



Applicant Workshop Outline  
May 31, 2007

**I. Project Management**

A. The Team

1. Project Manager
  - Leads the team
  - Organizes meetings, filings, various consultants
  - Represents applicant at hearings, staff meetings
  - Attends to community outreach
  - Can be the engineer or land use attorney
2. EIR consultant
  - Ensures thorough environmental review
  - Paid for by applicant but under contract with agency
  - Works with specialized consultants (e.g., biological/traffic)
3. Project Engineer
  - Prepares and files all maps
  - Reviews conditions of approval; ensures compliance with same
  - Prepares improvement plans and easements
  - Applies for and processes grading permits
  - Drafts NOI and SWPPP; coordinates with RWQCB
4. Biological consultant
  - Works with EIR consultant to provide review and analyze impacts on biological resources (e.g., species and habitat)
  - Coordinates all necessary permits (e.g., 401 and 404 permits, take permits, streambed alteration permits)
5. Traffic Engineer
  - Study traffic congestion, circulation, and access issues
  - Draft traffic management plans
  - Assist with valuation of rights-of-way takings
6. Architect/Urban Planner
  - Assists with master, community and Specific Plans
  - Identifies appropriate uses for land and designs around those uses
7. Land use/real estate attorney
  - Reviews environmental document
  - Ensures compliance with CEQA, SMA, MFA, etc.
  - Attends to all legal issues that arise throughout the course of project
  - Drafts and/or reviews all legal documents (e.g., CC&Rs, easements, deeds, development agreement, etc.)

- Assists other consultants in processing of applications, permits
  - Represents applicant at hearings, staff meetings
  - Defends approval or project; appeals denial of project
8. Title company
- Issues title report and insurance policy for property
  - Records easements, deeds, etc.
  - Assists with DRE application for subdivisions

\*Key thing to remember: All applicants and their consultants must work WITH planning, engineering, and other County Staff. County Staff is required to work with applicants to process applications in accordance with time frames provided in the County code and state statutes (i.e., PSA, SMA, etc.). Public agencies should treat applicants as clients.

## II. Defining the Project - What is an entitlement?

### A. General Plan Amendment

1. A General Plan is the constitution for development and must include a comprehensive, long term plan for the physical development of land both within the city/county and outside its boundaries. *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531.
2. Any subordinate land use action (e.g., zoning, CUP), must be consistent with the General Plan. If it is not, then the action is void at the time it is passed. *Leshar Communications, Inc. v. City of Walnut Creek*.
3. Amendment of General Plan pursuant to Gov. Code, § 65350 et seq.
  - a. Planning Commission must hold public hearing and make written recommendation to City Council/Board of Supervisors. Recommendation for approval must be made by majority of members.
  - b. City Council/Board of Supervisors must hold public hearing. Any substantial modification must be referred back to Planning Commission for further recommendation.
  - c. General Plan may only be amended by resolution.

### B. Specific Plan/Area Plan/Community Plan

1. The Specific Plan is one step below a General Plan in the land use hierarchy.
2. A Specific Plan must be consistent with the General Plan and all other entitlements must be consistent with the Specific Plan.
3. Amendment procedure is same as General Plan, but a Specific Plan may be amended as often as necessary. Amendment is accomplished by ordinance or resolution.

### C. Zoning

1. In general, zoning divides cities or counties into districts and applies different regulations to each district. Zoning usually regulates the footprint of a building (height and bulk) or the uses to which buildings in districts can be put.
2. Each city and county must adopt a zoning ordinance. Zoning must be:
  - i. Reasonably related to the public welfare (*Associated Home Builders, Inc. v. City of Livermore* (1976) 18 Cal.3d 582; and
  - ii. Consistent with the General Plan. (Gov. Code, § 65860(a).)
3. Two kinds of amendments to a zoning ordinance:
  - i. Reclassification of the zoning applicable to a specific property (rezoning); and
  - ii. Changes in the permitted uses or regulations on property within a zone (zoning amendment)
4. Amendment of a zoning ordinance is a legislative decision, and does not require detailed findings unless otherwise required by state or local law.
5. All zoning ordinances are subject to initiative and referendum.

### D. Variance

1. A variance is a permit that provides relief from a zoning ordinance by allowing a landowner to construct a building or a structure not otherwise allowed under the zoning regulations. Variances are regulated under the state zoning statutes.
2. Variances may only be granted where the applicant's property has such unique characteristics that it would cause undue hardship if the variance were not granted. However, a variance may not be granted if it would harm the public. (Gov. Code, § 65906.)

### E. Conditional Use Permit (CUP)

1. A CUP also provides relief from a zoning ordinance by allowing a use that is not permitted by right under the city's zoning code.
2. A CUP is regulated by local ordinance, not state law. (Gov. Code, § 65901.)

### F. Planned-Unit Development (PUD or PD)

1. Planned-unit development is a type of development and a zoning classification.
2. As a zoning classification, it allows a single zoning district to combine a variety of uses, including residential, commercial, resort, and industrial), although these uses are not normally allowed in the same district.

3. The planned-unit development concept was approved by the California courts in *Orinda Homeowners Comm. v. Board of Supervisors* (1970) 11 Cal.App.3d 768, but the specifics are regulated by local ordinance.

#### G. Coastal Development Permit

1. The California Coastal Commission, in partnership with cities and counties, regulates development within the coastal zone.
2. Development may not begin until the Commission has issued a coastal development permit either by:
  - i. The Coastal Commission; or
  - ii. A local government with a Local Coastal Program that has been certified by the Coastal Commission.
3. “Development” has been broadly defined to mean placement of any structure either on land or under water, grading, mineral extraction, subdivision and lot splits, construction, reconstruction, or demolition.

### III. Vested Rights and Development Agreements

#### A. Vested Rights and the *Avco* rule

1. Once a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he or she acquires a vested right to complete construction of the project in accordance with the terms of the permit. Once a landowner has secured a vested right, the government may not by virtue of a change in its land use laws, prohibit construction authorized by the permit on which the landowner relied. Conversely, neither the existence of particular zoning nor work undertaken pursuant to governmental approvals preparatory to construction of buildings can form the basis of a vested right to build a structure which does not comply with the laws applicable at the time the building permit is issued. *Avco Community Builders, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785. In other words, California is a late vesting state.
2. Prior to the *Avco* decision, the appellate courts had held that the applicant had to possess a building permit. “With commendable candor the Commission concedes that it does not deem a building permit to be an absolute requirement under all circumstances for acquisition of a vested right. It suggests that in other situations the government may grant another type of permit, such as a conditional use permit, which affords substantially the same specificity and definition of a project as a building permit, and that in such instances a builder might acquire a vested right even though the document was not designated a building permit.” *Avco* at page 794.

3. Erroneously granted building permits, in violation of CEQA, do not create vested rights in the granted permits. *Arviv Enterprises, Inc. v. South Valley Area Planning Commission* (2002) 101 Cal.App.4th 133.
4. Vesting is only established to the extent of the terms of the prior permit or approvals. A permit for demolition and foundation does not vest an owner's rights to complete the new structure where the owner was apprised of the limited nature of the permit and was apprised of a potential change in regulations. *McCarthy v. California Tahoe Regional Planning Agency* (1982) 129 Cal.App.3d 222. Where the agency had previously granted approvals for the installation of improvements for the expansion of treatment ponds, then the operator had established a vested right to continue a non-conforming use. *Halaco Engineering Co. v. South Central Coast Regional Com.* (1986) 42 Cal.3d 52.
5. The issuance of permits by themselves do not create vested rights. There must be substantial expenditure. This is a relative requirement, depending on the type and size of the project. There is no set mechanical test. However, the courts are consistent that only expenditures incurred after the issuance of the building permit qualify. *Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858.
6. Good Faith of Owner/Developer: The midnight grading of a project site to beat a regulatory deadline does not qualify as a good faith expenditure. *Aries Development Co. v. California Coastal Zone Conservation Committee* (1975) 48 Cal.App.3d 534, hearing denied. Remember, good faith expenditures based upon an invalid permit do not give rise to a vested right. *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813. When building permits are issued based upon misrepresentation of the applicant, then expenditures by the applicant based upon those permits, are not considered to be in good faith. *Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4th 1348.
7. Phased Projects: Generally, according to *Avco*, vested rights are not established for later project phases. There is no special rule for planned community developments. "We are aware of no authority compelling us to carve out an exception to this rule for planned unit zoning since the rule governs zoning of all other types. If there is to be a departure from settled rules for zoning of this character it must be provided by the legislature." *Avco* at page 796.
8. Loss of Vested Rights
  - a. Loss through inaction. *Lakeview Development Corporation v. City of South Lake Tahoe* (1990) 915 F.2d 1290.
  - b. Loss as a result of newly emergent public health and safety concerns. *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639.

- c. Intentional abandonment of a non-conforming use defeats any vested right to continue a non-conforming use. *Stokes v. Board of Permit Appeals* (1997) 52 Cal.App.4th 1348.
- d. A subdivider, who obtains a vested right to convert an apartment building into condominiums, and is therefore exempt from rent control and conversion regulation (*City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal.3d 1184) can lose that right if the public report is allowed to lapse. *City of West Hollywood v. 1112 Investment Company* (2003) 105 Cal.App.4th 1134.

B. Development Agreements (DAs)

1. In 1979, the California Legislature enacted the Development Agreement Law. (Gov. Code, §§ 65864-65869.5.)
2. DAs allow developers to negotiate with cities and counties to create vested rights via contract.
  - a. Developers benefit by locking in General Plan and zoning designations early, thus creating certainty for a project. (Gov. Code, § 65866.) The court in *Beverly Towers* said that the purpose of a DA is “to allow a developer who needs additional discretionary approvals to complete a long-term development project as approved, regardless of any intervening changes in local regulations.”
  - b. Local governments benefit because DAs allow them to negotiate fees, facilities, or other mitigation that they could not otherwise obtain as conditions of approval or exactions.
3. DAs may vest rights for long periods of time (10-15 years).
4. The approval of a DA is a legislative act. *Santa Margarita Area Residents Together (SMART) v. County of San Luis Obispo* (2000) 84 Cal.App.4th 221. The DA must be approved by ordinance and be consistent with the General/Specific Plan. DAs are subject to repeal by referendum. (Gov. Code, § 65867.5.)
5. There is a 90-day statute of limitations to challenge a DA. (Gov. Code, § 65009(c)(1)(d).)
6. DAs become effective 30 days after adoption, which is the time period to file a referendum. (Gov. Code, § 65867.5.)
7. A development agreement is a “project” under CEQA and is subject to environmental review. *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199.
8. A DA is a contract and may be enforced by any party to the agreement. (Gov. Code, § 65865.4.)

#### IV. Subdivision Map Act

- A. The Subdivision Map Act (SMA) vests in a city/county the power to regulate and control the design and improvement of subdivisions within its boundaries. (Gov. Code, § 66411.) Each city/county must adopt an ordinance regulating and controlling subdivisions.
- B. The SMA's goals are:
  - 1. Encouraging orderly community development by providing for the regulation of subdivisions.
  - 2. Ensuring that areas dedicated for the public will be properly improved.
  - 3. Protect individuals from fraud. (64 Cal.Ops.Atty.Gen. 814 (1981).)
- C. A subdivision is defined as "the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease, or financing, whether immediate or future." (Gov. Code, § 66424.)
- D. The SMA distinguishes between a subdivision consisting of five or more parcels and one consisting of four or fewer parcels.
  - 1. A subdivision which creates five or more parcels generally requires a tentative and final map; however, there are exceptions for specific situations. (Gov. Code, § 66426.)
  - 2. A subdivision which creates four or fewer parcels requires a parcel map. (Gov. Code, §§ 66426, 66428.)
  - 3. If only a portion of the property is subdivided, the applicant can designate the undivided portion as a "remainder." This remainder parcel does not count as a "parcel" for the purpose of determining the type of map needed. (Gov. Code, § 66424.6(a)(1).)
  - 4. A subdivider cannot avoid a tentative map by successively dividing four or fewer parcels (also known as "quartering"). (*Bright v. Board of Supervisors* (1977) 66 Cal.App.3d 191.)
- E. Tentative Map (TM)
  - 1. A tentative map shows "the design and improvement of a proposed subdivision and the existing conditions in and around it." (Gov. Code, § 66424.5(a).)
  - 2. Tentative maps are commonly approved with conditions that must be fulfilled before a final map will be approved. (Gov. Code, § 66426.)
  - 3. Tentative maps do not have to be based on a detailed, final survey of the property. (Gov. Code, § 66452.1.)

4. Alternatively, a subdivider can file a vesting tentative map (VTM). Once approved, a VTM confers a vested right to proceed with development in substantial compliance with the ordinances, policies, and standards in effect on the date that the local agency deemed the application complete. (Gov. Code, § 66498.1.)

F. Final Map (FM)

1. A final map executes the subdivision by addressing the details and showing that all the conditions of the tentative map have been met.
2. The final map must be filed before the TM expires. However, the local agency may process and approve the map after the TM expires. (Gov. Code, § 66452.6(d).)
3. The FM must be in substantial compliance with the TM. (Gov. Code, § 66474.1.) Once the local agency has certified that the FM is in substantial compliance, the legislative body has no discretion to deny approval of the FM. (*Youngblood v. Board of Supervisors* (1978) 22 Cal.3d 644.)
4. If the local agency disapproves a final map, it must make findings identifying the conditions that were not satisfied. (Gov. Code, § 66473.)
5. The approval and recordation of a FM allows the newly created parcels to be sold, leased, or financed. (Gov. Code, § 66499.30.)

G. All lot line adjustments used to be excluded from the SMA. However, in 2001, the Legislature narrowed the rules and now the exclusion only applies to a “lot line adjustment between four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel and where a greater number of parcels than originally existed is not thereby created...” (Gov. Code, § 66412(d).)

H. The SMA also allows subdivided lands to be merged or recombined. (Gov. Code, § 66499.11-66499.20<sup>3/4</sup>.)

I. Local agencies must adopt an ordinance specifying the map processing procedure. (Gov. Code, § 66451.)

V. **Property Exactions/Fees**

A. Property exactions may be imposed only to support some legitimate governmental interest. However, this requirement has been given such a broad reading by the courts that virtually any reasonable public need can support the requirement for an exaction in the development process.

B. However, there must be an “essential nexus” between the exaction being imposed and some adverse effect on the public interest from the development. Therefore the County must identify some burden on a public interest created by the project and show how the exaction will compensate for that burden.

1. The burden is on the County to establish the required nexus.
  2. The County must make some sort of individualized determination that the exaction is reasonably related, both in nature and extent (roughly proportional), to the burden created by the development.
  3. The county has the burden to establish why an exaction is necessary and a use restriction will not suffice.
  4. The exaction must offset only the burdens created by the project. It cannot go to remedy existing deficiencies or the effects of other developments or county actions.
- C. Any significant exaction usually requires the County to do a “nexus study.”
- D. Fees that are imposed to mitigate effects of the project (this does not include application processing fees) are a form of exaction. The state has adopted specific statutory limitations on mitigation fees imposed as a condition of project approval. When the County establishes, increases or imposes such fees it must:
1. Identify the purpose of the fee.
  2. Identify how the fee will be used.
  3. Demonstrate that a reasonable relationship exists between the purpose of the fee and burdens created by the project.
  4. Demonstrate there is a reasonable relationship between the purpose of the fee and the need for any public facility for which the fee is imposed.
  5. Demonstrate there is a reasonable relationship between the amount of the fee and the cost of the public facility fairly attributable to the project. Mitigation fees may not be imposed to address existing deficiencies, needs related to future growth or to offset burdens created by current activities other than the development itself.

NOTE: These fees may be paid under protest to allow the project to go forward while the fee is being challenged.

## VI. Application Process

- A. Agency has 30 days to review the application to determine whether it is complete. (Gov. Code, § 65943(a); Guidelines, § 15101.) Three things can happen:
1. An application can be deemed incomplete. Another 30 days starts to run upon resubmittal of the application. The agency must provide the applicant with a list of items required to make the application complete. Or see B., below, where applicant can file an appeal of the agency's decision.
  2. If no response from the agency is received, the application will automatically be deemed complete by law. Note that in order to invoke this remedy the applicant must include on the application a written statement seeking approval of a development permit.
  3. Alternatively, the agency can deem the application complete. The agency should provide the applicant with a letter noting the application's completeness.
- B. A determination of incompleteness may be appealed to the planning commission and/or city council/board of supervisors within 30 days. The appeal must be heard within 60 days. See the city or county code to determine which body will decide the appeal. (Gov. Code, § 65943(c).) If the appeal is rejected, the applicant has to resubmit its application and go through the application cycle again. If the applicant wins the appeal, the application is complete.

## VII. CEQA Process

- A. During the 30-day application review time frame discussed above, the agency should be focused on determining whether the development is subject CEQA (e.g., is it a project, does it involve the exercise of discretionary powers by the agency, or will it result in a direct or reasonably foreseeable indirect physical change in the environment?). (Guidelines, § 15060(a).)
- For larger projects especially, it is a good idea for applicants to request a pre-application consultation with the agency – that is a meeting prior to submitting a formal application. (Guidelines, § 15060.5.)
  - Once an application is deemed complete and subject to CEQA, the agency only has 30 days to determine whether the project is exempt or requires an EIR, ND or is covered under previous environmental

review. (CEQA Guidelines, § 15102; Pub. Res. Code, § 21080.2.)  
This timeline can be extended by 15 days upon mutual consent by the agency and applicant.

1. **Exempt Projects.** Two types of exempt projects – categorical (Guidelines, § 15260) or statutory (Guidelines, § 15300). A Notice of Exemption (NOE) may be filed after the project is approved by either the applicant or agency. (Guidelines, § 15062.)
  - a) Statutory exemptions include: preparation of Local Coastal Programs pursuant to the Coastal Act, RWQCB adoption of WDRs, General Plan time extensions, or ministerial projects.
  - b) Categorical exemptions include: replacement or reconstruction projects, minor alterations to land, inspections, loans, or open space contracts.
2. **Negative Declarations or Mitigated Negative Declarations.**
  - a) Employed when an initial study shows there is no substantial evidence in light of the whole record before the agency that the project may have a significant effect on the environment, or when the initial study identified potentially significant effects, but the applicant proposes to mitigate those potential significant effects prior to release of the MND to the public. (Guidelines, § 15070(a), (b).)
  - b) A Notice of Intent (NOI) must be issued for a ND or MND sufficiently prior to adoption by the lead agency to allow for the public to conduct either a 20 or 30-day review. (Guidelines, § 15072.)
  - c) A ND must be completed and approved by the agency within 180 days from the date when the lead agency accepted the application as complete. (Guidelines, § 15107.)
  - d) Once the ND is adopted or an exemption is determined to apply, the agency has 60 days to approve the project. (Gov. Code, § 65950(a)(3), (4).)
  - e) If the lead agency approves the project, it shall file a notice of determination (NOD) within 5 working days of deciding to carry out the project. (Guidelines, § 15075.)

3. **EIRs.**

- a) A local agency must immediately release a Notice of Preparation or NOP following its decision to prepare an EIR. (Guidelines, § 15082(a).) The local agency has 45 days to place an outside consulting firm under contract to prepare that EIR. (Pub. Res. Code, § 21151.5(b).)
- b) Once the draft EIR is completed, a notice of completion (NOC) must be filed with the Office of Planning and Research. A public notice of availability (NOA) should be sent to those who have requested at the same the NOC is sent to OPR and should be posted in the Clerk's office for at least 30 days. (Guidelines, § 15087.)
- c) There is a 30-day review period for local projects and a 45-day review period for projects requiring review by state agencies. (Guidelines, § 15105.)
- d) An EIR must be completed and approved by the agency within one year from the date when the lead agency accepted the application as complete. This time frame can be extended by up to 90 days upon mutual agreement of the parties. (Guidelines, § 15108; Pub. Res. Code, § 21151.5(a).)
- e) Once the EIR is certified, the agency has 180 days to act on the entitlements (e.g., development agreement, etc.) (Gov. Code, § 65950(a)(1)) or 90 days in the case of certain affordable housing projects. (Gov. Code, § 65950(a)(2).) If a tentative map is at issue, the agency has 50 days to act. (Gov. Code, § 66452.1.)