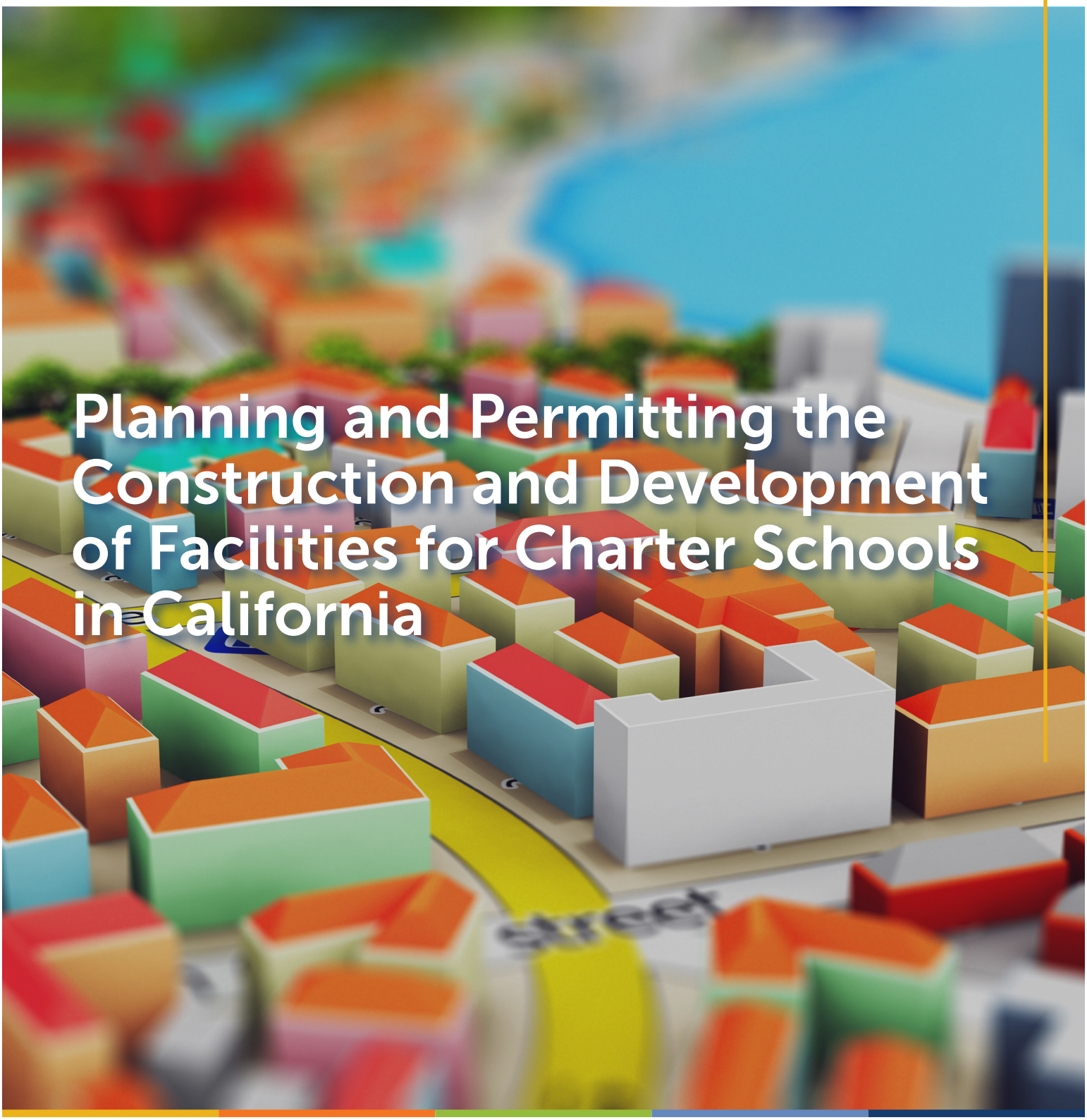
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Planning and Permitting the Construction and Development of Facilities for Charter Schools in California

Unparalled School Legal Services

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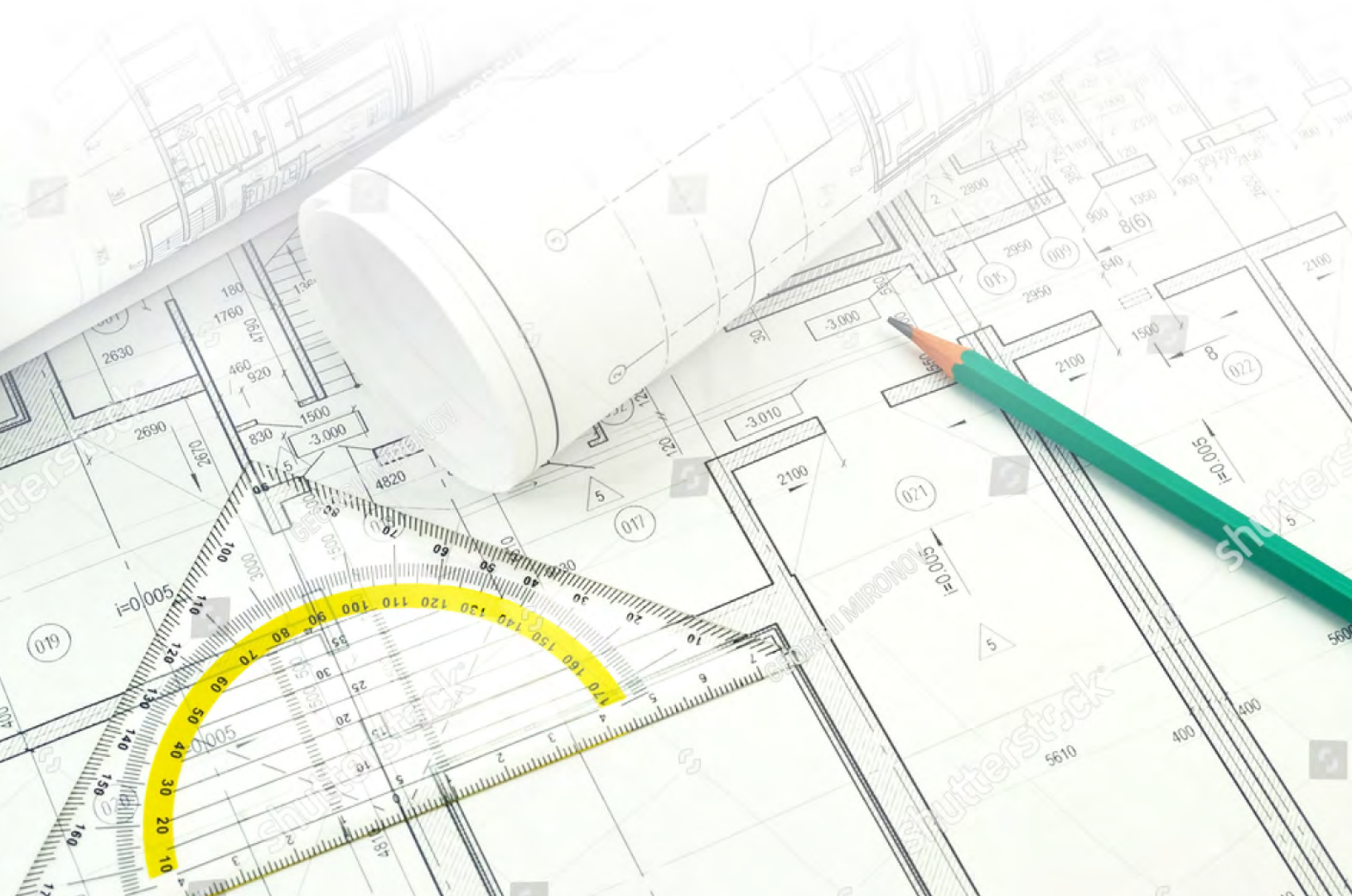
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INTRODUCTION

Throughout California, enrollment in charter schools continues to grow. The passion of charter school teachers, and the creativity of their students, deserves to be matched by new facilities worthy of their high standards. In order to achieve this goal, charter school operators in California need to be conversant in a unique set of complicated laws and regulations by which the state's buildings are constructed and developed and environmental impacts are managed.

When charter school operators begin planning for a new facility project, they are often faced with two preliminary questions: Which government regulations will apply to the project, and which government agency will be required to approve it? California Education Code Section 47610 provides charter schools more options when seeking government approvals for facilities projects than school districts have available. Whereas school district projects are almost always reviewed by state agencies such as the Division of State Architect, and built in compliance with state regulations such as the Field Act (Education Code § 17280), charter school operators may seek the approval of local government agencies that have adopted and enforce the California Building Standards Code. Moreover, although overzealous school districts will sometimes attempt to place facilities-related requirements upon charter schools operating in non-district owned facilities, their ability to do so is limited under state law. Charter schools should

be prepared to gain approval from the city or county government for facilities projects on non-district owned sites, and then take reasonable steps to provide evidence of local government approval to the district.

California has adopted a complex and comprehensive set of laws and regulations to govern the development of real property. These laws and regulations impose costs and time burdens that make the development process more cumbersome than in any other state. This is especially true because a myriad of local, regional and state agencies participate in land use decisions through an interconnected web of state and local priorities and mandates.

As the management of land use and development has traditionally been reserved for local agencies, cities and counties serve as the primary regulators of the development process. While public school districts may exercise independent authority with respect to school property and facilities, most charter schools operate independently from their chartering districts. In these cases, the charter school has the advantage of being a stand-alone legal entity in many respects. However, when it comes to the development of school facilities, this independence often comes at a price.

Except in those cases where a school district makes its property available for use by the charter school, the charter school is left to secure a home for its program through its own independent efforts. In these circumstances, a charter public school must engage with members of the city government, or with county officials where the property is located outside of a city's municipal boundaries. In this sense the charter school operator functions like a private developer, and is largely subject to compliance with the same local development process as any other private applicant. As this Guide explains, California places a premium on accountability, transparency, and responsibility for the interests of the local community.

This Guide has been assembled to provide the charter school operator as real estate developer with an overview of the most important laws and regulations governing

the development of school facilities. Intended to provide practical advice, the basic procedural and substantive requirements are presented, most of which are unique to California. For simplicity, the term "city" is used most frequently to refer to local government, even though, in unincorporated areas, this role is fulfilled by the county. While every effort is made to present guidance on the most important aspects of the process, for the sake of brevity, not every nuance can be explained. Moreover, no guide can serve as a substitute for expert legal advice. Charter school operators are therefore encouraged to refer to these materials to gain a basic understanding of the process, but are strongly advised to consult with legal counsel from the beginning of the process. Assembling the right team of experts early in the process can make a major difference in managing what is often a costly and emotional experience.



CITY AND COUNTY ZONING AND LAND USE REGULATIONS

To understand the local entitlement process, charter school operators need to have a basic understanding of the state laws that govern a city's regulation of land uses.

While each city sets its own priorities for the future, and crafts its own policies to guide development, various state laws establish the framework within which local decisions are made. These laws establish minimum standards which apply throughout the state. Through these laws, the state has identified substantive topic areas that cities must address, such as housing, airport land use compatibility, energy efficiency, and others. State law also imposes minimum procedural standards of due process to protect the interests of private landowners and the public.

A. The General Plan

The General Plan represents a comprehensive statement of a city's highest development priorities and land use policies. Maps and exhibits depict the desired arrangement of land uses. The General Plan is organized prospectively for a particular planning horizon year. Originally conceived as an advisory guide, the General Plan now functions as a mandatory policy document, which sits atop the hierarchy of all local land use regulations. It is akin to the city's "constitution" of local land use regulation. The various land use maps and exhibits form the "blueprint" for private development

within the city. State law mandates that every city and county in California adopt a General Plan, which is required to include several mandatory elements.

Required Elements. Central to the General Plan is the Land Use Element, which identifies a particular land use type for every property in the jurisdiction. Zoning, and all other regulations of the jurisdiction, must conform to the General Plan. The adoption of a General Plan is among the most important legislative functions of local government, and usually entails years of preparation culminating in several public hearings. In addition to addressing land use within the city, the General Plan also covers housing policy, transportation, conservation, open-space, noise, safety, and environmental justice. In addition to these mandatory elements, the General Plan often covers subjects of the city's choosing, such as economic development and aesthetics. By covering a diverse range of topics, the General Plan balances competing priorities, and seeks to achieve harmony among the various components. State law also limits the frequency of General Plan changes, allowing a city to approve only four amendments of the General Plan in a single year.

Over the last decade, cities and counties have updated their General Plans to include policies and programs directed at curbing and reducing the generation of greenhouse gas emissions. The comprehensive nature of the General Plan makes it an ideal policy vehicle for addressing climate change. As dense, urban development served by mass transit has been shown to generate fewer emissions per capita, most urban jurisdictions have sought to streamline the development of housing in such areas. This increases the demand for quality school options in the downtown areas, potentially creating opportunities for charter schools in larger cities up and down the state. A General Plan may also address climate change with specific requirements that apply to all new development, reducing energy consumption in new buildings and curbing vehicle emissions indirectly generated by new growth.

For charter school operators, the General Plan represents the starting point in the analysis of a city's land use requirements. The property in which a charter school

would be located must have an appropriate land use designation. Any specific policies that apply to new development should be reviewed carefully. The precise wording of such policies can be very important. General Plan policies often use permissive language (such as "encourage") to nudge developers to achieve its goals. Courts have considered the degree of compliance in such cases to be flexible. Conversely, where a General Plan includes a specific, mandatory requirement or limitation, it is an abuse of discretion for the city to approve a project which does not conform.

B. Zoning

Cities and counties in California have used zoning as the primary means of land use regulation for more than 100 years. Courts have long recognized the important role of zoning in maintaining harmony among different land uses, and have consistently upheld its legitimacy. Like the formulation of a General Plan, the establishment of zoning is a legislative act. As such, courts generally defer to the legislative choices made by the city in establishing its zoning ordinances. A city therefore has broad discretion to enact the zoning of its choice, which is presumed to be a valid expression of the city's prerogatives.

Permitted, Conditional, and Prohibited Uses. Zoning codes establish a set of land use districts within which land uses of a desired character are distinguished from other, undesired uses. For each district the jurisdiction lists specific uses in a table and indicates the level of review that is required to establish each listed use. A school may be listed as a "permitted" use in a particular zone, which means that the use is allowed "by right" without the need for a use permit. This can be pivotal, because the California Environmental Quality Act ("CEQA," discussed in more detail in the next chapter) does not apply to "ministerial" actions. A city functions in a ministerial capacity when it applies narrow, objective standards as opposed to open-ended or subjective standards that call for the exercise of discretion.

Most cities require a conditional use permit to establish a new school facility in most zones. It is not unusual for cities to identify a "public school" as a distinct use from a "private school" in the zoning code, though many cities simply designate zoning for "K-12 Education." However, most California zoning codes were drafted before the growth in the number of charter schools that has taken place over the past twenty years, and the codes and the city staff that interpret them frequently do not appreciate the differences between charter schools and other public schools. School districts are generally exempt from local zoning regulations under California Government Code Section 53094 and are therefore not familiar with the city's zoning approval process and are not impacted by onerous zoning regulations to the extent that those apply to charter schools. As a result, charter operators frequently encounter city staff that are not familiar with public school facilities projects, and often do not appreciate the differences between traditional public schools, charter public schools, and private schools. Charter school operators should be prepared for a certain amount of unfamiliarity with charter school projects, particularly in cities that have limited numbers of charter schools.

Conditional use permits are a common land use planning tool that all local governments utilize to control property uses through the implementation of various conditions that place restrictions on the use of property. The conditional use permit process is very frequently slow moving, includes multiple public meetings and comment periods, and requires applicants to submit various reports and studies that require the help of professional consultants to complete. As a result, it is very common for charter schools to spend nine months or more, and more than $100,000 in order to obtain this type of permit. These requirements are particularly challenging for charter schools that are new and seeking to obtain approvals between petition approval and the beginning of the school year in the fall, or existing schools that are forced to find new facilities unexpectedly without many months for advancing planning.

In order to navigate the permitting process as efficiently as possible, charter school operators should work with their legal counsel and project consultants to ensure that they have a clear understanding of what is required by the city for a complete project

application. Charter leaders should also plan to conduct extensive community outreach to develop support for the project, as well as address as many community concerns as possible as early in the process as possible. School projects very frequently result in at least some community opposition based upon concerns related to traffic, noise, and parking impacts. However, early, consistent, and skillful community engagement by charter school leaders can significantly improve community views of the project and typically leads to better outcomes through the permitting process.

Where a school use is not allowed under any circumstances, such as in some agricultural or industrial districts, the zoning of the property must be changed. A change of zone is a major legislative endeavor, which may also require an amendment of the General Plan. This calls for the city to balance various urban growth and community planning policies, and requires the concurrence of a majority of the elected body. As a result, charter school operators and developers will very rarely seek a zoning change, and will instead seek properties where charter facilities can be developed by right or conditionally.

Ancillary Approvals. In addition to identifying whether a use permit is required to establish a new school on a particular property, the city's zoning will also indicate whether other ancillary approvals are required. These typically involve matters such as architectural design, historical resource protection, hillside development, watershed protection, or other matters unique to the jurisdiction or area. Occasionally these are identified by an "overlay" district, which combines more than one zoning district on a single property. The zoning will usually identify the departments or agencies within the city that need to be consulted in order to change the use of the property, and the public bodies with discretionary approval authority.

Development Standards. Each zoning district specifies development standards that apply to construction activities. These standards regulate many aspects of development, including how close the building can be to the property line (called a building setback), the height of the building, and the level of intensity of development allowed on the

site. Where the city requires land to be set aside for a street widening or to expand a park, this dedication requirement will usually be identified as a development standard. For institutional uses like schools, the zoning will typically include, for example, a standard for parking, mandating a parking lot of a certain size, and requiring lockers or sheltered areas for safeguarding bicycles.

Variances and Relief from Standards. The standards that apply within a zoning district are required to be uniform. In rare cases this can impose a hardship because some physical feature of the property makes it impossible to develop in conformity with the zoning. In such cases the city must provide a process to obtain relief from the zoning, usually by obtaining a "variance" from the generally applicable standards. However, the ability to obtain a variance is usually very limited; it is only available where unique circumstances make the property unlike others in the same zone. More often a particular standard (such as building height) can be altered for the project by requesting a deviation or exception from the standard. The amount that the standard can be changed is set forth in the zoning and may require an additional approval from a particular city official or hearing body.

Vested Rights and Legal Nonconforming Uses. Once the city approves a certain use for a property, and the use is established on the property, the owner's right to use the property is said to be "vested" in conformity with those existing approvals. Subsequent changes to the zoning, or specific development standards, usually do not provide an opportunity for the city to reconsider the use of the property. In such cases the use may continue as a "legal nonconforming use" for as long as it remains in continuous operation, and may even be transferred to a new owner. However, once such a nonconforming use is vacated for the length of time specified in the zoning ordinances, the property can lose its vested status. Also, a use that has vested cannot be changed to a different use without complying with any discretionary approval process required by the city. For example, a site may be vested for use as a private school, but the city may still require a use permit to convert to a public charter school if the jurisdiction requires a use permit for a public school use.

C. Conditions of Approval

Every time a city approves a new use of property, other than as a ministerial action, it must make written findings that the use will not be detrimental to public health and safety or create a nuisance for surrounding properties. To support such findings, the city will impose conditions of approval. Typical conditions of approval that will accompany a new school use include provisions for driveway access to ensure that cars entering and leaving the site will not create a traffic hazard. The city will also impose conditions for pedestrian safety and access, and may require the school to make improvements to intersections near the school to increase student safety.

Legal Limitations. Where a school is approved in a new location, roads and sidewalks may be undeveloped or substandard. State law limits the extent to which a school can be required to make improvements to adjacent properties, and a city generally cannot require upgrades to roads or sidewalks on adjacent properties next to the school merely to avoid "breaks" in the sidewalk. Similarly, cities are permitted to require overhead power and telephone lines to be placed underground for aesthetic reasons, but are limited in their ability to require such improvements to adjacent properties. Instead, where utility poles must be moved to accommodate a major street widening, for example, the cost of the utility changes should be included in the cost of the street project and spread across all new development. A school should not be required to contribute more than its "fair share" to such off-site infrastructure upgrades. This concept is discussed more fully in the next section.

As cities have broad responsibility to maintain order and avoid nuisances, cities are allowed to impose conditions in various ways. In the first place, the city will usually require that the use be conducted in conformity with the plans and designs that were approved with the permit. These designs may themselves limit the size of the school, such that it is not necessary to specify an enrollment cap. However, a school can be limited in its enrollment as a condition of approval, if it can be shown that the site cannot serve more than a certain number of students without triggering the need for

a larger building or creating a nuisance for surrounding properties. Where a particular matter, such as student population, is specified as a condition of approval, it is a violation of the permit to exceed that number. However, just as every express condition of the permit may be enforced by the city, the city is not allowed to imply unwritten conditions into the permit after the fact if the conditions were not specified in writing and agreed upon as part of the permit during the approval process.

Conditions of approval are normally satisfied upon the issuance of a building permit. Any conditions that apply generally through the life of the permit will "run with the land" and remain binding upon a new owner of the property. To the extent possible, conditions should contain enough flexibility to allow for unforeseen circumstances. Where circumstances arise which were not foreseen, the city's zoning usually identifies a process for conditions to be changed after the permit has been granted. This may require approval by the same hearing body (e.g., planning commission) that issued the permit in the first place.

D. Exactions and Development Impact Fees

The United States and California Constitutions protect private property rights by requiring the government to provide compensation before "taking" private property for public use. Most legislative determinations, like the adoption of a General Plan or zoning, are not considered to unreasonably interfere with private property rights. However, where a change in the use of a particular property is on the table, there is a risk that the city may require the private owner to bear more than its share of public burdens that would otherwise be borne by the community at large. To guard against this risk, the city must demonstrate that every condition that it imposes relates to, and offsets, an impact of the development on the community. Once this "nexus" has been established, the developer's contribution to address the impact must be roughly proportional to its contribution to the problem. Thus, a condition to pay a fee or improve public infrastructure is generally limited to the developer's fair share of that improvement. This issue comes up with great frequency in California because of the many deficiencies that exist in our public infrastructure.

Through the planning process, cities often identify plans for improving roads and utility systems that serve multiple properties. Once approved, these infrastructure plans can include a fee schedule based on the amount of new development that is anticipated to generate demand for the infrastructure. These fees are supported by a nexus study which uses a factor (such as building square footage) to estimate the amount of infrastructure demand (or impact) from new development. These fees are typically "on the books" long before the developer's project is approved, affording no opportunity for the developer to challenge their legality as applied to the developer's project. California law therefore allows the developer to pay certain development fees under protest, and subsequently maintain an action to contest the fee. These challenges are limited to deciding whether the city has properly applied the fee to the developer's project. However, to the extent that a challenge strikes at the basis for the fee in the first place, that challenge usually must be filed at the time that the entire schedule of fees is adopted or updated. Similarly, most challenges to special benefit assessments and other charges that are collected with property taxes may only be challenged at the time that the agency adopts the assessment, even though the assessments may survive as liens on the property for many years.

E. Other State Laws Related to Land Use

Rounding out the laws governing the local development process are several laws that relate to various procedural and substantive topics. Among the most important substantive and procedural laws is the California Environmental Quality Act, which is discussed in the next Chapter. Other procedural requirements relate to open meetings, public records, and the timely processing of development applications. These procedural laws are discussed below, followed by a discussion of laws that govern subdivisions, coastal development, airport land use compatibility, and annexations. Laws regulating the licensing of locations that sell alcoholic beverages and medical marijuana are also mentioned.

Transparency Laws. As local government agencies, cities and counties are subject to certain laws intended to preserve the integrity of the process. The Ralph M. Brown Act applies to public hearings provided by cities and counties for development projects. This Act requires the city to limit its actions to those taken at public hearings for which proper notice has been provided. For a use permit or other development application, notice is posted at the project site and mailed to property owners within a certain distance (usually at least 300 feet) of the project site. An agenda identifying the development application and proposed action must be posted at least 72 hours prior to the hearing. Staff reports that are released to decision makers are public records subject to disclosure under the Public Records Act. Those interested in a particular development project will frequently request copies of reports and correspondence related to the project, which are generally subject to disclosure under the Public Records Act. Charter school applicants should therefore be mindful that all written correspondence with the city is subject to disclosure as a public record. Only after the project is approved will a joint defense agreement be available to shield communications from disclosure under the attorney-client privilege.

Permit Streamlining Act. The timing of hearings on development projects is governed by the Permit Streamlining Act. Cities are required to publish their application requirements, so that applicants for land use permits can provide all information to the city that is required to have a complete application. Cities are given a limited amount of time, once the application is filed, within which to determine that the application is complete for processing. Once the application is considered complete, the city next determines what level of environmental review is required, as discussed in the next Chapter. Cities are supposed to complete the environmental review process within certain time periods, and must schedule a hearing on the project once the process of environmental review is complete.

Subdivision Map Act. Land divisions are regulated by cities and counties pursuant to the Subdivision Map Act. Under this Act, a land division can take one of two forms. To create up to four parcels, a parcel map is required. Larger subdivisions require the

filing of a tentative subdivision map. The tentative map specifies a set of development conditions that must be satisfied before a final map is recorded. Land is not subdivided until either a parcel map or a final map is recorded in the official records. This can present an issue where a charter school desires to use some, but not all, of the buildings on a single site. This may occur where the property is owned by a church, which desires to retain possession of the church building apart from other, separate buildings on the site. Such an arrangement may trigger compliance with the Subdivision Map Act, which requires a parcel map to be recorded in order to sell, lease or finance separate parcels of land.

Coastal Act. Development of land in coastal areas of the state is governed by the Coastal Act, which applies to 76 coastal cities and counties. Under this Act, the city's zoning must be approved by the Coastal Commission, which thereafter may exercise appellate review of development projects for compliance with special conservation requirements. Once the Coastal Commission has certified a city's zoning, it is not necessary to obtain a permit from the Commission directly. However, the project may be subject to an appeal to the Coastal Commission once the city has issued its approval.

Airport Land Use Compatibility. Virtually every county hosts at least one military or civilian airport. Special laws govern land uses on properties near such airports, where noise and safety concerns arise. Each county maintains and periodically updates an airport land use compatibility plan, which specifies zones around the airport where land uses are restricted. These plans also require coordination between the city and the airport operator. When a city considers a development project on a site near an airport, the airport will review the proposal and determine whether the project is consistent with the compatibility plan. If necessary, the city can override a determination that a project is not consistent with the plan by 4/5 majority vote of the city council. Charter school sites that are proposed within two miles of an airport runway must be submitted to the California Department of Education (CDE), which reviews the proposed site in coordination with the Caltrans Division of Aeronautics. A charter school may not lease or buy such a property until it has received approval from CDE and CalTrans.

Local Agency Formation Commission. Growth around cities is governed by a special law, which is intended to ensure that local governments deliver services efficiently and avoid the needless urbanization of agricultural and open space areas. This law established a special regional agency known as the Local Agency Formation Commission (LAFCO), which is comprised of elected officials from the county, cities and special districts within the county. The LAFCO establishes a "sphere of influence" around each city and independent district within the county, which denotes the area that should be served by the municipal services provided by that city or district in the future. Proposals to expand a city's boundary to include additional territory are referred to LAFCO, which considers a number of policies related to the efficient delivery of municipal services and preservation of open space. A school site that is located within a city's sphere of influence may require extra processing, as the county may be required to direct the application to be processed by the city as an annexation to be approved by LAFCO. In other cases, the delivery of urban services to a school site in an unincorporated area of the county may require an application to be filed with LAFCO to expand the service boundary of the city or district that would provide the service. These actions are typically subject to compliance with the California Environmental Quality Act.

Alcoholic Beverages. Charter school operators should be aware of state laws that restrict the sale of alcoholic beverages and medical marijuana in proximity to schools. Bars and restaurants that serve alcoholic beverages ("on-sale" premises), as well as supermarkets and liquor stores ("off-sale" premises), must obtain a license from the California Department of Alcoholic Beverage Control (ABC). ABC is authorized to deny a license for any location that is within 600 feet of a school. However, this does not apply to the renewal of a license. Therefore, a charter school may locate within 600 feet of an existing licensee without causing the licensee to lose its license through non-renewal.

Medical Marijuana. State law also authorizes cities and counties to permit marijuana dispensaries. Several cities and counties have permitted medical marijuana dispensaries based upon the passage of the Compassionate Use Act by the voters in 1996, which has expanded with voters' passage of the Adult Use of Marijuana Act in 2016. A newly established state agency, the Bureau of Medical Cannabis Regulation (BMCR), will begin issuing state licenses in 2018. Like a liquor license, a state license (or local permit) to distribute marijuana cannot be issued for a location that is within 600 feet of a school. Such permits and licenses must be renewed annually. Unlike a liquor license, a marijuana permit will not be renewed if a school locates within 600 feet of the marijuana dispensary. Charter school operators should therefore expect to encounter stiff resistance from an established marijuana dispensary that is already operating within 600 feet of the proposed school site during any discretionary permit process.



BUILDING CODES THAT APPLY TO CHARTER SCHOOLS

Developers of charter school facilities must be aware of two alternative sets of building codes that apply to schools.

Unlike a school district, a charter school can elect to be subject to regulation by the city (or county) in which the school site is located as discussed in Chapter 1. Alternatively, some charter schools have made arrangements with school districts allowing for the charter school to use and develop properties that are owned by the district. School district facilities projects, and charter school facilities projects on land that is owned by school districts, will in most cases be subject to oversight by several state agencies that oversee public school construction in California. This may also occur when a charter school receives funding under a government program such as the Charter School Facilities Program (often referred to as the "state bond program" or Proposition 51) that requires the charter school project to be completed under the oversight of state agencies.

Local Permitting. Cities and counties administer the California Building Standards Code, which is applicable to the construction of a public charter school if the charter school does not elect to go through the Division of the State Architect ("DSA") and other state agencies for project approvals. These codes are updated periodically, with the most recent version taking effect on January 1, 2017. The Building Code includes provisions requiring facilities that are intended for use as school facilities to meet special standards. These standards are identified as Educational Group or "E" occupancy,

which is applicable to the use of any building or structure, or any portion thereof, by more than six persons at any one time for educational purposes through 12th grade.

If a charter school elects to seek its approvals through the local agency charged with enforcing the California Building Code, an inspection by the city or county Building Department is required before an existing building that is converted to a Group E occupancy can be used as a charter school facility. Special requirements applicable to school buildings are set forth in Section 452 of the California Building Code. For example, all buildings to be used for Group E occupancy must front directly on a public street or an exit discharge of not less than 20 feet in width, which must be maintained clear of obstructions and only used as access to the public street. While school grounds may be fenced and have locked gates, a safe dispersal area must be provided inside the fence at a distance of at least 50 feet away from school buildings. The safe dispersal area must be a minimum of 3 square feet per occupant. Gates must also be provided for emergency vehicle access in any fences or walls that surround outdoor areas. Fire protection services are often provided by fire districts that operate independently of the city. Inspections for compliance with fire safety requirements must therefore be directed to the appropriate agency.

In addition to compliance with all Group E occupancy requirements, the city inspector will also inspect an existing building to determine whether the building complies with currently applicable standards for energy efficiency and disabled access. The Building Code has been updated with increasing frequency in recent years to increase energy efficiency in response to California's efforts to address global climate change. The first major revision to California's energy codes occurred in 1978; buildings constructed before that year will likely require significant upgrades to lighting, heating and air conditioning systems to reduce energy consumption. In addition to consuming more energy than newly constructed buildings, older buildings are also likely to require improvements to maintain compliance with disabled access requirements. Parking areas and all paths of travel leading to and within the building must be assessed for compliance with accessibility standards.

District-Owned Properties. School facilities that are built on properties owned by school districts are generally not subject to regulation by local city and county building departments. Instead, these facilities must be inspected by staff from DSA. In certain circumstances, charter schools can elect to have DSA approve their use of a private site. Also, while many of the same provisions in the California Building Code for Group E occupancy are enforced and applied by the DSA, additional standards are applied to ensure greater resistance to damage in seismic events. These standards were adopted by the Field Act, which is administered by the DSA. The Field Act adds requirements for construction to avoid the potential for damage during earthquakes.

Portable classroom facilities must also receive an inspection from the DSA. Often a portable classroom building is re-used, in which case it may have already been certified for occupancy by the DSA. Under a new rule adopted in 2013, the DSA changed the standards that are applicable to the use of portable classroom buildings. Charter school operators are therefore cautioned that the use of portable buildings certified by the DSA before this rule took effect may require significant alterations. While the DSA will review and inspect school facilities on district properties for compliance with the Field Act and the California Building Code, local fire department inspectors must also be consulted for compliance with fire safety requirements.



CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA), found in Section 21000 of the California Public Resources Code, imposes both substantive and procedural mandates on local government agencies with respect to projects that may have environmental impacts.

Some charter school facilities projects will be subject to CEQA, and charter school operators should be familiar with CEQA requirements as they plan their facilities projects. The CEQA requirements have developed in case law and regulations (or "Guidelines") adopted by the California Resources Agency. In this chapter, the substantive obligations of cities are considered first, including consideration of certain regulations of the California Department of Education which relate to school sites. The term "impact" is used interchangeably with "effect." This chapter also discusses the process that cities follow to administer CEQA. This chapter concludes with a brief discussion of certain key concepts related to judicial review. CEQA is a broad and complex law; this Guide is only intended to provide an introduction.

Policies Underlying CEQA

CEQA was passed in 1970, after a period of rapid growth and urbanization transformed the state. CEQA requires cities and counties to evaluate and consider the environmental consequences of projects that they undertake or approve. Before

approving a project which has the potential to cause an impact on the environment, the agency must make a comprehensive evaluation of the significance of a number of potential environmental effects, including effects related to natural resources (e.g., air quality) as well as the built environment (e.g., traffic). Cities and counties have an affirmative obligation to disclose these consequences to the public before taking action to approve the project. The law also requires the agency to use its police power to condition development in order to mitigate any environmental effects that are found to be potentially significant. These mitigation measures are frequently imposed on larger charter school facility development projects.

Thresholds of Significance. A city has discretion to develop its own thresholds for determining whether a particular effect of a project will be "significant" or less-than-significant. To assist cities with this task, the CEQA Guidelines suggest a number of significance thresholds, most of which are routinely applied for this purpose. Additionally, cities can look to regulations from other government agencies with expertise in particular areas. As education is one area which has traditionally been left to other agencies, many cities borrow from regulations adopted by the California Department of Education when considering the environmental impacts of properties that are proposed for use as school sites.

Environmental Factors Applicable to School Sites. CEQA contains a special provision which mandates consideration of certain factors in the environmental review of elementary and secondary school projects. Though expressly applicable to school districts, a city would likely apply similar considerations in the review of a project proposed by a charter school. These factors include the presence or documented release of hazardous waste (or history as a solid waste disposal site), the presence of pipelines, and the proximity (within 500 feet) of a freeway or busy traffic corridor. Additionally, charter schools are specifically required to obtain CDE approval of any site within 2 miles of an airport runway. Other factors have been identified in regulations adopted by CDE for the evaluation of certain sites for development of public schools. These include the presence of high-voltage power lines and proximity of the site to a railyard

or large agricultural operation. While these regulations only apply to school districts, a charter school may be required to show that its site meets the same criteria in order to receive a grant or other state funding for school construction. It is therefore a good practice for a charter school to develop a familiarity with CDE's school siting regulations when looking for a site, and to be prepared to comply with these regulations if required to do so.

The CEQA Process

CEQA can apply to any discretionary entitlement to develop real property in California. Before issuing permits to charter school operators, a city or county must determine whether CEQA has been satisfied. Therefore, before filing an application for development of a charter school facility, the charter school operator should have a basic understanding of whether CEQA will apply to the project. The first step in the process is to confirm that what the charter school is proposing is a discretionary project that requires city approval, and that it could have a direct or indirect impact on the environment. If so, the charter facilities operator would then work to determine whether one of the exemptions in CEQA can be used by the city to approve the project without requiring CEQA review.

CEQA includes both "statutory" and "categorical" exemptions. The former are exemptions that have been written into the law and which apply automatically. Common statutory exemptions include emergency repairs to a public school facility or closing a school under certain circumstances. Categorical exemptions, by contrast, have been defined in regulations adopted by the Resources Agency. Examples of school-related categorical exemptions include minor alterations or additions to school facilities that will not increase enrollment more than 25%. While the Agency has determined that these categorical exemptions generally involve no or negligible impact on the environment, they are subject to exceptions to account for special circumstances. If an exemption is applicable, the city can usually approve the project shortly after the application is found to be complete.

DETERMINING WHETHER AN EXEMPTION APPLIES

Statutory Exemption for Ministerial Approvals. Where the city's zoning allows for the construction of a new public school facility without a use permit, CEQA may not apply if other discretionary approvals are not needed. This is because, as a matter of statutory construction, CEQA only applies to discretionary approvals. Where the zoning identifies a school as a permitted use, the project might only require a building permit, and the city does not apply any subjective standards to determine whether the school use is compatible with its land use policies. Application of CEQA in these circumstances would be a meaningless exercise, because the city lacks the ability to impose conditions to address environmental impacts.

Categorical Exemptions for Existing Sites. Categorical exemptions are available where the site already contains all of the buildings that will be used for the school, or only minor additions are proposed. In such cases the project (including a conditional use permit) can likely be approved under a categorical exemption for existing facilities. Key to the use of this exemption is a determination by the city that any additions to the buildings will add no more than 10,000 square feet of space. Where the school proposes to demolish an existing building and replace it with a new structure of substantially the same size, a categorical exemption for replacement or reconstruction of an existing structure may be used. For example, where the existing structure is not earthquake-safe, a new structure can replace the building which does not increase student capacity by more than fifty percent (50%). A separate exemption is also available for minor additions to existing school grounds, where the project will increase student capacity by no more than 25%, or ten classrooms, whichever is less. This is a handy exemption as it expressly allows for the addition of portables to a school site.

Categorical Exemption for Infill Development. The construction of new school facilities can also be permitted using an exemption for infill development. Under this exemption, a new charter school can be permitted on an existing site which meets certain conditions. First, the project must comply with all applicable General Plan policies

and applicable zoning designation and regulations. Second, the site must be no more than five acres, substantially surrounded by urban uses, and located within an incorporated city. Third, the site must have no value as habitat for an endangered, rare or threatened species. Fourth, the site can be adequately served by all required utilities and public services. A project which does not meet these criteria may be able to take advantage of streamlined environmental review for infill sites that are consistent with a Sustainable Communities Strategy (discussed below).

Categorical Exemption for Operational Changes. Because CEQA only applies to projects that might involve physical changes to the environment, there is also an express exemption for educational program changes. Under this categorical exemption, CEQA is not applicable to changes in the grade structure of the school or other operational changes that do not entail physical changes to facilities (or where the only physical changes are in the interior of existing buildings). The charter school would need to show that the proposed program changes will not result in environmental impacts resulting from changes in student transportation. Also, like all categorical exemptions, this exemption is not available where one of the exceptions to the use of exemptions is present.

Exceptions to Categorical Exemptions. All of the categorical exemptions that are available in the CEQA Guidelines are subject to certain limitations. One such limitation is the presence or history of environmental contamination as documented by databases maintained by state agencies. A site which has been documented to have a history of hazardous substances may also disqualify the school from receipt of public funds for school construction under CDE Regulations. The California Department of Toxic Substances Control (DTSC) oversees a program for the review and remediation of school sites with a history of contamination. Additionally, categorical exemptions are not available where there is a reasonable possibility of an effect on the environment due to unusual circumstances. In light of this exception, any time that a city uses a categorical exemption, it should make a written finding that there are no unusual circumstances related to the proposal. Finally, an exemption cannot be used where the project

would have a substantial adverse effect on a historical resource. For those situations where an exemption is not available, the CEQA process commences with the preparation of an initial study.

STREAMLINED REVIEW FOR SITES WITHIN A SUSTAINABLE COMMUNITIES STRATEGY

In 2011, CEQA was amended to provide greater opportunities to streamline the CEQA process for certain infill projects, including schools. This resulted in the addition, in 2013, of Section 15183.3 and Appendix M of the CEQA Guidelines, which identify the criteria and performance standards that must be satisfied to qualify for a new, expedited CEQA review process. Unlike the categorical exemption for infill development, the site is not required to be located in an incorporated city or less than five acres in size. Qualifying sites can receive a full exemption from CEQA review or can be approved with shortened environmental analysis.

Sustainable Communities Strategy. Section 15183.3 builds upon legislation from 2008 (SB 375) which aligned long-range transportation planning with the state's goals to address climate change. That law established a process for the creation of a Sustainable Communities Strategy by each of the 18 metropolitan planning organizations in the state. Formerly these organizations were responsible for demonstrating that the region's transportation system would conform to federal air quality requirements. Today, each of these organizations is also required to approve a regional land use strategy which demonstrates that urban growth will not cause the region to exacerbate the problem of global climate change. As urban areas increase housing opportunities served by high quality transit, the demand for high quality education will continue to grow. This creates an opportunity for charter schools to rise to the occasion.

To qualify, the site must be located in an urban area on a site that was either previously developed or that adjoins urban uses on at least three quarters of the site's perimeter. A site "adjoins" urban uses if it is immediately adjacent or is only separated by an improved public right-of-way. The project must also be consistent with the general use designation, density, building intensity, and applicable policies specified for the project

area in a Sustainable Communities Strategy. The project must also incorporate on-site renewable energy generation. If the site has a history of contamination, there must be documentation of how the site has been remediated, or is in the process of remediation.

The site must also be located in proximity to its student population. An elementary school qualifies for streamlining if it is within one mile of fifty percent of its projected student population. A middle or high school site qualifies if it is located within two miles of fifty percent of its projected student population. Alternatively, a site can qualify if it is within ½ mile of a stop on a bus or rail line featuring service at 15 minute intervals during peak hours. Finally, the school must provide parking and storage for bicycles and scooters.

If the site where a charter school proposes to locate qualifies for streamlining, the city can approve the project without having to repeat environmental analysis that was previously done on a city-wide or regional level. This advantage will be most helpful where an EIR was already certified for the Sustainable Communities Strategy, General Plan, or other community-level planning document, which assumed development of the site as a school. This allows the review of the school project to be focused on those effects that were not previously considered. In preparing their communities to accommodate more urban growth, many jurisdictions have developed uniformly-applicable policies or standards that address environmental issues on a city-wide basis. The application of these policies or standards can be invoked to further streamline environmental review.

PREPARATION OF AN INITIAL STUDY

Once the agency determines that the project is subject to CEQA, the standard process of environmental review begins with preparation of an initial study. A checklist form has been adopted for this purpose, which is found in Appendix G of the CEQA Guidelines (reproduced as Appendix G to this Guide). To assist the city with completion of this form, the city will typically include a lengthy questionnaire among its application materials. To complete the initial study, the applicant must provide information re-

lated to eighteen environmental topics covered by Appendix G: aesthetics, agriculture and forestry resources, air quality, biological resources, cultural resources, geology/soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation and traffic, utilities and service systems, and mandatory findings of significance.

The topics covered by an initial study range from ordinary to the complex, and may call for the completion of one or more individual technical analyses. Particularly in urban settings, engineering studies may be needed to answer questions related to geology, hydrology, traffic and utility systems. Therefore, a city may require these and other studies to be completed by the applicant before the development application will be considered complete for processing. Not every topic on the checklist is relevant to every project. For example, where the site proposed for a charter school is in an urban area, the initial study will likely determine that the topic of mineral resources is not applicable. Conversely, because of the special requirements that apply to school projects, every school will need to devote particular study to the topic of hazards and hazardous materials.

Significance Determinations. For every question on the checklist, the city must make an environmental determination. The city can find that the impact is not relevant to the project, in which case it may find that there will be no impact from the project. Where an impact is relevant to the project, the city must apply a threshold to determine whether the impact will be significant or less-than-significant. Each city is left to determine the significance of an environmental impact according to its own significance threshold.

As an example, whether the effect of noise on the project will be significant can be determined by reference to objective noise standards found in the General Plan or zoning. Where the site is located close to a freeway or railroad line, the existing noise level may be considered unacceptable for a school use. The initial study might disclose a

decibel level that is measured at the site during the relevant time of day of 57 decibels, where the threshold for significance for a school use may be 55 decibels. In that case, the initial study would determine that the noise impact of the project is significant.

Cumulative Impacts. In addition to the assessment of specific environmental impacts, the city must also determine whether the project will have one of three mandatory findings of significance. Foremost among these is the finding that the project will have impacts that are individually limited, but cumulatively considerable. A cumulative impact is one in which the project makes a contribution which, when combined with the contributions of other reasonably foreseeable projects in a relevant area, will have a cumulatively considerable effect. Most often cumulative effects are found to be considerable in the context of an air basin, water body, or freeway which is already significantly impaired or polluted. Adding even a small amount of emissions or new vehicle trips, insignificant at the project-level, can be considered a cumulatively considerable and significant environmental impact.

Social and Economic Effects. While an initial study covers a broad range of environmental impacts, which include effects on natural as well as the "built environment" of roads and structures, CEQA is not concerned with purely economic or social effects. While the city may have policies in its General Plan that relate to public safety and address the potential effects of criminal behavior and crowds, the potential for a school or performing arts venue to draw large crowds to an area should be characterized as a social rather than an environmental impact. Similarly, the effect that a charter school may have on the operating revenue of other, competing public schools, while significant for economic reasons, is not an environmental impact to be addressed in the CEQA process. The remaining steps in the CEQA process largely depend on the conclusions in the initial study.

ADOPTION OF A NEGATIVE DECLARATION/MITIGATED NEGATIVE DECLARATION

With the completion of an initial study, the city determines whether the project will have one or more significant environmental effects. If the project will not have a signif-

icant effect, or if mitigation measures are available to address all of the effects, the city may adopt a Negative Declaration (or "Mitigated Negative Declaration") for the project. It is very common for charter school facilities projects to be completed with either a Negative Declaration or Mitigated Negative Declaration. Returning to the earlier example of a significant noise impact, the initial study may determine that the noise impact can be reduced by the construction of a solid masonry wall. In that example, if the city found that the wall would reduce the existing noise level by 5 decibels, the initial study could find that the effect of noise would be less than significant, reducing the existing noise level from 57 to 52 decibels (which is below the significance threshold of 55 decibels). This and other conclusions would support the city's determination, at the conclusion of the initial study, that the project will not have a significant effect.

Public Review. After assessing all impacts and recommending all feasible mitigation measures, the city will circulate the initial study to the public for review and comment for a period of at least 30 days. The initial study is typically sent to interested public agencies and environmental organizations, with a request for comments to be submitted before the close of the public comment period. Where an agency or a member of the public disagrees with a conclusion in the initial study, it is important that the criticism include supporting documentation. A bare or conclusory opinion that a project's impacts will be more significant than disclosed in the initial study, which is not supported by reasoned analysis, factual evidence, or scientific study, usually does not provide a basis for overturning the conclusion that the project will not have a significant environmental impact. If corrections in the analysis of the initial study are needed, but there is no change to its conclusions, the document can be recirculated to the public. Once the initial study has been circulated for public comment, the city will schedule public hearings on the project.

The "Fair Argument" Standard. Where an agency or project opponent can show that the city's conclusion that the project will not have an impact on the environment is erroneous, it is an abuse of discretion for the city to adopt a Negative Declaration (or MND) for the project. This may occur where the city failed to properly analyze or

disclose a particular environmental effect, or where an opponent of the project conducts its own analysis of a particular impact which reaches a contrary conclusion. CEQA must be interpreted in a manner that provides the fullest possible protection to the environment. This establishes a low threshold for reversing a city's conclusion that a Negative Declaration or MND is appropriate. More specifically, the "fair argument" standard is applied to determine whether an Environmental Impact Report (EIR) should be prepared instead of a Negative Declaration or MND. Under this test, if it can be fairly argued that the project may have an environmental impact, the city must prepare an EIR even though it has concluded that there is no potential for such an impact to result. The EIR process is discussed in the next section.

PREPARATION OF AN ENVIRONMENTAL IMPACT REPORT

Where the city determines that a project may have a significant impact on the environment, the city must prepare an Environmental Impact Report (EIR). The city may commence the EIR process after preparing an initial study, or the city may determine at the outset that an EIR is appropriate. In terms of the length of time to prepare, where the process to approve a project with a Negative Declaration or MND may take six months or less, most cities are unable to approve a project with an EIR in less than a full year. This is because the EIR will typically examine all of the potential impacts of a project comprehensively and at a level of detail that is more robust than in an initial study. Typically, an EIR is completed by a consultant retained by the city and paid for by the applicant. For large land use projects, it is not uncommon for an EIR to cost the applicant $100,000 or more to prepare. Where streamlining is available (discussed above), the cost and scope of an EIR can be reduced significantly.

Draft EIR. The EIR process generally commences with the publication of a Notice of Preparation (NOP), which the city sends to interested agencies and individuals, inviting comments on the scope and contents to be covered by the EIR. After receiving comments on the NOP, a Draft EIR is prepared by the consultant, which includes those technical analyses necessary to evaluate environmental effects. An EIR for a new school

facility will likely include extensive discussions of air quality, geology and seismic or geotechnical issues, greenhouse gas emissions, hazards and hazardous materials, and traffic and transportation. Unlike an initial study, an EIR is also required to consider alternatives to the project. Once the city is satisfied with the contents of the Draft EIR, it is circulated for comment to members of the public for a period of at least 30 days.

Final EIR. The city is required to respond to written comments on the Draft EIR, by preparing a set of written responses and making any necessary changes to the EIR. These responses to comments and revisions are then released as the "Final" EIR, which must be made available to the public at least ten days before the city approves the project. Where a commenter shows that an effect of the project will be significant, either because the Draft EIR ignored the issue or concluded that it would be less-than-significant, the city may decide to recirculate the Draft EIR for an additional comment period. The desire to avoid this problem drives the length of time to prepare the Draft EIR, which must comprehensively analyze all environmental impacts.

Unlike a Negative Declaration or MND, in which the city concludes that a project will not have a significant effect on the environment, an EIR may conclude that the effects of the project will be significant. Such a conclusion does not absolve the city from imposing feasible mitigation measures to address the significant effects. However, an EIR does allow the city to find that there is no feasible mitigation available to address an impact. In such a case, the city may conclude that the impact remains significant and unavoidable. Such a conclusion must be discussed in written findings that are prepared, usually by the applicant, and disclosed to the public before action is taken to approve the project. It is very important for the city to properly document its rationale for approving the project in the face of the environmental impacts disclosed in the EIR.

PREPARATION OF FINDINGS OF FACT

Cities are required to properly document their rationale for approving projects, whether subject to CEQA or not. This is because each city's land use decisions must be found to be consistent with their General Plan, zoning and other applicable land use policies.

CEQA also calls for certain findings of fact to be prepared, particularly after the city has prepared an EIR. These EIR findings disclose the city's rationale in approving the project, explain how the city evaluated each of the impacts of the project on the environment, evaluate alternatives to the project, and discuss all feasible mitigation measures as well as any mitigation measures that were considered, but rejected as infeasible.

Where an EIR discloses that the project will have an effect on the environment for which feasible mitigation is not available, the city is allowed to find that specific legal, social, economic or policy reasons justify approval of the project notwithstanding its significant effect. This special finding is known as a statement of overriding considerations, and must be adequately supported by specific factual information in the administrative record. Cost alone is not a sufficient basis for finding that a mitigation measure is infeasible. Even public agencies with limited resources must thoroughly examine all potential sources of funding before concluding that a particular mitigation measure is infeasible. Even in those circumstances where an EIR is not prepared for the project, it is good practice to explain how the project complies with all applicable standards, policies and requirements of the city.

FILING A NOTICE OF DETERMINATION

After the city approves the project, there is a specific form that the city completes and files in the official records. The filing of this "Notice of Determination" (NOD) commences the running of the statute of limitations for the filing of a lawsuit challenging the city's CEQA determination. At the time that the NOD is filed, the applicant must also pay a filing fee that the Recorder collects on behalf of the California Department of Fish and Wildlife. By law, the project entitlements are not considered valid or operative, the CEQA process is not complete, and the statute of limitations does not begin to run, until this fee is paid. Effective January 1, 2018, the amount of the filing fee is $2,280.75 for a Negative Declaration or MND and $3,168.00 for an EIR, plus a $50 processing fee collected by the Recorder. These amounts are increased annually on January 1. Payment of the filing fee is waived for a project which will have no effect on

fish and wildlife. The fee is also not collected for a project which is exempt from CEQA. Once the fee is paid and the NOD is recorded, a 30-day statute of limitations on a challenge to the project commences.

Judicial Review

While the number of CEQA lawsuits filed in the state is small in comparison to the number of projects approved in compliance with CEQA, the threat of litigation, and particularly the risk of an attorneys' fee award, makes it important for applicants to have a basic understanding of judicial review. The role of the court in a CEQA lawsuit is more limited than in other contexts. This is because there is usually no opportunity to raise new factual issues in the judicial setting. Instead, all of the specific environmental determinations have already been made by the city, which certifies its determination that the law has been followed. Therefore, most of the issues that the court considers are legal questions, where the role of the court is to determine whether the city properly followed the law. For most of these issues, the court will defer to the city's resolution of the issue if it is clear that the city properly followed the substantive and procedural requirements of CEQA.

In most CEQA challenges, the plaintiff (called a "petitioner") typically seeks an injunction to halt construction of the project. Absent an unusual circumstance, such as the need to protect a historical resource, the court is not likely to grant an injunction. Instead, construction of the project can commence. However, the applicant bears the risk that the city's approval will be overturned. As a practical matter, this can usually be addressed by performing additional study or agreeing to perform additional mitigation measures. Still, the cloud of a pending lawsuit can make financing a large project more difficult.

STANDARD OF REVIEW

One area where courts are less likely to accord deference to the city's determination is the choice to adopt a Negative Declaration. In these circumstances, CEQA's command that the law be interpreted in a manner most protective of the environment overrides

the court's typical deference to the administrative process. Lead agencies must therefore make additional efforts to address public concerns raised during the review of an initial study. Under the fair argument standard, most environmental issues will be resolved in favor of the comprehensive study that is provided in an EIR. In such cases, the lead agency must convince the court that the comment does not actually contradict the conclusions of the initial study. Where it can be fairly argued that the project may have an impact on the environment, regardless of the evidence supporting the lead agency's conclusion, a petition seeking to overturn the lead agency's reliance on a Negative Declaration or MND will be granted.

Whether the fair argument standard applies to an issue can be the most important factor at play in a CEQA lawsuit. This is because the other standard of review that applies under CEQA, the abuse of discretion standard in Section 21168.5 of the Public Resources Code, is highly deferential to the lead agency. A reviewing court will only overturn a lead agency's decision under this standard if it is established that the city did not proceed in a manner required by law or the decision is not supported by substantial evidence. The lead agency secures the benefit of this standard when it prepares an EIR. Where an EIR has been prepared, a lead agency's factual conclusions (if supported by "substantial evidence") will generally be upheld by a reviewing court notwithstanding evidence in the record to support a contrary conclusion. The abuse of discretion standard also applies to the lead agency's reliance on an exemption from CEQA. The proper use of an exemption will not be overturned merely because it can be fairly argued that the project may result in an impact on the environment.

DEFENSES

Standing. There are two main defenses available to the lead agency in a CEQA lawsuit. First, to have standing to make a CEQA challenge, the petitioner must show that it raised its concerns with the lead agency before the project was approved. While most CEQA lawsuits are based on arguments raised in a comment letter that is submitted during the circulation of an initial study or Draft EIR, the requirement to exhaust the

petitioner's administrative remedy is satisfied even if that argument is not made until the final hearing. This can create a dilemma where a delay in the approval process to address a last-minute challenge causes the school to miss its opportunity to open with enough time to accept students at the beginning of the school year. In such cases, the decision to adhere to the construction schedule can come at the expense of a favorable litigation outcome.

Statute of Limitations. The other main defense available to a lead agency in a CEQA lawsuit is the relatively short timeframe for filing and serving the lawsuit on the parties, as set forth in Section 21167 of the Public Resources Code. The filing of a notice of determination commences a 30-day statute of limitations. Where the lead agency determines that the project is exempt from CEQA, it may file a similar notice after approving the project, which commences a 35-day statute of limitations. Because a defective notice will not commence the statute of limitations, allowing a challenge to be filed within a longer 180-day period, the lead agency should take care to properly file the Notice of Determination or Notice of Exemption after approving the project.

RECOVERY OF ATTORNEYS' FEES

A petitioner that is successful in a CEQA lawsuit can recover its attorneys' fees under the private attorney general doctrine. This doctrine is based on the theory that, without the ability to recover attorneys' fees, important matters affecting the public interest would not be litigated. The protection of the environment under CEQA is widely accepted as such a matter deserving of enforcement under the doctrine.

To recover attorneys' fees, the petitioner must show that its lawsuit served the public by advancing an interest that benefitted the community or a large group of people, and that pursuing the litigation would have been infeasible without the prospect of attorneys' fee recovery. This is unilateral; successful defendants are not allowed to recover their attorneys' fees against an unsuccessful plaintiff.

An award of attorneys' fees to a successful CEQA petitioner should be fully compensatory, and include all time spent by the petitioner's attorney during the administrative process in addition to trial and appellate litigation. As CEQA attorneys in metropolitan areas can show comparable hourly rates in excess of $400 per hour, awards of attorneys' fees in CEQA cases can reach the hundreds of thousands of dollars. Project proponents cannot avoid paying attorney's fees by abandoning the approval in response to the lawsuit; the petitioner is still allowed to claim victory and recover its attorneys' fees.

Indemnity. Because of their exposure to an award of attorneys' fees, cities routinely require an applicant to indemnify the city, and usually will not process the application until this indemnity is provided. This shifts the entire cost of the defense of the CEQA lawsuit to the applicant, who typically must also pay all staff costs incurred by the city in processing the development application and complying with CEQA. These factors should be considered when initially estimating a budget for a charter school's entitlements.

Exposure to attorney's fees under CEQA generally motivates applicants to prepare more thorough environmental documents and thereby improve their chances of success in litigation. Efforts to reform CEQA have thus far been limited, with the most significant changes focused on infill developments in urban areas where increased development is needed to accommodate growth in a manner that will not exacerbate the problem of global climate change.

CEQA: Selected Categorical Exemptions

Class 1. § 15301. Existing Facilities.

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

Examples include but are not limited to:

(a) Interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances;

(b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services;

(c) Existing highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety).

(d) Restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood;

(e) Additions to existing structures provided that the addition will not result in an increase of more than:

(1) 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or

(2) 10,000 square feet if:

(A) The project is in an area where all public services and facilities are available to allow for maximum development permissible in the General Plan and

(B) The area in which the project is located is not environmentally sensitive.

(f) Addition of safety or health protection devices for use during construction of or in conjunction with existing structures, facilities, or mechanical equipment, or topographical features including navigational devices;

(g) New copy on existing on and off-premise signs;

(h) Maintenance of existing landscaping, native growth, and water supply reservoirs (excluding the use of pesticides, as defined in Section 12753, Division 7, Chapter 2, Food and Agricultural Code);

(i) Maintenance of fish screens, fish ladders, wildlife habitat areas, artificial wildlife waterway devices, streamflows, springs and waterholes, and stream channels (clearing of debris) to protect fish and wildlife resources;

(j) Fish stocking by the California Department of Fish and Game;

(k) Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt;

(l) Demolition and removal of individual small structures listed in this subdivision;

(1) One single-family residence. In urbanized areas, up to three single-family residences may be demolished under this exemption.

(2) A duplex or similar multifamily residential structure. In urbanized areas, this exemption applies to duplexes and similar structures where not more than six dwelling units will be demolished.

(3) A store, motel, office, restaurant, and similar small commercial structure if designed for an occupant load of 30 persons or less. In urbanized areas, the exemption also applies to the demolition of up to three such commercial buildings on sites zoned for such use.

(4) Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

(m) Minor repairs and alterations to existing dams and appurtenant structures under the supervision of the Department of Water Resources.

(n) Conversion of a single family residence to office use.

(o) Installation, in an existing facility occupied by a medical waste generator, of a steam sterilization unit for the treatment of medical waste generated by that facility provided that the unit is installed and operated in accordance with the Medical Waste Management Act (Section 117600, et seq., of the Health and Safety Code) and accepts no offsite waste.

(p) Use of a single-family residence as a small family day care home, as defined in Section 1596.78 of the Health and Safety Code.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code; Bloom v. McGurk (1994) 26 Cal.App.4th 1307.

Class 2. § 15302. Replacement or Reconstruction.

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

(a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent;

(b) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

(c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.

(d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

Class 14. § 15314. Minor Additions to Schools.

Class 14 consists of minor additions to existing schools within existing school grounds where the addition does not increase original student capacity by more than 25% or ten classrooms, whichever is less. The addition of portable classrooms is included in this exemption.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

Class 22. § 15322.
Educational or Training Programs Involving No Physical Changes.

Class 22 consists of the adoption, alteration, or termination of educational or training programs which involve no physical alteration in the area affected or which involve physical changes only in the interior of existing school or training structures. Examples include but are not limited to:

(a) Development of or changes in curriculum or training methods.

(b) Changes in the grade structure in a school which do not result in changes in student transportation.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

Class 32. § 15332. In-Fill Development Projects.

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section. (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city

limits on a project site of no more than five acres substantially surrounded by urban uses. (c) The project site has no value, as habitat for endangered, rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Section 21084, Public Resources Code.

Exceptions to Categorical Exemptions. § 15300.2. Exceptions.

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

Note: Authority cited: Section 21083, Public Resources Code. Reference: Sections 21084 and 21084.1, Public Resources Code; Wildlife Alive v. Chickering (1977) 18 Cal.3d190; League for Protection of Oakland's Architectural and Historic Resources v. City of Oakland (1997) 52 Cal.App.4th 896; Citizens for Responsible Development in West Hollywood v. City of West Hollywood (1995) 39 Cal.App.4th 925; City of Pasadena v. State of California (1993) 14 Cal.App.4th 810; Association for the Protection etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720; and Baird v. County of Contra Costa (1995) 32 Cal.App.4th 1464.

CEQA: Environmental Checklist Form

1. Project title: _____

2. Lead agency name and address: _____

   _____

3. Contact person and phone number: _____

4. Project location: _____

5. Project sponsor's name and address: _____

   _____

6. General plan designation: _____ 7. Zoning: _____

8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. (Attach additional sheets if necessary.)

   _____

   _____

   _____

9. Surrounding land uses and setting. Briefly describe the project's surroundings:

   _____

   _____

   _____

10. Other public agencies whose approval is required
    (e.g., permits, financing approval, or participation agreement.)

    _____

    _____

    _____

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- ❑ Aesthetics
- ❑ Agriculture Resources
- ❑ Air Quality
- ❑ Biological Resources
- ❑ Cultural Resources
- ❑ Geology & Soils
- ❑ Hazards & Hazardous Materials
- ❑ Hydrology & Water Quality
- ❑ Land Use & Planning
- ❑ Mineral Resources
- ❑ Noise
- ❑ Population & Housing
- ❑ Public Services
- ❑ Recreation
- ❑ Transportation & Traffic
- ❑ Utilities & Service Systems
- ❑ Mandatory Findings of Significance

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

- ❑ I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
- ❑ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- ❑ I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- ❑ I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- ❑ I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

_____ _____

Signature Date

_____ _____

Printed Name For

EVALUATION OF ENVIRONMENTAL IMPACTS:

1. A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).

2. All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.

3. Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.

4. "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," as described in (5) below, may be cross-referenced).

5. Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:

   a) Earlier Analysis Used. Identify and state where they are available for review.

   b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

   c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

6. Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.

7. Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
8. This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
9. The explanation of each issue should identify:
   a) the significance criteria or threshold, if any, used to evaluate each question; and
   b) the mitigation measure identified, if any, to reduce the impact to less than significance

SAMPLE QUESTION:

Issues:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS: Would the project:				
a) Have a substantial adverse effect on a scenic vista?	❑	❑	❑	❑
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	❑	❑	❑	❑
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	❑	❑	❑	❑
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	❑	❑	❑	❑
II. AGRICULTURE RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	❑	❑	❑	❑

b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	❑	❑	❑	❑
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	❑	❑	❑	❑
III. AIR QUALITY: Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	❑	❑	❑	❑
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	❑	❑	❑	❑
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	❑	❑	❑	❑
d) Expose sensitive receptors to substantial pollutant concentrations?	❑	❑	❑	❑
e) Create objectionable odors affecting a substantial number of people?	❑	❑	❑	❑
IV. BIOLOGICAL RESOURCES: Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	❑	❑	❑	❑
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	❑	❑	❑	❑

c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	❑	❑	❑	❑
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	❑	❑	❑	❑
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	❑	❑	❑	❑
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	❑	❑	❑	❑
V. CULTURAL RESOURCES: Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	❑	❑	❑	❑
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?	❑	❑	❑	❑
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	❑	❑	❑	❑
d) Disturb any human remains, including those interred outside of formal cemeteries?	❑	❑	❑	❑
VI. GEOLOGY AND SOILS: Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:	❑	❑	❑	❑
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	❑	❑	❑	❑

ii) Strong seismic ground shaking?	❑	❑	❑	❑
iii) Seismic-related ground failure, including liquefaction?	❑	❑	❑	❑
iv) Landslides?	❑	❑	❑	❑
b) Result in substantial soil erosion or the loss of topsoil?	❑	❑	❑	❑
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	❑	❑	❑	❑
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	❑	❑	❑	❑
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?	❑	❑	❑	❑
VII. HAZARDS AND HAZARDOUS MATERIALS: Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	❑	❑	❑	❑
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	❑	❑	❑	❑
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	❑	❑	❑	❑
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	❑	❑	❑	❑

e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	❑	❑	❑	❑
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	❑	❑	❑	❑
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?	❑	❑	❑	❑
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	❑	❑	❑	❑
VIII. HYDROLOGY AND WATER QUALITY: Would the project:				
a) Violate any water quality standards or waste discharge requirements?	❑	❑	❑	❑
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	❑	❑	❑	❑
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	❑	❑	❑	❑
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	❑	❑	❑	❑

e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	❑	❑	❑	❑
f) Otherwise substantially degrade water quality?	❑	❑	❑	❑
g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	❑	❑	❑	❑
h) Place within a 100-year flood hazard area structures which would impede or redirect flood flows?	❑	❑	❑	❑
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	❑	❑	❑	❑
j) Inundation by seiche, tsunami, or mudflow?	❑	❑	❑	❑
IX. LAND USE AND PLANNING: Would the project:				
a) Physically divide an established community?	❑	❑	❑	❑
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	❑	❑	❑	❑
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	❑	❑	❑	❑
X. MINERAL RESOURCES: Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	❑	❑	❑	❑
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	❑	❑	❑	❑

XI. NOISE: Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	❑	❑	❑	❑
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels?	❑	❑	❑	❑
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	❑	❑	❑	❑
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	❑	❑	❑	❑
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	❑	❑	❑	❑
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	❑	❑	❑	❑
XII. POPULATION AND HOUSING: Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	❑	❑	❑	❑
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	❑	❑	❑	❑
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	❑	❑	❑	❑

XIII. PUBLIC SERVICES

a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	❑	❑	❑	❑
Police protection?	❑	❑	❑	❑
Schools?	❑	❑	❑	❑
Parks?	❑	❑	❑	❑
Other public facilities?	❑	❑	❑	❑

XIV. RECREATION

a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	❑	❑	❑	❑
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	❑	❑	❑	❑

XV. TRANSPORTATION/TRAFFIC: Would the project:

a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	❑	❑	❑	❑
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	❑	❑	❑	❑
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	❑	❑	❑	❑

d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	❑	❑	❑	❑
e) Result in inadequate emergency access?	❑	❑	❑	❑
f) Result in inadequate parking capacity?	❑	❑	❑	❑
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	❑	❑	❑	❑
XVI. UTILITIES AND SERVICE SYSTEMS: Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	❑	❑	❑	❑
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	❑	❑	❑	❑
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	❑	❑	❑	❑
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	❑	❑	❑	❑
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	❑	❑	❑	❑
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	❑	❑	❑	❑
g) Comply with federal, state, and local statutes and regulations related to solid waste?	❑	❑	❑	❑

XVII. MANDATORY FINDINGS OF SIGNIFICANCE

a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?	❑	❑	❑	❑
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	❑	❑	❑	❑
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	❑	❑	❑	❑

Note: Authority cited: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21080(c), 21080.1, 21080.3, 21082.1, 21083, 21083.3, 21093, 21094, 21151, Public Resources Code; Sundstrom v. County of Mendocino, 202 Cal.App.3d 296 (1988); Leonoff v. Monterey Board of Supervisors, 222 Cal.App.3d 1337 (1990).