

GUIDE TO
California Planning



William Fulton

SECOND EDITION – EXPANDED AND UPDATED

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GUIDE TO
California Planning

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P.O. Box 773 • Point Arena, California 95468

tel (800) 931-9373 • fax (707) 884-4109

email spbooks@solano.com

Internet www.solano.com

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Chapter 6

The Basic Tools

Part 1—The General Plan

Although planning—that is, guiding the physical development of California’s communities—is a task undertaken by myriad government agencies, private companies, and individuals, the core of this task is the planning work done by the state’s 478 cities and 58 counties. And for local governments, the day-to-day planning work is achieved mostly through the use of three well-established tools: the “general plan,” a comprehensive policy document, and two sets of implementing regulations, the zoning ordinance (often called the development code) and the “subdivision regulations.”

Although planning involves many other documents, regulations, and implementation mechanisms, these three tools do most of the work, and no one can truly understand California’s planning system without understanding what they are and how they operate. Together they create the policy foundation for local planning and the administrative regulations that carry out that policy.

The “general plan” (required by Govt. Code § 65300 *et seq.*) is California’s version of the “master” or “comprehensive” plan. It lays out the future of the city’s development in general terms through a series of policy statements (in text and map form).

The general plan is California’s version of the master or comprehensive plan.

The “zoning ordinance” (authorized by Govt. Code § 65850 *et seq.*) is, at least theoretically, the beast of burden for the general plan, designed to translate the general plan’s broad policy statements into specific requirements of individual landowners. The zoning ordinance divides all land in the city into zones and specifies the permitted uses and required standards in each zone.

The zoning ordinance is designed to translate the general plan’s broad policy statements into specific requirements of individual landowners.

The Subdivision Map Act (Govt. Code § 66410 *et seq.*) is a state law that establishes the procedures local governments must use

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when considering the subdivision of land. The Map Act is intended to ensure, among other things, that adequate public services will be provided to these new subdivisions.

Some overlap exists among the three tools. Generally speaking, however, they are meant to be used together to ensure the orderly development of communities in California. This chapter will focus on the general plan, while the next two chapters will discuss zoning ordinances and subdivision regulations respectively. Later chapters will discuss other tools used to shape and implement planning policy in California.

General Plans

Since the early 20th century, the idea of a comprehensive or master plan guiding a city's future has been an elusive ideal for both planners and local policy makers. Comprehensive plans have gone through many faddish changes during that time. Some have been little more than town-sized "site plans." Others have been policy plans, offering a set of policies to guide future decisionmaking without providing a vision of a community's physical future. And from time to time planners have grappled with the seemingly unanswerable question of whether a comprehensive plan should be a static and hard-to-change document, similar to a constitution, or a living document that can be constantly updated to respond to rapidly changing conditions.

Through all these evolutions, however, one fact has remained constant: Living or static, the comprehensive plan is supposed to be the supreme document guiding the future physical development of a community—the set of policies from which all decisions flow. This has not always been the case in California planning, of course, but over the last 30 years it has become a reality.

The idea of a comprehensive or master plan dates back to 1927, when the California legislature first gave local governments express authorization to form planning commissions.

The idea of a comprehensive or master plan in California dates back to 1927, when the legislature first gave express authorization to local governments to form planning commissions and called upon those planning commissions "to make and adopt a master plan for the physical development of the municipality, or county, and of any land outside its boundaries which, in the commission's judgment, bears relation to the planning thereof." Two years later, adopting the principles contained in the Standard City Planning Enabling Act, the legislature made a master plan mandatory for those cities and counties that created a planning commission.

In succeeding decades, the master plan requirements evolved gradually toward the general plan process we know today. In

1937, the state began requiring all cities and counties to adopt master plans, making California one of the first states in the nation to impose this requirement. Beginning in the 1950s, the state began requiring localities to prepare specific “elements,” or sections, of the master plans, with land use and circulation—still the core of most general plans—becoming mandatory first.

In 1937, the state began requiring all cities and counties to adopt master plans.

Finally, in 1965, the state’s planning laws were reorganized. The master plan was renamed the “general plan,” and localities were authorized to draw up “specific plans” to implement the general plan in specific geographical areas. This general plan may have been intended as the primary document for planning a community’s future, but there was no requirement that it be enforceable. As prominent land use lawyer Daniel J. Curtin, Jr., points out in his book *Curtin’s California Land Use and Planning Law*, up until 1971 state law even permitted local governments to adopt a zoning ordinance before they adopted a general plan.

In 1965, the master plan was renamed the “general plan,” and localities were authorized to draw up “specific plans” to implement the general plan in specific geographical areas.

In 1971, however, the state legislature passed a law requiring counties and most cities to bring their zoning ordinances and subdivision procedures into conformance with their general plans. Ironically, this law was originally drafted with the narrow purpose of controlling second-home subdivisions. Nevertheless, the “consistency law,” as it is usually known, became one of the most important planning laws in California history, because it essentially reversed the legal hierarchy of the general plan and the zoning ordinance.

In 1971, the state legislature passed the “consistency law” which essentially reversed the legal hierarchy of the general plan and the zoning ordinance.

In the past, the zoning ordinance usually had the most teeth, but today its legal function is to serve as a tool by which the general plan can be implemented. As one appellate court wrote, the consistency law “transformed the general plan from just an ‘interesting study’ to the basic land use charter governing the direction of future land use in the local jurisdiction.” (The consistency legislation applies only to counties and general law cities. But a later state law specifically required Los Angeles’s zoning to be consistent with its general plan, and some legal opinions suggest that other charter cities are subject to the provisions as well. In addition, according to the state Office of Planning and Research, at least 60 of the state’s 108 charter cities have local ordinances requiring consistency.) Perhaps the best way to understand the role of the general plan is to think of it, as many court rulings have done, as the “constitution” for the future development of a community. Like the constitution, the general plan is the supreme document from which all local land use decisions must derive.

Like the constitution, the general plan is the supreme document from which all local land use decisions must derive, but usually it does not contain specific implementation procedures.

Like a constitution, it is truly general. The general plan contains a set of broad policy statements about the goals for future development of the city. But usually it does not contain specific implementation procedures. That's why the zoning ordinance and other implementation tools are needed. (Occasionally the general plan and zoning ordinance are combined into one document, but typically the zoning ordinance is written after the general plan has been adopted.)

And like a constitution, the process of drawing up and revising a general plan creates an important forum for debate about the future of a community. Although the state does not establish a specific timetable for updating general plans, a wholesale revision typically occurs about once every 10 to 15 years—usually when the data on which the plan is based become dated, when the growth patterns facing a community have changed, or when the plan is perceived as legally vulnerable. The process of drawing up and adopting these revisions often becomes, essentially, a “constitutional convention,” at which many different citizens and interest groups debate the community's future.

There is, however, one important difference between a constitution and a general plan. Unlike a constitution, a general plan is not particularly hard to change—a fact which often undermines its political credibility. General plan amendments, which are usually designed to accommodate a particular development project or tweak the plan in some specific way, are permitted four times per year under state law. But even this restriction does not reflect the plan's true fluidity. Because any number of individual changes may be grouped into a formal amendment each quarter, the plan can essentially change at any time as long as a majority of the city council or board of supervisors deems the action appropriate.

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Thus, the general plan in California—though it has more teeth than it once had—often reflects the basic tension between the static and the dynamic that has characterized master planning efforts for the past century. On the one hand, the general plan is supposed to be a stable document providing a consistent vision for the future of a community. On the other hand, it can be easily changed for short-term political gain. By its very nature, the general plan is a document that is at once imposing and malleable.

What the General Plan Contains

General plans come in all shapes and sizes. Some are slick and colorful; others consist of little more than some typewritten text

and a couple of rudimentary diagrams.¹ But all general plans share certain characteristics.

Most important, a general plan is supposed to contain a vision of the community's future. At its best, the general plan identifies hopes and aspirations, and translates them into a set of policies laying out the community's physical development. Considering how few restraints the state imposes on general plan content, it is remarkable how rarely a general plan actually contains a thoughtful vision of its community's future.

Most will contain a preamble that includes a set of inspirational comments. But the policies that generate widespread public debate usually revolve around some quantitative measurement of the future: the eventual population, the number of housing units to be added, the amount of commercial square footage that will be permitted. Indeed, as will be discussed in more detail later, this is one of the great weaknesses of community debate about general plans—that they tend to focus on specific numbers, rather than a broader discussion of a community's future. In most general plans, remarkably little attention is given to design, quality of life, and the likely patterns of day-to-day living that will emerge as a result of the plan's policies.

Many general plans will also encompass "area plans," which are more specific versions of the general plan dealing with smaller geographical areas. Sometimes known as a community plan, an area plan has the same force of law as a general plan. (It is different, however, from a specific plan, which will be discussed in chapter 12.)

Most general plans will also include a technical background report, consisting of quantitative information about the city's demography, housing stock, economic make-up, and other aspects of the community. This information will be used as documentation to support the policy direction laid out in the general plan. Also important in shaping policy direction for the general plan are the circulation element and the soils, slopes, and seismic subsections of the safety element that are, or should be, the primary determinants of any

A general plan is supposed to contain a vision of the community's future.

General Plan

- (Preamble)
- (Technical Background Report)
- Land use element
- Circulation element
- Housing element
- Conservation element
- Open-space element
- Noise element
- Safety element
- (Optional additional elements)

1. One important breakthrough in the distribution of county general plans, at least, has been achieved by the California Resources Agency. Working with UC Berkeley, the agency has electronically scanned all county general plans and has made them available on the Internet through California's Land Use Planning Information Network, or LUPIN. The general plans are available on the world wide web at: <http://ceres.ca.gov/planning>.

LUPIN = Land Use Planning Information Network

limitations on the use of land and on the pattern, location, and character of development. These are the constraints that, if properly identified and mapped, form the reality check around which land use preferences are expressed in the land use element.

The fact that the general plan is the constitution—the supreme local land use document—does not mean it is exempt from state laws.

The general plan also must follow certain state requirements contained in the state Planning and Zoning Law. The fact that the general plan is the constitution—the supreme local land use document—does not mean it is exempt from state laws.

In fact, complying with the California Environmental Quality Act often is an expensive and time-consuming part of a general plan update. Most cities and counties report spending one-fifth to one-third of their general plan budgets on an EIR for the plan.

As one might expect given the state’s general approach to land use policy, California’s general plan requirements do not require that local governments accept specific policy conclusions. Nor is a city’s layout, mix of uses, height limitations, character, economic development, or any number of other matters the concern of the state. Rather, local governments are required to follow certain procedures and cover certain subject areas (called “elements”) in the general plan. Similarly, the state does not, generally speaking, review general plans for compliance with state law; such compliance is ensured only through litigation. (The housing element is something of an exception to both of these statements, and will be dealt with in a separate section later in this chapter.)

The state does not review general plans for compliance with state law; compliance is ensured only through litigation.

Under state law, every local general plan must include seven elements, or sections. These include:

- **The land use element**, the most basic part of the plan, which deals with such matters as population density, building intensity, and the distribution of land uses within a city or county.
- **The circulation element**, which must deal with all major transportation improvements. It serves as an infrastructure plan and also must be specifically “correlated” with the land use element—that is, the infrastructure must address the development patterns expected by the land use element.
- **The housing element**, which must assess the need for housing for all income groups and lay out a program to meet those needs.
- **The conservation element**, which deals with flood control, water and air pollution, and the need to conserve natural resources such as agricultural land and endangered species.
- **The open-space element**, which is supposed to provide a plan for the long-term conservation of open space in the community.

- **The noise element**, which must identify noise problems in the community and suggest measures for noise abatement.
- **The safety element**, which must identify seismic, geologic, flood, and wildfire hazards, and establish policies to protect the community.

These seven elements are not etched in stone. The legislature may amend the general plan law to add or subtract required elements whenever it wants. From 1970 to 1984, for example, the state required separate elements to deal with scenic highways and seismic safety, but then folded those requirements into other elements. The legislature has not increased the number of required elements since the 1980s. Instead, lawmakers have mandated that the elements address certain issues. For example, a law adopted in 2002 requires a city or county with a military base to address in the land use element the impacts of urban development on military operations. The law also requires the circulation element to include existing and proposed military airports and seaports.

Individual communities may add any other elements they wish—and most communities do. The specific mix of elements will vary depending on the needs of each community, but many patterns are evident. According to the Office of Planning and Research, parks and recreation, public facilities, and economic/commerce are the most popular optional elements. In Southern California, where smog is a major issue, air quality elements are common, partly because the South Coast Air Quality Management District has provided funding for local governments to prepare the elements. Agriculture elements are popular in rural areas. About 20 counties have adopted agriculture elements, but so have some unlikely cities, such as Rancho Palos Verdes (an extremely wealthy residential community near Long Beach) and San Jose (one of the most densely populated big cities in America). Virtually any area of community concern may be addressed in a separate element, but once an element is included in the general plan, it carries the same force of law as the seven elements required by the state.

It is also permissible to combine elements, and many communities do so. A particularly popular technique is a combined land use and circulation element, because the distribution of land uses and the construction of roads and transit lines are closely related, and because state law requires that they be specifically correlated. As will be discussed later in the chapter, even if they are not combined, these two elements are often developed in tandem.

The Most Popular Optional General Plan Elements

HERE IS A LIST OF the most frequently used “optional” elements of the general plan by cities and counties in California:

- Parks and Recreation (194)
- Economic (123)
- Public Facilities (114)
- Design (113)
- Air Quality (101)
- Seismic (94)
- Scenic Highways (89)
- Growth Management (85)
- Historic Preservation (82)
- Transportation (67)

Source: 2003 Planners Book of Lists, Governor’s Office of Planning and Research, Sacramento

Not only must the zoning ordinance and other planning documents be consistent with the general plan, the general plan's provisions must be internally consistent as well.



Perhaps the most important legal principle is that the elements of the general plan must be consistent. Not only must the zoning ordinance and other planning documents be consistent with the general plan, the general plan's provisions must be internally consistent as well. (Under law they are all regarded as equally important.)

The reasons for this requirement are obvious. A city council intent on pleasing all interest groups could be tempted to pass conflicting policies. For example, the city may enact an open-space plan saying that 80 percent of the city's land must be set aside for open space, and at the same time approve a housing element saying that 80 percent of the city's land must be set aside for housing. The internal consistency requirement is meant to assure that the general plan is not only visionary, but also realistic.

It is probably impossible, however, to draw up a general plan that is totally free from internal inconsistencies, meaning that most general plans are, at least theoretically, vulnerable to legal attack. Indeed, the consistency requirements—both zoning consistency and internal consistency—have been a favorite tool for builders trying to strike down growth-control initiatives.

Each element of the general plan has its own story, and a separate chapter could be written for each one. In order to describe the general plan, however, this chapter will primarily focus on the land use element, which often serves as the bedrock of the general plan. The housing element will be discussed in chapter 16.

The Land Use Element

Although the general plan deals with many aspects of a community and its future, perhaps its most basic job is to chart a course for the community's physical development. And for this reason the land use element is the broadest ranging, the most important, and usually the most highly publicized aspect of the general plan.

At its core, the land use element must lay out a vision of all the buildings, roads, and public facilities in the city—not only where they are now, but where they will be in the future. Perhaps the most important piece of the land use element is the diagram accompanying the text. This diagram graphically represents the policies laid out in the land use element, and must be consistent with the written text.

Because it looks like a map, the land use diagram often becomes the focal point of discussion. Residents can relate much more directly to the diagram than to the written text. They can identify the part of town where they live and see what the land use element calls

The land use element must lay out a vision of all the buildings, roads, and public facilities in the city—not only where they are now, but where they will be in the future.

for in that area. In many ways, this is good, because it sparks discussion and involves the residents in the process of preparing the land use element. In some ways, however, it is not so good. The diagram and its vivid graphic elements—bright colors, geometric shapes, and so forth—might encourage residents to think that the map’s potential will be fully realized, especially if the diagram includes something they don’t like.

For this reason, it is important to note that the land use diagram is not necessarily a map, nor is it required to be by law. Unlike a zoning map, it does not have to show the impact of the city’s regulations on every single parcel of land. Rather, it is merely a graphic representation of a series of policy statements. The diagram does not say, “We are going to put this building on this parcel.” Instead, it says, “Generally speaking, in this part of town we’re going to permit and encourage these kinds of developments.” The diagram doesn’t even have to look like a map; it could be a schematic diagram or even something more abstract, as long as it gets the message across to the citizens.

Unlike a zoning map, the land use diagram does not have to show the impact of the city’s regulations on every single parcel of land.

In planning jargon, the land use element is supposed to be concerned primarily with three characteristics of the buildings, facilities, and arrangements of land uses in a given community. These are:

- **Location.** Where different land uses—residential, business, retail, industry, open space—will be located in the community.
- **Distribution.** The geographical pattern, showing how those different land uses are arranged in the community.
- **Density and intensity.** How large the buildings will be and how tightly packed on the landscape.

The general plan law and its accompanying guidelines organize general plan requirements in these areas in a slightly different way. Under the law, the land use element must contain the following information about the use of land in the community:

- **Distribution and location.** State law requires the land use element to discuss the general distribution of some land uses and the specific location of others.

The land use element must address the distribution of:

- **Housing, business, and industry**
- **Open space and agricultural land**
- **Mineral resources**
- **Recreational facilities**

As with the land use diagram, these discussions do not have to identify the specific parcels where these uses are or will be located. Rather, they must reveal general patterns in the community.

However, the land use element must discuss the specific location of certain land uses—mostly those that require the intimate involvement of public agencies. These include:

- Educational facilities
- Public buildings and grounds
- Future solid and liquid waste facilities

When applicable, the land use element must also identify flood plains and areas designated for timber production.

The basic role of the land use element is to lay out the general patterns of development in the community.

The reasons for these requirements should be clear. The basic role of the land use element is to lay out the general patterns of development in the community. If they have to identify the probable future location of public facilities, as well as the current location of flood plains and timber lines, local governments are much more likely to consider whether the broad land use patterns they are establishing bear a relationship to their own public works projects, and to natural barriers to development.

- **Standards for density and intensity.** The land use element must also lay out standards for population density (how many people per square mile or a similar measurement) and building intensity (how much building space will be permitted in relation to the land area involved).

A city does not regulate the actual number of people moving in or out of it. The population density projections are translated into dwelling units per acre.

Many communities deal with population density by including a projected “ultimate” population for the city or county, and perhaps even for subareas as well. A city does not regulate the actual number of people moving in or out of it. Rather, the population density projections are translated into dwelling units per acre.

Each neighborhood is assigned a “standard” in terms of dwelling units per acre (between four and eight, say, in a single-family neighborhood; 35, 50, or even more in a multi-family neighborhood). Then the locality will make some assumptions about household size—that is, how many people will live, on average, in each household. (Average household size typically runs between two and three persons, though it has been rising in some urban areas because of demographic changes.) Collectively, these standards will be used to create both the density and distribution of population called for in the land use element’s broad policy statements.

Standards for building intensity are required to avoid the problem of using vague terms in drawing up land use policies. The land use diagram may call for “regional commercial” development along a local freeway, “service and neighborhood commercial” projects adjacent to residential neighborhoods, and “very low-density residential”

development on the edge of town. But these general terms must be defined more specifically somewhere in the general plan. For example, while the diagram may earmark an area for very low-density development, a section of the land use element dealing with standards may define “very low density” to mean specifically one unit for every two acres of land.

Interaction With Other Elements

The land use element, of course, must be consistent with all other elements of the general plan, as well as with the general plan’s other provisions. Nevertheless, two specific relationships are worth noting.

The land use element must bear a close correlation to the circulation element. Simply put, the circulation element must call for the creation of a transportation system that can handle the traffic created by the community envisioned in the land use element. Though the land use element must be consistent with other elements, the correlation with the circulation element is regarded as particularly important. It would be counterproductive to earmark an area for future development without also identifying the transportation facilities that would be required to accommodate that growth.

The circulation element must call for the creation of a transportation system that can handle the traffic created by the community envisioned in the land use element.

In practice, the land use and circulation elements will be crafted together in an iterative process. Typically, planners will draft a land use element with densities and intensities for the entire community—where jobs, housing, and shopping are likely to be located and in what quantities. Then the traffic engineers will incorporate the draft information into their statistical analysis, translating the land use patterns into a prediction of future traffic patterns.

Through this process, the traffic engineers will identify potential problem areas—road segments, intersections, etc.—which the planners will then use to redraft the policies in the land use element. Generally speaking, the combined land use and circulation analysis will provide decisionmakers with a well-defined set of policy choices. They may have to choose among the following types of policy options:

- **Expand road capacity** in areas where new development is expanded
- **Move new development** to areas which already have excess road capacity
- **Adopt policies to reduce vehicle trips** or encourage car drivers to use other modes of transportation
- **Reduce the total amount of development permitted**

The noise element must be used in the land use element to determine what the land use patterns will be.

There may be many other options, but these examples illustrate how the land use and circulation elements are developed together to create a coherent strategy for the future development of the community.

The land use element must also maintain a close relationship to the noise element. This requirement means that the noise contours and standards developed in the noise element must be used in the land use element to determine what the land use patterns will be. For example, if a vacant district lies next to a freeway, the land use element must recognize that freeway noise will have an impact on the adjacent land. Thus, the land use element might call for industrial buildings or warehouses on the vacant property, or else require that sound barriers be constructed if it is to be part of a residential district. The technical analysis conducted in the noise element will be discussed in more detail later in the chapter.

While the land use element must meet certain general requirements, the specifics are up to each individual community. For example, although requiring that a land use element identify the location of future schools and public buildings, state planning law imposes few standards. The law says that new schools must be at least 500 feet away from freeways, but the law does not say that the schools must be located near the houses where the students will live.

Neither does the law require a city or county to accept the recommendations of the local school district, which is free to ignore the general plan anyway.

This approach is different from that of several other states, notably Oregon and Florida, which review local plans and require strict conformance to state goals and standards. Nevertheless, it is in keeping with California's general attitude toward local planning, which is to set up the process and then stay out of it.

Crafting the General Plan

The legally prescribed process of creating and adopting a general plan is relatively simple. State law imposes only a few procedural requirements—notably one public hearing before the planning commission and one before the city council. But, as is clear from the Office of Planning and Research's General Plan Guidelines, writing a general plan can be a terribly involved process. If the general plan is the constitution for the future development of a community, then the process of writing or revising the general plan is really the "constitutional convention." For most cities and counties, it is a long, expensive, messy, often frustrating, often exciting process.

A wholesale general plan revision is likely to take at least three years and, even for small cities, will cost at least half a million dollars. Technical analysis on specific aspects of the general plan (a process that can dovetail with the environmental impact report) and public meetings and workshops typically consume much of the general plan budget. If a community does not have a consensus about growth, then there is almost no limit to how much the general plan revision can cost in money and time. In 1995, El Dorado County finally adopted a revised general plan after almost seven years of debate and multiple political swings on the board of supervisors. Environmental organizations sued, and four years later, a Superior Court judge threw out the revised plan because the EIR was inadequate. In 2004–15 years and four planning directors after the general plan process began—El Dorado County adopted a new general plan. The plan then barely survived a voter referendum, and the county still had to convince a judge to accept it.

Adopting a general plan is, of course, regarded as a “legislative” act by local government, and in cities with well-organized citizen groups, the general plan process closely resembles the legislative wrangling that goes on in Washington and Sacramento. Elected officials are heavily lobbied on particular issues. Interest groups decide which issues they can compromise on and which they must go to the mat for. In the end, a general plan, like a law or a constitutional amendment, will succeed only if all the important political constituencies are satisfied.

Riverside County Integrated Plan

STATE LAW REQUIRES THAT A general plan be “comprehensive” and “long term.” The state Supreme Court has called the general plan the “constitution for future development.” So when a county prepares a general plan, transportation plan, and species habitat plan at the same time, it might appear to be the normal practice. Instead, it’s the exception.

In 1999, Riverside County began work on the Riverside County Integrated Plan (RCIP), which involved crafting a new general plan for the entire county, and preparing a transportation plan and a multi-species habitat conservation plan for the western part of the county. Oftentimes, cities and counties adopt a general plan first, and then they work with whichever entity is responsible for the transportation plan to ensure that growth outlined in the general plan is accommodated. Whatever territory is left over after those two plans are adopted becomes, by default, open spaces for flora and fauna. Riverside County tried a more comprehensive approach.

Groundwork began in 1996, when county officials saw projections that called for continued rapid growth and worsening congestion on already clogged freeways. Demographers said the western county’s population would nearly double to about 2 million people by 2020, so officials talked about preparing a new transportation plan. But they soon recognized that requirements for protecting endangered species could block proposals in a new transportation plan. Thus, preparing a transportation plan and a plan that set aside habitat for rare plants and animals seemed like the way to go. At the same time, the county’s 1981 general plan, which had been amended piecemeal hundreds of times, was in need of an overhaul. The RCIP was born.

Initially, county officials set aside \$30 million and three years for the RCIP. Those were not enough. After four years, about \$35 million, and a name change to the Riverside County Integrated *Project* (to make the effort sound more action-oriented), the county had adopted the general plan and habitat plan. But adoption of the transportation blueprint by the Riverside County Transportation Commission was still a ways off.

Riverside County used a “stakeholder-driven” process, in which representatives of various interest groups, such as developers, landowners, and environmentalists, served on a number of committees that steered the planning effort. There were hundreds of publicly noticed advisory committee meetings with scores of stakeholders joining an army of county planners and consultants. All of the planning was aimed at accommodating growth—not slowing growth or trying to direct it elsewhere. The end result was a general plan that was clearly favorable to homebuilders. Yet the habitat plan designated about 500,000 acres—350,000 acres of publicly owned land and 150,000 acres of private property—for preservation, meaning that nearly one-quarter of western Riverside County would remain off-limits to development. The transportation plan intended to designate broad corridors where the government could build freeways, and possibly rail lines and separate lanes for trucks or busses. The transportation plan also sought to create one new connection each to neighboring Orange and San Bernardino counties.

Many of western Riverside County’s 14 cities felt left out of the process. The alienation deepened when county officials told the cities to collect development impact fees to fund transportation projects and habitat land purchases, and to set aside land within their cities as habitat. The penalty for not going along with the county’s approach was the loss of future transportation improvements. The cities reluctantly fell into line.

At more than \$35 million, the RCIP is likely to be the most expensive local planning effort in the country’s history. The cost and scope are similar to state plans adopted in places like New Jersey. Whether the final plans are effective or not will depend largely on implementation. The transportation projects and habitat land purchases are expected to cost more than \$10 billion, and no one is certain about the sources of all of that money. Recalcitrant cities are likely to continue quarreling with the county. And environmentalists who are unsatisfied that the plan does not stem urban sprawl adequately have vowed to take their cause to the courtroom.

Planners all over California closely watched Riverside County’s experience with comprehensive planning. Thus far, no other county has been willing to try the approach for itself. ■

The Process: Participation and Politics

A proposed general plan (or general plan revision) usually doesn’t leap forward into public hearings fully formed. In most cities, the process begins with two steps: the creation of an advisory task force, often known as the “general plan advisory committee,” and the selection of an outside general plan consultant. About half of all cities do their general plans in house. Some cities precede creation of the task force with a “visioning” process, in which the city and community leaders gather public input and attempt to reach a consensus about what sorts of things they want for the city, such as better parks or preservation of an historic district. Sometimes the advisory task force undertakes the visioning process.

A citizen’s advisory committee is usually made up of 20 to 30 citizens who represent various neighborhoods, industries, and other interest groups in the city. Membership will vary from city to city, depending on the political climate. In many cities, the real estate industry will be strongly represented. In slow-growth cities, on the other hand, it may be politically difficult to include more than a few representatives from the real estate industry, and the emphasis is likely to be on broad representation from neighborhood and homeowner groups. Architects, planners, engineers, representatives of other government agencies, and other people familiar with the land use process may also participate on the advisory committee.

Over a period of months or even a few years, the consultant or lead staff

person and the citizens committee will put together a draft of the general plan. In most instances, the consulting team will provide the committee with technical background and make recommendations, while the committee will make the initial policy choices. After receiving advisory committee approval, the general plan will then move on to the planning commission and the city council. Either or both of these bodies may alter the basic document or even change it completely. Again, this adoption process can last for many months. (As a major policy statement affecting the environment, the general plan also requires that an environmental impact report be prepared before approval. EIRs will be discussed in more detail in chapter 9.)

The rise of citizen power has changed the general plan process considerably, making it longer, more expensive, in some ways more cumbersome, in others more democratic. In many cities, city managers and council members resist broad public participation. They believe that an elite group of decisionmakers will make the most-informed choices and prevent the process from getting bogged down. These city managers and council members say visioning and consensus-building is unrealistic. Leaders in many other cities recognize that organized citizen groups cannot be ignored and welcome their participation.

The rise of citizen power has changed this process considerably in recent years, making it longer, more expensive, in some ways more cumbersome, in others more democratic.

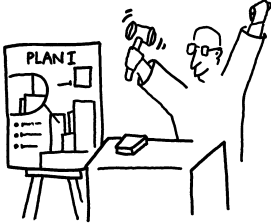
The 2003 version of the General Plan Guidelines for the first time included a public participation chapter. Partly as a method of avoiding future conflicts, the guidelines strongly recommend early, frequent, and broad public participation in workshops, town hall meetings, focus groups, design “charrettes,” and other activities.

Typically, an active citizenry is a response to a series of development disputes within a community, when ordinary people feel that their neighborhoods are threatened and organize to protect themselves. Once politicized, these people rarely return to the role of passive citizens. If the members have interest and dedication, the group becomes a permanent part of the city’s decision-making infrastructure, monitoring and commenting on the general plan as it proceeds from the advisory committee to the city council. And members of neighborhood groups and citizens committees often graduate to planning commissions and political office on the strength of their newfound exposure.

Generally speaking, it is easier for a smaller city to become highly political about planning issues, and affluent citizens are more likely than poor citizens to become active participants in the debate. This is not always true, of course. San Francisco is one of

the state's largest cities and the level of citizen participation is remarkably high. And citizen groups in poor neighborhoods sometimes carry considerable political weight. Nevertheless, political organization is more likely to occur in a smaller community with an affluent and educated populace.

Even in a highly organized city, a political consensus among organized groups does not guarantee the smooth passage and implementation of the general plan.



Even in a highly organized city, however, a political consensus among organized groups does not guarantee the smooth passage and implementation of the general plan. Most citizens are mobilized only by an immediate threat, such as the appearance of a bulldozer on a nearby piece of land. A general plan, by contrast, is an abstract process laying out a broad brush vision of a community's future. Average citizens won't care much about the general plan unless they understand how the process works and how the general plan's provisions will affect the likelihood of a bulldozer turning up in their neighborhood in the near future. Even if a city solicits participation, many citizens simply won't pay attention until a specific development proposal arises, long after the general plan is done. By contrast, developers usually understand how the general plan affects their interests, and are often major participants in both the crafting and hearing processes.

Technical Analysis

As the general plan has grown in importance, so has the role of technical analysis and the consultants who may perform these tasks.

The policies contained in a general plan are supposed to be based not only on a vision of a community's future, but also on data and analysis.

The policies contained in a general plan are supposed to be based not only on a vision of a community's future, but also on data and analysis. That is why the starting point for most general plans is a technical background report—reconnaissance of existing data on myriad aspects of life in the community, including building density and condition, traffic patterns, demographic and population data, information about water and wildlife, discussion of hazards, the community's fiscal condition, assessment of community needs for parks and open space, and so on. As the general plan is drafted, additional technical analysis will be required to test traffic, land use, and air quality scenarios, to examine the fiscal impact of future change, to assess noise problems, and to measure change in many other ways. (Most wholesale general plan revisions are accompanied by an environmental impact report, and much of the technical information will overlap, eliminating the need to collect it twice.)

The most important point to note, however, is that as the general plan has been strengthened as a policy document, both communities and the courts have come to demand a higher standard of

technical analysis. In part, this is required to bulletproof a general plan against litigation, which will be discussed later in more detail. At the same time, the analysis provides a foundation of information on which the policy choices contained in the general plan can be built.

A good example of the growing role of technical analysis is the noise element. As noted earlier, the general plan law calls for linkage between the land use element, which identifies the distribution of potentially noisy activities, and the noise element, which is supposed to analyze and mitigate noise levels in a community.

Noise analysis, however, is not a casual affair. Under state law, state guidelines, and case law, noise analysis must be done in a particular manner.

State law (Govt. Code § 65302(f)) requires noise elements to identify and analyze noise problems associated with a broad range of specific activities, including major roads and freeways, railroads, aviation facilities, and industrial plants. The law also requires localities to follow the “Noise Element Guidelines” prepared by the state Department of Health Services (appendix C of the *General Plan Guidelines*).

These guidelines call for a very specific noise analysis process, including identification of noisy activities, the likely impact of future land use patterns on noise, and a strategy to mitigate noise problems. In effect, the state law and the Noise Element Guidelines mandate that local governments use noise contour analysis, especially in conjunction with the land use element. (Noise contours are similar to topographical contours. Noise specialists measure decibel levels in many locations, or predict them, and then map the resulting contours at which those levels occur.)

Local governments who don’t undertake technical analysis on issues such as noise are faced with serious consequences, whether the problems being analyzed are large or small. In 1978, two years after the noise element legislation was passed, Mendocino County’s general plan was challenged on the grounds that its noise element contained no technical background information about the impact of noise on land within the county.

Mendocino County’s response was simply that a detailed technical analysis was not necessary for “a quiet rural county such as Mendocino.” Mendocino County may be a quiet place even to a casual observer, but this fact did not let the county off the hook. The court of appeal found the noise element inadequate, saying that the technical requirements in state law were mandatory, not optional, even if local decisionmakers didn’t think they had a noise

problem. *Camp v. Board of Supervisors*, 123 Cal. App. 3d 334 (1981). As a result of this ruling, the entire general plan was declared legally inadequate and the county was enjoined from issuing development permits until the problems were rectified.

Court Challenges

Had it not revised its noise element, Mendocino County would have been prohibited from issuing any building permits—just as Yuba County at one time was prohibited from approving a large specific plan until it revised its housing element to conform with state law. Because there is no state mandated schedule for revising general plans, communities often undertake needed revisions as a response to, or in order to avoid, litigation.

With a few minor exceptions, no state agencies hold the power to review local general plans and penalize cities and counties if their general plans are inadequate.

As with so much of California planning law, state laws regarding general plans are enforced only by litigation. With the minor exceptions noted above, no state agencies hold the power to review local general plans and penalize cities and counties if their general plans are inadequate. Only a court can do so. For this reason, citizen groups and others with an interest in land use regulations, such as the building industry, hold considerable power over general plans because of their ability to sue. This is why cities and counties have come to fear general plan lawsuits, whether they come from builders, slow-growthers, or affordable housing activists.

A court that finds a local general plan invalid can strip the locality of all of its land use power.

Thus, the planning process depends heavily on citizen enforcement to hold local governments accountable. Typically, if citizen groups or building industry leaders dislike the results of the general plan process (or a general plan amendment), they will sue to have the plan declared invalid. In essence, a court that finds a local general plan invalid can strip the locality of all of its land use power. If the general plan is invalid, a city or county cannot enact a zoning ordinance or approve new developments. It cannot approve a project under its subdivision review procedures. Its environmental impact reports are not binding, and in all probability the city or county may not be able to proceed with public works projects. In other words, the entire planning process can be shut down by the court, at least until the city or county approves a new (or amended) general plan that passes legal muster. In El Dorado County, where a court declared the general plan EIR invalid in 1999, the court allowed the county to continue processing development applications under a decades-old general plan until a new plan and EIR was adopted. But the court could have taken more drastic action against

the county. The threat of shutting down a city's planning process (or forcing a city to undertake a costly and time consuming general plan revision) is a powerful incentive for local officials to do things right.

Cities and counties are well aware that a strategic and successful general plan lawsuit could prevent them from acting on an important decision (such as a major development project) in a timely fashion.

A lawsuit challenging the general plan usually challenges one of four areas: consistency with other planning documents, internal consistency, compliance with state laws governing general plans, and adequacy of the EIR.

A lawsuit challenging the general plan usually challenges its consistency with other planning documents, its internal consistency, or compliance with state laws governing general plans.

Consistency with other planning documents. Starting in the 1980s, lawsuits attacked general plans for being inconsistent with the zoning ordinance. The surge of growth-control initiatives that were written as amendments to the zoning ordinance gave rise to this type of litigation.

The first important court case of this sort involved a growth-control initiative in the city of Norco in western Riverside County. The initiative was written as an amendment to the zoning ordinance, but did not seek to change the general plan. The building industry sought to stop the election on the grounds that the initiative would create a zoning ordinance inconsistent with the general plan. *deBottari v. City Council*, 171 Cal. App. 3d 1204 (1985).

This concept was later ratified by the California Supreme Court in a case from Walnut Creek. In 1985, the city's voters approved a growth-control initiative that would limit development in areas with heavy traffic congestion. A prominent landowner sued, claiming the initiative was a zoning ordinance that was inconsistent with the general plan, which called for Walnut Creek to develop into a regional center. The Supreme Court eventually ruled that the initiative was invalid because it was inconsistent with the general plan. *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531 (1990).

Because initiative and referendum powers are protected by the California Constitution, the courts accord them great deference. For this reason, judges usually permit a measure to appear on the ballot even when there is a legal challenge, thereby postponing a discussion on the merits of the case until after the election. In the Norco case, however, the court of appeal stopped the election. The court ruled that because the initiative changed the zoning ordinance but not the general plan, the measure would create a zoning ordinance that was, on its face, inconsistent with the general plan.

Because initiative and referendum powers are protected by the California Constitution, the courts accord them great deference.

For this reason, most growth-control initiatives in California are now written as general plan amendments that direct local officials to change other planning documents to retain consistency, or as both general plan amendments and zoning amendments.

The consistency requirement does not apply to California's 80-plus charter cities, though in practice they often follow the same policy.

It is important to note that the consistency requirement does not apply to California's 108 charter cities, though in practice they often follow the same policy.

Internal consistency. Another favorite legal strategy is to attack the general plan's internal consistency. While most plans do not contain flagrant inconsistencies, general plans are long and complex documents and any judge is virtually certain to find an internal inconsistency if he or she looks hard enough.

The internal inconsistency argument is so fertile that both citizen groups and landowners are likely to rely on it for years to come, especially in the context of growth-related ballot measures. Judges, however, are often reluctant to overturn a voter-approved initiative in its entirety.

Compliance with state laws. A general plan may be the supreme document from which all other local land use policies must flow, but it still must comply with state planning laws. A general plan that does not comply with some aspect of state law may be legally vulnerable.

A general plan that does not include the seven required elements will be struck down as inadequate.

For example, if a city or county prepares a general plan without including the seven required elements, the plan will surely be struck down as inadequate. Just as important, however, is the fact that a general plan may be legally vulnerable if it does not contain the standards required in state law.

Sometimes even the simplest error can lead to legal problems. In challenging the general plan for the city of Riverside, lawyers for a group of landowners sent one of their clerks to city hall to pick up a copy of the plan. However, the clerk returned empty-handed; the city was unable to produce a current copy of the plan and all its elements under one cover. Because state law requires the general plan to be readily available to the public, the lawyers made the plan's unavailability one of the causes of action in the lawsuit. And the courts subsequently declared the Riverside plan invalid, partly because it was unavailable. *Garat v. City of Riverside*, 2 Cal. App. 4th 259 (1991).

More recently, housing developers sued over Measure D, a growth-restricting initiative that Alameda County voters approved in 2000, claiming that it conflicted with the state housing element law. Specifically, developers argued that because the initiative foreclosed building in North Livermore (where 12,500 housing units had been

proposed), the ballot measure discriminated against low- and moderate-income housing development and shifted the housing burden to other jurisdictions. The courts rejected the developers' arguments because the county housing element in effect during 2000 did not include the North Livermore project and because prohibiting development in North Livermore did not preclude the county from meeting its housing obligations elsewhere. *Shea Homes Limited Partnership v. County of Alameda*, 110 Cal. App. 4th 1246 (2003).

Tests for an adequate general plan. In *Curtin's California Land Use and Planning Law*, Daniel J. Curtin, Jr., poses several questions to determine whether a general plan is legally adequate. The list is so good that it bears reprinting here:

Curtin's California Land Use and Planning Law lays out several questions to determine whether a general plan is legally adequate.

- Is it complete? (Seven elements)
- Is it informational, readable, and public?
- Is it internally consistent?
- Is it consistent with state policy?
- Does it cover all territory within its boundaries and outside its boundaries that relate to its planning?
- Is it long-term in perspective?
- Does it address all locally relevant issues?
- Is it current?
- Does it contain the statutory criteria required by state law as demanded by the courts? For example:
 - Does the land use element identify areas that are subject to flooding?
 - Are noise contours shown for all of the listed sources of noise?
 - Does it contain adequate standards of population density and building intensity?
 - Does the circulation element responsibly list sources of funding for new transportation facilities?
 - Is the circulation element fiscally responsible?
 - Is the circulation element correlated with the land use element?
 - Does the general plan clearly specify allowable uses for each land use district?
 - Are the density ranges specific enough to provide guidelines in making consistency findings where necessary?
 - Does the housing element contain a program to conserve and improve the condition of the existing affordable housing stock?

- Has the city adopted an analysis and program for preserving assisted housing developments as part of its housing element?
- Does the housing element identify adequate sites that will be available through an action program for development of emergency shelters and transitional housing for the homeless?
- **Are the diagrams or maps adequate?** Do they show proposed land uses for the entire planning area? Is the land use map linked directly to the text of the general plan? Are the maps and text consistent?
- **Does it serve as a yardstick?** Can you take an individual parcel and check it against the plan and then know how you can use your property?
- **Does it contain an action plan or implementation plan?**
- **Finally, was it adopted correctly?** Did it receive proper environmental review? Was the draft housing element or amendment sent to HCD for review before adoption?

Strengths and Weaknesses of the General Plan Process

State law focuses heavily on public participation, the approval process, and requirements for technical analysis, but leaves the question of a community's vision to that community.

In assessing the way general plans are crafted in California today, it is important to remember the legal context within which they are prepared. State law focuses heavily on public participation, the approval process, and requirements for technical analysis. But it leaves the question of each community's vision to that community.

This is, perhaps, appropriate. After all, each community knows itself better than anyone else does. But by regulating some aspects of the general plan process and letting others be, the state often sets the priorities for the general plan discussion. The typical general plan process contains a great deal of discussion about densities and population buildouts and noise levels and traffic levels-of-service, but precious little discussion about the vision for a community's future.

This is not always true, of course. Many communities undertake the general plan with an enthusiastic desire to shape their own future. But because of the emphasis on technical analysis, that future is often examined only in terms of the quantitative results—the numbers—that emerge from the technical analysis. And all too often, those numbers are bandied about as a replacement for a discussion of a community's vision.

Take the question of population. Many general plan debates revolve almost entirely around the eventual population—the number of people who will live in the community at the end of the period

covered by the general plan. Community leaders, business leaders, planning commissioners, and elected officials often spend many months debating what that number should be. Should it be 120,000? 140,000? 105,000?

Yet these debates are rarely informed by a real world understanding of what the impact of such a population would be. Pro-growthers want a big target to shoot at, while slow-growthers use the population number as an organizing principle against more development. Lost in the discussion are countless subtleties—including, for example, the fact that the population figure is based on a host of assumptions about household size and the rate of housing construction which are mostly beyond the control of local government.

At the same time, it is hard to argue that California communities should return to the days when the typical general plan was “just an interesting study” and the real planning—such as it was—was accomplished by “good ol’ boys” behind closed doors and executed through incremental zone changes that had nothing to do with the plan sitting on the shelf. Instead, the general plan has changed planning in California by imposing a rational process on communities. That process is sometimes too technical or too oriented around numbers; it is sometimes more procedural than substantive; and, in the end, it creates a document that can be changed all too easily. Yet in community after community, the general plan has also provided a focal point for discussion about what the future really should be—and that, after all, is the point of the exercise.