

5-15-1976

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### Recommended Citation

Lindell L. Marsh and Bruce G. Merritt *The Specific Plan in California: A Developing Concept for the Resolution of Conflicts in Land Use*, 3 Pepp. L. Rev. 3 (1976)  
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# The Specific Plan in California: A Developing Concept for the Resolution Of Conflicts in Land Use

LINDELL L. MARSH\* and  
BRUCE G. MERRITT\*\*

## I. THE PROBLEM: EXCESSIVE URBANIZATION

Excessive urbanization has diminished the quality of life in much of California, particularly along its coast. Communities have been destroyed by their merger into expanding megalopolises. The pollution of the State's air and waters has increased. Population and structural density has reduced the amount of open space lands available for agriculture, outdoor recreation and wildlife.

At the urging of their constituencies, government agencies on all levels have attempted to formulate innovative strategies and to adapt traditional forms of regulation to deal with this threat. An increasing number of local communities have devised regulatory schemes to limit or control growth in population and structural density.<sup>1</sup> Programs have been implemented to address these prob-

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1. See, e.g., Irvine, Cal. § 12 Urgency Interim Ordinance, December 18, 1973.

lems on a regional level in the San Francisco Bay area,<sup>2</sup> Lake Tahoe<sup>3</sup> and along the California coast generally.<sup>4</sup> State legislation has been enacted to promote the conservation of open space lands for agriculture and other purposes.<sup>5</sup> State and federal regulations controlling air and water quality and noise have been promulgated in recent years and have had their effect on land use policy. The preservation of wildlife areas and the public's right of access to the coast have been enhanced by recent state legislation and landmark court decisions.<sup>6</sup> Even broader land use legislation has been pro-

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2. CAL. GOV'T CODE §§ 66600 *et seq.* (West 1966) (establishing the San Francisco Bay Conservation and Development Commission). *See generally* Note, *Saving San Francisco Bay: A Case Study in Environmental Legislation*, 23 STAN. L. REV. 349 (1971).

3. CAL. GOV'T CODE §§ 66800 *et seq.* (West Supp. 1966). Comment, *Regional Government for Lake Tahoe*, 22 HAST. L.J. 705 (1971). *See also* Muys, *Interstate Compacts and Water Resources Planning and Management*, 4 NATURAL RES. L. 153 (1973).

4. The California Coastal Zone Conservation Act of 1972, CAL. PUB. RES. CODE §§ 27000 *et seq.* (West Supp. 1976), establishes the California Coastal Zone Conservation Commission and authorizes the preparation of the California Coastal Plan. *See* Note, *Saving the Seashore: Management Planning for the Coastal Zone*, 25 HAST. L. J. 191 (1973); Jackson & Baum, *Regional Planning: The Coastal Zone Initiative Analyzed in Light of the BCDC Experience*, 47 CAL. ST. B.J. 426 (1972). *See also* CAL. PUB. RES. CODE §§ 22000 *et seq.* (West Supp. 1976) (establishing the Ventura-Los Angeles Mountain and Coastal Study Commission).

5. *E.g.*, the California Land Conservation Act of 1965, CAL. GOV'T CODE §§ 51200 *et seq.* (West 1966); CAL. REV. & TAX. CODE §§ 402.1 and 421-25 (West Supp. 1976) (with respect to the taxation of agricultural and open-space lands); and the Open-Space Lands Act of 1970, CAL. GOV'T CODE §§ 65560 *et seq.* (West Supp. 1976). *See also* ECKBO, DEAN, AUSTIN & WILLIAMS, STATE OPEN SPACE AND RESOURCE CONSERVATION PROGRAM FOR CALIFORNIA, prepared for the California Legislature Joint Committee on Open Space Land (1972); CALIFORNIA LEGISLATURE, JOINT COMMITTEE ON OPEN SPACE LAND, FINAL REPORT (1970); ASSEMBLY SELECT COMMITTEE ON OPEN SPACE LANDS, CALIFORNIA LEGISLATURE, OPEN SPACE ZONING HANDBOOK (1973); A.B. 15 (Warren) 1974-1975 Reg. Sess. (regarding the preservation of agricultural lands).

6. *See e.g.*, *Gion v. City of Santa Cruz*, 2 Cal. 3d 29, 465 P.2d 50, 84 Cal. Rptr. 162 (1970) (implying dedication of public rights of way by waterfront property owners). *But see* CAL. CIV. CODE § 1009 (f) (West Supp. 1976) (modifying the effect of the Gion rule); *Marks v. Whitney*, 6 Cal. 3d 251, 491 P.2d 374, 98 Cal. Rptr. 790 (1971) (restricting the filling of tide-lands); CAL. GOV'T CODE §§ 66478.1 *et seq.* (West Supp. 1976) (requiring dedication of public access to waterways as a condition for the approval of a subdivision map); CAL. GOV'T CODE § 66474 (West Supp. 1976) (requiring that approval of a subdivision be withheld in cases where substantial and avoidable injury to fish or wildlife is likely); CAL. GOV'T CODE § 12606

posed at both the state and federal levels.<sup>7</sup>

Finding effective solutions to the problems of excessive urbanization is not a simple task. The solutions offered are frequently viewed as contrary to our basic concepts of private property, equal protection of the laws and due process, as well as to the accepted traditional relationships between federal, state and local governments. In addition, the solutions proposed often conflict with policies relating to other seemingly important social objectives such as the continued availability of reasonably priced energy and the well-being of the nation's economy. The recent controversy regarding the leasing of federal lands off the southern California coast for petroleum production brought to the forefront the conflict between such competing policy objectives and underscored the need for new mechanisms on all levels of government to reconcile such conflicts. This need is the major near-term challenge that faces land use planners and attorneys.

The excesses of urbanization are generally the result of our society's lack of planning and foresight and its continued willingness to allow and even encourage excessive development. It must be recognized that urbanization has been the byproduct of an increase in the economic well-being of our society and that the policies which promoted it have also created jobs and promoted a higher standard of living. Those policies, however, when viewed in retrospect, have led beyond the original planners' horizons to excessive growth and urbanization. While we cannot state that another course would have proved more beneficial, it is clear that a continuation of those policies would have led to a substantial diminution in the overall quality of life in this state. A major change in those policies is now occurring and should be embraced creatively. New and revised institutions, mechanisms and tools should be devised which permit the effective and equitable resolution of the problems of excessive urbanization in the context of the entire range of issues confronting our society. This article discusses one such tool—the specific plan.

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(West Supp. 1976) (authorizing Attorney General to maintain actions for equitable relief to protect natural resources from pollution, impairment or destruction).

7. See generally ENVIRONMENTAL POLICY DIVISION, CONGRESSIONAL RESOURCE SERVICE, Library of Congress, 93d CONG. 1ST SESS.; NATIONAL LAND USE POLICY LEGISLATION, 93d CONG., AN ANALYSIS OF LEGISLATIVE PROPOSALS AND STATE LAWS (prepared at the request of the Senate Committee on Interior and Insular Affairs, April, 1973); and SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, LAND USE POLICY AND PLANNING ACT, H.R. Doc. No. 268, 93d CONG., 1ST SESS. (1973). See also note 99 *infra*.

## II. THE EVOLUTION AND FAILURE OF EXISTING INSTITUTIONS

A. *Private Property*

Many of the recent innovations in land use regulation present fundamental questions regarding the basic concepts upon which the ownership of land in this country is based. One of these concepts is private property, an institution both contemplated and protected by the Fifth and Fourteenth Amendments of the United States Constitution as well as by most state constitutions.<sup>8</sup> Private property may not be taken for public use without the payment of just compensation. In certain cases when the regulation of land passes beyond permissible limits, it constitutes a "taking" of private property for which compensation must be paid.<sup>9</sup>

In order to understand the concept of private property and its relationship to permissible regulation, it must be viewed in its historical context. The existing system of private property and the principles upon which it is based have their roots in English law.<sup>10</sup> The institution of land ownership in England, as it existed prior to Independence, consisted of a feudal system of multi-tiered land tenures with incidental services and obligations in which the regulatory authority of the Crown and Parliament was relatively unrestricted. The only limitations on the taking of private property by the Crown were procedural in nature; that is, a taking could not occur except in accordance with the laws established by Parliament. Compensation was a legislative prerogative and not a mat-

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8. "Private property shall not be taken or damaged for public use without just compensation having first been made. . . ." (Emphasis added) CAL. CONST. art. I, § 14.

9. For a discussion of the conflict between private property and public regulation and the "taking issue" generally, see BOSSELMAN & CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* (1971); BOSSELMAN, CALLIES AND BANTA, *THE TAKING ISSUE* (1973); Dunham, *A Legal and Economic Basis for City Planning*, 58 COLUM. L. REV. 650 (1958); Dunham, *PROPERTY, CITY PLANNING AND LIBERTY*, in *LAW AND LAND* 28 (C. Haar ed. 1964); Michelman, *Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law*, 80 HARV. L. REV. 1165 (1967); Sax, *Takings, Private Property and Public Rights*, 81 YALE L. J. 149 (1971); Van Alstyne, *Taking or Damaging by Police Power: The Search for Inverse Condemnation Criteria*, 44 S. CAL. L. REV. (1971); Van Alstyne, *Modernizing Inverse Condemnation: A Legislative Prospectus*, 8 SANTA CLARA LAWYER 1 (1967); Heyman, *Innovative Land Regulation and Comprehensive Planning*, 13 SANTA CLARA LAWYER 183 (1972).

10. See *THE TAKING ISSUE*, *supra* note 9 at 53-81.

ter of right. The harshness of the legislative act, or any mitigation of its effect upon the private landowner, was left to the discretion of Parliament.

When transmitted to the colonies, however, this English precedent was substantially affected by the abundance of land to be settled as well as by a popular aversion to centralized authority.<sup>11</sup> The result was an increase in the rights of the owner of land and a corresponding decrease in the rights and interests of the public. The strength of the concept of private property in this country was reflected in several early state constitutions and the Fifth Amendment to the United States Constitution which departed from English precedent by requiring the payment of "just compensation." In addition, governmental authority over land use was delegated to the lowest levels of government.

During the next century the public rights and interests in real property were further diminished as the federal and state governments undertook major programs to divest themselves of land in which they had held title in order to, among other things, provide revenue and encourage settlement.<sup>12</sup> The result was a vast increase in the amount of lands held in private ownership as well as a deference to private decision-making with respect to land use and development.<sup>13</sup> Land was plentiful. Its development was encouraged and restrictions on land use were comparatively few.

Until shortly after 1900, a compensable taking of property was held to have occurred only if government took title to, or at least

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11. *Id.* at 81-104.

12. See generally Public Land Law Review Commission, HISTORY OF PUBLIC LAND LAW DEVELOPMENT, Chapters IV, VII-XI (1968), prepared in connection with the Commission's Report, ONE-THIRD OF THE NATION'S LAND, a Report to the President and Congress (June, 1970).

13. In California, this divestiture of lands was speeded by the confirmation of private ownership of large tracts of coastal lands comprising Mexican and Spanish ranchos pursuant to the Treaty of Guadalupe Hidalgo of 1848. See e.g., GILLINGHAM, THE RANCHO SAN PEDRO (1961). While the confirmation of *rancho* lands generally excluded tide, submerged, swamp and overflowed lands, the federal and state governments proceeded to dispose of such excluded lands with widespread sales. In excess of 65,000 acres of swamp lands were sold pursuant to the Swamp Lands Acts of 1849, 1850 and 1860. See SHAW & FREIDLINE, WETLANDS OF THE UNITED STATES 5 (1956); HISTORY OF PUBLIC LAND LAW DEVELOPMENT, *supra* note 12 at 325. The State Lands Commission estimates that there are approximately 80,000 acres (125 square miles) of patented tidelands within the State of California. Taylor, *Patented Tidelands: A Naked Fee? Marks v. Whitney and The Public Trust Easement*, 47 CAL. ST. B.J. 420, 421 (1972). Had it not been for restrictive court decisions with respect to these conveyances (see, e.g., *People v. California Fish Co.*, 166 Cal. 576, 138 P. 79 (1913)), a substantial portion of these tidelands, including much of San Francisco Bay, would now be filled and appropriated to private use.

possession of, lands in private ownership. Government regulation which only restricted the use of property but did not result in governmental ownership or possession was generally held not to constitute a taking.<sup>14</sup>

In the early part of this century, a different view of real property developed.<sup>15</sup> This view regarded ownership as a bundle of rights and interests, reflecting the manner in which real property interests were increasingly being fractionalized. This view was given recognition by the United States Supreme Court in 1922 when land use regulation was rapidly on the increase. In that year Justice Holmes wrote his historic opinion in the case of *Pennsylvania Coal Company v. Mahon*.<sup>16</sup> Pennsylvania had enacted a law forbidding the mining of coal in such a way as to cause the subsidence of any residential structure. The Pennsylvania Coal Company owned certain real property but conveyed it away, reserving a right to

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14. Bosselman, *et al.*, *THE TAKING ISSUE*, *supra* note 9 at 105 *et seq.* For example, where a contract required land to be used as a cemetery, a city was permitted to prohibit the development of the cemetery because of the "evil vapors" that would result. *Brice Presbyterian Church v. City of New York*, 5 Law. 537 (N.Y. 1826). The covering of creeks could be prohibited for sanitary reasons. *Baker v. Boston*, 12 Pick. 183 (Mass. 1831). The removal of stones, sand and gravel from certain lands could be prohibited. *Commonwealth v. Tewksbury*, 11 Metc. 55 (Mass. 1846). The establishment of harbor lines beyond which structures could not be built was permitted. *Commonwealth v. Alger*, 7 Cush. 53 (Mass. 1853). The prohibition of liquor production was held to be a permissible exercise of the police power even though it resulted in the closing of a brewery. *Mugler v. Kansas*, 123 U.S. 623 (1887). However, the United States Supreme Court stopped short of allowing the damming of water which resulted in the inundation of privately-owned lands. The Court reasoned that such damming resulted in a physical "taking." *Pumpelly v. Green Bay Co.*, 80 U.S. 166 (1871).

15. See *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386-87 (1926), in which the court acknowledged a changing climate in land use control:

Building zone laws are of modern origin. They began in this country about twenty-five years ago. Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of [*sic*] the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive.

16. 260 U.S. 393 (1922).

mine the underlying coal. It was stipulated that since the overlying lands were now used for residential purposes, the affect of the state statute was to render mining uneconomical. The coal company contended that the statute deprived it of property without compensation; the statute was defended as being a bona fide exercise of the state's police power. Holding in effect that the right to mine was property subject to the protections of the Fifth and Fourteenth Amendments, Justice Holmes wrote:

'For practical purposes, the right to coal consists in the right to mine it.' . . . What makes the right to mine coal valuable is that it can be exercised with profit. To make it commercially impracticable to mine certain coal has very nearly the same effect for constitutional purposes as appropriating or destroying it.<sup>17</sup> (foot-note omitted)

The question then in determining whether property had been confiscated was whether its value had been destroyed as the result of government action.

Justice Holmes recognized that valid police power regulation might reduce the value of property without requiring compensation, but he argued that when regulation goes "too far"<sup>18</sup> a taking occurs:

One fact for consideration in determining [the limit of permissible regulation] is the extent of the diminution. When it reaches a certain magnitude, in most if not all cases there must be an exercise of eminent domain and compensation to sustain the act.<sup>19</sup>

Thus, the legacy of the *Mahon* case is two-fold: implicit in the ownership of property is the right to profitably use or develop it and, accordingly, regulation which goes "too far" in restricting this right of development or use constitutes a taking.

Until recently, little had been done to further define the point at which the exercise of regulation becomes a "taking."<sup>20</sup> There is general concurrence that this issue "is still at a point of development where it is more readily amendable to ad hoc pragmatic analysis than to conceptionally symmetrical generalization."<sup>21</sup> The

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17. *Id.* at 414.

18. *Id.* at 415.

19. *Id.* at 413.

20. It is clear, however, that zoning undeveloped property for a less valuable use than that for which it could be used is not a "taking" for which compensation must be paid. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386-87 (1926).

21. Van Alstyne, *Modernizing Inverse Condemnation: A Legislative Prospectus*, *supra* note 9 at 25; "There is no set formula to determine where regulation ends and taking begins." *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 594 (1962).



openness of this issue may be largely attributable to a lack of governmental interest in the area of land use regulation (except to promote and encourage development). As a result the use of land has remained virtually unregulated except by local schemes such as zoning which have proven inadequate to deal with the problems of modern urbanization.<sup>22</sup>

Recent and growing public and governmental concern over the excesses of urbanization has intensified the need for a further definition of the limits of the rights of the public in privately owned lands, either by formulating principles for the application of the Holmesian concept so that an accepted and understood line between public and private rights can be established, or by discarding the Holmesian concept and returning to the earlier rule that a taking only occurs when title or possession has been taken for a public use.

Under either approach the physical taking of property would require compensation, although some questions could arise in determining the circumstances which would constitute a "physical taking." Under either approach, regulation to prevent external harm would generally not constitute a compensable taking (although the definition of external harm could be debated). In any event the requirements of equal protection and due process would still be applicable. The development of other principles becomes significant only if the Holmesian concept is followed.

Recent cases have tended to qualify the assumed right of an owner to develop his property. For example, in *Just v. Marinette County*,<sup>23</sup> the Wisconsin Supreme Court held that an owner of lands adjacent to a lake, which for purposes of the ordinance in question were characterized as "wetlands", had no constitutionally protected right to fill and develop them.<sup>24</sup> In California, the Supreme Court recently held in *HFH, LTD. v. Superior Court of Los Angeles County*<sup>25</sup> that an action for inverse condemnation will

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22. See generally Ellickson, *Alternatives to Zoning: Covenants, Nuisance Rules, and Fines as Land Use Controls*, 40 U. CHI. L. REV. 681 (1973); and Comment, *Land Use Control in Metropolitan Areas: The Failure of Zoning and a Proposed Alternative*, 45 S. CAL. L. REV. 335 (1972).

23. 56 Wisc. 2d 7, 201 N.W.2d 761 (1972).

24. *Id.* at 22, 201 N.W.2d at 770-71.

25. 15 Cal. 3d 508, 542 P.2d 237, 125 Cal. Rptr. 365 (1975).

not lie as the result of a rezoning of undeveloped property which reduces its market value. Instead, the injured landowner's remedy is a writ of mandate if the rezoning was arbitrary or discriminatory.<sup>26</sup> It would appear that these cases strongly support the proposition that a landowner's right to use his land as he pleases is subject to the government's authority to prohibit development without the payment of compensation so long as there is no taking in a physical sense and other constitutional and statutory safeguards are complied with. From an institutional viewpoint this places a great deal more discretion in the legislative body to determine the extent to which the development of land may be restricted.<sup>27</sup> The broad scope of such discretion carries a great potential for arbitrary, discriminatory or inequitable action and it may therefore be anticipated that local legislative bodies will be judicially required to more articulately justify their decisions.

Historically, then, the trend in the United States has been to expand the concept of private property and the assumed right of development at the expense of the government's authority to regulate. Responding to the need to curb some of the excesses of urbanization, recent decisions have reversed that trend, seeking instead to limit the assumed right of the landowner to develop and to increase the effective authority of government to restrict development. This change has given local government both a greater discretion in the development of its land use plans and policies as well as an equitable burden, subject to increasing judicial scrutiny, to act as a fair and impartial arbiter in resolving land use conflicts. The local agency will need to develop new legal tools and mechanisms to adequately perform and sustain this enhanced role and concomitant burden.

## *B. Local Land Use Planning and Regulation*

### *1. Local Regulation in General*

Historically, land use planning and regulation in California has been delegated to the lowest levels of government and articulated in the form of zoning schemes<sup>28</sup> and subdivision ordinances<sup>29</sup>

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26. *Id.* at 518-19, 542 P.2d at 244-45, 125 Cal. Rptr. at 372-73.

27. [L]egislative rather than judicial action holds the key to any useful reform. The welter of proposals for action to remedy the inequities in the scheme of land use regulation which fall short of invoking constitutional protection bear ample witness to the ferment in this area.

*Id.* at 521-22, 542 P.2d at 247, 125 Cal. Rptr. at 375.

28. Zoning regulations are authorized by CAL. GOV'T CODE §§ 65800-65912 (West Supp. 1976).

29. Subdivision Map Act, CAL. GOV'T CODE §§ 66410-66499 (West Supp. 1976).

under the aegis of a general plan<sup>30</sup> which until recently consisted of little more than platitudes which lay unconsulted after once having been articulated. The ability of such fragmented regulatory schemes to adequately cope with excessive urbanization is doubtful. For example, the effectiveness of zoning, the principle tool of land use regulation, is limited by a number of factors, including, among others, the following:

a. Zoning schemes in the past have assumed that land can be developed and used for at least the purpose zoned, and if the market indicates a "higher" use the zoning designation will be changed accordingly. Zoning will generally not be reduced or rolled back, and any increase in the value of land as a result of a zone change should flow to the owner.

b. Zoning is based on end-state planning; that is, the distribution of uses in different zones is articulated as if all uses could be developed simultaneously. Zoning does not provide for change in land use over time.

c. Zoning is rigid in that it generally does not contemplate administrative discretion in its application to specific situations. This rigidity has been diminished somewhat by, for example, schemes which provide for the issuance of conditional use permits, the expanded use of variances and the development of special zones (such as planned unit development zones) which contemplate the exercise of broader administrative discretion. There is a tendency, however, for these arrangements to be administered on an ad hoc basis without adequate consideration or articulation of underlying and long-term objectives. This ad hoc approach is particularly inappropriate in many areas, such as the coastal zone, where the policies, programs and interests of a great number of concerned governmental agencies and diverse interests must be considered and reconciled.

d. Zoning is passive in nature. It contemplates that the landowner will determine the sequence of development and, in many cases, the zone designation itself.

e. Zoning is parochial in that its effect ends with the boundaries of the local agency and it is often the product of a legisla-

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30. See CAL. GOV'T CODE §§ 65350-65402 (West Supp. 1976).

tive body which represents only the present residents of the local area and may not be representative of all of the owners of the lands regulated or of all of the people affected. While the legislative bodies are authorized to consider planning factors relating to lands beyond their jurisdiction, they generally do not. The result has been a highly parochial, fragmented patchwork of regulations.

f. The aspects of land use which may be controlled by zoning are insufficient to achieve many of the planning objectives which are now of concern. Control of density or the provision of housing for the elderly, for example, can be accomplished, if at all, only with great imprecision.

Zoning was supplemented at an early time by the Subdivision Map Act<sup>31</sup> which was intended to assure that the boundaries of subdivided lands are coherent; however, the regulatory procedure established by the Act proved to be a convenient point of regulation for other purposes. Now, before a subdivision map is approved, certain improvements and dedications may be required including the dedication of land for parks (or the payment of fees in lieu thereof).<sup>32</sup>

There has been little formal coordination between these regulatory schemes. The result has been that long-range planning decisions tend to be made in the context of considering individual projects presented to a local agency for approval. In addition, because of the different thrusts of the various regulatory schemes, irrational differences in treatment result. For example, a developer may be required to dedicate lands as a condition to the approval of a subdivision map while no such condition may be imposed upon the issuance of a building permit. Accordingly, the developer of a condominium project which is subject to the Subdivision Map Act may be required to relinquish part of his land for park purposes, while the developer of an identical apartment project may be free from this requirement. Similarly, since the approval of a subdivision map is considered to be discretionary while the

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31. Subdivision Map Act, CAL. GOVT. CODE §§ 66410-66499 (West Supp. 1976).

32. CAL. GOV'T CODE § 66477 (West Supp. 1976) permits a city or county to require that a subdivider dedicate land for park or recreational purposes or pay a fee in lieu thereof as a condition of the approval of a final subdivision map. The predecessor of this provision was upheld as constitutional in *Associated Home Builders v. City of Walnut Creek*, 4 Cal. 3d 633, 484 P.2d 606, 94 Cal. Rptr. 630 (1971). See also Heyman & Gilhool, *The Constitutionality of Imposing Increased Community Costs on New Subdivision Exactions*, 73 YALE L.J. 1119 (1964).

issuance of a building permit is ministerial, the developer of a high rise condominium may be required to submit to the local agency's time consuming environmental review process under the California Environmental Quality Act of 1970<sup>33</sup> while the developer of an identical apartment building may escape such a review process.<sup>34</sup>

The general plan, authorized by California law since 1927,<sup>35</sup> provided the opportunity for such coordination. However, such plans have generally proven to be little more than statements of objectives and recommendations too vague to be useful. Perhaps this has been due to fears that a too carefully detailed general plan might give rise to inverse condemnation. A more likely explanation is that the lack of a detailed general plan has permitted local decision makers to keep their options open, to avoid controversy and to continue regulating on an ad hoc basis or according to their own undisclosed plans.<sup>36</sup>

## 2. Innovative Regulatory Programs

Reflecting an appreciation of the inadequacies of zoning and subdivision regulations a number of local agencies have developed new programs to deal with excessive urbanization. Innovation in land use regulatory schemes began in California, as in other states, with areas of special concern—flood plains, hillsides, natural and scenic areas and tide and submerged lands.<sup>37</sup>

A number of cities have initiated programs to limit their population and structural density and to provide for growth management.<sup>38</sup> In general, however, these schemes are often simply superimposed on traditional regulations and represent only patchwork and stopgap attempts to limit further growth. Frequently, these schemes are only an expression of the parochial interests of the local electorate which may not be a foundation for farsighted or equitable land use planning which will affect landowners (some of whom may be non-residents and non-voters) as well as regional and occasional statewide interests.

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33. CAL. PUB. RES. CODE §§ 21000 *et seq.* (West Supp. 1976) ("CEQA").

34. CAL. PUB. RES. CODE § 21080 (West Supp. 1976).

35. 1927 Cal. Stats. ch. 874.

36. See authorities cited note 108 *infra*.

37. See authorities cited notes 5-6 *supra*.

38. Some cities have simply revised the permissible zoning downward,

While the courts have been increasingly willing to expand the authority of government to regulate and restrict land development, there has been a growing tendency to require that restrictions not be arbitrary or designed to benefit only those local interests repre-

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while others are limiting development based upon the adequacy of public services and other related factors.

The City of Irvine has adopted a residential development permit scheme which requires a permit to be obtained before developing new subdivisions within the city. The permit is issued only upon a finding by the Planning Commission that certain public facilities (utilities, sewer facilities, water, drainage, police protection, fire protection, park and recreation facilities, roads and other local transportation) are adequate to provide services to the new development. This finding is mandatory if the developer has sufficient "points" as determined from a schedule which provides a certain number of points for each type of service available. Irvine, Cal. § 12, Urgency Interim Ordinance, December 18, 1973. Concurrent with the establishment of this system, the city adopted a capital improvements program to provide such services on a fixed schedule. The plan is based on a scheme similar to that which was judicially upheld in *Golden v. Planning Board of Town of Ramapo*, 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972).

The so-called "Petaluma Plan", adopted by the city of Petaluma, limits housing development growth rate to 500 dwelling units per year. The plan includes complex procedures and criteria by which the 500 development-unit permits are awarded to competing developers. According to the system, points are awarded for conformity of a proposed project to the city's general plan and its environmental design plan, for good architectural design, and for providing low and moderate income housing and recreational facilities. The plan further provides for the establishment of a 200-foot wide "green belt" around the city to serve as a boundary for any urban expansion during the term of the plan. This plan has been upheld by the Ninth Circuit Court of Appeals. See *Construction Ind. Ass'n v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975).

The Urban Development Policy of the city of San Jose, revised and adopted in November 1974, seeks to confine future development outside of existing urban developed areas by regulating the extension of urban facilities, utilities and services to new areas. The extension of such services is to be in conformity with a five-year capital improvement program. Lands which are not funded or programmed in the capital improvement program are generally not to be developed.

The city of Livermore instituted a "development rights transfer" scheme to concentrate development in areas of greater proximity to city services and facilities. Under this system, certain areas will be designated "conservation areas" in which development will not be permitted. Owners of such lands will receive transferable development rights which may be sold to property owners in other areas where development is permitted only if supplemental development rights are acquired. See *Livermore, Cal., General Plan—1959-1990* (1959), as amended in 1972.

The city of Milpitas has limited all new development to the number of residential units which the city is able to "absorb" as indicated by a formula keyed to the capacity of the city's school district and the increase in the number of pupils caused by varying types of residential development. Once the amount of development which will be permitted is determined, applications for zoning changes or residential permits are granted on a "first-come-first-served" priority. Milpitas, Cal., § 8, Ordinance 38.235, December 5, 1972.

sented in the legislative body. Courts have increasingly been willing to question the adequacy of general plans<sup>39</sup> and to examine the extraterritorial effects of local regulations.<sup>40</sup> In connection with phased development, for example, the court in *Golden v. Planning Board of Ramapo*<sup>41</sup> was careful to note that the regulatory scheme was not designed to preclude development but rather to provide for it in an efficient manner.<sup>42</sup> Historically, judicial concern has been articulated primarily with respect to the exclusion of racial minority groups and the poor.<sup>43</sup> More recently, however, the courts have begun to ask whether local regulatory schemes are in accord with the "general welfare" of areas outside of the local jurisdiction, thus construing the power of local agencies to enact ordinances for the "general welfare" as a limitation as well as a grant of authority.<sup>44</sup> In California, while the court upheld a Los

39. See *Coalition for Los Angeles County Planning v. Board of Supervisors* (no. C-63218, Superior Court, County of Los Angeles, June 19, 1975); 8 ERC 1249.

40. See, e.g., *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 67 N.J. 151, 161, 336 A.2d 713, 723-4 (1975).

41. 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972).

42. *Id.* at 172, 285 N.E.2d at 302, 334 N.Y.S.2d at 152.

43. See, e.g., *Southern Alameda Spanish Speaking Org. v. City of Union Hill, Cal.*, 424 F.2d 291 (9th Cir. 1970). See generally Freilich & Bass, *Exclusionary Zoning: Suggested Litigation Approaches*, 3 URBAN L. 344 (1971), and Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767 (1969). With regard to judicial suspicions of exclusionary zoning generally, see Lamm & Davison, *The Legal Control of Population Growth and Distribution in a Quality Environment: The Land Use Alternatives*, 49 DENVER L. J. 1 (1972); Bingham & Bostick, *Exclusionary Zoning Practices: Examination of the Current Controversy*, 25 VAND. L. REV. 111 (1972); *Steel Hill Development, Inc. v. Town of Sanbornton*, 469 F.2d 956 (1st Cir. 1972); *National Land and Investment Co. v. Kohn*, 419 Pa. 504, 215 A.2d 597 (1965); *Board of County Supervisors of Fairfax County v. Carper*, 200 Va. 653, 107 S.E.2d 390 (1959); *Appeal of Kit-Mar Builders, Inc.*, 439 Pa. 466, 268 A.2d 765 (1970); *Appeal of Girsch*, 437 Pa. 237, 263 A.2d 395 (1970); *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 254 A.2d 700 (1969); *Kavanewsky v. Zoning Board of Appeals of the Town of Warren*, 160 Conn. 397, 279 A.2d 567 (1971). But see *Confederacion de la Raza Unida v. City of Morgan Hill*, 324 F. Supp. 895 (N.D. Cal. 1971), where the court upheld hillside zoning over objections that the regulatory scheme was exclusionary. However, the court noted that the general plan of the city with respect to housing had not been attacked as exclusionary.

44. In *Steel Hill Development, Inc. v. Town of Sanbornton*, *supra* note 43, while the court upheld a 6-acre lot zoning ordinance on the grounds that basic value judgments should be left to legislative determination, it stated:

Altos Hills scheme virtually banishing all commercial uses of property from the city, it emphasized that the general welfare of the "community or region" would not suffer and that such uses are adequately provided outside the city.<sup>45</sup>

Courts are also beginning to require that zoning and similar regulatory schemes be "balanced";<sup>46</sup> that is, a city may not permit only uses (such as industry) which will increase its tax base and expect other cities to assume the accompanying burden of providing residences for the employees of that industry.<sup>47</sup> The New Jersey Supreme Court recently held that a local agency must provide for its share of regional housing needs and that nonresidents and prospective residents have standing to challenge the violation of this rule.<sup>48</sup>

Finally, courts are beginning to recognize the quasi-judicial or adjudicatory function of many zoning decisions, including zoning

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We are faced with "a local legislative determination that the general welfare will be promoted by exclusion of an unwanted use from a non-metropolitan community [which exclusion] is not likely to conflict with a regional need for local space for that use."

*Id.* at 961. See also *Oakwood at Madison, Inc. v. Township of Madison*, 117 N.J. Super. 11, 14, 283 A.2d 353, 356 (1971).

45. *Town of Los Altos Hills v. Adobe Creek Properties, Inc.*, 32 Cal. App. 3d 488, 509, 108 Cal. Rptr. 271, 287 (1973).

46. "The test must be whether it [the zoning ordinance] promotes reasonably a balanced and well ordered plan for the entire municipality." *Oakwood at Madison, Inc. v. Township of Madison*, 117 N.J. Super. 11 at 15, 283 A.2d 353 at 357 (1971).

47. See generally *Oakwood at Madison, Inc. v. Township of Madison*, *supra* note 46; Note, *Zoning—Municipal Corporations—General Welfare as a Zoning Purpose Held to Encompass Local and Regional Housing Needs*, 26 *RUTGERS L. REV.* 401 (1973).

48. *Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel*, 67 N.J. 151 at 155 n.3, 336 A.2d 713 at 717 n.3 (1975). Whether the parties challenging a proposed land use decision have standing to do so may be as critical as whether there is any substantive cause of action. In *Township of Mount Laurel*, the New Jersey Supreme Court rather easily found standing on the part of nonresidents of Mt. Laurel who were effectively excluded from residence in the city by virtue of the challenged zoning ordinance. In *Construction Industry Ass'n v. Petaluma*, 522 F.2d 897 (9th Cir. 1975), however, an association of builders and developers was held to have no standing to assert that Petaluma's housing and zoning plan violated the constitutional right to travel. Since plaintiffs' actual injury was outside of the "Zone of Interest" of the constitutional right being asserted, the court held that there was no "case or controversy" as required by Article III of the U.S. Constitution. *Id.* at 903-04.

It is clear, however, that a plaintiff challenging the validity of a local land use regulation need not own property which is subject to such regulation nor be a resident of the regulating jurisdiction to have standing if it can be demonstrated that the regulation has a direct, intended and immediate effect upon plaintiff's property. *Id.* at 905. Accord *Scott v. City of Indian Wells*, 6 Cal. 3d 541, 548-49, 492 P.2d 1137, 1141, 99 Cal. Rptr. 745, 749 (1972).



amendments. Accordingly, when such decisions affect vested rights, due process considerations come into play and judicial review becomes more rigorous.<sup>49</sup>

In summary, land use policy has historically been left to local government and to the market place. The result has been the promotion of development which yields profits for the developers and the local economy. During the past ten years there has been a growing realization that, although they are important, developer profit and the promotion of the local economy may not be coincident with the highest quality of life for the residents of the area or to the overall benefit of those who may otherwise profit economically from such development. Local governments are now attempting to make existing mechanisms, such as zoning and subdivision regulations, more flexible and to develop new programs to phase or limit development and to provide for open space and other public purposes.

While courts have generally accepted experimentation and stop-gap measures, it is inevitable that legislatively or judicially formulated safeguards will increasingly be imposed to assure that local government does not arbitrarily limit a land owner's right to use his land and that local land use policies are consistent with regional and statewide concerns.

In light of the foregoing, it can be anticipated that local government will be required to develop its land use policy with greater care and to articulate in greater detail the manner in which that policy takes into consideration and reconciles the concerns of the private landowner, local interests and regional and state interests.<sup>50</sup>

### *C. Regional and State Land Use Planning and Regulation*

The only provisions in California law for general statewide planning are those establishing the Office of Planning and Research<sup>51</sup> which is advisory in nature and expressly has no operating

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49. *Fasano v. Bd. of County Comm'rs*, 264 Ore. 574, 507 P.2d 23 (1973). See also Cunningham, *Rezoning by Amendment as an Administrative or Quasi-Judicial Act*, 73 MICH. L.R. 1341 (1975). See note 71 *infra*.

50. These "concerns" will include the constitutional mandates of procedural and substantive due process, equal protection and the right to travel.

51. CAL. GOV'T CODE §§ 65025-65049 (West Supp. 1976).

or regulatory powers.<sup>52</sup> The State has generally abrogated its planning responsibilities in favor of local government.<sup>53</sup> Most statewide planning is undertaken by state agencies with specific charges and therefore can not be considered comprehensive.

Within the past ten years, however, the state has created several regional and state programs to provide for comprehensive planning and regulation. The Tahoe Regional Planning Agency,<sup>54</sup> the San Francisco Bay Conservation and Development Commission<sup>55</sup> and the Coastal Zone Conservation Commission<sup>56</sup> are examples of a trend toward region level planning.<sup>57</sup> State responsibility for administering and developing guidelines for environmental impact reports as well as for certain elements of local general plans also evidence the growth of a state presence in the land use planning area.<sup>58</sup>

With the growing recognition that the problems of excessive urbanization extend beyond local regulatory boundaries, a number of proposals have been made which would promote greater coordination of the various planning and regulatory schemes on a regional and state level.<sup>59</sup> Generally, this legislation would provide for the establishment of a state planning and regulatory agency which would develop statewide priorities and principles upon which local regulatory systems would be based. To assure the conformity of local plans to these priorities, the agency would retain sufficient authority, either directly or through regional agencies, to review such plans as well as certain specific land use decisions of regional or statewide concern such as decisions with respect to key facilities (e.g. power plants or transportation facilities), regional and large scale developments (e.g. major shopping centers or large residential tracts), and sensitive, significant or critical environmental areas (e.g. wetlands or timberlands).<sup>60</sup> So far, however, none of these proposals has been enacted.

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52. See Marks & Taber, *Prospects for Regional Planning in California*, 4 PAC. L.J. 117 (1973).

53. CAL. GOVT. CODE § 65030 (West Supp. 1976).

54. See authorities cited note 3 *supra*.

55. See authorities cited note 2 *supra*.

56. See authorities cited note 4 *supra*.

57. See also CAL. GOV'T CODE §§ 65060-65069.5 (West Supp. 1976), providing for the establishment of Regional Planning Districts.

58. See CAL. PUB. RES. CODE §§ 21083, 21104, 21150, 21153, 21165 (West Supp. 1976).

59. See note 114 *infra*.

60. See BOSSELMAN & CALLIES, *THE QUIET REVOLUTION IN LAND-USE CONTROLS*, *supra* note 9; NATIONAL LAND-USE POLICY LEGISLATION, *supra* note 7.

The inefficiency which results from the lack of comprehensive state land use policy is obvious. It is intolerable, for example, to have the Department of Transportation plan major highways to serve an area which another agency intends to preserve in a rural or primitive state. All cities should not be able to restrict further growth if it means that there will be no place designated to accommodate future increases in population. Nor should the cost of such inefficiency go unrecognized. The cost is borne by the users of the land, by the taxpayers who support government and ultimately by everyone. The state cannot long afford a system of approvals which requires that an application for development permit be submitted in seriatim to a large number of agencies, each having the authority to halt a project until its own parochial objectives have been satisfied. An effective system of planning must combine a degree of efficiency with a mechanism for reconciling the conflicting interests of the private sector, as well as the concerns of the public at all levels of government.

The major problem with respect to increased state and regional planning and regulation relates to maintaining a proper balance of power or sharing of authority among the various affected agencies. Undoubtedly, there is a broad consensus that the development of land use policy should continue to be the primary responsibility of local government since it is accessible and provides a degree of human responsiveness and flexibility which is generally not available from regional, state or federal agencies. A consensus probably also exists that there are important considerations of regional and statewide scope which should be reflected in local land use policies. The problem is that local governments, as well as private landowners, are fearful of relinquishing any authority to regional and state agencies because of their lack of control over the processes which might evolve. Accordingly, it is extremely important in developing processes for the recognition and reconciliation of private, local, regional and statewide interests that assurances are provided to prevent a usurpation of authority.

#### *D. Summary*

The institutions which have evolved in this country and within California to deal with the planning and regulation of land use have encouraged overdevelopment and are inadequate to deal with

the problems which have resulted. As a result, the courts have become increasingly sympathetic to the expansion of government discretion in limiting development and to the erosion of the assumed "developability" of land, once thought to be implicit in the concept of "private property." Concurrently, government is increasing its involvement in land use planning and regulation at all levels through a multitude of fragmented programs and schemes aimed at curbing the excesses of urbanization.

The shortcomings of this patchwork of programs and the need for improvement are generally acknowledged. A more effective assault on the problem will require the examination of issues at the very core of our institutions relating to land ownership and its use and regulation. This task has been addressed with some trepidation. The pressing problems of excessive urbanization, however, make it imperative that a high priority be given to the development of new mechanisms to assure the efficient, effective and equitable reconciliation of private, local, regional and state interests and policies in land. One such mechanism is the specific plan.

### III. THE SPECIFIC PLAN AS A TOOL FOR DEALING WITH LAND USE PROBLEMS

#### A. *California Provisions For Specific Plans*

##### 1. Authority and Scope

Sections 65450-65552 of the California Government Code authorize any city or county to prepare a specific plan containing the regulations, programs and legislation necessary to implement its general plan. Such specific plans are derived from the "precise plans" of earlier legislation<sup>61</sup> and are principally distinguished from

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61. The origins of the specific plan in California can be traced to the Conservation and Planning Act. Cal. Stats., ch. 807, § 49, p. 1915 (1947), as amended by Cal. Stats. ch. 868, § 7, p. 2045 (1947). Section 49 of that Act authorized the legislative bodies of cities and counties to establish planning commissions to "prepare precise sections of master plans or detailed or precised plans based thereon" which could include

proposed regulations limiting the uses of land, the uses of buildings, the height and bulk of buildings, the open spaces about buildings, the location of buildings and other improvements with respect to existing or planned rights-of-way and such other matters as will accomplish the purposes of this Act, including procedure for the administration of such regulations.

In 1951 this Act was replaced by CAL. GOV'T CODE §§ 65250-65254 (West 1951) which again called for the creation of "precise plans" having substantially the same scope as those provided for in the Conservation and Planning Act. Such plans still consisted primarily of regulations concerning the construction and location of buildings.

Article 8 was in turn superceded by CAL. GOVT. CODE § 65600 (West 1966)

general plans by their more detailed and specific application.

The planning agency, which each county and city in California is required to establish,<sup>62</sup> may on its own initiative (and must if directed by its legislative body) prepare specific plans based upon that city's or county's general plan and drafts of such regulations, programs and legislation as may in its judgment be required for the systematic execution of the general plan.<sup>63</sup> Such plans and measures are then recommended to the legislative body for adoption. The legislative body of the city or county may itself initiate the establishment of a specific plan or an amendment to an existing specific plan, but it must first refer the proposal to the planning commission for a report.<sup>64</sup>

A specific plan must include "all detailed regulations, conditions, programs and proposed legislation which shall be necessary or convenient for the systematic implementation of each [mandatory] element of the general plan . . ."<sup>65</sup> California Government Code Section 65302 sets forth the mandatory elements of a general plan: land use (designating the proposed general distribution, location, extent and density of varying types of land use), traffic circulation, housing standards, conservation of natural resources, open-space,<sup>66</sup> seismic safety, noise and scenic highways.

A specific plan may, but is not required to, include detailed regulations, conditions, programs and proposed legislation which *may* be necessary or convenient for the systematic implementation of any general plan element set forth in Government Code Section

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which authorized the planning commission to "prepare precise plans based on the master plan and drafts of such regulations, programs and legislation as may in its judgment be required for the systematic execution of the master." The reference to "programs" and "legislation" was the first glimmer of recognition of the precise plan as a tool for future planning and development beyond its purely regulatory function. This recognition was not complete, however, since Section 65601, describing the contents of a precise plan, still substantially incorporated the language of the 1947 Conservation and Planning Act dealing with the construction and location of buildings.

62. CAL. GOV'T CODE § 65100 (West Supp. 1976).

63. CAL. GOV'T CODE § 65450 (West 1966).

64. CAL. GOV'T CODE § 65507 (West Supp. 1976).

65. CAL. GOV'T CODE § 65451 (West Supp. 1976).

66. This is more particularly described in CAL. GOV'T CODE § 65560 *et seq.* (West Supp. 1976).

65303.<sup>67</sup> This section lists the discretionary elements of a general plan: recreation (natural reservations, parks, parkways, beaches, playgrounds, etc.), supplemental traffic circulation matters, transportation (rights-of-way, terminals, viaducts, ports, harbors, aviation, etc.), public transit (rapid transit, street car, motor coach, trolley coach lines, etc.), public services and facilities (sewage, refuse disposal, drainage, utilities), public buildings (civic centers, schools, libraries, police and fire stations), community design, housing standards, redevelopment, historic preservation and "[s]uch additional elements . . . which in the judgment of the planning agency relate to the physical development of the county or city." Thus, the authorized contents of a specific plan incorporates the general plan's very broad scope of mandatory and permissible subject matter.

In addition to the foregoing, a specific plan is expressly required to include regulations, conditions, programs and proposed legislation with regard to the following:

- (a) The location of housing, business, industry, open space, agriculture, recreational, educational, religious and waste disposal facilities, and height, bulk and set-back regulations;
- (b) The location, names and numbers, and construction and maintenance standards for streets, roads and other transportation facilities;
- (c) Standards for population and building density, water supply and sewage disposal;
- (d) Standards for conservation, development and utilization of natural resources, including prevention and control of flooding, water pollution and soil erosion;
- (e) Implementation of the open-space element required by Government Code Section 65560 *et seq.*;
- (f) "Such other measures as may be necessary or convenient to insure the execution of the general plan."<sup>68</sup>

It is obvious, then, that the scope of a specific plan is very broad, extending into virtually every facet of the physical development of a city or a county. More traditional forms of land use regulation, such as zoning, are included within the scope of a specific plan even though provided for by their own authorizing legislations.<sup>69</sup>

A specific plan need not cover the entire area of the general plan.<sup>70</sup> The planning agency or the legislative body may designate areas within the city or county for which a specific plan may be necessary or convenient. Thus, geographic subdivision of the general plan is clearly envisioned. By inference from the permis-

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67. CAL. GOV'T CODE § 65452 (West Supp. 1976).

68. CAL. GOV'T CODE § 65451 (West Supp. 1976).

69. See CAL. GOV'T CODE § 65800 *et seq.* (West Supp. 1976).

70. CAL. GOV'T CODE § 65450.1 (West Supp. 1976).

sive language of Government Code Section 65450.1, a specific plan embracing the entire area of the general plan would also comply with the statute. Whether the general plan may be subdivided by subject matter rather than geographically is an unresolved question. Could a city, for example, establish a specific plan for the implementation of the conservation or circulation elements of the general plan? Government Code Section 65451 would seem to proscribe this by requiring that specific plans include all details necessary for the implementation of *each* element of the general plan. On the other hand, the language of Government Code Sections 65552 (referring to "a specific street or highway plan") and 65553 (referring to "a specific plan regulating the use of open-space land") would seem to imply that specific plans dealing with specific subjects can be enacted. If this is true, these sections would greatly increase the flexibility of cities and counties in dealing with their unique local planning problems and objectives.

## 2. Adoption

The procedure for adopting a specific plan is set forth with some particularity in Government Code Section 65500 *et seq.* Before a planning agency can recommend a specific plan to the city or county legislative body (or can report on a specific plan referred to it by the legislative body), it must hold at least one public hearing. The notice of such hearing must meet the requirements set forth in Government Code Section 65500. This notice, directed generally to the electorate of the city or county, is appropriate for a planning matter which is necessarily of general interest and concern. Unlike a general plan, however, a specific plan may affect particular parcels of property in a way which might impose an additional requirement of notice and hearing with respect to owners whose property uses are substantially affected by its provisions.<sup>71</sup> The

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71. Whether or not notice to affected property owners is constitutionally required depends on the illusive test of whether the enactment of the specific plan is under the circumstances an "adjudicative" or "legislative" act. See generally *San Diego Building Contractors Ass'n v. City Council*, 13 Cal. 3d 205, 529 P.2d 570, 118 Cal. Rptr. 146 (1974); *Scott v. City of Indian Wells*, 6 Cal. 3d 541, 548-49, 492 P.2d 1137, 1141 (1972); *Kissinger v. City of Los Angeles*, 161 Cal. App. 2d 454, 463, 327 P.2d 10, 16-17 (1958); see also *Fasano v. Board of County Commissioners*, 264 Ore. 574, 507 P.2d 23 (1973). It is quite possible that the standard of notice applied may be stricter in the case of amendments to a plan than in its original enactment.

mandatory referral to the planning agency and the statutory and constitutional notice and hearing requirements would appear to preclude the enactment of a specific plan by initiative.<sup>72</sup>

After the required public hearing, the planning agency may recommend the specific plan to the legislative body by way of a resolution of the planning commission.<sup>73</sup> A copy of the specific plan or amendment recommended must be submitted to the legislative body together with "a statement of the planning commission's reasons for such recommendation."<sup>74</sup> The predecessor to this section had required that the planning commission submit "a report of findings."<sup>75</sup> In construing this earlier section, it was held that a resolution of the planning commission merely stating that the "plan is deemed to be in the public interest" and is "recommended for adoption by the city council" was insufficient to comply with the requirements of the statute.<sup>76</sup> The current section has deleted the requirement of findings, but it should be expected that the planning commission will be required to specify its "reasons for such recommendation" with more particularity than merely the recitation of their conclusion that it is in the public interest.

Once the specific plan has been recommended to the legislative body, it is exclusively in the latter's discretion whether it is enacted or rejected. The recommendation of the planning agency gives the proposed specific plan no legal effect and obviously creates no vested rights until adoption by the legislative body.<sup>77</sup> Similarly, a specific plan adopted by the legislative body may not be changed by the planning commission without the action of the legislative body.<sup>78</sup> Thus, the role of the planning agency is an advisory one and its recommendations are not binding on the legislative body which remains free to disregard them.<sup>79</sup>

Although the legislative body need not accept the advice of the planning agency, it is required to seek it. Thus, it may not initiate

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72. See *Simpson v. Hite*, 36 Cal.2d 125, 134-35, 222 P.2d 225, 230-31 (1950); *Peoples Lobby, Inc. v. Board of Supervisors*, 30 Cal. App. 3d 869, 873, 106 Cal. Rptr. 666, 669-70 (1973); Oren, *The Initiative and Referendum's Use in Zoning*, 64 CAL. L. R. 74 (1976).

73. CAL. GOV'T CODE § 65501 (West 1966).

74. CAL. GOV'T CODE § 65502 (West 1966).

75. Cal. Stats. 1953, ch. 1355 (repealed 1965).

76. *Williams v. City of San Bruno*, 217 Cal. App. 2d 480, 488-91, 31 Cal. Rptr. 854, 858-59 (1963).

77. See *Millbrae Ass'n v. Millbrae*, 262 Cal. App. 2d 222, 246, 69 Cal. Rptr. 251, 268 (1968).

78. *Id.* at 242, 69 Cal. Rptr. at 265.

79. See *Banville v. County of Los Angeles*, 180 Cal. App. 2d 563, 570, 4 Cal. Rptr. 458, 461-62 (1960).



a specific plan without referring it to the planning agency<sup>80</sup> nor may it make any change or addition to a recommended specific plan without referring the change or addition back to the planning agency for a report.<sup>81</sup> In the latter event, the failure of the planning commission to report within four days after the reference constitutes approval of the change or addition.<sup>82</sup> If the legislative body enacts part of the planning commission's recommendation and rejects part, there is some ambiguity as to whether this constitutes a "change or addition." In *Millbrae Ass'n v. Millbrae*,<sup>83</sup> for example, it was held that the adoption by a city council of one of eight related recommended rezonings did not amount to a change or alteration of the planning commission's recommendation but only in a reduction in its scope.<sup>84</sup> Whatever the wisdom of this rule when applied to zoning ordinances, difficulties would abound if it were applied to recommended specific plans which are inevitably intertwined packages that cannot be changed in size or scope without effecting changes in character. Thus, the advisory role of the planning agency is essential to the legal validity as well as to the actual quality of a specific plan, and no city with a planning agency may exclude the agency from this process.<sup>85</sup>

Before adopting a proposed specific plan or an amendment thereto, the legislative body must hold at least one public hearing.<sup>86</sup> Notice of such hearing must conform to the requirements of Government Code Section 65500 as well as to the procedural due process mandates of the Fourteenth Amendment with respect to affected property owners.<sup>87</sup>

### 3. Administration and Effect

Once a specific plan has been adopted, the legislative body has broad powers to assure its administration and enforcement. The legislative body may establish administrative rules and procedures

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80. CAL. GOV'T CODE § 65507 (West Supp. 1976).

81. CAL. GOV'T CODE § 65504 (West Supp. 1976).

82. CAL. GOV'T CODE § 65504 (West Supp. 1976).

83. 262 Cal. App. 2d 222, 69 Cal. Rptr. 251 (1968).

84. *Id.* at 235, 69 Cal. Rptr. at 261.

85. For cities without a planning commission see CAL. GOV'T CODE § 65505 (West 1966).

86. CAL. GOV'T CODE § 65503 (West Supp. 1976).

87. See *Fasano v. Bd. of County Comm'rs*, 264 Ore. 574, 507 P.2d 23 (1973).

and may delegate such administrative functions, powers and duties to the planning agency or some other agency as may be desirable or necessary.<sup>88</sup> The legislative body is further empowered to create administrative agencies, boards of review, appeal and adjustment and to provide for other officials and employees to administer and enforce its specific plans.<sup>89</sup>

The most important aspect of the specific plan is its legal effect as a regulatory device. It is in this area that the greatest ambiguities exist in the current legislation. Unlike zoning, which has been defined by years of experience and by an abundance of case law, the specific plan is still a relatively new creature in the law. Some of its effects, however, have been clearly set forth in the Code. The Subdivision Map Act, for example, provides that no city or county shall approve a required subdivision map unless its legislative body "shall find that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan . . . or any specific plan . . . ." <sup>90</sup> That section further provides that the subdivision shall only be consistent if the city or county has officially adopted such a plan and the subdivision is "compatible with the objectives, policies, general land uses and programs specified in such a plan."

Streets may not be improved or sewer connections laid or authorized in any street where a specific street or highway plan has been adopted until the matter has been referred to the planning agency for a report determining its conformity to such plan and a copy of the report has been submitted to the legislative body.<sup>91</sup> The Government Code does not clearly state whether the legislative body could authorize such action, notwithstanding a report of nonconformity, without formally amending the specific plan.

Similarly, streets may not be improved, sewers or connections laid or public buildings or works constructed within any territory covered by a specific plan regulating the use of open-space land until the matter has been referred to the planning agency for a report determining its conformity to such plan, a copy of the report has been filed with the legislative body and the legislative body has made a finding that the proposed improvement, connection or construction is in conformity with the specific plan.<sup>92</sup>

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88. CAL. GOV'T CODE § 65550 (West 1966).

89. CAL. GOV'T CODE § 65551 (West 1966).

90. CAL. GOV'T CODE §§ 66473.5, 66474 (West 1966).

91. CAL. GOV'T CODE § 65552 (West Supp. 1976).

92. CAL. GOV'T CODE § 65553 (West Supp. 1976).

The enactment of a specific plan may also impose further restrictions and requirements of consultation on other agencies under the operation of certain Code provisions relating to general plans.<sup>93</sup> Such provisions give local government the power to restrict other governmental agencies or to at least compel consultation to an extent not possible under other forms of land use regulation such as zoning.

The specific plan, then, occupies a very special position in the matrix of local planning. It is the meeting point of a number of different functions and purposes, the point at which the planning and regulatory functions merge. More planning and action-oriented than zoning ordinances, the specific plan is more regulatory and implementation-oriented than the general plan. In short, it is a mechanism which brings policy and implementation together in one package. As will be discussed below, such a merger of functions can provide a very effective mechanism for resolving land use conflicts.

#### *B. Advantages of the Specific Plan and Possibilities for More Effective Use*

##### 1. Resolution of Local Conflicts in Land Use

Generally, land use regulation reflects underlying social, economic and political interests with regard to the lands affected. In the United States, the interests involved have generally supported development. This is no longer so. At the present time there is widespread and persistent conflict among the representatives of these interests in many areas of this state as to whether development should be promoted and, in some cases, whether it should even be permitted. The specific plan provides a mechanism for the recognition and reconciliation of these diverse and conflicting interests.<sup>94</sup>

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93. CAL. GOV'T CODE §§ 65401, 65402 (West Supp. 1976).

94. See, e.g., M. McCoy & C. Walecka, MARINA DEL REY SUBREGIONAL PLAN (Univ. of So. Cal., Sea Grant Inst. Prog., 1975). This plan was prepared by a group representing diverse interests (including land developers, residents and others) as a compromise and reconciliation of the various interests with respect to future land use in the area. The area involved a rapidly developing marina comprised of a small craft harbor surrounded by high density residential and recreationally oriented commercial uses

The broad and multifaceted nature of the specific plan permits an analysis, as part of a single program, of numerous separate projects and proposals which in the past have generally been considered separately under conventional regulatory schemes. Accordingly, the specific plan can provide for a broader spectrum of trade-offs than are normally available. For example, a group of citizens attempting to preserve open space may oppose all ad hoc proposals for facilities which would support further development, including additional sewer and water facilities. Such a group, however, might support a specific plan permitting a degree of development if it contains acceptable comprehensive restrictions on the amount, character and location of developments so that individual ad hoc development will not result in the aggregate in excessive growth. Affected landowners and developers may also support such limitations provided that they receive assurances in return that some development will be permitted, and, perhaps, that approvals and permits for that development will be processed on an expedited basis.

The resourceful planner may find additional elements available to effect a needed compromise. The plan, for example, may provide for a capital improvements program to assure developers that needed public facilities will be provided in accordance with an agreed upon time schedule,<sup>95</sup> a density transfer arrangement to offset the effect of restrictions imposed,<sup>96</sup> a bonus scheme to reward the provision of public benefits,<sup>97</sup> accelerated processing of permit applications, and, perhaps, tax incentives.<sup>98</sup> Compromise

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which had been superimposed on an informal beach community of small deteriorating beach cottages and narrow streets developed during the 1920's and 1930's as the Venice of the West. The preface of the report suggested that, in order to become part of the regulatory scheme of the City and County of Los Angeles, the plan should be "translated to specific plan standards."

95. See *Golden v. Planning Board of Ramapo*, 30 N.Y.2d 359 at 373, 285 N.E.2d 291 at 304, 334 N.Y.S.2d 138 at 155 (1972).

96. The specific plans adopted by the City of Los Angeles for the Westwood Village and the Century City areas provide for the transfer of density within the areas covered by the plans. Los Angeles, Cal., Westwood Village Ordinance No. 145,043, August 24, 1973; Los Angeles, Cal., Century City Ordinance No. 146,798, December 6, 1974. See Costonis, *Development Rights Transfer: Description and Perspectives for a Critique*, in 3 *MANAGEMENT & CONTROL OF GROWTH* 92 (The Urban Land Institute 1975); Comment, *Development Rights Transfer in New York City*, 82 *YALE L.J.* 338 (1972).

97. See, e.g., Svirsky, *San Francisco: The Downtown Development Bonus System*, in *THE NEW ZONING: LEGAL, ADMINISTRATIVE AND ECONOMIC CONCEPTS AND TECHNIQUES* (N. Marcus & M. Groves ed. 1970).

98. See, e.g., the tax relief provisions of the California Land Conserva-

may also be obtained by making adjustments in the types and character of public improvements to be included in the plan such as the location and design of a transportation system or the size and character of proposed parks and schools. Because the possible components of a well conceived specific plan are far more numerous and varied than those available in connection with traditional forms of land use regulation the likelihood of achieving consensus of the interests involved is greatly enhanced.

## 2. Resolution of Inter-Governmental Agency Conflicts in Land Use Policy

It has only been recently that any major efforts have been made to coordinate the land use policies of the various levels of government.<sup>99</sup> The specific plan can facilitate this coordination by providing a means by which the various affected agencies can reconcile their conflicts and formulate a common land use policy for the area involved.

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tion Act ("Williamson Act"), CAL. GOV'T CODE §§ 51200-51295 (West Supp. 1976). See also CAL. REV. & TAX. CODE §§ 421-25 (West Supp. 1976).

99. Evidence of such increased coordination is found in the provisions of CEQA, CAL. PUB. RES. CODE §§ 21000 *et seq.* (West Supp. 1976), which require governmental agencies to consult with each other when making decisions which might significantly affect the environment and in the increased role of the State Office of Planning and Research in developing guidelines to be used by local agencies in the preparation of certain specified elements of their General Plans.

In addition there are numerous recent proposals for land use planning and regulatory schemes which would provide for the coordination of local and, in some cases, regional land use policies at the state level. These include proposals or reports by, or sponsored by, the California Council of the American Institute of Planners, the League of California Cities, California Tomorrow, Inc. and the Planning and Conservation Foundation. The California Coastal Plan, CAL. PUB. RES. CODE §§ 27000 *et seq.* (West Supp. 1976), is a more formal proposal for such a scheme. See, Cal. S.B. 1579, Cal. A.B. 3544 and Cal. A.B. 2948, 1975-76 Reg. Sess. introduced to implement the Coastal Plan. See also various bills introduced in the California Legislature during 1970-72 regarding land use regulation in the coastal zone.

Legislation providing for such state level coordination has recently been introduced, including Cal. A.B. 2050, 1970, Cal. A.B. 2144, 1973, Cal. A.B. 2978, 1974, Cal. A.B. 2422, 1975-76 Reg. Sess., Cal. A.B. 625, 1975-76 Reg. Sess.

The American Law Institute has also recently adopted portions of a Model Land Development Code which contemplates a stronger role for state agencies in the development and implementation of land use policies.

See also the TASK FORCE ON NATURAL RESOURCES AND LAND USE INFORMATION AND TECHNOLOGY COUNCIL OF STATE GOVERNMENTS 1-4. LAND USE POLICY AND PROGRAM ANALYSIS (1974).

Since the specific plan is adopted locally, the local agency is generally not required to take into consideration the policies and programs of other agencies. To the extent that it is willing to do so, however, other agencies may reciprocate, enabling it to obtain valuable consultation and commitments which will promote its own objectives. The need for a reconciliation of local priorities with regional and statewide interests is nowhere stronger than in the coastal zone. In this regard, the California Coastal Plan specifically contemplates the development of "subregional plans" which could take the form of specific plans.<sup>100</sup>

The specific plan is binding to an extent on other governmental agencies, at least with respect to proposed capital improvements.<sup>101</sup> In most cases it does not bind their regulatory authority. There are, however, analogous schemes where such a binding effect is provided. One of these is the Delaware River Basin Compact, an interstate compact approved by Congress.<sup>102</sup> The governing commission is comprised of representatives from the various levels of government, including the federal government.<sup>103</sup> Once the plan promulgated by the Authority has been approved by the federal government representative it is binding on all federal agencies.<sup>104</sup> A similar provision is contained in the Coastal Zone Management Act of 1972 which requires federal agencies to act consistently, to the maximum extent practicable, with a state coastal plan which has been approved by the Secretary of Commerce.<sup>105</sup>

On the state level, an effective statewide land use plan could include state and regional commissions empowered to certify local specific plans (participating with respect to areas and projects of regional and state-wide concern) and give them binding effect upon state agencies. Such a scheme might also include an expedited processing procedure for projects which are in conformity with a certified local plan.<sup>106</sup> Although the integration of local and

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100. See California Coastal Plan, *supra* note 4 at 180-85.

101. See text accompanying notes 90-93, *supra*.

102. Delaware River Basin Compact, Public Law 87-238, 75 Stat. 688. For a discussion of cooperative land use policy programs involving river basin authorities, see Muys, *Interstate Compacts and Regional Resource Planning and Management*, 4 NATIONAL RESOURCES LAWYER 153 (1973). A similar interagency approach involving the federal government was initially proposed with regard to regional planning for Lake Tahoe. See Comment, *Regional Government for Lake Tahoe*, 22 HASTINGS L.J. 705 (1971).

103. Delaware River Basin Compact, *supra* note 102 at § 2.2.

104. *Id.* at § 11.1; but see § 15.1.

105. 16 U.S.C.A. §§ 1451, 1456(c) (2) (West 1974).

106. The environmental impact report process might also be revised to require an analysis of all relevant land use planning considerations, includ-

state planning would be a major improvement in the existing system and would be of benefit to land developers as well as to others, it will require a considerably greater commitment to planning at the state and regional level than has heretofore existed.

### 3. Integration of Programs and Regulatory Schemes

The specific plan provides a mechanism which can overcome the historic fragmentation of local land use programs (such as the separation of zoning and regulatory schemes from capital improvements programs).<sup>107</sup> While the general plan (if properly used) could contemplate such an integration of schemes and programs, it is framed at such a high level of abstraction that in many cases the real basis for decision making continues to be the unstated policies and priorities of the individual decisions makers.<sup>108</sup>

In order to overcome this type of problem in the provision and maintenance of open space, legislation was adopted in 1970 which expressly provided for the adoption of a specific "action program" which would combine planning with a program for affirmative action.<sup>109</sup> The thrust of the specific plan concept is similar. It

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ing social and economic, as well as environmental considerations, and to provide comment on the consistency of the proposed action with local, regional and state land use policies. If thus revised, the inefficiency and duplication of information presently found in the process could be significantly reduced.

107. See text accompanying notes 33 and 34, *supra*.

108. In this regard the Joint Committee on Open Space Lands, in its report to the California Legislature in 1970, stated with respect to open space that:

There is currently [1970] no requirement that local plans contain a description of the program which the legislative body intends to promulgate for the implementation of plan. The result is to perpetuate the dichotomy between the plan and the control measures which should carry it out. This in turn tends to result in two parallel plans. One plan is the official general plan. The other is the *de facto* plan drawn by the local legislative programs. Ideally, there should be a unity between these two plans. The first step toward the objective is to require that each open-space plan contain an action plan program setting forth the various means by which the planning body proposes to achieve its planning objectives. Only in this way will the various entities concerned with planning matter be placed on notice of the entire planning pattern.

California Legislature, Joint Committee on Open Space Lands, *Final Report*, at 24 (February, 1970).

109. CAL. GOV'T CODE § 65564 (West Supp. 1976).

also offers the opportunity for the integration of detailed regulatory schemes which are generally passive in nature with other programs, such as capital improvement programs, that are required in order to implement the general policies of the local agency.

Further, zoning and other more conventional mechanisms are relatively limited in the scope of their application as are the regulatory classifications which they have developed. The specific plan is a broader approach to land use regulation, one that is free of the narrower precedents which have restricted the usefulness of more conventional approaches. The specific plan can more effectively provide for a wide variety of considerations such as growth management, capital improvements, the provision of low and moderate income housing or housing for the elderly which have generally not been considered as part of traditional regulatory schemes such as zoning or subdivision map approval.

#### 4. Provision of Baseline Information

The specific plan lends itself to the comprehensive and systematic accumulation of information relating to land use policies. This accumulated information can be used for a variety of purposes. The plan might contain reports and studies which, when adopted, could be a source of reference for the preparation of further environmental impact reports and statements. Then, instead of preparing an entirely new statement or report with respect to each particular project, reference could be made to the reports prepared in connection with the specific plan to the extent that they are applicable.<sup>110</sup> In some cases, further reports now prepared as a matter of course under existing guidelines might be avoided altogether.

#### 5. Avoidance of Constitutional Pitfalls

Underlying the various constitutional limitations on regulatory authority is a concern for the reasonableness of the proposed regulation or action in relation to the private interests to be protected. By providing a policy which is comprehensive, the specific plan offers the opportunity to more completely accommodate the numerous interests protected by these constitutional limitations,

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110. A similar approach is being employed by San Francisco with respect to the preparation of environmental impact statements which are required in connection with applications for Community Development Block Grants under the Housing and Community Development Act. See ENVIRONMENTAL COMMENT, December, 1975 at 1.



thus not only reducing the risk of litigation but also improving the agency's position in the event that litigation is commenced. The specific plan offers an opportunity for the local agency to conduct the studies and prepare the analyses necessary to properly determine and articulate reasonableness.<sup>111</sup> For example, a specific zoning action judicially examined in isolation could appear arbitrary, discriminatory or violative of equal protection requirements. On the other hand, if the same specific action were part of a comprehensive scheme which recognized the concerns and interests of private property owners as well as the public and provided for certain trade-offs (such as tax incentives or bonus arrangements) as an articulated attempt to equitably reconcile those concerns and interests on a comprehensive basis, a court would be more inclined to conclude that the regulation was reasonable and fair.<sup>112</sup>

In any event, the question of reasonableness is a factual one and the position of a local agency is considerably stronger when it has conducted proper studies, has made a serious effort to consider and reconcile conflicting interests and has articulated a scheme which deals with the various problems in a comprehensive way. The courts have repeatedly evidenced a reluctance to replace the governmental agency's judgment with their own when reviewing complex and, in large part, political decisions on land use policy.<sup>113</sup> This is a sensible recognition that the adversary system of justice is not well suited to the analysis and study of complex planning issues.

#### 6. Provision of a Highly Visible Focal Point For Discussion of Public Policy Issues

Underlying all of the foregoing is the specific plan's value as a highly visible focal point for community discussion and decision

111. See generally I. Heyman, *Innovative Land Regulation and Comprehensive Planning*, 13 SANTA CLARA L. 183 (1972).

112. For example, the court in *Golden v. Planning Bd. of Town of Ramapo*, 30 N.Y.2d 359 at 373, 285 N.E.2d 291 at 304, 334 N.Y.S.2d 138 at 155 (1972), was particularly cognizant of the relationship of the capital improvements program to the proposed growth management scheme.

113. Being neither a super legislature nor a zoning board of appeal, a federal court is without authority to weigh and reappraise the factors considered or ignored by the legislative body in passing the challenged zoning regulations.  
*Construction Ind. Ass'n v. City of Petaluma*, 522 F.2d 897 (9th Cir. 1975).

making with respect to land use policy issues as they relate to a local area. Unlike the general plan, the provisions of a specific plan are too specific to be disregarded. Unlike a single zoning decision or subdivision approval, the aggregate effect of individual decisions is apparent. This concept of a highly visible policy and decision making process is an integral component of the democratic process even though it is understandably difficult to achieve in a diverse and complex society.<sup>114</sup>

### C. Problems and Issues

While existing specific plan legislation offers great promise as a mechanism for reconciling land use conflicts, its future application and use will to some extent be affected by the resolution or clarification of certain problems and issues. A few of the more apparent problems are discussed below.

#### 1. Constitutional Limitations

As discussed above, the specific plan concept can assist local governments in obtaining their proper objectives in a constitutionally acceptable manner.<sup>115</sup> Nevertheless, the constitutional principles of just compensation, due process, equal protection and the right to travel will continue to be raised with respect to innovative regulatory schemes such as the specific plan.<sup>116</sup> Because the enabling legislation is broadly drawn and there is little by way of custom or judicial precedent to define the limits of permissible use, the specific plan may carry with it a potential for controversy and litigation both as to the interpretation of its legislation as well as to the applicability of constitutional principles.

#### 2. Relationship to Other Planning and Regulatory Schemes

The relationship of the specific plan to the general plan and other forms of land use regulatory schemes such as zoning and subdivision ordinances is still largely undetermined. Was the legislation creating the specific plan intended as an entirely separate

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114. For an interesting discussion of the role of a visible policy in group decision making processes, see L. HALPRIN, *THE RSVP CYCLES: CREATIVE PROCESSES IN THE HUMAN ENVIRONMENT* (1969).

115. See text accompanying notes 111-13 *supra*.

116. Users of the specific plan will need to be aware of at least three areas where major constitutional principles are still largely undefined: (i) point at which regulation become a "taking"; (ii) how specific may specific planning become before notice and a hearing must be afforded to affected landowners; and (iii) the standard of judicial review applicable to the implementation and/or amendment of specific plans.

grant of authority? To what extent is it bound by the limitations and provisions of more traditional schemes? May a specific plan, for example, require an industrial development to dedicate lands for public purposes when the Subdivision Map Act expressly excludes industrial subdivisions from the provisions enabling a local agency to require such dedication as a condition to final map approval?<sup>117</sup> Consideration should be given to the adoption of additional legislation to clarify these questions.

### 3. Provision of Assurances

One of the most interesting problems relating to the effective use of the specific plan concept is the means by which assurances can be provided to private landowners as well as to other governmental agencies that the policies set forth in an adopted specific plan will actually be implemented. Such assurances are not only valuable in obtaining the cooperation of interested parties, but may enhance the local agency's ability to withstand challenges in the courts. In *Golden v. Planning Board of Town of Ramapo*,<sup>118</sup> for example, the court noted with apparent approval that the regulatory schemes providing for phased development were matched with a capital improvements program to assure that the restricted lands could be developed after a specified period of time.<sup>119</sup> Of course, even the provision of a capital improvements program does not assure future development and there remains the question of what remedies might be available to a landowner in the event that the improvements are not completed within the time specified. While such a failure to proceed with a specified capital improvements program might be the basis for judicial relief from the restrictions, this remedy is far less effective than that normally available to enforce contractual undertakings and may be time consuming and costly to enforce. Where the consent of landowners to a specific plan has been secured by means of a compromise embodying such a program, this problem is obviously even more significant.

Under certain circumstances, a specific plan might include or contemplate contractual undertakings. Although there are sub-

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117. CAL. GOV'T CODE § 66477 (West Supp. 1976).

118. 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972).

119. *Id.* at 373, 285 N.E.2d at 304, 334 N.Y.S.2d at 155.

stantial restrictions on the authority of a local agency to limit its police powers by contract,<sup>120</sup> recent court decisions have hinted at doctrines which might be used to provide a greater degree of commitment on the part of local government in certain circumstances.

One such doctrine is estoppel. Although the courts have historically been reluctant to extend the doctrine of estoppel to government,<sup>121</sup> it is still clear that, at least in some circumstances, it may be applicable.<sup>122</sup> To successfully assert this doctrine the injured party would have to show that (1) the local government had represented certain facts, (2) that such representations were intended to induce its reliance, and (3) that it justifiably relied upon the representations to its injury.<sup>123</sup> The main obstacle in using estoppel to bind a local government seeking to renege on promises made is the strong public policy against allowing government to contract away its police power so as to render it unable to respond to a change of circumstances or policy.<sup>124</sup>

Another approach to the problem would be to require that the local government sustain the burden of proof in demonstrating the need for a change in the plan, taking into consideration, among other things, the nature of the commitments contained therein. This approach would recognize the plan as one embodying and reconciling numerous complex and conflicting interests and therefore one deserving preservation and enforcement of the compromise contained therein absent a compelling need to depart from it. Under some circumstances a prerequisite to allowing a change would be the compensation of injured parties. Such an approach would protect the interests of the local government in maintaining flexibility as well as the interests of landowners and others who have relied on existing plans.

A not dissimilar approach was applied by the Oregon Supreme Court in *Fasano v. Board of County Commissioners*. In that case

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120. See *County of San Diego v. California Water and Telephone Co.*, 30 Cal. 2d 817, 824, 186 P.2d 124, 129 (1947).

121. *Id.* at 825-27, 186 P.2d at 129-31. See also D. HAGMAN, J. LARSON & C. MARTIN, CALIFORNIA ZONING PRACTICE §§ 5.28-5.52 (1969).

122. *City of Long Beach v. Mansell*, 3 Cal.3d 462, 493, 476 P.2d 423, 445, 91 Cal. Rptr. 23, 45-46 (1970). Cf. *Strong v. County of Santa Cruz*, 15 Cal. 3d 720, 543 P.2d 264, 125 Cal. Rptr. 896 (1975).

123. *Driscoll v. City of Los Angeles*, 67 Cal. 2d 297, 305, 431 P.2d 245, 250, 61 Cal. Rptr. 661, 666 (1967).

124. See *People ex rel. Dep't of Pub. Works v. Ryan Outdoor Advertising, Inc.*, 39 Cal. App. 3d 804, 812-13, 114 Cal. Rptr. 499, 504-05 (1974); *Kappadahl v. Alcan Pacific Co.*, 222 Cal. App. 2d 626, 633, 35 Cal. Rptr. 354, 358-59 (1963).

certain zoning amendments were treated as "quasi-judicial" in nature and the proponents of the amendments were held to have the burden of justification.<sup>125</sup> A careful planner could lay the groundwork for this type of judicial review by including within the adopted specific plan a carefully articulated statement of the facts upon which the plan is based, the assurances sought, the manner in which interested parties are relying thereon and any anticipated detriment that might be suffered as a part of the compromise incorporated within the plan.

Recent proposals for the certification of local plans by regional or state agencies might also provide a measure of protection against unjustified changes by requiring that the local agency justify its need for the change and by giving opposing parties the opportunity to object.

It is clear that to more fully obtain and reflect the compromises which may be required in an effective specific plan the local agency must have an ability to provide a high degree of commitment. Accordingly, methods for achieving this such as those discussed above should be considered further.

#### 4. Local Boundary Limitations

A significant limitation on the specific plan concept is that it is primarily a local regulatory mechanism. While under current legislation adjoining jurisdictions may act together to produce a regional plan,<sup>126</sup> such plans are general in scope and advisory only.<sup>127</sup> The increasing need for greater coordination of local planning with regional, state and national interests would seem to justify the passage of enabling legislation to provide for the adoption of specific plans comprising areas in more than one jurisdiction and binding governmental agencies on the various levels. Such legislation would permit plans to be formulated for areas defined by geographic and demographic as well as by political boundaries.<sup>128</sup>

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125. 264 Ore. 574 at 579, 507 P.2d 23 at 28 (1973).

126. CAL. GOV'T CODE § 65060 *et seq.* (West 1966). See also Joint Powers Act, CAL. GOV'T CODE § 65000 *et seq.* (West 1966) providing for joint power agreements.

127. CAL. GOV'T CODE § 65060.8 (West 1966).

128. Some cities and counties in California have already sought a greater

#### IV. SUMMARY AND CONCLUSION

Traditional land use planning and regulatory institutions have proven inadequate to deal effectively with the problem of excessive urbanization in California. The need for developing new approaches for solving this problem has been recognized on all levels of government. We are now experiencing a period of experimentation, but many of the innovations being developed are fragmentary and inconsistent when viewed from a regional, state and national perspective, inefficient in terms of the cost of their application, inequitable and perhaps inconsistent with some of the basic principles of this society.

There is no greater priority facing planners and land use attorneys than the development of mechanisms and tools which permit government to effectively deal with problems of excessive urbanization and which provide for the equitable reconciliation of conflicting private, local, regional and statewide interests. In this regard there is wisdom in recognizing local government as the focal point for the development of area-wide land use policies while at the same time requiring consistency with regional, statewide and nationwide interests.

The specific plan concept offers local government a means of taking the initiative in developing comprehensive land use policies which combine regulation with action programs. The specific plan concept also offers a process whereby an effective and definitive policy can be developed in a highly visible manner which both recognizes and reconciles the diverse interests which are affected thereby. In this way the specific plan promises to be an effective mechanism for resolving land use conflicts within our society in a manner which will improve the quality of life available to the people of this state.

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degree of coordination and integration in their land use policies by means of joint power agreements. One example is the proposed "Richardson Bay-Southern Marin Development Review Area" in which the cities of Belvedere, Mill Valley, Sausalito and Tiburon have agreed with Marin County to establish a joint residential development in the review board with the power to pass on applications for residential development in the review area. See MARIN COUNTY, CALIF. CODE ch. 22.96 (pertaining to residential development review, added by Ordinance No. 2158).