# PLANNING COMMISSION STAFF REPORT

**DATE:** April ~~12,~~ 26, 2017 PUBLIC HEARING

**SUBJECT:** REVIEW OF THE RECOMMENDATIONS OF THE AD HOC PDD COMMITTEE REGARDING MODIFICATIONS TO THE PLANNED DEVELOPMENT DISTRICT PROCESS.

**FROM:** Department of Planning Services

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## SUMMARY:

This is a request for Planning Commission review of the recommendations of the Ad Hoc PDD Committee relative to modifications to the Planned Development District regulations. The Ad Hoc PDD Committee was established through a settlement agreement, and was tasked with recommending modifications to the City's Planned Development District (PDD) regulations and process. The Committee met over the course of nine months, and developed a series of recommendations in four areas: (1) changes to the PDD ordinance; (2) changes to the processing of PDD applications; (3) associated changes to the General Plan; and (4) associated changes to the zoning code. The Planning Commission is expected to review and discuss the recommendations of the Ad Hoc PDD Committee, and forward any or all of the recommendations to the City Council.

## RECOMMENDATION:

1. Open the public hearing and receive testimony;
2. Discuss the recommendations of the Ad Hoc PDD Committee and provide direction to staff.

## BACKGROUND INFORMATION:

The Ad Hoc PDD Committee ("Committee") was formed through a settlement agreement ("Agreement") that arose from a lawsuit regarding the Dakota development (Case 5.1310/PD-365). A copy of the Agreement is included with this staff report as Attachment #3. The Agreement established a seven-member Committee to study the existing Planned Development District (PDD) process, and to make recommendations as to whether modifications should be made to the process. The Committee was given

six months to formulate its recommendations, but was allowed a reasonable extension of time if needed to complete the process. The Agreement requires that the recommendations of the Committee be considered in good faith by the Planning Commission. In addition, the Agreement requires that all recommendations of the Committee be presented to the Planning Commission, even if the recommendation is not adopted as the majority position of the members. Finally, the Agreement states that the Planning Commission may consider whether or not to forward any or all of the recommendations to the City Council.

The Agreement established a Base Committee consisting of the following individuals: Jim Harlan, representing the plaintiff in the lawsuit; Marvin Roos, representing the builder and developer; and Kathy Weremiuk, representing the Planning Commission. The Agreement required the Base Committee to appoint up to four additional individuals to serve on the Committee, with the additional members having expertise in the following areas: (1) a local contractor or engineer; (2) a person with expertise in the field of affordable housing; (3) a local architect; and (4) a person with expertise in the field of planning in the local area. The Base Committee selected the following members to fill the remaining four positions: Lyn Calerdine, Tracy Conrad, Michael Johnston, and Scott Bigbie.

The Committee met 15 times between July 2016 and March 2017 to discuss revisions to the PDD regulations and process. The table below identifies the dates of the meetings held by the Committee:

| *List of Ad Hoc PDD Committee Meeting Dates:* | | |
|---|---|---|
| 07/14/16 | 10/06/16 | 01/10/17 |
| 07/26/16 | 11/03/16 | 01/23/17 |
| 08/09/16 | 11/21/16 | 01/31/17 |
| 08/23/16 | 12/05/16 | 02/13/17 |
| 09/15/16 | 01/04/17 | 03/02/17 |

The Committee finalized their recommendations at their meeting of March 2, 2017, and requested that the recommendations be forwarded to the Planning Commission in accordance with the Agreement.

## ANALYSIS AND RECOMMENDATIONS:

The series of meetings held by the Committee focused on three primary topic areas:

1. Identification of issues and concerns with the current PDD ordinance;
2. A review best practices; and
3. Development of recommendations for changes and improvements to the PDD process.

*Identification of Issues and Concerns:*

The first series of meetings focused on identifying issues and concerns with the current PDD ordinance and process. The Committee developed a list of concerns, based on the experience of the Committee members, in addition to noting concerns raised by members of the public. Some of the key concerns listed by the Committee include the following:

- Overuse of the PDD process;
- Lack of public benefit;
- Density and intensity of PDD developments;
- Reductions in development standards and impacts to adjoining properties;
- Lack of common open space in PDD projects; and
- Inconsistencies between PDD projects and General Plan or Zoning Code requirements.

A complete list of the issues and concerns compiled by the Committee is included as Attachment #2 to this report.

*Review of Best Practices:*

As part of their review of best practices, the Committee analyzed numerous Planned Development ordinances from other communities. The suggestions for other ordinances for study came from Committee members, members of the public, and City staff. The list of ordinances that were reviewed as part of the process included the following:

| *List of PDD Ordinances Reviewed:* | |
|---|---|
| Scottsdale, AZ | Santa Barbara, CA |
| Beverly Hills, CA | Truckee, CA |
| Davis, CA | Shelton, CT |
| Duarte, CA | Coral Gables, FL |
| Glendale CA | Manatee County, FL |
| Palm Desert, CA | Naples, FL |
| Pasadena, CA | Las Vegas, NV |
| Redwood City, CA | Southampton, NY |

In addition to making a comparative analysis of the ordinances of other communities, the Committee also reviewed the book "Planned Unit Developments" by Daniel R. Mandelker, FAICP (*Planning Advisory Service Report Number 545, American Planning Association, 2007*). The book was produced by the American Planning Association to provide guidance on the development and regulation of planned developments. The Committee used the information from both of these sources in formulating their recommendations.

*Recommendations:*

Upon identifying issues and concerns and finalizing their review of best practices, the Committee began to develop a list of recommendations for modifications to the current PDD ordinance. The Committee members identified four areas where modifications to existing plans, ordinances and processes were suggested:

- Changes to the existing PDD ordinance (PSZC Section 94.03.00);
- Changes to the processing of PDD applications;
- Changes to the General Plan; and
- Changes to the zoning code.

While the complete list of recommendations in included as Attachment #1 to this staff report, the following discussion summarizes recommendations from each of the four subject areas.

1. Changes to the existing PDD ordinance:

   The Committee suggested that changes should be made to the purpose statement of the existing ordinance to clearly identify which types of projects should be allowed under the PDD process. The Committee has recommended that justification should be provided by the applicant as to why the PDD process is necessary, and has also compiled a list of general requirements that should be met before a PDD project can be approved. It was suggested that the Public Benefit Policy, as adopted by City Council, be modified to provide greater clarification as to what could be considered as a benefit and to better align the requested modifications with equivalent public benefit.

2. Changes to the processing of PDD applications:

   The Committee has suggested a number of changes to how PDD applications are processed, including a requirement for a study session with the Planning Commission, greater detail in staff reports regarding conformance to the General Plan, establishing required findings for PDD developments, and coordination of PDD entitlements with mapping entitlements. In addition, the Committee recommended changes to the meeting sequence, such as having the Architectural Advisory Committee review projects after the Planning Commission review is completed.

3. Changes to the General Plan:

   While the Committee has encouraged an update of the General Plan, there are other recommendations that can be implemented in the interim to address immediate concerns. One of the changes identified by the Committee is to modify any language in the General Plan that mandates the use of the PDD process. It has also been recommended that bonuses be encouraged for affordable housing, senior housing, or assisted-living facilities, and that additional

areas be identified for multifamily housing. Most importantly, the Committee has recommended that the General Plan and zoning code be aligned for consistency, so as to prevent conflicts between zoning regulations and General Plan goals and policies.

4. Changes to the zoning code:

   Changes to the zoning code have been proposed by the Committee to assist in reducing the number of projects that are submitted as PDD applications. The Committee has recommended that small-lot development standards be considered, as well as developing standards for the reuse of existing golf course facilities. It has also been recommended that the High Rise Ordinance be further evaluated, and that the definitions for open space/lot coverage/common open space be clearly defined. As with the General Plan, it is recommended that any language mandating the PDD process be eliminated.

While Committee members generally agreed with most of the recommendations, dissenting opinions were provided on certain recommendations. Attachment #1 identifies where Committee members were not in agreement on the recommendations. As stipulated in the Agreement, all recommendations are to be presented to the Planning Commission, even where the recommendation is not adopted as the majority position.

*Process/Next Steps:*

Per the Agreement, the Planning Commission shall in good faith consider the recommendations of the Committee at a duly noticed meeting. The Planning Commission shall review the recommendations, and may consider whether or not to make any or all of the recommendations to the City Council. Due to the number of recommendations proposed by the Committee, the Planning Commission may desire to hold additional meetings on the topic. Once the Planning Commission completes its deliberations, they shall forward their recommendations to the City Council for consideration. Upon direction from the City Council, staff will develop a work plan for implementation of the recommendations. The recommendations would be processed as amendments to the zoning code and to the General Plan, and would follow the normal public hearing process for consideration, discussion and adoption.

*Work plan/Implementation:*

Critical to the work of the committee is the implementation of the recommendations, as may be directed by City Council. Based on current workload and the number of recommendations proposed, staff will not be able to develop and process all of the recommendations concurrently. Consequently, a work plan will need to be developed to begin the sequential implementation of the recommendations of the Committee. A proposed work plan for implementation of the recommendations might proceed in the following order:

1. Modifications to PSZC Section 94.03.00 – PDD Ordinance.
2. Modifications to procedural requirements for PDD applications.
3. Elimination of language in the General Plan and zoning code that mandates the use of the PDD process.
4. Establish standards for small-lot development, golf course redevelopment, and revised standards for mixed-use development.
5. Modifications to the General Plan and zoning code to establish bonuses for affordable housing and senior housing.
6. Schedule an update of the General Plan.

The work plan could be adapted or revised based on immediate need, or upon the recommendations and direction of the Planning Commission.

*Public Comment:*

Members of the public attended the Committee meetings and offered comment at the meetings. In addition, comment letters and study materials were received from members of the public and were provided to the Committee members for review and consideration. Letters, emails, and supporting study materials that were received and provided to the Committee as part of this process are included as Attachment #4 to this report.

ENVIRONMENTAL ANALYSIS:

The recommendations of the Committee are not subject to the California Environmental Quality Act ("CEQA") under CEQA Guidelines (14 Cal. Code Regs.) sections 15060(c)(2), 15060(c)(3), and 15061(b)(3). The activity is not subject to CEQA because it will not result in a direct or reasonably foreseeable indirect physical change in the environment; and the activity is covered by the general rule that CEQA applies only to activities that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment, the activity is not subject to CEQA.

Flinn Fagg, AICP
Director of Planning Services

ATTACHMENTS:

1. Recommendations of the Ad Hoc PDD Committee
2. List of Issues and Concerns (as generated by the Ad Hoc PDD Committee)
3. Settlement Agreement and General Release of Claims
4. Public comment letters

# ATTACHMENT #1

| Suggested Changes to the PDD Ordinance (Section 94.03.00) | |
|---|---|
| **Purpose of Planned Development Districts** | **Dissenting Opinion(s):** |
| 1. Allow development of multiple land parcels under a single development plan. | |
| 2. Allow a mixture of land uses or zones in a single project. | |
| 3. Allow flexibility in development standards, *where contextually appropriate*. | |
| 4. Provide community benefits not required under the applicable zoning district or other land development codes. | |
| 5. Promote innovation and excellence in site and urban design, resulting in projects of significantly higher quality than would be achieved through conventional design practices and standards. | |
| 6. Promote design variety within a development. | |
| 7. Promote open space preservation through municipal dedication or community association ownership. | |
| 8. Promote more efficient traffic and pedestrian circulation. | |
| 9. Promote preservation of natural or significant/historic architectural features. | |
| **PDD Project Justification** | **Dissenting Opinion(s):** |
| 10. Specify why and how the project is better than by right-of-zone, and why the PDD process is desirable for the project. | |
| 11. Specify exactly which exceptions are being requesting from the underlying zoning regulations and why those departures are necessary. | |
| 12. A PDD application shall specify the objectives of the project and how they relate to the PDD application. | |
| 13. Provide recreational facilities for residents of the development not otherwise required under the zoning district or other land development codes. | |
| **PDD General Requirements** | **Dissenting Opinion(s):** |
| 14. The project shall comply with the land use map and policies as specified by the General Plan. A General Plan amendment shall be filed in conjunction with the PDD application where the proposed project is inconsistent with the existing land use designation of the General Plan. | |
| 15. The project shall comply with the height of the underlying zoning district, unless otherwise authorized by a specific plan or the General Plan. | |
| 16. Open space shall meet or exceed the open space requirements of the underlying zoning district. | |
| 17. The project shall respect the setback requirements of the underlying zoning at the perimeter of the development site. | |
| 18. Exceptions to setback requirements or other development standards shall be mitigated by increased open space. | |

| Suggested Changes to the PDD Ordinance (Section 94.03.00) | |
|---|---|
| 19. Preserve the existing street grid, and require streets or driveways of a PDD project to align with streets at the perimeter of the project unless contextually inappropriate. | |
| 20. Refine the definition of "open space" and coordinate with definitions for "lot coverage" and "common open space." Clearly identify where "common open space" is required, versus a percentage of open space that includes the landscaped areas of individual units. | |
| **Public Benefit** | **Dissenting Opinion(s):** |
| 21. Amend the PDD ordinance to require the provision of public benefit; define what constitutes public benefit, and preclude the project itself from being defined as the major public benefit. | |
| 22. A PDD application shall list the public benefits proposed with the project, including additional public open space, affordable housing units, additional public amenities, additional off-site improvements, or similar benefits that are not required as standard development conditions. Items such as roadways, required traffic signals, payment of impact fees, landscape materials, or similar items that are required for all standard developments cannot be counted towards satisfying the public benefit requirement. | |
| 23. Modifications to development standards shall not be thought of as "waivers," but as minor modifications to development standards. Any modification shall be in exchange for desired public benefits specified by the zoning ordinance or General Plan policies. | |
| **Other Standards/Requirements** | **Dissenting Opinion(s):** |
| 24. Allow density bonuses in accordance with State law through the PDD process for affordable housing units and senior housing units. | |
| 25. Use the PDD process for environmentally sensitive parcels to allow for clustering of housing and preservation of open space. | |

| Suggested Changes to the Processing of PDD Applications | |
|---|---|
| **Process Changes** | **Dissenting Opinion(s):** |
| 1. Require PDD projects to be reviewed by the Planning Commission in a study session prior to formal submittal. | |
| 2. Planning staff shall identify compliance with the General Plan, development standards for the underlying zoning district, and other land use requirements. | |
| 3. Staff reports shall detail specifically how proposed projects comply with the General Plan land use designation, policies, and other provisions. | |
| 4. Staff reports shall detail specifically how proposed projects comply with the underlying zoning district. | |
| 5. PDD applications that require excessive exceptions to development standards shall be recommended for denial or shall be revised and resubmitted. | |
| 6. The City Council and Planning Commission need to acknowledge the role of staff as the regulatory gatekeeper, and give staff the authority to enforce the General Plan and development standards. | |
| 7. PDD applications that do not conform to the General Plan land use designation and policies in terms of use or density shall require the submittal of a General Plan amendment or a Change of Zone application. | |
| 8. Revise the findings required for a PDD to include: a) general consistency with development standards; b) conformance to the General Plan; c) public benefit; d) major architectural standards with enhanced design requirements; and e) specific development standards. | |
| 9. Prior to approving a PDD, the Planning Commission and the City Council shall make findings that the PDD is consistent with the General Plan, that the use is consistent with the proposed underlying zoning, and that any modifications to development standards are offset by the public benefits of the project. | |
| 10. Coordinate the expiration of PDD entitlements with any mapping action associated with the project so that both actions expire at the same time. | |
| 11. Allow a PDD to be approved for a period of 3 years; allow no more than (3) one-year extensions. Any extensions shall be timed to expire with any associated tentative tract map or tentative parcel map. | LC |
| **Changes to Meeting Format** | **Dissenting Opinion(s):** |
| 12. Modify the entitlement process to send applications to the Planning Commission first for land use approval, and then to the Architectural Advisory Committee for architectural review. | |
| 13. Keep the public comment period open until after a motion by the Planning Commission; allow a 1-minute public comment period after the motion is made, with comments limited solely to the motion as made. | LC |

**Suggested Changes to the General Plan**

| General Plan Changes | Dissenting Opinion(s): |
|---|---|
| 1. Identify areas suitable for small-lot development. | |
| 2. Study the addition of multifamily housing in areas zoned for shopping centers as a means to encourage affordable housing, and study incentives for density/height and reduced parking for affordable or senior-assisted living facilities within or adjacent to commercial areas. | |
| 3. Schedule an update to the General Plan. | |
| 4. Bring the zoning code into conformance *and alignment* with the General Plan. Clarify that consistency with the General Plan (while not required for Charter Cities) is to be encouraged for adopted General Plan policies. | |
| 5. Review all sections of the General Plan that mention the PDD process and determine if a zoning ordinance update to a CUP or other permit can handle the issue. | |
| 6. Language in the General Plan that mandates the use of the PDD process as the entitlement application for certain land uses (such as Mixed Use) should be modified to allow the PDD for new and emerging concepts, but also mandate that the zoning ordinance be updated to cover these new development concepts as quickly as possible. | |
| 7. Gates around developments should be precluded where it interrupts the grid pattern. Gating of private roads may be considered on a case-by-case basis upon making findings. | LC, KW |
| 8. Study the lower threshold of the higher density residential General Plan categories. | |
| 9. Carefully define "mixed-use and multi-use," and specify if it must include commercial and residential uses on the development site. Establish a residential bonus for true mixed-use development. | |
| 10. Determine which development standards in zoning cannot be modified with a PDD application, and move such standards to the General Plan. | |
| 11. Prepare a zoning/General Plan consistency map that could point to rezoning of inconsistent properties. | |
| 12. Establish where bonuses may be appropriate for affordable housing, provision of public parking, provision of additional open space, etc. | |
| 13. Establish goals and policies for the reuse or redevelopment of existing golf course facilities. | |

**Suggested Changes to the Zoning Ordinance**

| Zoning Code Changes | Dissenting Opinion(s): |
|---|---|
| 1. Establish standards for small-lot development in place of utilizing the PDD process. Consider small-lot development in the R-2 and R-3 zones as may be appropriate, based on density. | |
| 1a. For small-lot development, require an average of 5,000 SF lot area or provide common open space. | |
| 1b. In the RGA-6/8 and R-2 zones, change the default single-family standards from R-1-C to the proposed small-lot standards. | |
| 2. Establish development standards for the reuse of existing golf courses facilities that incorporate best practices from other jurisdictions. | |
| 3. Refine the definition of "open space" and coordinate with definitions for "lot coverage" and "common open space." Clearly identify where "common open space" is required, versus a percentage of open space that includes the landscaped areas of individual units. | |
| 4. Establish a maximum height limit by zoning district; consider the elimination or modification of the High-Rise Ordinance after review of permitted heights in all zoning districts. If the High-Rise Ordinance is retained, consider different standards for different areas of the city, *based on context.* | |
| 5. Modify the zoning code to allow mixed-use development by right, and establish development standards for mixed-use projects. | |
| 6. Rezone land not currently zoned for residential use (such as unbuilt or underutilized commercial land) to include cluster or multifamily uses to make up for increasing small-lot development. | |
| 7. Create new zones to accommodate the types of development actually being built (example: small-lot residential zone). | |
| 8. Remove language in the zoning code that specifically allows the City Council to approve modifications of development standards. | |
| 9. Add appropriate development standards in the zoning code for institutional uses, religious uses, properties split by zoning, and mixed-use development, so that these uses can be built by right rather than relying on the PDD process. | |
| 10. Review all sections of the General Plan that mention the PDD process and determine if a zoning ordinance update to a CUP or other permit can handle the issue. | |
| 11. Consider more/other ways to create flexibility in standards (such as the CUP process) to achieve better design, etc. | |
| 12. Consider standards to address grading of hillside parcels or parcels with significant slopes. | |
| 13. Develop standards to address shading and mitigation of solar impacts. | |
| 14. Develop increased design standards/requirements for PDD projects. | |

# ATTACHMENT #2

**Ad Hoc PDD Committee**
**Notes – 7/26/16 & 8/9/16**

Issues/Concerns with Current PDD Ordinance – 7/26/16

- Apparent need for PDD – potential overuse
- Inconsistencies between General Plan and zoning
- Public benefit transparency/nexus
- Small lots
- Inconsistencies in standards
- Should be used for unusual cases
- Need list of public benefit projects
- PDD is a gift to the developer
- Public perception
- Economic cost of land
- Lack of variety/quality of design
- Open space requirement (increase)
- Establish minimum acreage for PDD

Issues/Concerns with Current PDD Ordinance – 8/9/16

- Discretionary approvals – differing opinions of Council/PC/Staff
- Staff was tougher (no standards to apply)
- Order of Reviews (AAC/PC/CC)
- Study session as part of process
- Precedence in discretionary reviews
- Market forces (product type, Air B&B)
- Insurance issues, defects (condos)
- Reduced standards, no additional community space
- Increased land prices (impact)
- No public benefit, paucity of amenities
- Loss of R-3 zoned property
- Lack of contextualism
- Purpose statement – what are the advantages, get something better
- Should be a combination of land uses
- Obviating the development standards
- Decreases community open space – lack of graciousness
- Lot coverage/impermeable lot coverage (definition of open space)
- PDD's that aren't built out and later amended
- Re-examine public benefit
- Street width issues
- Open space hasn't been enforced

Items to Add to Existing Ordinance – 8/9/16

- Shade
- Grading

- Future modifications
- Criteria (see example from Scottsdale)
- Open space – how it's calculated
- List of ways project is seeking modification

# ATTACHMENT #3

**SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS**

This SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS ("Agreement") is entered into as of this ___ day of July, 2014 (the "Effective Date"), by and between the City of Palm Springs, a California municipal corporation, and the Palm Springs City Council (collectively, "Palm Springs"), Wessman Holdings, LLC, a California limited liability company ("Developer"), Dakota PS, LLC, a California limited liability company ("Builder") and People for Proper Planning, a California ad hoc non-profit membership organization ("People") with respect to the facts set forth in the Recitals below. Palm Springs, Developer and People shall hereinafter be referred to, collectively, as the "Parties" and, each, a "Party."

**RECITALS**

A. On February 19, 2014, Palm Springs approved a resolution approving a Mitigated Negative Declaration for a Planned Development District ("PDD") allowing 39 two-story detached single family homes and approving a Tentative Tract Map to subdivide 6.37 acres into 30 residential lots located at the base of the San Jacinto Mountains, fronting Belardo Road in the City of Palm Springs (the "Dakota Project" or the "Project"). On March 5, 2014, Palm Springs adopted Ordinance No. 1846, approving the PDD.

B. On or about March 21, 2014, People filed a Petition for Preemptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") against Palm Springs in the Riverside County Superior Court, Palm Springs Branch, entitled *People for Proper Planning v. City of Palm Springs, et at.*, Case No. PSC1401656 ("Action"). Developer was named in the Action as a Real-Party-In-Interest. People's Petition alleges that Palm Springs, as lead agency with respect to approval of the Dakota Project, violated the California Environmental Quality Act (Public Resources Code §§21000 et seq. - "CEQA") when it issued certain Approvals for the Project. The Petition further alleges that Palm Springs violated its Municipal Zoning Code and further violated the City General Plan in approving the Project. Palm Springs and Developer deny all of these claims, and contest People's allegations in the Petition.

C. The Parties, in their shared interest, to avoid any further litigation between them, and to settle and resolve, fairly, fully and finally, all matters in dispute between them, wish to compromise and settle the Action and the disputes between them regarding the Project (and certain proposed modifications thereto) on the terms and conditions set forth herein. Accordingly, this Agreement is a compromise of disputed claims, and the execution of this Agreement shall not be considered or treated at any time or for any purpose as an admission that the other side's positions had merit, or as an admission of liability, or wrongful conduct, by any of the Parties to this Agreement. No past or present wrongdoing on the part of any of the Parties shall be implied from the negotiation or the consummation of this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement covenant and agree as follows:

1. Ad Hoc PDD Committee. A seven-member ad hoc committee ("Committee") shall be formed to study the existing PDD process, and to make recommendations to both the Planning Commission as to whether modifications should be made to the PDD process, and if so, what type of modifications. Margo Wheeler, the City's Director of Planning Services, will serve as staff to the Committee. If Ms. Wheeler no longer works for the City, the City Manager shall appoint an alternative staff member to serve as the staff to the Committee. The Committee membership and formation shall be as follows:. The City, Builder/Developer, and People hereby form a three-person base committee ("Base Committee"). The City's Mayor Pro Tem shall appoint a member of Palm Springs Planning Commissioner as the City's representative on the Base Committee. Builder and Developer jointly appoint Rich Meaney as their representative on the Base Committee. People hereby appoint Jim Harlan as People's representative on the Base Committee. The Parties may replace their representatives on the Base Committee as necessary. The Base Committee shall be responsible for selecting up to four additional Committee members from the following categories: (1) a local contractor or engineer; (2) a person with expertise in the field of affordable housing; (3) a local architect; and (4) a person with expertise in the field of planning in the local area. The Base Committee will work cooperatively to fill positions (1) through (4) with persons who will bring local knowledge, expertise, and differing viewpoints to the Committee. Except as provided in the next sentence, the decisions shall be made by a majority of the Base Committee members. The Base Committee may by unanimous decision select members who do not fit within the criteria specified above. The persons selected shall have demonstrated the ability to work collaboratively. If the Base Committee is unable to fill one or more of the four positions, the Base Committee and any additional members selected by the Base Committee shall serve as the Committee. The Committee shall have its kickoff meeting within 45 days of the Effective Date. The Committee shall hold no fewer than three meetings. After receiving the information it deems appropriate, the Committee shall formulate its recommendations regarding the PDD process. The Committee shall complete the formulation of its recommendations within six month if the Effective Date unless the Committee votes to grant itself a reasonable extension of time to complete the process. The Committee's recommendations shall be considered in good faith by the Planning Commission at a duly noticed regular or special meeting. The recommendations shall not be binding. The recommendations of all members of the Committee will be presented, even if the recommendation is not adopted as the majority position of the members. The Planning Commission will consider whether or not to make any or all of the recommendations to the City Council.

2. Enhanced Notice of PDD Applications/Hearings Pending Completion of the Ad Hoc PDD Committee. Between the Effective Date and the date that the Ad Hoc

PDD Committee completes its task and delivers its recommendations to the City Council, the City will provide enhanced public notice relating to PDD applications and hearings as follows.

(a). Complete Applications. Counsel for People will prepare a listing of e-mail addresses of persons who wish to be notified of the filing of PDD applications. The list may be updated as desired by People. Once such applications are deemed complete, the City will provide a notice to the persons on the list that includes the name of the applicant, the location and type of project, a brief description of the project, and a description of any deviations in property development standards from the Palm Springs Municipal Code requested by the Applicant. Application documentations will be available for inspection at City Hall during normal business hours.

(b). Hearing Notices. On all public hearing notices related to projects involving a PDD application, the notice shall include a description of any deviations in property development standards from the Palm Springs Municipal Code requested by the Applicant.

3. Compromise of Claims and Dismissal of Action. The Parties hereby agree to compromise and settle People's claims arising from or related to the facts alleged in the Petition pursuant to the terms and conditions set forth herein, including the general release set forth below in Paragraph 5. Concurrently with the mutual execution of this Agreement, People shall execute and transmit to counsel for Palm Springs and Developer a fully executed Request for Dismissal of the Petition, with prejudice, in a form suitable for filing with the Court, which such Request for Dismissal shall be filed with the Court by counsel for Palm Springs or Developer. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own attorneys' fees and costs incurred in the Petition proceeding.

4. No Admission of Liability. The Parties enter this Agreement and release for the purpose of terminating the dispute between them. By entering into and carrying out this Agreement, no Party to this Agreement admits any liability to any other Party on any theory for any claim or cause of action. This Agreement shall not be used or construed as an admission of liability by any Party hereto for any purpose.

5. General Releases.

(a) This release is intended as a full and complete release by People in relation to the Petition, the Action and the Project. No part of this release shall release any rights or obligations of the Parties created by this Agreement. People, for itself, and on behalf of its members, associates, predecessors, successors, assigns, parents, subsidiaries, alter egos and affiliates (collectively, the "Releasing Parties"), fully release and discharge Palm Springs, the Builder, the Developer, the Developer's affiliated entities (including, without limitation, Wessman Holdings, LLC), and its respective present and former officers, directors, employees, partners, attorneys, independent contractors, agents, insurers, accountants, heirs, and successors and assigns

(collectively, the "Released Parties"), from all rights, claims, demands, actions or causes of action of every nature whatsoever which any of the Releasing Parties now has or may have against any of the Released Parties arising from or related to the above recited facts, the Petition, the Action and/or the Project (collectively, the "Released Claims"), except those rights and obligations arising out of this Agreement. People, on behalf of itself and each of the Releasing Parties, covenants not to threaten, bring, commence, initiate, institute, file, join, maintain, prosecute, support, or threaten any action(s) based in whole or part upon any of the Released Claims, except as necessary to enforce this Agreement and the obligations set forth herein. People understands and agrees that this Agreement may be pled as a full and complete defense and bar to, and may be used as the basis to dismiss with prejudice or enjoin, any action(s) based in whole or in part upon a Released Claim.

(b) This release is intended as a full and complete release and discharge of any and all Released Claims that the Releasing Parties may have arising from or related to the Project or proceedings on the Petition. In making this release, People, on behalf of itself and each of the Releasing Parties, intends to release the Released Parties from any liability of any nature whatsoever for any claim of damages or injury or for equitable or declaratory relief of any kind, whether the claim, or any facts on which such claim might be based, is known or unknown to the party possessing the claim. People has read and has otherwise been informed of the meaning of Section 1542 of the California Civil Code, and has consulted with its counsel, and understands the provisions of Section 1542. People, on behalf of itself and each of the Releasing Parties, expressly waive all rights under Section 1542 of the Civil Code of the State of California and any successor statute, which the Parties understand provides as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

People's Initials: ____

(c) People, on behalf of itself and each of the Releasing Parties, acknowledges that it may hereafter discover facts different from or in addition to those which they now believe to be true with respect to the Released Claims. People, on behalf of itself and each of the Releasing Parties, agrees that the foregoing releases shall be and remain effective in all respects notwithstanding such different or additional facts or any discovery thereof.

(d) No Released Party nor any related entities have made any statement or representation to any of the Releasing Parties regarding any fact relied upon in entering into this Agreement, and People, on behalf of itself and each of the Releasing Parties, expressly states it does not rely upon any statement, representation or promise of any Released Party or related entities in executing this Agreement, or in

making the settlement provided for herein, except as is expressly stated in this Agreement.

(e) Each Party to this Agreement has made such investigation of the facts pertaining to this settlement and this Agreement, and of all other matters pertaining thereto, as it deems necessary. In entering into this Agreement, each Party assumes the risk of any misrepresentation, concealment or mistake. If any Party should subsequently discover that any fact relied upon by the Party in entering into this Agreement was untrue, or that any fact was concealed from that Party, or that the Party's understanding of the facts or of the law was incorrect, such Party shall not be entitled to any relief in connection therewith, including without limitation upon the generality of the foregoing, any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be, and is, final and binding among the Parties.

(f) If it is within the contemplation of the Parties to this Agreement that each of them may have claims for relief or causes of action for malicious prosecution or abuse of process or other claims in connection with the Petition proceeding described above, and matters undertaken in connection therewith, it is the intention of the Parties to this Agreement to fully, finally and forever release any and all such claims.

6. Representations, Warranties and Covenants. Each Party to this Agreement (each, the "Representing Party") hereby represents and warrants to the other Parties as follows:

(a) The Representing Party has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and no approvals or consents of any person or entity other than the Representing Party is necessary in connection with it. The execution and delivery of this Agreement and the documents related hereto by the Representing Party have been duly authorized by it, and this Agreement and the documents related hereto, when executed and delivered, shall constitute a legal, valid and binding obligation of the Representing Party enforceable against it in accordance with their terms.

(b) Each person executing this Agreement on behalf of an entity, other than an individual executing this Agreement on his or her own behalf, represents that he or she is authorized to execute this Agreement on behalf of said entity.

(c) The Representing Party has not assigned or transferred to any third party any of the rights, claims, causes of action or items to be released or transferred which it is obligated to transfer or to release as part of this Agreement. If a Representing Party breaches the foregoing representation and warranty, such Representing Party shall defend, indemnify and hold harmless the non-breaching Parties, of, from and against all liabilities, claims, demands, damages, costs, expenses, and attorneys' fees incurred by such non-breaching Parties as a result of any person or entity asserting any such assignment or transfer in violation of this paragraph's

representation and warranty. It is the intention of the Parties, and each of them, that this indemnity does not require payment as a condition precedent to recovery.

7. Entire Agreement. This Agreement contains the entire agreement of the Parties, and supersedes any prior written or oral agreements between them concerning the subject matter of this Agreement. This Agreement may only be waived, modified or amended by the written agreement of all Parties to this Agreement.

8. Partial Invalidity. In the event that any term, covenant, condition or provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or against public policy, the remaining provisions shall continue in full force and effect.

9. No Waiver. The waiver by one Party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered as a waiver by such Party of any other (or the enforcement for subsequent breaches or failures of the same) covenant, condition or promise. The delay in pursuing any remedy or in insisting upon full performance for any breach or failure of any covenant, condition or promise shall not prevent a Party from later pursuing remedies or insisting upon full performance for the same or similar breaches or failures.

10. Headings. The headings, subheadings and numbering of the different paragraphs of this Agreement are inserted for convenience and reference only and are not to be taken as part of this Agreement or to control or affect the meaning, construction or effect of the same.

11. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California.

12. Successors In Interest. Subject to any restrictions against assignment contained herein, and to any legal limitations on the power of the signatories to bind non-signatories to this Agreement, this Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, agents and related entities of each of the Parties hereto.

13. Time Is Of The Essence. Time is of the essence in the performance of all obligations under this Agreement.

14. Necessary Acts. Each Party to this Agreement agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

15. Advice of Counsel. Each Party hereto, by its due execution of this Agreement, represents to every other Party that it has reviewed each term of this Agreement with its counsel in the above-referenced litigation, and that hereafter no Party shall deny the validity of this Agreement on the ground that the Party did not have advice of counsel generally or advice of its counsel in the aforementioned litigation. Each Party has had the opportunity to receive independent legal advice with respect to

the advisability of making the compromise and settlement provided for herein, and with respect to the meaning of California Civil Code §1542.

16. Attorneys' Fees and Costs. Except as otherwise may be agreed to in a writing executed by the one or more of the Parties hereto, each Party shall bear its own attorneys' fees and costs in connection with the Action and the preparation and execution of the Agreement.

17. Construction. Each Party has cooperated in the drafting and preparation of this Agreement. In any construction to be made to this Agreement, or of any of its terms and provisions, the same shall not be construed against any Party.

18. Notices. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served shall be deemed so given or served if sent by United States mail, certified or registered mail, postage prepaid, with return receipt requested. Such notices or demands shall be effective upon the earlier of (a) three (3) business days after mailing, or (b) actual receipt as evidenced by the return receipt, and shall be addressed as follows:

| | |
|---|---|
| To: | People<br>____________________<br>____________________<br>____________________<br>____________________<br>____________________ |
| With a Copy To: | Law Office of Babak Naficy<br>1504 Marsh Street<br>San Luis Obispo, CA 93401 |
| To: | City of Palm Springs<br>3200 East Tahquitz Canyon Way<br>Palm Springs, California 92262 |
| With a Copy To: | Douglas C. Holland, Esq.<br>Woodruff, Spradlin & Smart<br>555 Anton Boulevard, Suite 1200<br>Costa Mesa, CA 92626 |
| To: | Wessman Holdings, LLC<br>555 S. Sunrise Way, Suite 200<br>Palm Springs, CA 92264 |
| With a Copy To: | Emily Hemphill, Esq.<br>Post Office Box 1008<br>Rancho Mirage, CA 92270 |

| | |
|---|---|
| To: | Rich Meaney<br>Dakota Partners, LLC<br>700 E. Tahquitz Canyon Way, Suite A<br>Palm Springs, CA 92262 |
| With a Copy To: | M. Katherine Jenson, Esq.<br>Rutan & Tucker, LLP<br>611 Anton Boulevard, Suite 1400<br>Costa Mesa, CA 92626 |

Either Party may change its address for service of notices by giving written notice to the other Party of the new address.

19. <u>No Third Parties Benefited</u>. This Agreement is made for the sole benefit and protection of Palm Springs, the Developer (and its successors, if any) and People. No other person shall have any right of action or right to rely thereon, and the Parties hereto hereby agree that nothing contained in this Agreement shall be construed to vest in any other person or entity any interest in or claim upon the funds that may be advanced pursuant to this Agreement or any rights under this Agreement.

20. <u>Execution</u>. This Agreement may be executed in counterparts and by facsimile signature; provided, however, that any Party executing this Agreement by facsimile signature shall provide the original of his signature to every other Party within one (1) business day. When each Party has signed and delivered at least one such counterpart to each Party's counsel, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties. One fully executed original is to be delivered to counsel for each Party hereto.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**PEOPLE FOR PROPER PLANNING**

By: ______________________
Name: ROBERT J. STONE
Title: An Individual and on Behalf of People for Proper Planning

By: ______________________
Name: ______________________
Title: An Individual and on Behalf of People for Proper Planning

APPROVED AS TO FORM:

By: ______________________
Name: Babak Naficy
Title: Attorney for Petitioners

**CITY OF PALM SPRINGS; PALM SPRINGS CITY COUNCIL**

By: ______________________
Name: DAVID READY
Title: CITY MANAGER

**ATTESTED:**

By: ______________________
Name: JAMES THOMPSON
Title: City Clerk, City of Palm Springs

**APPROVED AS TO FORM:**

By: ______________________
Name: Douglas Holland
Title: City Attorney, City of Palm Springs

*[Continued on Next Page]*

**WESSMAN HOLDINGS, LLC**

By: [signature]
Name: JOHN WESSMAN
Title: MGM PARTNER

**APPROVED AS TO FORM:**

By:______________________________
Name: Emily Hemphill
Title: Attorney for Real-Parties-In-Interest

**DAKOTA PS, LLC**

By: [signature]
Name: JOHN WESSMAN
Title: MGM PARTNER

**APPROVED AS TO FORM:**

By: [signature]
Name: M. Katherine Jenson
Title: Attorney for Dakota PS, LLC

*[Signature Page to Settlement Agreement and Mutual General Release]*

**WESSMAN HOLDINGS, LLC**

By: ______________________
Name: JOHN WESSMAN
Title: Mgm Partner

**APPROVED AS TO FORM:**

By: ______________________
Name: Emily Hemphill
Title: Attorney for Real-Parties-In-Interest

**DAKOTA PS, LLC**

By: ______________________
Name: JOHN WESSMAN
Title: Mgm [illegible]

**APPROVED AS TO FORM:**

By: ______________________
Name: M. Katherine Jenson
Title: Attorney for Dakota PS, LLC

*[Signature Page to Settlement Agreement and Mutual General Release]*

# ATTACHMENT #4

STEPHANIE AUSTIN
448 N. GREENHOUSE WAY
PALM SPRINGS, CA 92262

PHONE/FAX (760) 327-7215
email – saustin2@dc.rr.com

August 19, 2016

TO: Members of the Ad Hoc PDD Committee
Cc: Staff Liaisons
SUBJECT: August 23, 2016 Meeting, 2:30PM

There are numerous examples of PDD's in numerous small cities throughout the US, and a growing number of communities are suggesting misuse of the practice and challenging their planning commissioners. For now I am showing examples from three cities, two of them bearing similarities to Palm Springs. Further examples can be made available for the next scheduled meeting.

Please click on this link: Southampton. Southampton, New York is the largest of the Hampton communities. (Population 55,000 which doubles in the summer, as does ours in the winter). Southampton has recently been torn apart over PDD submissions. "The PDD has pitted local citizens against the Town Board as well as developers whose grand ambitions have shown a blatant disregard for preserving the character of the township."

A further link, this from Texas Municipal Zoning Law, which states: PDD's "allow developers to obtain site-specific approval for development that may not fit standard area and use zoning categories that require specific negotiation to ensure that community interests are protected." And "Unlike special exceptions, PDD's constitute zoning amendments. PDD is an especially effective regulatory mechanism when developers want to use land for a purpose that is not allowed under the city's zoning ordinance".

In Shelton, Connecticut (population 40,472) the Conservation Commission has released a position statement that says that "the PDD mechanism is being misused in Shelton, particularly with regard to high density developments in residential zones." A member of the Planning and Zoning Commission states in regard to PDD's " You're kind of allowing them every place." "You people are having a problem telling people 'no' . . . I'm really concerned about the process." Click on Shelton.

To put it simply: A PDD is a way for developers to build in an area which is not now and has never been zoned for their project. As a Palm Springs resident my questions are this:

- What was wrong with the original zoning? Early residents and mayors had a vision for our City, which until very recently has successfully stood the test of time.
- What is the reason now for zoning amendments?
- Our City is internationally known, loved and respected. Why are we permitting Orange County developers (and others) to rebuild our city in their image, not in ours?
- Why does it appear that our Planning Commission rubber-stamps every project that appears with the letters PDD in it?

I'm delighted that we appear to have started a discussion in the form of an Ad Hoc PPD Committee. I encourage you to tackle this issue head on - and preferably soon before Palm Canyon Drive is transformed into Orange County East.

Sincerely,

Stephanie Austin

**Flinn Fagg**

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| | |
|---|---|
| **From:** | Stephen M Rose <stephenmrose@gmail.com> |
| **Sent:** | Monday, August 22, 2016 10:01 AM |
| **To:** | Flinn Fagg |
| **Subject:** | PDD Taskforce Meeting |
| **Attachments:** | PDD.pdf |

Dear Mr Fagg,
I am sorry I will not be able to make the meeting tomorrow, but I do have some opinions that I would like to share.
Could you please share this letter with the task force members? Thank you.
Steve Rose
1195 East Sunny Dunes Road
Palm Springs, CA 92264
323 839 9054

To: The PDD Taskforce,

I have been a resident of Palm Springs since 1996. First, part time, and for the last 5 years, full time. I have been very disturbed to see the rampant and inappropriate use of the Planned Development District. The purpose of the PDD was clear, but the way they were overused showed a clear bias toward the developer. The PDD was a bonanza for the developers and allowed them densities that easily tripled their profits. And, by there very nature these PDDs broke every rule in the book as is presented in the General Plan and Zoning Code.

This misuse of the PDD along with the concurrent permissive policy on Short-term Vacation Rentals provided a mix that is both hideously profitable for the few, and deeply destructive to the many. Two thousand homes have been converted to STRs and those who wished to purchase homes in our established neighborhoods find that is no longer an option. The 10,000 square foot lot with the single story home is no longer an available for the person wishing to become a Palm Springs resident. Deep pocket investors with all cash offers are scooping them up as fast as the realtors can list them and then quickly converting them to unsupervised hotels.

So, where do our new residents end up? They begrudgingly end up in these PDD developments. They have no choice. They have been funneled into them like cattle at a slaughterhouse by a demonic plan that produces vast profits for the developers, vast profits for the Short-term Rental Industry and squat for the people.

If the General Plan doesn't work for this council then let's go through a thorough and public process to rewrite. Ignoring the General Plan is wrong, and must end now.

Stephen M Rose
1195 East Sunny Dunes Road
Palm Springs, CA 92264
323 839 9054
stephenmrose@gmail.com

KATHY STONE 8/23
SUBMITTED AT AD HOC PDD COMMITEE MEETING

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement covenant and agree as follows:

1. Ad Hoc PDD Committee. A seven-member ad hoc committee ("Committee") shall be formed to study the existing PDD process, and to make recommendations to both the Planning Commission as to whether modifications should be made to the PDD process, and if so, what type of modifications. Margo Wheeler, the City's Director of Planning Services, will serve as staff to the Committee. If Ms. Wheeler no longer works for the City, the City Manager shall appoint an alternative staff member to serve as the staff to the Committee. The Committee membership and formation shall be as follows:. The City, Builder/Developer, and People hereby form a three-person base committee ("Base Committee"). The City's Mayor Pro Tem shall appoint a member of Palm Springs Planning Commissioner as the City's representative on the Base Committee. Builder and Developer jointly appoint Rich Meaney as their representative on the Base Committee. People hereby appoint Jim Harlan as People's representative on the Base Committee. The Parties may replace their representatives on the Base Committee as necessary. The Base Committee shall be responsible for selecting up to four additional Committee members from the following categories: (1) a local contractor or engineer; (2) a person with expertise in the field of affordable housing; (3) a local architect; and (4) a person with expertise in the field of planning in the local area. The Base Committee will work cooperatively to fill positions (1) through (4) with persons who will bring local knowledge, expertise, and differing viewpoints to the Committee. Except as provided in the next sentence, the decisions shall be made by a majority of the Base Committee members. The Base Committee may by unanimous decision select members who do not fit within the criteria specified above. The persons selected shall have demonstrated the ability to work collaboratively. If the Base Committee is unable to fill one or more of the four positions, the Base Committee and any additional members selected by the Base Committee shall serve as the Committee. The Committee shall have its kickoff meeting within 45 days of the Effective Date. The Committee shall hold no fewer than three meetings. After receiving the information it deems appropriate, the Committee shall formulate its recommendations regarding the PDD process. The Committee shall complete the formulation of its recommendations within six month if the Effective Date unless the Committee votes to grant itself a reasonable extension of time to complete the process. The Committee's recommendations shall be considered in good faith by the Planning Commission at a duly noticed regular or special meeting. The recommendations shall not be binding. The recommendations of all members of the Committee will be presented, even if the recommendation is not adopted as the majority position of the members. The Planning Commission will consider whether or not to make any or all of the recommendations to the City Council.

2. Enhanced Notice of PDD Applications/Hearings Pending Completion of the Ad Hoc PDD Committee. Between the Effective Date and the date that the Ad Hoc

**Flinn Fagg**

**Subject:** FW: Changing Planning Rules/PDDs?

Begin forwarded message:

**From:** "Stephanie Austin" <saustin2@dc.rr.com>
**Date:** September 9, 2016 at 5:51:25 PM PDT
**To:** "Tracy Conrad" <tconrad412@aol.com>
**Subject: Changing Planning Rules/PDDs?**

Good afternoon Tracy – FYI: This appeared in Los Angeles Times today.

**Behind closed doors: Mayor Eric Garcetti** wants to end **private meetings** between planning commissioners and developers or other outside parties. The announcement comes as the mayor and other city officials plan to fight a planned March ballot measure that would temporarily halt major projects that require changes in the city's planning rules.

For the complete story please look at the link below. Thanks.

http://www.latimes.com/local/lanow/la-me-ln-private-meeting-developers-20160907-snap-story.html

*Stephanie Austin*

Thousands of starfish washed ashore.
A little girl began throwing them in the water so they wouldn't die.
"Don't bother, dear," her mother said, "it won't make a difference."
The girl stopped for a moment and looked at the starfish in her hand.
*"It will make a difference for this one."*

**Flinn Fagg**

| | |
|---|---|
| **From:** | Judy Deertrack <judydeertrack@gmail.com> |
| **Sent:** | Thursday, September 15, 2016 4:53 PM |
| **To:** | Flinn Fagg; Kathy Weremiuk |
| **Subject:** | PFPP v. Palm Springs / For Distribution to PDD Study Group? |
| **Attachments:** | People v. City of Palm Springs 2016.14.22.pdf |

Dear Flinn and Kathy,

Here is the PFPP v. Palm Springs decision. It might be useful for the group to see this. It has loads of information that I believe bears on the PDD Study and General Plan compliance issues, minimum density thresholds, and issues on small lot development.

Judy Deertrack
760 325 4290

## Flinn Fagg

| | |
|---|---|
| **From:** | Judy Deertrack <judydeertrack@gmail.com> |
| **Sent:** | Thursday, September 15, 2016 4:45 PM |
| **To:** | Flinn Fagg; Kathy Weremiuk |
| **Subject:** | FRANK TURNER / PDD STUDY / PAGE 5 |
| **Attachments:** | PDD ARTICLE Frank Turner unmarked copy.pdf |

Dear Flinn,

Thank you for your generosity in meeting with me this morning. I was really encouraged, and I like your thinking, background, and orientation to planning. You are a gift to this city.

Here is a shorter version of the article from Frank Turner, with the study results about the 7% usage on page 5 of this document (at page 155 of the Master Document.)

There is another longer article that I will send after this (too many MB's).

Judy Deertrack
760 325 4290

# INTRODUCTION TO PLANNED DEVELOPMENT ZONING*

Frank F. Turner, FAICP and Terry D. Morgan, Esq.

## Introduction

Planned development zoning_and other flexible zoning techniques were developed to overcome the rigidity of traditional zoning. Traditional zoning divides a jurisdiction into districts (e.g., Single Family 1, Retail, Office). The zoning ordinance specifies regulations (e.g., use, yard, and building bulk requirements) that apply uniformly to all property within the same zoning district. Traditional zoning ensures consistent application of regulations , but it does not easily accommodate innovative development, especially where mixed-use projects are proposed, if the project does not conform to district regulations. (1) Traditional zoning also does not permit devising site-specific regulations in response to on-site conditions or to mitigate off-site impacts. Under traditional zoning, changing regulations to meet the needs of a specific project or property requires amending the district's regulations or granting variances to the regulations. Amending district regulations is difficult because the amendment would apply to all property within the district. A variance is difficult because it typically depends on demonstrating a unique hardship related to the physical characteristics of the property. The merits of the development concept alone are not proper reasons for granting a variance. Planned development zoning (also termed planned unit development) was created as a means of tailoring zoning regulation to the specific needs of a project plan and the unique characteristics of a site.

During the 1960s, many organizations, including the Urban Land Institute, National Association of Homebuilders and American Society of Planning Officials, published technical reports on the planned unit development (PUD) concept and model PUD ordinances.(2) The term "planned unit development" was coined to describe a site specific zoning process which permits greater regulatory flexibility tied to site plan review. Early PUD literature cites three objectives for creating PUD ordinances: (1) unitary

development review (combining zoning, site planning and

* The original chapter appeared in *The Southwestern Legal Foundation Proceedings of the Institute on Planning, Zoning, and Eminent Domain* (1992), published by Matthew Bender & CO.; inc. copyright 1993 by Matthew Bender & Company, Inc. and was reprinted with permission all rights reserved.

subdivision regulation); (2) flexible site plan based regulation; and (3) lower development cost. This literature primarily addresses the use of planned development zoning to regulate innovative residential development. Cluster housing, patio homes and zero lot-line homes are types of housing commonly cited as projects that are more easily accomplished as planned developments. These reports also refer to integrating other uses into residential areas and creating mixed use developments through planned development zoning, but the primary focus is residential development.

Planners support the use of planned unit development zoning because it offers the ability to facilitate innovation and respond to specific site conditions. Increasingly traditional land use regulations are criticized for reinforcing the pattern of sterile, homogeneous development characteristic of suburban areas.[3] Planning commissioners and city council members also find advantages to planned development zoning because it provides a vehicle for negotiation unavailable in the yes/no options of traditional zoning. This is especially valuable in accommodating the demands of homeowners and other adjacent property owners who want negotiated agreements made enforceable by ordinance. Today, the use of planned development zoning- is firmly established and in common use throughout Texas and the remainder of the country.

## Methods for Establishing Planned Developments

The method for establishing and administering planned development zoning varies among cities. Texas zoning legislation (Chapter 211, Local Government Code) does not directly address the use of planned development zoning, but the concept of planned development zoning has been held valid by Texas courts, provided the specific Methods of planned development zoning used by a city conform to the general requirements of state law pertaining to zoning. Planned development zoning establishes land use regulations for a specified area either as a unique zoning district or as an area specific amendment to the regulations of a

standard district. A planned development zoning district may be any size and include one or more land uses. Establishing a planned development zoning district typically includes the approval of a development plan. Requirements for a development plan vary in content and detail. Generally the plan illustrates the boundaries of the area being zoned (or rezoned) and the location of land uses, roads, lots, buildings, other surface improvements, and open space.

The ordinance establishing the district will contain the regulations and standards necessary to execute the plan. A planned development zoning district may be created as a freestanding district or as an overlay district. The use of both methods is further described below.

- **Free Standing PD Districts** - Each PD is a unique district tailored to the specific site and development. Typically, the zoning map designates the area zoned with the letters "PD" followed by a number used to reference the ordinance containing the regulations. The ordinance defines permitted uses, yard, height, bulk and other regulations for the property, similar to any other zoning district.

- **PD Overlay Districts** - PD districts are created by superimposing additional regulations to alter (i.e. add, delete, modify) the standards of the base zoning district. As an example, an area may be zoned Residential-1, permitting single-family houses centered on lots of 9,000 square feet or larger. A PD overlay is attached allowing cluster housing on smaller lots and requiring 15 percent of the area to be common open space. The zoning map shows 'the base zoning, the PD overlay designation, and an ordinance reference number. The ordinance describes changes to the base zoning requirements. Except as modified by the overlay district, the requirements of the base zoning district still apply.

**Plan Approval** — Most cities use a two step plan approval process. The first step is the approval of a conceptual or schematic development plan concurrent with establishing the zoning district. The second step is the approval of a final development plan prior to application and approval of plats and building permits. Planned residential districts frequently require an intermediate "preliminary" or "tentative" development plan to coincide with preliminary plat approval. Some ordinances, particularly those addressing mixed use, distinguish between a "development plan" for a phase of the project and a "site plan" for individual, non-single family uses. The conceptual plan aids in understanding the development proposal and negotiating the specific regulations to be included in the PD ordinance. Conceptual plans are very useful in coordinating the phased development of large projects. 'The conceptual plan may be approved administratively or as a part of the actual ordinance establishing the zoning

district. If the plan is administratively approved, it may be amended from time to time so long as it conforms to the district's regulations. Conceptual plans that are directly incorporated into the ordinance establishing the zoning district may only be amended by the same procedure as rezoning.

Administrative approval of the conceptual plan provides greater flexibility by accommodating plan amendments without the necessity of going through the rezoning process. This flexibility can, however, yield an amended plan that is significantly different from the original even if still within the terms of a broadly drawn adopting ordinance. Because of the limited discretion available through an administrative review process, a city may be unable to deny the plan or to impose additional development conditions. For this and other reasons discussed in succeeding sections, the preferred method is to incorporate the conceptual plan into the ordinance establishing the district. Alternatively, if a conceptual plan is administratively approved, the ordinance establishing the PD district should include all requirements and specifications that must be met if approval is later sought for a new or amended conceptual plan.

Generally, the final development (or site) plan is a detailed, scaled drawing of site improvements and buildings. Plan approval is required prior to the release of engineering plans and the issuance of building permits. The plan may be for the entire project or a portion of the project. Plan approval usually is a administrative function assigned by ordinance to staff, the planning commission or city council, although some ordinances confer considerable discretion on decision-makers at this stage of the process.(4) The purpose of the review is to ensure that the proposed development conforms to the PD regulations and the prior approved plans. Although the site planning process is typically coupled with planned, development zoning, this is not always the case. Some cities use planned development zoning to modify standard zoning requirements for specific properties without requiring site plan approval concurrent or subsequent to the zoning approval.

**Expiration of PD Approval** - The creation of a planned development district is a legislative action. Once approved, the ordinance will remain in place and run with the land until a subsequent legislative action (i.e., rezoning) occurs. Depending on the terms of a city's zoning ordinance and whether or not a plan

for the development was adopted by ordinance, site plan approval may expire if the project is not built. A new plan may be submitted to replace the expired plan, but the new plan must comply with the ordinance establishing this district and other applicable regulations. Regulations pertaining to the expiration of administratively approved plans must be adopted prior to the acceptance of an application for plan approval. Tex. Loc. Gov't Code section 245.002(a) states: "Each regulatory agency shall consider the approval, disapproval, or conditional approval of any application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates or other properly adopted requirements in effect at the time the original application for permit is filed."

## Use of Planned Development Zoninein Texas

In 1991, the authors of this chapter conducted a survey of the twenty largest (by population) cities in Texas to determine their use of planned development zoning. Seventeen of the twenty largest cities in Texas used planned development zoning. Of the three cities not using PD zoning, Houston and Pasadena did not have a zoning ordinance. Lubbock had a zoning ordinance but did not *use* planned development .zoning. All of the cities using planned development zoning had specific sections within their zoning ordinances authorizing planned development regulations and defining procedures for establishing districts. All but three of the ordinances contained very brief purpose statements relating to the use of planned development zoning. Most PD purpose statements generally stated the need for flexibility. Few of the ordinances cited within the purpose statement the relationship of planned development zoning to implementing the community's comprehensive plan.

All but one of the cities could potentially use planned development zoning to regulate any type of development. The ordinances generally permitted planned development districts to be of any size deemed appropriate. Despite the residential origin of planned development zoning, very few of the ordinances showed a bias toward regulating residential vs. non-residential development. The majority of cities surveyed frequently used planned development zoning to regulate permitted uses, intensity and density of use, location and bulk of buildings and the extent of landscaping. Less than a third of the cities frequently used planned development zoning to specify architecture, public improvements

or development phasing. Only a few ordinances required or mentioned the use of a schedule to define the sequence and timing of development.

**Use of Site Plans** - Most of the Texas ordinances reviewed either required or allowed the submittal of a conceptual plan in conjunction with an application for planned development zoning, and required the conceptual plan to be adopted by ordinance as a part of the zoning. Very few of the ordinances specifically addressed the meaning of the plan as a regulation. Most of the ordinances stated that subsequent plans are to conform to the conceptual plan but did not define criteria for determining conformity. Many of the ordinances provided for minor amendments to the conceptual plan without rezoning. The responsibility for approving minor amendments was typically assigned to the planning director. Ordinances varied considerably on what is considered to be a minor amendment. The ability to request a minor amendment presumably resided only with the property owner, since none of the ordinances specifically stated that the city may make minor adjustments to conform the proposed development to new standards or to solve engineering problems.

Final development plans were typically required prior to the issuance of a building permit. Council approval of the final site plan was often required. Only a few ordinances provided for the expiration of development plans. Only one ordinance addressed the issue of vesting plans for partially built developments. A few ordinances required development schedules and stated that the city may call a public hearing to consider appropriate zoning if the schedule is not met and an extension is not approved.

One of the objectives of the PD concept stated in early literature is the integration of zoning, site planning and subdivision regulation. However, only a few of the Texas ordinances reviewed referenced the city's subdivision regulations and the need to coordinate platting and site planning.

One of the most interesting findings of the survey was how frequently the cities used planned development zoning. Seven percent of zoning cases approved during 1991 by the seventeen cities involved the use of planned development districts. Four cities reported that twenty percent or more of their zoning cases involved use of planned development districts. The frequency of use was greatest in the Dallas/Fort Worth area.

**Pros and Cons of PD Zoning Cited by Texas Cities** - The respondents in the cities surveyed were asked to list the reasons they support the use of

planned development zoning and concerns they have about its use. Listed below are their responses.

**Reasons for Supporting PD Zoning:**

- Greater flexibility;
- Ability to negotiate;
- Ability to assess and mitigate site specific impacts;
- Ability to address public concerns;
- Ability to compensate for deficiencies in standard zoning districts;
- Ability to better regulate large scale mixed use development; and,
- Ability to address site-specific considerations.
- Concerns About Use of PD Zoning:
- Contract zoning (inappropriate bargaining);
- Time consuming to establish and administer PD districts;
- More vulnerable to politics;
- Erosion of standard zoning requirements;
- Over use;
- Lack of an automatic revocation if project is not built;
- Manipulation of regulations to gain approval;
- Lack of consistency among districts; and,
- Difficulty in administering regulations when the district is split among multiple owners.

**Authority For and Legal Challenges to PD Zoning**

This section of the chapter reviews legal authority for planned .development zoning and possible legal challenges to its use. Texas statutory authority and case law are surveyed generally. Additional case law, federal and of other states, are noted where principles may also apply to the use of planned development zoning in Texas.

Planned development zoning was not anticipated in the Standard Zoning Enabling Act, and is not expressly authorized in Texas' zoning enabling act or in special statutes. In the absence of express enabling authority, however, most courts have been willing to broadly construe the state's zoning enabling act to find authority for PDs as valid exercises of the zoning power. In Teer v. Duddlesten,[5] the Texas Supreme Court upheld the City of Bellaire's planned

development district against a challenge by neighbors that PDs were not authorized under the zoning enabling act. In construing the act to allow PDs, the court noted that the enabling act did not specifically prohibit the use of PDs, and concluded, therefore, that PDs were not per se "spot zoning."[6]

Planned development zoning has been found to advance the purposes set forth in the standard zoning enabling act, such as the provision of open space and the prevention of overcrowding. A variety of reasons are given by courts interpreting statutes to authorize PDs.[7] Authority for PD may also be found in home rule powers. Where home rule powers are strong, as in Texas, enabling statutes act as limitations, not grants of authority on local governmental powers (8)

Local governments must follow their own ordinances in regulating PDs [9] Generally, local governments may not condition PD approval :upon standards not contained in their regulations, nor may they apply more stringent standards than appear in the ordinance. Requirements of other ordinances, however, such as subdivision regulations, may be incorporated by reference into the PD ordinance, or may be implied by a reviewing court based on common definitions {[1°]

**Typical Challenges (and Defenses) to PD Techniques** - All zoning actions are afforded a• strong presumption of validity.[11] Because PDs depart from traditional concepts of zoning, however, they have been more closely scrutinized by reviewing courts than more typical zoning mechanisms.

**Standards for Review** - In determining whether PD regulations are arbitrary and capricious, or unreasonable, judicial inquiry frequently is focused on the absence of standards by which PDs are established or evaluated. In Beaver Meadows v. Bd. of County Commissioners,[12] the County attempted to condition the approval of Beaver Meadows' planned development on the provision of off-site facilities and assurances for the provision of emergency medical services. While the trial court upheld these conditions, the Colorado Supreme Court reversed, in favor of Beaver Meadows. The Court held that, while the County ordinance appeared to authorize the Board to review the application, the regulation lacked the necessary detail to support the conditions.[13]

If PD ordinances do not contain sufficient standards to enable a reviewing court to determine the reasonableness of the local decision, they may be held invalid as an unlawful delegation of legislative authority."[)]

**In *Accordance* With a Comprehensive Plan** - General limitations on the amendment of zoning ordinances and other exercises of the zoning power apply to PDs. For example, PD districts must be established in accordance with a comprehensive plan. Where PDs are established as an overlay district or floating zone, the consistency doctrine -- where recognized -may limit the location of such districts and the types and intensity of uses available.

Under the standard zoning enabling act, the requirement that zoning regulations be "in accordance with a comprehensive plan" may be satisfied by comparing a particular zoning amendment with the comprehensive zoning ordinance map, if such map presents a plan for orderly development.(15) On the other hand, if a community has a separately adopted comprehensive plan, the court may rely upon such document in determining whether a particular zoning amendment conforms to the comprehensive plan. Accordingly, in Mayhew v. Town of Surmyvale,(16) the court determined that the town zoning ordinance was in conflict with its adopted comprehensive plan and, consequently, that the applicant's planned unit development could not be refused on the basis of such zoning ordinance.

**Soot Zoning** - Situations where a zoning amendment is sought to establish a use prohibited by the existing regulations are frequently challenged as "spot zoning." Although PD overlay districts usually incorporate a concept plan for particular uses which identifies specific uses at the time of rezoning, this generally does not render the creation of the district as spot zoning.(17) A number of factors will be taken into consideration to determine whether the zoning amendment constitutes spot zoning, such as: use of neighboring property; suitability of the tract for anticipated uses; relationship to valid police power objectives; and size of the tract rezoned.(18) The conclusion that a particular zoning amendment involves "spot zoning" can be avoided if the comprehensive plan for the area designates the site as suitable for location of a "floating zone," such as a planned unit development.

**Uniformity** - The uniformity clause in the Standard Zoning Enabling Act requires that similar use be treated uniformly. Courts have upheld PDs challenges under this provision on the interpretation that uniformity is required only within, not among, zoning districts.(19) In the Chrinko case, the court dismissed the uniformity challenge on the basis that the ordinance accomplished uniformity since the PD "option" was open to all developers.

**Contract Zoning** - Because many PDs are "negotiated," they are susceptible to challenge as unlawful contract zoning. In most jurisdictions, contract zoning is distinguished from permissible conditional zoning on the basis of whether the alleged agreement is bilateral (contract zoning) or unilateral (conditional zoning) in nature. In Teer v. Duddlesten,[20] supra, the city had obtained the developer's promise to perform conditions attached to the requested planned development amendment. Although the Court of Appeals found that the city had merely preserved its police power instead of bargaining it away with the acceptance agreement, the Supreme Court held that such arrangement amounted to illegal "contract zoning." The Supreme Court held that the city could accomplish its objectives by conditioning the rezoning. Such "conditional zoning" was unilateral in character, according to the Court, and was not personal to the applicant[21]

**Statutory Procedures** - In recent cases, most courts invalidating PDs have done so on the basis of the local government's failure to follow statutory procedures or those established by local ordinances. Standard zoning procedures for amendment of zoning ordinances or approval of special use permits must be followed. In Wallace v. Daniel,[22] a developer sought rezoning of a tract for use as a planned unit development, but failed to submit a detailed description of the proposed development as required by local ordinance. The planning commission recommended -approval of the development without such detail. Although the developer subsequently submitted a specific plan to the county council prior to approval of the ordinance, the court held that the procedure was fatally flawed. Because the planning commission did not have before it essential information concerning the nature of the project, it could not make an effective recommendation to the county council, the court reasoned.

The court in Wallace held that the enabling act required by implication that municipalities must follow their own procedures when adopting ordinance amendments. Failure to consider a specific plan when approving a PD amendment recommendation from the planning commission violated this municipal ordinance.[23]

**Challenges by PD Applicants** - Challenges by applicants most frequently arise when initial approval or approval of the development plan is heavily conditioned, or when the local government attempts to rezone or otherwise impose new regulations on subsequent phases of the project:

**Excessive Conditions** - A condition imposed on development approval must substantially advance a legitimate governmental objective [24] Generally speaking, a PD may be lawfully conditioned on the provision of improvements or amenities to serve the development which are contemplated; in the enabling act; in parallel statutes, such as subdivision laws; in the comprehensive plan; or in the zoning ordinance itself. The issue frequently is raised when the development plan is reviewed by the city. In Board of Supervisors v. West Chestnut Realty Corp.,[25] the court upheld the denial of the application for development plan on the ground that the developer was required to depict specific improvements, including utilities, at all phases of the application process. According to the court, additional detail was required regarding storm water management, considering the location of the property in relation to storm water facilities. Although the township's ordinance did not expressly require additional detail, the court found that such information was required based upon a reasonable construction of all of the township regulations.

In Municipality of Upper St. Clair v. Boyce Road Partnership,[26] the issue concerned what conditions the city could apply to subsequent phases of a multi-phase PD project. The court found that the developer's failure to install electric lines underground, failure to submit proof of project financing, and failure to comply with the township's interim floodplain ordinance constituted valid grounds for denying final approval of the third and fourth phases of the project. The court held that the conditions had been imposed at the time of granting final approval to previous phases of the development and that compliance with the conditions was required prior to final approval of subsequent phases.

Ad hoc conditions- unsupported by standards, however, may be invalidated. In RIB Development Corp. v. City of Norwalk,[27] the PD was denied on the grounds that the development posed safety hazards to school children. The court invalidated the denial, because the PD ordinance contained specific site development standards, but did not include the grounds for denial advanced by the city.

Some PD ordinances include exactions of land or improvements for public facilities as conditions of zoning or plan approval, similar to those imposed on subdivision plats. In such cases, cities must observe constitutional standards in imposing the conditions: In 1994, the United Supreme Court announced its "rough proportionality" standard governing development exactions in Dolan v. City of Tigard [28] Under this test, a land dedication requirement (and perhaps other forms of development exactions)[29] must be "roughly proportional" to the nature and extent of the impacts on community facilities resulting from the development. Although mathematical precision is not required, the test requires that some quantification of this

relationship is necessary. The Texas Supreme Court in applying standards under the State's constitution requires that there be a "reasonable connection" between the exaction and both the need for the facilities exacted and the benefit to the development.[3*]

This type of analysis was applied by the Colorado Supreme Court to invalidate a road exaction imposed on a planned development. Thus in Beaver Meadows v. Bd. of County Commissioners,[313 the board of commissioners conditioned approval of a planned unit development on improving an access road for 4.73 miles and arrangement for emergency medical services to serve the development. Although the county intended to pursue the formation of an improvement district to assist with the costs, the developer was required to pay the total initial cost of the improvement pending the formation of the district. The Colorado Supreme Court invalidated the conditions, reasoning that the county's regulations did not support the conditions imposed in the case. The Court construed the subdivision and planned unit development laws together, concluding that the county had the authority to impose conditions relating to road planning and improvements. The county's regulations, however, contained no criteria for evaluating roads to serve a particular development project. Because the regulations provided no guidance, the developer could not be required to install improvements which would obviously benefit other property owners. The Court also held that the county could have required provision for emergency medical services if the statutory authority were supported by standards in the regulations. In the absence of such local guidelines, the condition to provide emergency services could not be imposed ad hoc. Generally speaking, the conditions applied at the time of development plan approval must be contemplated in the concept plan.[32]

**Regulatory Takings** - Where local governments rezone or otherwise impose new regulations on undeveloped phases of a PD, thereby changing uses, reducing intensity of use, or imposing stricter development standards, a property owner may challenge the action as a deprivation of economically viable use of the property under federal or state constitutional provisions prohibiting the taking of private property for public use without just compensation[33] Under most circumstances, a court will not evaluate the effect of a regulation on a single interest in the property, but will ascertain the impact. on the property when taken as a whole [34] Applying this principle in a regulatory taking challenge, a reviewing court should take into account the beneficial uses that already have *been* developed in earlier phases of

the project when weighing the economic impacts of the new regulations.

Before challenging local government zoning regulations, the property owner usually must satisfy ripeness requirements imposed under federal and state law. Typically this requires that the property owner attempt to vary the application of new regulations or modify his development proposal before the claim matures.[35] In the case of Williamson County Regional Planning Comm'n v. Hamilton Bank, the county disapproved a subdivision plat for the latter phases of a development project because the plat did not comply with newly enacted zoning and subdivision regulations, even though the first phases of the project had already been developed. The Supreme Court overturned the damage award of $350,000 for a temporary taking of the property because the developer had failed to apply for variances to the regulations. Under the county's testimony, some 300 units could have been constructed on the site under variance provisions. In the context of planned developments, a property owner may be required to seek relief from the *new* regulations by submitting a concrete development proposal, coupled with variance requests, before his claim ripens.

**Vested Rights** - When cities impose new regulations on subsequent phases of a planned development, landowners also may seek to enjoin such actions on the basis of "vested rights." In most cases, challenges will be based on Tex. Loc. Gov't Code ch. 245, a 1999 replacement statute for former "HB 4."[36] The new law attempts to make vested rights provisions retrospective to cover the period of the repeal, roughly two years. Because most planned developments involve multiple phases, however, it also is possible that the common law doctrine of vested rights will come into play. Under this seldom applied standard, a city may be estopped from applying new regulations, where a property owner has made substantial expenditures on a development in progress in good faith reliance on a validly issued permit.[37]

Chapter 245 of the Texas Local Government Code, the usual vehicle for challenging new regulations, requires that " approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time the original application permit is filed."[38] The law further states, "if a series of permits is required for a project, the orders, regulations, ordinances, or other requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration of all subsequent permits required for

the completion of the project. All permits required for a project are considered to be a single series of permits. Preliminary plans and related subdivision plats, site plans, and all other development permits for land covered by the preliminary plans or subdivision plats are considered collectively to be one series of permits for a project (39)

There are certain exemptions to the provisions of Chapter 245 identified in Section 245.004. The exemption of most utility in addressing planned developments is that for "municipal zoning regulations that do not affect lot size, lot dimensions, lot coverage, or building size, or that do not change development permitted by a restrictive covenant required by a city." Thus even if subsequent applications for approval of later phases of a planned development are considered part of the same series of permits for a project, some types of new zoning regulations may be applied to limit development, including use restrictions.

A separate issue under the vesting statute is whether plans associated with establishment of PD districts are the type of "site plans" that qualify as "development permits" under the law. Approval of a planned development zoning district itself is a legislative act and should not be viewed as the issuance of a development permit. However, the concurrent review and approval of a development plan prepared in association with an application for PD zoning may trigger vesting of a "project" as defined by Chapter 245. The outcome depends in large measure on whether the "concept plan" is incorporated as part of the adopting ordinance; if the conceptual Plan is approved as an administrative action, it almost certainly will be considered a "site plan" triggering rights under ch. 245.

Procedures pertaining to the processing of a series of plans, plats and permits required to develop within a planned development district must be carefully drafted to avoid unreasonable freezing of development regulations. Each required approval should expire if applicant fails to proceed to the next required step with a defined time period. The procedures should also provide standards for determining when a plan amendment is substantially different than the original project and therefore may be regulated as a new project. These procedures must be placed before an application is filed for the first permit required to conduct a project. Chapter 245 prohibits retroactive application of new regulations, including permit expiration dates to projects in progress.

Section 245.005 includes language addressing dormant projects, a provision that may be useful considering the extended life of some planned developments. Dormant projects include those projects for which the permit

does not have an expiration date and on which no progress has been made towards completion of the project "Progress towards completion of the project" is defined as being any one or more of the following: application for a final plat, a good-faith attempt to file an application with a regulatory agency, incurred of costs for developing the project, posting of fiscal security to ensure performance, or payment of utility connection fees or impact *fees* for the project. Fortunately, Section 245.005 also provides for the expiration of some dormant projects that already have permits. After May 11, 2000, cities may place an expiration date on a permit that has no expiration date if no progress has been made toward completion of the project. If a city imposes an expiration date on such a "dormant project," the expiration date may not be earlier than May 11, 2004.

**Discretionary v. Ministerial Actions** - In a recent Dallas Court of Appeals decision, Bartlett v. Cinemark USA, Inc., [(40)] approval of the second stage of a planned development was held to be a ministerial decision rather than an act of discretion on the part of the City Council.

Consequently, the Court found that the City's Council's denial of the development plan for a movie theater complex subjected the City and individual council members to civil rights hal:Jay. In reaching this result, the Court distinguished the Council's role in initially adopting PD zoning (a legislative function) from that the functions it played in acting on the subsequent development plan, which it ultimately characterized as "ministerial" in nature.[(41)]

- Although the facts in the Cinemark case were unique in many respects, the Dallas PD ordinance under consideration was not significantly different from that of many other cities. The ordinance required that the PD district be established on the basis of a detailed site plan approved with the ordinance. The developer could choose to submit the plan in two stages. If this option was taken, the first "conceptual plan" was incorporated .as part of the ordinance establishing the district. A development plan that was consistent with the conceptual plan had to be submitted within six months of approval of the district, supplying additional details for the project.

The case counsels great caution in applying PD standards to approval of site plan approvals after the first "conceptual" site plan is approved. The nature of subsequent site plans must be first determined from the text of the PD ordinance itself, with the key distinction being whether such stages of approval constitute a form of zoning amendment or at least allow the application of some measure of

discretion by the decision-makers. Clearly, the identity of the decisionmaker—whether the City Council, the Planning and Zoning Commission, or the Planning Director—is immaterial to characterization of the decision by the courts. Both the nature of the standards and the nature of the procedures to be applied at subsequent stages of the PD development process are relevant in determining whether such decisions constitute at least some measure of the exercise of discretion. This point in turn is important for determining the scope of immunities available to public officials under the federal civil rights act.

**Subdivision Laws** - Property division within land zoned for PDs is subject to enforcement of subdivison laws and ordinance requirements [42] Where residential development is involved, preliminary plats or tentative maps may be approved simultaneous with initial approval of the PD.[43] Under the Nevada legislation, cities and counties are given the power to modify subdivision as well as zoning requireinents in approving a PD. The statute requires that "all planning, zoning and subdivision matters relating to the platting, use and development of the planned unit development and subsequent modifications of the regulations relating thereto to the extent modification is vested in the city or county, must "?_- determined and established by the city or county [in the PD regulations]."[44]

Unintended divisions may occur, however, where property ownership is divided through foreclosure. Although there is little case law on the subject to date, in such instances, subdivision of the PD may be required prior to further rezoning or development approval on the resultant tracts. The result may depend upon the wording of the state subdivision laws. In Texas, for example, any division of a tract into two or more parts constitutes a subdivision.[45] There are no express statutory exemptions. Consequently, local ordinance must exempt divisions that would occur by means of foreclosure.[46] In other jurisdictions, divisions resulting from foreclosure may be expressly exempt from subdivision requirements.[47] On the other hand, the Nevada enabling authority for PDs expressly requires that the property must be rezoned and resubdivided if the landowner abandons the development plan or fails to carry out the plan within the specified period of time.[48]

**Rights of Third Parties** - Although PDs typically are conditioned to address complaints of adjoining landowners, local government action may be undone if such conditions amount to a delegation of zoning authority to neighbors.[49] By the same token, adjoining property owners do not acquire an

enforceable interest in the zoning of the land as PD or in particular conditions or restrictions governing development of the site. In American Aggregates Corp. v. Warren County Comm'rs[50], the county denied the plaintiffs request to build a concrete batching facility on property zoned for industrial purposes adjacent to its sand and gravel pit. The pit abutted a residential neighborhood, also zoned for industrial use. The local ordinance required the plaintiff to submit a planned unit development overlay for the affected area. The County approved the PD, but denied a requested modification for the batching plant following a public hearing at which residents of the adjoining subdivision objected. The Ohio Court of Appeals invalidated the planned unit development, reasoning that Ohio statutes authorized the use of such techniques only for uses zoned for residential purposes. The Court found that the sand and gravel operation did not constitute a nuisance to adjacent neighbors, since such residences were built on industrially-zoned property. The Court also ruled that the county could not impose the PD merely because the land could ultimately be reclaimed for residential purposes in the future.

In Young v. Jewish Welfare Federation of Dallas[51], the city revised a site plan submitted in conjunction with approval of a special use permit, authorizing the holder of the special use permit to use right-of-way previously submitted in a deed of dedication as a parking lot. The city had not accepted the 25-foot strip as a public street, and the property owner had withdrawn its offer of dedication. The adjoining property owner sued the city, claiming that the amendment of the site plan without notification to him was unlawful and that he had acquired an interest in the street being placed adjacent to his property. The court rejected the claim, finding that the property had never been dedicated to the city and, consequently, the plaintiff was not entitled to rely upon dedication of the street in purchasing his property.

## Issues Concerning Planned Development Zoning

While planned development zoning is a valuable tool in regulating development, its very flexibility can cause a number of problems. Since Texas' zoning statutes do not directly address planned development zoning, cities are provided little guidance on the use of PD zoning and procedures for establishing and administering PD districts. Some of the major concerns identified in the course of this study are reviewed below.

**Ordinance Construction and administration** - Each city's zoning ordinance must authorize the use of planned development zoning and define procedures for the creation and administration of districts. The text of the zoning ordinance governing PD districts should clearly specify whether the district is intended to be free-standing (in which case all pertinent zoning standards must be defined) or function as an overlay district. In the latter case, the ordinance should define the extent to which planned development zoning may be used to vary standard development regulations. Without proper authority PD zoning should not be used to alter subdivision ordinance or building code requirements. Unified development codes and cross authorizations may offer some ability, but this power should not be automatically assumed.

Drafting of specific planned development district regulations must avoid ambiguities to ensure intended results. Most planned development zoning requests involve complex issues and expectations.. The use of conceptual plans and illustrations is helpful in gaining an understanding of what can be done if the zoning is approved; however, unless the ordinance creating the planned development district clearly identifies the extent to which the conceptual plan is part of the district regulations (and hence part of the zoning for the district), the development proposed in subsequent plans may differ considerably from that shown on drawings at the time the zoning was approved, particularly if considerable time has elapsed since the original approval. Controversy over the intent of the ordinance inevitably arises in such circumstances. One technique to avoid ambiguities is to distinguish in the zoning ordinance between those features of a conceptual plan that are "regulatory" in character from those that are purely "informational." The difference is that regulatory elements require rezoning to change; informational features do not.

A related drafting issue is clarification of ambiguities concerning the level of discretion to be applied at later stages of the planned development process. This should be done in the text of the zoning ordinance that defines general standards for PD districts, rather than in the ordinances establishing individual PD districts. Discretion is mandated where the original conceptual plan is very general (or absent altogether), or the adopting ordinance fails to specify all uses or standards that are applicable to development within the PD district (for example, setbacks, heights applicable to structures, etc.). In some cases, the next stage of PD development constitutes in effect a zoning amendment to the original approval, necessitating appropriate notice and hearing procedures. In any event, the standards for approval, where discretion is called for in approving subsequent plans, should necessarily be broad.

Administration of planned development zoning is complicated by numerous factors. All zoning ordinances provide fertile ground for argument. Terminology, definitions and questions of intent seem produce endless debate. This problem seems even greater with planned development zoning. The problems of interpretation and enforcement only grows as the time between zoning approval and development lengthens and is further compounded by changes in property ownership and city staff.

Few planned developments are built as they were originally approved. As time passes, the market changes and unforeseen conditions and circumstances arise. Unfortunately, a change, even a minor change, to the development plan may require rezoning. This is especially true if the PD contains a long list of detailed requirements or if a preliminary development plan was incorporated by reference into the zoning. If rezoning is required, the process takes time, it may be expensive and may lead to opposition and renegotiation. Large planned developments are seldom built all at once. Zoning ordinances (both the general PD provisions of the zoning ordinance or the specific ordinance for the property) should deal with typical phasing problems. A related concern is the vesting of development plans when a portion of the project is built. Again, ordinances should directly define when vesting occurs.

Normally, the creation of a planned development district is initiated by a single property owner/developer. It is usually understood that a large project-will be built in phases by multiple owners/developers, but that the overall development will be coordinated through the zoning and master plan. Planned development ordinances should anticipate how to manage the plan and zoning rights if the owners are not cooperating and disagree on the meaning and distribution of development rights. This problem is common in the major metropolitan areas of Texas. The banking and real estate collapse resulted in foreclosures and the division and transfer of property within planned developments to such an extent that many PDs cannot be developed as zoned. The general provisions of a city's zoning ordinance should contain procedures for resolving issues concerning distribution of development rights and approval of development plans where a planned development district is divided into multiple ownerships.

**Proliferation of Planned Development Zoning** - The survey of Texas cities shows planned development zoning is used frequently. A number of forces have generated this demand. Neighborhood organizations are becoming stronger participants in the development decision-making process. Neighborhood associations

are insisting that negotiated concessions be made enforceable by recording them in the PD ordinance. Developers have found planned development zoning a successful strategy for gaining approval. Developers freely negotiate restrictions and concessions to win approval. Planners have promoted the use of planned development districts as a means of adding regulations that they have not been successful in getting approved as general ordinance amendments. All of the forces have resulted in the growing ad hoc use of planned development zoning.

## Conclusion

Planned development zoning can be very valuable tool for regulating development. It offers tremendous flexibility in allowing development regulations to be tailored to the needs of a specific area based on actual conditions and development plans. The technique allows developers and cities to be innovative and more effective in ensuring sound development, consistent with the city's comprehensive plan and compatible with surrounding properties.

Successful use of planned development zoning depends on a well-written local zoning ordinance that defines the purpose, limits and abilities, and methods for establishing and administering PD districts. Specific PDs must be carefully written to ensure the accomplishment of the intended purpose. Overuse of planned development zoning should be guarded against. PDs should not be used to correct deficiencies of a standard district, nor should PDs be used as a means of legislatively granting a variance. Instead, PDs should be reserved to accommodate innovation and to respond to :unique site conditions in accordance with the citys comprehensive plan.

### Notes

1. Typically, zoning ordinances do not include residential and commercial land use within the same district Texas law does not permit use variances. Thus, planned development zoning is frequently used to regulate mixed-use development.

2. See FHA, Planned-Unit Development with a Homes Association (U.S. Government Printing Office, 1963); NAHB & ULI, Innovation v. Transitions in Community Development: A Comparative Study in Residential Land Use (Urban Land Institute, 1963); Huntoon, PUD: A Better Way for the Suburbs (Urban Land Institute, 1971); So, et al., Planned United Development Ordinances (American Society of Planning Officials, 1973).

3. See Porter, et al., Flexible Zoning-How It Works (Urban Land Institute, 1988).

4. Most zoning ordinances require site plans to be approved by the planning and zoning commission or city council even though this is a administrative function. Councils and commissions often incorrectly assume that site plan review gives them the power to make changes to the plan or to add requirements above those contained in the zoning.

5. 26 Tex. Sup. Ct. J. 544 (July 20, 1983), op. withdrawn and rev'd, 664 S. W. 2d 702 (Tex. 1984).

6. See, e.g., Ahearn v. Zoning Bd. of Appeals, 551 N.Y. S. 2d 392 (App. Div. 1990); Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n, 426 A2d 327 (D.C. Appl. 1981).

7. See, e.g., Chrinko v. South Brunswick Township Bd., 187 A2d 221 (N.J. L. Div. 1963).

8. City of College Station v. Turtle Rock Corp., 680 S.W. 2d 802, 087 (Tex. 1984).

9. Board of Supervisors *v.* West Chestmut.Realty Corp., 532 A2d 942 (Pa. Commw. Ct. 1987).

10. Ibid.

11. Peabody v. City of Phoenix, 14 Ariz. App. 576, 485 P. 2d 565 (1971); City of Waxahachie v. Watkins, 154 Tex 206, 275 S.W. 2d 477 (1955).

12. 709 P.2d 928 (Colo. 1985).

13. See also Tri-State Generation & Transmission Co. v. City of Thornton, 647 P.2d 670 (Colo, 1982); Doran Investments v. Muhlenberg Township, 10 Pa. Commw. 143, 309 A. 2d 450 (1973).

14. Nemeroff Realty Corp. v. Kerr, 32 N.Y. 2d 873, 299 N.E. 2d 897, 346 N.Y.S. 2d 532 (1973); Cheney v. Village 2 at New Hope, Inc., 420 Pa. 626, 241 A.2d 81 (1968).

15. See Teer, N. 5 supra.

16. 774 S.W. 2d 284 (Tex. App. - Dallas 1989).

17. Cheney v. Village 2 at New Hope, Inc., N. IS supra, 241 A.2d 81.

18. City of Pharr v. Tippitt, 616 S.W. 2d 173 (Tex. 1981).
19. Orinda Homeowners Comm. v. Bd. of Supervisors, 90 Cal. Rpt. 88 (Cal. App. 1970); Chrinko v. South Brunswick Township Planning Bd.,N. 7 supra, 187 A.2d 221.

20. N. 5 supra.

21. See also Rutland Environmental Protection Ass'n v. Kane County, 334 N.E. 2d 215 (111. Appl. 1975); see generally Wegner, Moving Toward the Bargaining Table: Contract Zoning, Development Agreements, and the Theoretical Foundations of Government Land Use Deals, 1988 Land Use & Envir. L. Rev. 245.

22. 409 S.W. 2d 184 (Tex. Civ. App. - Tyler 1966, *writ refd n.r.e.)*
23. See, e.g., Turner v. Barber, 380 S.E. 2d 811 (S.C. 1989).

24. Nollan v. California Coastal Comm'n, 483 U.S. 825 107 S. Ct. 3141 (1987); Leroy Land Development Corp. v. Tahoe Regional Planning Agency, 735 F. Supp. 1399 (D. Nev. 1990); compare Arrington v. Mattox, 767 S.W. 2d 957 (Tex. App. 1989).

25. N. 10 supra, 532 A. 2d 942.

26. 531 A. 2d 111 (Pa. Commw. 1987).

27. 242 A.2d 781 (Conn. 1968).

28. 114 S.Ct. 2409 (U.S. 1994).

29. It appears that the Court intended to limit its ruling in this case to exaction's of an interest in land. See City of Monterrey v. Del Monte Dunes at Monterrey, Ltd., v., 119 S.Ct. 1624 (U.S. 1999).]

30. City of College Station v Turtle Rock Corp., 680 S.W. 2d 802 (Tex. 1984).

31. N. 12 supra, 709 P.2d 928.

32. Board of Supervisors v. West chestnut Realty Corp., N. 10 supra, 532 A. 2d 942.

33. See Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978); Mayhew v. Town of Sunnyvale, 964 S.W. 2d 922 (Tex. 1998)

34. Keystone Bituminous Coal Ass'n v. DeBenedictis, 480 U.S. 470 (1987); Presbytery of Seattle v. King County, 787 P.2d 907 (1990); but see Ciampetti v. United States, 18 C. Ct. 548 (1989); Corrigan v. City of Scottsdale, 149 Ariz. 553, 720 P.2d 528 (1985); see generally Shonkwiler & Morgan,Land Use Litigation, Section 3.05 (West 1991 Supp.).

35. Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 105 S. et 3108 (1985); City of El Paso v. Madero Development & Construction Co., Inc., 803 S.W. 2d 396 (Tex. App. – El Paso 1991, writ denied); Mac Donald, Sommer & Prates v. County of Yolo, 477 U.S. 340 (1986); see generally Shonkwiler & Morgan N. 37 supra, at Ch. 8; Morgan, "Regulator Takings: A State and Federal Perspective," 1991 Institute of Planning, Zoning & Eminent Doman, Ch. 6 (Matthew Bender 1991).

36. BB 4, formerly Tex. Gov't Code sections 481.141 et seq, was inadvertently repealed by the 1997 Legislature. Other states also have vested rights legislation, see e.gs., Colo. Rev. Stat. Section 24-68-101 et seq.; Nev. Rev. Stat. Section 278 A.520 to 278A.540; see generally Morgan, "The Texas Permit Processing Law: Legislating Vested Development Rights" in 1996 Institute on Planning, Zoning and Eminent Domain, ch. 3]

37. See Caruthers v. Board of Adjustment, 290 S.W.2d 340 (Tex. Civ. App-Houston 1956); Biddle v. Board of Adjustment, 316 S.W. 2d 437 (Tex. Civ. App.-Houston 1958); see generally Cunningham & Kremer, "Vested Rights, Estoppel and the Land Development Process," 29 Hastings L.J. 625 (1978).

38. Section 245.002(a).

39. Id. at subsection (b).

40. 908 S.W.2d 229 (Tex. App. Dallas 1995, no writ.

41. Administrative actions may involve the exercise of discretion, in which case "qualified" immunity extend to
public officials under the civil rights act; where no discretion is involved, officials may be subject to damages for violation of constitutional rights such as alleged in the Cinemark case.

42. Prince George's County v. M&B Construction Co., 197 A2d 683 (Md. 1972).

43. See e.g., Nev. Rev. Stat. Section 278A.460.

44. Ibid.

45. See, e.g., Tex. Loc. Gov't Code Section 212.004.

46. See Tex. Loc. Gov't Code Section 212.0045.

See, e.g., Nev. Rev. Stat Section 278.320 (1)(c), providing that "any division of land which is ordered by any court in this state or created by operation of law" is not a subdivision.

47. Nev. Rev. Stat Section 278A.580.

48. See, e.g., Williams v. Whitten, 451 S.W. 2d 535 (Tex. Civ. App. — Tyler 1970, *no writ).*

See also Minton v. St. Worth Planning Comm'n, 786 S.W. 2d 563 (Tex. App. — Ft. Worth 1990).

50. 528 N.E. 2d 1266 (Ohio App.).

51 371 SM. 2d 767 (Tex. Civ. App. -- Dallas 1963, writ refd n.r.e.).

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**Flinn Fagg**

| | |
|---|---|
| **From:** | Judy Deertrack <judydeertrack@gmail.com> |
| **Sent:** | Thursday, September 15, 2016 4:53 PM |
| **To:** | Flinn Fagg; Kathy Weremiuk |
| **Subject:** | PFPP v. Palm Springs / For Distribution to PDD Study Group? |
| **Attachments:** | People v. City of Palm Springs 2016.14.22.pdf |

Dear Flinn and Kathy,

Here is the PFPP v. Palm Springs decision. It might be useful for the group to see this. It has loads of information that I believe bears on the PDD Study and General Plan compliance issues, minimum density thresholds, and issues on small lot development.

Judy Deertrack
760 325 4290

**Flinn Fagg**


**From:** Judy Deertrack <judydeertrack@gmail.com>
**Sent:** Wednesday, October 05, 2016 10:58 PM
**To:** Kathy Weremiuk; Flinn Fagg; Jim Harlan; Lyn Calerdine; T Conrad
**Cc:** Frank Tysen; Robert Stone; David Ready

**Subject:** WORKING GRAPHS THAT MAY BE HELPFUL / PDD STUDY GROUP
**Attachments:** 01 TEMPLATE _ GENERAL PLAN POLICIES _ PDD'S WITH EXHIBITS.pdf; 02 TEMPLATE _ PDD PROVISIONS _ ORD 94.03.00.pdf; 03 ORD 91.00.04 Establishment of Zones. (COMMENTARY).pdf; 04 TEMPLATE THE LOT SQUEEZE.pdf; 05 WOODBRIDGE GENERAL PLAN MAP.pdf; 06 PD 379 WOODBRIDGE ASSESSMENT.pdf

Folks,

ONE OF TWO TRANSMISSIONS

I thought I would share some of my working aids with you that have assisted me in gleaning out what is intended with the use of a PDD.

My Exhibits are roughly as follows. I have one that is too large on a coordination of General Plan Policies and the requirements for Very Low Density Residential (VLDR). I will do the Comparison Grid for each of the land use classifications, by the time I finish.

(1) A Grid Showing the page and General Plan Element (i.e.: Housing Element) in which each mention of the PDD process is made.

(2) A breakdown of the working elements of the PDD Ordinance 94.03.00, and how it addresses its powers and limits on setting development standards in a PDD zone;

(3) An analysis of Ordinance 91.00.04, which covers the full range of recognized ZONES in Palm Springs, and how they coordinate with General Plan Land Use Classifications. The use of these zoning codes must conform to the requirements of the General Plan. Each zone is addressed to a particular General Plan Classification -- but the Palm Springs General Plan does not make this easy -- and it should.

(4) Diagram called "The Lot Squeeze," or small lot development that is used for decreasing residential density, by reducing lot size, increasing building coverage, and increasing height in a triple-hit.

(5) A Map of the Woodbridge (PD 379) proposed development area; showing how density and type of use are affected by a transportation corridor; in this instance, Palm Canyon Drive.

(6) The Woodbridge Full Assessment with mapping showing the residential density pattern in lieu of pedestrian mixed-use.

(7) By separate email, a General Plan Analysis of Policies that address Very Low Density Residential (I will have a grid for each classification by the end of the study).

Thank you.  Look forward to tomorrow.

Judy Deertrack
760 325 4290

| GENERAL PLAN POLICIES THAT ADDRESS THE PLANNED DEVELOPMENT DISTRICT | |
|---|---|
| GP ELEMENT AND PAGE # | **ANALYSIS GRID FOR PDD** |
| RELATIONSHIP TO OTHER PLANS AND PROGRAMS – Planned Development Districts<br><br>Admin Element Page 1-18 | "Planned development districts are mechanisms to provide flexibility in the application of development standards that would yield a more desirable and attractive project than would otherwise be possible with strict application of the underlying zoning regulations." (FLEXIBILITY FOR AESTHETICS AND DESIGN) |
| | "Planned development districts enable property owners to apply modified development standards (e.g., an increase in buildable area or building height or adjustments to setbacks) that are different than those identified in the Zoning Code, if the project can mitigate any impacts that would be generated by the modifications." (MITIGATION REQUIRED) |
| | "All Planned Development Districts shall be consistent with the General Plan." (GEN PLAN CONSISTENCY REQ.) |
| MIXED-USE DISTRICT C-B-D<br><br>Land Use Element Page 2-7 | **Central Business District (1.0 FAR; 21–30 dwelling units per acre).**<br>"If projects in these areas [Appendix A, Downtown Urban Design Plan] provide substantial public spaces or plazas, a FAR of up to 4.0 may be developed upon approval of a Planned Development District or Specific Plan. The Downtown Central Core may also accommodate up to 70 dwelling units per acre for residential or hotel uses if a Planned Development District or Specific Plan is prepared and approved." |
| MIXED-USE MULTI-USE DISTRICT<br><br>Land Use Element Page 2-7 | **Mixed-use/Multi-use (Maximum of 15 dwelling units per acre for residential uses and a maximum 0.50 FAR for nonresidential uses).**<br>"Residential development at a maximum density of 15 units per acre is permitted; planned development districts may allow residential densities up to 30 du/acre and also ensure that all proposed uses are properly integrated and allow the implementation of development standards that are customized to each site."<br>*Additional information related to the location and desired mix of uses can be found at page 2-30 of the Land Use Element. |
| Housing Element Page 3-31 | **Table 3-13: Zoning and Residential Land Use Designations and Associated Regulatory Processes.**<br>*All housing types can be allowed in any designation, with approval of a Planned Development Permit in lieu of a zone change. (Asterisk statement at bottom of Table) |

<table>
<tr><th colspan="5">GENERAL PLAN POLICIES / ANALYSIS GRID FOR PDD ORDINANCE 94.03.00<br><br>SECOND PAGE</th></tr>
<tr><td rowspan="3">Housing Element<br>Page 3-38</td><td colspan="4">Planned Development (PD). "The Zoning Code allows PD districts to foster and encourage innovative design, variety, and flexibility in land use and housing types that would not otherwise be allowed in zoning districts."</td></tr>
<tr><td colspan="4">"Density under the PD district is allowed by zoning and the General Plan, but may be increased if the district assists the City in meeting its housing goals as set forth in the Housing Element."</td></tr>
<tr><td colspan="4">"The form and type of development on the site must be compatible with the existing or planned development of the neighborhood. The PD requires approval by the Planning Commission and City Council."</td></tr>
<tr><td rowspan="2">Table 3-15<br>Housing<br>Regulatory<br>Incentives<br>HE Page 3-38</td><th>Density</th><th>Open Space</th><th>Lot Area</th><th>Parking</th></tr>
<tr><td>PDD - Limited by General Plan</td><td>PDD - No Limit</td><td>PDD - No Limit</td><td>PDD - No Limit</td></tr>
</table>

development standards, design guidelines, phasing plan, infrastructure plan (water, sewer, or drainage), and implementation plan pursuant to California Governmental Code Sections 65450 through 65457. They are typically implemented as customized zoning for a particular area of the City, and are generally used for large-scale projects that require a comprehensive approach to planning and infrastructure issues.

A limited number of specific plans have been approved within the City of Palm Springs for the following projects: Canyon Park, Canyon South (an amendment to the Canyon Park Specific Plan), and Section 14, which are shown on the Land Use Plan (Figures 2-2 and 2-3).

## PLANNED DEVELOPMENT DISTRICTS

Planned development districts are mechanisms to provide flexibility in the application of development standards that would yield a more desirable and attractive project than would otherwise be possible with strict application of the underlying zoning regulations. Planned development districts enable property owners to apply modified development standards (e.g., an increase in buildable area or building height or adjustments to setbacks) that are different than those identified in the Zoning Code, if the project can mitigate any impacts that would be generated by the modifications. All Planned Development Districts shall be consistent with the General Plan.

To implement the land use policies identified in this element, planned development districts are intended to:

a. Provide a mechanism to allow the permitted building area, floor area ratios, and building heights to exceed provisions specified by land use policy.
b. Provide a mechanism for allowing both on- and off-site density transfers.
c. Provide a mechanism for the consolidation of adjoining commercially and residentially designated parcels into a single site, if they are designed as part of a unified development project.
d. Provide a mechanism for determining the appropriate type, character, density/intensity, and standards of development for the reuse of sites currently used for public or private institutions.
e. Provide a mechanism for creative, high quality projects that are evaluated as a whole, rather than against individual standards.

also included in this land use designation. These uses are generally located in areas that will benefit from a higher level of exposure to residents located outside of the City, such as properties located on Ramon Road adjacent to the City limits and selected properties adjacent to the I-10.

## MIXED USE

**Central Business District (1.0 FAR; 21–30 dwelling units per acre).** Bounded approximately by Ramon Road, Calle Encilia, Alejo Road and Belardo Road, the Central Business District designation allows for a mix of commercial, residential, and office uses at a higher concentration, density, and intensity than in other areas of the City. The CBD serves as the main activity center and cultural core of the community and, as such, theatres, museums, retail, and other entertainment venues are encouraged here. Uses such as grocery stores, hardware stores, and convenience or pharmacy stores that provide services to the Downtown's residential population are also encouraged. The Central Business District is subdivided into zones or areas that provide for diversity in development standards and land use intensities. These subareas are defined in Appendix A, *Downtown Urban Design Plan*. Examples include the gateways into Downtown, Downtown Central Core, and the Downtown Outer Core. The Downtown Central Core (roughly bounded by Amado Road, Tahquitz Canyon Way, Museum Drive, and Indian Canyon Drive) and the Gateway areas (at roughly the north and south ends of the CBD) may be developed with a maximum FAR of 3.5. If projects in these areas provide substantial public spaces or plazas, an FAR of up to 4.0 may be developed upon approval of a Planned Development District or Specific Plan. The Downtown Central Core may also accommodate up to 70 dwelling units per acre for residential or hotel uses if a Planned Development District or Specific Plan is prepared and approved.

*Central Business District*

**Mixed-use/Multi-use (Maximum of 15 dwelling units per acre for residential uses and a maximum 0.50 FAR for nonresidential uses).** Specific uses intended in these areas include community-serving retail commercial, professional offices, service businesses, restaurants, daycare centers, public and quasi-public uses. Residential development at a maximum density of 15 units per acre is permitted; planned development districts may allow residential densities up to 30 du/acre and also ensure that all proposed uses are properly integrated and allow the implementation of development standards that are customized to each site.

Additional information related to the location and desired mix of uses in each mixed-use/multi-use area can be found on page 2-30 of this element.

**Table 3-13**
**Zoning and Residential Land Use Designations and Associated Regulatory Processes**

| Housing Type | Zoning Districts | | | | | |
|---|---|---|---|---|---|---|
| | G-R-5 | R-1 | R-G-A | R-2 | R-3/R-4 | R-MHP |
| Single-Family* | P | P | P | P | | |
| Multiple-Family* | | | P | P | P | |
| Accessory Dwelling* | CUP | CUP | CUP | CUP | | |
| Guest House* | | P | | | | |
| Manufactured Housing* | | P | P | P | | |
| Mobile Home Parks* | | | | | | P |
| Assisted Living* | | | CUP | CUP | CUP | |

Source: Palm Springs Zoning Code.
Notes: P designates a use permitted by right; CUP designates a conditionally permitted use
*All housing types can be allowed in any designation, with approval of a Planned Development Permit in lieu of a zone change.
The City also allows residential development in the Open Space/Conservation, Mountain, and Desert land use designations. Please refer to the Land Use Element for greater detail.

The following describes provisions that allow housing opportunities other than more conventional single-family and multiple-family housing.

### *Manufactured Housing*

State law requires cities to permit manufactured housing and mobile homes on lots for single-family dwellings when the home meets the location and design criteria established in the Zoning Code. The Zoning Code does not define manufactured housing, but treats manufactured housing like any other single-family home and permits it in all residential zones.

### *Accessory Dwelling Units*

State law requires local governments to adopt an administrative approval process for accessory dwelling units, unless the City Council has adopted specific findings that preclude such uses due to adverse impacts on the public's health, safety, and welfare. The City presently allows accessory dwelling units in residential zones in accordance with State law. As allowed under AB 1866, the City currently reviews accessory or second units under the standards allowed if a City does not have a local ordinance. As part of the City's comprehensive update of its Zoning Ordinance, the City has developed a local ordinance with City-specific standards. The Ordinance amendments will be completed in 2014. A program is included in this document to assure completion of this task.

Senate Bill 1818 amended state law by lowering the affordable housing requirement and increasing the bonus and incentives. Density bonuses are discussed in the Development Review Committee and during the pre-application phase.

- *Planned Development (PD).* The Zoning Code allows PD districts to foster and encourage innovative design, variety, and flexibility in land use and housing types that would not otherwise be allowed in zoning districts. Density under the PD district is allowed by zoning and the General Plan, but may be increased if the district assists the City in meeting its housing goals as set forth in the Housing Element. The form and type of development on the site must be compatible with the existing or planned development of the neighborhood. The PD requires approval by the Planning Commission and City Council.

- *Variance.* A variance may be granted for a parcel with physical characteristics so unusual that complying with the requirements of the Zoning Code creates an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and, in general, not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners. A variance requires approval from Planning Commission.

**Table 3-15**
**Regulatory Incentives**

| Procedure | Sample of Reductions in Standards | | | | Approval |
|---|---|---|---|---|---|
| | Density | Yards/Open Space | Lot Area | Parking | |
| Minor Modification | No | Up to 20% | Up to 10% | Up to 10% | Planning Director |
| Density Bonus Provision | Up to 25 | Depends on requested concession | | | By-Right |
| Planned Development | Limited by General Plan | No limit | No limit | No limit | Planning Commission & City Council |
| Variance | Limited by General Plan | Depends on topography | | | Planning Commission & City Council |

Source: City of Palm Springs Zoning Code, 2013.

The City of Palm Springs has utilized each of these mechanisms to facilitate the development of recent affordable housing projects in the

| ORDINANCE LANGUAGE (CITY OF PALM SPRINGS ORDINANCE 94.03.00 (PD) | | |
|---|---|---|
| Purpose, Function, and Parameters of Use when Altering Development Standards | | **ANALYSIS GRID FOR PDD ORDINANCE 94.03.00** |
| PURPOSE STATEMENT | Various Types of Land Use | Purpose.<br>The planned development district is designed to provide various types of land use which can be combined in compatible relationship with each other as part of a totally planned development. |
| INTENT OF THE DISTRICT | General Plan Compliance | Purpose.<br>It is the intent of this district to insure compliance with the general plan and good zoning practices while allowing certain desirable departures from the strict provisions of specific zone classifications. |
| CONFORMITY FINDINGS | CONFORMITY WITH GENERAL PLAN | B. Uses Permitted.<br>The planning commission and city council shall find that the proposed uses as shown on the preliminary development plan for the PD are in conformity with the required findings and conditions as set forth in Section 94.02.00 (Conditional use permit), the general plan and sound community development. |
| MULTIPLE HOUSING TYPES | DENSITY DOES NOT EXCEED GEN PLAN | B.1. Planned residential development districts may include a multiplicity of housing types; provided, the density does not exceed the general plan requirements. |
| INCREASE IN HOUSING DENSITY | HOUSING GOALS | B.1. Housing density may be increased in conformance with state and local regulations if the district assists the city in meeting its housing goals as set forth in the housing element of the general plan. |
| DEVELOP. FORM & TYPE | COMPATIBLE SURROUND. | B.1.The form and type of development on the PD site boundary shall be compatible with the existing or potential development of the surrounding neighborhoods. |
| MULTIPLICITY OF USES | USES CONFORM TO GEN PLAN & SUBJECT ZONING | B.5. Planned development districts may include a multiplicity of uses; providing, the proposed uses are permitted by the subject zoning and/or general plan regulations. |

| | | |
|---|---|---|
| DEVELOP. FORM & TYPE | COMPATIBLE SURROUND. | B.5.The form and type of development on the site boundary shall be compatible with the existing or potential development of the surrounding neighborhoods. |
| DEVELOP. STANDARDS FULL RANGE | PLAN COMM & CITY COUNCIL | C. Property Development Standards.<br>The planning commission and the city council shall establish a full range of development standards appropriate to the orderly development of the site which shall include the following: |
| DEVELOP. STANDARDS | HEIGHT | C.1. Building heights shall conform to the requirements of the underlying zoning district. Structures which exceed permitted heights shall be subject to the requirements of Sections 93.03.00 and 93.04.00. |
| DEVELOP. STANDARDS | PARKING | C.2. Parking and loading requirements shall be subject to the requirements of Sections 93.06.00 and 93.07.00, respectively. The planning commission and the city council may modify such requirements based upon the submittal of a specific parking plan. |
| DEVELOP. STANDARDS | SETBACKS (Front Yard) | C.3. Front yard setbacks compatible with the existing or potential development adjacent and/or opposite from existing development shall be required to provide for an orderly and uniform transition along the streetscape to preserve, protect and enhance the properties adjacent to the proposed PD. |
| DEVELOP. STANDARDS | MINIMUM LOT FRONTAGE | C.4. Minimum lot frontage not less than that of existing lots adjacent and/or opposite from existing developments shall be required to provide for an orderly and uniform transition along the streetscape to preserve, protect and enhance the properties adjacent to a proposed PD. |
| DEVELOP. STANDARDS | OPEN SPACE (Equal to or Greater Than) | C.5. Open space for planned districts shall be equal to or greater than the minimum open space requirement for the zone in which the planned district is located, unless otherwise approved by the planning commission and city council. Recreational areas, drainage facilities and other man-made structures may be considered to meet a part of the open space requirements. |
| DEVELOP. STANDARDS | ENVIRON. | C.5.a. Protection of natural landscape features such as watercourses, hillsides, sensitive land area, existing vegetation, wildlife, unique topographical features, and views shall be encouraged. Open spaces shall be integrated into the overall design of the project. |
| DEVELOP. STANDARDS | OPEN SPACE Co / In / MU | C.5.b. Open space for commercial, industrial and mixed uses shall be determined by the development plan approved by the planning commission and city council. |

**91.00.04 Establishment of zones.**

A. Division of City into Zones—Purpose.

In order to classify, regulate, restrict and separate the use of land, buildings and structures and to regulate and to limit the type, height and bulk of buildings and structures in the various districts and to regulate the areas of yards and other open areas abutting and between buildings and structures and to regulate the density of population, the city is divided into the following zones:

1. Residential Zones.

| | |
|---|---|
| a. G-R-5 ESTATE RESIDENTIAL (0-2) | Guest ranch zone |
| b. R-1-AH VERY LOW DENSITY (2-4) | Single-family residential zone twenty thousand (20,000) square feet, |
| c. R-1-A VERY LOW DENSITY (2-4) | Single-family residential zone twenty thousand (20,000) square feet; |
| d. R-1-B VERY LOW DENSITY (2-4) | Single-family residential zone fifteen thousand (15,000) square feet; |
| e. R-1-C VERY LOW DENSITY (2-4) | Single-family residential zone ten thousand (10,000) square feet; |
| f. R-1-D VERY LOW DENSITY (2-4) | Single-family residential zone seven thousand five hundred (7,500) square feet; |
| g. R-G-A(6) LOW DENSITY (4-6) | Cluster residential zone; SFR ON 7,500 SF LOTS OR LARGER |
| h. R-G-A(8) LOW DENSITY (?) | Garden apartment multiple-family residential zone; SFR ON 7,500 LOTS OR LARGER |
| i. R-2 MEDIUM DENSITY (6-15) | Limited multiple-family residential zone; |
| j. R-3 HIGH DENSITY (15-30) | Multiple-family residential and hotel zone; |
| k. R-4 HIGH DENSITY (15-30) | Large scale hotel and multiple-family residential zone; |
| l. R-4-VP HIGH DENSITY (15-30) | Vehicle parking and large-scale hotel and multiple-family residential and limited commercial retail zone; |
| R-MHP | Residential mobilehome park zone. |

2. Commercial Zones.

| | |
|---|---|
| a. P | Professional zone; |
| b. C-B-D | Central business district zone; |
| c. C-D-N | Designed neighborhood shopping center zone; |
| d. C-S-C | Community shopping center zone; |
| e. C-1 | Retail business zone; |
| f. C-1AA | Large scale retail commercial zone; |
| g. C-2 | General commercial zone; |
| h. C-M | Commercial manufacturing zone; |
| | |

| | |
|---|---|
| i. H-C | Highway commercial zone; |
| j. R-4-VP | Vehicle parking and large scale hotel and multiple-family residential and limited commercial retail zone. |

3. Manufacturing/Industrial Zones.

| | |
|---|---|
| a. M-1-P | Planned research and development park zone; |
| b. M-1 | Service/manufacturing zone; |
| c. M-2 | Manufacturing zone; |
| d. E-I | Energy industrial zone. |

4. Open Space Zones.

| | |
|---|---|
| a. W | Watercourse zone; |
| b. 0 | Open land zone; |
| c. 0 - 5 | Open land zone; |
| d. 0 - 20 | Open land zone; |
| e. U - R | Urban reserve zone. |

5. Miscellaneous Zones/Overlays.

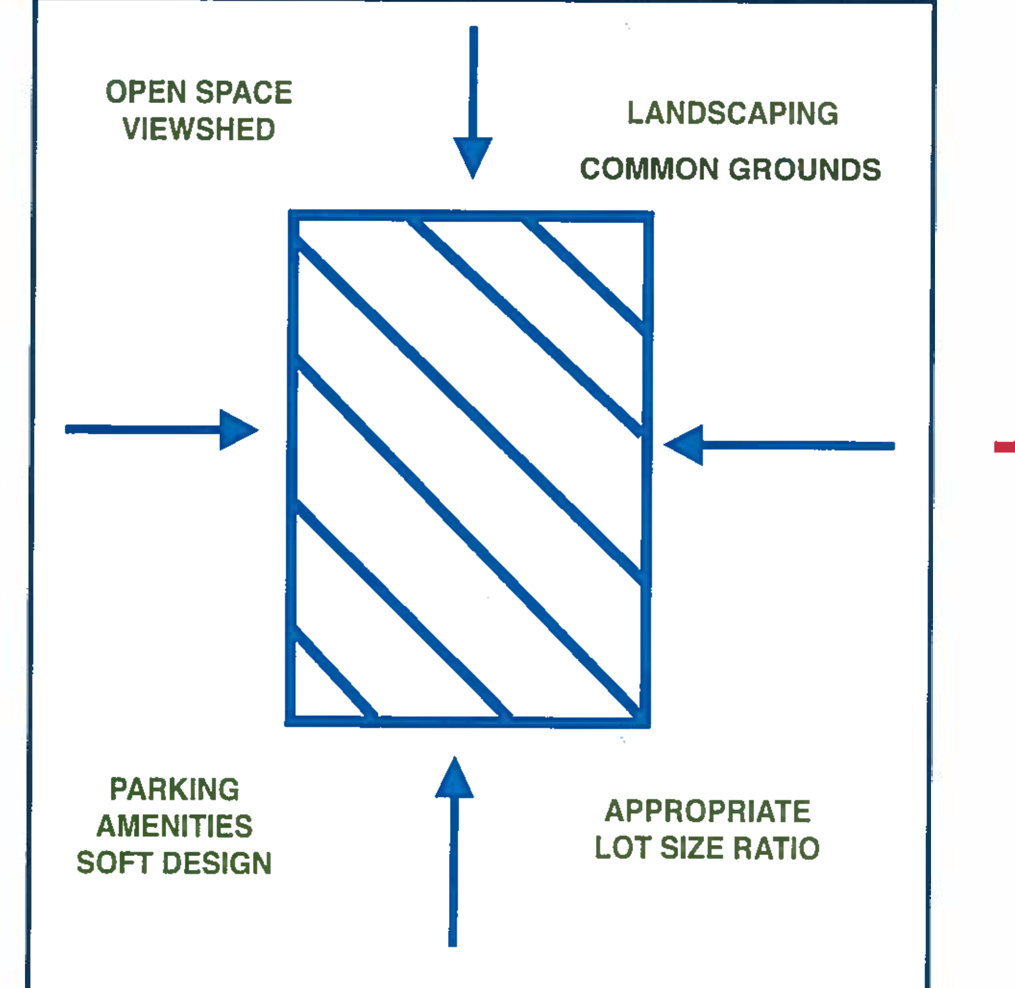
| | |
|---|---|
| a. A | Airport zone; |
| b. CC | Civic center district zone; |
| c. D | Downtown parking combining zone; |
| d. G | Gaming overlay zone; |
| e. H | Historic preservation combining zone; |
| f. IL | Indian Land; |
| g. N | Noise impact combing zone; |
| h. PD | Planned development district; |
| i. R | Resort combining zone. |

B. Adoption of Districts—Maps.

Such zones and boundaries of such zones and each of them are established and adopted and are shown, delineated and designated on the "Official Zoning Map" of the city of Palm Springs, Riverside County, California, which map, together with all notations, references, data, district boundaries and other information thereon, is attached hereto and made a part hereof and is adopted. (Ord. 1551, 1998; Ord. 1294, 1988)

# DOWN AND OUT AND UP

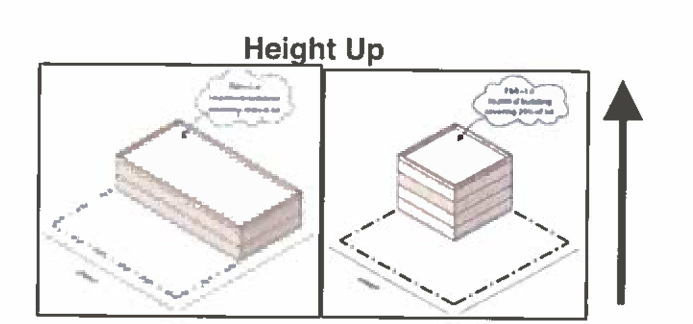
THE SPATIAL ORIENTATION OF LOT RATIO

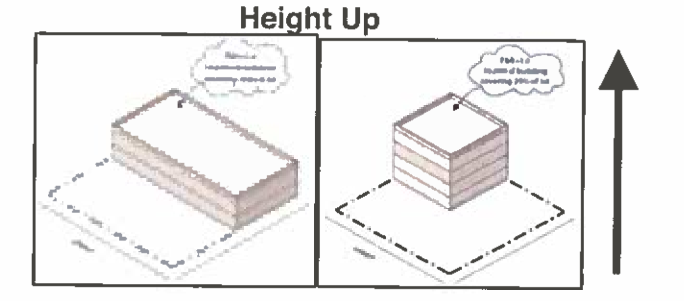



LOT COVERAGE OUT

LOT SIZE
DOWN

Height Up

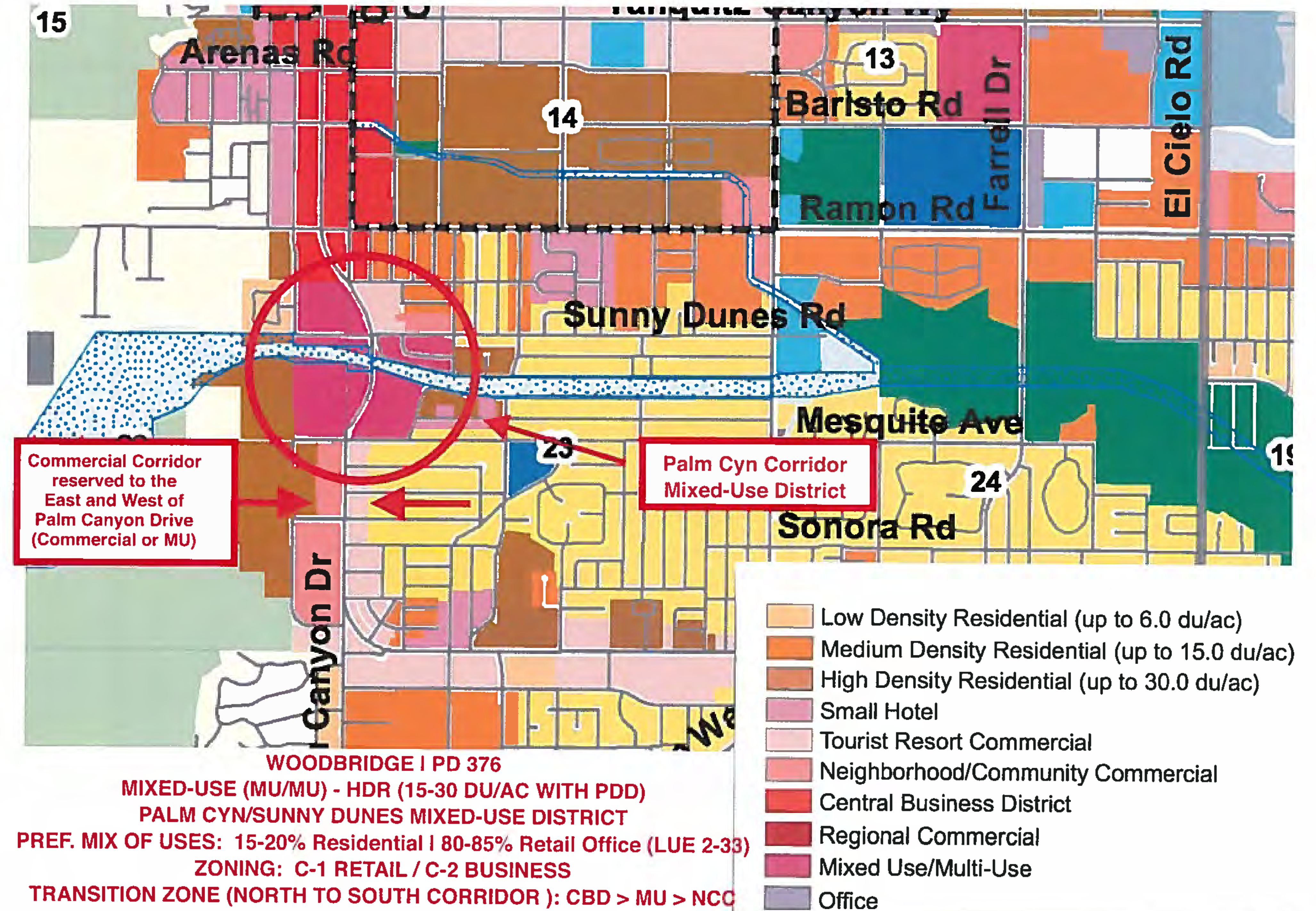


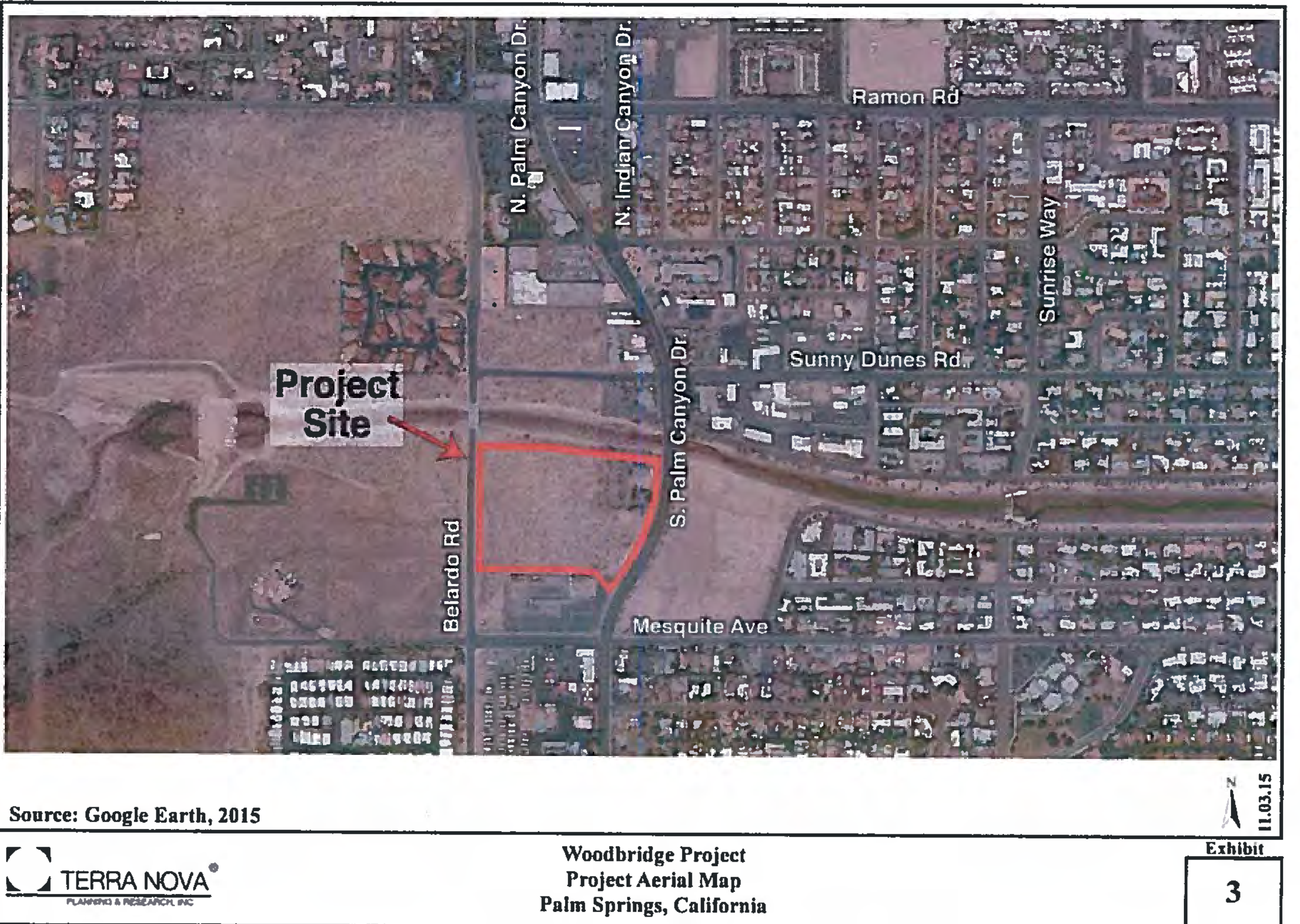


"THE LOT SQUEEZE"
LOT SIZE DOWN
BUILDING COVERAGE OUT
HEIGHT UP

THE "SQUEEZE" REDUCES RESIDENTIAL DENSITY
BECAUSE IT IS USED FOR SMALL LOT SFR IN PLACE OF MFR

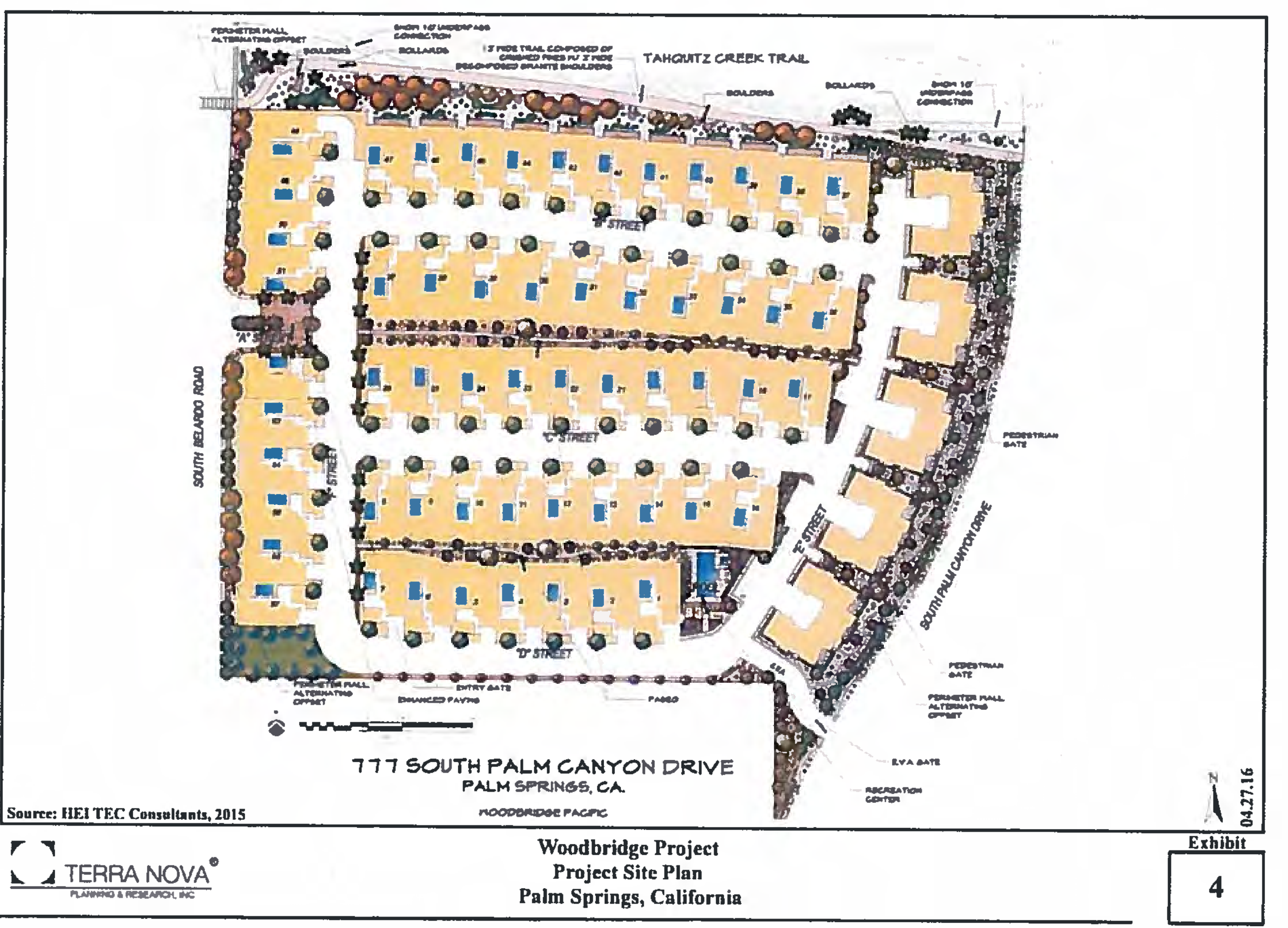
THE ABSENCE OF TRADITIONAL ZONING PROTECTIONS
LOT RATIOS / TRADE-OFFS BETWEEN HEIGHT & OPEN SPACE


15
Arenas Rd
14
13
Baristo Rd
Farrell Dr
Ramon Rd
El Cielo Rd
Sunny Dunes Rd
Mesquite Ave
Sonora Rd
23
24
Canyon Dr
Commercial Corridor reserved to the East and West of Palm Canyon Drive (Commercial or MU)
Palm Cyn Corridor Mixed-Use District
Low Density Residential (up to 6.0 du/ac)
Medium Density Residential (up to 15.0 du/ac)
High Density Residential (up to 30.0 du/ac)
Small Hotel
Tourist Resort Commercial
Neighborhood/Community Commercial
Central Business District
Regional Commercial
Mixed Use/Multi-Use
Office
WOODBRIDGE I PD 376
MIXED-USE (MU/MU) - HDR (15-30 DU/AC WITH PDD)
PALM CYN/SUNNY DUNES MIXED-USE DISTRICT
PREF. MIX OF USES: 15-20% Residential I 80-85% Retail Office (LUE 2-33)
ZONING: C-1 RETAIL / C-2 BUSINESS
TRANSITION ZONE (NORTH TO SOUTH CORRIDOR ): CBD > MU > NCC




Woodbridge Project
Project Aerial Map
Palm Springs, California

Exhibit 3




Source: HEI TEC Consultants, 2015

TERRA NOVA®
PLANNING & RESEARCH, INC

Woodbridge Project
Project Site Plan
Palm Springs, California

Exhibit 4

Judy Deertrack
1333 South Belardo Road, Apt 510
Palm Springs, CA 92264

Home Phone: 760 325 4290
Email: judy@judydeertrack.com

Wednesday, October 5, 2016

To the City Council
Palm Springs, California

1.B. SECOND READING AND ADOPTION OF ORDINANCE NO. 1900 APPROVING PLANNED DEVELOPMENT 379 IN LIEU OF A CHANGE OF ZONE FOR A 12.38-ACRE SITE ADDRESSED AT 777 SOUTH PALM CANYON DRIVE AND BOUNDED BY PALM CANYON DRIVE TO THE EAST, TAHQUITZ CREEK (WASH) TO THE NORTH, BELARDO ROAD TO THE WEST AND PRIVATE PROPERTY TO THE SOUTH:

**RECOMMENDATION**: Waive the second reading of the ordinance text in its entirety and adopt Ordinance No. 1900, "AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING PLANNED DEVELOPMENT 379 IN LIEU OF A CHANGE OF ZONE FOR A 12.38-ACRE SITE ADDRESSED AT 777 SOUTH PALM CANYON DRIVE AND BOUNDED BY PALM CANYON DRIVE TO THE EAST, TAHQUITZ CREEK (WASH) TO THE NORTH, BELARDO ROAD TO THE WEST AND PRIVATE PROPERTY TO THE SOUTH."

To the Honorable City Council:

This is a second reading of the ordinance for Woodbridge, but not knowing exactly the scope of the City Council's continuing jurisdiction to give this a second look, I would like to add further comments. I do so out of the continuing work and study I have done under the Planned Development District Contract with People for Proper Planning, and the data that we will be introducing to the PDD Study Group created by Settlement Agreement with PFPP.

I have earlier placed objections on the record that conclude (from my own perspective) the following; namely, that the project, as approved, violates the land use classification intended for this parcel, which was Mixed-Use/Multi-Use, with a preferred and recommended balance of uses that is 80-85% retail/office and 15-20% residential, and a density of 15-30 du/ac with the use of a PDD. The current design of singular use SFR with Townhouses conflict with the policies, objectives, and programs of the General Plan, which utilizes the Mixed Use/Multi-Use Area as a commercial node that intersperses the C-1 and C-2 strip designations along Palm Canyon Drive, and was meant to introduce the idea of a node for pedestrian amenities, common space, and connectivity. Please read the attached descriptions.

I have felt that the City's interpretation of the General Plan that these Mixed Use Nodes (given the VERY explicit language in the General Plan as to what is intended) does not hold ground. Replacing the intended mixture of commercial and residential with two types of high-end single-family residential subverts the intent of the General Plan. A further aggravating outcome is the displacement of intended high density residential, which frustrates the policy of affordability for the service population of Palm Springs; their need to remain close to the working core of the City; and their need to remain close to neighborhood serving retail and residential; referring to SteinMart and its residential surroundings. I have expressed that I feel the General Plan prohibits the use of SFR as a singular use in the area; and the idea of mixing this with a few MFR Townhomes does nothing to break the deviation from what the General Plan intended by its terms.

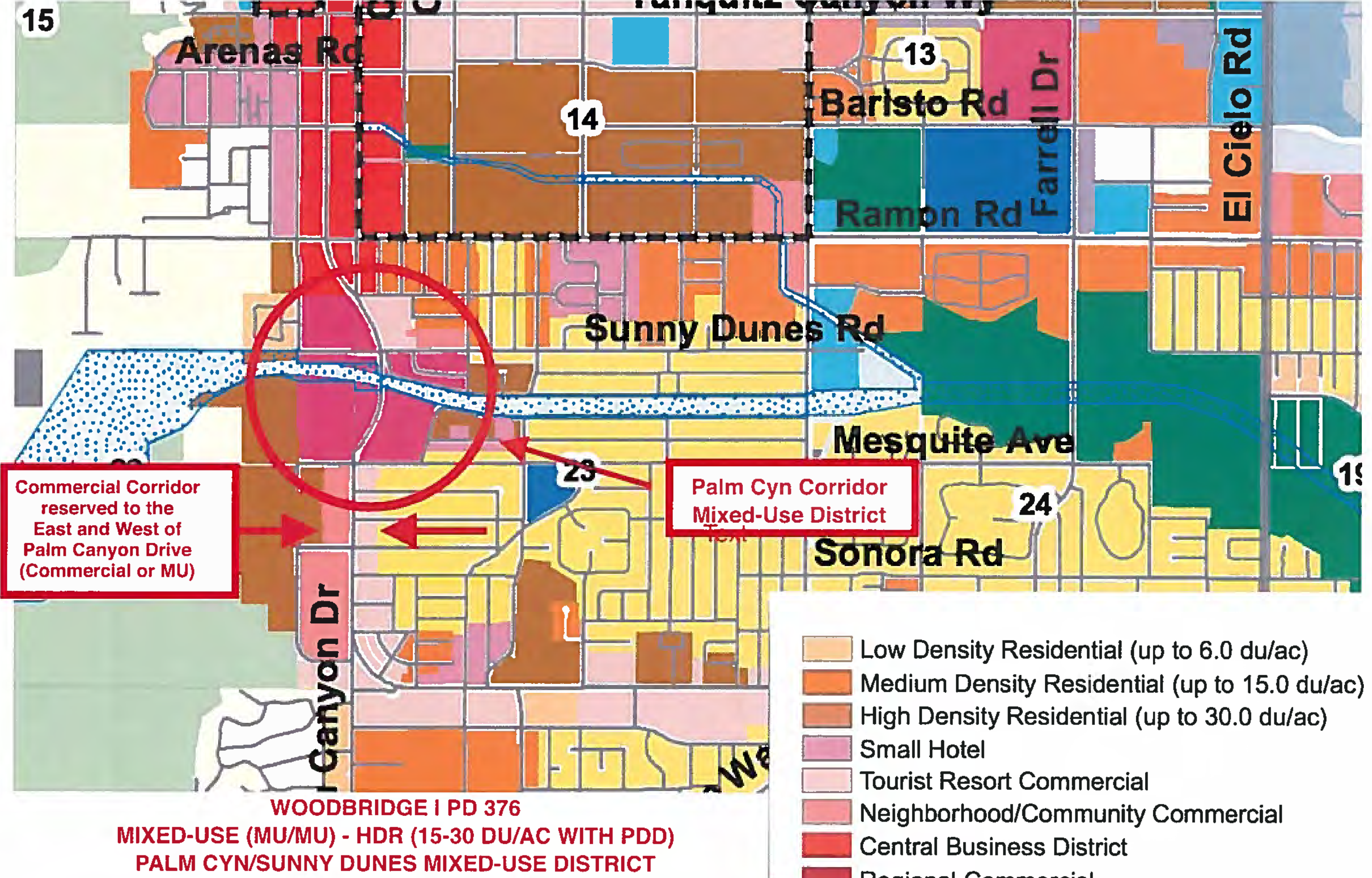
My first two attached exhibits are a general plan map and a zoning map of the Woodbridge Project and its surroundings. It shows a very important characteristic of land use and zoning. There are two forms of transition going on that are characteristic of corridors like Palm Canyon; namely vertical and horizontal density transitions from Downtown outward.

NORTH/SOUTH (VERTICAL) TRANSITION: You will see from the map that the density is highest in the downtown area (red!), which is Central Business District. Then along the Corridor you get a transition zone into Mixed-Use, which is still intense, but involves the important MIXTURE OF USES as its primary characteristic, and it is also a housing opportunity, or the most valuable land for Affordable Housing. This is a NODE that runs along a C-1 and C-2 vertical corridor.

EAST/WEST (HORIZONTAL TRANSITION): You will note that along any major corridor you have a commercial strip usually anywhere from 300 - 500 feet back from Palm Canyon consisting of C-1 & C-2 except for interspersed NODES (MIXED USE DISTRICTS) that blend commercial with affordable housing and high density residential at intervals. This is the function of the Woodbridge Property. The City has designed buffer concepts, including transitions to lighter Neighborhood Commercial Zones and the Mixed-Use properties to integrate into the neighborhoods back behind.

DENSITY: Some of the greatest sacrifice is density, as these SFR units are packed in. This sacrifices the generous open space that allows for alleviation of the rock crushing, and the general plan intent that the hillside areas and their unique features be integrated into the developments. With more open space, the rock crushing would be mitigated.

Thank you for your kind attention. Please note attached exhibits, Judy Deertrack




WOODBRIDGE I PD 376

MIXED-USE (MU/MU) - HDR (15-30 DU/AC WITH PDD)

PALM CYN/SUNNY DUNES MIXED-USE DISTRICT

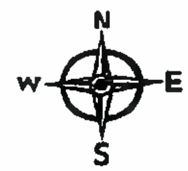
PREF. MIX OF USES: 15-20% Residential I 80-85% Retail Office (LUE 2-33)

ZONING: C-1 RETAIL / C-2 BUSINESS

TRANSITION ZONE (NORTH TO SOUTH CORRIDOR ): CBD > MU > NCC

Exhibit from J.Deertrack

# Department of Planning Services
# Vicinity Map




R1C
R3
C1
C1 R2
R2
R2
R2
R2
R2
CAMINO PAROCELA
PD
PD
R2
R1A
R2
BELARDO RD
C2
R2
R2
R3
C2
CM
CU
SUNNY DUNES RD
R2
C2
CM
CM
O20
C2
W
C2
INDUSTRIAL PL
R2
R3
N RIVERSIDE DR
W
R3
C1
C1
R3
S RIVERSIDE DR
C2
R2
R1C
MESQUITE AVE
MESQUITE AVE
BELARDO RD
C1
R2
R3
C1
R1C
PALO VERDE AVE
PALM CANYON DR
C1
R2
C1
R1C
C1
R2
OCOTILLO AVE
PD
C1
R2
R1C
MORONGO RD
PD
C1
R2
R1C

**Legend**

- Site
- 500ft Site Radius
- Zoning
- Parcels

CITY OF PALM SPRINGS

WOODBRIDGE I PD 379
Zoning Transition
North to South Zoning = C1 and C2
Interspersed with an MU/MU Node I One of Seven Identified MU Nodes in General Plan
MU/MU Node Conducive to Affordable Housing and Public Gathering Place
The East/West Buffer that surrounds Palm Canyon transitions to R-2 and R-1-C

also included in this land use designation. These uses are generally located in areas that will benefit from a higher level of exposure to residents located outside of the City, such as properties located on Ramon Road adjacent to the City limits and selected properties adjacent to the I-10.

## MIXED USE

**Central Business District (1.0 FAR; 21–30 dwelling units per acre).** Bounded approximately by Ramon Road, Calle Encilia, Alejo Road and Belardo Road, the Central Business District designation allows for a mix of commercial, residential, and office uses at a higher concentration, density, and intensity than in other areas of the City. The CBD serves as the main activity center and cultural core of the community and, as such, theatres, museums, retail, and other entertainment venues are encouraged here. Uses such as grocery stores, hardware stores, and convenience or pharmacy stores that provide services to the Downtown's residential population are also encouraged. The Central Business District is subdivided into zones or areas that provide for diversity in development standards and land use intensities. These subareas are defined in Appendix A, *Downtown Urban Design Plan*. Examples include the gateways into Downtown, Downtown Central Core, and the Downtown Outer Core. The Downtown Central Core (roughly bounded by Amado Road, Tahquitz Canyon Way, Museum Drive, and Indian Canyon Drive) and the Gateway areas (at roughly the north and south ends of the CBD) may be developed with a maximum FAR of 3.5. If projects in these areas provide substantial public spaces or plazas, an FAR of up to 4.0 may be developed upon approval of a Planned Development District or Specific Plan. The Downtown Central Core may also accommodate up to 70 dwelling units per acre for residential or hotel uses if a Planned Development District or Specific Plan is prepared and approved.

*Central Business District*

**Mixed-use/Multi-use (Maximum of 15 dwelling units per acre for residential uses and a maximum 0.50 FAR for nonresidential uses).** Specific uses intended in these areas include community-serving retail commercial, professional offices, service businesses, restaurants, daycare centers, public and quasi-public uses. Residential development at a maximum density of 15 units per acre is permitted; planned development districts may allow residential densities up to 30 du/acre and also ensure that all proposed uses are properly integrated and allow the implementation of development standards that are customized to each site.

Additional information related to the location and desired mix of uses in each mixed-use/multi-use area can be found on page 2-30 of this element.

The MFR limitation of 15 du/ac anticipates mixed-use development and increases in the General Plan to 15-30 du/ac with a PDD

THIS IS ONE OF THE SEVEN IDENTIFIED
MIXED-USE PLANNING AREAS
WOODBRIDGE LIES WITHIN ITS BOUNDARIES
Reference: Intended "Mix of Uses"



Obligation: To further the GP goals and not obstruct their attainment"

### Palm Canyon Drive and Sunny Dunes Road

The Sunny Dunes and Palm Canyon Drive mixed/multi-use area currently contains scattered commercial uses and large vacant parcels. Different from the mixed/multi-use areas identified above, the Palm Canyon Drive and Sunny Dunes Road area is envisioned as a mixed-use area creating an office, retail, and residential node just south of Downtown. This mix of uses will complement the hotel uses along East Palm Canyon Drive by providing a concentrated commercial and office base in close proximity to visitor accommodations.

*Preferred mix of uses:* 30–50 percent commercial, 30–50 percent office; 15–20 percent residential

### Smoke Tree

The Smoke Tree mixed-use area is located along East Palm Canyon Drive, between Sunrise Way and the city limits. Smoke Tree is ideally located to serve the needs of surrounding residential neighborhoods, and is characterized by its intimate scale, pedestrian orientation, and vibrant human activity. The purpose of this area is to create a unique mixed-use center characterized by pedestrian-oriented retail shops, restaurants, hotel facilities, and multifamily residential uses.

*Preferred mix of uses:* 30–60 percent residential uses, 20–40 percent resort commercial, 20–40 percent neighborhood commercial

### Palm Springs Mall

Located along one of the City's most visible corridors, the Palm Springs Mall presents an opportunity to inject new vitality along Tahquitz Canyon Way, which serves as the City's most important east-west corridor linking Downtown and the Airport. As a mixed/multi-use area comprised of residential, office, and commercial uses, it is envisioned that this node will provide an opportunity for more efficient use of an underutilized commercial site that can complement the civic and office uses currently existing along the corridor.

*Preferred mix of uses:* 25–35 percent residential, 25–35 percent office, 40–50 percent commercial

CD18.3 Screen views of surface parking areas using shade trees, low-perimeter hedges, and other plantings. Incorporate landscaped planters, shade trees, and defined pedestrian pathways into the parking lot design.

CD18.4 Incorporate pedestrian-scale design amenities such as awnings, large storefront windows, arcades, small sitting areas, special paving and color treatments, and accent landscaping into building and site design.

CD18.5 Encourage pedestrian access to and from adjacent uses by providing pedestrian and bike paths and breaks in perimeter walls or landscaped buffer areas.

CD18.6 Develop a consistent sign program that encourages distinctive and high-quality design within the overall theme of the retail center. Such a program should include style, scale, type, and placement of signage.

CD18.7 Ensure that the scale and massing of neighborhood retail centers are sensitive to the context of surrounding residential development.

CD18.8 Encourage the provision of at least one accessible, attractive, and comfortable public gathering place within the center.

CD18.9 Encourage the creation of vehicular and pedestrian access between adjacent commercial properties with similar or compatible uses.

### Actions

CD18.1 Create a point-based project evaluation checklist to encourage design submissions consistent with the above-stated policies.

## MIXED-USE AND MULTI-USE DEVELOPMENT

***Mixed-use*** and ***multi-use*** developments allow for greater flexibility and a more varied environment than traditional single-use land use designations. Mixed/multi-use areas should consist of commercial, office, and residential uses in either vertical or horizontal proximity to each other. This type of development is appropriate for areas of higher intensity uses and can be used to create hot spots of activity.

Palm Springs has the opportunity to create interesting and vibrant nodes through the placement of mixed/multi-use in the downtown area and along corridors, especially North Palm Canyon Drive. These mixed/multi-use areas should fit into and add to the visual quality of the surrounding area.

**Mixed-Use:** Mixed-use projects contain two or more uses located vertically within a building. The most common design for mixed-use projects consists of ground floor commercial/office uses with second floor and above residential/ office uses. This positioning allows ground floor commercial/office uses to benefit from easy pedestrian access and upper-story residential/office uses to retain more privacy because of their location above the ground floor.

**Multi-Use:** Multi-use projects contain two or more uses located within horizontal proximity to each other. This type of land use designation allows for multiple uses within one project site. Multi-use projects allow for a flexible positioning of uses, such as commercial uses along a street front with residential or office uses located behind and off the street.

THE CITY'S DEFINITION OF TWO TYPES OF RESIDENTIAL AS A MIXED-USE PROJECT DOES NOT COMPORT WITH TRADITIONAL NOTIONS OF MIXED-USE, NOR DOES IT CONFORM TO THE GENERAL PLAN DEPICTIONS OF MIXED USE AND ITS RECOMMENDATIONS OF BALANCE OF USES BY PERCENTAGE.

## GOAL CD19:

**Create mixed-use and multi-use areas that are visually attractive, pedestrian friendly, easily accessible, and contain a blend of commercial, office, and residential uses.**

*La Plaza, above, is an excellent example of vibrant and successful mixed use. It contains retail on the ground floor and offices above.*

Policies

CD19.1 Encourage design flexibility in mixed/multi-use development by allowing the vertical and/or horizontal mix of uses in specified areas.

CD19.2 Ensure that new mixed-/multi-use developments are compatible with adjacent neighborhoods through project design, scale, and appropriate buffers and transitions between uses. In general, taller projects should step down their heights as they approach adjacent development.

CD19.3 Locate mixed/multi-use development in areas of high visibility and accessibility, and along streets that balance vehicular and pedestrian traffic.

CD19.4 Locate commercial or office uses on the ground floor with residential or office uses on the upper floors in vertical mixed-use projects.

CD19.5 Encourage architectural design that differentiates ground-floor commercial/office uses from residential uses above.

CD19.6 Locate ground-floor commercial uses near the sidewalk to provide high visibility from the street.

CD19.7 Design new development with the pedestrian in mind by including wide sidewalks, shade street trees, sitting areas, and clearly defined pedestrian routes.

CD19.8 Minimize the visual impact of surface parking by providing parking structures or rear or side-street parking with effective landscape buffering.

CD19.9 Segregate residential parking from commercial and office parking.

CD19.10 Ensure privacy for residents by providing each residential use with its own private space (such as balconies, patios or terraces) and larger communal spaces such as lobbies, central gardens, or courtyards.

THE PDD FLEXIBILITY IN SETBACKS AND PARKING AND OPEN SPACE WAS TO CREATE THE MIXED-USE PEDESTRIAN ENVIRONMENT, NOT ISOLATED SFR SMALL LOT DEVELOPMENT

Actions

CD19.1 Amend the zoning code to create mixed/multi-use development standards. The standards should remove potential barriers to this type of development, such as parking, open space, and setback requirements, as well as ensure the feasibility of the implementation of the above policies.

## MIDBLOCK CORRIDOR RESIDENTIAL

Midblock corridor residential is a viable option for mixed-/multi-use areas with marginal uses along a corridor. The creation of midblock corridor residential within mixed-/multi-use areas allows for the concentration of commercial uses at key intersections and the placement of higher-density residential development along roadways such as arterials or collectors. Due to their location along roadways that generally accommodate higher volumes of traffic, midblock corridor residential developments should be set back from the street and oriented to create an interesting and attractive streetscape while allowing for safety and livability and shield units from roadway noise to the greatest extent possible. Midblock residential developments should create a vibrant and pedestrian-friendly environment that is compatible with and will successfully transition into the surrounding neighborhoods.

The Land Use Element identifies portions of the North Palm Canyon Drive/Indian Canyon Drive corridor as mixed-/multi-use areas. These areas are ideal for the introduction of midblock residential development. Midblock corridor residential development in this area will provide a viable alternative to the existing array of underutilized sites and prevent the introduction of strip commercial along the corridor. It will allow commercial uses to be concentrated at prominent intersections, increase the housing stock, and create a varied and visually interesting corridor leading into the downtown area.

## GOAL CD20

**Encourage attractive and well-designed midblock corridor residential development along the North Palm Canyon Drive/Indian Canyon Drive corridor, and other corridors where appropriate.**

Policies

CD20.1 Create a pedestrian-friendly environment along midblock corridor residential development through the use of landscaping, shade trees, special paving, pedestrian-scaled lighting, and small gathering spaces.

**Table 3-12**
**General Plan and Zoning**
**Primary Residential Land Use Designations**

| General Plan Land Use Designation | Zoning Districts | Allowed Residential Uses* |
|---|---|---|
| Estate Residential (0 to 2 du/ac) | G-R-5 | Large estate single-family homes, many of which are near the foothill areas of the community. |
| Very Low Density (2.1 to 4.0 du/ac) | R-1 | Accommodates single-family homes situated on large lots one-half acre or larger. |
| Low Density (4.1 to 6.0 du/ac) | R-G-A | Accommodates "typical" single-family detached residences on 7,500-square-foot or larger lots. |
| Medium Density (6.1 to 15 du/ac) | R-2 | Accommodates single-family attached and detached uses, multiple-family units, and mobile homes. |
| High Density (15.1 to 30 du/ac) | R-3; R-4 | Accommodates higher density residential homes built at a density of 15.1 to 30 dwelling units per acre. |
| Central Business District | CBD | Allows commercial, residential, and office uses at a high intensity and density (21 to 30 units per acre). |
| Tourist Resort Commercial | R-C | Allows commercial, residential and office uses at a medium intensity and density of up to 21 units per acre. |
| Mixed-Use/Multi-Use | MU | Allows commercial, residential, and office uses at a low concentration and density at up to 15 units per acre. |

Notes: Palm Springs allows residential development in the Open Space/Conservation, Mountain, and Desert land use designations at a lower density than the above residential land use categories. A Small Hotel land use classification also allows up to 10 units per acre. The Land Use Element provides more detail on these categories
*All housing types can be allowed in any designation, with approval of a Planned Development Permit.

**Compatible underlying zoning**

**The use of the PDD changes the MU/MU Density to 15-30 du/ac**

## Land Ownership

One of the distinguishing characteristics in Palm Springs is the unique pattern of land ownership. Palm Springs is divided into Indian and non-Indian property holdings, based upon a grid pattern of square-mile sections of alternating ownerships. This grid pattern of alternating ownership dates back to the original land agreement between the Agua Caliente Band of Cahuilla Indians (the Tribe) and the federal government.

Indian lands fall into three categories:

- ***Tribal Trust Lands.*** In the 1970s, the City and the Tribe came to an agreement that recognized the Tribe's authority to regulate Indian Trust lands. Under this agreement, the City acts as the Tribe's agent to impose City land use regulations and consults with the Tribe regarding any action that may affect Indian Trust Lands. In addition, the agreement established an appeal process designating the Tribal Council as the final authority over land use matters on Indian lands.

Senate Bill 1818 amended state law by lowering the affordable housing requirement and increasing the bonus and incentives. Density bonuses are discussed in the Development Review Committee and during the pre-application phase.

- ***Planned Development (PD).*** The Zoning Code allows PD districts to foster and encourage innovative design, variety, and flexibility in land use and housing types that would not otherwise be allowed in zoning districts. Density under the PD district is allowed by zoning and the General Plan, but may be increased if the district assists the City in meeting its housing goals as set forth in the Housing Element. The form and type of development on the site must be compatible with the existing or planned development of the neighborhood. The PD requires approval by the Planning Commission and City Council.

- ***Variance.*** A variance may be granted for a parcel with physical characteristics so unusual that complying with the requirements of the Zoning Code creates an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and, in general, not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners. A variance requires approval from Planning Commission.

Does this mean the regulatory incentive is tied to "facilitation of housing projects" and must be justified by an increase in housing density?

**Table 3-15**
**Regulatory Incentives**

| | Sample of Reductions in Standards | | | | |
|---|---|---|---|---|---|
| **Procedure** | **Density** | **Yards/Open Space** | **Lot Area** | **Parking** | **Approval** |
| Minor Modification | No | Up to 20% | Up to 10% | Up to 10% | Planning Director |
| Density Bonus Provision | Up to 25 | Depends on requested concession | | | By-Right |
| Planned Development | Limited by General Plan | No limit | No limit | No limit | Planning Commission & City Council |
| Variance | Limited by General Plan | Depends on topography | | | |

Source: City of Palm Springs Zoning Code, 2013.

The City of Palm Springs has utilized each of these mechanisms to facilitate the development of recent affordable housing projects in the



HOUSING ELEMENT AT PAGE 3-38

3.7.3 Limited commercial uses may be permitted for resident and guest use.

3.7.2 Limit new development to three-story structures; a maximum height of 30 feet may be achieved for hotels if a variety of building heights is achieved for design purposes. A maximum height of 60 feet may be achieved through the approval of a planned development which ensures that the effects of such height are compatible in scale and character with the existing natural and urban setting. Stricter development standards may be required by ordinance or by condition of the planned development.

## HIGH DENSITY RESIDENTIAL

3.8.1 Require that the design of new residential and hotel development include the following:

UNDER CALIFORNIA CONSISTENCY DOCTRINE, APPLICABLE TO CHARTER CITIES AND EXPRESSLY ADDRESSED IN PFPP v. CITY OF PALM SPRINGS, THE ORDINANCES MUST BE EXERCISED IN A MANNER THAT FURTHERS THE GENERAL PLAN GOALS AND OBJECTIVES FOR THE PLANNING AREA AND DOES NOT FRUSTRATE THEIR ATTAINMENT

THE OPEN SPACE OBJECTIVES, RESIDENTIAL HOUSING TYPES, DENSITY, AND MIXTURE OF USES SHOULD BE EXERCISED IN A MANNER CONSISTENT WITH GENERAL PLAN DIRECTIVES

a. a minimum of 45% of the lot area shall be maintained as on-site open space/recreational area.
b. incorporation of a minimum area of the required common open space at grade or the level of the first habitable floor;
c. design of common open space so that it is easily accessible and of sufficient size to be usable by all residents;
d. incorporation of architectural design details and elements which provide visual character and interest, avoiding flat planar walls and "box-like" appearances; and
e. protection of privacy and view for adjacent single-family structures with increased setbacks to the second-story max.

3.8.2 Allow the consolidation of abutting residential and commercial parcels into unified mixed-use development projects containing an aggregate site area of at least two (2) acres, provided that:

a. the total yield of development does not exceed that permitted by the underlying land use classifications;
b. at least 50% of the maximum allowable residential density is developed;
c. no residential uses are located along the ground floor of the commercial frontage;
d. only residential uses are developed along the residential street frontage;

e. a planned development is prepared and approved that demonstrates that the project:
    1. is compatible with and complements adjacent uses;
    2. maintains or increases the existing number of residential units and those for low- and moderate-income households or seniors; and
    3. adequately mitigates traffic, noise, light and glare and other environmental impacts; and

f. the project increases the supply of neighborhood-serving commercial uses.

3.8.3 Limit new development to two-and three-story structures; a maximum height of 60 feet may be achieved through the approval of a planned development which ensures that the effects of such eight is compatible in scale and character with the existing natural and urban setting. Stricter development standards may be required by ordinance or by condition of the planned development. A maximum of 100 feet may be achieved on Indian Land.

THE HEIGHT REQUIREMENTS ARE COMMENSURATE TO THE HEIGHT ASSOCIATED WITH CLUSTERED MIXED-USE DEVELOPMENT, UNLIKE SINGLE-FAMILY DEVELOPMENT LOW STRUCTURES

## LARGE SCALE RESORT

3.9.1 The site shall contain a minimum of 40 acres and have adequate infrastructure available.

3.9.2 The density allowed for a Large-Scale Resort shall be a threshold of ten (10) to a maximum of thirty (30) dwelling units per acre.

3.9.3 Site access shall be limited to secondary and major thoroughfares.

3.9.4 Building height should be limited to 30 feet. Building height in excess of those in the immediate area, with a maximum of 60 feet, may be allowed where it can be demonstrated that no significant impacts result from the increased height.

3.9.5 The site shall contain appropriate social/cultural amenities, such as golf courses, tennis facilities, conference rooms, water-related recreation facilities, and equestrian facilities.

3.9.6 A minimum of 75% of the lot area shall be maintained as on-site open space/recreational area.

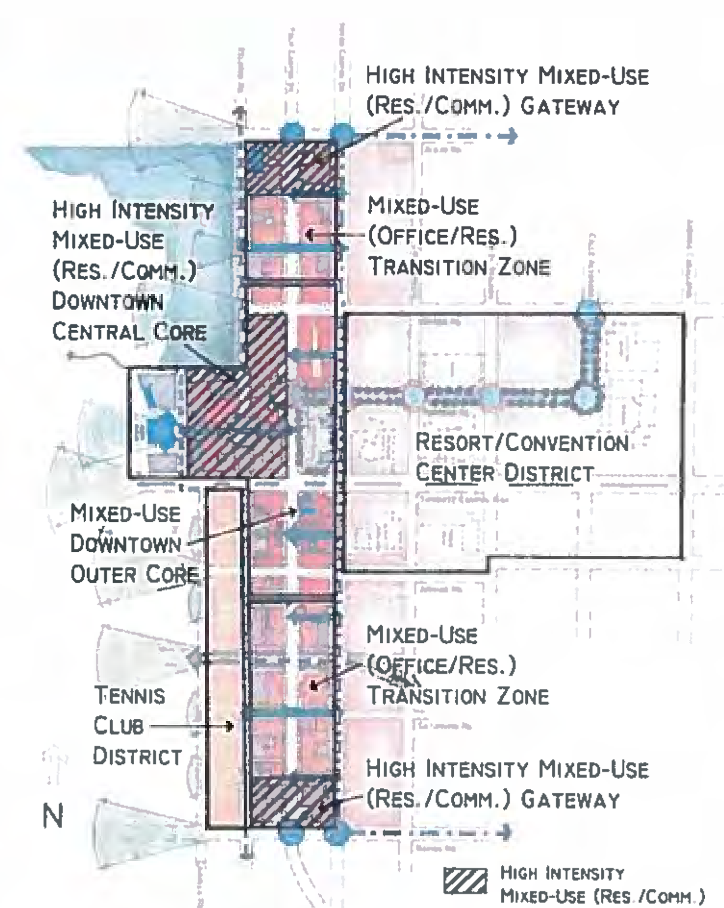
3.9.7 A Planned Development District application shall be required for approval of a Large-Scale Resort.

GEN PLAN
APPENDIX A
DOWNTOWN
URBAN DESIGN
PLAN

## land use & development / districts

Currently, the majority of downtown Palm Springs is used primarily during the daytime. However, there is potential to extend the hours of use and to create a more exciting and lively atmosphere in downtown Palm Springs through the introduction of mixed-use residential developments and the expansion of nighttime commercial/retail uses. People create a sense of vitality through activity and use of the streets and sidewalks. Downtown residents would enliven the area by using downtown areas when others have left and by creating a new nighttime market for activities, stores, and restaurants. Therefore, downtown Palm Springs would benefit from downtown residents and those new residents would benefit from the exciting and lively atmosphere of the area.

To achieve the desired mix of vitality and activity, downtown Palm Springs should be comprised of a number of different zones distinguished by land use and height. These zones include: the core (comprised of a high intensity mixed-use center with taller buildings surrounded by a vibrant mixed-use area); two shorter, less intense mixed-use transition zones to the north and south of the core; taller, more intense north and south gateway areas; the Resort/Convention Center District; and the Tennis Club District (see map to the right). Further defined theme based districts (areas identified by specialized uses, such as cultural and art uses, restaurant uses, nightlife uses, etc.) within these larger districts are encouraged and should be strengthened where they already exist when possible.




*Above: A map of zones in downtown Palm Springs. (For building heights for the various zones see the "Building Height, Orientation, Massing, & Design" section starting on page thirty-six.) These zones should be further subdivided into theme based districts to create areas with separate and unique identities within the downtown.*

TRANSITION ZONES ARE BUILT THROUGH GENERAL PLAN LAND USE CLASSIFICATION ALONG ALL MAJOR TRANSPORTATION CORRIDORS, IN THIS INSTANCE, PALM CANYON DRIVE,

THE NORTH/SOUTH TRANSITION INVOLVES DECREASING DENSITY IN STAGES FROM CBD TO MIXED-USE (WOODBRIDGE) TO TRC AND NEIGHBORHOOD COMMERCIAL

THE EAST/WEST TRANSITION OCCURS ALONG PALM CANYON DRIVE THRU AN APPROX. 300 FT (?) BUFFER OF COMMERCIAL WITH RESIDENTIALL BACKDROP, AND A FEW PLANNED MIXED-USE NODES THAT ACHIEVE A MIXTURE OF COMMERCIAL AND RESIDENTIAL AS ANOTHER FORM OF TRANSITION

• **Downtown Core:** The downtown core (approximate area bounded by Amado Road and Arenas Road and Museum Drive and Indian Canyon Drive) should be a vibrant, compact, and walkable center of activity in the downtown area. The core should be comprised of a central core area consisting of taller (max. 60 ft; see "Building Height, Orientation, Massing, & Design" section starting on the next page for more detail on allowed building heights in the downtown), high intensity mixed-use (residential/ commerical) buildings surrounded by an equally vibrant, but shorter (max. 30 to 45 ft.) mixed-use (commercial/office/ residential) outer core area.

• **Transition Zones:** The transition zones should serve as less intense connector areas between the high intensity downtown core and north and south gateways to help create a varied downtown experience. These areas are ideal for theme based districts (areas with similar or complementary uses such as restaurants, art galleries, etc.) and should consist primarily of shorter, one to two story (max. 30 ft.) commerical/office mixed-use buildings. Slightly taller mixed-use buildings with ground floor retail/office and residential lofts above (max. 45 ft.) are permitted on the east side of Palm Canyon Drive.

• **Gateways:** The north and south entrances to the downtown (along Alejo Road and Ramon Road between Belardo Road and Indian Canyon Drive) should be well defined areas that make one's entrance into the downtown a memorable experience. They should be taller (max. 60 ft.), high intensity mixed-use (residential/ commercial) areas with distinctive landscaping and signage marking the entrance to downtown.

• **The Resort/Convention Center District:** This district is completely contained within the Section 14 area and its land uses are defined by the Section 14 Specific Plan. The district's location adjacent to the downtown core makes it an integral part of the downtown. It should be well connected with the rest of the downtown to ensure the success of the entire downtown area.

• **The Tennis Club District:** The Tennis Club district is an important historic area in downtown Palm Springs. It contains many architecturally, socially, and culturally important hotels, small resorts, and residences. This district should continue to retain the current land uses, sense of place, and character that currently exists.

• Within all of the downtown zones (especially in the core and transition areas) theme based villages or districts are encouraged. These districts should be lively, walkable areas with similar or complementary uses that create a sense of district identity. These areas should be connected with each other and the central downtown core to create a dynamic and pedestrian friendly downtown. Existing theme based districts should be strengthened and new ones created when possible.

## land use & development / districts

MIXED-USE DISTRICTS ACT AS A BLEND BETWEEN HIGH DENSITY COMMERCIAL (CBD) AND NEIGHBORHOOD COMMERCIAL AND RESIDENTIAL AREAS.

THIS IS THE FUNCTION OF THE PALM CANYON / SUNNY DUNES MIXED-USE DISTRICT

**91.00.04 Establishment of zones.**

A. Division of City into Zones—Purpose.

In order to classify, regulate, restrict and separate the use of land, buildings and structures and to regulate and to limit the type, height and bulk of buildings and structures in the various districts and to regulate the areas of yards and other open areas abutting and between buildings and structures and to regulate the density of population, the city is divided into the following zones:

1. Residential Zones.

| | |
|---|---|
| a. G-R-5 ESTATE RESIDENTIAL (0-2) | Guest ranch zone |
| b. R-1-AH VERY LOW DENSITY (2-4) | Single-family residential zone twenty thousand (20,000) square feet, |
| c. R-1-A VERY LOW DENSITY (2-4) | Single-family residential zone twenty thousand (20,000) square feet; |
| d. R-1-B VERY LOW DENSITY (2-4) | Single-family residential zone fifteen thousand (15,000) square feet; |
| e. R-1-C VERY LOW DENSITY (2-4) | Single-family residential zone ten thousand (10,000) square feet; |
| f. R-1-D VERY LOW DENSITY (2-4) | Single-family residential zone seven thousand five hundred (7,500) square feet; |
| g. R-G-A(6) LOW DENSITY (4-6) | Cluster residential zone; SFR ON 7,500 SF LOTS OR LARGER |
| h. R-G-A(8) LOW DENSITY (?) | Garden apartment multiple-family residential zone; SFR ON 7,500 LOTS OR LARGER |
| i. R-2 MEDIUM DENSITY (6-15) | Limited multiple-family residential zone; |
| j. R-3 HIGH DENSITY (15-30) | Multiple-family residential and hotel zone; |
| k. R-4 HIGH DENSITY (15-30) | Large scale hotel and multiple-family residential zone; |
| l. R-4-VP HIGH DENSITY (15-30) | Vehicle parking and large-scale hotel and multiple-family residential and limited commercial retail zone; |
| R-MHP | Residential mobilehome park zone. |

2. Commercial Zones.

| | |
|---|---|
| a. P | Professional zone; |
| b. C-B-D | Central business district zone; |
| c. C-D-N | Designed neighborhood shopping center zone; |
| d. C-S-C | Community shopping center zone; |
| e. C-1 | Retail business zone; |
| f. C-1AA | Large scale retail commercial zone; |
| g. C-2 | General commercial zone; |
| h. C-M | Commercial manufacturing zone; |
| | |

| | |
|---|---|
| i. H-C | Highway commercial zone; |
| j. R-4-VP | Vehicle parking and large scale hotel and multiple-family residential and limited commercial retail zone. |

3. Manufacturing/Industrial Zones.

| | |
|---|---|
| a. M-1-P | Planned research and development park zone; |
| b. M-1 | Service/manufacturing zone; |
| c. M-2 | Manufacturing zone; |
| d. E-I | Energy industrial zone. |

4. Open Space Zones.

| | |
|---|---|
| a. W | Watercourse zone; |
| b. 0 | Open land zone; |
| c. 0 - 5 | Open land zone; |
| d. 0 - 20 | Open land zone; |
| e. U - R | Urban reserve zone. |

5. Miscellaneous Zones/Overlays.

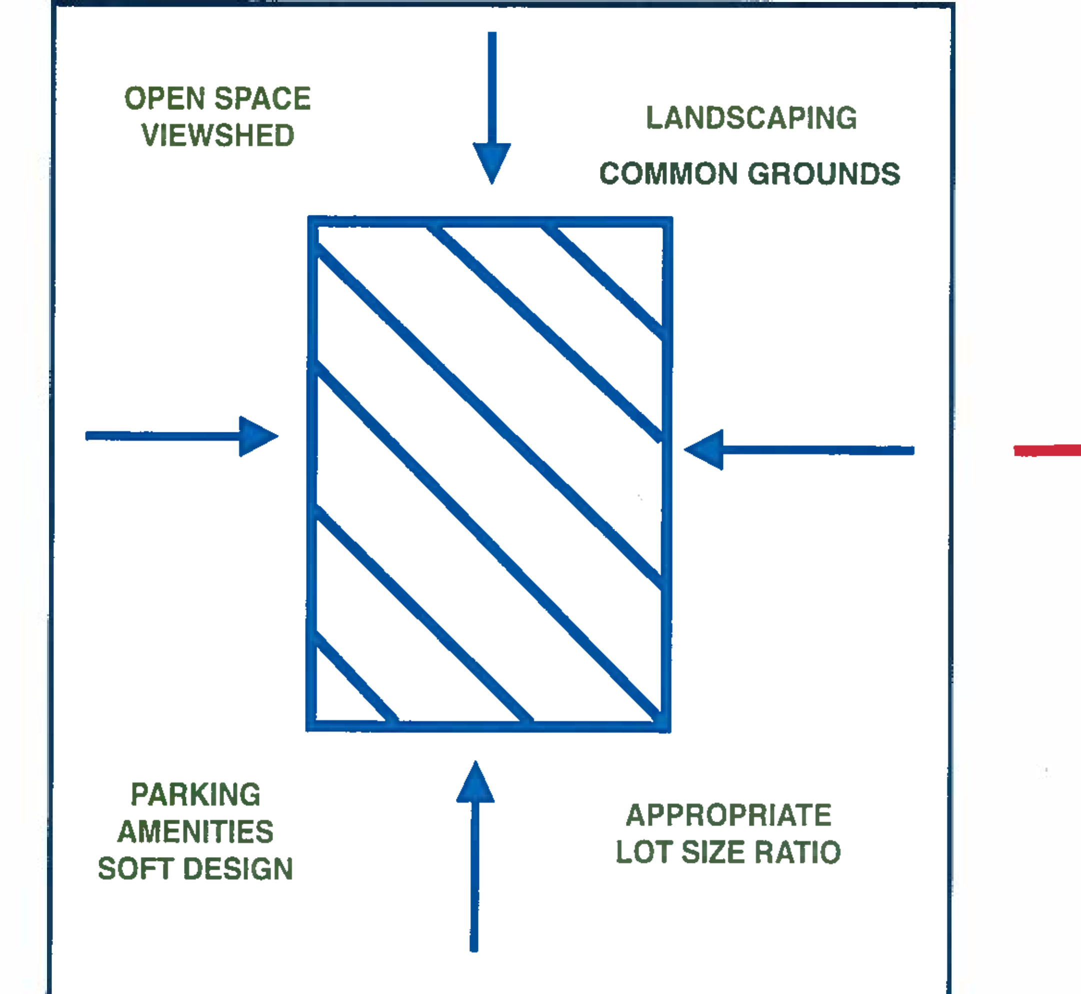
| | |
|---|---|
| a. A | Airport zone; |
| b. CC | Civic center district zone; |
| c. D | Downtown parking combining zone; |
| d. G | Gaming overlay zone; |
| e. H | Historic preservation combining zone; |
| f. IL | Indian Land; |
| g. N | Noise impact combing zone; |
| h. PD | Planned development district; |
| i. R | Resort combining zone. |

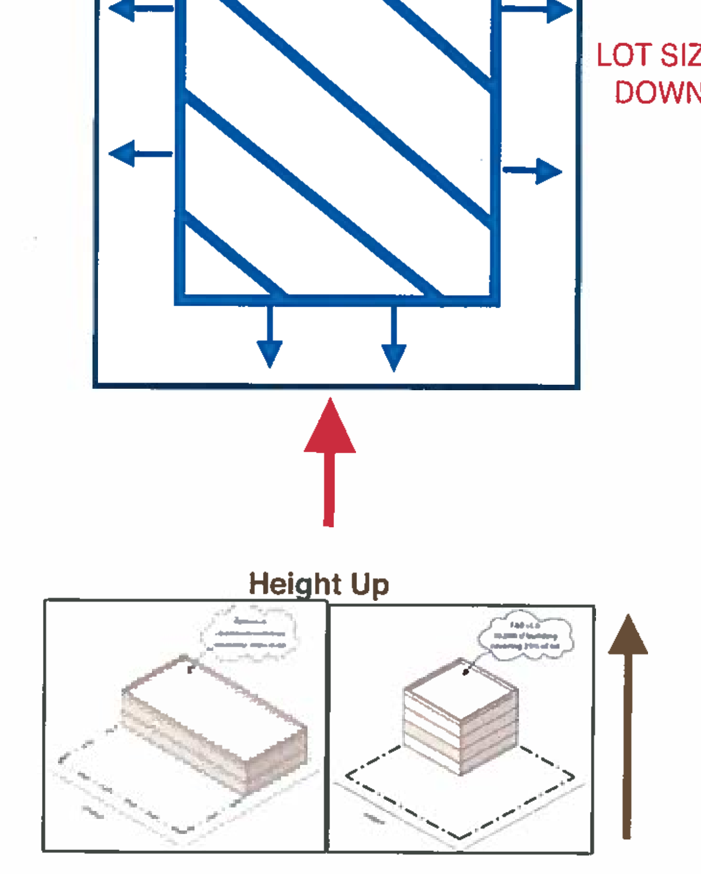
B. Adoption of Districts—Maps.

Such zones and boundaries of such zones and each of them are established and adopted and are shown, delineated and designated on the "Official Zoning Map" of the city of Palm Springs, Riverside County, California, which map, together with all notations, references, data, district boundaries and other information thereon, is attached hereto and made a part hereof and is adopted. (Ord. 1551, 1998; Ord. 1294, 1988)

# DOWN AND OUT AND UP

THE SPATIAL ORIENTATION OF LOT RATIO




"THE LOT SQUEEZE"
LOT SIZE DOWN
BUILDING COVERAGE OUT
HEIGHT UP

THE "SQUEEZE" REDUCES RESIDENTIAL DENSITY
BECAUSE IT IS USED FOR SMALL LOT SFR IN PLACE OF MFR

THE ABSENCE OF TRADITIONAL ZONING PROTECTIONS
LOT RATIOS / TRADE-OFFS BETWEEN HEIGHT & OPEN SPACE

**Flinn Fagg**

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| | |
|---|---|
| **From:** | Judy Deertrack <judydeertrack@gmail.com> |
| **Sent:** | Wednesday, October 05, 2016 11:02 PM |
| **To:** | Kathy Weremiuk; Flinn Fagg; David Ready; Jim Harlan; Lyn Calerdine; T Conrad |
| **Cc:** | Frank Tysen; Robert Stone |
| **Subject:** | SECOND OF TWO TRANSMISSIONS |
| **Attachments:** | 07 VLDR ZONE PLANNING ANALYSIS WITH EXHIBITS.pdf |

This last grid is the VLDR Comparison Grid.
Judy

| ANALYSIS GRID FOR VERY LOW DENSITY RESIDENTIAL | | | | | | | |
|---|---|---|---|---|---|---|---|
| GP ELEMENT AND PAGE # | ZONE | DENSITY RANGE | LOT SIZE | LOT AREA COVERAGE | OPEN SPACE | MAXIMUM HEIGHT | HOUSING TYPE |
| LUE VLDR 2-5 | | 2-4 du/ac | 8,500-16,500 sf | | | | SFR Detached |
| APP E<br>BRIDGE E-1 & 2<br>VL RESIDENTIAL | | | | | VLDR= 70% OS On-Site Recreation Area | Max. 26 feet<br>Setbacks=Height | SFR= Primary LU<br>1/DU per lot<br>Limit Commercial |
| APP E<br>BRIDGE E-10 &11<br>Density/Intensity<br>L 1 / 2 VL Density | | 1-2 du/ac | | | | Max. 26 feet<br>Hillside 30 feet | |
| HOUSING 3-29<br>TABLE 3-12<br>Primary Res.<br>LU Designations | R-1 | 2 – 4 du/ac | | | | | SFR on large lots ½ acre or larger<br>------<br>All housing types allowed with PDD |
| HOUSING 3-34<br>Development Standards | VLDR<br>SFR allowed in G-R-5 and R-1 | | 7,000–20,000 sf | | | | SFR |
| HOUSING 3-35<br>TABLE 3-14<br>Primary Res.<br>Dev. Standards | R-1 | 4 du/ac<br>Max. Density determined by Gen Plan LUD | 7,500-20,000 sf | | No Open Space Development Standards | One-story (18') | |
| HOUSING 3-38<br>TABLE 3-15<br>Waiver Provisions For PDD's | | Density Limited by General Plan | | No Limit to Reduction in Standards with PDD | No Limit to Reduction in Standards with PDD | | |

## RESIDENTIAL LAND USES

**Estate Residential (0–2.0 dwelling units per acre).** The Estate Residential designation provides for the development of large-lot, single-family residences that are custom in design. This designation is predominantly located in areas adjacent to the City's hillsides, reflecting the natural and environmental constraints that must be addressed there. Minimum lot sizes are generally 20,000 square feet in this designation; guest ranches are permitted on parcel areas of five acres, with a minimum lot area of 4,000 square feet per guest ranch unit.

*Estate Residential*

**Very Low Density Residential (2.1–4.0 dwelling units per acre).** The Very Low Density residential is the most prevalent land use designation within the City, representing typical single-family detached residential development. Lot sizes in this land use designation generally range from 16,500 to 8,500 square feet.

**Low Density Residential (4.1–6.0 dwelling units per acre).** Similar to the Very Low Density Residential designation, the Low Density Residential designation also represents "typical" single-family detached residential development. This designation accommodates typical lot sizes ranging from 10,000 to 8,000 square feet.

**Medium Density Residential (6.1–15.0 dwelling units per acre).** This residential land use category accommodates a range of residential housing types, including single-family attached, single-family detached, patio homes, duplexes, townhomes, multiple-family, and mobilehome projects.

*Medium Density Residential*

**High Density Residential (15.1–30 dwelling units per acre).** Typical development in this category would include duplexes, townhomes, and apartments. Hotels and motels are also permitted up to 43 rooms per net acre (up to 86 rooms per net acre permitted on Indian Land) as long as they are consistent with the design and character of the surrounding neighborhoods and do not create significant design, parking, or traffic impacts to the surrounding residential neighborhood.

# APPENDIX E. BRIDGE POLICIES

## BRIDGE POLICIES

The following policies are intended to cover development standards dropped or not carried forward from the 1993 plan and are intended to be incorporated as text revisions to the Palm Springs Zoning Ordinance.

Upon adoption of the zoning ordinance text revisions by City Council, the General Plan bridge policies shall be deemed repealed and no longer in effect. Where land use designations have been superseded by new designations, the Director of Planning shall make a determination as to which bridge policy applies based on the new designation which most closely applies to the existing bridge policy land use designation

### RURAL AND VERY LOW RESIDENTIAL

3.4.1 Single-family residences shall be the primary land use and shall be restricted to one residence per lot; attached dwellings may be permitted in cluster development.

3.4.2 Limited commercial uses and services, and facilities for the keeping of horses, may be permitted for resident and guest use.

3.4.3 Limit new building heights to a maximum of 26 feet with minimum setbacks from property lines equal to the height.

3.4.4 Residential structures on lots with a slope of 10% or greater may exceed the height limit if the following requirements are met:

a. the maximum height shall be 30 feet;
b. the windows of a second-story shall be oriented away from the living space, exterior and interior, of adjoining property;

c. views from neighboring structures are protected to the greatest degree possible; and
d. the development site shall be designed so that the structure will fit into the natural landscape; site with uni-level pads shall not be eligible for the additional height.

3.4.5 A minimum of 75% of the lot area in Rural Residential areas, and 70% in Very-Low-Density Residential areas, shall be maintained as on-site open space/recreational area.

3.4.6 Special street and development standards are encouraged in Rural Residential areas to maintain a "relaxed" rural atmosphere.

## LOW DENSITY RESIDENTIAL

3.5.1 Single-family detached units shall be the primary land use and shall be restricted to one unit per lot; attached dwellings may be permitted in cluster developments.

3.5.2 Limit new building heights o a maximum of 18 feet and one story. A limited number of units within a planned development may contain a second story if the following requirements are met:

a. the maximum height shall be 25 feet;
b. the windows of the second story shall be oriented away from the living space, exterior and interior, of adjoining units;
c. the two-story elements shall be placed toward the south portion of any individual lot; and
d. the two-story units shall be located so that they are not visible at the boundaries of the planned development.

3.5.3 Residential structures on lots with a slope of 10% or greater may exceed the height limit if the following requirements are met:

a. the maximum height shall be 30 feet;
c. the architectural character of the dwelling must be of a high quality;
d. views from neighboring structures are protected to the greatest degree possible; and
e. the development site shall be designed so that the structure will fit into the natural landscape; sites with uni-level pads shall not be eligible for the additional height.

3.5.4 A minimum of 65% of the lot area shall be maintained as on-site open space/recreational area.

**Land Use Density/Intensity**

| Land Use | Density (dwelling units/acre) | Population | Floor Area Ratio | Bldg. Height (feet) | Lot Coverage (%) |
|---|---|---|---|---|---|
| **Residential** | | | | | |
| R .2/.4 – Rural Residential | 0.2–0.4 | 2.52 C | – | 26 (30*) | 25 |
| L 1 / 2 Very Low Density | 1–2 | 2.52 C | – | 26 (30*) | 30 |
| L4 Low Density | 3–4 | 2.52 C | – | 18 (30*) | 35 |
| L6 Low Density | 4–6 | 2.52 C | – | 18 (30*) | 35 |
| M8 Medium Density | 6–8 | 1.90 C | – | 24 | 50 |
| M15 Medium Density | 12–15 | 1.91 C | – | 24 | 50 |
| H30 Medium High Density | 21–30 | 1.99 C | – | 30–60<br>100 I | 55 (40 H) |
| H 43/21 High Density | 30–43 (86 I) A<br>15–21 B | 1.99 C | – | 30–60<br>100 I | 55 (40 H) |
| H 43/30 High Density | 30–43 (86 I) A<br>21–30 B | 1.78 C | – | 30–60<br>100 I | 55 (40 H) |
| CDL 6 Density Controlled | 3–6 | 1.90 C | – | 25 | 35 |
| CDL 8 Density Controlled | 3–8 | 1.90 C | – | 25 | 35 |
| LSR Large-Scale Resort | 10–30 | 10-30 D | – | 30–60 | 25 |
| **Commercial/Industrial** | | | | | |
| CBD Central Business District | 30–43 (86I) A<br>21–31 B | 54D | 1.00<br>(0.38 E) | 30–60 | – |
| NCC Neighborhood Convenience Center | – | 38 D | –<br>(0.28 E) | 30 | 60 |
| CSC Community Shopping Center (Commercial) | – | 30 D | (0.28 E) | 30 | 60 |
| CSC Community Shopping Center (Hotel/Multi-Family Residential) | 43/21 | 1.99 C | – | 30–60 | 55 (40 H) |
| RC Resort Commercial | 30–43 (86I) A<br>15–21 B | 49 D | –<br>(0.28 E) | 35 | 95 |
| P Professional | 12–21 B | 73 D | –<br>(0.28 E) | 24–60 | 60 |
| GC General Commercial | – | 49 D | –<br>(0.28 E) | 30 | 60 |
| HC Highway Commercial | 30–43 B | 44 D | –<br>(0.28 E) | 30 | 60 |
| BI Business Industrial ** | 30–43 B | 24 D | –<br>(0.23 E) | 30–60 | 60 |
| **Open Space** | | | | | |
| C Conservation | 1 / 20 | 2.52 C | – | 30 | 10 |
| D Desert | 1 / 5–3½ | 1.90 C | – | 15 | 10 |
| PR Parks & Recreation | – | – | – | 24 | 10 |
| W Watercourse | – | – | – | – | – |

**Table 3-12**
**General Plan and Zoning**
**Primary Residential Land Use Designations**

| General Plan Land Use Designation | Zoning Districts | Allowed Residential Uses* |
|---|---|---|
| Estate Residential (0 to 2 du/ac) | G-R-5 | Large estate single-family homes, many of which are near the foothill areas of the community. |
| Very Low Density (2.1 to 4.0 du/ac) | R-1 | Accommodates single-family homes situated on large lots one-half acre or larger. |
| Low Density (4.1 to 6.0 du/ac) | R-G-A | Accommodates "typical" single-family detached residences on 7,500-square-foot or larger lots. |
| Medium Density (6.1 to 15 du/ac) | R-2 | Accommodates single-family attached and detached uses, multiple-family units, and mobile homes. |
| High Density (15.1 to 30 du/ac) | R-3; R-4 | Accommodates higher density residential homes built at a density of 15.1 to 30 dwelling units per acre. |
| Central Business District | CBD | Allows commercial, residential, and office uses at a high intensity and density (21 to 30 units per acre). |
| Tourist Resort Commercial | R-C | Allows commercial, residential and office uses at a medium intensity and density of up to 21 units per acre. |
| Mixed-Use/Multi-Use | MU | Allows commercial, residential, and office uses at a low concentration and density at up to 15 units per acre. |

Notes: Palm Springs allows residential development in the Open Space/Conservation, Mountain, and Desert land use designations at a lower density than the above residential land use categories. A Small Hotel land use classification also allows up to 10 units per acre. The Land Use Element provides more detail on these categories.
*All housing types can be allowed in any designation, with approval of a Planned Development Permit.

## Land Ownership

One of the distinguishing characteristics in Palm Springs is the unique pattern of land ownership. Palm Springs is divided into Indian and non-Indian property holdings, based upon a grid pattern of square-mile sections of alternating ownerships. This grid pattern of alternating ownership dates back to the original land agreement between the Agua Caliente Band of Cahuilla Indians (the Tribe) and the federal government.

Indian lands fall into three categories:

- ***Tribal Trust Lands.*** In the 1970s, the City and the Tribe came to an agreement that recognized the Tribe's authority to regulate Indian Trust lands. Under this agreement, the City acts as the Tribe's agent to impose City land use regulations and consults with the Tribe regarding any action that may affect Indian Trust Lands. In addition, the agreement established an appeal process designating the Tribal Council as the final authority over land use matters on Indian lands.

designation. No conditional use permit, zoning variance, or other zoning clearance is required of employee housing that is not required of a dwelling unit of the same type in the same zone. The same applies to taxes and fees.

### *Mixed-Use Housing*

Mixed-use/multi-use housing is allowed in the Central Business District (at up to 21 to 30 units per acre), the Tourist Resort Commercial, and Mixed-Use/Multi-Use land use designations (at up to 15 dwelling units per acre). The amendments to the Zoning Ordinance include densities of up to 70 units per acre in the Mixed Use/multi-use designated lands in the Downtown, consistent with the requirements of the General Plan. As part of the comprehensive update of the Zoning Ordinance to be completed in 2014, the City is also including development standards which offer sufficient flexibility to encourage mixed use opportunities. A program is included in this document to assure completion of this task.

## Development Standards

The General Plan sets forth broad policies on where housing can be located in Palm Springs and the permitted density of residential development. However, the Zoning Ordinance provides specific guidance on applicable development standards. To ensure a wide range of housing opportunities and prices, residential development standards should vary accordingly in order to facilitate different types and prices of housing products.

The City allows a range of housing types in 10 primary residential zones. Development standards for different types of housing by zone are summarized below and in Table 3-14.

- Single-family homes are allowed in the Guest Ranch Zone (G-R-5) and R-1 with variations for lot sizes ranging from 7,000 to 20,000 square feet. This zoning district corresponds to general plan land use designation of estate and very low density.
- The City has three multiple-family residential zones, including garden apartments (R-G-A), limited multiple-family (R-2), and multiple-family residential and hotel (R-3 and R-4).
- The CBD zone allows for mixed residential and commercial projects, provided the projects satisfy the R-3 and R-4 development standards, which correspond to the high density residential land use designation.

**Table 3-14**
**Primary Residential Land Use Zones**

| Zone | Development Standards | | | | |
|---|---|---|---|---|---|
| | Density Range | Minimum Lot Size | Maximum Height | Front, Interior, and Rear Yard | Open Space |
| GR-5 | 2 du/ac | 5 acres | 1 story (15 ) | 50 x 50 x 50 | None |
| R-1 | 4 du/ac | 7,500–20,000 sf | 1 story (18 ) | 25 x 10 x 15 | None |
| R-G-A | 6 du/ac | 2 acres | 1 story (24 ) | 25 x 10 x 20 | None |
| R-2 | 15 du/ac | 20,000 sf | 2 stories (24 ) | 25 x 10 x 10 | 50% lot* |
| R-3 | 21 du/ac | 20,000 sf | 2 stories (24 ) | 25 x 10 x 10 | 45% lot* |
| R-4/CBD** | 30 du/ac | 2 acres | 30 maximum | 30 x 10 x 20 | None |
| R-MHP | — | 5,000 sf | 2 stories (24 ) | 40 x 15 x 15 | None |

Source: City of Palm Springs Zoning Code, 2013
Slight modifications are required on corner lots
*May include balconies, terraces, roof decks, patios, landscaped areas, etc
**To increase to 70 du/acre in the CBD, with 2014 Zoning Ordinance amendments
Maximum density is determined or controlled by the General Plan land use designation

The most pertinent development standards that affect the construction of new housing in Palm Springs include:

- ***Density Standards.*** The City's residential density standards are typical for communities in the Coachella Valley and are sufficient to facilitate and encourage the construction of housing for various income levels. For instance, over the past few years, the City has developed affordable housing at a range of densities, to up to 35 units per acre, with the use of density bonuses. These housing densities are allowed and achieved in the R-3 and R-4 zones. Affordable housing has been built at various density levels in the Vista Del Monte, Vista Serena, Coyote Run, Vista Sunrise, and Vista Del Sol projects (please see the Inventory section, below).

- ***Parking Standards.*** City parking requirements are designed to ensure that on-site spaces are available to accommodate vehicles owned by residents. According to the 2010 Census, the majority (48%) of homeowners have 1 vehicle available, and 37% have 2 vehicles available. Among renters, 60% have 1 vehicle available, and 23% have 2 available. The City's Zoning Code requires that two parking spaces be provided per single-family units. The City requires multiple-family units to have 1 primary space for studio units, 1.5 spaces for two-bedroom units, and 0.75 space per bedroom for larger units. One space

Senate Bill 1818 amended state law by lowering the affordable housing requirement and increasing the bonus and incentives. Density bonuses are discussed in the Development Review Committee and during the pre-application phase.

- ***Planned Development (PD).*** The Zoning Code allows PD districts to foster and encourage innovative design, variety, and flexibility in land use and housing types that would not otherwise be allowed in zoning districts. Density under the PD district is allowed by zoning and the General Plan, but may be increased if the district assists the City in meeting its housing goals as set forth in the Housing Element. The form and type of development on the site must be compatible with the existing or planned development of the neighborhood. The PD requires approval by the Planning Commission and City Council.
- ***Variance.*** A variance may be granted for a parcel with physical characteristics so unusual that complying with the requirements of the Zoning Code creates an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and, in general, not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners. A variance requires approval from Planning Commission.

**Table 3-15**
**Regulatory Incentives**

| Procedure | Sample of Reductions in Standards | | | | Approval |
|---|---|---|---|---|---|
| | Density | Yards/Open Space | Lot Area | Parking | |
| Minor Modification | No | Up to 20% | Up to 10% | Up to 10% | Planning Director |
| Density Bonus Provision | Up to 25 | Depends on requested concession | | | By-Right |
| Planned Development | Limited by General Plan | No limit | No limit | No limit | Planning Commission & City Council |
| Variance | Limited by General Plan | Depends on topography | | | Planning Commission & City Council |

Source: City of Palm Springs Zoning Code, 2013.

The City of Palm Springs has utilized each of these mechanisms to facilitate the development of recent affordable housing projects in the

**Flinn Fagg**

| | |
|---|---|
| **From:** | Judy Deertrack <judydeertrack@gmail.com> |
| **Sent:** | Thursday, October 06, 2016 8:49 AM |
| **To:** | Kathy Weremiuk; Flinn Fagg; T Conrad; Jim Harlan; Lyn Calerdine; David Ready |
| **Cc:** | Frank Tysen; Robert Stone |
| **Subject:** | Fwd: WORKING GRAPHS THAT MAY BE HELPFUL / PDD STUDY GROUP |
| **Attachments:** | 00 00 TEMPLATE GENERAL PLAN POLICIES USE OF THE PDD EXHIBITS.pdf |

Folks,

I made a revision to one of my graphs. I left out several sub-paragraphs that are important from the General Plan Administration Element at page 1-18. I also re-titled the Exhibit to make it a little easier to distinguish from the grid that covers Ordinance 93.04.00.

Thank you.

Judy Deertrack
760 325 4920

---------- Forwarded message ----------
From: **Judy Deertrack** <judydeertrack@gmail.com>
Date: Wed, Oct 5, 2016 at 10:57 PM
Subject: WORKING GRAPHS THAT MAY BE HELPFUL / PDD STUDY GROUP
To: Kathy Weremiuk <kathy.weremiuk@verizon.net>, Flinn Fagg <Flinn.Fagg@palmsprings-ca.gov>, Jim Harlan <JimHarlan@aol.com>, Lyn Calerdine <lyn.calerdine@gmail.com>, T Conrad <Tracy@smoketreeranch.com>
Cc: Frank Tysen <frankjtysen@gmail.com>, Robert Stone <rjuliansf@aol.com>, David Ready <David.Ready@palmsprings-ca.gov>

Folks,

ONE OF TWO TRANSMISSIONS

I thought I would share some of my working aids with you that have assisted me in gleaning out what is intended with the use of a PDD.

My Exhibits are roughly as follows. I have one that is too large on a coordination of General Plan Policies and the requirements for Very Low Density Residential (VLDR). I will do the Comparison Grid for each of the land use classifications, by the time I finish.

(1) A Grid Showing the page and General Plan Element (i.e.: Housing Element) in which each mention of the PDD process is made.

(2) A breakdown of the working elements of the PDD Ordinance 94.03.00, and how it addresses its powers and limits on setting development standards in a PDD zone;

(3) An analysis of Ordinance 91.00.04, which covers the full range of recognized ZONES in Palm Springs, and how they coordinate with General Plan Land Use Classifications. The use of these zoning codes must conform to the requirements of the General Plan. Each zone is addressed to a particular General Plan Classification -- but the Palm Springs General Plan does not make this easy -- and it should.

(4) Diagram called "The Lot Squeeze," or small lot development that is used for decreasing residential density, by reducing lot size, increasing building coverage, and increasing height in a triple-hit.

(5) A Map of the Woodbridge (PD 379) proposed development area; showing how density and type of use are affected by a transportation corridor; in this instance, Palm Canyon Drive.

(6) The Woodbridge Full Assessment with mapping showing the residential density pattern in lieu of pedestrian mixed-use.

(7) By separate email, a General Plan Analysis of Policies that address Very Low Density Residential (I will have a grid for each classification by the end of the study).

Thank you. Look forward to tomorrow.

Judy Deertrack
760 325 4290

| GP ELEMENT AND PAGE # | PALM SPRINGS GENERAL PLAN PROVISIONS<br>FOR UTILIZING THE PLANNED DEVELOPMENT DISTRICT (PDD) |
|---|---|
| RELATIONSHIP TO OTHER PLANS AND PROGRAMS –<br><br>Planned Development Districts<br><br>Admin Element Page 1-18 | "Planned development districts are mechanisms to provide flexibility in the application of development standards that would yield a more desirable and attractive project than would otherwise be possible with strict application of the underlying zoning regulations." (FLEXIBILITY FOR AESTHETICS AND DESIGN) |
| | "Planned development districts enable property owners to apply modified development standards (e.g., an increase in buildable area or building height or adjustments to setbacks) that are different than those identified in the Zoning Code, if the project can mitigate any impacts that would be generated by the modifications." (MITIGATION REQUIRED) |
| | "All Planned Development Districts shall be consistent with the General Plan." (GEN PLAN CONSISTENCY REQ.) |
| | a. Provide a mechanism to allow the permitted building area, floor area ratios, and building heights to exceed provisions specified by land use policy. |
| | b. Provide a mechanism for allowing both on- and off-site density transfers. |
| | c. Provide a mechanism for the consolidation of adjoining commercially and residentially designated parcels into a single site, if they are designed as part of a unified development project. |
| | d. Provide a mechanism for determining the appropriate type, character, density/intensity, and standards of development for the reuse of sites currently used for public or private institutions. |
| | e. Provide a mechanism for creative, high quality projects that are evaluated as a whole, rather than against individual standards. |
| MIXED-USE DISTRICT C-B-D<br><br>Land Use Element Page 2-7 | **Central Business District (1.0 FAR; 21–30 dwelling units per acre).**<br>"If projects in these areas [Appendix A, Downtown Urban Design Plan] provide substantial public spaces or plazas, a FAR of up to 4.0 may be developed upon approval of a Planned Development District or Specific Plan. The Downtown Central Core may also accommodate up to 70 dwelling units per acre for residential or hotel uses if a Planned Development District or Specific Plan is prepared and approved." |

<table>
<tr><th colspan="5">GENERAL PLAN POLICIES / ANALYSIS GRID FOR PDD ORDINANC 94.03.00<br>SECOND PAGE</th></tr>
<tr><td>MIXED-USE<br>MULTI-USE<br>DISTRICT<br><br>Land Use<br>Element<br>Page 2-7</td><td colspan="4">Mixed-use/Multi-use (Maximum of 15 dwelling units per acre for residential uses and a maximum 0.50 FAR for nonresidential uses).<br>"Residential development at a maximum density of 15 units per acre is permitted; planned development districts may allow residential densities up to 30 du/acre and also ensure that all proposed uses are properly integrated and allow the implementation of development standards that are customized to each site."<br>*Additional information related to the location and desired mix of uses can be found at page 2-30 of the Land Use Element.</td></tr>
<tr><td>Housing<br>Element<br>Page 3-31</td><td colspan="4">Table 3-13: Zoning and Residential Land Use Designations and Associated Regulatory Processes.<br>*All housing types can be allowed in any designation, with approval of a Planned Development Permit in lieu of a zone change. (Asterisk statement at bottom of Table)</td></tr>
<tr><td rowspan="3">Housing Element<br>Page 3-38</td><td colspan="4">Planned Development (PD). "The Zoning Code allows PD districts to foster and encourage innovative design, variety, and flexibility in land use and housing types that would not otherwise be allowed in zoning districts."</td></tr>
<tr><td colspan="4">"Density under the PD district is allowed by zoning and the General Plan, but may be increased if the district assists the City in meeting its housing goals as set forth in the Housing Element."</td></tr>
<tr><td colspan="4">"The form and type of development on the site must be compatible with the existing or planned development of the neighborhood. The PD requires approval by the Planning Commission and City Council."</td></tr>
<tr><td rowspan="2">Table 3-15<br>Housing<br>Regulatory<br>Incentives<br>HE Page 3-38</td><th>Density</th><th>Open Space</th><th>Lot Area</th><th>Parking</th></tr>
<tr><td>PDD - Limited by General Plan</td><td>PDD - No Limit</td><td>PDD - No Limit</td><td>PDD - No Limit</td></tr>
</table>

development standards, design guidelines, phasing plan, infrastructure plan (water, sewer, or drainage), and implementation plan pursuant to California Governmental Code Sections 65450 through 65457. They are typically implemented as customized zoning for a particular area of the City, and are generally used for large-scale projects that require a comprehensive approach to planning and infrastructure issues.

A limited number of specific plans have been approved within the City of Palm Springs for the following projects: Canyon Park, Canyon South (an amendment to the Canyon Park Specific Plan), and Section 14, which are shown on the Land Use Plan (Figures 2-2 and 2-3).

## PLANNED DEVELOPMENT DISTRICTS

Planned development districts are mechanisms to provide flexibility in the application of development standards that would yield a more desirable and attractive project than would otherwise be possible with strict application of the underlying zoning regulations. Planned development districts enable property owners to apply modified development standards (e.g., an increase in buildable area or building height or adjustments to setbacks) that are different than those identified in the Zoning Code, if the project can mitigate any impacts that would be generated by the modifications. All Planned Development Districts shall be consistent with the General Plan.

To implement the land use policies identified in this element, planned development districts are intended to:

a. Provide a mechanism to allow the permitted building area, floor area ratios, and building heights to exceed provisions specified by land use policy.
b. Provide a mechanism for allowing both on- and off-site density transfers.
c. Provide a mechanism for the consolidation of adjoining commercially and residentially designated parcels into a single site, if they are designed as part of a unified development project.
d. Provide a mechanism for determining the appropriate type, character, density/intensity, and standards of development for the reuse of sites currently used for public or private institutions.
e. Provide a mechanism for creative, high quality projects that are evaluated as a whole, rather than against individual standards.

also included in this land use designation. These uses are generally located in areas that will benefit from a higher level of exposure to residents located outside of the City, such as properties located on Ramon Road adjacent to the City limits and selected properties adjacent to the I-10.

## MIXED USE

**Central Business District (1.0 FAR; 21–30 dwelling units per acre).** Bounded approximately by Ramon Road, Calle Encilia, Alejo Road and Belardo Road, the Central Business District designation allows for a mix of commercial, residential, and office uses at a higher concentration, density, and intensity than in other areas of the City. The CBD serves as the main activity center and cultural core of the community and, as such, theatres, museums, retail, and other entertainment venues are encouraged here. Uses such as grocery stores, hardware stores, and convenience or pharmacy stores that provide services to the Downtown's residential population are also encouraged. The Central Business District is subdivided into zones or areas that provide for diversity in development standards and land use intensities. These subareas are defined in Appendix A, *Downtown Urban Design Plan*. Examples include the gateways into Downtown, Downtown Central Core, and the Downtown Outer Core. The Downtown Central Core (roughly bounded by Amado Road, Tahquitz Canyon Way, Museum Drive, and Indian Canyon Drive) and the Gateway areas (at roughly the north and south ends of the CBD) may be developed with a maximum FAR of 3.5. If projects in these areas provide substantial public spaces or plazas, an FAR of up to 4.0 may be developed upon approval of a Planned Development District or Specific Plan. The Downtown Central Core may also accommodate up to 70 dwelling units per acre for residential or hotel uses if a Planned Development District or Specific Plan is prepared and approved.

*Central Business District*

**Mixed-use/Multi-use (Maximum of 15 dwelling units per acre for residential uses and a maximum 0.50 FAR for nonresidential uses).** Specific uses intended in these areas include community-serving retail commercial, professional offices, service businesses, restaurants, daycare centers, public and quasi-public uses. Residential development at a maximum density of 15 units per acre is permitted; planned development districts may allow residential densities up to 30 du/acre and also ensure that all proposed uses are properly integrated and allow the implementation of development standards that are customized to each site.

Additional information related to the location and desired mix of uses in each mixed-use/multi-use area can be found on page 2-30 of this element.

**Table 3-13**
**Zoning and Residential Land Use Designations and Associated Regulatory Processes**

| Housing Type | Zoning Districts | | | | | |
|---|---|---|---|---|---|---|
| | G-R-5 | R-1 | R-G-A | R-2 | R-3/R-4 | R-MHP |
| Single-Family* | P | P | P | P | | |
| Multiple-Family* | | | P | P | P | |
| Accessory Dwelling* | CUP | CUP | CUP | CUP | | |
| Guest House* | | P | | | | |
| Manufactured Housing* | | P | P | P | | |
| Mobile Home Parks* | | | | | | P |
| Assisted Living* | | | CUP | CUP | CUP | |

Source: Palm Springs Zoning Code.
Notes: P designates a use permitted by right; CUP designates a conditionally permitted use
*All housing types can be allowed in any designation, with approval of a Planned Development Permit in lieu of a zone change.
The City also allows residential development in the Open Space/Conservation, Mountain, and Desert land use designations. Please refer to the Land Use Element for greater detail.

The following describes provisions that allow housing opportunities other than more conventional single-family and multiple-family housing.

### *Manufactured Housing*

State law requires cities to permit manufactured housing and mobile homes on lots for single-family dwellings when the home meets the location and design criteria established in the Zoning Code. The Zoning Code does not define manufactured housing, but treats manufactured housing like any other single-family home and permits it in all residential zones.

### *Accessory Dwelling Units*

State law requires local governments to adopt an administrative approval process for accessory dwelling units, unless the City Council has adopted specific findings that preclude such uses due to adverse impacts on the public's health, safety, and welfare. The City presently allows accessory dwelling units in residential zones in accordance with State law. As allowed under AB 1866, the City currently reviews accessory or second units under the standards allowed if a City does not have a local ordinance. As part of the City's comprehensive update of its Zoning Ordinance, the City has developed a local ordinance with City-specific standards. The Ordinance amendments will be completed in 2014. A program is included in this document to assure completion of this task.

Senate Bill 1818 amended state law by lowering the affordable housing requirement and increasing the bonus and incentives. Density bonuses are discussed in the Development Review Committee and during the pre-application phase.

- ***Planned Development (PD).*** The Zoning Code allows PD districts to foster and encourage innovative design, variety, and flexibility in land use and housing types that would not otherwise be allowed in zoning districts. Density under the PD district is allowed by zoning and the General Plan, but may be increased if the district assists the City in meeting its housing goals as set forth in the Housing Element. The form and type of development on the site must be compatible with the existing or planned development of the neighborhood. The PD requires approval by the Planning Commission and City Council.

- ***Variance.*** A variance may be granted for a parcel with physical characteristics so unusual that complying with the requirements of the Zoning Code creates an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and, in general, not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners. A variance requires approval from Planning Commission.

**Table 3-15**
**Regulatory Incentives**

| Procedure | Sample of Reductions in Standards | | | | Approval |
|---|---|---|---|---|---|
| | Density | Yards/Open Space | Lot Area | Parking | |
| Minor Modification | No | Up to 20% | Up to 10% | Up to 10% | Planning Director |
| Density Bonus Provision | Up to 25 | Depends on requested concession | | | By-Right |
| Planned Development | Limited by General Plan | No limit | No limit | No limit | Planning Commission & City Council |
| Variance | Limited by General Plan | Depends on topography | | | |

Source: City of Palm Springs Zoning Code, 2013.

The City of Palm Springs has utilized each of these mechanisms to facilitate the development of recent affordable housing projects in the

**Flinn Fagg**

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| | |
|---|---|
| **From:** | Judy Deertrack <judydeertrack@gmail.com> |
| **Sent:** | Thursday, October 06, 2016 10:40 AM |
| **To:** | Kathy Weremiuk; Flinn Fagg; Lyn Calerdine; David Ready; Jim Harlan; T Conrad |
| **Cc:** | Robert Stone; Frank Tysen |
| **Subject:** | REPORT TO THE PDD COMMITTEE / J.DEERTRACK / OCTOBER 6 2016 |
| **Attachments:** | REPORT TO THE PDD STUDY GROUP 2016.10.06 J.Deertrack.docx |

Folks,

Please consider the Report, below. I will also be bringing some xeroxed materials for your review.

Judy Deertrack

JUDY DEERTRACK

# REPORT

**Prepared by:** Judy Deertrack
**Committee:** Planned Development District (PDD) Study Committee, Palm Springs
**Date:** October 6, 2016
**Re:** PDD and the Palm Springs General Plan and Zoning Ordinance

The purpose of the City's General Plan is to provide the long-term vision of community growth through goals, policies, programs, and implementing mechanisms that ensure that growth occurs in a balanced and designed manner, and also that it remains apace with infrastructure requirements. The form, less than the substance, of the General Plan is dictated by the California Governor's Office of Planning and Research through published guidelines for adopting General Plans. However, the State does provide minimum guidelines for each required chapter of the General Plan, and declares areas of special interest, such as affordable housing, regional transportation, and regional air quality – areas frequently regulated through statutory schemes that apply to land use decisions. The Chapters of the General Plan are, by state directive, broken down into mandatory categories such as Land Use, Housing, Circulation, Open Space, and Noise, etc. Counties and Cities can combine these core Elements, or add additional Elements. In point of fact, the overarching purpose of the Land Use Element that guides development permits, is "to guide future growth and development into a sustainable citywide development pattern."

In the early 1970's, California became a national leader in General Plan practice through legislative enactment of the General Plan Consistency Doctrine. The provision applies to both general law cities and home rule charter cities, such as Palm Springs. General Plans, prior to the early 1970's had been largely advisory in nature. However, cities and counties quickly became disillusioned with "ad hoc" planning that allowed for case-by-case determination of planning standards, finding that it was increasingly impossible to implement the long-range planning vision, or adequately provide for the tight fit between infrastructure and the built environment. Calculation of where to place sensitive uses; where to concentrate density; how to buffer neighborhoods; how and where to provide public services; coordination of the transportation grid with planned districts – all of these "public interest" considerations began to displace the earlier domination of "developer rights" without consideration for long-term growth impacts.

The revolution in planning switched the emphasis to a much more sophisticated consideration of objectives upon review of a development application. Instead of a single-minded concentration upon the economics of developing the lot, the cities and counties inherited hard-fought legal rights to a much broader scope of police powers, which allowed them to consider neighborhood impacts; district impacts, city-wide impacts, and regional impacts, to the planning decision.

PHONE FAX EMAIL
1333 S. Belardo Rd, Unit 510, Palm Springs, CA 92264 760 325 4290 NO FAX judy@judydeertrack.com

The single most important necessary legal change in status that had to occur for the protection and development of the larger public interest was the status of the General Plan. The General Plan had to, and did become, the "constitution for development" to which all ordinances and planning decisions must conform. This allowed both a vertical and horizontal "plan check" for conformity of planning and practice. All ordinances implementing the general plan were inspected for their conformity with the expressed policies of the plan. All land use entitlements, programs, and planning decisions are, likewise, in a vertical alignment. Development permits require compliance with relevant ordinances; the relevant ordinances are inspected for compliance with the General Plan in a vertical hierarchy. Likewise, the multiplicity of ordinances used in approval, and the multiplicity of General Plan Chapters must remain internally consistent. In that manner, the City can (and must) evaluate, over a period of time, its progress in implementing the long-term vision. In this manner, the development permit, ordinances, programs, and General Plan use "knit together" to create a close coordination between policies and actions (such as permit approvals). The legal standard used in California for conformity requires actions to be "in furtherance of the General Plan goals, policies, and programs; and not exercised in a manner to frustrate their attainment."

The General Plan Land Use Map also became on the most important mechanism for evaluating city-wide and regional land use, because of the use of "transition" principles; in other words, the creation of inner-city districts and nodes with the highest density of use, with transportation corridors (such as Palm Canyon Drive) radiating outward into increasingly softer commercial zones, with the placement of residential land uses critically placed in a combination of buffer zones with appropriate (and hopefully nearby) "service access" to neighborhood commercial land use areas. Placement of affordable housing is critical to the service population of the city.

By both state definition and Palm Springs General Plan definition, the zoning code is the largest single implementing tool for the policies, goals, and programs of the General Plan. This is precisely because the ordinance list of uses and development standards are designed to implement the "district standards" within which each ordinance is meant to apply.

Charter cities are allowed a form of home rule in order to "deviate" from zoning standards in a largely undefined manner. It is unfortunate that California law has provided little guidance on the extent of deviation. There are two important caveats, however; the first being that, regardless of the manner in which development standards are altered, charter cities are not excused from the larger obligations to conform their decisions to the general plan. And, secondly, charter cities can waive the provisions that give them this flexibility, through provision in the General Plan. The General Plan for the City of Palm Springs is replete with statements of General Plan Consistency. The other obvious reference to the City's intent to make development decisions consistent with the General Plan are the Consistency Findings that one finds in the Staff Report, Resolution, and PDD Rezone Ordinances.

Now enters the Planned Development District (PD) Overlay Zone in Ordinance 93.04.00, in lieu of zone change (Also Reference Ordinance 91.00.04 Establishment of Zones) which has been used almost uniformly (approximately 90-95%) in all commercial and residential development decisions for at least the last eleven years, and possibly further back. The preliminary findings of the PDD Study show that in the vast majority of cases, the development standards for the lot size, lot area coverage, open space, height, and setbacks on parcels have been altered, and often significantly altered. The primary impact, at first glance, seems to be a significant increase in lot density, with what the author refers to as a "lot squeeze," or decrease in lot size, increase in building coverage,

and increase in height, usually with no offsetting compensations for the interruption of open space and view shed impairment; considering that the open space component of development is what is most compromised.

The City, however, has frequently modified more than the traditional development standards of setbacks, step backs, height, and lot size. The City has used the PDD to change uses and density within the areas. These practices may be much more problematic, since it is not at all clear within the General Plan or the PDD Ordinance on whether use or density was meant to be altered; particularly where it can be demonstrated the change would "frustrate the goals, objectives, and programs of the general plan."

The open space component to lot development allows for establishing a proper "lot ratio" between the boundary edges and the buildings, and provides the grounds for view shed, aesthetics, landscaping, parking, public amenities (where appropriate), common grounds, public art, pedestrian use and flow, conservation of natural features, and the plethora of features that soften design in communities that wish to attain a connection to natural surroundings and softer village environment.

The rationale for the PDD is primarily the need for zoning flexibility; particularly with mixed-use projects (usually an 85% commercial / 15% housing ratio) and affordable housing, where the density bonus would require (and justify) more of a lot squeeze – although with generous common space features that accompany multi-family residential. What has been found, so far, is a tendency for the for SFR high-end housing on small lots, sometimes at the sacrifice of multi-family residential status.

The City has had no tracking devices to plot the cumulative impact of PDD Overlay Zone Use and its combined geographical location, changes in use, waiver provisions, or nature of public benefits. For instance, can Public Benefits be measured as a series of "capital improvements?" Can they be quantified? If the standard is "rough proportionality" between the waiver of standards and public benefits – how is that standard met or defined? The primary concern, without adequate tracking or adequate utilization of the PDD as a planning tool, is that the General Plan standards may be compromised over time.

The dialog on the use of the Planned Development District Overlay Zone must begin by what the General Plan intended for a PDD, and how the implementing ordinances incorporated General Plan language. If the City has abandoned the use of its regular ordinance pattern, which provides the design grid for the City, and controls density and location of uses, including the all-important transitions – how do we measure the impact? If one looks at the General Plan Land Use Map, increasingly we see lots rezoned as "PDD," with no idea of what standards have actually been implemented at that location. This may be deeply problematic over time.

I invite the Committee to consider the General Plan language (attached) that (1) defines the land use classifications used in Palm Springs; (2) that discusses Bridge Policies for their use; (3) that identifies the Planning Districts and their qualities; and (4) contains limitations on development standards that obtain; regardless of the mechanism of a PDD.

# HOUSING NEEDS AND RESOURCES

## Regional Housing Needs

Every five years, the California Department of Finance's makes projections of statewide housing need. This projection is disaggregated into regions of the state by the Department of Housing and Community Development (HCD), the agency responsible for guiding statewide housing planning. HCD is responsible for working with Councils of Governments (COGs), which represent cities, to address housing needs in each community. Palm Springs, along with over 200 local governments, is represented by the Southern California Association of Governments (SCAG).

SCAG prepares housing need estimates for each of its 200 agencies. Because of the size of the southern California region, SCAG works closely with 13 different subregional associations of governments to determine and allocate housing needs. SCAG delegated the responsibility to assign specific housing need goals to the Coachella Valley Association of Governments (CVAG). Under this arrangement, CVAG may produce a different allocation of housing need than SCAG estimated, provided that the total subregional housing need assigned to CVAG is not changed.

When determining the distribution of the region's housing need among the jurisdictions in southern California, SCAG considers a number of planning considerations allowed for in state law. These include the adequacy of infrastructure and services, availability of land, market demand for housing, and other housing and planning factors. SCAG also relies on population and employment growth projections provided by each jurisdiction. These factors provide the basis for estimating the housing need within each County and the 13 subregional councils of government within the larger SCAG region.

SCAG then estimates each jurisdiction's future housing for the shorter housing element period, which is eight years. SCAG projects that Palm Springs will increase by 272 households (from 2014 through 2021) based on population and employment growth in the city.

Table 3-18 provides a summary of the City's 2014-2021 regional housing needs allocation. Of the 272 units allocated, 11.5% must be affordable to Extremely Low Income households, 11.5% to Very Low Income households, 16% to Low Income households, 18% to Moderate Income households and 43% to households with Above Moderate Incomes.

Table 3-18
Regional Housing Needs Allocation, 2014-2021

| Household Income Levels | Definition (Percent of County MFI) | Total Units |
|---|---|---|
| Extremely Low | Less than 30% | 31 |
| Very Low | Less than 50% | 32 |
| Low | 51% to 80% | 43 |
| Moderate | 81% to 120% | 50 |
| Above-Moderate | Over 120% | 116 |
| | Total | 272 |

Source: Southern California Association of Governments.

The California Department of Housing and Community Development allows jurisdictions to count four types of housing credits toward meeting their share of the region's housing need. These include:

- Actual number of housing units built and occupied since the planning period for the housing element officially began in 2014, and projects approved for construction;
- Rehabilitation of substandard units that would otherwise be demolished and taken out of the City's affordable housing stock, subject to stringent qualifying regulations;
- Preservation of affordable units that were created through governmental subsidies that are at risk of conversion by either purchasing or extending the affordability covenants on the units; and
- Designation of adequate vacant and underutilized sites with zoning, development standards, services, and public facilities in place so that housing could be built during the planning period.

## Housing Production

It is anticipated that market-rate development will address the need for 116 units of above-moderate income housing during the present planning period.

**Flinn Fagg**

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**From:** Judy Deertrack <judydeertrack@gmail.com>
**Sent:** Friday, October 14, 2016 12:49 PM
**To:** Flinn Fagg
**Cc:** Kathy Weremiuk; T Conrad; Jim Harlan; David Ready; Michael Johnston; Lyn Calerdine
**Subject:** EXCELLENT RESOURCE MATERIALS FROM SLO CITY ATTORNEY
**Attachments:** Land-Use-101-Webinar-Slides SLO City Attorney pg 11 (Charter Cities).pdf; Land-Use-101-Webinar-Slides SLO City Attorney.pdf; Land-Use-101-Webinar-Paper (SLO City Attorney).pdf

Flinn,

You had offered to forward my educational materials to the PDD Study Committee because I do not have a complete list of the email addresses.

Would you please forward this to the Committee, should they choose to enlarge their understanding of the General Plan and Zoning approach used in California? It has a lot of Charter City Information as well.

I came from San Luis Obispo (got my Urban Planning Masters at SLO CalPoly), and their City Attorney's Office does a very nice job of laying out the principles that are used in the permit process. This would be very helpful in the context of using the PDD and how it relates to the General Plan.

Thank you.

Judy Deertrack
760 325 4290

# Zoning Regulations

- General law cities' ordinances must be consistent with the General Plan (many charters or ordinances also require).
- Presumed to be valid if reasonably related to community welfare.
- Subject to 90 day challenge period, and will be upheld unless proved to be arbitrary, capricious or an abuse of the police power.
  - even for charter cities that may not be subject to General Plan consistency requirements, inconsistency creates a presumption that a zoning provision does not relate to the public welfare; makes the ordinance subject to challenge as an abuse of the police power.

# Land Use 101

By: Christine Dietrick,
City Attorney, San Luis Obispo

# Topics to be covered

- General plans, specific plans, zoning regulations and design, conservation, and historic preservation tools
- Subdivisons
- Vested rights and development agreements
- Development fees, exactions and takings analyses
- Affordable housing
- Due process proceedings and administrative findings
- Basic requirements under CEQA

# General Overview of Land Use Authority

Foundational concepts of Land Use Authority:

Constitutional police power

Broad and elastic, but not unlimited

# Police Power

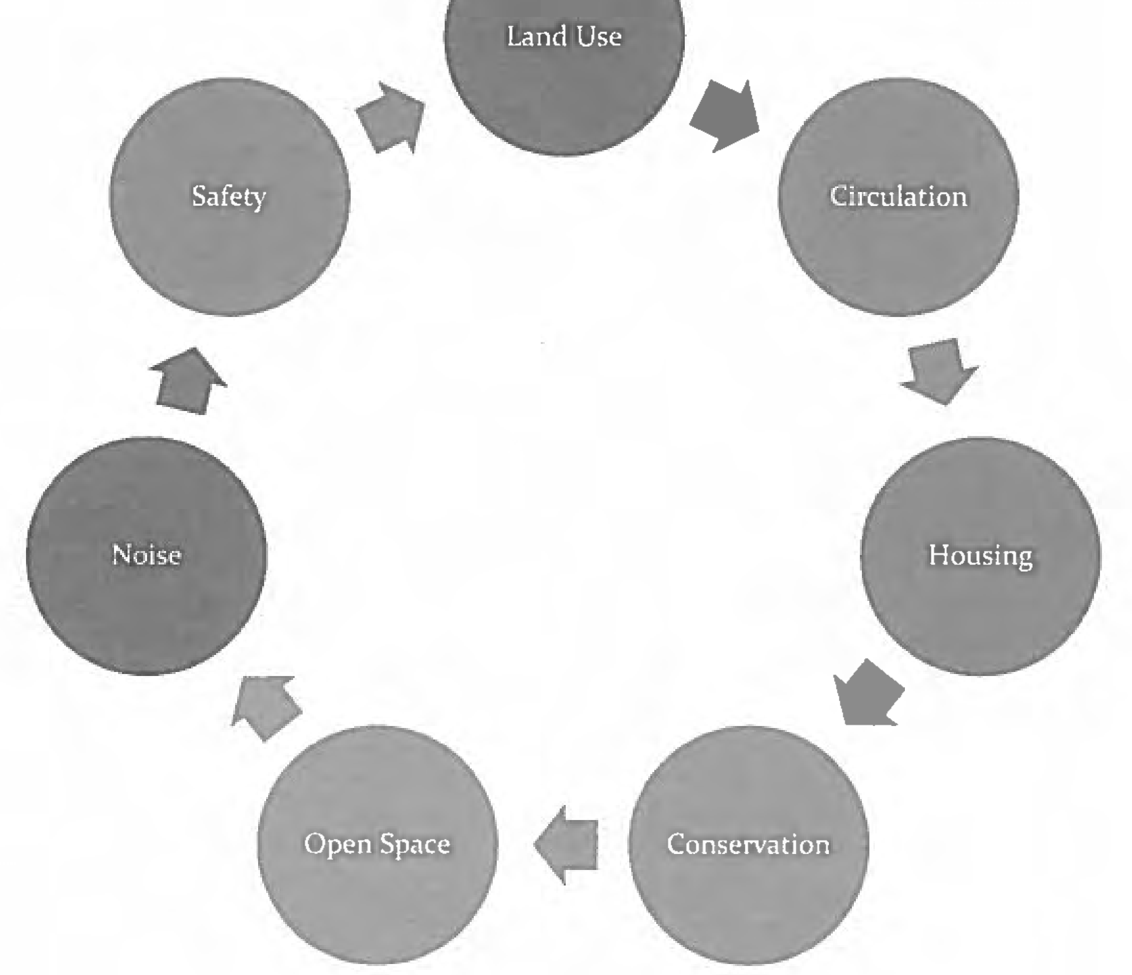
> "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."
>
> Cal. Const. at. XI, section 7

## Constitutional Authority

- No statute grants land use regulation authority
- Rather a city can regulate as it sees fit in the absence of a prohibition or preemption of the city's broad constitutional authority

# General plan, specific plans and zoning regs, oh my!

# General Plan
# Gov’t Code § 65300




## 7 Elements required in the General Plan
(others are optional, like Air Quality or Historic Resources)

# General Plan

## Constitution for Development

### Internal Consistency

Harmony among the policies set forth in the elements of the Plan

### Vertical Consistency

Consistency between a city's General Plan, Specific Plans, and Zoning Regulations and permitted projects, with the General Plan as the guiding document

# General Plan

- Caution: Some elements get more scrutiny than others.
- Land Use and Circulation Elements required to correlate (because the Circulation Element sets out the transportation plan for planned land in the Land Use Element)
- Numerous requirements apply to Housing Element adoption or amendment; review by the State Department of Housing and Community Development (HCD) and certification are required.
- When HCD certifies, City gets a rebuttable presumption of validity if challenged (not so for self-certification).
- If invalid, jeopardizes decisions, because approvals require General Plan consistency. If your plan is invalid, your projects can't move forward.

# Specific Plans

- Bridge between the General Plan and Zoning Regulations; can remain fairly big picture or begin to look more like a zoning ordinance.
- A tool to more accurately define the "look" and "feel" of future development.
- Next tier toward implementing the General Plan.

# Zoning Regulations: Gov't Code § 65800

- GC expressly provides that cities may regulate via zoning ordinances; provides minimal standards, but expresses intent of minimal interference with local land use regulation.
- Zoning ordinances and maps divide the City into zones and define the allowable and conditional land uses and standards within those zones.
- GC Zoning Regulation provisions do not apply to a charter city, but there are numerous express applications to charter cities, so don't assume and always check your own charter and ordinances.

# Zoning Regulations

- General law cities' ordinances must be consistent with the General Plan (many charters or ordinances also require).
- Presumed to be valid if reasonably related to community welfare.
- Subject to 90 day challenge period, and will be upheld unless proved to be arbitrary, capricious or an abuse of the police power.
  - even for charter cities that may not be subject to General Plan consistency requirements, inconsistency creates a presumption that a zoning provision does not relate to the public welfare; makes the ordinance subject to challenge as an abuse of the police power.

# Zoning Regulations

## Variances and Use Permits

- Administrative, discretionary approvals that allow for deviation from zoning regulations where a property is uniquely situated or where a use may be acceptable only under certain conditions.
- Considered a "quasi-judicial" action-requires due process.
- Requires findings to support variation or relief from otherwise applicable rules (variances) or additional conditions (conditional use permits).
- Once issued, permits/property rights granted run with the land (transfer with the property from owner to owner)
- Must be consistent with the General Plan.

# Design, Conservation and Historic Preservation

- Achieving aesthetic objectives and preservation of scenic, natural and historic resources is a permissible basis of regulation.
- Cities can require discretionary design or architectural review so long as it is reasonably related to the public health, safety and welfare (broad latitude is given).
- General regulation of land use, not subject to higher scrutiny test in *Nollan/Dolan* (later).
- All are OK: "no monotonous development"; "respect the existing privacy of surrounding community"; "not in character"; "protect character and stability".
- Design review approval is usually processed through an ARC.

# Design, Conservation and Historic Preservation

- Historic preservation has some special privileges.
- Federal: National Historic Preservation Act
- State: California Register of Historic Resources (PRC § 5020.1)
- Local: Cities have the police power to protect property of historic and aesthetic significance and define standards unique to the community.
  - How?
    - Historic resource designations; historic design guidelines; historic districts; anti-neglect and maintenance ordinances.

# Subdivsions

- Subdivision Map Act – Gov't Code § 66410 et seq., governs the process for division of land into separate parcels for lease, sale or financing.
- Requires adoption of local ordinance, which can include provisions additional to, but not in conflict with, SMA.
- Common approvals : subdivision maps (tentative & final, where 5 or more parcels), parcel maps (where 4 or fewer parcels), lot line adjustments (affecting fewer than 4 existing parcels), and certificates of compliance (which validate parcels lawfully created prior to the adoption of the Subdivision Map Act or not recorded).
- Through Map Act and local ordinance cities can impose significant conditions on subdivisions and parcel maps.

# Permit Streamlining Act

- Gov't Code § 65920 et seq. acts as a "time clock" on the review and processing of discretionary land use permits.
- Applications "deemed approved" if timelines are not met!
- Does not apply to legislative acts or to a CEQA action.
- Public notice of the application must be given. Gov't Code § 65956.
- Shorter deadlines apply to subdivisions under the Map Act: Gov't Code §§ 66452.1 –66452.2.

# Vested Rights

- Generally, cities can change land use rules discussed previously and require property owners to follow the new rules for development.

- Except where "vested rights" are established to protect investment-backed property expectations and/or provide developers with greater certainty.

# Vested Rights

- Vesting Maps – Gov’t Code § 66498.1 *et seq*. (Subdivision Map Act)
  - Vested rights status from an approved tentative map
- Substantial hard costs in good faith reliance on a validly issued permit; the *Avco* rule
  - *Avco Community Developers v. South Coast Regional Comm’n*

# Vested Rights

- Development Agreements – Gov't Code § 65864 et seq.
  - City may enact local ordinance; a legislative contract between the city and developer.
  - Locks in development standards, fees.
  - City may seek "non-nexus " benefits.
  - Approval is subject to referendum.
  - Findings not required (but could be handy).
  - It is a project subject to CEQA; you are committing to something that is likely to change the environment.

# Takings & Exactions

Constitutional limit of constitutional land use authority.

> 5$^{th}$ Amendment - "nor shall private property be taken for public use, without just compensation." (*also* Cal. Const. Art. I, § 19)

- Physical taking
- Denial of economically beneficial use
- Partial regulatory taking
- Land use exactions

# Takings & Exactions

A government action is a taking of private property if:

- It lacks a legitimate public purpose (but see, *Lingle v. Chevron USA, Inc.*, where the court discounted public purpose analysis).
- It denies the property owner any viable economic use of his or her property (in these cases a variance is typically required to permit some reasonable economic use).
- It lacks legally sufficient "nexus" to the impacts of development or does not reflect "rough proportionality" between the demands on the private property owner and the impacts of development. See *Nollan /Dolan*.

# Takings & Exactions

Understanding and fair implementation of *Nollan/Dolan* analysis:

1. What is impact of this project?
2. Does it serve a legitimate public interest?
3. How do the impact and the condition relate to one another?
4. Are the impact and the condition (fee, exaction) proportional?

# Affordable Housing
## Statutory limits on authority

- Lack of housing deemed a “critical problem” in California.

- Legislature has determined that the problem warrants multiple interventions, including prohibitions on barriers to housing, incentives for affordable housing, and ensuring infrastructure support for housing.

# Affordable Housing
## Statutory limits on authority

- Density Bonus Law, Gov't Code § 65915 (mandatory concessions must be granted if a developer proposes to build affordable housing) "Housing Accountability Act," Gov't Code § 65589.5 (applies to both affordable and other housing projects)
- Water & sewer priority, Gov't Code § 65589.7
- "Least Cost Zoning," Gov't Code § 65913.1
- Second units, Gov't Code § 65852
- Growth management policies/ordinances that limit number of housing units are subject to scrutiny and require findings of necessity to protect health, safety & welfare.
- But, take note of *CBIA v. City of San Jose, Sterling Park v. Palo Alto and Palmer/Patterson* cases in the inclusionary housing context.

# Due Process

**Clear application to administrative proceedings:**

- Reasonable notice of action
- Opportunity to be heard
- Impartial decision maker

**Harder to navigate:**

- Ensuring that attorney is not serving dual role to staff and review bodies along the process

# Writ of Mandate

## How decisions are judged:

Legislative/ Quasi-legislative → Traditional Mandamus

- To challenge a ministerial or quasi-legislative act or failure to perform a duty
- If the claimant has a "substantial beneficial interest"
- If there is no other "plain, speedy, and adequate remedy, in the ordinary course of law"

# Writ of Mandate

## How decisions are judged:

Quasi-judicial → Administrative Mandamus

- Usually limited to the administrative record
- Limit of scope:
  - Proceeded without or in excess of jurisdiction
  - Hearing was unfair
  - Abuse of discretion

# The Role of Findings

- Sometimes statutorily required, often required by ordinance (e.g., variance provisions  findings both statutory and local).
- Always required where there is a adjudicatory/quasi-judicial decision being made (*Topanga* rule: Where due process hearings are required, findings required for "quasi-judicial" decisions).
- Not normally required for legislative acts, unless specifically required by ordinance or statute – still often helpful and well advised on controversial actions.
- Helps articulate reasoning and creates a clear map of the record judicial review.
- Record MUST contain evidence to support findings; conclusory findings without support won't get you there.
- Supporting facts can come in through staff reports, powerpoints, written and oral testimony, MND or EIR, exhibits, etc.
- Best opportunity for the city to define the question and frame its arguments supporting its conclusion.

# Other Rights of the Public

- Brown Act
- Public Records Act
- Conflicts of interest prohibitions
- CEQA

# California Environmental Quality Act

- Public Resources Code § 21000 et seq.; 14 CCR § 15000 et seq. (the "State CEQA Guidelines").
- A practice area unto itself, but try to remember the basic purposes:
  - Identify and evaluate potential adverse environmental impacts.
  - Prevent significant, avoidable damage to environment.
  - Foster informed public participation.
  - Ensure informed and transparent governmental decision making.

# California Environmental Quality Act

- Applies to all discretionary decisions regarding projects involving government action, including land use approvals and public works projects.

- CEQA does not apply to :
  - Ministerial actions (e.g. building permits)
  - Decisions with no possibility of adverse impact
  - Project denials
  - Preliminary actions that don't commit to project and preserve ability to impose mitigation measures or adopt project alternatives.

- Requires that the decision maker consider the environmental consequences of an action *before* action is taken.

- CEQA contains a "substantive mandate" not to approve projects with significant environmental effects if "feasible alternatives or mitigation measures" can lessen or avoid those effects.

- Fertile ground for litigation.

# California Environmental Quality Act

Know your exemptions:

- **Statutory** (absolute, granted by Legislature) CEQA § 21080.01 et seq.; Guidelines § 15260 et seq. (e.g. specific projects, emergency projects).

- **Categorical** (determined by the Resources Agency) CEQA § 21084; Guidelines § 15300, et seq. (e.g., existing facilities, replacement or reconstruction).

  - Note: Don't skip the analysis of categorical exemptions, as even a "clean fit" may not apply if significant effect on environment is possible due to "unusual circumstances"; consider potential impacts on adjacent historic resources or districts.

# California Environmental Quality Act

- If not exempt, the city must complete an “Initial Study” to determine if adverse changes in environment will result from the project, whether changes are potentially significant and, if so, what type of CEQA document to prepare.
- Initial Study template is available in the appendix to the Guidelines; answer the questions thoughtfully and thoroughly and connect the dots that lead to your conclusions.

# California Environmental Quality Act

CEQA options:

- Negative Declaration (ND) or Mitigated Negative Declaration (MND) where the Initial Study shows no significant impacts likely to result from the project or concludes that any impacts can be reduced to less than significant by requiring proper mitigation.

- Environmental Impact Report (EIR) is required if "significant" impacts are identified that are not reducible through readily apparent mitigation measures.

- EIRs are time consuming and expensive, but so are lawsuits:

  - "Fair Argument" test applies to challenges to ND/MND; courts defer to the city under a "Substantial Evidence" test in EIR legal challenges.

# Questions?

# Land Use 101

A Field Guide

**By: Christine Dietrick, City Attorney**
**Jon Ansolabehere, Assistant City Attorney**
**City of San Luis Obispo**

## INTRODUCTION

This paper provides a general overview of the fundamental principles and legal concepts of Land Use and Planning Law. This paper will cover: the foundations of city land use authority through the constitutional police power; basis for challenging public agency decisions; the requirements for and relationships between general plans, specific plans, zoning and subdivision regulations and development agreements; basic environmental review requirements under CEQA; vested rights principles; an overview of design, conservation, and historic preservation tools; the general rules governing development fees, exactions and takings analyses; state and local affordable housing requirements; and the requirements for due process proceedings and administrative findings in the land use context. We hope you find the paper helpful and that it serves as an easy to use resource for municipal land use attorneys.

## THE POLICE POWER

Virtually every reference guide on Municipal Law begins with the premise that a city has the police power to protect the public health, safety and welfare of its residents. *See Berman v. Parker*, (1954) 348 U.S. 26, 32-33. This right is set forth in the California Constitution, which states "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Cal. Const. at. XI, section 7. The ability to enact ordinances to protect the health, safety and welfare is important in the land use context because it confers very broad rights to adopt regulations that implement local land use vision and values, so long as laws enacted by a city are not in conflict with state general laws. This concept is critical because new practitioners often look to cite to a specific statute as the legal authority to adopt an ordinance when, in fact, a city's broad land use authority flows directly from the constitution in the absence of a statutory prohibition or preemption of the city's otherwise regulatory authority.

Land use and zoning regulations are derivative of a City's general police power. *See DeVito v. County of Napa*, (1995) 9 Cal. 4th 763, 782; *see also Big Creek Lumber Co. v. City of Santa Cruz*, (2006) 38 Cal. 4th 1139, 1159. This power allows cities to establish land use and zoning laws which govern the development and use of the community. In *Village of Belle Terre v. Boraas*, (1974) 416 U.S. 1, the U.S. Supreme Court addressed the scope of such power and stated: "The police power is not confined to

elimination of filth, stench and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people." *Id* at 9.

One seminal land use and zoning case underscoring a city's police power was *Wal-Mart Stores Inc. v. The City of Turlock*, (2006) 138 Cal. App. 4th 273, 303 where, in response to concerns over the impacts of big box stores, particularly Wal-Mart, the City of Turlock adopted an ordinance prohibiting the development of discount superstores. Wal-Mart challenged the ordinance, stating the city had exceeded its police power, but the Court disagreed. The court found the police power allows cities to "control and organize development within their boundaries as a means of serving the general welfare." *Id* at 303. The important issue to understand in that case was the language of the ordinance itself. The ordinance did not, and legally could not, target specific tenants which were perceived as causing the certain impacts. However, the city could control the use and development standards of property within its community which, in effect, prohibited only a handful of big box retailers, including Wal-Mart.

Another case that highlights the city's police power, especially at the micro-level, is *Disney v. City of Concord*, (2011) 194 Cal.App.4th 1410. In that case, the City of Concord adopted an ordinance restricting the storage and parking of recreational vehicles in residential yards and driveways. Among other things, the City of Concord's ordinance limited the number of RVs on any residential property to two, required RVs to be stored in side and rear yards behind a six foot high opaque fence, prohibited RVs from being stored on front yards and driveways (with some exceptions) and established maintenance standards for RVs within the public view. James Disney filed suit. His main argument was that the ordinance exceeded Concord's police power. The Court determined that the City of Concord's Ordinance was a valid exercise of the city's police power, where the ordinance had an aesthetic purpose. Citing *Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 858, the Court stated "It is within the power of the Legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled." Again, as echoed by *Village of Belle, supra,* a city's police power is not limited to regulating just stench and filth.

**Preemption.**

Although a city's police power is broad, it is not absolute, and cannot conflict with the State's general laws. A conflict exists between a local ordinance and state law if the ordinance "duplicates, contradicts or enters an area fully occupied by general law, either expressly or by legislative implication." *Viacom Outdoor Inc. v. City of Arcata*, (2006)140 Cal. App. 4th 230, 236.

> **PRACTICE NOTE FOR CHARTER CITIES**: Charter cities enjoy additional constitutional freedom to govern their "municipal affairs" even if a conflict with State law may exist. See Article XI, section 5 of the California Constitution. There is no exact definition of the term "municipal affair" other than those areas expressly stated in section 5. Whether a subject area is a municipal affair (over which a charter city has sovereignty) or one of "statewide concern" (over which the Legislature has authority) is an issue for the courts that depends on the facts and circumstances of each case. Land use and zoning decisions however, have been consistently classified as a municipal

affair and charter cities are exempt from various provisions of the Planning and Zoning Law unless the city's charter indicates otherwise. See e.g. Gov. Code sections 65803, 65860(d); *City of Irvine v. Irvine Citizens Against Overdevelopment*, (1994) 25 Cal. App. 4th 868, 874.

**PRACTICE TIP**: Sometimes, the State or federal government preempts a particular area of law because of potential discrimination or disparate impact concerns. For example, California Health and Safety Code section 1566.3 preempts local zoning with respect to residential facilities serving six or fewer mentally disabled or handicapped persons. Practitioners should be cautious about land use decisions that potentially involve a protected class, not only from an equal protection basis, but from a possible preemption basis as well.

## WRIT OF MANDATE; HOW CITY LAND USE DECISIONS ARE JUDGED

One of the most important perspectives on Land Use and Planning Law is to understand the basis and procedures by which a city's decisions are challenged. By understanding "which hat" your agency is wearing (legislative or adjudicative/quasi-judicial), you will better navigate the contours of legally defensible decisions and how to develop the administrative record to support your agency's decision.

**PRACTICE TIP:** One way to explain the difference between a quasi-legislative decision and a quasi-judicial decision is to state something like: "This is a legislative decision. By taking legislative action, you are being asked to formulate general policies or rules that will apply to future projects, applications or factual circumstances of a given type. In contrast, a quasi-judicial/adjudicative decision is one in which a specific project, application or set of facts is being evaluated for compliance with the policy or rule that you have already developed (the development of law (legislative) versus the application of law to facts (adjudicative)."

**Traditional Writ of Mandate – the Legislative or Quasi-legislative Hat.**

Traditional Mandamus is the form of an action to challenge a ministerial or quasi-legislative act of a city. *California Water Impact Network v Newhall County Water Dist.* (2008) 161 CA4th 1464, 1483. The statutory authority for this type of action is Code of Civil Procedure sections 1085 *et seq*. A ministerial duty is imposed on a person in public office who, because of that position, is obligated to perform in a legally prescribed manner when a given state of facts exists. *County of Los Angeles v. City of Los Angeles* (2013) 214 CA 4th 643, 653. A ministerial duty is one that does not involve any independent judgment or discretion. *Id* at 653. Traditional Mandamus is only available if the person claiming such relief has a "substantial beneficial interest" and "there is not a plain, speedy, and adequate remedy, in the ordinary course of law." Code of Civ. Proc. section 1086. A "substantial beneficial interest" means "a clear, present and beneficial right" to the performance of a ministerial duty. *California Ass'n of Med. Prods. Suppliers v. Maxwell-Jolly* (2011) 199 CA4th 286, 302. This is similar to a standing requirement. Even for a discretionary decision, Traditional Mandamus is available to compel the exercise of that discretion. *Daily Journal Corp. v. County of Los Angeles* (2009) 172 CA 4th 1550, 1555. In other words, Traditional Mandamus may be used to require someone to make a decision. It cannot be used to shape or

otherwise challenge the decision unless that decision constitutes an abuse of discretion. *Saleeby v. State Bar* (1985) 39 C3d 547, 562.

Traditional Mandamus is also available to challenge quasi-legislative acts. *California Farm Bureau Fed'n v. State Water Resources Constrol Bd.* (2011) 51 C4th 421, 428. Judicial review of quasi-legislative acts is usually limited to determining whether the act was arbitrary or capricious; the act was entirely lacking in evidentiary support; or the city failed to follow the procedures required by law. *SN Sands Corp. v. City and County of San Francisco* (2008) 167 CA 4th 185, 191.

> **PRACTICE TIP**: The standard of review for Traditional Mandamus is low[1], generally limited to a court's review of whether the city has abused its discretion in exercising its legislative authority, and a legislative body has fairly broad discretion in policy adoption subject to review. Still a record that reflects the agency's reasoning and the need and support for a given action will be a helpful defense no matter what the standard of review.

**Administrative Writ of Mandate – the Quasi-judicial Hat.**

An adjudicative or quasi-judicial administrative decision may be challenged by Administrative Mandamus when: a hearing in the underlying administrative proceeding is required by law in which evidence is taken and the decision maker is vested with the discretion to determine contested factual issues. Code of Civ. Proc. 1094.5. Review of these decisions is usually limited to the administrative record. Code of Civ. Proc. section 1094.5(a). The scope of review in Administrative Mandamus proceedings is limited to: whether the agency has proceeded without, or in excess of, jurisdiction; whether there was a fair hearing; or whether there was any prejudicial abuse of discretion. Code of Civ. Proc. section 1094.5(b). "Abuse of discretion" is established when: the agency has not proceeded in the manner required by law; the order or decision is not supported by the findings; or the findings are not supported by the evidence. *See Leal v. Gourley*, (2002) 100 CA 4th 963, 968.

The standard of review for Administrative Mandamus is usually the substantial evidence test, however, when the underlying decision substantially affects a fundamental vested right, the independent judgment test applies. Code of Civ. Proc. section CCP §1094.5(b)-(c); *Goat Hill Tavern v City of Costa Mesa* (1992) 6 CA4th 1519, 1525. Under the substantial evidence test, a court determines if there is substantial evidence to support the findings and if the findings support the decision. Under this test, the court accords significant deference to the administrative fact-finder. *Bedoe v. County of San Diego* (2013) 215 CA 4th 56, 61.

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[1] Courts have consistently refused to substitute judicial judgment for the legislative judgment of the governing body of a local agency. So long as the legislative decision bears a reasonable relationship to the public welfare, it is upheld. See *Ass'n. Home Builders, Inc. v. City of Livermore*, (1976) 18 Cal. 3d 582, 604. *California Hotel & Motel Ass'n v. Indust Welfare Comm'n*, (1979) 25 Cal. 3d 200, 211-212 [judicial review is limited "out of deference to the separate of powers between the Legislature and the judiciary [and] and to the legislative delegation of administrative authority to the agency."] Of course, there is a caveat if some sort of heightened scrutiny is involved.

**PRACTICE TIP:** To the greatest extent possible, make sure your city's resolutions and ordinances relating to entitlements include all necessary findings required by statute or ordinance to support an entitlement or approval and use your findings as an opportunity to "connect the dots" between each finding and the facts in the record supporting that finding. Though not specifically required in most cases, you may also want to consider including similar findings to support controversial legislative actions as a way to tell the City's story. Although sometimes difficult, don't let your resolutions become purely template documents with little connection to the underlying decision.

In contrast, under the Independent Judgment standard, the court affords no deference to the factual assessments of the administrative fact finder. *Welch v. State Teachers' Retirement Sys*, (2012) 203 CA 4th 1, 5. In the land use context, when a development approval has been denied in the first instance, it is highly likely that the Substantial Evidence test will be applied. Even if a conditioned permit affects a "fundamental" right, the right may not be "vested" for Independent Judgment purposes. With a vested right, the substantial evidence test applies. *See Break-Zone Billiards v. City of Torrance* (2000) 81 CA 4th 1205. The Independent Judgment test usually applies in cases involving classic vested rights, such as the right to continued operation of one's business. *Goat Hill Tavern, supra.*

## RELEVANT LAWS

Now that we have introduced to you the overarching principles of the police power and discussed the way land use decisions are challenged, there are several statutory schemes with which every land use practitioner should be familiar. These statutes regulate, in one way or another, virtually every land use and planning issue. They include:

1. Planning and Zoning Law, Government Code sections 65000 – 66035;
2. Subdivision Map Act, Government Code sections 66410 – 66499.58;
3. Environmental Quality Act (CEQA), Public Resources Code sections 21000 – 21189.3, 14 CCR 15000 – 15387[2];
4. Ralph M. Brown Act, Government Code sections 54950 – 54963 – although the Brown Act is not specifically a "land use law," every practitioner counseling any public agency must be intimately familiar with these open meeting laws;
5. Mitigation Fee Act, Government Code sections 66000 – 66008.

**PRACTICE TIP:** Create a "meeting folder," including the main provisions of each statute referenced above. We typically have provisions from and/or reference guides on these provisions at every meeting involving a land use issue. American Council of Engineering Companies provides good reference guides that are compact, succinct and easy to transport to meetings.

[2] These are also known as the CEQA Guidelines.

## THE GENERAL PLAN, SPECIFIC PLANS AND ZONING REGULATIONS

**The General Plan.**

California Planning and Zoning Law requires each city to prepare and adopt "...a comprehensive, long term general plan for the physical development of the...city, and of any land outside its boundaries..." Gov. Code section 65300. Under Gov. Code Section 65302, each General Plan must include the following elements:

1. Land Use Element;
2. Circulation Element;
3. Housing Element;
4. Conservation Element;
5. Open Space Element;
6. Noise Element; and
7. Safety Element.

Gov. Code Section 65302 also sets forth particular requirements that must be included in each of the seven elements. One of the more scrutinized elements of a General Plan is the Housing Element which, among other things, must show that the agency's land use and zoning designations contribute to the attainment of State housing goals regarding affordable, transitional and supportive housing.

> **PRACTICE TIP:** Be cognizant of the various components that must be included in each of the elements of the General Plan and make sure that policy discussion at either the Planning Commission or City Council respects State-mandated land use requirements such as affordable housing. These requirements can encounter tension with local objectives to limit growth or constrain development.

> **PRACTICE NOTE:** For those public agencies that have an airport within or in immediate proximity to their jurisdiction, additional requirements and referrals for the review and comment by outside agencies are necessary to make sure that a General Plan and any updates are consistent with the jurisdiction's Airport Land Use Plan. Pub. Util. Code section 21675.

Government Code section 65583(c) requires the Housing Element to establish a program setting forth a schedule of actions to implement the Housing Element's policies. Over the course of the last ten years or so, we have seen a shift towards more specific program/schedule language required by Housing and Community Development ("HCD") for each Housing Element update.

Adoption and amendment of a General Plan is a "project" under CEQA and therefore, environmental review must be performed. *City of Santa Ana v City of Garden Grove* (1979) 100 CA3d 521. Adopting or amending the General Plan must be done in accordance with Government Code section 35350 *et seq.* A general law city may not amend any of the seven mandatory elements of its General Plan more than four times per year. Gov. Code section 65358(b).

**PRACTICE TIP**: Most public agencies "group" General Plan amendments for various projects quarterly to comply with the amendment limitations of section 65358(b).

**PRACTICE TIP**: The social realities of development may outpace General Plan updates. Careful consideration must be given to make sure that enough flexibility is built into the General Plan to account for planning trends. For example, many cities across California are experiencing a social desire for multi-modal transportation design and development projects are being put forward that advance this method of design. Unfortunately, certain policies and planning frameworks may not be well suited to properly account for this change. For example, traffic impact analysis has historically been analyzed based on Level of Service and trip generation. New methodologies are being put forward, and in some ways mandated, to account for bimodal or multimodal transportation. Policies that too narrowly incorporate traditional or existing methodologies risk becoming quickly outdated, driving a need for frequent revision and undermining the utility of the General Plan as a forward-looking community vision document.

Because of the comprehensive nature of General Plan documents, they often take months, if not years, to adopt or significantly update and the legal issues surrounding the adequacy of a General Plan are certainly the subject of treatises beyond the scope of this paper. However, the "take away" is that the General Plan needs to be visionary, but also must give enough guidance and particularity to provide clear context for the subsequent planning decisions and approvals that will flow from and must be consistent with the General Plan (i.e., specific plans, zoning regulations, and map, project and permit approvals).

**General Plan Consistency.**

General Plan consistency is looked at in two ways – (1) internal consistency; and (2) vertical consistency.

*Internal Consistency.*

Government Code section 65300.5 requires a General Plan to be "integrated and internally consistent and compatible state of policies..." In *Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County*, (1985) 166 Cal.App. 3d 90, the County's General Plan was found internally inconsistent where one portion of the circulation element indicated that roads were sufficient for projected traffic increases, while another section of the same element described increased traffic congestion as a result of continued subdivision development. However, in *Friends of Aviara v. City of Carlsbad*, (2012) 210 Cal. App. $4^{th}$ 1103 the court found that Housing Element Law's requirement that a municipality set forth the means by which it will "achieve consistency" with other elements of its general plan manifests a clear legislative preference that municipalities promptly adopt housing plans which meet their numerical housing obligations even at the cost of creating temporary inconsistency in general plans.

*Vertical Consistency.*

As noted above, a General Plan must not only be internally consistent but vertically consistent with other land use and development approvals such as Specific Plans and the agency's zoning and development regulations. *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal. 3d, 553, 570. Similar to the horizontal consistency requirements discussed above, the requirement to be vertically consistent has been codified in Government Code section 65860(a), which states,

> County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met: (1) The city or county has officially adopted such a plan. (2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.

In *Lesher Communications, Inc. v. City of Walnut Creek*, (1990) 52 Cal. 3d 531, 540, the California Supreme Court addressed the importance of vertical consistency in the context of a land use initiative measure. In that case, a "Traffic Control Initiative" was placed on the ballot to establish a building moratorium to combat traffic congestion. The measure passed. The problem the Court faced, however, was the fact that the measure created vertical inconsistency between Walnut Creek's General Plan and Zoning Regulations. After carefully looking at the language of the measure, the Court held that: (1) the initiative was not offered as, and could not be construed as, an amendment to the city's general plan, and (2) since the initiative was inconsistent with the general plan in effect when the initiative was adopted, the measure was invalid. In analyzing the effect of Government Code section 65860(c), the Court stated:

> We cannot at once accept the function of a general plan as a "constitution," or perhaps more accurately a charter for future development, and the proposition that it can be amended without notice to the electorate that such amendment is the purpose of an initiative. Implied amendments or repeals by implication are disfavored in any case, and the doctrine may not be applied here. The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan as a pro tanto repeal or implied amendment of the general plan. The general plan stands. A zoning ordinance that is inconsistent with the general plan is invalid when passed and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. **The tail does not wag the dog.** The general plan is the charter to which the ordinance must conform. (Citations omitted) Id at 540-41. (emphasis added)
>
> Subdivision (c) of section 65860 does not permit a court to rescue a zoning ordinance that is invalid *ab initio*. As its language makes clear, the subdivision applies only to zoning ordinances which were valid when enacted, but are not consistent with a subsequently enacted or amended general plan. It mandates that such ordinances be

conformed to the new general plan, but does not permit adoption of ordinances which are inconsistent with the general plan. The obvious purpose of subdivision (c) is to ensure an orderly process of bringing the regulatory law into conformity with a new or amended general plan, not to permit development that is inconsistent with that plan. *Id* at 545-46.

The *Lesher Communications* case illustrates the clear hierarchy between a city's General Plan and Zoning Regulations and the ultimate supremacy of the General Plan as the guiding document. While most land use approvals are not initiative-based and do not run into the same complications as that which occurred in the *Lesher* case, the case underscores the importance of General Plan consistency requirements and highlights the peril of failing to understand or respect those requirements. Depending on the structure of a city's municipal code, it will most often be the Planning Director, Planning Commission and City Council that will have the responsibility to determine whether a proposed land use development is consistent with its General Plan and virtually every planning consideration should begin with this threshold consistency consideration.

**PRACTICE TIP**: Although courts typically defer to a city's interpretation of its own general plan, you should not lean on deference alone in making sure you have a defensible record. Your land use approval records should reflect a consideration of the consistency requirements and include specific findings and evidence to support each of those findings, commensurate with the nature and scope of the approval being granted. Sometimes we see consistency findings that are more or less a regurgitation of the findings themselves, without any articulation of factual, project-specific support. Here is an example of how best to write such findings:

**POLICY:**
2.2.8 Natural Features: Residential developments should preserve and incorporate as amenities natural site features, such as land forms, views, creeks, wetlands, wildlife habitats, and plants.

**AVOID WRITING FINDINGS LIKE THIS:**
The project is consistent with Policy 2.2.8 of the General Plan because it preserves and incorporates natural features as amenities.

**WRITE FINDINGS LIKE THIS WHICH SPECIFICALLY INCLUDES SUPPORTING FACTS:**
The project is consistent with Policy 2.2.8 of the General Plan because it incorporates San Luis Creek into the common area and incorporates "greenbelt" designs into the project by permanently preserving open space buffers around the development site.

**Specific Plans.**

Specific Plans are hybrid documents that act as a bridge between the General Plan and Zoning Regulations for future development of a particular area. Government Code section 65450 states that a city may prepare a specific plan "for the systematic implementation of the general plan..." A Specific Plan is adopted in the same manner as a General Plan (Gov. Code section 65453) and is considered a legislative act.

> **PRACTICE TIP**: Where a development application is covered by a Specific Plan, be cognizant of the continuing requirements of the Permit Streamlining Act especially for subsequent projects which are exempt from additional CEQA review, to avoid arguments that a subsequent project is deemed approved based on public review of the Specific Plan. See 81 Ops.Cal.Atty.Gen. 166 (1998).

*So what is a Specific Plan and what is the point?*

For some, the concept of a Specific Plan is far less familiar and its purpose is not entirely clear. There are no black and white rules governing when a Specific Plan is required. Instead, a Specific Plan is a tool that public agencies and developers use to achieve better specificity on the vision and development potential of a particular tract of land without having to go through extensive site specific land use analysis and entitlement proceedings. It is "programmatic" in nature and usually deals with major infrastructure, development and conservation standards and includes an implementation program. See Gov. Code section 65451. Often, a specific plan will establish the "look" and "feel" of what future development on the property will be and it can provide a more clear and refined definition of the parameters in which development will be allowed and the responsibilities for major infrastructure area developers will be expected to fulfill. Specific plans can be very useful to agencies in setting realistic development expectations and signaling important big picture limitations or constraints unique to a particular area; they can be very useful to developers in helping to size the potential and costs of development.

**Development Agreements.**

Development Agreements are a unique planning tool authorized by statute pursuant to Government Code section 65864 – 65869.5. A Development Agreement is an agreement between the City and a property owner in which the parties agree to "freeze" all rules, regulation, and policies that are place as of the execution of the agreement. Gov. Code section 65866; *Santa Margarita Area Residents Together v San Luis Obispo County Bd. of Supervisors* (2000) 84 CA4th 221. The Development Agreement structure, because it is a voluntary, arm's length negotiation process between a developer and city, may also allow a city to negotiate developer concessions or contributions that it could not otherwise obtain from a developer through normal exactions or conditions of approval. In some circumstances, development agreements can provide both greater flexibility and greater certainty in the development of large or complex projects. However, it should be noted that Development Agreements are legislative acts and subject to referendum, so the flexibility afforded by the tool is also limited by community values.

**PRACTICE TIP**: Because a Development Agreement is a legislative act and participation is voluntary between the parties, no findings are required to grant or deny such an application, although making findings is usually well advised from a community transparency standpoint. Because these types of arrangements are time and resource intensive, they are often reserved for unique circumstances where there is a specific purpose and underlying need for such an arrangement beyond developer convenience. For example, Development Agreements may be appropriate when a city desires redevelopment of a particular area in a manner that requires up front infrastructure investments beyond a particular developer's "fair share" and a developer desires longer term vesting rights than could be achieved through standard development entitlements so that the developer can obtain financing, among other things.

## VESTED RIGHTS

Under the doctrine of vested rights, if a property owner has received a permit from a public agency to do something, such as a building permit or use permit, and then incurs substantial costs in reliance of that permit, then the property owner has the right to rely on that permit regardless of changes in the public agency's land use regulations. See *Avco Community Developers, Inc. v South Coast Reg'l Comm'n* (1976) 17 C3d 785, 793. In *Autopsy/Post Service, Inc. v. City of Los Angeles*, (2005) 129 Cal. App. 4th 521, the Court of Appeal held that a property owner did not have vested rights status despite the expenditure of approximately $225,000 on the purchase of land and construction costs in reliance of the city's issuance of a building permit for an autopsy facility. Specifically, the Court found that substantial evidence supported the trial court's finding that the city's grant of a building permit and owner's reliance on it did not create a fundamental vested right to use building for performing autopsies -- a use prohibited by the zoning law. City staff were questioned and stated they had no knowledge, before the issuance of the permit, that the structure was intended for use as an autopsy facility, the plans approved made no reference to an autopsy facility, the building permit application did not reveal the corporate name as owner or tenant, instead naming an individual as the owner, and product approvals for autopsy tables were issued without reference to the applicant's name or the location where the product would be installed. *Id* at 527.

The Subdivision Map Act has a specific provision which allows a developer to obtain vested rights status with regard to an approved tentative map. Gov. Code section 66498.1(b). Essentially, by placing the word "vesting" on the draft tentative map, a developer obtains the vested right upon tentative map approval to proceed with development in substantial compliance with the ordinances, policies, and standards in place at the time the application for the map was complete (with some exceptions related to health, safety and welfare). Given the numerous statutory extensions (i.e. SB 1185, AB 333, AB 208 and AB 116) the vested status of a tentative map can be significant.

## THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act ("CEQA") is a comprehensive statutory scheme that requires cities and other public agencies to consider the environmental consequences of their actions before

approving plans or polices or otherwise committing to a course of action on a project. Typically, the city acts as the lead agency for CEQA environmental review for its projects or projects which fall within its jurisdiction. While CEQA has come to be used as a weapon against development in some contexts, it is fundamentally a process and tool to facilitate environmentally informed decision making. In the big picture, the CEQA process forces public agencies and decision makers to ask and evaluate the answers to the following questions:

1. What is the current environmental condition in which the subject property is situated?
2. What environmental impacts are likely to result from the public agencies' approval or decision on a proposed project?
3. Are these potential impacts significant?
4. Are there any alternatives to the proposed project or ways to lessen (mitigate) those impacts of the project so they are not significant?
5. Do those alternatives or mitigation measures render the project infeasible?
6. If so, does the public agency nonetheless want to approve a project with significant environmental impacts because its other benefits outweigh those unavoidable environmental impacts?

   **PRACTICE TIP**: Many CEQA determinations are as much art as science and CEQA analysis is very fact dependent, so there won't always be clear and unequivocal statutory language or case law to "answer" your environmental analysis question. However, try to keep in mind that CEQA is supposed to be a tool to guide good decision making and shed light on environmental impacts, not a fog laden maze with traps for the unwary.

Take the time to ensure: 1) that your environmental review documents address the questions above; 2) that the questions have actually been answered; 3) that the answers are reasonable and based on the facts and realities of the proposed project; 4) that all reasonable mitigations have been explored and that those that are reasonable and feasible are required; and 5) that there are clearly understandable and supported reasons for rejecting mitigations and/or proceeding with a project despite significant impacts. The CEQA review process should be a reasoning process and the result of the analysis should, therefore, be reasonable. If you are not convinced that is the case, it is unlikely a court will be. Keep these fundamental concepts in mind during any CEQA analysis as the underlying purpose and intent of CEQA will shed good light on the situation at hand, especially if your situation does not have any good case law or other authority to fall back on.

**Step 1: Is this a project under CEQA?**

CEQA defines a project as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following: (a) An activity directly undertaken by any public agency; (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or (c) An activity that involves the issuance to a

person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies." Pub. Res. Code section 21065; CEQA Guidelines section 15378(a). A "project" under CEQA includes not only the more recognizable activities such as public works projects, grading, or other construction activities but the enactment and amendment of zoning ordinances, annexation, the adoption or amendment of a general plan or even the approval of a contract which has the ability to cause a direct physical change in the environment.

**Step 2: Timing of CEQA compliance.**

CEQA compliance must occur before the public agency approves a project. The term "approves" however, does not mean final approval. Instead, "approval" refers to "the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person." Or for private projects, "approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project. CEQA Guidelines section 15352. The operative phrase in section 15352(a) is "commits the agency to a definite course of action" which can sometimes occur unexpectedly. For example, in *Save Tara v. City of West Hollywood (Waset, Inc.)* (2008) 45 Cal 4th 116, the California Supreme Court disapproved a line of cases and held that a lead agency has no discretion to define "approval" so as to make its commitment to a project before preparation of an EIR. *Id* at 194. Specifically, in that case, the city and two developers entered into an agreement for the development of affordable housing on city-owned land. The agreement was "subject to environmental review," among other things. The court determined that, in light of all the surrounding circumstances, the city's agreement with the developer and commitments made foreclosed potential mitigation measures or alternatives that would normally be considered part of the CEQA process. *Id* at 138 - 142. In other words, the city went "too far" and committed itself to a definite course of action notwithstanding the CEQA compliance condition it placed in the agreement with the property owner.

> **PRACTICE TIP**: If a project is in the design phase or if a significant amount of money is being requested (or both), make sure that your city is not committing to a definite course of action without complying with CEQA. Ask yourself: by this approval, are we foreclosing any alternatives or mitigation measures?

**Step 3. Is the project exempt?**

If an action or approval is a project under CEQA, it may be statutorily or categorically exempt from CEQA review or may nevertheless fall under the "general rule" or "common sense" exemption. The list of statutory and categorical exemptions can be found under CEQA Guidelines sections 15260 – 15285 and 15300 – 15333, respectively. Some of the more commonly referenced exemptions that we see are:

| <u>Statutory Exemptions</u> | <u>Categorical Exemptions</u> |
|---|---|
| 15262 – Feasibility and Planning Studies<br>15268 – Ministerial Projects<br>15269 – Emergency Projects<br>15280 – Lower Income Housing Projects | 15301 – Existing Facilities<br>15302 – Replacement or Reconstruction<br>15304 – Minor Alternations to Land Use<br>15305 –Minor Alternations to Land Use Limitations<br>15306 – Information Collection<br>15307 – Actions to Protect Natural Resources<br>15308 – Actions to protect the Environment<br>15315 – Minor Land Divisions<br>15317 – Open Space Contracts or Easements<br>15321 – Enforcement Activities<br>15332 – In-Fill Development Projects |

> **PRACTICE TIP**: Note that even if a project is categorically exempt, it may not be exempt if the exception in section 15300.2 applies which states, among other things that "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances" (CEQA Guidelines section 15300.2(c)) or "...may cause a substantial adverse change in the significance of a historic resource" (CEQA Guidelines section 15300.2(f)). See also (CEQA Guidelines section 15300.2(a), (b), (d) and (e)). Compare with CEQA Guidelines section 15260, which states that the *statutory* exemptions "are complete exemptions from CEQA." CEQA Guidelines section 15260.

The CEQA Guidelines provide an additional exemption which is commonly referred to as the "catch-all" or "common sense" exemption. Specifically, the CEQA Guidelines state: "[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA."

> **PRACTICE TIP:** If staff is claiming an exemption on the "catch-all" rule under CEQA Guidelines section 15061(b)(3), ask staff what evidence they have to make this determination. The safest route is to prepare an Initial Study. Also make sure that staff is not overusing this exemption especially if a project is otherwise statutorily or categorically exempt from CEQA review, which will provide a more specific and supportable action.

**PRACTICE TIP:** If a project is utilizing a statutory or categorical exemption specify the precise facts which make the project exempt.

**Step 4: It's a CEQA Project. Now what do I do? Study, study, study.**

*The Initial Study.* An Initial Study is a preliminary environmental analysis for a project to determine if an Environmental Impact Report (EIR) or a Negative Declaration (ND) is needed. Note that if an EIR will clearly be needed for a project, an Initial Study is not technically required. CEQA Guidelines section 15063(a). However, an Initial Study may nevertheless be a good idea to help frame the scope of the EIR (see section below regarding scoping). The Initial Study must include a description of the project, environmental setting, potential environmental impacts, and mitigation measures for any significant environmental effects. CEQA Guidelines Section 15063(d). In describing the project, the Initial Study must look at "...all phases of project planning, implementation and operation..." CEQA Guidelines Section 15063(a).

**PRACTICE TIP**: Although there is no specific format required for an Initial Study, we recommend that public agencies use, at least as the baseline template, the Initial Study found in Appendix G of the CEQA Guidelines.

If the results of an Initial Study indicate that a project may have a potentially significant impact, an EIR must be prepared.

*So do I need to prepare an EIR? The "Fair Argument" Standard.*

CEQA's fair argument standard is the critical tipping point for many projects and is one of the areas of CEQA that generates a significant amount of litigation and controversy. EIRs are expensive (often well in excess of $100,000) and take a significant amount of time to prepare, circulate and approve. As a result, an EIR can effectively kill a project, which is why the fair argument standard is welcomed by project opponents in CEQA litigation. The fair argument standard is set forth in Public Resources Code section 21080(d):

> "If there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment, an environmental impact report shall be prepared." Pub. Res. Code section 21080(d)

"Substantial evidence" means "...fact, a reasonable assumption based upon fact, or expert opinion supported by fact. Pub. Res. Code section 21080(e)(1). "Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." The meaning of substantial evidence is probably one of the most critical aspects of any challenge to a ND of environmental impact or Mitigated Negative Declaration of environmental impact (MND). As with any controversial project, there are usually some project opponents who simply

voice their opposition to the project and who cite CEQA and raise various environmental concerns. However, their statements may not truly rise to the level of constituting "substantial evidence" within the meaning of CEQA.

> **PRACTICE TIP:** Know verbatim the fair argument standard and be able to articulate the tests for any agency body considering an environmental determination. Inevitably, every land use practitioner will come across the situation where a Planning Commissioner asks: "Does this ND or MND violate CEQA?" We recommend that you respond by explaining the fair argument standard and what constitutes "substantial evidence," and advise the body that it must determine whether that standard has been met in light of the underlying record of information before it. Conclusory statements or speculation do not generally constitute substantial evidence. For example, just because a concerned neighbor says it will be "too noisy" and "will have a significant impact on the environment" doesn't necessarily make it so. However, the statement of several neighbors supported by a noise expert hired by the neighbors who has produced a study suggesting that the city's methodology is flawed and it has underestimated the noise impacts should warrant further consideration.

The difficulty in analyzing what constitutes substantial evidence, even where "expert testimony" is invoked, was well illustrated in *Apartment Association of Greater Los Angeles v. City of Los Angeles,* (2001) 90 Cal. App. 4th 1162. In that case, the City of Los Angeles adopted a housing code enforcement program. Opponents retained an expert who stated in the administrative record that the enforcement program would require landlords to undertake construction or repair activities "in potentially tens of thousands of apartment and other buildings...use hazardous chemicals to control pests and rodents, and potentially disturb hazardous building materials..." The court found that such expert testimony did not constitute substantial evidence because such opinion was not expert opinion supported by fact and that such statements were simply "argument, speculation, unsubstantiated opinion or narrative." *Id* at 1176.

> **PRACTICE TIP:** In reviewing whether a statement constitutes substantial evidence, be mindful of words such as "may", "could", "potentially", "might" and other similar adjectives and to what facts in the record are asserted to support the statements. Whether such statements constitute "substantial evidence" under CEQA will turn on the nexus between such language and whether the data supports the conclusion.

The fair argument standard should be understood in light of CEQA's purpose (informed decision making) and preference for environmental protection, which manifests in this standard that created a "low threshold" for requiring an EIR. See *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal. App. 3d 748, 754; *Citizens of Lake Murray Area Assn. v. City Council* (1982) 129 Cal. App. 3d 436, 440; *Mejia v. City of Los Angeles,* (2005) 130 Cal. App. 4th 322, 332. This "low threshold" is sometimes difficult to accept for both city staff and developers considering the substantial costs and delays associated with the EIR process. However, keep in mind that nowhere in CEQA does the cost or delay play into the decision as to whether to prepare an EIR.

*The ND, MND and NOD (A game of Acronym Soup).*

If the Initial Study indicates that the project will not have a significant effect on the environment, then the city can prepare a ND. Pub. Res. Code section 21080(c); CEQA Guidelines section 15070 *et seq*. If the Initial Study indicates that there could be significant impacts, but those impacts can be mitigated to a point of insignificance, then a MND can be prepared. Most projects, especially those involving any sort of construction activity, will include conditions or mitigation measures within the negative declaration calculated to reduce any potential environmental impacts to be less than significant. However, conditions or mitigation measures in the MND will not preclude the need to prepare an EIR if information meeting the the fair argument standard discussed above is introduced into the record. See Pub. Res. Code section 21064.5; CEQA Guidelines section 15070(b)(2).

> **PRACTICE TIP:** One recurring problem with MNDs are "deferred" mitigation measures which are generally impermissible under CEQA. For example, in *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, the court determined that a mitigation measure that required a developer to "prepare a hydrological study evaluating the project's potential environmental effects" violated CEQA. That said, requirements for future implementation measures are allowed, provided there are adequate performance standards, timing of implementation, and contingency plans in place. CEQA Guidelines 15121.6.4(a). In short, a future requirement to study a potential environmental impact is not advisable, but a future requirement for specific mitigation of an identified impact is.

> **PRACTICE TIP:** Land use approvals are often challenged either on the fair argument standard or under administrative writ of mandate grounds. Keep in mind who the real party in interest is. Although it is the city's decision that is subject to challenge, it is the property owner's entitlement that is at stake. Be sure to include in the conditions of approval for every discretionary permit a well-drafted indemnification, hold harmless and duty to defend provision to protect the city from challenge. If a lawsuit is filed, the City will be able to utilize this condition and tender the defense costs to the real party in interest. For subdivision projects, the Subdivision Map Act provides certain limitations on a property owner's duty to indemnify – see Government Code section 66474.9.

If an ND or MND is prepared, the city must provide the public and specified agencies with a notice of intention. Pub. Res. Code section 21092; CEQA Guidelines section 15072. The public review period must be no less than 20 days. Pub. Res. Code section 21092. If the State Clearinghouse is used, the review period is at least 30 days. Pub. Res. Code section 21091(b).

> **PRACTICE TIP:** Unless the project is time critical, the best practice is to use the State Clearinghouse to distribute environmental documentation.

> **PRACTICE NOTE:** In addition to the lead agency designation, CEQA designates certain other public agencies involved in a project approval as "responsible agencies" and "trustee agencies." Although participation by each type of agency is important, it is imperative that any trustee agency (e.g., California Fish and Wildlife) be provided notice before the city (as the lead agency) takes action on the project. Otherwise, the city may face a failure to follow procedure argument or the trustee agency can even "take over" the CEQA review.

Once a notice of intention is provided and the ND or MND is approved, the city needs to record a Notice of Determination (NOD). CEQA Guidelines section 15075.

> **PRACTICE TIP**: Record the NOD *as soon as possible* in order to trigger the 30-day statute of limitations on the approval of the ND or MND.

**STEP 5: The EIR.**

There are several types of EIRs and which type is appropriate depends on the project being approved. For example, a General Plan update would not utilize a "project EIR"; instead, a General Plan update would utilize a Master EIR. Pub. Res. Code sections 21156 – 21158.5.

*Scoping.*

One of the most important initial steps of the EIR process is determining the scope of an EIR. CEQA Guidelines section 15083. This process is essentially a consultation between the city, the developer, responsible and trustee agencies, and sometimes the public, to decide what environmental issues an EIR will focus on. The result of the scoping process is usually two-fold – it (hopefully) removes unnecessary analysis of non-issues and focuses attention on real or legitimately perceived real issues.

> **PRACTICE NOTE**: Scoping meetings are not always helpful. However, for projects where the concerns focus on specific and fairly narrow potentially significant environmental impacts, a scoping meeting can be very helpful in tailoring the EIR process to a limited set of issues.

*Notice of Preparation.*

Once an EIR is "scoped", a City must prepare a Notice of Preparation (NOP) and send it to all responsible agencies, trustee agencies, Office of Planning and Research and any federal agencies who are providing funding or have any part of the approval process for the project. Pub. Res. Code section 21080.4; CEQA Guidelines section 15082(a). In addition, the NOP must be sent to any interested person who has requested written notice. Pub. Res. Code section 21092.2. If an agency chooses to respond, the response must contain specific details regarding how, in terms of scope and content, the EIR should treat environmental information related to the responsible or trustee agency's area of statutory responsibility and must identify the "significant environmental issues and reasonable alternatives and mitigation measures that the responsible agency or trustee agency, or [OPR] will need to have explored in the draft EIR." CEQA Guidelines section 15082(b). If you did your homework in the scoping meeting, responses to the NOP should come as no surprise.

*Preparing the Draft EIR.*

An environmental consultant will almost always prepare the EIR. Although the project applicant pays for the costs for preparation of an EIR, the EIR must "be prepared directly by, or under contract" with the lead agency. Pub. Res. Code section 21082.1(a); CEQA Guidelines section 15084(a).

The EIR must include the following components:

1. Table of Contents or Index; (CEQA Guidelines section 15122)
2. Summary of the proposed actions and their consequences; (CEQA Guidelines section 15123)
3. Project description; (CEQA Guidelines section 15124)
4. Environmental Setting; (CEQA Guidelines section 15125)
5. Evaluation of Environmental Impacts; (CEQA Guidelines section 15126)
6. Water supply assessment –for certain large projects (although there may be some movement in this area of the law and more projects may become subject to this analysis; (Pub. Res. Code section 21151.9; Water Code section 10911(b))
7. Significant Environmental Effects of the Proposed Project; (CEQA Guidelines section 15126.2)
8. Effects Not Found to Be Significant; (CEQA Guidelines section 15128)
9. Mitigation Measures; (CEQA Guidelines section 15126.4)
10. Cumulative Impacts; (CEQA Guidelines section 15130)

    **PRACTICE NOTE**: One interesting concept that has arisen is "urban decay". CEQA Guidelines section 15131 states that economic or social information may be included in an EIR or may be presented in whatever form the agency desires. Subsection (a) states "[e]conomic or social effects of a project shall not be treated as significant effects on the environment." Subsection (b) however states "[e]conomic or social effects of a project may be used to determine the significance of physical changes caused by the project." One situation where this analysis is commonly utilized is with projects involving big box retailers, most notably Wal-Mart. See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App. 4th 1184. The idea behind the analysis is that there will be a physical manifestation of a project's potential socioeconomic impact. In *Bakersfield Citizens for Local Control,* there were two proposed Wal-Mart projects less than 5 miles from each other. Economic experts warned that such land use decisions could cause a chain reaction of store closures and long term vacancies, thus destroying existing neighborhoods and leaving decaying shells in their wake.

11. Project Alternatives; (CEQA Guidelines section 15130);
12. Inconsistencies with Applicable Plans; (CEQA Guidelines section 15125(d))
13. Discussion on Growth Inducing Impacts; (CEQA Guidelines section 15126.2(d)) and
14. Organizations and Persons Consulted. (CEQA Guidelines section 15129).

The most robust and time consuming discussions usually revolve around items 4, 5, 7, 8, 9, and 10.

*Recirculation Issues.*

One issue that often comes up is if an EIR needs to be recirculated because the document has been changed or new issues have arisen during the public review process. You may find yourself on the receiving end of the following question: "Do we need to recirculate?" The effect of recirculation should not be taken lightly – it costs money, delays final approval of the environmental document, and opens the document up to additional comments and criticisms. On the other hand, failure to recirculate when necessary exposes the document and CEQA process to challenge.

Recirculation is required in four instances:

1. When there is new information that shows a new, substantial environmental impact;
2. When new information shows a feasible alternative or mitigation measure that clearly would lessen environmental impacts, but it is not adopted;
3. When new information shows a substantial increase in the severity of an environmental impact; or
4. When the draft EIR was so fundamentally inadequate and conclusory that meaningful public review and comment were precluded.
   (CEQA Guidelines section 15088.5(a))

   **PRACTICE TIP**: When in doubt, recirculate the EIR.

*Approval of an EIR.*

After the final EIR is complete, the city must make certain findings before it can certify and approve the EIR. Specifically, the city must find that:

1. Changes or alterations have been required in, or incorporated into, the project that mitigate or avoid the significant effects on the environment;
2. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency; or
3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the EIR.

Pub. Res. Code section 21081; CEQA Guidelines sections 15091 – 15094. Item 3 is generally referred to as a "statement of overriding conditions."

As with a ND or MND, the city should file a NOD in order to trigger the 30-day statute of limitations on the certification of the EIR. Pub. Res. Code sections 21152(a), (c); CEQA Guidelines section 15075(e).

## TAKINGS, DEVELOPMENT FEES AND EXACTIONS

**Takings.**

Takings analysis begins with the constitutional premise that no private property shall be taken for public use without the payment of just compensation. U.S. Const. 5th Amend.; see also Cal. Const. art. I section 19. A taking can be in the form of a physical taking (i.e. physical invasion of property), *Loretto v. Teleprompter Manhattan CATV Corporation*, (1982) 458 U.S. 419 (State law required property owners to allow cable company to install cable facilities on apartment buildings); denials of all economically beneficial use, *Lucas v. South Carolina Coastal Council*, (1992) 505 U.S. 1003 (regulation barring development on beachfront lots was a taking); partial regulatory takings, *Penn Central Transportation Company v. City of New York*, (1978) 438 U.S. 104 (historic preservation ordinance was not a taking because it did not have any economic impact on the station or interfere with the developer's investment backed expectations as the railroad could continue to earn a reasonable rate of return; and land use exactions, *Nollan v. California Coastal Commission*, (1987) 483 U.S. 825 and *Dolan v. City of Tigard*, (1994)512 U.S. 374. These last two cases are commonly referred to as *Nollan/Dolan* and were seminal in establishing the appropriate takings analysis for land use exactions. This paper will focus on this last takings analysis.

***Nollan/Dolan* and the Test of Reasonableness/Nexus Requirement.**

In California, property development is considered a privilege and not a right. *Associated Home Builders, Inc. c. City of Walnut Creek*, (1971)4 Cal. 3d 633, 638. However, the *Nollan* and *Dolan* cases have limited the extent in which public agencies may condition development. Specifically, cities may impose conditions on development so long as the conditions are reasonable and there exists a sufficient nexus between the conditions imposed and the projected burden of the proposed development. *Nollan*, 483 U.S. at 834-835. Further, cities must prove that such conditions have a "rough proportionality" to the development's impact. *Dollan*, 512 U.S. at 391. In order to understand what is meant by these limitations, it is helpful to know the development and conditions in the underlying cases.

In *Nollan*, a property owner wanted to build a house within the Coastal Zone. The Coastal Commission imposed a condition on the permit, requiring dedication of a lateral access easement along the property owner's private beach. The rational for the condition was to assist the public in viewing the beach and in overcoming a perceived "psychological barrier" to using the beach. *Id.* at 435. The *Nollan* court determined that there was no nexus between the identified impact of the project (obstruction of ocean view by the new house) and the easement condition (physical access across the beach).

Similarly, in *Bowman v. California Coastal Commission*, (2014) 230 Cal. App. 4th 1146, the Court of Appeal found no nexus between a request for a permit to rehabilitate a house and a condition imposed by the Coastal Commission for the property owner to dedicate to the public a lateral easement for public access along the shoreline of his property. Specifically, the Court stated: "We agree with appellants that under *Nollan* and *Dolan,* the easement lacks an "essential nexus" between the exaction and the construction. The work occurs within the existing "footprint" of the property." *Id* at 1151.

In *Dolan*, a property owner applied for a permit to further develop his property. His plans were to increase the size of his plumbing store (by about double) and pave his 39-car parking lot. The permit was approved by the City of Tigard with the condition that the property owner dedicate a portion of his property within the 100 year flood plain for improvement of a drainage facility, and dedicate a 15-foot strip of land adjacent to the flood plain for a pedestrian/bicycle path. The city made numerous findings to support the nexus requirement. The Supreme Court held that even though a nexus between the project and the conditions existed, the degree of the takings was not roughly proportional to the development's impact. The City of Tigard asked for too much in relation to the impact that the development presented.

> **PRACTICE TIP**: The *Nollan/Dolan* analysis can be difficult for city staff and the legislative bodies to understand and implement. If the question is asked if a particular condition constitutes a taking under *Nollan/Dolan,* we recommend that you walk the individual or individuals considering the issue through the following questions so the individual or individuals can articulate a response:
>
> 1. What is the impact that this project has on this issue?
> 2. Does the condition serve a legitimate public interest?
> 3. What is the relationship between the particular impact of the development and the condition? How do they relate to one another?
> 4. Are the impact and the condition on par with one another?

**Development Fees (AB 1600).**

AB 1600, otherwise known as the Mitigation Fee Act, was based on the rational articulated in *Nollan* and *Dolan*, and sets forth certain requirements that must be followed by a California city in establishing or imposing a development impact fee. The Act is codified at Government Code section 66000 – 66025, and requires, among other things, a city to identify the purpose of the fee, identify how it will be used, demonstrate that a reasonable relationship exists between the purpose of the fee and the type of development project on which the fee is imposed, and demonstrate that there is a reasonable relationship between the need for the service or public facility and the type of development project on which the fee is imposed. Gov. Code section 66001(a)-(b).

> **PRACTICE TIP**: For the most part, a city's AB 1600 fees will be established pursuant to fee study. However, it is critical that the public agency also perform the annual and five-year reporting requirements required by Gov. Code sections 66006 and 66001(d), respectively. Failure to report or make the necessary findings could render AB 1600 accounts subject to refund.

Note that these fees are different than other statutorily authorized fees, such as Quimby fees.

## AFFORDABLE HOUSING

As noted above, State law requires each city to provide affordable housing to all economic segments. See e.g., Gov. Code section 65008. This paper will briefly touch on some of the various ways affordable housing programs are implemented by the State and at the local level.

> **PRACTICE NOTE**: Remember that to further the development of affordable housing within the State, CEQA *statutorily* exempts certain affordable housing projects from environmental review.

**Anti-NIMBY laws.**

Government Code section 65589.5 requires a city to make certain findings before it can reject or impose certain conditions on an affordable housing project, including emergency shelters, transitional housing and supportive housing. This statute effectively "flips" the development process and creates a presumption in favor of affordable housing that puts the onus on the city to find that the project would have a specific adverse impact on the health, safety and welfare and that there is no feasible method to mitigate or avoid the impact other than by disapproving the project or imposing certain conditions. Gov. Code section 65589.5(j).

**Second Units, AKA "Granny Units".**

Government Code sections 65852.1 – 65852.2 sets forth the State's second units law. The purpose of the law was to promote the development of secondary units and to make sure that any requirements imposed by cities are not so onerous as to unreasonably restrict the creation of such units. Govt. Code section 65852.150. One important component of this statutory scheme is Government Code section 65852.2(a)(b)(3), which states:

> This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

As a result, most cities' secondary unit regulations mimic the maximum standards set forth in Government Code section 65852.2(a).

**Inclusionary Housing.**

Many public agencies have enacted inclusionary housing ordinances which either encourage or require developers to include a certain percentage of affordable housing units within projects. Many inclusionary housing regulations include the ability to pay an "in-lieu" fee to account for fractional affordable housing requirements or as an alternative to a set-aside requirement. Although inclusionary housing programs have, for the most part, withstood judicial scrutiny (see *BIA of Central California v. City of Patterson*, (2009)171 Cal. App. 4th 886; *Home Builders Assoc.'n of Northern California v. City of*

*Napa*, (2001) 90 Cal. App. 4th 188), fairly recent case law has held that the Costa-Hawkins Act has preempted the field of rental restrictions. *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, (2009) 175 Cal. App. 4th 1396.

In *Sterling Park v. City of Palo Alto (2013)* 57 Cal.4th 1193, the California Supreme Court held that in-lieu fees were subject to challenge as exactions subject to the statute of limitations under the Mitigation Fee Act, disapproving *Trinity Park, L.P. v. City of Sunnyvale*, (2011) 193 Cal.App.4th 1014, which held the Mitigation Fee Act did not apply to a below market housing condition and that the Subdivision Map Act's 90-day statute of limitations applied. It also held that since Palo Alto required the developer to grant the city an option to purchase the units, the option was an interest in real property that could qualify as an 'exaction' as well and that the developer could use the Mitigation Fee Act's protest procedures to challenge the option as well. The Court did not reach the issue of whether a pure price control without an option would qualify as an 'exaction.'

> **PRACTICE NOTE:** The California Supreme Court, in *California Building Industry Association v. City of San Jose*, (2013) 307 P. 3d 878, will decide whether inclusionary housing requirements need to be justified by a nexus study or can be adopted based on the police power. Given the uncertainty of the standard of review, many practitioners in this area are advising that it seems prudent to complete a nexus study so that the program can continue in the event of an adverse ruling.

**Density Bonus Law.**

Government Code sections 65915 – 65918 sets forth the State's Density Bonus Law, which, among other things, provides developers with a density bonus or other development-related concessions if a developer agrees to construct certain housing developments that provide either affordable housing or other similar housing. Gov. Code section 65915(a). This law specifically applies to charter cities. Gov. Code section 65918. The amount of the density bonus and the number of concessions depends on the percentage of units set aside for affordable housing.

> **PRACTICE NOTE:** Government Code section 65915 does not set forth the type of concessions that are available under this law and instead states the applicant may submit a proposal for a specific concession and the city shall grant the concession requested unless it makes a written finding based on substantial evidence that the concession, among other things, would have a specific adverse impact (as defined in Government Code section 65589.5(d)(2)) upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

> **PRACTICE NOTE:** It is important to understand that the State's Density Bonus Law is mandatory and that if a developer proposes a project that qualifies for a density bonus and/or

concession(s), the city and reviewing bodies have little ability to otherwise modify the impacts of those bonuses or concession(s).

**PRACTICE NOTE:** There still appear to be differing practices as to whether a developer's inclusionary housing triggers the density bonuses or concessions under Govt. Code sections 65915 *et seq*. If there is still any ambiguity in your city's ordinances, we recommend the city include inclusionary housing within density bonus calculations. See *Latinos Unidos Del Valle De Napa y Solano v. County of Napa*, (2013) 217 Cal. App. 4th 1160 (density bonus is mandatory even if the project only includes affordable housing "involuntarily" to comply with a local ordinance).

## DUE PROCESS

The Due Process clause of the Fourteenth Amendment is inextricably intertwined with land use law. Due process requires reasonable notice and an opportunity to be heard by an impartial decision maker for administrative proceedings that affect liberty or property interests. See Gov. Code section 65905(a); *Fuchs v County of Los Angeles Civil Serv. Comm'n* (1973) 34 CA3d 709. Due process issues can be fairly apparent, for example in the case of an issuance or revocation of a conditional use permit.

One issue to be aware of is a due process claim arising out of the competing roles of the city attorney as advisor and advocate, for instance the attorney who advised the city on the underlying land use application also advises the body which acts as a later decision-maker in the administrative hearing on the application. See *Nightlife Partners, Ltd. V. City of Beverly Hills* (2003) 108 CA 4th 81 (city violated due process rights of the land use applicant when the lawyer advising the administrative hearing officer on appeal had also advised the City on the original denial of the permit being appealed); *Quintero v City of Santa Ana* (2003) 114 CA4th 810 (due process violated where Board's regular legal advisor appeared before the Board as an advocate, even where separate counsel to the Board was provided); see also *Howitt v Superior Court* (1992) 3 CA4th 1575 (county counsel's office must establish that its attorney who advised county's appeals board was completely segregated from attorney representing the department that terminated the employee, or else county counsel would be disqualified from advising county appeals board).

This line of cases obviously presents some difficult logistical problems for small, in-house municipal legal offices, which require careful thought and planning, and often the retention of outside counsel, where attorneys work closely with staff, as well as acting as advisors to planning commissions and city councils.

## HISTORIC PRESERVATION

For many communities such as the City of San Luis Obispo, historic preservation is critical. At the federal level, there is the National Historic Preservation Act that sets forth federal authority for federal historic preservations programs. California has the California Register of Historic Resources, Pub. Res. Code sections 5020 *et seq*., which is an authoritative listing and guide for cities to implement their respective historic preservation ordinances. There are four different criteria for designation, which are as follows:

1. The resource is associated with events that have made a significant contribution to the broad patters of local or regional history or the cultural heritage of California or the United States;
2. The resource is associated with the lives of persons important to local, California or national history;
3. The resource embodies the distinctive characteristics of a type, period, region or method of construction or represents the work of a master or possesses high artistic values; or
4. The resource has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California or the nation.

Note that the resource is not always a structure but can be something as simple as a sign, wall or trail. The typical effects of historic designation are protection of the resource from alternation, neglect or impact, the ability to obtain building code alternatives, and potentially property tax reduction under the Mills Act.

## CONCLUSION

The world of land use law and regulation is comprehensive and the sheer volume of legal concepts, statutes governing land use decisions, and procedural requirements can be daunting. However, land use regulation is at the heart of some of the most significant decisions local governments make and represents the single most powerful tool that communities have to define, establish, and maintain their "sense of place." If each land use decision can be evaluated starting with the constitutional foundations of the authority to regulate and the various statutes and processes can be viewed as tools to help answer the important questions and order important land use decisions, the process starts to seem less overwhelming. Fundamentally, this paper is presented from the perspective that the law is supposed to make sense and that the objective of the law is good planning. It is our hope that the paper can be used as one of many tools to navigate the legal complexities through that lens. Attached to this paper is a brief "snapshot" of our "go-to" reference guides and websites, which we use in this important subject area.

# "Go-To" Reference Materials

These are the books, websites and other reference materials we have sitting in our office or on our "favorites" tab on our computers. We thought it might be helpful to share with you the references we use, while keeping in mind that everyone works within a limited budget.

Here is what our office looks like in regards to land use materials (in no particular order):

- Copy of our City's General Plan, Specific Plan, Zoning Regulations, Community Design Guidelines
- Remy, Thomas, Moose and Manley's Guide to CEQA
- Bass, Bogdan and Rivasplata's CEQA Deskbook
- Curtin's California Land Use and Planning Law
- California Municipal Law Handbook, CEB
- ACEC Planning and Zoning
- Michael Durkee's Map Act Navigator
- CA League of Cities': Proposition 218 Implementation Guide, Providing Conflict of Interest Advice, The People's Business, Open and Public IV
- Abbott, Detwiler, Jacobson, Sohagi and Steiner's Exactions and Impact Fees in California
- CALTrans's Standard Specifications
- Miller & Starr, California Real Estate (All of 'em)
- CEB California Civil Writ Practice
- CEB; California Land Use Practice
- CEB California Practice Under CEQA
- Link to the League of California Cities' City Attorney's e-Group Listserv
- Link to California Code through www.legalinfo.legislature.ca.gov;
- Link to our City's Westlaw account.

We use these reference materials on nearly a weekly basis and could not imagine operating without them. Of course, there are numerous other reference guides and materials that are tremendously helpful but the above list just happens to be the ones that we have accumulated over the years and try to keep current.

**Flinn Fagg**

| | |
|---|---|
| **From:** | Judy Deertrack <judydeertrack@gmail.com> |
| **Sent:** | Monday, October 24, 2016 8:01 PM |
| **To:** | Flinn Fagg; Robert Stone; Frank Tysen; Kathy Weremiuk; Scott Bigbie; Lyn Calerdine; Michael Johnston; Tracy Conrad; Marv Roos; Jim Harlan |
| **Subject:** | PDD STUDY / CONSISTENCY WITH THE GENERAL PLAN / SMA |
| **Attachments:** | 01 EXCERPTS ON RESIDENTIAL DENSITY (PFPP v. City of Palm Springs).pdf; 02 GENERAL PLAN AE 1-17 TO 1-18 SP and PDD.pdf; 03 CALIFORNIA GENERAL PLAN GUIDELINES CONSISTENCY IN PRACTICE.pdf; 04 SUBDIVISION MAP ACT (CHARTER CITY CONSISTENCY REQUIREMENT).pdf |

To the Committee,

*Subdivision Map Act Consistency Requirements (PDD Findings):*

I am still concerned about Mr. Holland's declaration the City need not conform its zoning to the General Plan, which has been the City's long term practice. I know the City has expressed a desire to change that practice, and states that it is voluntary, but as of recent decisions, it has not yet occurred -- voluntarily or otherwise.

I have attached some reading material, fairly simple, and hopefully valuable, in understanding how consistency review works. Firstly, even though Charter Cities are potentially exempt from the Government Code sections on zoning, **if the Charter City has made provision in its Charter, Ordinances or in its General Plan for Consistency, then that will prevail.** Mr. Holland had not mentioned this factor, and it is controlling. If the General Plan and/or ordinances are inconsistent on the point, that is serious enough to invalidate project approval.

But I did recall something quite important from CalPoly's Planning Department, and why most Charter Cities follow their general plans, despite the exemption. Cities must still follow the State Subdivision Map Act -- which does not fall under the Planning and Zoning Exemptions in the Government Code. Charter Cities are NOT exempt from the Subdivision Map Act (see attachment).

It is the goose or the gander. Where you don't get caught up under one law, you do under another. On a residential subdivision, the density (SFR versus MFR) is reflected in the map's lot configurations and lot sizes. And if those lots do not conform to the language of the General Plan for density and residential type, the City has violated its consistency requirement on the Subdivision Map Act findings. So, the City gets caught in non-compliance regardless.

But my position has been thus -- zoning may not have to strictly adhere to the General Plan, there is room for flexibility; but since (in other sections of the Government Code) the State of California has provided that Charter Cities develop and adopt a General Plan -- I do not believe the State intended to exempt cities from conforming. The zoning acts cannot frustrate and circumvent the intent of the plan. General Plan non-compliance is poor practice; it is an insult to the General Public; it may be legally problematic.

*PFPP v. City of Palm Springs:*

I have also attached the wording again from *PFPP v. City of Palm Springs.* I am sorry I must disagree with Mr. Holland's position on this.

The Fourth District Justices spoke as clearly as could be, namely; the City is required to accommodate its fair share of regional housing; the 2007 EIR mentioned compliance was reached through means of the "closed density ranges" with minimum and maximum values; and, by eliminating those ranges the City's Amendment impacted housing diversity because "high density designated parcels may now be considered for low density development." The court could not have been clearer.

At the bottom left of page 6 of the opinion, the Fourth District Court of Appeal states, "As the City acknowledges, the zoning ordinance sets no minimums on residential density. **However, the General Plan does."**
[emphasis added]

Then the justices spend five or six paragraphs citing California law on General Plan Zoning Consistency (knowing Palm Springs is a Charter City!), and stated that "a zoning ordinance that is inconsistent with the general plan is invalid when passed...." "The tail does not wag the dog." That language and those concepts were not just dropped into the decision inadvertently.

Immediately after all of this instruction on General Plan obligations, the court states, **"Given the above,** we conclude that the City may not rely on an exemption from CEQA, ......"

By including the words, *"given the above"* -- the court is CLEARLY applying case law just cited from DeVita, City of Irvine, et seq, to the evaluation of this case.

This appeal was on the grounds of inadequate CEQA review of the City's General Plan Amendment eliminating minimum density ranges. The court instructed the City to VACATE its exemption finding, which had allowed the City to certify and approve the Amendment.

My question is this -- The case determination was from April of this year. That I know of, the City is STILL applying the General Plan Amendment (waiving minimum density standards) to new PDD's going through the system. When will the City vacate the General Plan Amendment and correct its actions, and follow the instruction of the Fourth District Court of Appeal?

Until it does, I would recommend a hold on any residential PDD's, because of their reliance upon minimum threshold standards.

With regard,

Judy Deertrack
760 325 4290

judgment of the trial court are supported by substantial evidence. Nevertheless, an appellate court must independently decide questions of law without deference to the trial court's conclusions. (*Evans v. Unemployment Ins. Appeals Bd. (1985) 39 Cal.3d 398, 407*; *Kreeft v. City of Oakland (1998) 68 Cal.App.4th 46, 53*.)

Examples of questions of law relevant to this appeal include (1) determining the meaning of a statute (*People ex rel. Lockyer v. Shamrock Foods Co. (2000) 24 Cal.4th 415, 432)*, and (2) determining the meaning of a provision of a general plan because a charter city's adoption of such plan is a legislative act (*Gov. Code, § 65700, subd. (a)*; see *Chandis Securities Co. v. City of Dana Point (1996) 52 Cal.App.4th 475, 481)*. Although a trial court's conclusions on questions of law are not entitled to deference, "the City's legislative enactments are entitled to some deference; there is a presumption that both [*7] the general plan and the initiative measures amending such are valid [citation], and so long as reasonable minds might differ as to the necessity or propriety of the enactment, the municipality's (or electorate's) determination of policy must be upheld. [Citation.] The only issue to be resolved is whether, applying the standard that the legislation, unless clearly arbitrary, capricious, or entirely lacking in evidentiary support, must be upheld [citation], the general plan, as amended, substantially complies with state law, i.e., whether there has been '"actual compliance in respect to the substance essential to every reasonable objective of the statute," as distinguished from "mere technical imperfections of form." [Citation.]' [Citation.]" (*Garat v. City of Riverside (1991) 2 Cal.App.4th 259, 292*, disapproved on other grounds as stated in *Morehart v. County of Santa Barbara (1994) 7 Cal.4th 725, 743, fn. 11*.)

**B. The City Erred in Relying on a Categorical Exemption**

PFPP contends the City erred by relying on a categorical exemption because the Amendment is not a minor alteration of a land use limitation; furthermore, even if the exemption could apply, it would not here because the Amendment has a strong possibility of having an adverse impact on the environment. We agree.

"To achieve its objectives of environmental [*8] protection, CEQA has a three-tiered structure. [Citations.] First, if a project falls into an exempt category, or '"it can be seen with certainty that the activity in question will not have a significant effect on the environment" [citation], no further agency evaluation is required.' [Citation.] Second, if there is a possibility the project will have a significant effect on the environment, the agency must undertake an initial threshold study; if that study indicates that the project will not have a significant effect, the agency may issue a negative declaration. Finally, if the project will have a significant effect on the environment, an environmental impact report (EIR) is required. [Citation.]" (*Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles (2008) 161 Cal.App.4th 1168, 1185-1186* (*Committee to Save the Hollywoodland*).)

Here, the City never undertook an initial threshold study because it found the Amendment to fall into an exempt category. "The Legislature has made certain categories of projects exempt from CEQA. Many of these exemptions appear in *Public Resources Code section 21080, subdivision (b)*. [Citations.] *Public Resources Code section 21080, subdivision (b)(9)* exempts from CEQA '[a]ll classes of projects designated pursuant to *[Public Resources Code] [s]ection 21084*.' [¶] *Public Resources Code section 21084* authorizes the Secretary of Resources Agency to include in the Guidelines[2] a list of classes of projects [*9] exempt from CEQA provided the Secretary makes 'a finding that the listed classes . . . do not have a

[2] CEQA Guidelines (*Cal. Code of Regs., tit. 14, §§ 15000 et seq.*) developed by the Office of Planning and Research and adopted by the California Resources Agency. (*Pub. Resources Code, § 21083*.)



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significant effect on the environment.' The classes of projects identified by the Secretary of the Resources Agency appear in Guideline section 15300 et seq. and are sometimes referred to as 'categorical exemptions.'" (*Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997) 52 Cal.App.4th 1165, 1191* (*Azusa*).)

"The agency decides whether a project is categorically exempt as a part of its preliminary review without reference to any mitigation measures. [Citation.] If the agency establishes the project is within an exempt class, the burden shifts to the party challenging the exemption to show that it falls into one of the exceptions. [Citation.] Generally, courts apply the substantial evidence test to the agency's factual determination that the exemption applies in the first instance; courts are divided on the question of whether the 'fair argument' standard (whether the record contains evidence of a fair argument that the project may have a significant effect on the environment) [citation], or the substantial evidence test applies to the second step of the analysis, namely [*10] determination of whether an exception to the exemption exists.[3] We do not substitute our judgment for that of the state agency and must resolve reasonable doubts in favor of its decision. [Citation.]" (*Committee to Save Hollywoodland, supra, 161 Cal.App.4th at pp. 1186-1187*, fn. omitted.) When an agency relies on a categorical exemption, the exemption must be narrowly construed. (*Azusa, supra, 52 Cal.App.4th at p. 1192*.)

The City found the Amendment to be exempt from CEQA review. The exemption at issue here, a class 5 exemption, exempts projects that "consist[] of minor alterations in land use limitations in areas with an average slope of less than 20%, which *do not result in any changes in land use or density*, including but not limited to: [¶] (a) Minor lot line adjustments, side yard, and set back variances not resulting in the creation of any new parcel; [¶] (b) Issuance of minor encroachment permits; [¶] (c) Reversion to acreage in accordance with the Subdivision Map Act." (*Cal. Code Regs., tit. 14, §§ 15000 et seq.* (CEQA Guidelines), 15305, italics added.) The City found the Amendment exempt because its "proposed change reflects past and current practice and retains existing density maximum standards." The trial court agreed. We do not.

Because the Amendment does [*11] not retain existing density minimum standards on its face, it apparently results in a change to land density. The City's argument to the contrary discounts minimum density standards on the ground that the General Plan qualifies that minimum number as "anticipated." Moreover, the City argues that the Amendment "did not alter any language in the Housing Element or any tables either in the Land Use Element or Housing Element"; that "[i]t did not alter estimates of housing stock with the Housing Element"; and "[t]he ranges of density were left alone in some places as they still remain useful in noting the minimums that can be anticipated and continue to give meaning to the General Plan's description of the lower threshold." In sum, the City's argument is that the Amendment did not result in a change to land density.

Notwithstanding the above, even if we accepted the City's argument and assumed the Amendment qualified as a class 5 exemption, we conclude that PFPP met its burden of showing that the Amendment falls into one of the exceptions to exemption. PFPP presented sufficient evidence supporting a fair argument that the Amendment will result in a significant impact on the environment due to its [*12] across-the-board change in land use regulation that affects every residential area identified by the General Plan.

[3] We need not decide that issue here, however, as the result is the same under either test.



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Moreover, the Amendment is capable of causing significant cumulative impacts on the City's stock of high-density, low and moderate income housing due to its elimination of the minimum density allowances. In order to evaluate how the Amendment will impact the environment, we begin with the EIR that was prepared in support of the 2007 General Plan (2007 EIR).

According to the 2007 EIR, residential land uses accounted for approximately 41 percent of the urban and developed land uses within the City, with only 3 percent of total acreage designated for high density. In support of the 2007 General Plan update, which set the anticipated range of density, the City identified the following policies and actions that were designed to reduce potential land use and planning impacts of future development. Regarding land use, the City sought to "[e]ncourage, where appropriate, high density projects to maximize the use of land." As for the housing element, the City wanted to encourage a broad range of housing opportunities, "[m]aintain a range of housing densities through general plan land use designations and zoning to facilitate and encourage [*13] single-family homes, apartments and townhomes, mobile homes, and special needs housing," facilitate the development of affordable housing, and "[p]rohibit the encroachment of significant housing development into areas designated as open space, desert, or conservation areas without appropriate environmental review and approvals."

The 2007 EIR noted that the housing element of the General Plan update "provides a thorough discussion as well as goals and policies to address issues of housing affordability." Recognizing that Government Code section 65863 "restricts cities' ability to reduce the maximum allowable density in areas already designated or zoned for residential uses to a level below the density used by the [state] when determining whether a city's housing element complies with state law," the 2007 EIR noted that the City could not permit the "reduction of density of any such residentially designated parcel unless the city finds the proposed reduction in density is consistent with the General Plan," and there are remaining sites adequate to accommodate the City's share of the regional housing needs. While the Amendment does not reduce the maximum allowable density for residential areas, its elimination of the minimum allowable density [*14] changes the density range, effecting a lower average density for residential areas than that anticipated in the 2007 EIR. The City's claim that the Amendment is exempt from CEQA analysis begs the question: Is the City able to accommodate its share of the regional housing needs if there is no minimum (and a lower average) density for residential areas as originally identified and required in the General Plan?

According to the City, the minimum density identified in the General Plan is irrelevant because it was never really considered. It contends that the "'baseline' or existing environment" remains unchanged given the City's practice of never interpreting the General Plan as mandating minimum densities, and the Zoning Ordinance (under which all residential development is processed) as never mandating minimum densities. The City adds that this was the existing environment when the General Plan was adopted in 2007 and will remain so with the Amendment. The trial court agreed, finding the Amendment did not change the existing environmental baseline. We are not persuaded.

While we agree that the physical environmental conditions in the vicinity of the project normally constitute what is [*15] known as the baseline (Cal. Code Regs., tit. 14, §§ 15000 et seq. (CEQA Guidelines), 15125, subd. (a)), we do not agree that such is the case here. Once the City adopted the General Plan in 2007, the General Plan itself provided the baseline for future projects. (Save Our Peninsula Committee v. Monterey County Bd. of



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Supervisors (2001) 87 Cal.App.4th 99, 125-126 ["[W]here the issue involves an impact on traffic levels, the EIR might necessarily take into account the normal increase in traffic over time. Since the environmental review process can take a number of years, traffic levels as of the time the project is approved may be a more accurate representation of the existing baseline against which to measure the impact of the project."].) Here, the City is required to accommodate its share of the regional housing needs. The 2007 EIR identified closed density ranges that met this requirement. By eliminating the minimum density, the Amendment will impact the availability of high density, low and moderate income housing because high density designated parcels may now be considered for low-density development. Thus, the Amendment lowers the average density for residential areas and changes the land use regulation to the detriment of every parcel designated as residential by the General Plan, potentially causing significant cumulative [*16] impacts on the City's stock of high density, low and moderate income housing. Moreover, permitting low density residential development in areas previously set aside for high density projects will necessarily reduce the range of housing types, prices and opportunities available in the City to the frustration of the General Plan's goal of facilitating a broad range of housing types. The City recognized that the Amendment embraces a trend towards low density, small lot single-family dwellings. Thus, arguably, the Amendment changes the diversity of residential densities established in General Plan. Given this change, it is unclear whether the City will be able to accommodate its share of the regional housing needs.

Further, we find the City's reliance on its zoning ordinance as providing guidance on "whether the [Amendment] ha[s] the potential to reduce residential densities" to be misplaced. As the City acknowledges, the zoning ordinance sets no minimums on residential density. However, the General Plan does. The General Plan is a ""constitution" for future development' [citation] located at the top of 'the hierarchy of local government law regulating land use' [citation]." (DeVita v. County of Napa (1995) 9 Cal.4th 763, 772-773.) "A zoning ordinance [*17] is consistent with the city's general plan where, considering all of its aspects, the ordinance furthers the objectives and policies of the general plan and does not obstruct their attainment. [Citation.] . . . . [¶] . . . [¶] . . . 'A zoning ordinance that is inconsistent with the general plan is invalid when passed [citations] and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. [Citation.] The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform.' [Citation.] The same rule applies to this case." (City of Irvine v. Irvine Citizens Against Overdevelopment (1994) 25 Cal.App.4th 868, 879.)

Given the above, we conclude that the City may not rely on an exemption from CEQA, it must proceed to the next step of the analysis and conduct an initial threshold study to see if the proposed Amendment will have a significant impact upon the environment to determine whether a negative declaration may be issued. (See Committee to Save Hollywoodland, supra, 161 Cal.App.4th at p. 1187.)

III. DISPOSITION

The judgment is reversed. The trial court is directed to grant PFPP's petition for a writ of mandamus and require the City to vacate [*18] both its issuance of an exemption under CEQA concerning the Amendment, and its September 4, 2013, Resolution No. 23415 certifying and approving the Amendment. PFPP is awarded its costs on appeal.

Ramirez, P. J., and Slough, J., concurred.



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## EXEMPTIONS

The State Legislature has recognized that occasions arise which require the local jurisdiction to have some flexibility in amending the General Plan. As set forth in the California Government Code, the following are exempt from the General Plan amendment schedule:

- Amendments to optional elements.
- Amendments requested and necessary for affordable housing (Section 65358(c)).
- Any amendment necessary to comply with a court decision in a case involving the legal adequacy of the general plan (Section 65358(d)(1)).
- Amendments to bring a general plan into compliance with an airport land use plan (Section 65302.3).

# RELATIONSHIP TO OTHER PLANS AND PROGRAMS

Although the General Plan serves as the primary means to help the City implement its vision, several other management and implementation tools are needed to ensure that the goals and policies identified here are fully realized.

## MUNICIPAL CODE AND ZONING ORDINANCE

The City's Municipal Code and Zoning Ordinance are the primary tools used to implement the goals and policies of the General Plan. The Zoning Ordinance provides more detailed direction related to development standards; permitted, conditionally permitted, and prohibited uses; and other regulations such as parking standards and sign regulations. The land uses specified in the Zoning Ordinance are based upon and should be consistent with the land use policies set forth in this element. Changes to the Zoning Ordinance may be necessary due to the adoption of provisions in this General Plan and could require changes to the zoning maps and development standards.

## SPECIFIC PLANS

While the General Plan provides overall guidance for the physical development of the City, specific plans are used to provide more detailed regulatory guidance for special areas or large developments within the City. Specific plans are generally comprised of a land use plan, circulation plan,

development standards, design guidelines, phasing plan, infrastructure plan (water, sewer, or drainage), and implementation plan pursuant to California Governmental Code Sections 65450 through 65457. They are typically implemented as customized zoning for a particular area of the City, and are generally used for large-scale projects that require a comprehensive approach to planning and infrastructure issues.

A limited number of specific plans have been approved within the City of Palm Springs for the following projects: Canyon Park, Canyon South (an amendment to the Canyon Park Specific Plan), and Section 14, which are shown on the Land Use Plan (Figures 2-2 and 2-3).

## PLANNED DEVELOPMENT DISTRICTS

Planned development districts are mechanisms to provide flexibility in the application of development standards that would yield a more desirable and attractive project than would otherwise be possible with strict application of the underlying zoning regulations. Planned development districts enable property owners to apply modified development standards (e.g., an increase in buildable area or building height or adjustments to setbacks) that are different than those identified in the Zoning Code, if the project can mitigate any impacts that would be generated by the modifications. All Planned Development Districts shall be consistent with the General Plan.

To implement the land use policies identified in this element, planned development districts are intended to:

a. Provide a mechanism to allow the permitted building area, floor area ratios, and building heights to exceed provisions specified by land use policy.
b. Provide a mechanism for allowing both on- and off-site density transfers.
c. Provide a mechanism for the consolidation of adjoining commercially and residentially designated parcels into a single site, if they are designed as part of a unified development project.
d. Provide a mechanism for determining the appropriate type, character, density/intensity, and standards of development for the reuse of sites currently used for public or private institutions.
e. Provide a mechanism for creative, high quality projects that are evaluated as a whole, rather than against individual standards.