Land Use 101

American Planning Association
California Chapter
San Diego

Making Great Communities Happen

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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
- §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?

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