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Senator Gloria Negrete McLeod, Chair

Thinking About Tomorrow:

An Oversight Hearing on General Plans

February 7, 2006
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Thinking About Tomorrow
Table of Contents

	<u>Page</u>
Introduction	1
Why prepare a general plan?	2
What are the characteristics of a general plan?	5
What's in a general plan?	7
What do we know about general plans?	9
How can the state help?	12
Sources & credits	15

More information about general plans and local planning practices can be found on the website of the Governor's Office of Planning and Research: www.opr.ca.gov

Thinking About Tomorrow: An Oversight Hearing on General Plans

General plans are California's oldest form of growth management. Local general plans are the central to the legal foundation that supports local decisions about land use conservation and development in California. General plans are the policy basis for all local land use decisions.

Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning.

Government Code §65300

As the Legislature prepares to allocate billions of dollars of state bond funds to public works projects and housing developments, legislators need to refocus their attention on how local officials make land use decisions. In particular, they need to pay attention to general plans which the courts have called the "constitution for all future development."

Senator Gloria Negrete McLeod, Chair of the Senate Local Government Committee, has called a legislative oversight hearing on local general plans for Wednesday, February 7. She wants the Committee to explore the following questions:

- Why prepare a general plan?
- What are the characteristics of a general plan?
- What's in a general plan?
- What do we know about general plans?
- How can the state help?

This briefing paper prepares the members of the Senate Local Government Committee for their February 7 oversight hearing. Pages 12 through 14 offer policy questions (printed in *italics*) that the Senators may want to ask at the Committee's hearing.

Why Prepare A General Plan?

There are five good reasons why counties and cities prepare long-range comprehensive plans that guide the conservation and development of their communities:

- State law mandates general plans.
- General plans are the basis for local land use decisions.
- General plans identify the topics that are important to communities.
- General plans promote community participation.
- General plans set the ground rules for future development.

State law mandates general plans. Every county and city, even a charter city, must adopt a general plan with statutorily required contents. As Table 1 shows, California has a long history of state laws that guide local land use planning and development. Responding to the increasing national interest in land use planning and zoning, the Legislature first authorized *master plans* in 1927 (SB 585, McKinley, 1927). By 1929, master plans were required for cities and counties that had established local planning commissions. In 1937, the Legislature mandated that all counties and cities adopt master plans (AB 722, Weber, 1937). The statutory requirement for counties and cities to adopt local general plans is now 70 years old.

Table 1: Brief History of State Mandated Local Plans

1927	Legislature authorizes local master plans.
1929	Master plans required for planning commissions.
1937	Master plans required for all counties and cities.
1955	Land use and circulation elements added.
1965	Master plans renamed as “general plans.”
1967	Housing element added.
1970	Conservation and open space elements added.
1971	Seismic safety, noise, scenic highway, safety elements added.
1984	Mandated elements reduced from 9 to 7.

The early requirements for local general plans were quite broad. Beginning in 1955, however, the Legislature began requiring more detail by mandating that the

plans contain a *land use element* and a *circulation element*. In 1965, the Legislature overhauled the Planning and Zoning Law and renamed the required plans as *general plans*. During the late 1960s and early 1970s, legislators added several more topics to the list of elements that local officials must include in their general plans. In 1984, the Legislature combined some of these elements so that general plans must now include seven required elements. (See pages 8 and 9 for a description of the required elements.)

General plans are the basis for local land use decisions. Most land use development decisions must be consistent with the general plan of the county or city that approves the project. The California Supreme Court emphasized the policy supremacy of the general plan over land use decisions in its 1990 *Lesh* decision when it said that “the tail does not wag the dog.”

Planners and land use lawyers call this concept *vertical consistency*. In particular, the requirement for vertical consistency applies to:

- Zoning ordinances.
- Subdivision decisions.
- Specific plans.
- Public works projects.
- Use permits.

To demonstrate this vertical consistency, planning commissioners, county supervisors, and city councils must make formal findings backed by substantial evidence that show how their land use decisions are consistent with their general plans. As the central land use policy document, the general plan becomes the legally defensible basis for regulating land uses. For example, the Subdivision Map Act prohibits local officials from approving a proposed subdivision unless they find that it is consistent with the local general plan.

In the 1980 *Friends of “B” Street* decision, the appellate court explained that local public works projects must be consistent with local general plans. As counties and cities prepare to build and improve public works with state infrastructure bond funds, they need to be sure that their general plans are adequate so they can be used as the legal basis for making the vertical consistency findings.

General plans identify the topics that are important to communities. County boards of supervisors and city councils should prepare and adopt general plans that reflect the issues that are important to their constituents. While the Planning and

Zoning Law organizes the required elements into seven categories, a better way to understand these topics is to think of four main themes:

- Housing and community development.
- Resource conservation and development.
- Health and safety hazards.
- Public facilities and services.

By asking their constituents how they want the community to look in the future, local officials can use the process of preparing and adopting a general plan to identify the issues that are important to residents and property owners.

For example, an older suburb may emphasize job creation and home ownership --- topics that fit within a community's required circulation element or housing element. A town in the Mother Lode foothills may worry about wildland fires --- a topic that local officials can address in the safety element. The open space, conservation, and land use elements can be the focus of attention in a rural county that wants to protect prime agricultural land and commercial ranches.

General plans promote community participation. Planning is inherently political. As the central policy document, the general plan expresses the community's choices about questions involving conservation and development. It is no surprise that the debates about what to put into a general plan (and what to leave out) can be highly charged. The process of writing a general plan attracts:

- Residents (homeowners, tenants).
- The development community (builders, lenders, Realtors, labor, suppliers).
- Organized interests (chambers of commerce, civic associations).
- Neighborhood groups (some of them may be *ad hoc*).

Because some communities care deeply about what may happen in their future, the public debate can be intense. When they prepare general plans, many communities vigorously invite public participation in identifying planning goals, selecting alternatives, and exploring implementation measures. Some local officials hold communitywide meetings before revising their general plans, some meet with neighborhood groups, some conduct surveys; all must hold formal public hearings. Experienced planners know that these public participation expenses can be as much as one-third of the cost of revising a new general plan.

General plans set the ground rules for future development. Adopting general plans promotes fairness. When local elected officials adopt a new or revised general

plan, they are setting the ground rules for how they intend to act on future development projects. General plans are important to property owners because they give signals to both the proponents and their neighbors about whether and what kind of development (if any) they can expect in the future. General plans are important to other governments because they explain how much development is likely to occur. School districts, water and sewer agencies, park managers, and other public officials can plan their own facilities once they know how, when, and where a community intends to grow. Federal agencies and state departments look to local general plans for guidance on the need for transportation, flood protection, and other infrastructure.

What Are the Characteristics of a General Plan?

A county or city general plan has six key characteristics:

- It is a legislative act.
- It must be comprehensive.
- It must be long-term.
- It relates to physical development.
- It relates to the community's planning area.
- It must be internally consistent.

It is a legislative act. Just as the Legislature creates state policy when it passes a new law, a county board of supervisors or city council sets policy when it adopts a local general plan. A general plan is a guide to action. The legislative policies within general plans that control the specific actions which carry out the broader policies. For example, when approving the subdivision of former farmland just inside the city limits, a city council is applying its general plan policies for residential development to a particular piece of property. In this way, the general plan guides the use of counties and cities' police power regulation of land uses.

Because general plans are legislative acts, they can be adopted or amended by the voters with initiatives. Sometimes called *ballot box planning*, land use initiatives allow their sponsors to ask the voters to write or change general plans to promote or restrict development.

It must be comprehensive. General plans must be both complete and adequate. Thirty years ago, an appellate court rejected a city's claim that its subdivision approval was consistent with the local general plan when the opponents

pointed out that the city council had failed to adopt the required open space element. A general plan that is not complete is not an adequate basis for making land use decisions. In 1981, another court invalidated a county's approval of a subdivision when the opponents showed that the county's general plan didn't cover the topics required by state law. A general plan that doesn't substantially comply with statutory requirements is not an adequate policy document.

General plans must cover all of the topics assigned by the Planning and Zoning Law. But the statute acknowledges that not all of the listed issues are equally important in every community. Some call this approach the *shoe-fits theory of planning*. A county or city must plan for a required topic only to the extent that it exists. For example, a small city in a rural county may be a quiet place, so its required noise element may not be very extensive. In contrast, a county that is crisscrossed with oil pipelines and seismic faults should pay attention to both man-made and natural hazards in its safety element.

It must be long-term. Planners never stop thinking about the future. While local elected officials may measure their time horizons in four-year election cycles, they need to think in longer terms when preparing, adopting, and amending general plans. Economic trends sometimes take a decade to emerge. Public works projects like roads, sewer pipes, and libraries can last for more than 75 years. Ranchers often think in generations. The advisory *General Plan Guidelines* published by the Governor's Office of Planning and Research (OPR) say that the time horizon in most general plans is 15 to 20 years.

It relates to physical development. The seven required elements in general plan law focus almost entirely on physical conditions: flood plains, unstable hillsides, wildland fires, airport noise, military bases, forests, and agricultural soils, among others. Even the required housing element concentrates on available parcels and buildings, although demographic and economic forces influence regional housing needs. The Planning and Zoning Law allows counties and cities to add their own local concerns to general plans, and many do. Some communities have added child care or cultural topics. But the state law's overwhelming emphasis is on physical planning.

It relates to the community's planning area. A local general plan must cover all of the territory within the county or city. In addition, a general plan must include any other land outside its boundaries that "bears relation to its planning." Therefore, a city's *planning area* almost always goes beyond its city limits. Even in cities that are hemmed in by other municipalities, general plans look over the

line into the neighboring communities. Cities that want to expand their boundaries put unincorporated territory into their planning areas so that their general plans can promote orderly and phased development. The forces that influence development rarely stop at temporary political boundaries.

It must be internally consistent. OPR's *General Plan Guidelines* explain the five types of internal consistency:

- All elements have equal legal status. The policies of the land use element can't trump the policies in the open space element.
- All elements must be consistent with each other. The land use element can't propose development if the circulation element fails to plan for more roads.
- The data, goals, and implementation measures within one element must match and complement the other elements. The housing element's population projections can't differ from the demographic assumptions that drive the conservation element.
- Community plans must be consistent with the overall general plan. An area plan can't restrain housing if the general plan calls for development.
- The plan's text and diagram must mesh. A general plan is more than just a colored map; it must include text that spells out the data and analysis, the goals and policies, and the feasible implementation measures. The plan's maps must line up with the adopted policies.

OPR summed up the need for internal consistency this way: *“Without consistency in all five of these areas, the general plan cannot effectively serve as a clear guide to future development. Decision-makers will face conflicting directives; citizens will be confused about the policies and standards the community has selected...”*

What's In a General Plan?

Even though California is a big state with a varied topography and diverse demography, the Planning and Zoning Law applies to every one of the 58 counties and 478 cities. Each county and city must adopt a general plan that meets the statutory criteria. State law, however, allows local officials to conform to this statewide law in ways that meet their local conditions and circumstances. That's the so-called *shoe-fits theory* (see page 6). General plans' contents fall into three categories:

- Seven mandated elements.
- Special planning requirements.
- Optional elements.

Seven mandated elements. As legislators perceived the need for more focused local planning, they mandated that general plans contain particular *elements*. They added the first two elements --- land use and circulation --- in 1955. The housing element entered the Planning and Zoning Law in 1969. During an increase in environmental awareness, the Legislature mandated the elements for conservation and open space in 1970. In 1971, legislators responded to natural disasters and other hazards by mandating elements for seismic safety, noise, and safety. The scenic highway element came along in 1971.

The Legislature has not added any new elements in 35 years. A 1972 statute and a 1979 constitutional amendment require the State General Fund to pay for the costs of new state mandated local programs.

The nine mandated elements contained overlapping topics and requirements. A reform effort pushed by the California County Planning Directors' Association led to the 1984 bill that pruned duplication and streamlined the statute. As Table 2 shows, the Planning and Zoning Law now requires general plans to contain seven elements:

Table 2: Mandated General Plan Elements

Land use	Housing	Open space	Safety
Circulation	Conservation	Noise	

Although the Legislature has not mandated any new elements since 1971, legislators have added additional requirements to some of the existing elements. For example, the Legislature added military facilities and training areas to the contents of general plans (SB 1468, Knight, 2002; SB 926, Knight, 2004). Cities and counties in the San Joaquin Valley must add air quality considerations to their general plans (AB 170, Reyes, 2003). Legislators expanded the open space element to include land for the protection of Native American historic, cultural, sacred sites, features, and objects (SB 18, Burton, 2004).

In the last two-year legislative session, some legislators authored bills that would have added more topics to the existing general plan elements. None succeeded:

- AB 802 (Wolk, 2005) regarding flood hazard information.
- SB 44 (Kehoe, 2005) regarding air quality concerns.
- SB 409 (Kehoe, 2005) regarding water supply.
- SB 655 (Ortiz, 2005) regarding naturally occurring asbestos.

Special planning requirements. Besides the seven mandated elements, a local general plan must contain other subjects, depending on the community's geographical location and physical conditions. These special considerations include the requirements which can be found in the:

- California Coastal Act
- Surface Mining and Reclamation Act
- California Integrated Waste Management Act
- County Hazardous Waste Management Plans
- Alquist-Priolo Earthquake Fault Zoning Act
- Seismic Hazards Mapping Act
- Cobey- Alquist Floodplain Management Act
- Airport Land Use Commission Law
- Delta Protection Act

For example, the Legislature has linked the Surface Mining and Reclamation Act to the Planning and Zoning Law. A county that contains mineral deposits of state-wide or regional significance must amend its general plan to recognize those designated areas and adopt policies that emphasize their conservation and extraction.

Optional elements. A general plans may include any other elements or subjects that a county board of supervisors or city council considers important. Once adopted, an optional element is part of the official general plan and must be followed. Eight counties and 34 cities have adopted optional "aesthetics elements" as part of their general plans. The City of San Diego's general plan has an "industrial element." Kings County added a "dairy element" to its general plan in 2002. Communities as different as Belvedere and Holtville put "cultural elements" into their general plans.

What Do We Know About General Plans?

The Planning and Zoning Law requires counties and cities to "prepare, periodically review, and revise, as necessary" their general plans. In other words, as the California Supreme Court noted in its 1990 *Goleta Valley* decision, the law "requires that planning efforts remain current." Except for the housing elements, the Planning and Zoning Law does not set fixed deadlines for counties and cities to regularly revise their general plans. In the 1995 *De Vita* case, the Supreme Court ex-

pressed its unease with aging general plans: “Our ruling today does not imply that localities may allow their general plans to become obsolete.”

Nearly 2/3 of the local general plans may be out-of-date.

Each year the Governor’s Office of Planning and Research (OPR) surveys local planning departments, asking basic questions about their operations and the status of their plans. OPR’s *The California Planner’s Book of Lists, 2006* reports that Orange County revised six of its mandated elements in 2005 and its housing element in 2001. The City of Stockton revised its housing element in 2004, but it had not revised the other six mandated elements since 1990. In other communities, revisions have been more irregular. The City of Chino, for instance, reported that it revised its land use element in 1981, but its mandated safety element dates back to 1974.

Based on local planners’ responses, OPR identified 304 cities and 39 counties that have not comprehensively revised their general plans within the last 10 years. As required by law, OPR forwarded the names of these communities to the Attorney General.

Revision costs. Among the many reasons that local officials haven’t revised their general plans are the costs of preparing the planning documents, conducting environmental review under the California Environmental Quality Act (CEQA), and encouraging public participation.

What Olshansky found. A 1991 statewide survey by researcher Rob Olshansky asked planning directors about their planning practices. Olshansky reported that:

- The average cost to comprehensively update a general plan was \$208,000.
- The costs were split almost evenly between staff and hired consultants.
- It took an average of 22.8 months to update a general plan.
- General plans are updated about every 12 years.
- Planners said that the newer the plan, the more effective it is.
- Most updates are not comprehensive updates of all plan elements.
- General plans are frequently amended, often for single projects.

What OPR found. OPR’s 2002 local government planning survey asked counties and cities how much their most recent update cost, including CEQA review and public participation. Based on 156 responses from the 536 counties and cities, OPR found that the average cost for:

- Revising a general plan was \$333,139 (including CEAQ and participation).
- CEQA review was \$96,277.
- Public participation was \$39,643.

Based on what local planners told OPR, the most expensive general plan update was the \$4,000,000 spent by El Dorado County (including \$1 million for CEQA review and \$1 million for public participation). The City of Tehama reported spending just \$1,000 to update its general plan (including \$100 for CEQA review and \$25 for public participation).

Lack of funding. Another reason that local officials don't regularly revise their general plans is the lack of funding for planning programs. Unlike other states, California provides no direct and very little indirect support for general plans. The state government has never funded local general plans. Until the late 1970s, the federal government provided categorical grants to help communities pay for comprehensive planning. OPR managed the "HUD 701" program in California, awarding planning grants to many counties and smaller cities. That effort disappeared with the consolidation of categorical funding into the Community Development Block Grant (CDBG). For the last 30 years, counties and cities have relied on local money --- mostly general funds --- to pay for their general plans.

Local fees. In 2002, the Legislature authorized local officials to increase their land use permit processing fees to raise the additional funds need to prepare and revise their required plans (AB 2936, Aroner, 2002). The Aroner bill codified a practice that some counties and cities were already using to generate funding for revising their general plans. Based on what local officials told OPR, 44 cities and eight counties have enacted permit fees to fund their general plan updates. Some communities charge these fees as a percentage of a project's cost. The City of Chino, for example, told OPR that it charges 0.05% of building valuation, while the City of South Pasadena adds a 10% surcharge to building permits. Other communities charge flat fees. Tulare County has a \$150 flat fee and the City of Tulare charges \$54/acre for commercial property and \$52/acre for industrial property.

While these new local fees generate some of the revenue needed to pay for revising general plans, the fiscal reality is that most of that money usually comes from local general funding.

How Can the State Help?

In 2007, the Legislature has an opportunity to help counties and cities revise their general plans, creating the legal basis for future land use decisions.

Passed by the voters at the November 2006 election, Proposition 84 enacted “The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006,” and authorized \$5.4 billion in state bonds. One stated purpose is: “Revitalizing our communities and making them more sustainable and livable by investing in sound land use planning, local parks and urban greening.”

Chapter 9 of Proposition 84 makes \$580 million available for those purposes and specifically allocates \$90 million for “planning grants and incentives.” The Legislature is responsible for appropriating those funds.

Senate Bill 167. On February 1, 2007, Senator Gloria Negrete McLeod introduced SB 167. The bill requires OPR to award grants and loans to cities and counties to prepare and adopt general plans, including the costs of complying with the California Environmental Quality Act (CEQA). The planning grants can pay for up to one-third of these local costs. With an five-year additional loan, OPR can cover up to half of a plan’s total costs.

- *Should state grants pay for more (or less) than one- third of the local costs to revise general plans?*
- *Should legislators emphasize revolving loans more than direct grants?*
- *How long should the repayment period be? Five years? Ten years?*
- *Should the state charge interest on these planning loans?*

OPR must adopt formal regulations for applications for awarding these grants and loans. In preparing these regulations, OPR must consult with state agencies, local officials, and groups interested in regional and local planning. SB 167 allocates \$1 million to OPR for these purposes in 2007-08. Over the life of the program, OPR can’t spend more than 5% of the bond funds on administration which is the limit that the voters set in Proposition 84. Consistent with another feature of Proposition 84, OPR must cooperate in the Resources Agency’s independent audit of expenditures.

- *Are formal regulations necessary or even desirable?*
- *Should legislators name the groups to be consulted?*
- *How much will it cost OPR to prepare regulations in 2007-08?*
- *How will legislators and taxpayers know that their money is well spent?*

To get a grant or loan, SB 167 requires a city or county to meet six minimum conditions:

- Present a budget and two-year schedule for adopting a general plan.
 - Follow the state's statutory planning priorities.
 - Follow OPR's *General Plan Guidelines*.
 - Agree to revise its general plan every 10 years in the future.
 - Charge fees to offset some of the costs of future general plan revisions.
 - Implement the existing statutory requirements for airport land use, school sites, tribal consultation, and water supply planning.
-
- *Can local officials revise general plans within the two-year time limit?*
 - *Should the bill ask communities to follow the state's planning priorities?*
 - *Should the bill ask OPR to follow the state's planning priorities?*
 - *Does the bill make OPR's General Plan Guidelines binding?*
 - *What happens if a community doesn't revise its plan after 10 years?*
 - *Should the state require local officials to impose fees?*
 - *Should the bill just require local officials to create a revenue stream?*
 - *Are there other conditions that legislators should ask of applicants?*
 - *Should grants & loans go to communities with the oldest plans?*
 - *Should grants & loans go to communities that have more recent plans?*
 - *Should grants & loans go to communities that have approved more housing?*

SB 167 requires OPR to give a preference to applications from communities that:

- Participate in a Regional Blueprint Project.
 - Agree to collaborate with the other cities in the county.
 - Agree to approve development "by right" after adopting its plan.
 - Must include air quality in their general plans (San Joaquin Valley).
 - Contain flood hazard zones.
-
- *Should legislators leave the amount of the preferences up to OPR?*
 - *What must a community do to "participate" in a Regional Blueprint?*
 - *In counties with many cities, what about subregional collaboration?*
 - *Should legislators reward development "by right" without knowing details?*

- *Should legislators ask officials to streamline their approval processes?*
- *Does the air quality criterion favor San Joaquin Valley communities?*
- *Should the bill reward any community that puts air quality in its plan?*
- *How will the bill fit into the expected flood protection laws?*
- *Should the bill give preferences for other criteria?*
- *Farmland protection? Housing production? Cutting vehicle miles traveled?*

The bill declares the Legislature's intention to appropriate \$45 million for these grants and loans over four fiscal years, as shown in Table 3:

Table 3: Proposed Planning Grants and Loans

\$10 million in 2008-09

\$15 million in 2009-10

\$15 million in 2010-11

\$5 million in 2011-12

- *Will counties and cities be ready to apply for grants by July 1, 2008?*
- *Can OPR hire enough staff to review local applications and make awards?*
- *Do local planners and consulting firms have the capacity to perform?*
- *Should legislators pledge more grant money in the earlier fiscal years?*
- *Should legislators allocate bond funds for Regional Blueprints?*
- *Should legislators allocate bond funds for LAFCOs' planning?*
- *Should legislators allocate bond funds for other planning efforts?*

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