, but the impacts are fully mitigated)

CEQA (continued)

- Typical topics analyzed include:
 - **Traffic**
 - **Parks**
 - **Public Safety**
 - **Utilities**
 - **Public Infrastructure**
 - **Biology/Wetlands**
 - **Soils/Geology**
 - **Archaeology/Paleontology**
 - **Water Supply**
 - **Air Quality/Climate Change** (Climate Action Plans and Checklists)
 - **Tribal Consultation** required for possible cultural resources (AB 52)

Assessment Districts

- Designed to finance public facilities and infrastructure.
 - *Community Facilities Districts (Mello Roos)*
 - *Infrastructure Districts*

Clean Water



Multiple federal and state laws regulate water quality and wetlands:

- §404 Permit (§31 U.S.C. §1344) – Army Corps – wetlands, vernal pools
- §401 Certification (§31 U.S.C. §1341; Ca. Water Code §§1360 et. Seq.) – RWQCB certification for §404 for consistency with state laws
- §1603 (Cal. Fish & Game Code §§1600 et. Seq.) – State Streambed Alteration Agreement
- NPDES Permit (Discharge permit) (§31 U.S.C. §1342; Cal. Water Code §§13370 et. seq.)
- Stormwater Runoff Permit issued by Regional Water Quality Control Board

State/Federal Regulations

Federal/State Endangered Species Acts

- State and federal law contains complex regulations and procedures for development that might affect endangered or threatened species

Historic Resources

- National Historic Preservation Act
- Archeological and Historic Preservation Act
- Historical Resources Board
 - Local approval

Schools

- Mitigation of impacts on schools
 - *Fees*
 - *Dedications*
 - *District Boundaries*

Special or Local Regulations

- ***Climate Action Plan***
- Inclusionary Zoning
- Just Eviction
- Art Fee
- Local Wetlands
- Condo Conversion
- Grading
- Substantial Conformance Review
- Special Parking Requirements
- Undergrounding utilities

Initiative/Referendum

- Allowed under state election law
- Subject to any land use decision
- Planning and zoning documents may be amended by initiative.
- Projects may be approved by **initiative**.
- Projects may be overturned by **referendum**.

Litigation

- Usually challenging the adequacy of environmental analysis
- Property owners can challenge government actions.
- Denial of project approvals as an unconstitutional “taking” of property without compensation.
 - *Property owners and project opponents: Arbitrary or capricious litigation.*

Miscellaneous Regulations

- Proximity to Airport
- Soil or slope instability
- Contaminated Property (Hazardous Materials)
- Designated Flood Zone or subject to past flooding

Questions?



American Planning Association
California Chapter
San Diego

Making Great Communities Happen