Los Angeles Residents' Guide to Land Use Planning & Development

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Disclaimer

The Community Economic Development Unit of the Legal Aid Foundation of Los Angeles (LAFLA) has prepared this information. Many thanks to Hanna Yoon, James Ho, Angela Bowden, Jennifer Ito, Roxana Tynan, Jerilyn Lopez Mendoza, Julian Gross, Lizette Hernandez, Malaika Clements, Sarah Vallim, Caryn Mandelbaum, Alexander Harden, Serena Lin, Sara Jackson, Doug Smith, Zahirah Mann, Omid Haghighat, Leslie Ivie, and Malcolm Carson, each of whom contributed to the production of this guide.

The Guide is not intended to provide you with specific legal advice regarding economic development; rather, they are designed to give you general information. All information in this handbook is believed to be accurate and current as of July 2011, with information on Chapter 5, Redevelopment, added in February 2012. This information is included only for purposes of instruction and example. All such information is subject to change at any time. If you have specific questions about laws relating to economic development, you should consult an attorney.

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Introduction

Why We Created This Guide

The Los Angeles Residents' Guide to Planning (Guide) is designed to provide low-income residents of Los Angeles with the information they need to participate in decisions that shape their neighborhoods and communities. We hope it can be used to support low-income communities in their efforts to win victories in the planning and development arena, and build sustained power and capacity.

To that end, the Guide attempts to help communities maximize their leverage and direct community efforts toward legally relevant points of intervention**.** In our experience public agencies and decision-makers are capable of directing community participation away from important points of intervention or hiding those points of intervention. At the same time, organizing efforts, even when effective at generating participation, can also direct energy away from the most important intervention points. With that in mind, the Guide aims to inform residents about legally relevant points of intervention to help maximize the effectiveness of community participation in planning and development.

This Guide is not intended to provide instruction on how to organize your community. There are a number of excellent organizations in Los Angeles that can help with that effort. Our goal, rather, is to provide information that can make organizing more effective.

The history of economic development in Los Angeles is replete with examples of the negative effects that result from excluding low-income communities from decision-making. The disinvestment now experienced by these communities can in part be traced to planning and development decisions by both government and private industry that ignored community needs and community voices. Over the last several decades, however, communities have increasingly involved themselves in all facets of the planning and development process. Organized groups of low-income residents in neighborhoods across the City have come together to win victories for their communities. These victories include:

- Community Plans that encourage community-friendly development;
- Community Benefits Agreements and City Policies that ensure new development comes with good jobs for neighborhood residents, truly affordable housing, park space, job training and other community services;
- Environmental Review that helps prevent increased pollution in low-income neighborhoods; and
- City decisions that keep the number of new nuisance businesses (like liquor stores and incinerators) to a minimum in low-income neighborhoods.

Some of the great community stories include:

Community Benefits at the Grand Avenue Project. In early 2007, a special local government authority gave the green light for a $2 billion Grand Avenue Project to be developed by the Related Companies on land leased downtown from the City and County of Los Angeles. The approval marked the end of a long process of advocacy and negotiation by groups representing low-income residents. The Grand Avenue Community Benefits Coalition, an alliance of

community and labor organizations, came together in November 2004 seeking to maximize the positive economic and social impact of the project through a platform of community benefits. Ultimately, the coalition won an unprecedented program of community benefits, including:

- 20% of all residential units offered at rents that are actually affordable to low-income Angelenos (among the first 100 affordable units, 35 will be affordable to households earning 35% of Area Median Income, with the remainder affordable to households earning 50% of Area Median Income);
- $1.5 million for a revolving loan fund for developers of permanent supportive housing for homeless individuals and families;
- A strong local hiring program with a goal that 30% of all construction jobs (and 50% of all apprentice positions) go to individuals living within 5 miles of the project, and 10% of all construction jobs go to those who are low income and have barriers to employment;
- Up to $2.8 million for job training funds to support the local hiring program; and
- The establishment of a community advisory committee within the Redevelopment Agency to oversee the implementation of community benefits.

Koreatown Immigrant Workers Alliance. In February 2007 the Los Angeles City Council approved a voluntary wage condition as part of the redevelopment of California Market – one of Koreatown's largest supermarkets – making it the first project to have wage conditions attached without public subsidies. After learning that California Market proposed to replace its existing market with a 130,500 square foot commercial mall, Koreatown Immigrant Workers Alliance (KIWA) worked for over a year to make sure that the supermarket would pay better wages to its approximately 100 market workers upon re-opening. Community members contended the market needed to benefit the neighborhood by providing quality jobs if they were to win approvals that would burden local residents. The voluntary condition requires California Market to pay virtually all market workers, including independent contractors who work regularly at the market, a base wage of 85 cents above the minimum wage for the first 4 years after re-opening. After the 4th year the market must pay workers no less than $1 above the minimum wage. The agreement also includes severance pay of two weeks' salary and priority hiring for current workers who will be laid off when the project's construction begins. Importantly, the condition is enforceable by the City or any covered worker.

Community Input into the I-710 Expansion Planning. In 2006, in response to tremendous public outcry, a Community Advisory Committee (CAC) was established to provide local residents and community, industry, labor, environmental, and health organizations with the opportunity to provide meaningful input into I-710 freeway expansion planning process. After numerous meetings over the course of six months, the diverse group reached consensus on solutions to many of the transportation-related issues facing the 710 Corridor and has produced a thirty-four page report containing scores of excellent recommendations. Most significantly, the group agreed there should be no freeway expansion unless public officials first bring the corridor into compliance with state and federal clean air laws and reduce emissions to below 2002 levels. All segments of the community have adopted the common-sense position that freeway expansion must be contingent on the establishment of effective measures to address the very real and ongoing public health disaster that is the result of diesel emissions from the current freeway. The

findings of the CAC were adopted by the responsible elected officials as guidance for the environmental review process. Further, a corridor-level air quality plan is being developed.

Bus Rider's Union. In the early 1990's, poor and minority inner-city residents in Los Angeles faced overcrowded, unreliable, and increasingly expensive bus service. At the same time, the local transit agency (MTA) diverted billions of dollars to pay for rail construction projects primarily designed to service affluent, suburban commuters. In response, a group of bus riders began to organize the Bus Rider's Union (BRU) to advocate for better bus service for low-income and minority riders. Their actions, in combination with a civil rights lawsuit, resulted in a 1996 Consent Decree whereby MTA promised to keep fares relatively low, reduce overcrowding, and expand service. Pursuant to the Consent Decree, MTA has purchased over 1,300 new, clean-fuel buses, fares have remained level for 8 years and significant improvements in the areas of overcrowding, new service, reliability, and speed have all been experienced.

We hope that the Guide will allow your community to build upon and strengthen this trend of participation in planning and development.

How Does Planning and Development Impact Your Community?

Think about the streets in your neighborhood . . . now the businesses . . . now the houses.

The images you see are all shaped by planning and development decisions. Below is a list of questions related to the planning and development process. These questions will be resolved during that process, with or without community involvement.

Land use: What will your neighborhood look like in the future? What kinds of new construction will be permitted or encouraged? Will it be industrial, commercial, multifamily housing, or something else? Will it be a nuisance?

Housing: Is there affordable housing in your neighborhood? How "affordable" is it? Is the housing ownership or rental? Is it close to transportation and community services? How many units are in the building?

Transportation: How is your neighborhood connected to the wider region? Are there freeways, street improvements, bus routes, light and heavy rail, pedestrian, and bicycle accommodations?

Redevelopment: Is redevelopment responsive to the needs of the community or will it signal the beginning of the end for your neighborhood? Will the redevelopment agency use eminent domain? Will it provide relocation benefits and replacement housing? Will it include affordable housing?

Community Development: Can you and your neighbors influence how government funds are spent in your community? Will funds go toward community centers, recreational facilities, youth programs, or neighborhood revitalization?

Environment: How can you protect and enhance the environmental quality of your neighborhood? Who will get environmental permits? Will toxic cleanup happen? Can we improve air and water quality?

Parks and Recreation: Is there enough safe, clean open space in your neighborhood? Do developments include parks or recreation resources?

Jobs: Do new employers that arrive with development hire people from the neighborhood? Do they pay a decent wage? Do they provide benefits?

What Do You Need to Know to Participate in Planning and Development?

There is a relatively simple framework that will help guide your efforts to participate in planning and development decisions.

1. *What is the development or planning issue in your neighborhood*?

2. *How do you find important information about what is going on in you neighborhood?*

3. *What is the public process?*

4. *Where are the intervention points*?

5. *Will the Project involve redevelopment, and how can you participate in the process?*

6. *What impacts will the project have on the environment, and how can you participate in the environmental review?*

7. *Is there an opportunity for a Community Benefits Agreement?*

This Guide should help you answer each of these questions. Use the Table of Contents to find the information you need.

Chapter 1

How Do You Find Out What's Going on in Your Neighborhood?

How Do You Find Out What's Going On In Your Neighborhood?

In order to get involved with development in your neighborhood, you need to know what development is happening. You also need to locate information about that development that will help you create a strategy. For example, you might find out that a big new shopping center is being constructed in your neighborhood with the help of federal government grants. Those grants may have requirements attached to them that will create an opportunity to win good jobs or other benefits for local residents in the community. The developer may ask the city to change its planning or zoning requirements in order to allow the development to be built. This section outlines what information you should gather to be a successful participant in the planning process, as well as where and how to find that information.

I. GATHERING INFORMATION ABOUT DEVELOPMENT PROJECTS

The first step in understanding and influencing development in your community is to gather relevant information. Important information about development projects and the approval process is rarely disseminated to all interested stakeholders in a timely fashion. It requires work and organization to gather the information needed to meaningfully participate. This section will help your community gather this critical information, first by identifying the type of information that is needed, and then by identifying where and how that information can be obtained.

A. What Information Do You Need?

The volume of information that is available can be overwhelming, so it is important to start with the basics. There are several fundamental questions that you will want to ask when faced with a new development project in your community, and the answers to these threshold questions will spark important follow-up questions. Below are some of the critical questions that will help form the base of information needed for meaningful participation.

1. What Kind of Development Is This?

(a) Residential
- New housing or rehabilitation of an existing building?
- Single family, condominium, or rental?

(b) Commercial
- Retail or office building?

(c) Industrial

(d) Mixed-Use

(e) Public Works and Infrastructure Improvement

(f) Parks and Recreation

(g) Parking Facility

(h) Roads, Sidewalks, Transportation Projects

2. *What Is the Basic Information About the Property*?

The basic information about the property is crucial to understanding not only the important features of development you're dealing with, but what restrictions limit the development and what problems the developer will need to fix in order to make the project work.

(a) Use – *learn how the property is currently being used to know what the community may be losing as a result of the development). For example, is the development:*
- Local Business
- Affordable Housing
- Community Facilities

(b) Planning and Land Use – *technical discussion of the property's use. Includes:*
- Legal description of the property, including boundaries, height, and density
- Applicable zoning codes and specific plans
- Other applicable laws affecting the development
- If the development is in the "coastal zone," affordable housing under a state law called the Mello Act

(c) Ownership
- Old Owner
- New Owner or Developer

(d) Encumbrances on the Property
- Liens
- Covenants – *For example, residential properties that have taken redevelopment loans may have covenants attached to them that require that the property continue to have affordable housing.*

(e) Property Tax Information

(f) Building and Safety
- Inspections, complaints, permits, code enforcement

(g) Redevelopment
- Redevelopment Plan
- Use of Eminent Domain

3. What Public Process Must The Development Go Through?

Almost every development project in Los Angeles must obtain approval from the City or County. The development permits, zoning code compliance, city planning compliance, and environmental review each create a public process and an opportunity for community involvement.

(a) Permits, Zone Changes and Variances

(b) Advisory Bodies
- Neighborhood Council
- Project Area Committee or Community Advisory Committee

(c) Decision Making Bodies
- Planning Department
- Planning Commission
- City Council
- County Board of Supervisors
- Zoning Board
- Redevelopment Agency

The Typical Public Process for a Development Project

Step 1: The developer discusses the project with community groups like the Neighborhood Council.
Step 2: The developer works with the Building and Safety Department to determine what approvals are needed and submits a project application to the City Planning Department.
Step 3: The Planning Department Hearing Officer (or Zoning Administrator) holds hearing and makes recommendation (typically placing conditions on the project).
Step 4: The Regional or City Planning Commission makes a determination regarding any administrative/adjudicatory matters or appeals from the Hearing Officer.
Step 5: The City Council makes a determination regarding legislative matters and appeals from the Planning Commission.

4. What is the Timeline?

To understand what tools you may have to shape the development, you need to know how far along the development is the process. The further along, the fewer tools and less power you may have.

(a) Where is the project in the approvals process?

(b) What is the intended timeline for construction?

5. *Where Is the Money Coming From*?

It is important to understand what sources of financial support are behind a development. In some cases, those sources come with strings attached that may provide leverage to efforts aimed at reaching community goals. For example, U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant Program (CDBG) money comes with a local hiring requirement. Redevelopment money comes with an affordable housing requirement. Additionally, the simple fact that public money is going to support a private development creates leverage for the realization of a true public benefit from the development, possibly in the form of community benefits.

(a) Government Sources
- Community Redevelopment Agency
- Federal Grants (CDBG, Federal Transportation Funds, etc.)
- State and Local Grants
- Enterprise Community and Empowerment Zone

(b) Private Sources
- Loans
- Equity

What is a subsidy?

Subsidies are assistance the public provides private developers through government agencies. Subsidies can include:

- Loans, loan guarantees or grants to the developer
- Tax breaks or credits to the developer
  - In particular reducing the amount of property tax a developer or business has to pay can result in huge savings for the business.
- Assembling land for the developer
- Publicly-funded infrastructure related to the development (like a street or parking facility)
- Relocation and replacement housing costs borne by the city
- Selling land at reduced cost to developers ("land write downs")

6. *What Impact Will the Development Have on the Community*?

It is vital to understand the impact of a development project on the community in order to evaluate how to respond to the project. A project may bring in resources to the community like good jobs for local residents or remove resources like

affordable housing from the community. A project may harm the community by polluting the air or help the community by providing a place for recreation.

(a) Displacement of Existing Businesses or Services

(b) New Housing Units
- Number
- Affordability
- Size and Quality

What is "affordable housing?"

Usually, housing is considered affordable to you if it costs less than one third of your household income to live there. "Affordable" housing is usually described using income categories -- "Extremely Low," "Very Low" "Low" and "Moderate" – to indicate the household income level to whom the unit is affordable. These levels are set every year by HUD, based on the "area median income" or "AMI" for a family of four in Los Angeles, which for 2010 is $63,000. (*See http://www.huduser.org/portal/datasets/il/il10/index_mfi.html.)*

"Extremely Low" = 30 % of AMI = $18,900 x 1/3 divided by 12 mos. = $525 max. monthly rent.

"Very Low" = 50% of AMI = $31,500 x 1/3 divided by 12 months = $875 max. monthly rent.

"Low" = 80 % of AMI = $50,400 x 1/3 divided by 12 months = $1,400 max. monthly rent.

"Moderate" = 100 % of AMI = $62,960 x 1/3 divided by 12 months = $1,749 max. monthly rent.

(c) Destruction or Removal of Housing Units

(d) Creation of Community Facilities
- Green space
- Playgrounds
- Child Care
- Community Centers

(e) Displacement of Existing Residents and Relocation Plans

(f) Employment
- Number of full-time and part-time construction jobs created
- Number of full-time and part-time permanent jobs created
- Living or prevailing wage
- Health insurance and other benefits
- Commitment to local hiring
- Maximum skill requirements

(g) Net Financial Impact
- Public subsidies
- Tax revenue anticipated to be generated by development

(h) Environmental Impact
- Pollution
- Noise
- Traffic
- Light

(i) New Businesses
- Type of Businesses Anticipated
- Opportunities for Local Businesses

7. *Who Makes the Decisions*?

Once you've decided what types of community planning issues you want to participate in, the next question to ask is which agency or agencies is or are responsible for that aspect of the planning process. A list of government agencies playing a major role in quality of life decision-making processes can be found in Chapter 2, and at Appendix 1.

B. How do You Get the Information You Need?

Unfortunately, the above mentioned information is not found in one centralized location. As a result, once you have identified the information you need, it is equally important to know where you might find or obtain that information. In some cases you will need to seek out the information from various government agencies. In other instances, the developer or the local government may be legally required to give you certain information.

1. Common Sources of Planning and Development Information

INFORMATION NEEDED	**SOURCE**
What Kind of Development Is This?	LA Department of City Planning
Current Use, Building and Safety	City of LA Department of Building and Safety, Building Records Section: (818) 374-5013 LA Housing Department Occupancy Monitoring Section: (213) 808-8943
Legal description of the project	City Planning Department Community Planning Bureau: (213) 978-1181
Applicable zoning codes	Los Angeles City Department of Building and Safety: (866) 4LA-CITY, http://zimas.lacity.org
Other applicable laws affecting the development	City Planning Department Land Use Information: (213) 978-1213

What Public Process Must The Development Go Through?	
Ownership Encumbrances on the Property	Los Angeles County Recorder 12400 E. Imperial Highway, Norwalk, CA: (800) 815-2666
Property Tax Information	Los Angeles County Assessor - (213) 974-3211
Redevelopment	City of L.A. Community Redevelopment Agency: (213) 977-1600. (*See Appendix 5 for a listing of Redevelopment Areas and contact info*.)
Permits, Zone Changes, and Variances	City Planning Department Community Planning Bureau: (213) 978-1181
Project Timeline	City Planning Department - (213) 978-1219
Government Sources of Funding	CDBG – Los Angeles County Community Development Commission: (323) 890-7001 or LA City Community Development Department: (213) 744-7300 LA City – LA City Community Development Department: (213) 744-7300 Redevelopment – City of L.A. Community Redevelopment Agency: (213) 977-1600 Empowerment and Enterprise Zones – (213) 485-4767
Community Impact	Environmental Impact – City Planning Department Environmental Review Section: (213) 978-1357 or (213) 978-1331

2. Notice Requirements

As a general but very important rule, government agencies are not allowed to make final decisions about activities that may affect your community without providing the public with reasonable notice sufficiently far in advance so as to allow for meaningful public participation. If an agency makes an important decision without providing proper public notice and an opportunity for comment, that alone may be a valid basis to challenge the decision legally.

Public notice can come in many forms. Agencies are often required to publish notice of their proposed actions (along with information on when, where, and how the public can comment) in a daily government publication such as the Federal Register or a similar state or local equivalent (available in public libraries and online). Many types of actions and decisions must also be publicized in a newspaper of "general circulation" in the community, usually the major daily newspapers. This is most likely found in the "Legal Notices" or "Classified" section of your local paper. The specific notice requirement in the relevant law or regulation will help you learn where notices are required to be given.

What constitutes adequate notice? By law, the notice must be mailed by a certain date and contain certain information. For example, for public hearings subject to California state law, which includes many hearings related to adoption or amendment of general plans, zoning ordinances, intention to consider adoption of a development agreement, variances, and conditional use permits, the notice must be given at least 10 days prior to the hearing and must contain "the date, time and place of the hearing, the identity of the hearing body or officer, a general explanation of the matter to be considered, and a general description, in text of by diagram, of the location of the real property, if any, that is the subject of the hearing." (Cal. Gov. Code §§ 65091 and 65094.) However, in the city of Los Angeles, the Los Angeles Municipal Code expands that notice to 24 days in advance for legislative land use actions, (LAMC Sec. 12.32(c)(4), variances, LAMC Sec. 12.27(c), and conditional use permits and other quasi-judicial approvals, LAMC Sec. 12.24(D)(1).)

What if adequate notice was not given? This could be the basis for invalidating the decision (although not usually), or at least delaying the decision until a properly noticed hearing is held.

3. Getting on the Mailing List:

Typically, agencies are only required to give notice to residents and property owners who will be directly affected by a proposed action, as well as "interested parties." Obviously, keeping track of all possible decisions about an issue by all of the agencies involved can require a lot of attention, and if you don't live right next door to a proposed project you may not receive notice. One way to make your job easier once you know about a particular issue or set of issues you want to track, and to avoid the time-consuming job of looking for newspaper and other notices, is to **ask the responsible agencies to put you on a mailing list as an interested party** in order to receive copies of all public notices relevant to those issues and decisions. Agencies typically send notices of public hearings to a specified list of interested parties. If you want to be involved, a good first step is to have the name of your group or organization added to that list. It's best to do it in writing by letter, and keep a copy for your records so that you can prove later that you did make the request if the agency fails to keep you informed. (Cal. Gov. Code § 65092.)

4. Public Records

If you are having trouble finding out everything that you need to know about a particular proposed agency action, you can make a formal request for access to this information. All public agencies are governed by federal, state or local public records laws. **These laws require the agency to make available, upon request, all of its written records, subject to certain exceptions**.

California state and local agencies are governed by the Public Records Act (Cal. Gov. Code § 6253). If a state or local agency is not making all of the relevant information available, you can make a "Public Records Act Request." The records can either be inspected at the offices of the agency, or a member of the public can request (and pay the cost of) copies of the records. (Cal. Gov. Code § 6253). The Act defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used or retained by any state or local agency…" (Cal. Gov. Code § 6252(d).) This broad definition encompasses a vast range of documents. (*Poway Unified Sch. Dist. v. Superior Court* (1998) 73 Cal. Rptr. 2d 777.) The Act provides that "public records are open to inspection at all times during the office hours of the…agency and every person has a right to inspect any public record, except as…provided, [and to receive] an exact copy [of] an identifiable record" unless impracticable. (Cal. Gov. Code § 6253.)

Federal agencies are governed by the Freedom of Information Act (FOIA). If you have reason to believe that a federal agency has not made all of the relevant information available, you can write a letter to the agency indicating that you are making a request under FOIA (it is helpful to use the formal citation to the statute in your letter: 5 U.S.C. § 552), specifying the information or category of information that you need, and requesting a waiver of copying charges. Further information can be found at http://www.epa.gov/foia/.

By law the agency is required to respond within a relatively short time – ten business days unless the agency can show that an additional ten days are needed due to "unusual circumstances."

Federal agencies normally are allowed to charge members of the public fees for copying relevant information, with one very important exception. The statute specifically requires agencies to provide information without charge or at a reduced fee "if the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester." Therefore, you should always include in your request letter a paragraph describing yourself or your organization, why the information is needed, and how it will be used for the public interest and not commercial purposes. If the government office containing the information you have requested will not waive copying charges, ask them what the charges will be before they make any copies. You want to be able to decide whether to spend the money on copying or something else.

Sample Letter Requesting Public Information

[Agency head]
[Agency]
[City, CA, Zip Code]

Re: California Public Records Act Request

Dear [Name]:

I write pursuant to the California Public Records Act to request access to the agreement between your agency and [company] regarding [subsidies – tax break, loan, etc.] offered for the [project name] project. [Any additional information identifying the documents or records].

If all or any part of this request is denied, please provide the specific statutory exemption(s) that you believe would support such a denial, and inform me of appeals procedures available to me under the law.

I would appreciate hearing from you within 10 days, as required by the Act.

Sincerely,

II. SETTING UP A SYSTEM FOR MONITORING DEVELOPMENT IN YOUR NEIGHBORHOOD

Beyond reacting to one particular development after you've stumbled on it, you may want to set up a system that will help you keep track of what's going on in your neighborhood. **Monitoring** is a mechanism for continually receiving information about all major development projects or plans that are of concern to the community.

Step 1. Identify the Goals for Monitoring Development for your Organization

- What are your goals for monitoring development?
    - Within your organization, who (or what) do you want to impact?

- What are the goals for your coalition of allies?

Step 2. Identify Types of Projects You Want to Follow

- ***Examples of Project Types:***
    - Hotel Developments
    - Office Space
    - Retail Development
    - Residential Developments
    - Public Projects and Miscellaneous

- ***Establish benchmarks that will trigger your attention, such as:***
    - Subsidy size
    - Scale of a project
    - Number of housing units
    - Potential tenants
    - Number of employees/ wages
    - Environmental Impacts
    - Location
    - Number of hotel rooms

    Examples

    Residential Development:
    - Type I (10+ stories), Number of Jobs (Construction), number of Affordable units, Community Group Issues, Large Subsidy

    Retail:
    - 100,000 square feet, Non-Union Big Box Store, $1 Million or more in "incentives"

    Office Space:
    - Class A, More than 100,000 square feet., 7+ Acres, $10 Million or more Project Cost

    Hotels:
    - Location, Number of Rooms, 100+ Jobs, Large Subsidy

Step 3. Map Out the Development Approval Process

- ***Understand role different agencies and legislative bodies play in the approval process in your region. Distinguish between advisory and decision-making bodies. Identify the different tracks for different projects***
    - City staff (Planning staff, permitting staff, redevelopment agency staff, economic development staff)
    - City council and its committees
    - Planning commission and zoning board
    - Redevelopment agency board
    - City agency directors
    - Other special districts or authorities (i.e., ports and harbors)

- ***Can the decision be overturned, if so how?***
    - Administrative Appeal: if so, by whom?
    - Referenda
    - Legal challenge

Step 4. Identify Major Informational Resources

- ***Identify the important sources of information that pertain to development***
    - Local Newspapers and Business Journals (daily/weekly)
    - Subscribe to City Council and CRA/LA Board Agendas (weekly)
    - Get a copy of the City and CRA/LA Budget (biannually)

  - Subscribe to Public Notices (weekly)
  - Subscribe to Planning Commission dockets (bimonthly)
  - Attend project committees, neighborhood group meetings (varies)
  - Go through the City websites (weekly)
  - Reach out to active neighborhood associations or community groups that participate in regional development

- ***Identify good contacts that are knowledgeable about development within your region***
  - City Contacts:
    - City Planners
    - Project leads or public records contact at the CRA/LA
    - City Clerk
    - City council staff person
  - Other contacts
    - Leaders of neighborhood groups
    - Union researchers
    - Environmental organizations

Step 5. Create a spreadsheet that clearly illustrates the projects you are following

- Location of the Site, identify RDA project area, city council district, or enterprise zone
- Description of Project (include description of predevelopment site)
- Project Budget and Subsidies
- Job Projections
- Timeline of Project
- Key Parties Involved
- Developer, Owner, and Tenant Information
- Potential Allies
- Update Spreadsheet Regularly

Example of Projects Spreadsheet

Project	Description	Job Projections	Subsidy Size	Environmental Impact	Potential Allies
Wal-Mart	Big box retail 130,000 sq. ft. Surface Parking lot and land available for later expansion.	200-300 part time jobs, 85% below living wage	$1,000,000	Traffic congestion	Local Unions, The Sierra Club, Women's Rights Groups, Health Care Advocates, Immigration Rights Groups, Small Businesses.

Chapter 2

Government Agencies and Programs

I. OVERVIEW OF GOVERNMENT AGENCIES' ROLES IN PLANNING AND DEVELOPMENT

A. Local Agencies -- City Council and Zoning/Planning Departments

Local planning creates the process by which a local community determines what gets built where. All new construction built in your community must receive approval from your local city or county planning department. In some cases, development requires city council approval as well. The planning department establishes zoning laws and long-term plans to guide potential new developments. The planning department is also responsible for completing a thorough environmental review of any major new developments in the community.

1. *Types of planning decisions*:

Long-term planning: General plans, specific plans, district plans, and other policy documents designed to guide the future development of a community.

Short-term planning: Zoning decisions, permits and variances, site plans, project planning.

2. *Who are the decision-makers*?

Although planning department staff have a great degree of influence, ultimately, all major city planning decisions or recommendations are made by the local planning commission, who are appointed by the city council, board of supervisors, or mayor (in Los Angeles). Their decisions can generally be appealed to the city council or board of supervisors.

Legislative land use decisions, such as a General Plan amendment or the creation of a new Specific Plan, require city council approval after planning commission recommendation.

3. *Intervention points:*

All major planning decisions are subject to resident input, such as:

Publicly-noticed hearings: If the decision will be made by the planning commission, it must be at a publicly-noticed hearing at which residents have the right to voice their concerns.

Environmental Review: All projects with *significant potential environmental effects* are required to undergo a thorough environmental analysis. Pursuant to the California Environmental Quality Act, the written document describing the potential environmental effect – an Environmental Impact Report (EIR) – must be available to the public for analysis and comment.

Resident Enforcement Lawsuits: The planning laws in California also include provisions that allow for "resident enforcement." In other words, if laws are not being followed, private residents have the right to sue the government to force them to follow the law.

B. Redevelopment Agencies

Your local redevelopment agency has the power to adopt wide-ranging plans for the redevelopment of your community. They are empowered to issue bonds, collect property taxes, and buy derelict or blighted properties against the will of the owner in order to develop them into new uses that may or may not better serve the local community. They are also required to put 20% of their revenues into a housing trust fund to build more affordable housing in the community. Be aware that recently enacted legislation has significantly altered (if not eliminated) redevelopment in California. For more information, see the Redevelopment chapter of this Guide.

1. Who are the decision-makers?

The local redevelopment agency can be appointed by the city council or the city council can itself also act as the local redevelopment agency. In Los Angeles, the redevelopment agency (CRA/LA) is an appointed agency, separate from the City Council.

2. Opportunities for Input:

PAC: If the proposed redevelopment project includes the authority to exercise eminent domain over residential properties, a Project Advisory Committee (PAC) must be established and made up of residents, businesses, and community organizations. The PAC's role is mostly to advise the redevelopment agency about local concerns with respect to the proposed project, but the PAC also has the right to vote on whether to or to not approve the redevelopment plan. If the PAC votes against the plan, the redevelopment agency must override the PAC's veto with a 2/3 vote of the local city council.

Legal Action: The creation and adoption of a redevelopment plan is a several-year-long process with ample opportunities for public participation. The process ultimately ends in a vote by the redevelopment agency as to whether or not to adopt the proposed project. Once a plan has been adopted, the agency is required by law to follow the plan. If the agency does not follow the plan, its actions can be stopped by legal action. In addition, redevelopment agencies are legally required to pay fair market value for land obtained through eminent domain and pay relocation assistance to homeowners and tenants that are forcibly relocated by a redevelopment project.

Community-controlled redevelopment: California law also allows neighborhoods to organize their own redevelopment areas, but this law has not been used before and the costs of administering it can be prohibitive.

C. Regional and County Agencies

Most of the land use decisions that affect your community will be made by local governments; however, county and regional agencies also shape this process in many ways. County planning agencies are responsible for decisions and plans affecting unincorporated areas of the county. In addition, regional agencies are becoming much more influential in local decisions. For instance, the Southern California Association of Governments (SCAG) is responsible for creating a Regional Transportation Plan (RTP) that will allocate federal transportation funding and establish a vision for regional growth. Recent environmental legislation has strengthened the link between regional planning and local growth patterns. County transportation authorities, such as the Metropolitan Transportation Authority in Los Angeles County, have significant influence over the development of local transit systems, which are often a catalyst for other development and growth.

D. State Agencies

Several important agencies are organized pursuant to state law and responsible for a single issue that spans across multiple local boundaries. These agencies create regulations that guide local planning. For instance, the Department of Housing and Community Development (HCD) is responsible for periodically making Regional Housing Needs Assessment (RHNA) determinations for the state's various regions. These determinations are then used by local governments in the formation of the Housing Element.

II. SELECTED LIST OF PUBLIC AGENCIES

Los Angeles City Agencies		
Agency Name	**Agency Focus**	**Contact information**
City Planning Department	Subdivision, Parcel Map, Zone change, Zone Variance, general Plan Amendment, Conditional Use Permit, Site Plan Review.	Environmental Review Section: (213) 976-2991 Web: http://planning.lacity.org
Community Development Department (CDD)	Development Projects with Partial or Total Funding from CDD	Environmental Section: (213) 744-7300 Web: http://www.ci.la.ca.us/Cdd
Department of Building & Safety	New Construction, Alteration, Addition, Demolition, Change of Use	Preservation Coordinator: (213) 977-6941 or (888) LA4-BUILD

		Web: http://www.ladbs.org/
Department of Public Works, Bureau of Engineering	A-permit, B-permit, U-permit, E-permit, Watercourse Permits, Coastal Development Permit on public property	(213) 978-0333 Web: http://www.dpw.lacity.org/index.html
Department of Recreation & Parks	Development on City Parklands	Planning and Construction: (213) 202-2681 Web: http://www.laparks.org/main.htm
Department of Transportation	Traffic Impact Analysis, DASH bus services, Special Parking Revenue Fund	(213) 972-8470 Web: http://ladot.lacity.org/
Department of Water & Power	Water Rights, Water or Power Rights of Way, New water or Power Resources	Economic Development Group 1-800-864-4409 http://www.ladwp.com/ladwp/homepage.jsp
Harbor Department	Tenant Projects at the Port of Los Angeles	Environmental Management Section: (310) 732-3675
Los Angeles Housing Department	Development Project with Partial or Total Funding from LAHD	Policy and Planning Unit: (213) 808-8809 Web: http://lahd.lacity.org/lahdinternet/
Los Angeles World Airports	Tenant Development Projects, Lease Agreements	(310) 646-5252 Web: http://www.lawa.org/

Regional and County Agencies		
Agency Name	**Agency Focus**	**Contact information**
Department of Beaches and Harbors	Projects with impact on the County coast	Web: http://beaches.co.la.ca.us/bandh/main.htm
Department of Parks and Recreation	Projects with impact on county parks. Click on the "public information" link	Web: http://parks.lacounty.gov/

Department of Public Works	Design, construction, operation, maintenance, and repair of roads, bridges, airports, sewers, water supply, flood control, water quality, and water conservation facilities, and for the design and construction of capital projects	(626) 458-5100 Web: http://ladpw.org/
Los Angeles County Department of Regional Planning	Variance and use permit applications, as well as tentative tract and minor land divisions	Department of Regional Planning (213) 974-6411 Web: http://planning.co.la.ca.us/ Address: Hall of Records, 13th Fl. 320 West Temple Street Los Angeles, CA 90012
Los Angeles Regional Water Quality Control Board	Projects with impact on county water	http://www.waterboards.ca.gov/losangeles/
Los Angeles Unified School Districts	Projects with impact on public schools	(213) 241-1000 Web: www.lausd.k12.ca.us/ Address: 333 South Beaudry Ave. Los Angeles, CA 90017
Los Angeles County Metropolitan Transportation Authority	Projects with impact on public transportation within LA County such as Metro Bus and Metro Rail	Administrative Office: 213-922-2000 Web: www.mta.net Address: One Gateway Plaza Los Angeles, CA 90012
Southern California Association of Governments	Transportation related Environmental Impacts. Regional planning elements include transportation, housing, growth, air quality and watershed management	Environmental Planning Division: (213) 236-1806 Web: http://www.scag.ca.gov/ Address: 818 W. Seventh St., 12th Floor (Main Office) Los Angeles, CA 90017

State Public Agencies		
Agency Name	**Agency Focus**	**Contact information**
California Air Resources Board	Reducing emissions from motor vehicles, fuels, consumer products, and sources of air toxics at the state level; oversight of local air pollution agencies	(916) 322-2990 Web: www.arb.ca.gov Address: 1001 I Street P.O. Box 2815 Sacramento, CA 95814
Department of Housing and Community Development	Affordable Housing policy creation and administration of state housing element law.	(916) 445-4782 Web: www.hcd.ca.gov Address: 1800 Third Street Sacramento, CA 95811
California EPA Office of Environmental Health Hazard Assessment	Environmental health risks	External Affairs: (916) 445-6903 Executive Office: (916) 324-7572 Web: www.oehha.ca.gov Address: 1001 I Street Sacramento, CA 95814
California Highway Patrol, Office of Special Projects	Construction or expansion of a school facility	(916) 657-7222 Web: http://www.chp.ca.gov Address: Office of Special Projects 2555 First Avenue Sacramento, CA 95818
California State Parks	Projects with impact on State Parks	Web: http://www.parks.ca.gov/
California Public Utilities Commission	Regulates natural gas, electric, telephone, and water companies as well as railroads and marine transportation companies	(415) 703-2782 Web:

		http://www.cpuc.ca.gov/puc/ Address: 505 Van Ness Ave San Francisco, CA 94102
California State Department of Transportation (Caltrans)	Highway transportation, mass transportation, transportation planning, administration.	Headquarters: 916-654-5266 Web: www.dot.ca.gov
Caltrans Division of Transportation Planning	Projects with impact on State transportation system, Caltrans rights of way or utility easements	Transportation Planning Program: (916) 654-5266 District 7: (213) 897-3656 Web: http://www.dot.ca.gov/hq/tpp/offices/index.html Address: 1120 N Street, MS 32 Sacramento, CA 95814
Department of Conservation, State Mining and Geology Board	Sites where geologic or earthquake hazards are a consideration	(916) 445-1825 Web: http://www.consrv.ca.gov/smgb/Pages/index.aspx Address: 801 K Street, MS 12-01 Sacramento, CA 95814
Department of Conservation, Division of Oil, Gas, and Geothermal Resources	Permits for drilling, maintenance, production, and plugging of oil, gas and geothermal wells.	(916) 322-1080 Web: www.consrv.ca.gov/dog Address: 801 K Street, MS 20-20 Sacramento, CA 95814
Department of Fish and Game	Projects with impact on fish and game	(916) 445-0411 Web: www.dfg.ca.gov Address: 1416 Ninth Street

		Sacramento, CA 95814
Department of Parks and Recreation, Office of Historic Preservation	Historical sites or resources	Los Angeles River Center and Gardens: (323) 221-8900, Ext. 101 Web: http://ohp.parks.ca.gov/ Address: 570 West Avenue Twenty-Six, Suite 100 Los Angeles, CA 90065
State Clearinghouse (*within the Governor's Office of Planning and Research*)	On the website you can search through their database for CEQA documents submitted to the State Clearinghouse for CEQA review. Also has a list of publications.	(916) 445-0613 Web: http://www.opr.ca.gov/index.php?a=sch/sch.html

Chapter 3

Planning and Development Rules and Process

I. YOUR LEGAL RIGHTS TO PARTICIPATE IN PLANNING AND DEVELOPMENT DECISIONS

Many governmental decision-making processes require that policymakers allow for interested residents to play a meaningful role.

A. Citizen Advisory Groups and Other Participatory Bodies

These procedures are designed, in part, to help interested community members get involved in a decision early in the planning stages and to take part in developing and reviewing alternative approaches. Site-specific citizen's advisory groups or similar informal groups are sometimes formed pursuant to statute (e.g., redevelopment) and sometimes just as a result of community or political pressure. You maybe be able to persuade the government or private industry in your community that creating this type of group would be help with better communication and better decision-making.

B. Public hearings

Almost all processes allow for at least one publicly-noticed hearing where interested residents can come and voice their concerns with respect to a proposed decision. Some of these rules are contained in:

Organizational bylaws and rules for conduct of meetings – All public agencies must follow their internal bylaws, rules, and regulations when conducting public hearings.

The Brown Act – California state law requires legislative bodies of government agencies to hold their meetings open to the public except as expressly authorized by the Act. This is to prevent government officials from holding "backroom" meetings away from the public eye, preventing resident input into the decision-making process. (Cal. Gov. Code § 54950 *et seq*.)

C. Written comments

Some processes allow the public to file written comments with respect to a proposed decision. In the context of the California Environmental Quality Act (CEQA), the agency is required to respond to the comments. Typically, written CEQA comments must be filed within a 30-day public comment period following release of a draft of the decision-making document. Specific deadlines are discussed elsewhere in this guide.

D. Challenging the decision

Some processes allow for a formal challenge (not a lawsuit) to be filed and responded to within a set amount of time. Otherwise, a lawsuit can be filed if the applicable period has not expired.

1. Environmental challenges

Were the environmental effects of the proposed decision properly studied and, if necessary, mitigated?

Application: The California Environmental Quality Act (CEQA), discussed Chapter 6, requires planners to study and disclose, to decision-makers and the public, the significant environmental effects of a proposed project, and to also identify ways to avoid and prevent environmental damage. If these requirements are not followed, a community group can sue to have a project stopped.

2. Racial/ethnic discrimination

Was the decision motivated by an intent to discriminate against minority groups?

Application: Title VI of the federal Civil Rights Act ("Title VI") prohibits discrimination by entities receiving federal financial assistance. Most governmental agencies receive some form of federal assistance and, as a result, Title VI has proved a valuable tool for community groups in low-income and minority communities who are fighting against environmental racism.

3. Conflicts of Interest

Were the decision-makers improperly biased by their self-interests?

Application: California law prohibits any public official, at any level of state or local government, from making, participating in making, or in any way attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Cal. Gov. Code § 87100.)

4. Authorizing statutes

Was the decision authorized by law and, if so, were the authorizing laws followed?

Application: If the governmental agency fails to take any of the steps required by the statute authorizing its actions, then that action can be invalidated in court.

5. Certifications

Were the project approvals (e.g., variances, conditional uses, density bonuses) granted in accordance with the ordinances governing those approvals? If not, they can be challenged.

E. Governmental Decisions Not Subject to Resident Participation

Typically, if the government is only implementing or administering already-established policies, those actions will not be subject to resident participation. For example, if a proposed new

development falls completely within existing zoning requirements, the developer has a right to the permit and there is usually no process for resident review.

II. PLANNING STRUCTURE AND PROCESS

A. Regional Planning

In recent years there has been a growing interest in regional planning. Because things like transportation systems, environmental impacts, and sectoral economic growth are not neatly confined within local borders, planning professionals have advocated for greater regional governance. Likewise, because regional growth patterns have created and exacerbated racial and economic segregation, social justice advocates are increasingly seeking solutions at the regional scale.

In California, there are 36 regional governance structures called Councils of Governments (COGs). COGs are created to address issues that transcend local boundaries, such as transportation, growth management and environmental protection. The Southern California Association of Governments (SCAG) represents six counties, 191 cities, and more than 18 million residents.

Many of California's COG's, including SCAG, also function as Metropolitan Planning Organizations (MPOs). MPOs are decision-making bodies that exist and operate under a federal mandate to coordinate short and long-range transportation planning for all urbanized areas consisting of more than 50,000 residents. MPOs are tasked with creating and updating a Regional Transportation Plan (RTP). The RTP is an important comprehensive planning document that directs federal transportation investment and guides transportation system growth. In 2008, a groundbreaking environmental bill (SB 375) amended the RTP process to include a Sustainable Communities Strategy (SCS) that would funnel new housing and commercial development along transportation corridors.

1. The Regional Transportation Plan

Federal and state laws require MPOs to develop an RTP periodically in order to qualify for future transportation funding. The RTP is a long range transportation plan that considers the future role of transportation in the broader context of economic, environmental, and quality of life goals. SCAG updates the RTP every four years to reflect population growth projections and changes in development trends. The RTP focuses on aviation, environmental mitigation, goods movement, high-speed regional transportation, highways and arterials, land use patterns, public transit, transportation finance, and transportation safety and security. The RTP update process draws on the advice and input of various task forces, local governments, Caltrans, state and federal agencies, non-profits and the general public.

2. The Sustainable Communities Strategy

In 2008 the California legislature passed Senate Bill 375. This legislation is intended to reduce vehicle miles traveled (thus reducing greenhouse gas emissions) by aligning the transportation and land use planning process. One key mechanism to achieve this goal is the addition of the Sustainable Communities Strategy (SCS) as a component of the RTP. Each MPO is now tasked with creating an SCS that describes how land use decisions will meet emissions targets and achieve the state's environmental goals. The SCS will likely encourage new growth along existing and proposed transportation lines in order to enhance connectivity between housing and employment opportunities and reduce the reliance on automobiles. The SCS is not a mandate requiring local governments to make certain land use decisions; but as part of the RTP, which directs federal transportation funding, it may prove to be a strong incentive.

B. Local Comprehensive Planning

While regional governance and planning is growing in influence, actual land use authority – for the most part –resides with local governments. Local comprehensive planning is the process by which a community decides how it will grow and develop. In delegating land use decision-making power to local governments, state law requires that each incorporated city and county engage in a comprehensive planning process. Creating a comprehensive plan should be a process of community-wide public participation and input. The broad, General Plan created by each jurisdiction includes numerous elements and more specific sub-plans that form the foundation for policy decisions regarding community growth and development. Each community's legislative body, upon recommendation and guidance from a planning commission, implements the General Plan through zoning ordinances.

1. The General Plan

As its name suggests, the General Plan is a document that provides a broad, generalized vision for future development. The General Plan describes goals and policies that serve as the basis for other land use ordinances and local land use decisions.

The General plan must contain at least seven mandatory elements that discuss goals with respect to specific issues. The required elements are 1) land use; 2)circulation; 3) housing; 4) conservation; 5) open-space; 6) noise; and 7) safety.

The General Plan must be internally consistent, meaning that the goals described in these distinct elements may not contradict one another. In addition, all local land use decisions, such as zoning codes, subdivisions, and site plan approvals must further the goals, objectives, and policies of the General Plan.

The process of adopting or amending a city's General Plan requires public participation. In Los Angeles, the Planning Commission must first hold at least one public hearing before making a recommendation for approval. Next, the City

Council's Planning and Land Use Management committee (PLUM) will hold a public hearing. Finally, the full council will hold a public hearing before taking action on the plan or amendment.

2. The Housing Element

The Housing Element assesses the current and projected housing need for all economic segments of the population. In California, each jurisdiction is assigned a Regional Housing Needs Assessment (RHNA) number, which is essentially the "fair share" of projected housing needs that the community must accommodate. The Housing Element must identify ways in which the city will accommodate this projected housing growth for all economic segments of the economy. This means that a jurisdiction must adequately zone for affordable, multifamily housing sufficient to meet the projected need. The Housing Element does not mandate that the community actually build this housing; it only ensures the ability to do so.

Of the seven required elements of the General Plan, the Housing Element is the only element that must be updated on a particular time schedule. Previously, the Housing Element was required to be updated every four or five years. With the passage of SB 375, the Housing Element must (in most cases) now be updated every eight years.

The Housing Element can be an important point of entry for local participation and advocacy in the planning process. The public can comment on draft Housing Elements and participate in public workshops. In addition, citizens can file a lawsuit against a city for failing to enact a Housing Element or for enacting an inadequate element. State law also allows affordable housing developers to build on any site proposed for rezoning if the city has not actually rezoned within a certain time frame.

3. Community Plans

In Los Angeles, the land use element of the General Plan actually consists of 35 separate Community Plans. Each Community Plan sets general land use principles and policies for a specific area of the City. The Community Plan is meant to determine desirable future growth patterns in a local area and to encourage development that addresses prevailing neighborhood issues. The Plan sets forth "Goals," "Objectives," "Policies," and "Programs" across categories like Residential, Commercial, Industrial, Transportation and Recreation. For example, the existing Southeast Los Angeles Community Plan has the following Objective: "To promote and ensure the provision of adequate housing for all persons regardless of income, age, or ethnic background." Following that Objective, the Plan contains this Policy: "Ensure that new housing opportunities minimizes displacement of the residents." (*See Southeast Los Angeles Community Plan, available at http://cityplanning.lacity.org,* at *III-4.*) The Community Plan's impact is most concretely felt in the City's zoning code, which is periodically

updated. In addition, land use and development decisions and other land use policies must be consistent with the Community Plan.

Community Plans are required to be updated periodically. The Community Plan update process includes several opportunities for public comment and participation. (*See Appendix 3 for information pertaining to the South Los Angeles and Southeast Los Angeles Community Plan updates.)*

The process begins with a review of the existing community plan, which includes input from neighborhood councils. After planning department staff analysis and input, further information is shared with neighborhood councils. After Council offices have reviewed this information, there is a series of public workshops in the local area. This is followed by an open house review of the draft plan. Finally, the plan enters the hearing phase, where public hearings will be held by the planning department, the area planning commission, the City Planning Commission, PLUM, and, finally, the full council.

4. Specific Plans

A Specific Plan is a detailed plan for the development of a specific area of the city. It contains specific limitations on development, such as maximum height or set backs, and also details the approvals and appeals process for developments within the Specific Plan area.

Specific Plans implement the community's General Plan and are adopted and amended in the same manner. In Los Angeles, the adoption of a Specific Plan will be considered first by the City Planning Commission, which will hold a public hearing. If the Commission approves the Specific Plan, it is recommended for adoption by the City Council. Typically, there will be a public hearing before PLUM, followed by another public hearing when full council considers the plan.

5. Zoning Ordinance

As the tool that implements the General Plan, community plans and specific plans, the Zoning Ordinance imposes a set of restrictions on land use and development within a particular area. The ordinance creates "zones" for specific land uses such a residential, industrial, or commercial. Within these zones, there are usually a number of subcategories such as residential "single family" or "heavy" industrial. Each zone has particular legal limitations on use, height, yard size, lot size, and parking. For example, an "R3, Multiple Dwelling" zone is limited to residential and child care, with buildings less than 45 feet in height. The City's zoning ordinance is amended several times a year to keep current with state mandates and to address specific areas of concern. (*See Appendix 2 for a summary of the City of Los Angeles zoning regulations.)*

6. Overlay Zones

Particular areas of the city may contain Overlay Zones, which are established by ordinance to protect uses and regulate development in order to protect specific features in an area. Examples include Historic Preservation Overlay Zones, flood hazard zones, ocean-submerged land zones, and coastal zones.

C. Site Specific Planning

As opposed to comprehensive plans or zoning codes, most decisions actually consider the appropriateness of a proposed use for an individual parcel or site. Rather than being initiated by the city, these decisions are usually in response to an application from a property owner. Most of these decisions involve the Planning Department or Planning Commission evaluating a proposal. However, in the case of rezoning, a site-specific application *can* be considered a legislative approval that requires City Council review. While it may seem like site-specific developments would have less of an impact on your community than a comprehensive plan or code, a single project can significantly affect a neighborhood. Whether it is a proposed commercial center that will displace local businesses or residents, or a proposed industrial use that may cause significant health impacts, community input is essential – both to mitigate potential harms and help mold a development into a more community-friendly project.

1. Rezoning

If a property owner wishes to develop land in a way that does not comply with the existing zoning code, then a rezoning (or zone change) is required for approval. For instance, if a developer wishes to build a seven-story apartment building on a lot that is zoned R3 (which includes certain height limitations), the project cannot be approved unless the zoning is changed to allow for the increased height.

In California, rezoning is a legislative act that requires city council approval. In Los Angeles, the Planning Commission will first consider the application and hold a public hearing. If the zone change is recommended by the Planning Commission, PLUM and the full Council will also consider the request and hold public hearings before making a determination.

2. Variance

A variance is another tool that a property-owner can use to avoid restrictions imposed by the zoning code. A variance is essentially a limited waiver of the zoning requirements that is granted only in special cases where a strict application of the zoning code would deprive the property owner of the uses enjoyed by other land in the same zone. A variance cannot allow a use prohibited by the zoning ordinance, but can relax the standards for things like lot size, set backs, or floor-area-ratio. The classic example is a property owner who has a giant, immovable boulder that takes up much of the lot. In that case, a variance might be granted to allow the owner to build closer to the street than would be otherwise allowed in that zone.

Section 12.27 D of Los Angeles Municipal Code sets the standards for granting a variance, which includes findings that the variance: (a) will not adversely affect any element of the General Plan; and (b) is not materially detrimental to public welfare or injurious to property in same zone or vicinity. *The Zoning Administrator must hold a public hearing before issuing a variance.*

3. Conditional Use Permit

While zoning generally divides the allowable uses of land (residential, commercial, industrial, open space, etc.) into different zones, certain uses of land may only be allowed upon approval of a conditional use permit (CUP). Uses that often require a CUP include schools, hospitals, factories that produce hazardous materials, and group homes. A CUP may impose special conditions that ensure the use will not harm surrounding properties. A CUP does not rezone land; the use in question must comply with the zoning requirements *and* obtain a CUP.

The granting of a CUP requires a public hearing. In Los Angeles, either the Zoning Administrator, Area Planning Commission, or the City Planning Commission decides whether to issue the CUP, depending on what type of use is requested, and can include special restrictions on the development. *The Decision-maker must hold a public hearing before issuing the permit*. The initial decision-maker has 75 days from the receipt of the application to make a decision. (Municipal Code § 12.24(G). Zoning Administrator decisions can be appealed to the Area Planning Commission, and Area Planning Commission or City Planning Commission decisions can be appealed to the City Council. (Municipal Code § 12.24 (I)(2).)

4. Site Plan

In Los Angeles, a Site Plan Review is required before issuing building permits for development projects that will result in:

- An increase in 50,000 square feet of non-residential floor space;
- An increase of 50 or more dwelling units;
- Changes to fast food restaurants; or
- New residential buildings in the Greater Downtown Housing Incentive Area.

The Site Plan review process is governed by Municipal Code 12.05. Generally, the Planning Director will determine whether the proposed project is consistent with the General Plan and any other applicable plans (e.g., Specific Plans, Redevelopment Plans). A public hearing is not required for Site Plan Review, but you may request that one be held.

III. TYPES OF PERMITS AND APPROVALS

In most cases, a plan or project's approval process is determined by whether the decision is legislative, quasi-judicial, or ministerial. These distinctions are important because they determine, among other things, the level of public participation that is required.

A. Legislative

Some developments require *legislative* approvals. This means the city council must take action to create or amend a rule or policy that applies to the development in question. Legislative approvals are generally those approvals that will change the law or standards as they are applied to all residents. For instance, changing a plan affects multiple property owners and residents that live within the plan's coverage. *There are extensive public hearing requirements that go along with this process*.

Legislative approvals include:

General Plan or Specific Plan Amendment – The City Council actually takes the step of changing the planning law that governs the area for which the development is proposed.

Zoning Change or Rezoning – Here, the City Council places the property within a different zoning category. This is a major step, and the City may require the developer to pay impact fees or contribute to community improvements.

B. Quasi- Judicial and Ministerial

Some developments require *quasi-judicial* (also called "adjudicatory") approvals. This means that the planning commission (or other agency) must determine if the development complies with an existing rule or policy. In other cases, the development may only require *ministerial* approvals, which require little or no judgment or exercise of discretion by the decision-making body. Depending on the facts of the case, the following approvals could be either adjudicatory or ministerial. (In most cases they will be quasi-judicial.)

Building Permit – Allows the developer to construct on the lot. The City will issue the building permit only after compliance with applicable zoning and planning regulations and design review.

Conditional Use Permit – The zoning ordinance lists permitted uses within each zone, as well as a second list of uses that may be allowed if the developer obtains a conditional use permit. These "conditional" uses are the kind that the City only wants in limited numbers or special circumstances, like tall buildings, and, in Los Angeles, are listed in Sections 12.24 U,V,W and X of the Municipal Code.

Tentative Subdivision Map – When a property owner subdivides the property into 5 or more separate parcels (for example, when creating condominiums), she must generally prepare a detailed tentative tract map that must be approved by the planning commission. (Cal. Gov. Code § 66426.) The Subdivision Map Act authorizes a number of conditions, including community

improvements that can be placed on a subdivision in exchange for map approval. *The commission must hold a public hearing before approving a tentative subdivision map.*

Variance – A variance allows a developer to construct in ways otherwise prohibited by the zoning ordinance because of special physical characteristics of the lot. *The Zoning Administrator must hold a public hearing before issuing a variance.*

What is a "Density Bonus?"

Local land use controls (e.g. zoning and specific plans) limit the size of buildings developers can build and the size of the residential units inside. This limits the "density," which is the *number* of residential units a developer can build on the site. In order to allow developers to build more residential units, state law and city ordinances give developers a way around these regulations in exchange for including affordable units or senior housing, or for building near mass transit. The extra units are called a "density bonus."

When developers construct housing developments with at least 10% percent of units for households earning 80% of the AMI, or 5% of units for households earning 50% of the AMI, state law and city ordinance allow them to increase the size of the total development 20% above the legal limit. Developers may also request up to three additional *concessions* from the local zoning regulations. For example, a developer might elect to raise the maximum height of a building to allow more units to be built on top of the building.

Residents may appeal projects subject to the zoning variance when requested concessions:

1. Are unnecessary for developers to be able to afford to include the affordable housing units in the project
2. Threaten an adverse effect on public health and safety
3. Threaten an adverse effect on real property listed in the California Registry of Historical properties

Finally, a condition of granting a density bonus is that affordable housing developed as a result must retain its affordability for a minimum of 30 years. (Cal. Gov. Code § 65915-65918.)

IV. APPROVAL PROCESS

In order to obtain the permits and approvals for the plans and projects described above, the developer or the local government must go through a specific process set out in the Los Angeles Municipal Code. These processes differ depending on whether the approval is a legislative, quasi-judicial, or ministerial action.

A. Legislative Actions

1. General Plan Amendments

Initiation: In Los Angeles, an amendment to the General Plan may be initiated by the Council, City Planning Commission, or Director of Planning. Regardless of which body initiates the amendment, the Planning Director must prepare the amendment and a report recommending action by the City Planning Commission.

Public Hearing: Before the City Planning Commission acts on a proposed Plan Amendment, the matter is set for a public hearing. The Planning Commission may hold the hearing itself, or direct the Director to hold the hearing. Notice of the time, place, and purpose of the hearing must be given in at least one newspaper and mailed to any person requesting notice at least ten days prior to the date of the hearing. At the hearing, the Commission or Director will hear public testimony from anyone wishing to be heard. The City Planning Commission will then recommend to the Mayor and Council that the proposed amendment be approved or disapproved in whole or in part. The City Planning Commission must make this determination within 90 days of receiving the Director's report.

Mayoral Review: Within 30 days of receiving the Planning Commission's recommendation, the Mayor must make a recommendation to the Council on the proposed amendment. The Mayor's failure to act within the 30 days will be considered recommendation.

Council Review and Public Hearing: After receiving the recommendations of the City Planning Commission and the Mayor, the Council must hold a public hearing on the proposed amendment. Typically, there will be a hearing and recommendation by the Planning and Land Use Management (PLUM) committee, followed by a hearing before the full Council. At the close of the hearing, the Council can either approve or disapprove of the amendment, or propose changes to the amendment. The Council must make this determination within 75 days of receiving the Planning Commission's recommendation. If both the Planning Commission and the Mayor recommend approval, the Council may adopt the amendment by a majority vote. If either the Commission or the Mayor recommends disapproval, the Council may adopt the amendment only by a 2/3 vote. If both the Commission and the Mayor recommends disapproval, the Council may only adopt the amendment by at least a 3/4 vote.

2. Specific Plans and Rezoning

Large development projects will often require the city to change its zoning code to allow the proposed use. In addition, developers or the city will often seek to streamline multiple approvals by creating a Specific Plan. These approvals require the adoption of land use ordinances and must obtain city council approval.

The procedures for approving a zoning change or adopting or amending a Specific Plan are provided in section 12.32 of the Los Angeles Municipal Code.

Initiation or Application: The City Council, the City Planning Commission, or the Director of Planning can initiate the consideration of a zone change or adoption of a Specific Plan. In addition, a property owner may apply for a zone change or specific plan under certain circumstances.

Planning Commission Review and Public Hearing: In most cases, the City Planning Commission will recommend approval or disapproval for either an initiated or proposed zone change or Specific Plan. The Area Planning Commission will hear and make recommendations in some circumstances.

City Planning Commission vs. Area Planning Commissions

Area Planning Commissions handle matters of mostly local significance, such as:

- Development projects that create less than 50,000 gross square feet of nonresidential floor area;
- Development projects that create or results in less than 50 dwelling units, guest rooms, or combination thereof; and
- Applications without a proposed project description having less than 65,000 square feet of lot area.

For zone changes or specific plans initiated by the City, the Director will first make a recommendation on the matter. Before making a recommendation, the Director may direct a hearing officer to hold a public hearing and make a report or recommendation.

For zone changes or specific plans applications from property owners, the Planning Commission will hold a public hearing or direct a hearing officer to hold a hearing. If a Hearing Officer holds a hearing, he or she will make a recommendation for action on the application. That recommendation will then be heard by the Planning Commission, which will hold another public hearing. The Planning Commission will recommend approval or disapproval within 75 days of the completion of the application or within 75 days from the date of the Director's recommendation.

Appeal: If the Planning Commission recommends disapproval of a proposal that was initiated by the City, that decision is final. If the Planning Commission recommends disapproval of an application, that decision may be appealed to the City Council. The appeal must be filed within 20 days of the mailing of the Planning Commission's decision. The Council will hold a public hearing before acting on the appeal. The Council must make its decision within 75 days after the expiration of the appeal period.

Council Review and Public Hearing If the Planning Commission recommends approval, the Council may hear the matter. In most cases, the Council's Planning and Land Use Management (PLUM) Committee will consider the matter and hold a public hearing first. After a PLUM hearing, there will be another public hearing and consideration by the full council. The Council may approve an application or initiated proposed zone change or specific plan by making findings that the proposed ordinance is consistent with the General Plan. If the Planning Commission recommends approval, the Council will act within 90 days of receipt of this recommendation.

B. Quasi-Judicial Approvals

1. Conditional Use Permits

The process by which the city approves a Conditional Use Permit is determined by Section 12.24 of the Los Angeles Municipal Code. Some uses require approval by the City Planning Commission (CPC) with appeals to the City Council. Other uses require approval by the Area Planning Commission (APC) with appeals to the City Council, and some uses require approval by the Zoning Administrator (ZA), with appeals to the Area Planning Commission. Subsections U, V, W, and X of Section 12.24 list these conditional uses and the initial decision making body and the appellate decision making body for each.

Public Hearing: Upon receipt of a complete application, the initial decision-making body (CPC, APC or ZA) will set the matter for public hearing. The initial decision-making body may hold the hearing or direct a Hearing Officer to conduct the hearing. Notice of the hearing will be provided in at least one newspaper and by written notice to the applicant and adjacent property at least 24 days prior to the date of the hearing.

Initial Decision: In approving any conditional use, the decision-making body must find that the proposed use will not be detrimental to the character of development in the immediate neighborhood and is consistent with the elements and objectives of the General Plan. In approving the use, the decision-making body may impose conditions that it deems necessary to protect the best interests of the surrounding property or neighborhood, or to secure appropriate development that is consistent with the General Plan. This initial decision must be made within 75 days of the date the application is deemed complete. If the decision-making body fails to act within 75 days, the applicant may request transfer of jurisdiction to the designated appellate body.

Appeal: Any applicant or any other person who disagrees with the initial decision may appeal the decision. Appeals from an initial decision by the Zoning Administrator will be heard by the Area Planning Commission. Appeals from an initial decision by the Area Planning Commission or City Planning Commission

will be heard by the City Council. This appeal must be filed within 15 days after the initial decision.

Before acting on the appeal, the appellate body will set the matter for public hearing, giving the same notice required for the original hearing. The appellate body will make its decision, based on the record, as to whether the initial decision-making body erred or abused its discretion.

Mayoral Approval: For decisions in which the City Council is the appellate body, the decision is transmitted to the Mayor. The Mayor may then approve or disapprove the appellate decision within 10 days – based solely on the administrative record and whether the Mayor believes the use conforms with the statutory requirements and is consistent with the General Plan. If the Mayor disapproves of the use, he or she will return the matter to the Council with written objections. The Council can then overrule this objection with a 2/3 vote (or 3/4 vote if the Council had modified and approved the action or reversed the decision of the original decision-making body).

2. Variances

Application and Hearing: To apply for a variance, an applicant files an application with the Department of City Planning. The Zoning Administrator will set the matter for public hearing unless the Zoning Administrator makes written findings that the requested variance will not have a significant effect on adjoining properties, or is not likely to evoke public controversy. If the Zoning Administrator determines that it would be in the public interest, the Zoning Administrator can set the matter for public hearing even though a public hearing is not otherwise required. Notice of the hearing should be provided in writing to the owners of the property involved and to residential, commercial, and industrial occupants in a 500 foot radius, at least 24 days prior to the hearing.

Decision: The Zoning Administrator will make a decision on the variance application within 75 days and the decision must be supported by written findings of fact, consistent with Charter Section 562. In approving a variance, the Zoning Administrator may impose conditions that it deems necessary to protect public health, safety, or welfare, and to assure compliance with the General Plan.

Appeal: Any person aggrieved by an initial decision of the Zoning Administrator concerning a variance may appeal the decision to the Area Planning Commission. The appeal must be filed within 15 days. Before deciding the appeal, the Area Planning Commission must hold a public hearing. An appeal from a decision of the Area Planning Commission granting or affirming the grant of a variance may then be filed with the City Council. The Council will hold a public hearing and make a decision on the appeal, which will then be forwarded to the Mayor for consideration.

Chapter 4

Points of Intervention

Points of Intervention

Once you've gathered information and identified the approval process for the project or plan that will affect your community, the next step is to find out where and when your group might be able to influence that process and shape the outcome. The planning process typically includes several points of community input and participation. Ideally, decision makers will take this process seriously and will meaningfully respond to community concerns and input expressed during these public input opportunities. However, even if it seems that decision-makers are going through the motions and not really responding to public input, it is still important to participate. If you ultimately decide to challenge a project in court, you may be required to show that you "exhausted your administrative remedies." The various points of entry in the planning and development process will vary according to the specifics of the project and the entitlements or permits being sought. The following section describes some of the important points of intervention available for most project or plan approvals.

I. PUBLIC HEARINGS AND MEETINGS

Most planning processes allow for at least one publicly noticed hearing where interested residents can come and voice their concerns on a proposed decision. In some cases, opportunities for public hearings or meetings are provided automatically. In others, they are held only if enough people show community concern or interest. If it is not clear, and if you believe that having a public hearing is a useful way to organize community involvement and to make your case to the agency, you should always request that a hearing be held (preferably in writing and keep a copy of your requests). In California, there are generally two sources of law that govern how these meetings must be held:

Organizational bylaws and rules for conduct of meetings – All public agencies must follow their internal bylaws, rules, and regulations when conducting public hearings.

Brown Act – California state law requires that legislative bodies of government agencies hold their meetings open to the public, except as expressly authorized by the Act. This is to prevent government officials from holding "backroom" meetings away from the public eye, which would limit resident input in the decision-making process. (Cal. Gov. Code Sec. 54950).

II. CITIZEN ADVISORY GROUPS AND OTHER PARTICIPATORY BODIES

Participatory bodies are designed to help interested community members get involved in a decision early in the planning stages and take part in developing and reviewing alternative approaches. Site-specific citizen's advisory groups or similar informal groups are sometimes formed pursuant to statute (e.g., redevelopment law) and sometimes just as a result of community and political pressure. You maybe be able to persuade the government or private industry in your community that creating this type of group would help facilitate better communication and better decisions.

Being involved in a citizen advisory group or other informal problem-solving process is one way to make people aware of key issues of concern for your community. This type of process is

successful when it involves people who represent all potentially affected interests. Members of the group educate each other about what is important to them and explore the types of decisions or actions that can be taken to address everyone's concerns. Participating in advisory groups also allows you to network with other communities that share similar concerns or have experienced similar problems.

The I-710 Major Corridor Study is cited as a good example of a participatory process that included extensive use of community advisory groups. Each community along the route of the freeway was allowed to form a "Tier 1" Community Advisory Committee, and representatives from each of these committees met with other regional stakeholders in a "Tier 2" Community Advisory Committee. The bodies produced a set of recommendations for the proposed project that have guided public officials and agency planners as they move forward with the project.

III. PUBLIC COMMENT

Some processes allow the public to file written comments with respect to a proposed decision and sometimes the agency is required to respond to these comments (e.g., California Environmental Quality Act (CEQA)). In the instance of CEQA, written comments must be filed within a 30-day public comment period following release of a draft of the decision-making document.

Public comment is an important part of the participation process. First, it is, of course, possible that the agency in question is simply unaware of the concerns in the community, and a public comment is an organized and official way of making the agency aware of those concerns, so that it can respond appropriately. More importantly, however, public comment allows the community to put its concerns "on the record." If the agency ultimately makes a decision that you do not like, you are often not able to raise issues or present information, in court, that was not brought to the agency's attention before the decision was made. Therefore, providing extensive comments during the public comment period may be essential to success in a future lawsuit.

You may also be able to improve the way citizens are informed about the impacts on the community of the proposed actions by providing comments about the way the agency has conducted its public education and outreach efforts.

IV. POLITICAL ADVOCACY

In addition to participating in the formal public participation processes, you may want to also consider speaking with local elected officials and advocating for your desired outcomes. This strategy has a better chance of success if you are able to organize a significant number of community members. In Los Angeles, each councilmember is extremely influential when it comes to land use decisions in his or her district. Therefore, establishing a working relationship with your council office can be an important component of a comprehensive strategy to influence the planning and development process.

V. ENGAGE PUBLIC OPINION

Decision-makers - especially elected decision-makers - can be highly responsive to public opinion. If you are able to appeal to large numbers of constituents, both inside and outside of your neighborhood, your chances of influencing these decision-makers increases. Therefore, in addition to public participation and political advocacy, you may also consider efforts to build support and unity around an issue in the public sphere. This can take the form of distributing flyers at community events, or engaging local media to help tell your story.

VI. CHALLENGE THE DECISION:

Sometimes the community comes to the end of a formal planning process feeling their voices have not been heard and concerns have not been addressed. Some processes allow for a formal challenge (not a lawsuit) to be filed within a set amount of time. In other situations, it is possible to file a lawsuit challenging the legitimacy of the agency's actions. In either case, it is very important to remember the time period for an appeal or a lawsuit is typically extremely short, and courts are very unlikely to entertain challenges not made within the applicable time period.

A. Environmental Challenges

If the process involved compliance with a state or federal environmental law, there are usually provisions allowing for "citizen suits" to be filed by any person to enforce those laws. For the most part, it is necessary to retain an attorney in order to file a citizen suit. However, citizens who win in these cases can often collect attorney's fees and other costs of the lawsuit (such as expert witness fees), which may allow attorneys to handle these cases for free and collect their fees upon successfully prosecuting their case.

For example, the California Environmental Quality Act (CEQA), discussed in Chapter 6, requires planners to study and disclose the significant environmental effects of a proposed project and to identify ways to avoid and prevent environmental damage. If these requirements are not followed, a community group can sue to have a project stopped.

Likewise, the Clean Air Act requires that each air quality control district take steps to ensure compliance with the healthy air standards established by the Act. Federal funds can be withheld from any transportation project in a region out of compliance with federal clean air standards, though the federal government has granted waivers from this provision in many cases.

B. Racial/Ethnic Discrimination

Title VI of the federal Civil Rights Act ("Title VI") prohibits discrimination by entities receiving federal financial assistance. Most governmental agencies receive some form of federal assistance and, thus, Title VI has proved a valuable tool for community groups in low-income and minority communities that are fighting against environmental racism.

C. Conflicts of Interest

California law prohibits any public official at any level of state or local government from making, participating in making or in any way attempting to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Cal. Gov. Code § 87100.)

D. Authorizing Statutes

If the governmental agency fails to take any of the steps required by the statute authorizing its actions, then that action can potentially be invalidated in court.

Chapter 5

Redevelopment

I. A BRIEF HISTORY OF REDEVELOPMENT

Redevelopment Agencies were publicly funded organizations created in 1945 by a California statue. They were created to encourage improvement and development of land, including the creation of low and moderate income housing. To access Redevelopment funds, the proposed project area needed to be predominantly urbanized and blighted, and its redevelopment necessary to effectuate the public purposes of the Redevelopment law.

Over the past 66 years, approximately 400 Redevelopment Agencies were created in cities throughout California. These agencies were funded through a portion of money raised through individual property taxes. In the City of Los Angeles the local agency was called the Community Redevelopment Agency (CRA/LA).

II. RECENT DEVELOPMENTS IN REDEVELOPMENT

In January 2011, Governor Brown declared that California was in a fiscal emergency. One of the strategies the government looked to in resolving this fiscal emergency involved the future of Redevelopment. In response to Governor Brown's concerns, during a special session the California Legislature drafted two new bills that addressed resolution of the fiscal emergency by accessing funds held by Redevelopment Agencies. These bills were the: (1) Dissolution Act (ABX1 26), which would shut down Redevelopment Agencies and allow all the funding from Redevelopment to flow to other entities; and (2) the Voluntary Program Act (ABX1 27, or "Opt-In Program"), which would allow Redevelopment Agencies to continue operating if they elected to share their assets with other entities. Governor Brown signed both of these bills into law on June 29, 2011. After the bills were signed, local governments and Redevelopment Agencies were concerned about the impact these new laws would have on local development projects, and a lawsuit was filed challenging these new laws in the California Supreme Court.

In December 2011, the California Supreme Court decided the Legislature has the power to close all of the Redevelopment Agencies in the state, including CRA/LA; but that the Legislature does not have the power to create a fund sharing or "opt-in" system. In other words, the California Supreme Court affirmed the validity and constitutionality of the Dissolution Act (ABX1 26) but held that the Voluntary Program Act (ABX1 27) was not a proper use of legislative authority. With this, Redevelopment as it has been known in California since 1945 ended.

III. THE FUTURE OF REDEVELOPMENT

As of February 1, 2012, every Redevelopment Agency in California was dissolved and it is anticipated that, after a process called "winding down," billions of dollars will go to state, city, and county agencies to carry out some of the former redevelopment activities. The Los Angeles Mayor and City Council have decided not to manage the "winding down" process and dissolution for CRA/LA. Therefore, Governor Brown has appointed a Designated Local Authority (DLA) to oversee the dissolution of CRA/LA. DLA will administer 31 existing redevelopment plans for the City of Los Angeles.

The future management of funds allocated for low and moderate incoming housing in California remains unresolved. In response to concerns, two more new bills are being considered by the California Legislature that may protect low and moderate incoming housing funds. On January 31, 2012, the California Senate approved a bill (SB 654) that may create rules protecting low and moderate income housing funds that were held by Redevelopment Agencies. On February 2, 2012, the other half of the California Legislative branch – the Assembly – introduced a similar bill (AB 1585). If these proposed bills become law, it may mean that unencumbered funds designated for low to moderate income housing must be used for low to moderate income housing, and may be administered by local agencies such as the Los Angeles Housing Department (LAHD).

IV. IMPORTANT RESOURCES

Assembly Bill ABX1 26 – http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/abx1_26_bill_20110629_chaptered.html

California Redevelopment Association website – http://www.calredevelop.org/external/wcpages/wcwebcontent/webcontentpage.aspx?contentid=438

Office of the Governor website – http://gov.ca.gov/news.php?id=17396

CRA/LA website – http://www.crala.org/

Chapter 6

The California Environmental Quality Act (CEQA)

I. WHAT IS CEQA?

The California Environmental Quality Act (CEQA) is a state law that requires **government agencies** to consider the environmental effects of certain development projects before approving them, and allows the public to participate in and influence the future development of their community. CEQA (pronounced "see-kwah") applies to many projects, including public projects undertaken by state, county and city governments as well as most private projects that require a government permit or approval. (*See Breakout on Agencies & Permits*.)

Words in **bold** are defined in the Glossary of Terms located at the end of this chapter.

The purpose of CEQA is to foster coordination between agencies, enhance public participation, and *inform* members of the public and the government of (1) the basic characteristics of a project, (2) a proposed project's potential environmental effects, (3) the possible ways to mitigate, or reduce, any negative effects on the environment, and (4) the reasons why a project with significant environmental effects was ultimately approved for construction. Thus, CEQA is sometimes called a "full disclosure law." However, CEQA does not require cities and counties to meet certain environmental quality levels.

CEQA applies to activities that will cause some direct or indirect change to the environment. The "environment" refers to the physical conditions enclosed within and around the project boundaries, such as land, air, water, minerals, animal and plant life, noise and cultural resources.

Government agencies must comply with, or follow, CEQA requirements *before* they can approve a project. Legally, government agencies are the only parties responsible for CEQA compliance. However, as the **project applicant** seeking agency approval on an activity, developers are very concerned about CEQA compliance because their project could be stalled indefinitely through legal challenges or even disapproved in the process. Almost anyone can file a lawsuit challenging the agency's CEQA compliance and the developer must bear the financial costs of delayed development, defending the lawsuit, and creating environmental documents. In this way, CEQA can be an important tool for groups who are seeking to challenge a new development project.

II. CEQA COMPLIANCE PROCESS – OVERVIEW

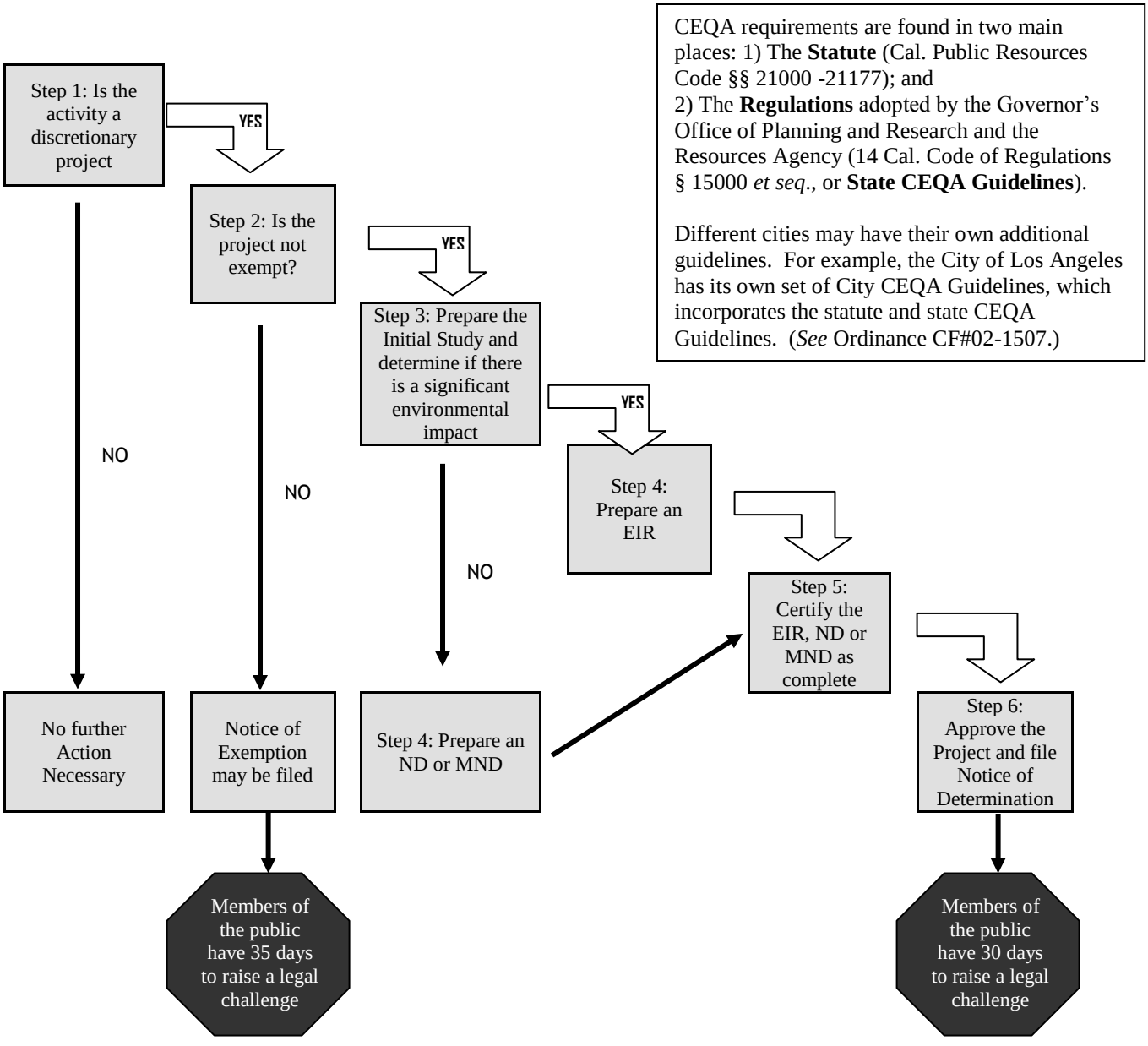
There are six basic steps that a public agency, usually a city or county agency, must follow in order to comply with CEQA:

1. Determine if the proposed activity is a **Discretionary Project.**
2. If the proposed activity is a project, determine if the project is **Exempt or Not Exempt** from CEQA compliance.
3. If the project is not exempt from CEQA, conduct an **Initial Study** to determine if the project may have a **significant environmental impact.**

4. If the project has a significant environmental impact, then prepare an **Environmental Impact Report (EIR).** Otherwise, prepare a **Negative Declaration (ND)** or **Mitigated Negative Declaration (MND).**
5. **Certify**, or approve as complete, the EIR, ND, or MND.
6. **Approve or Disapprove** the Project.

After a project has been approved, members of the public may file a lawsuit challenging the public agency's decision in approving the project.

THE SIX STEPS OF CEQA COMPLIANCE



III. CEQA COMPLIANCE – THE SIX STEPS IN DETAIL

→ Step 1: Determine if the proposed activity is a Discretionary Project

The CEQA process begins once an agency proposes to carry out an activity or once a developer submits an application to an agency to request a permit or approval to develop a property. The agency must first determine if CEQA will apply to the proposed development activity. CEQA only applies to activities that are both "discretionary" and "projects." CEQA does not apply to "ministerial" actions.

CEQA only applies to discretionary projects proposed to be carried out or approved by a public agency.

A **project** refers to actions or activities that are directly carried out by agencies, financed by agencies, or require approval by a public agency. Proposals for legislation or purchase of supplies would not qualify as a project, whereas building a residence would. (State CEQA Guidelines § 15378) An activity is **discretionary** if an agency is required to use its discretion or exercise subjective judgment in deciding whether to approve or disapprove the activity. Some examples of discretionary actions or activities are: enactment and amendment of zoning ordinances, issuing conditional use permits, and adoption or amendment of general and special plans. Most projects are discretionary. For more information, see State CEQA Guidelines § 15357.

In contrast, an activity is **ministerial** if an agency may not use its discretion and must automatically approve the activity if it conforms to standards set in other laws. Some examples of ministerial actions or activities are: automobile registrations, dog licenses, and marriage licenses. For more information, see State CEQA Guidelines § 15369.

However, the line between discretionary and ministerial is not always clear-cut. For instance, building permits are usually considered discretionary, but in certain circumstances a building permit could be ministerial. Let's say an ordinance will grant a permit as long as the structure matches the location's zoning requirements, the structure meets the strength requirements in the Uniform Building Code, and the applicant has paid his fee. If the applicant follows all of these requirements, then the agency must grant the permit because the ordinance leaves no room for use of discretion. However, if the ordinance allowed the agency to consider the building's architectural design in order to determine if the building is a good "fit" with the other buildings in the neighborhood before granting the permit, then the permit is discretionary.

→ Step 2: Determine if the project is Exempt or Non-exempt

If the proposed activity is a discretionary project, the next step is to determine if the project is **Exempt** or **Non-Exempt** from CEQA compliance. If the project is exempt then no further action is required to comply with CEQA. But if the project is non-exempt, then the public agency must conduct further environmental review. In general, projects are exempt if they are minor or ongoing maintenance projects. More specifically, there are two types of exemptions:

- **Statutory exemptions** are exemptions granted by the State Legislature. Examples include emergency repairs, demolition permits, adoption of coastal and timberland plans,

and some mass transit projects. For more information see California Public Resources Code §§ 21080, 21084, and State CEQA Guidelines §§ 15260-15285.

- **Categorical exemptions** are exemptions listed in the State and City CEQA Guidelines, and refer to projects that the Secretary of Resources has concluded to not have a significant effect on the environment. Examples include repair or replacement of pre-existing structures, construction of small structures such as two homes or less, and minor alterations on the land, such as minor lot line adjustments. However, these exemptions are not absolute. For more information, see State CEQA Guidelines §§ 15300-15332 and City CEQA Guidelines, Article III.

If the project qualifies as a one of the listed statutory or categorical exemptions, an agency may choose to file a **Notice of Exemption** with either the City or County Clerk, or the Governor's Office of Planning and Research (OPR). A notice of exemption is a document that describes the project and lists which exemption the project falls under. Once a notice of exemption is filed, it will trigger a 35-day **statute of limitations,** or time limit, for challenging in court the agency's decision that the project is not exempt. If a notice of exemption is not filed, the time limit for legally challenging the agency's decision is 180 days after the date of the agency's approval. It is important to keep in mind the statute of limitations and file a lawsuit within that period because after the time limit has passed, groups are barred from filing a lawsuit under CEQA.

→Step 3: Prepare an Initial Study and determine if the project has a significant environmental impact

If the Project is not-exempt, then the public agency undertakes an **Initial Study**. An initial study is a preliminary analysis that determines whether a project may have a **significant environmental impact** and an environmental impact report (EIR) must be prepared. (*See Sample Initial Study Checklist in Appendix 6*.) A significant environmental impact results if any aspect of the project will cause a "substantially, or potentially substantial, adverse change" on the physical conditions in the environment. Purely economic or social changes alone will not be a significant impact. (State CEQA Guidelines §15382) Thus, a building which would increase air and noise pollution, increase traffic, and consume a lot of electricity would have a significant environmental impact.

Most local and county agencies use a checklist to assess all the environmental factors. However, agencies are not allowed to create a "naked checklist," or a checklist that merely checks off "yes" or "no" without including any explanations. Agencies must briefly explain their findings or present evidence to support their conclusions, regardless of whether their findings show that the impact is significant or not. (State CEQA Guideline § 15063)

Environmental Factors Addressed in Initial Study and EIR

- Aesthetics
- Agricultural Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology/Soil
- Hazards/Hazardous - Materials
- Hydrology/Water - Quality
- Land Use/Planning
- Mineral Resources
- Noise
- Population/Housing
- Public Services
- Recreation
- Transportation/Traffic- Utilities/Service Systems

→ Step 4: Prepare a Negative Declaration, Mitigated Negative Declaration or Environmental Impact Report

Based on the findings of the initial study, the public agency will prepare a negative declaration, a mitigated negative declaration, or an environmental impact report.

- If no significant adverse impact on the environment is found, then the agency prepares a **Negative Declaration (ND)**, which is a document that states no further environmental review is required. (State CEQA Guidelines § 15070.)
- If potential environmental effects are found that can be reduced to a less than substantial level through changes to the project proposal, then the agency prepares a **Mitigated Negative Declaration (MND)**. An MND is similar to an ND except that an agency attaches changes or conclusions to the project proposal to mitigate, or reduce, the project's potential negative effects. (State CEQA Guidelines § 15070.)
- If there is substantial evidence that the project may have a significant adverse impact, then the agency prepares an **Environmental Impact Report (EIR).** An EIR can be very expensive, take a long time to prepare, as well as be several hundred pages long. An EIR must include a description of: the project, the surrounding environment, significant environmental effects, mitigation measures or measures proposed to avoid or minimize significant effects, project alternatives, and **cumulative impacts** (these are two or more individual effects that, when considered together, are substantial or increase other effects). The EIR is a useful organizing tool for local residents because it tells a story of how the developers obtained the land and what they plan to do with the land. By increasing awareness of potential environmental issues, the EIR encourages residents to organize around them.

EIRs are considered the "*heart*" of CEQA. EIRs are long, detailed accounts of a project's environmental effects, mitigation measures and project alternatives.

If the agency decides to prepare an ND or MND, then the agency must offer the public an opportunity to review the declaration and submit comments. This opportunity is called the **public review period**. The agency prepares a ND or MND, notifies the public that it intends to adopt the ND or MND, and then receives and considers comments from the public.

The agency follows a similar process if it decides to prepare an EIR, but it must follow certain additional steps. These are scoping, preparing a Draft EIR, and preparing a Final EIR.

- **Scoping** - First, the agency consults with other agencies, the project applicant, and occasionally the public to determine what needs to be evaluated in the EIR. This process of deciding what topics should be evaluated is called scoping. The agency prepares a **Notice of Preparation**, which is a document that describes the project and solicits comments from other agencies and the public on the scope of the EIR. Sometimes an agency will also hold public scoping meetings, especially when the project has a regional impact. (State CEQA Guidelines §§ 15082, 15083, 15375)
- **Screening** – For some projects, after scoping, the agency will conduct a "screening" process to determine which project alternatives will be considered for further environmental review.

- **Draft EIR** – After considering comments regarding the scope of the EIR, the agency prepares a Draft EIR. The applicant's consultants may also prepare the draft, as long as the agency independently reviews and exercises judgment over the document. Once the Draft EIR is complete, the agency files a **Notice of Completion** with the Governor's Office of Planning and Research stating that the draft is ready for public review and then the draft is circulated to the public. (State CEQA Guidelines §§ 15085, 15087)
- **Final EIR** – After the agency receives the public's comments, it must prepare responses to all comments in the Final EIR. CEQA does not require that the Final EIR be re-circulated for public review, unless significant new information is added to the EIR after the review period but prior to **certification**. (State CEQA Guidelines §§ 15088-90)

Final EIR Contents
- Draft EIR
- Public Comments
- Agency responses to comments
- Any amendments

Developers generally prefer an ND or MND over an EIR because, as the project applicant, developers must bear the cost of the EIR preparation as well as any costs that occur from delaying the project. For example, if the EIR takes five months to prepare and costs $75,000, the developer is not only paying the $75,000 but also any monthly interest or option payment on the property until the developer can start construction. On large projects, this amount can be several thousand dollars. In addition, if the EIR requires any mitigation measures, the cost of construction will probably increase.

→ Step 5: Certify the ND, MND, or EIR

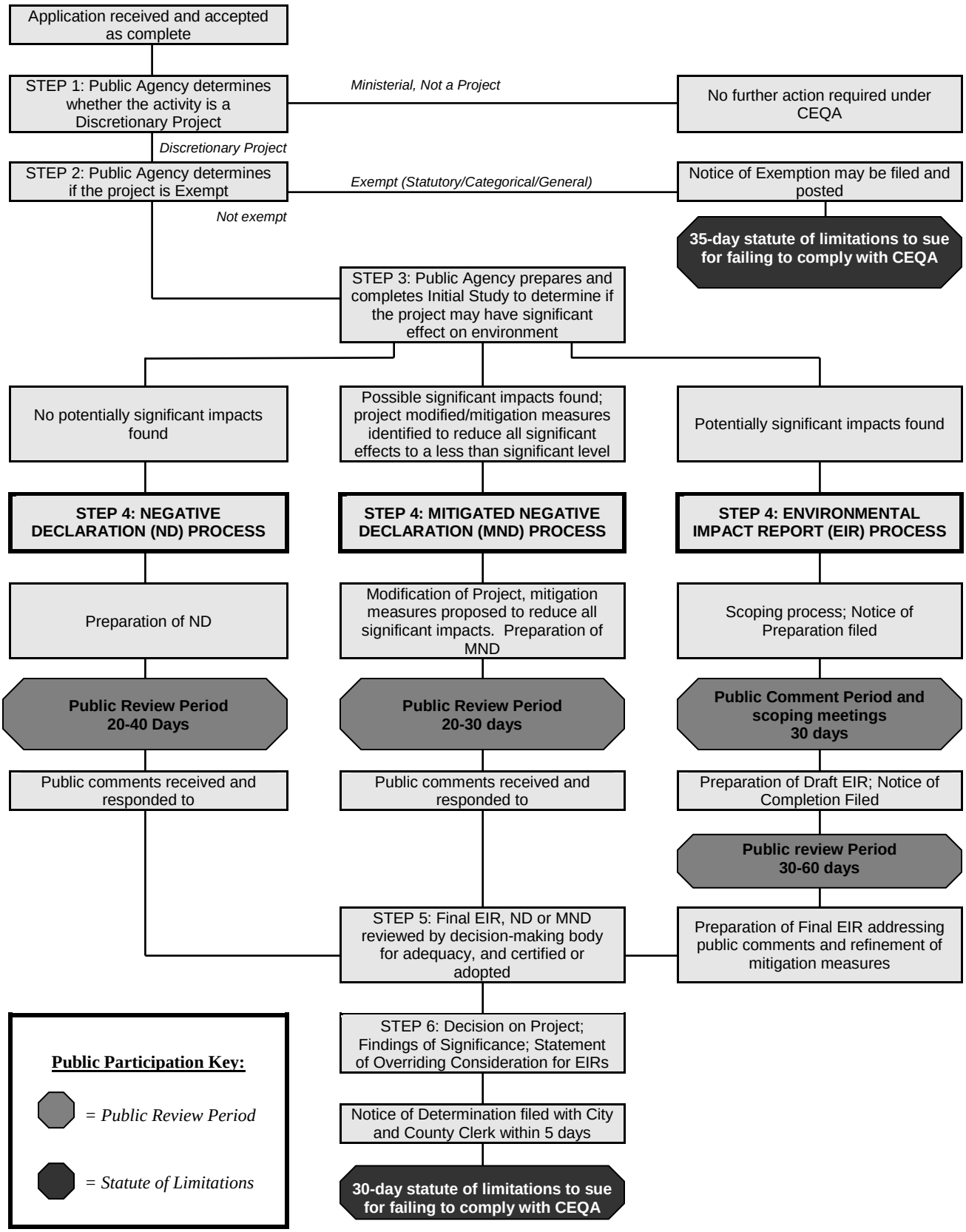
Once the agency has responded to the public's comments in the Final ND, MND, or EIR, the agency must review the document for accuracy and then **certify,** or formally confirm, that it has considered and approved the Final ND, MND, or EIR as accurate and complete. This process is called certification.

→ Step 6: Approve or Disapprove the Project

After the ND, MND, or EIR is certified as complete, the agency must make a final decision as to whether it will approve the development project. Agencies should not approve a project that has significant environmental effects, unless the agency incorporates mitigation measures. If the agency finds that mitigation measures are **infeasible,** or not capable of being successfully carried out within a reasonable period of time, the agency may still approve a project. However, the agency must prepare a **Statement of Overriding Considerations**, which states that specific economical, legal, social, technological, or other considerations outweigh the project's unmitigated adverse impacts.

Within five days of approving the project, the agency must file a **Notice of Determination,** which is a notice that declares that the agency has approved a project application. The proper filing of this notice is significant because it will trigger a 30-day statute of limitations, or time limit, for filing a lawsuit challenging the agency's compliance with CEQA. If no notice is filed within five days, a CEQA challenge may be brought within 180 days of the date of approval. Local agencies file the notice with the City and County Clerk, while all other agencies file the notice with the Governor's Office of Planning and Research.

CEQA PROCESS FLOW CHART DETAILING WHEN PUBLIC CAN PARTICIPATE



THE STAPLES CENTER EXPERIENCE

In January 2001, a draft EIR was prepared for the proposed expansion of the Staples Center in downtown Los Angeles. The proposed project, known as the Los Angeles Sports and Entertainment District, called for the creation of a 1,200 room convention center hotel, a second 600 room hotel, a 7,000 seat live theater, 800 residential units, up to 300,000 square feet of office space, and up to 125,000 square feet of sports club. In February 2001, the Figueroa Corridor Coalition for Economic Justice (FCCEJ), a coalition of over 30 community groups, unions, and faith based organizations, submitted a 42-page comment letter, along with various articles and reports, on this Draft EIR.

In addition to making several specific comments regarding the inadequate analysis of various environmental factors such as housing, air quality, and parking, the comment letter made a general comment that the Draft EIR failed to include an analysis of the energy environmental impacts. This failure was an extreme oversight in light of the scale of the project and the ongoing energy crisis facing California and the region. (At the time California was going through a period of rolling blackouts.) The comment letter requested a full energy analysis along with mitigation measures to be included in the Final EIR.

The threat of a successful CEQA litigation and the need to act within a short time frame brought the private development group, which included owners of the Staples Center, to the bargaining table. By May 2001, and after 100 hours of labor-style negotiations, FCCEJ successfully negotiated a Community Benefits Agreement (CBA) with the developers in exchange for non-opposition of the development project.

Highlights of the "Staples CBA":

- More than $1 million for the creation or improvement of parks and other public open spaces;
- A goal that 70% of the estimated 5,500 permanent jobs to be created by the project - including those offered by tenants – would be paid Living Wages ($7.72 an hour with benefits or $8.97 without, or covered by collective bargaining agreement);
- A local hiring and job training program for those displaced by the arena, living within three miles of the project or living in low-income areas citywide. Developers will give $100,000 in seed funding to create job training and job referral programs;
- Developer funding for a residential parking permit program that will reserve street parking for residents; and
- Construction of between 100 to 160 affordable housing units, or 20% of the total project. Developers will also provide up to $650,000 in interest-free loans for nonprofit housing developers in the early stages of developing projects in the area.

IV. HOW TO PARTICIPATE IN THE CEQA PROCESS

You can participate in the CEQA process by submitting comment letters, attending a CEQA scoping meeting, submitting oral or written comments at public hearings, attending agency meetings, negotiating with developers, or filing a CEQA challenge in court.

A. Submitting Comment Letters during the Public Review Period

You may submit comment letters when the agency is determining the scope of the EIR, and after the completion of the draft ND, MND, or EIR. A comment letter may alert agencies about deficiencies in environmental documents, uncover project impacts not considered by the agency, and suggest other mitigation measures or alternatives. Agencies must respond to all submitted comments before certification, and, in some cases, a well-written letter might convince an agency to conduct further studies.

Submitting **a well-written comment letter** against a project does not guarantee that the agency will ultimately decide in your favor, especially if you do not have substantial evidence backing your position. However, it is important that you submit a comment if you want to have the option of filing a legal challenge later. You are not allowed to file a lawsuit unless you have first "exhausted one's administrative remedies" by submitting a comment letter. Furthermore, you can only sue over issues that were addressed with specificity in the comment letter, so carefully draft your letter by including all possible issues that might come into conflict later and explain the basis for any conclusions (such as supporting data or references).

It is a good idea to coordinate with other organized groups and individuals to show that a lot of people care about the issue and that the project is controversial. Strategize with other groups to see whether it would be more powerful to send many letters from each different organization, or send one letter signed by the entire coalition. Include all relevant attachments and other supporting documents because you want these documents to be included in the administrative record in case you want to file a legal challenge. Mention the environmental document or project number so that the agency can easily reference your letter. Finally, send a carbon copy to (i.e., CC) other relevant parties, including other public officials, your local city councilmember, or members of the applicable agency's board.

Depending on the agency, notices for the public review period may be published in newspapers, posted in the project site, or mailed to neighboring property owners. Some notices might be published online on the agency's website. **You or your organized group may also call the agency and request to be placed on a project's notice list.** Agencies must put you on the list and send notices relating to the project to you. To learn more about how the major agencies in the City of Los Angeles handle notices, consult the "Guide to Understanding CEQA in the City of Los Angeles," which can be downloaded under the "Environmental" tab at http://planning.lacity.org/.

Here are some examples of issues to raise during each comment period:

- **After the draft ND or MND is prepared**, you may submit comments objecting to the ND or MND and stating an EIR is more appropriate; alerting the agency of environmental impacts not considered by agency; or requesting a public hearing.
- **If an agency invites public participation in the scoping process**, you can submit suggestions on what impacts should be evaluated in the Draft EIR.

- **After the Draft EIR is completed**, you may submit comments alerting agencies about deficiencies in environmental documentation; uncovering project impacts not considered by the agency; and recommending other mitigation measures or alternatives. If you feel a public hearing is necessary, you may also submit a written request for a public hearing.

B. Attending a Public CEQA Scoping meeting

When an agency decides to prepare an EIR, the agency *may* decide to have a public scoping meeting, or a meeting to discuss what topics the EIR should cover. A scoping meeting is required if the project will have "regional effects." Members of the public can participate by attending the meeting and making comments orally.

A scoping meeting helps shape how broad or narrow the scope of an EIR will be. While the agency ultimately determines the scope of the EIR, you have an early opportunity to voice your concerns about certain environmental impacts.

C. Presenting oral or written comments at Public Hearings

Sometimes an agency may have a public hearing to open the range of discussion. While public hearings are not required at any stage of the environmental review process, an agency is encouraged to include environmental issues on the agenda when it has a public hearing on the project itself and to post the hearing time and location on the internet. (State CEQA Guidelines § 15202.) If no public hearing has been scheduled and you feel one is necessary, you may request a public hearing in a comment letter.

Agencies will often schedule hearings during the public review period and include the time and location of the hearing in the notice declaring that the draft ND, MND, or EIR is ready. Otherwise, you can check the agendas for agency meetings. You may submit oral or written comments at the hearing. However, you will often have a time limit on how long you can speak at a public hearing.

D. Attending Department, Board, Commission, Council Committee, or City Council meetings

When the agency actually votes whether to approve a project or holds other meetings, members of the public can participate and voice their concerns at these meetings.

While agency decision makers should take into consideration the concerns of the public, be aware that political pressure to approve a project may outweigh public concern. Nevertheless, well-organized community members can create a lot of political pressure to disapprove a project or incorporate mitigation measures. Check city council and board calendars to see when the item is placed on the agenda.

E. Negotiating with developers

Before the project is approved by the agency, organized groups can negotiate with developers to make modifications in their project proposal by using CEQA. However, developers will not take you seriously unless you are well-organized and clear about what your community's needs.

Negotiation can be an organized group's strongest tool. The goal of the negotiation process is a Community Benefits Agreement (CBA). A CBA is a legally binding agreement where you promise to not oppose the development project in agency hearings or in court, in exchange for the developer providing community benefits such as living wage jobs and park space, or affordable housing.

F. Filing a CEQA challenge in court

As a final resort, you may file a lawsuit in court once the project has been approved. Almost anyone or any organized group can file a lawsuit challenging an agency's approval. Thus, individuals, neighborhood groups, environmental groups, neighboring cities, labor unions, and even competing developers can block a project until the courts affirm approval of the CEQA review. These challenges are frustrating to developers because they are expensive to defend and can delay the project indefinitely if the court rules in the challenger's favor. The developer bears the costs of both the legal defense and the delay. Moreover, CEQA requires agencies to follow many complicated procedural requirements, and judges are prone to looking unfavorably on agencies that forget to follow any of those requirements. For example, failure to properly file a notice of preparation for an EIR may be grounds for a court to say that an EIR is invalid.

You may sue the agency after a notice or exemption or notice of determination is filed. It is important to note that you can only make legal challenges on issues that were raised in the public review period and you must file a challenge within the statute of limitations. **The statute of limitations is very short, so you will have to act quickly**.

NEW! MEDIATION OPTION

Beginning July 1, 2011, parties challenging a project under CEQA may request mediation before challenging the approval in court. Any person wishing to bring a CEQA action may request mediation within five days of a notice of exemption or notice of determination. The request must be filed with the lead agency, and if the agency accepts, the parties enter into mediation and the statute of limitations for filing litigation is tolled. If the lead agency denies the request or fails to respond within five days, the parties proceed to litigation.

While developers definitely do not welcome CEQA lawsuits, from the community's perspective the drawbacks to filing a lawsuit are that it is expensive, the evidence is limited to the administrative record, and the remedies you can receive are very limited.

First, you will need legal representation and there are few legal aid organizations with the resources to represent you for free. On the other hand, developers will have ample resources to defend the lawsuit. Developers are getting better at ensuring agency compliance and courts are becoming more hostile to seemingly frivolous lawsuits.

Second, the evidence is limited to the administrative record, which consists of all the environmental documents, the comment letters, and meeting minutes. Discovery, or the broad disclosure of information to the opposing party that is normally permitted in other lawsuits, is not permitted in CEQA lawsuits. If the record does not contain particularly damaging information, then you will likely not prevail in the lawsuit.

Finally, the remedies are limited because you can only ask for CEQA compliance. For example, if an agency issues an MND and approves a project, you cannot ask the court to stop the project forever or to stop the operating permit. You can ask the court to require that the agency prepare an EIR or address additional impacts in the MND.

Here are some examples of what to argue in a CEQA lawsuit:

- If a **Notice of Exemption** was filed, look at the notice to determine which specific exemption applied to the project (the agency should identify the exemption), and argue that the exemption should not apply to this particular project, and an initial study should be conducted.
- If a **Notice of Determination** was filed for an ND or MND, you may argue that an EIR was more appropriate, or that the agency did not follow certain CEQA requirements.
- If a **Notice of Determination** was filed for an EIR, you may argue that the Final EIR was inadequate and incomplete in its analysis. You may also argue that the agency did not follow certain CEQA procedural requirements.

V. IMPORTANT DEADLINES TO KEEP IN MIND

Keep in the mind the deadlines for submitting a comment letter during public review period, or suing for CEQA noncompliance. (State CEQA Guidelines §§ 15100 – 15112.)

A. Public Review Periods

During the ND or MND process, the public review period begins after the agency prepares the ND or MND. The public review period is at least 20 days for local projects and 30 days for other projects. (State CEQA Guidelines § 15105.)

During the EIR process, there are two opportunities for public review and comment. The first opportunity occurs after the agency files a **Notice of Preparation.** You must submit a comment letter within 30 days after the date of the notice of preparation. (State CEQA Guidelines §15082.) The second opportunity for public review occurs after the agency files a **Notice of Completion** of the Draft EIR. The public review period must last for at least 30 days after the notice of completion on local projects and at least 45 days for other projects. (State CEQA Guidelines § 15105.)

These are the minimum time limits for public review periods. An agency may extend the time limit if it feels the limit does not provide adequate time for review and comment. (State CEQA Guidelines § 15203.) You may also request an extension of the time limit, especially if the environmental documents are extremely technical and difficult to understand.

B. Statute of Limitations for filing CEQA challenge

After the agency files a **Notice of Exemption**, you must file a lawsuit within 35 days of the filing date, or else you will be permanently barred from bringing a lawsuit. If no notice of exemption is filed, you have 180 days after the date of project approval. (State CEQA Guidelines § 15112.) You also have the option of requesting mediation within five days of a notice of exemption.

After the project is approved and the agency files a **Notice of Determination**, you must bring a lawsuit within 30 days of the filing date or else you will be permanently barred from bring a lawsuit. If no notice of determination was filed, you have 180 days from the date or the decision to carry out or approve the project. (State CEQA Guidelines § 15112.) You also have the option of requesting mediation within five days of a Notice of Determination.

VI. TYPES OF ENVIRONMENTAL IMPACT REPORTS (EIRS)

A. Project EIR

A Project EIR discusses the environmental impacts of a particular development project during the planning, construction and operation stages. This is the most common type of EIR.

Example – The Los Angeles City Planning Department prepared a Project EIR for the Metro Universal Project on Lankershim Boulevard: http://cityplanning.lacity.org/eir/MetroUniversal/DEIR/MetroUniversal.html.

B. Master EIR

A Master EIR is designed to provide analysis of broad policy issues, such as cumulative and growth-inducing impacts, to limit the environmental review of subsequent projects. For the first five years after the certification of the Master EIR, an agency is not required to review the adequacy of the Master EIR for projects described in that document. After five years, the agency must determine whether a supplemental or subsequent EIR is needed.

Example – A Master EIR was prepared for the Corbin and Nordhoff Redevelopment project to assess the impacts of the redevelopment of an area undergoing a General Plan Amendment and zone change: http://cityplanning.lacity.org/EIR/Corbin_Nordhoff/MEIR/index.htm.

C. Program EIR

Program EIRs are similar to master EIRs, and are used to study broad planning decisions or a series of projects that may have related impacts.

Example – The Los Angeles Unified School District prepared a Program EIR for Phase II and future phases of the New School Construction Program. Phase II and the future plans should provide approximately 125,000 new seats: http://www.laschools.org/peir/final.

D. Staged EIR or Tiering

Staging or Tiering occurs when future environmental documents incorporate or build upon general matters covered in earlier EIRs or NDs. These tools are used for very large projects that will be built over a long period of time.

Example – The University of California's use of tiering allowed the University's 2000 Final Project EIR to rely on information in its 1990 Long Range Development Plan EIR.

E. Subsequent EIR

A Subsequent EIR is a new EIR that may be required if there are substantial changes to the project or in the project's circumstances since the previous EIR.

Example – The Metropolitan Transit Authority (MTA) issued a Subsequent EIR when they proposed to extend the Metro Gold line six miles through East Los Angeles.

F. Supplemental EIR

A Supplemental EIR may be prepared rather than a subsequent EIR if there have been substantial changes to a project but only minor additions or changes are necessary to make the previous EIR adequate for the project. These are less costly than subsequent EIRs.

Example – The Port of Los Angeles completed a Supplemental EIR for its Channel Deepening Project: http://www.portoflosangeles.org/EIR/ChanDeep/SEIR/seir_chandeep.asp.

G. Addendum to an EIR

An Addendum to an EIR is an addition that makes minor technical changes or additions to a prior EIR when there have been no substantial changes to the project.

Example – Two different addendums were prepared to discuss minor refinements of the hotel and road plan for the Hollywood and Highland Project, which was a 1,172,000 square foot commercial and entertainment retail space, with restaurants, multiplex theater, broadcast studio, live entertainment, and hotel uses.

VII. GLOSSARY OF CEQA TERMS

Agency, Government Agency, Public Agency – Includes any state agency, board, or commission, and city, county or regional agency. When there are two or more agencies involved in a project, the agency responsible for carrying out the project will be designated the *lead*

agency, and the other agency, which is generally responsible for issuing the permit, will be designated the *responsible agency*.

California Environmental Quality Act (CEQA) – Passed in 1970, CEQA is found in California Public Resources Code Sections 21000 et seq.

Categorical Exemptions – Projects listed in the State and City CEQA Guidelines that are exempt, or not subject to, CEQA compliance because they have no potentially significant environmental effect or public policy goals dictate they should be completed regardless of impacts. (State CEQA Guidelines, § 15354.)

Certification – The process of an agency formally confirming that they have considered and approved a final EIR, ND or MND as complete and accurate.

Discretionary action – Requires the public official to use judgment in making a decision to approve or disapprove an activity.

Environmental Impact Report (EIR) – Detailed document describing a project's significant environmental effects and discussing ways to mitigate those effects as well as alternatives to the project.

Infeasible – Not capable of being successfully carried out within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

Initial Study – A preliminary analysis conducted by an agency to determine whether a project will have a significant environmental impact and whether to prepare an EIR, ND, or MND.

Ministerial action – Does not allow the use of a public official's subjective judgment or discretion, official must approve the activity if it conforms with fixed standards in other laws.

Mitigated Negative Declaration (MND) – Document that finds a project will not have a significant effect after the project has been modified or incorporated mitigation measures.

Negative Declaration (ND) – Document that finds a project will not have a significant effect as originally proposed.

Notice of Completion – Document that notifies the public that the agency has completed the draft EIR and it is ready for public review.

Notice of Determination – Document filed with the county clerk once a project has been approved by a public agency. Must be filed within 5 days of project approval and triggers a 30 day statute of limitation for filing a legal challenge.

Notice of Exemption – Document filed with the City of County clerk that describes a project and explains the reasons why that project is exempt from CEQA compliance.

Notice of Preparation – Document that notifies agencies and the public that the agency will prepare a draft EIR, and which solicits comments regarding the scope of that EIR.

Project – Defined by State CEQA Guideline § 15378, an activity that is undertaken by an agency or private individuals that are supported by the government, or an activity that requires the City to issue a permit or lease.

Project Applicant – A person or entity who proposes to carry out a project which needs a lease, permit, license, certificate, entitlement, or financial assistance from a public agency. If a developer applies for a permit, they are the project applicant.

Public Review Period – The period of time that members of the public can submit comments raising concerns about environmental documents.

State CEQA Guidelines – Regulations adopted by the Governor's Office of Planning and Research and the Resources Agency (14 Cal. Code of Regulations § 15000 *et seq*.).

Statement of Overriding Considerations – Document prepared if an agency chooses to approve a project after finding that mitigation measures are infeasible, which states that specific economical, legal, social, technological, or other considerations outweigh the project's unmitigated adverse impacts.

Statute of limitations – A period of time for which a party can file a lawsuit challenging an environmental document and approval of a project. After the time period expires, a person loses the right to challenge the adequacy of the environmental document or the approval.

Statutory Exemptions – Projects listed in the CEQA statute that the State Legislature has decided should not be subject to CEQA compliance.

VIII. IMPORTANT RESOURCES

California Environmental Resources Evaluation System – For links to CEQA statute, regulations, case law, proposed amendments, and a process flow chart: http://ceres.ca.gov/ceqa/.

City of Los Angeles Environmental Affairs Department – For links to the Los Angeles City CEQA Guidelines, a "Community Guide to the California Environmental Quality Act (CEQA)," a "Guide to Understanding CEQA in the City of Los Angeles," and other agencies: http://www.ci.la.ca.us/EAD/programs/ceqa.htm.

Planning and Conservation League – To order a "Citizen's Guide to CEQA" which is available in English and in Spanish for $15.00. Address: 926 J Street, Suite 612, Sacramento, CA 95814; Tel: (916) 444 -8726; Fax: (916) 448-1789; E-mail: pclmail@pcl.org.

Articles –

- William Fulton, "Chapter 9: The California Environmental Quality Act," in Guide to California Planning.
- Barbara Schussman, "California Environmental Quality Act (CEQA)," in Curtin's California Land Use and Planning Law (edited by Daniel J. Curtin, Jr. and Cecily T. Talbert).
- Michael H. Zischke, Ann R. Danforth, and Robert E. Merritt, "The California Environmental Quality Act," in Understanding Development Regulations (edited by Robert E. Merritt and Ann R. Danforth).
- Michael H. Remy, Tina A. Thomas, James G. Moose, and Whitman F. Manley, Guide to the California Environmental Quality Act (CEQA), 10th ed. by Solano Press.

Chapter 7

Community Benefits Agreements

I. WHAT IS A COMMUNITY BENEFITS AGREEMENT (CBA)?

A **Community Benefits Agreement (CBA)** is a legal document that comes out of negotiations between community groups and a developer. It is a contract between community groups and developers, in which the developer provides certain community benefits along with the development such as local hiring, living wage jobs, affordable housing, community park space, and funding for childcare centers.

Each CBA is unique and applies to a specific development project, and reflects the needs of a particular community. CBAs are separate from a **development agreement**, which is a governmental agency's agreement with a developer, though CBAs are often made part of the development agreement. In fact, it is a good idea to have the CBA incorporated into the development agreement so the city or other government agency can enforce the CBA provisions.

CBAs can take different forms and be incorporated into different documents:

- As an Addendum to a development agreement
- As an Addendum to redevelopment plan
- Codified as official government policy
- As a stand-alone document

The first CBA in Los Angeles came about in connection with the Los Angeles Sports and Entertainment District Project, a large hotel and entertainment complex that surrounds the Staples Center sports arena downtown (Staples). The landmark agreement was signed in 2001 between the Figueroa Corridor Coalition for Economic Justice (FCCEJ), a coalition of over 25 community groups, unions and residents, and the developers – LA Arena Land Company, owned by billionaires Phillip Anschutz and Rupert Murdoch. FCCEJ won an unprecedented package of benefits from the developer in return for a promise by coalition members to support the project. Specifically, the developer agreed to provide public park space; target employment opportunities to local residents; provide permanent affordable housing; provide basic services needed by the community; and address issues of traffic, parking, and public safety.[1]

Since the Staples agreement, CBAs have been negotiated for several other projects, including the SunQuest Industrial Park – a project expected to create over 500 manufacturing jobs in the industrial east San Fernando Valley, and the North Hollywood Redevelopment Project – which has built new office towers, entertainment facilities, shopping centers, new apartments for seniors and young families, and has rehabilitated thousands of homes and commercial buildings.[2]

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[1] Community Benefits Program, Attachment A, *available at* http://www.saje.net/atf/cf/%7B493B2790-DD4E-4ED0-8F4E-C78E8F3A7561%7D/communitybenefits.pdf.

[2] SunQuest Industrial Park Project Community Benefits Plan (Oct. 2001); North Hollywood Mixed Use Redevelopment Project Community Benefits Program (Nov. 2001), *both available at* http://www.communitybenefits.org/section.php?id=155#cbaslist

II. CBA PROCESS

The CBA process begins once community members have identified a new development project in their neighborhood and then identified their community's needs and how the project could benefit them. Once a list of potential benefits has been created, community members meet with the developer to negotiate a CBA.

Here are the main steps of the CBA process:

1. Identify what kind of development project is proposed in your community.
2. Determine local needs and assess what kind of leverage you have.
3. Define the criteria and components of the desired CBA.
4. Organize, negotiate, and finalize the CBA.
5. Implement the CBA.
6. Monitor the CBA to be sure it is fulfilling its goals.

→ Step 1: Identify what kind of development project is proposed and its impact on the community

Important questions include:

- Where is the project and what council district is it located in?
- Who is the developer?
- What type of project is it (e.g., residential, commercial, or mixed-use)?
- Is the project receiving any public subsidies or is it applying for any variances or other permits?
- At what stage is the project in the development process?

In assessing the project's impact on the community, pay attention to what community benefits are already available, what community benefits will be removed by the project, and what community benefits should be replaced.

→ Step 2: Determine local needs and assess what kind of leverage you have

Engage community members who have a stake in the outcome of the development in figuring out what the community needs are. For example, if you anticipate that good jobs are an important community need, include questions of employment backgrounds in a survey of community residents. By examining the job skills, employment history, and educational attainment of local residents, you have a more realistic understanding of the local workforce. This way, if you design a jobs program, you can set realistic timelines and goals and can target communities with the most demonstrated need. This also allows you also to defend yourself against a possible legal challenge that argues that the program is too broad.

Then, in order to assess your community capacity, figure out what kind of leverage you have. The more leverage you have, the better position you are in for negotiating a CBA. Some of the most commonly used leverage points are: zoning approvals, environmental approvals,

redevelopment plans, public subsidies, public bodies and alliances, other laws, developer's perspective, and other types of support.

→ Step 3: Define the components of the desired CBA

The process of determining what benefits you might like to see should flow directly from the assessment of community needs and leverage. You can be very creative in determining what type of benefits will best help meet the specific needs of your community and be acceptable to the developer, given the community's leverage.

After you have determined what general components you want in your CBA, you should also pay a lot of attention to how the CBA will be **implemented** and how provisions will be **monitored and enforced**. For more information on what you need to consider, look at the section of this chapter titled "Key Questions to Consider in Creating a CBA."

It is important to consider the fact that someone may have to actually implement the benefits your coalition wants. For example, if you set up a local hiring program, who will do outreach, intake and referral? Or if you create affordable housing, who will ensure that eligible applicants know how to apply? These sorts of considerations should impact both who you bring into your coalition and what benefits you propose.

The major issues concerning monitoring and enforcement include: establishing clearly defined time frames for all of the commitments; monitoring provisions for ongoing commitments including affirmative reporting requirements and ability to investigate complaints of noncompliance; and providing for enforcement by community groups. It is strongly recommended that CBAs between community groups and a developer are incorporated into the development agreement between the city and the developer, so that the city can also enforce provisions of the CBA. Ideally, subsidies should be given out over time as obligations are met rather than up front. Agreements should have "clawback" provisions to allow local or state governments to get their money back if obligations to government or the community are not met.

For a description of the major types of benefits included in CBAs, please see the section of this chapter titled "Major Types of Benefits Included in a CBA" below.

→ Step 4: Organize, negotiate, and finalize the CBA

Community groups must be very organized to successfully negotiate an agreement with a developer or to lobby their local government for community benefits. Most likely it will take a strong coalition of groups to win community benefits. The more public support you have, the more leverage you have over developers and governmental agencies during the negotiation process. At the same time, poor organization and a loose coalition will create little leverage and may set a poor example for future CBA negotiations. Without a unified team, developers can more easily set competing interests within a coalition against each other. Plus, a well organized coalition will do a better job of implementing the CBA and ensuring that the community actually realizes the benefits it won.

Not only must each group be very well organized, but also all the groups must work together well and trust each other. There must be a clearly defined process for how the coalition will arrive at bottom lines and make last minute decisions on trade-offs or deal points. Without such a process, community members will have a hard time trusting and supporting the coalition, and it is unlikely that the effort will be successful. Other questions that will need to be resolved are what will be the **group's priorities** and who will be part of the **negotiation team**.

Once you determine who will be on the negotiation team, you need to start conducting CBA negotiations with the developer or her representatives. Sometimes a government agency may also participate in the CBA negotiations. *The CBA should be negotiated before the government approves the project.*

A major part of negotiations is **educating** all parties about issues. You must educate the developer and possibly the city about your perspective and needs of your community. You must come up with strong arguments of why the Developer should provide these benefits and how it would be to its advantage. Coalition members also need to educate other coalition members about various priorities. This way, coalition members will be able to back each other up when negotiating specific issues that one member have more expertise in.

It is a good idea to include **advisors or observers** during the negotiation sessions. While they should not be active during the negotiation sessions, they can advise you on more technical issues such as environmental concerns and help you strategize later. If the Developer negotiates through an attorney, you may want to negotiate through an attorney as well.

While many developers will not welcome the demand for community benefits, negotiation does not have to be a negative experience. The important part of negotiation is educating the other side and **building positive relationships**. If you are overly hostile, the other side might walk away from the bargaining table, and governmental agencies will be less inclined to support your side.

In order to finalize a CBA, you will need an attorney to write the contract. Be sure to have your attorney walk you through the language and ask questions if certain portions are not clear. Once the document is finalized and agreed upon by community members and the developer, determine will sign, or execute, the CBA. All parties who sign the agreement will be bound to, or legally obligated to comply with, the provisions of the CBA.

→ Step 5: Implement the CBA

Just because you sign the CBA does not mean your work is done. You must implement, or carry out, the provisions of the CBA. Community groups often underestimate how much time implementation requires. How a particular CBA is implemented depends on the benefits being offered. Some CBAs require ongoing communication between community groups and developers for several years. For example, a CBA that promises local hiring through a first source program for five years will need more community involvement. Community groups will have to maintain relationships with the Developer, business owners, and the first source program staff during that entire time. Other CBAs can be implemented before construction (like a one-

time payment into a fund). Roles, responsibilities, and time frames for implementation should be clearly described in the CBA.

→ Step 6: Monitor the CBA to be sure it is fulfilling its goals.

Ideally, you will have already memorialized in the CBA the monitoring and enforcement mechanisms *(See Step 3 on defining components of CBA)*. The final step is actually following through with those monitoring provisions to see if the CBA's goals are being reached. If there are changes that need to be made, keep in contact with the developer, so you can make any necessary adjustments.

III. MAJOR TYPES OF BENEFITS INCLUDED IN A CBA

The following represents some of the major categories of benefits that communities can negotiate or lobby for: Quality Jobs, Affordable Housing, Community Services, Environment, and Community Involvement.

A. Quality Jobs

Some of the chief issues that community members are concerned with deal with the quality and wages of jobs in a new development. Community members will also be concerned that a good proportion of jobs created will go to local community members. Examples of quality jobs provisions include: living wage jobs; targeted hiring programs and job training; locally-owned operators or contractors; apprenticeship programs; right to organize; worker retention; or responsible contractor.

1. Living Wage Jobs

A **living wage** is a wage that is sufficient to lift a worker out of poverty, and is generally higher than the state or federal minimum. Some living wages are indexed to the federal poverty line and some are indexed to go up with the cost of living. The City of Los Angeles has a Living Wage Ordinance (Administrative Code, Section 10.37), which applies to businesses that have: (1) service contracts with the City, (2) lease land from the City, (3) require City operating permits, or (4) receive city financial assistance. The law requires employers to pay workers $7.72 an hour if the company provides health benefits, or $8.97 an hour if no health benefits are provided. If a business does not fall into any of the four categories, it can still be encouraged to comply with the law.

Resources on Living Wage Programs

Economic Policy Institute, Living Wage Issue Guide, www.epinet.org; **LAANE**, Living Wage Technical Assistance Program, www.LAANE.org; **ACORN**, Living Wage Resource Center, www.livingwagecampaign.org; **Good Jobs First**, Best Practices, www.goodjobsfirst.org; **PolicyLink**, Equitable Development Toolkit, www.policylink.org

Even if your community does not have a living wage ordinance, an agreement can require subsidy recipients to pay a living wage. Looking at existing living wage

ordinances as well as your local economy can help you decide what a living wage is in your community, taking into account the cost of health insurance and whether it is provided at the jobs in question. If your neighborhood already has a living wage ordinance, and it applies to the project, then you can focus on other issues.

In a community that has a living wage ordinance (like the City of Los Angeles), an agreement can impose *additional* obligations on a developer, contractor, subcontractor, or tenants in a development. For example, communities can help maximize the number of living wage jobs at a development by having the developer choose tenants who already pay a living wage or encourage tenants to pay a living wage. While developers are hesitant to require tenants and subcontractors to be bound to CBA requirements, developer are more likely to agree to *goals*, as opposed to *requirements* for tenants and subcontractors to pay a living wage. Developers of the Staples project in Los Angeles agreed to a goal of ensuring that 70 percent of the 5,500 permanent jobs at the development pay at least the living wage or are union. The developer for the North Hollywood Redevelopment Project agreed to make all reasonable efforts to ensure that 75 percent of the jobs at the development would be living wage jobs.

In addition, the city and the developer can develop incentive programs for tenants, offering them a variety of benefits for meeting living wage standards. Ideas include creating a fund to help tenants pay living wages or offer health insurance, or offering rent reductions or funds for capital improvements to tenants who pay living wages. If developers are resistant to forcing tenants to have living wages you could also include disclosure requirements on wages paid at the development for the developer and the tenant, and also meeting requirements for the developer and prospective tenants to discuss living wages before the lease is signed.

2. Targeted Hiring Programs and Job Training

Most low-income neighborhoods suffer from lack of available jobs. In order to increase public support, developers may promise the creation of jobs with their project, but they cannot guarantee that those jobs will be filled by local, low-income people. Targeted hiring programs like First Source and Local Hiring Programs can link job opportunities with workers in nearby low-income communities. Employers can further enhance these targeted hiring programs by informing hiring programs of their long-range training needs, so that the hiring programs can tailor job training programs to fit those needs.

Through a **First Source Program (FSP)**, employers agree to look first for employees from a specified source like a community group or a one-stop center. Usually, this means that employers post job openings at the FSP for a certain amount of time before opening up the position to the general public. The FSP then screens and refers local residents with appropriate experience. Some CBAs require that businesses hire from this referred pool while others simply require

that businesses interview a certain percentage of those referred. Most CBAs require that employers make a "good faith" effort to hire each referred applicant. FSPs can help employers cut down on recruitment and training costs by centralizing the process.

Through a **Local Hiring Program**, employers agree to hire from a certain area surrounding the development. Developers may have a different definition of "local" (i.e., it could as broad as the state of California), so it is important to clarify what the target neighborhood is (e.g., by zipcode, or street boundaries).

Targeted Hiring Programs may be negotiated for both **Construction jobs** and **Permanent jobs**. *Construction jobs* are those jobs associated with actual building of the development. *Permanent jobs* are those jobs associated with the development itself, including jobs with retailers, hotels, and restaurants.

Keep in mind that the administrative requirements of implementing targeted hiring programs may exceed your community capacity. Before you pursue this community benefit during negotiation, you should make a realistic assessment of the number and sophistication of job training programs in your area, and assess whether there will be enough funding and staffing to maintain a targeted hiring program. Otherwise, the program will be unable to place needy workers in jobs, lose legitimacy from local community members and developers, and be criticized as a useless exercise by employers.

All CBAs that include a targeted hiring program should do the following:

- Clearly spell out, in detail, what the employers' responsibilities are;
- Require employers to provide periodic reports on the percentage of targeted individuals hired, and provide any other information that the enforcement body reasonably finds necessary to determine compliance; and
- Indicate who will monitor the program and describe how it will be enforced.

Developers can take steps towards establishing a targeted hiring program by directly participating, providing seed money, or providing physical space.

Participation: Developers can participate, and require or encourage their tenants to participate, in a first source or local hiring program in their community. There are different levels of commitment: first source programs can range from non-binding good faith agreements, to requirements about where and when to give notice, to a formal agreement to hire only from a given source of applicants.

In the Staples project (referenced above), the developer agreed to provide local residents with notices of jobs through a first-source hiring program that the Figueroa Corridor Coalition for Economic Justice will set up with $100,000 seed funding. The developer agreed to a goal of 50 percent local

hires. The developer in North Hollywood and its contractors and tenants will make all job announcements available to a list of participating community organizations before they become available to the general public. Under the agreement governing the Oakland port expansion project, fifty percent of the workforce hours are to be performed by workers in the "Local Impact Area."

When designing a local hiring program, it can be important to set goals and standards in terms of number or percentage of workhours instead of number or percentage of workers. This is especially important if you are talking about construction jobs or other jobs where some workers may put in many hours, but others might work only a couple hours total on the whole project. *Designating goals in terms of workers instead of workhours and bringing in local hires for very few workhours is one way that employers have gotten around meaningful participation in local hiring programs*.

Seed Money: Developers can provide money to a community organization to set up a first source hiring or job training program. The developer in North Hollywood agreed to donate $10,000 to the Coalition for Humane Immigrant Rights of Los Angeles as seed money for a job-training program for day laborers.[3] In a agreement around a DreamWorks development, in return for a large job creation tax credit, the studio agreed to create a "Workforce Development Fund" to fund job training for minorities and low-income people in the entertainment and multi-media industries. Although that development eventually fell through, the studio still committed $5 million dollars to the Workforce Development Fund, and committed to hire people who were trained by the program.[4] This led other studios to get involved in supporting the effort as well by providing money and hiring commitments, and has resulted in the creation of a new nonprofit agency to work on these issues.

Provide Space: Developers can provide on-site space for an office to run the first source hiring program. This brings the program closer to employers at the site and better serves their needs. The developer in North Hollywood has agreed to make space available on-site for two employees to staff a first-source hiring program.[5]

3. Constitutional Issues Relating to Local Hiring Preferences

With local hiring programs, keep in mind that certain constitutional issues might be raised. The Commerce Clause of the US Constitution, which gives Congress the power to regulate interstate commerce, has been interpreted to prohibit state and local governments from imposing restrictions that discriminate against

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3 North Hollywood Mixed Use Redevelopment Project Community Benefits Program *supra* note 2, at 3.

4 *Fostering Dreams of Studio Jobs*, L.A. TIMES, July 16, 1999 at B6, *available at*, http://articles.latimes.com/1999/jul/16/local/me-56478.

5 North Hollywood Mixed Use Redevelopment Project Community Benefits Program, *supra* note 2, at 2.

businesses and residents from other jurisdictions.[6] Programs requiring employment and contracting preferences for local residents and businesses could potentially be challenged under this clause.[7] The Privileges and Immunities Clause has also been interpreted to prohibit discrimination against out-of-state residents, and could theoretically be applied to inter-jurisdictional discrimination as well.[8]

Courts have developed the "market participant" exception to the Commerce Clause prohibition.[9] This exception enables cities to enact hiring preferences and discriminate in favor of local businesses when such behavior does not constitute "regulating commerce."[10] The definition of "market participant" has traditionally hinged on the use of public funds.[11] To date, no similar exception has been made to the proscription against in-state hiring preferences under the Privileges and Immunities Clause.

The potential problems raised by these constitutional provisions can best be addressed by narrowly tailoring the provision to address poverty or economic distress in a particular neighborhood, with detailed findings regarding the need for such measures. In addition, the more closely the program is tied to a public subsidy, e.g., as part of a deal between consenting parties, the more likely it is that the "market participant" exception would apply.[12]

4. Locally-Owned Operators or Contractors

In order to ensure that the wealth generated from a publicly subsidized project remains in the local community, you can require a developer to grant a preference to locally-owned businesses. Approaches may include requirements relating to notification of bid openings, bid preparation, breaking up larger contracts into smaller pieces, making good faith efforts to award contracts to local businesses, and attempting to meet percentage goals for local business awards.

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6 U.S. CONST. art. I, § 8, cl. 3; *Pelican Chapter, Assoc. Builders and Contractors, Inc. v. Edwards*, 901 F. Supp. 1125 (M.D. La. 1995).

7 For more detail, see Kary L. Moss et al., *Legal Strategies to Achieve Tax Subsidy Accountability, in* PUBLIC SUBSIDIES, PUBLIC ACCOUNTABILITY: HOLDING CORPORATIONS TO LABOR & COMMUNITY STANDARDS 58, 68 (Grassroots Policy Project, Sugar Law Ctr. for Econ. & Soc. Justice & Sustainable Am. eds., 1998).

8 U.S. CONST. art. IV, §2, cl. 1; Patrick Sullivan, Comment, *In Defense of Resident Hiring Preferences: A Public Spending Exception to the Privileges and Immunities Clause*, 86 CAL. L. REV. 1335, 1337 (1998); *see also*, Hannah Roditi & Naomi Zauderer, *Breaking Down the Wall: Opening Building-Trade Careers to Low-Income People of Color*, 36 CLEARINGHOUSE REV. 154, 158-60 (May-June 2002).

9 *Hughes v. Alexandria Scrap Co*., 426 U.S. 794 (1976); *White v. Mass. Council of Constr. Employers*, 460 U.S. 204 (1983).

10 *Hughes*, 426 U.S. *supra* note 10, at 810.

11 *White*, 460 U.S. *supra* note 10, at 210.

12 JULIAN GROSS ET AL., COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE 29 (2005), *available at* http://www.communitybenefits.org/downloads/CBA%20Handbook%202005%20final.pdf.

5. Apprenticeship Programs

A community may want to work with employers and unions to create apprenticeship programs for local job seekers. Apprenticeship programs are on-the-job training programs, which prepare individuals for occupations in the skilled trades and crafts. After working under an experienced craftsperson, or "journeyman" for about 3 to 5 years, an apprentice will be able to land a higher paying union position.

Sometimes local residents lack enough training to start off an apprentice, but the Alameda Corridor Jobs Coalition (ACJC) got around this problem when the developer agreed to accept 650 local residents into a contractor's pre-apprenticeship program, which would feed into a union apprenticeship program. The developer also agreed to encourage contractors and subcontractors to use the highest possible apprentice-to-journeyman ratio. Under California labor laws, employers cannot exceed the 1-to-5 apprentice-to-journeyman ratio.

6. Right to Organize

The community may want to advocate for developers or tenants to sign "card check" or neutrality agreements with appropriate unions to increase the likelihood of unionization of those jobs. *In a card check agreement*, an employer agrees to recognize the formation of a union once a set percentage of employees have signed up on a card. *In a neutrality agreement*, an employer agrees not to say or do anything to oppose the formation of a union, such as launch an anti-union campaign. Card check and neutrality agreements are often negotiated together. The Staples developers signed such an agreement with five unions to require the hotel and theatre tenants, and parking and janitorial contractors, to maintain neutrality during any union organizing. Similar agreements are in place for the North Hollywood Redevelopment and SunQuest Projects. *These "right to organize" agreements should be kept separate from the CBA and should not be incorporated into the development agreement because they might conflict with the federal prohibition on local government involvement in collective bargaining issues.*

7. Worker Retention

CBAs can include job safeguards for employees already working in a development. Community groups can demand that the developer follows similar protections as those included in worker retention ordinances. The City of Los Angeles' Worker Retention Ordinance provides job security to long-term service workers when city contracts change hands, and applies to projects receiving public funds. (Administrative Code, Section 10.36) Some ordinances also prevent new employers from firing existing workers in order to "break" the union that represents those workers. Security services, custodial services, and other similar positions are natural fits for worker retention provisions. The Staples

CBA included worker retention provisions for contractors, and hotel and theater employees.

8. Responsible Contractor

In the spirit of the Los Angeles Responsible Contractor Ordinance, developers could agree not to lease or contract with any business that has been found in violation of any workplace related or environmental laws. (Responsible Contractor Ordinance, Administrative Code, Section 10.40)

C. Affordable Housing

Attorneys and community groups have successfully used the development process to improve the availability of decent affordable housing in their communities. Examples of affordable housing provisions include: affordable units; low- or no-interest housing loans; land to build housing; developer contribution to relocation benefits; and replacement housing

1. Affordable Units

Whenever housing is being developed as part of a publicly subsidized project, community groups can ask that a certain minimum percentage of the housing be affordable to low-income individuals.[13] When advocating for affordable housing, communities will want to consider what affordability levels will accommodate the families in their community. Local affordability levels may be lower than US Department of Housing and Urban Development regulations or other what laws would suggest. Other issues include the number of years the units are required to remain rent-restricted, how they will be integrated into the wider development, and how many bedrooms they will have.

2. Low- or No-Interest Housing Loans

Developers can take extra steps to create affordable units, including setting up a revolving fund to provide low- or no-interest loans for affordable housing developers.

3. Land to Build Housing

Developers can provide land at reduced or no cost for a non-profit developer to build housing.

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[13] The U.S. Department of Housing and Urban Development has developed definitions of housing affordability which are based on regional median incomes, with the goal that households should pay no more than 30 percent of monthly income towards rent. (*See, e.g.,* 42 U.S.C.S. 12745(a)(1)(A); 24 C.F.R. 92.252.)

4. Developer Contribution to Relocation Benefits

State and federal law establish minimum standards for relocation benefits for displaced tenants.[14] These may or may not be adequate. A developer can provide relocation benefits above and beyond those required under the law.

5. Replacement Housing

When a project must demolish existing affordable housing units, communities can demand that the developer pay for replacement housing at the same affordability levels. If the demolition is part of a redevelopment project, such replacement housing may be legally required.[15] However, an agreement with a developer can go further than redevelopment law by requiring that new units are created before or simultaneously to units being destroyed, and that displaced residents will have priority move-in. This is particularly important in areas where very little vacant affordable housing exists.

An agreement can also very clearly require a developer to create housing that is as affordable as the housing being destroyed. Redevelopment law may already require this generally. Nonetheless, advocates have found that when single resident occupancy hotels or other housing for extremely low-income people is destroyed, redevelopment law may allow replacement housing to be built that, while still affordable for some low-income people, is not affordable to the people that were displaced.

C. Community Services

New developments offer great opportunities to bring much-needed services to communities. Often a developer can offer one part of the solution, such as space, free rent, or seed money, that makes it possible for community organizations to do the rest. Community groups should remember most developers are not in the business of operating these types of facilities, and community groups should expect to remain involved in the implementation of and fundraising for these facilities. Examples of community service provisions include: childcare; filling gaps in commercial services; community, youth, and senior centers; health clinics; neighborhood improvement fund; and schools.

1. Childcare

Given the enactment of welfare-to-work laws, quality affordable childcare is greatly needed in many communities. Developers can provide rent-free, built-out space, allowing local childcare providers to operate with funds from other sources. The developer for the North Hollywood Project has agreed to build an on-site, affordable childcare center for use by project residents and workers as

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[14] *See, e.g.,* CAL. HEATH AND SAFETY CODE § 33411-33411.5; 24 C.F.R. 42.325

[15] *See, e.g.,* CAL. HEALTH & SAFETY CODE § 33413(a) (2003).

well as the surrounding community. The developer has guaranteed that at least 50 slots at the childcare center will be affordable to low-income individuals.

2. Filling Gaps in Commercial Services

Many communities lack basic commercial establishments such as supermarkets, laundry facilities, banks, and pharmacies. Developers or public entities can provide incentives such as below-market rents and low-interest business start-up loans for such establishments to locate in communities that need them.

3. Community, Youth, or Senior Centers

Many communities lack public space for city programs, classes, meetings, or activities for youth and seniors to take place. Some developers have committed to build or fund new community, youth, or senior centers. As part of the SunQuest community benefits agreement, a new 14,000 square foot youth center will be built in the local community of Sun Valley.

4. *Health Clinics*

A developer can make available free or low-cost space in a project for a community-based health clinic. Outside the scope of the community benefits agreement, the developer for the North Hollywood Redevelopment Project has agreed to make 20,000 square feet of rent-free space available on site to the Valley Community Clinic.

5. Neighborhood Improvement Fund

The developer can pay into a fund administered by the city, the redevelopment agency, or a community organization. This fund can be dedicated to making improvements – such as street repair, sidewalk repair or construction, streetlights, etc. – in the communities surrounding the project. The SunQuest developer will contribute $150,000 to the city for neighborhood improvements in the areas immediately surrounding the site.

6. *Schools*

Contributions to local schools for new facilities or programs can be a part of a community benefits package. As part of the SunQuest development, a fund will be created to help establish or continue art programs at schools in the surrounding communities.

D. Environment

Environmental considerations are frequently among the list of chief community concerns, in terms of both reducing environmental impacts and capitalizing on the opportunity to win

environmental improvements in the neighborhood. The larger the proposed project and the more public subsidies a project receives, the greater the public benefits that ought to be provided. Examples of environmental provisions include: parks; construction and traffic management; mitigation of negative environmental impacts; and green building practices.

1. Parks

Many low-income communities lack adequate parks and recreational resources. Developers can help by paying for development of open space and parks in the vicinity of their project. They can also maximize public green space at their development. The community benefits agreement for the Staples project requires the developer to fund at least $1 million worth of new parks and recreation facilities.

2. Construction and Traffic Management

The community should be involved in the development and implementation of a plan to minimize disruptions due to construction and increased traffic. One way to do this is to designate a community liaison from the developer who is responsible for receiving and addressing community input.

3. Mitigation of Negative Environmental Impacts

In California, certain negative environmental impacts identified in the planning stages of a project must be "mitigated," or reduced.[16] Environmental mitigation can be accomplished in ways that serve both the community and the developer. By maximizing public participation throughout the environmental review process, you can help shape what kind of mitigation methods you want. In the SunQuest project, the city declared in a Mitigated Negative Declaration (MND) that it would not approve the project unless SunQuest provided additional landscaping, irrigation elements and trees, lot coverage (meaning that no part of the site will have bare dirt as its visible surface), and truck routing. This MND was also incorporated into the CBA, making it enforceable by both the local government and the community. (Contrast this with how we encourage the CBA to be incorporated into the city's agreement with the developer. Both have similar results, albeit different processes). *For more information, see the Guide section on the California Environmental Quality Act.*

4. ***Green Building Practices***

A wide variety of creative ways exist for a developer to make a development "green." Some ideas might include using recycled and non-toxic building materials, avoiding non-renewable materials like hardwood, installing solar

16 14 CAL. CODE REGS. § 15126.4.

panels, and maximizing landscaping in the design phase of the project.

E. Community Involvement

Community forums and other methods of informing and involving the community in the development plans are good ways to make sure developments conform to the needs, desires, and interests of the local community. Developers, city council offices, neighborhood councils, project area committees, and community groups can all play a role in organizing these events. Examples of community involvement provisions include: community input and oversight of development process and community input in selection of tenants.

1. *Community Input and Oversight of the Development Process*

In some contexts, such as redevelopment, state law mandates that local community members play a role in the planning process.[17] For example, in redevelopment project areas, developers must consult a Project Area Committee (PAC) made up of residents, businesses, and property owners. In addition, local neighborhood council systems that exist in many cities can also provide mechanisms to ensure community input.[18] A good example of community oversight of a CBA is the Port of Oakland expansion project, which provides for an advisory body of community representatives with participation from the contractors, port, and construction trade unions. The advisory body meets monthly to review progress and recommend further steps to develop and enforce provisions of a social justice program.

2. *Community Input in Selection of Tenants*

If community members are involved when tenants are chosen, the tenants chosen are more likely to meet the needs of the community. Community involvement assures tenants that they will have enough business to do well. This will lead to fewer turnovers at development sites and more stable services for communities. The Staples, SunQuest, and North Hollywood community benefits agreements all provide for such input through notice and meeting requirements.

IV. KEY PLAYERS

A. Community Residents

Residents will be most directly affected by a development and should play an active role in organizing. They will testify at hearings, provide input during the assessment period, and volunteer time.

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[17] *See, e.g.*, CAL. HEALTH & SAFETY CODE §33385.

[18] Neighborhood Councils exist in many localities throughout the country such as Los Angeles, California; Birmingham, Alabama; Dayton, Ohio; Santa Monica, California; New York City, NY; Portland, Oregon; Seattle, Washington; and St. Paul, Minnesota. These local groups of neighborhood stakeholders have input, though not decision-making power, for issues like city budgets and planning decisions in their area.

B. Community-Based Organizations

Most CBAs require a strong coalition of community organizations to be successful. These groups play a strong role in organizing the community and assessing local need. They are integral to implementing the CBA provisions once a CBA has been signed. As community watchdogs, they play a crucial role in monitoring whether the CBA is fulfilling its goals and enforcing the agreement as necessary.

C. Unions

Organized labor unions may join efforts with community groups to get benefits for employees. While the relationship between unions and community groups may not always be smooth, a collaboration of efforts can lead to significant results, such as higher wages, apprenticeship programs, and local hiring.

D. Public Officials

Public officials can be important allies for community groups even though they may or may not be involved in CBA negotiations. Public officials can encourage the Developer to negotiate a CBA and apply political pressure by delaying the project approval process if the Developer is not willing to negotiate.

E. Developers

Developers are generally opposed to any activities that will infringe on their business decisions. However, developers want public support on their project so that they can get their project approved, along with any permits or subsidies they request, and start construction. They will negotiate with community representatives to the extent necessary to move the project forward.

F. Attorneys

While community groups should always take the leading role, an attorney will be necessary at a certain point, if only to draft and review the CBA document. Ideally, the attorney's role will be limited to just memorializing the agreement that has been directly negotiated by community groups, but at times it may be useful for the attorney to take a more prominent role in order to help their community to win benefits. In addition, attorneys might get involved in the monitoring and enforcement process.

V. KEY QUESTIONS TO CONSIDER IN CREATING A CBA

Once you are ready to think about the specific language of the CBA (although your attorney will actually draft the document), you should keep in the mind the following concerns:

A. Living Wage Jobs

1. Which jobs do you want to pay a living wage?

You can set a percentage goal (e.g., 70% of all on-site jobs will pay a living wage) or a blanket requirement. You will also need to define which jobs are covered (e.g., all jobs for which at least 50% of the worker's time is spent working on the development site, whether with a contractor, retail store, etc.).

2. How will you measure compliance?

An option is to require each employer to report on number of jobs, wages, and benefits. You may consider an exception for small businesses.

B. Targeted Hiring Programs

1. What is your target area or who are your target residents?

If you want local hiring, there should be a clear geographic definition of the project area for which there will be hiring preference. Usually "local" means the city, but it can be a smaller area (such as a zipcode, or a certain radius around the development) or a broader area (such as the county or state). In the Alameda Corridor Project, a hiring preference was made to residents who could prove residence in one of the "corridor communities" depicted on a map. The Hollywood & Vine CBA used a tiered scheme, with first priority going to displaced residents and second priority going to low-income residents living within 1 mile of the development.

2. What is the percent set aside for your local hiring goal?

Percent set asides are the percentage of total hours worked or total employees hired that must be residents of the target area. Percent hiring goals generally vary from 10 to 50 percent. In order to maximize political support and minimize legal challenges, the percent set aside should match your community's employment needs. It is recommended that you set your percentage to "all hours worked," as opposed to "all new hires" or "all jobs," because this paints a more accurate picture of the available amount of work and is more difficult to manipulate to the developer's advantage. ("All hours worked" also conforms with HUD Section 3 guidelines). For example, if your total was set to "all jobs," then the developer could hire local residents for only part-time or short-term jobs and still be in compliance. In the ACJC project, the residents successfully negotiated that 30% of "all work hours on the project" would be performed by local workers and that 30% of all local workers would come from a job training program. You may also want to ensure that local hiring goes to workers who were already union members.

3. On hiring for construction jobs, how will you coordinate with apprenticeship programs?

Apprenticeship programs are the main way for local workers to get into union construction positions. You should think about potential obstacles for workers, such as child-care, transportation, language skills, and access to licenses, tools or union fees. In almost any local hiring situation, it is important to have a pre-apprenticeship program to provide skills training and necessary services to allow local residents to qualify for an apprenticeship. Also, under California labor laws, employers must not exceed a set apprenticeship-to-journeyman ratio. You can encourage employers to use the highest ratio allowed.

The Alameda Corridor Jobs Coalition was able to convince the developer to agree to allow 650 residents to participate in a contractors' pre-apprenticeship and then moving on to a union apprenticeship program. The contractors and subcontractors were also "encouraged" to use the highest apprentice-to-journeyman ratio allowed.

4. Will you limit a contractor's or subcontractor's authority to not hire?

Some employees may have certain obstacles that prevent them from being hired. For example, they may have spotty work history, a criminal record, or they may not have a driver's license. You can advocate that employers overlook these barriers to employment. Los Angeles Community Action Network just negotiated a local hiring agreement where the employer agreed to not discriminate against individuals with certain barriers.

5. Outreach and Advertising

You should discuss what information will be included in the documents and where the job information will be posted or distributed to. In the Pike CBA and the Alameda Corridor Project, specific goals and methods were discussed.

6. Implementation

What will be the structure of the Intake/Screening/Referral program?

Who will run it?
What information will the program gather from applicants?
What information will it share with unions and employers?
What is the time period for referral?
Which applicants get referred to which program/union/employer?

How will follow-up occur to ensure hiring and retention?

C. Affordable Housing Provisions

1. ***What percentage of total units will be affordable?***

2. ***What is the definition of "affordable?"***

You can use HUD standards for "extremely low," "very low" and/or "low" income categories. Alternatively, you can just use percentage of AMI.

3. ***For how many years after construction will the units be required to be affordable?***

4. ***Will the required affordable units be integrated with the market-rate units?***

5. ***Will the affordable units be on-site or off-site?***

6. ***How many bedrooms will each affordable unit have?***

7. ***Will the developer apply for a waiver or reduction in the affordability requirements? Can the developer contribute money to an affordable housing fund rather than building affordable units?***

8. ***When will the affordable units be built – at the same time as or later than the market rate units?***

D. Community Input

How do you screen for Contractors/Subcontractors/Tenants?

It can be helpful to have community input in selecting contractors, subcontractors, and tenants. In the Hollywood & Vine CBA, community groups were allowed to review potential contractors. In addition, it can be helpful if bidding parties submit detailed plans for how they will meet the goals set in the CBA, as was the case in the Alameda Corridor Project.

E. Monitoring and Enforcement Provisions

1. ***What kind of monitoring mechanism will the CBA have?***

Most CBAs have a reporting requirement as a monitoring mechanism, but they differ in how often the reports should be made and to whom the reports should be given. Think about when the reports will be due, how often will they be submitted and which other body can verify the reports. Other options include periodic site visits or access to other types of information, such as all the job announcements. For instance, the Pike CBA required monthly reports from contractors, compiled by developers, reported by the city to a 5 member

monitoring committee. The Alameda Corridor CBA required the contractor to draft quarterly reports to Alameda Corridor Transportation Authority. If your CBA requires regular reporting of employment statistics, you should specify what kind of information the report should include, such as:

- Total work hours
- Total work hours by local hires
- Total jobs (plus job descriptions/classification)
- Total jobs by local hires
- Outreach efforts

2. What if the developer does not comply with a CBA requirement (i.e., breaches the contract)? What remedy will the other parties have?

Different CBAs have used different enforcement mechanisms, often with the developer either losing the contract or losing the subsidy (i.e., "clawback" provisions). The Hollywood & Vine CBA instilled monetary penalties for non-compliance. The CBA for the Pike Project created a Monitoring Committee and granted that committee authority to go to mediation. Some CBA's also include the right to ask for a court order requiring a developer to honor commitments of a CBA. For the Alameda Corridor Project, a contractor or subcontractor's failure to use good faith could result in "delay in processing payment, requirements to undertake corrective action, termination of the Contract or such other remedy as ACTA may deem appropriate."

F. Execution and Implementation of Agreement

1. Which parties should sign the agreement?

The developer and community members should definitely sign the agreement. You should try and have the CBA incorporated into the development agreement between the City and the developer. This way, the agreement will be attached to the project proposal and the City can enforce the CBA against the developer. Other groups with a stake in the outcome, such as community organizations, faith-based organizations, and unions could also be a party. In the Staples CBA, the City, developer, and community members were bound to the CBA. If you have "right to organize" clauses, these should be made into a separate agreement and not incorporated into the development agreement.

In working with community coalitions, it is important to consider how the coalition will make decisions about enforcing the CBA and who within the coalition will have the power to execute those decisions.

2. Will other parties other than the developer be bound to the CBA (i.e., contractor, subcontractor and tenants)? How will you give notice to these other parties of their responsibilities?

Community groups often want the power to enforce a CBA not only against the developer but also anybody that is linked to the development, such as the contractor, subcontractor, and any tenants. Developers are generally resistant to forcing tenants to open themselves up to potential lawsuits, and are even scared tenants might not sign a lease with such restrictions, but if tenants are given advance notice then they are aware of their obligations and must comply with them. In the Staples CBA and the Hollywood & Vine CBA, the contractor program was a requirement for inclusion in all subcontracts. In the Alameda Corridor Project, subcontractors must execute a separate letter of assent to the program when they execute the subcontract. In addition, there was a special program implemented to train contractor personnel about the CBA requirements.

3. Who will oversee implementation? A committee? When will it meet? What power will it have?

4. What, if any, "good faith efforts" will be required of parties to the agreement?

G. Other Considerations[19]

What is the relationship of the CBA to other agreements or laws?

This question is more relevant for attorneys, but you should be aware that a CBA might come into conflict with a clause in a collective bargaining agreement or within applicable city ordinances. You should do research to see if there are agreements or ordinances that might conflict with your CBA, but you may also want to include a clause in the CBA that informs how parties should resolve conflicts with other agreements or laws.

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19 COMMUNITY BENEFITS AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE, *supra* note 13; Nona Liegeois & Malcolm Carson, *Accountable Development: Maximizing Community Benefits from Publicly Supported Development*, Clearinghouse Review, J. Poverty Law & Policy, (July-August 2003), *available at* http://www.povertylaw.org/clearinghouse-review/issues/2003/20030715/chr500959.pdf.