

LAND USE REGULATION IN A 'FREE MARKET SOCIETY'*

Katharine ROSENBERRY

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There is a perception among some that because the United States is considered a 'free market society' it does not regulate the development of land. This is an inaccurate perception. An extreme example demonstrating the inaccuracy of the perception is the amount of regulation that exists in San Marino, California, a city located in southern California.

San Marino, a wealthy town where the average price of a home is \$650,000, may have more regulations per capita than any city in the United States (1). In San Marino it is illegal to have a trash can or air-conditioner in public view, a dead lawn or a chain link fence. Bicycles cannot rest on the grass or against trees, and at least eighty percent of the words on a business sign must be in English. Watering the sidewalk is a crime. Only single family households are permitted, and kitchens must be on the first floor of a home. Trees may not be cut down without City approval, and if a homeowner does a poor job of trimming a tree, he or she may be sent to a tree trimming class run by the City. These are just a few of the regulations. Even though the City only has a population of 13,000 there were more than 700 code enforcement violations filed in 1998.

It is important to note, however, that while San Marino appears to have an excessive amount of regulation, this amount of regulation would not exist if there were not strong support for it among the residents. This sentiment is expressed by the resident who said,

1. 'Stiff Laws Keep San Marino', Los Angeles Times, December 1, 1998, at B12.

We love this town, and the rules are how we keep it this way (1).

Figure 1. Hierarchy of Land Regulation Laws in the United States.

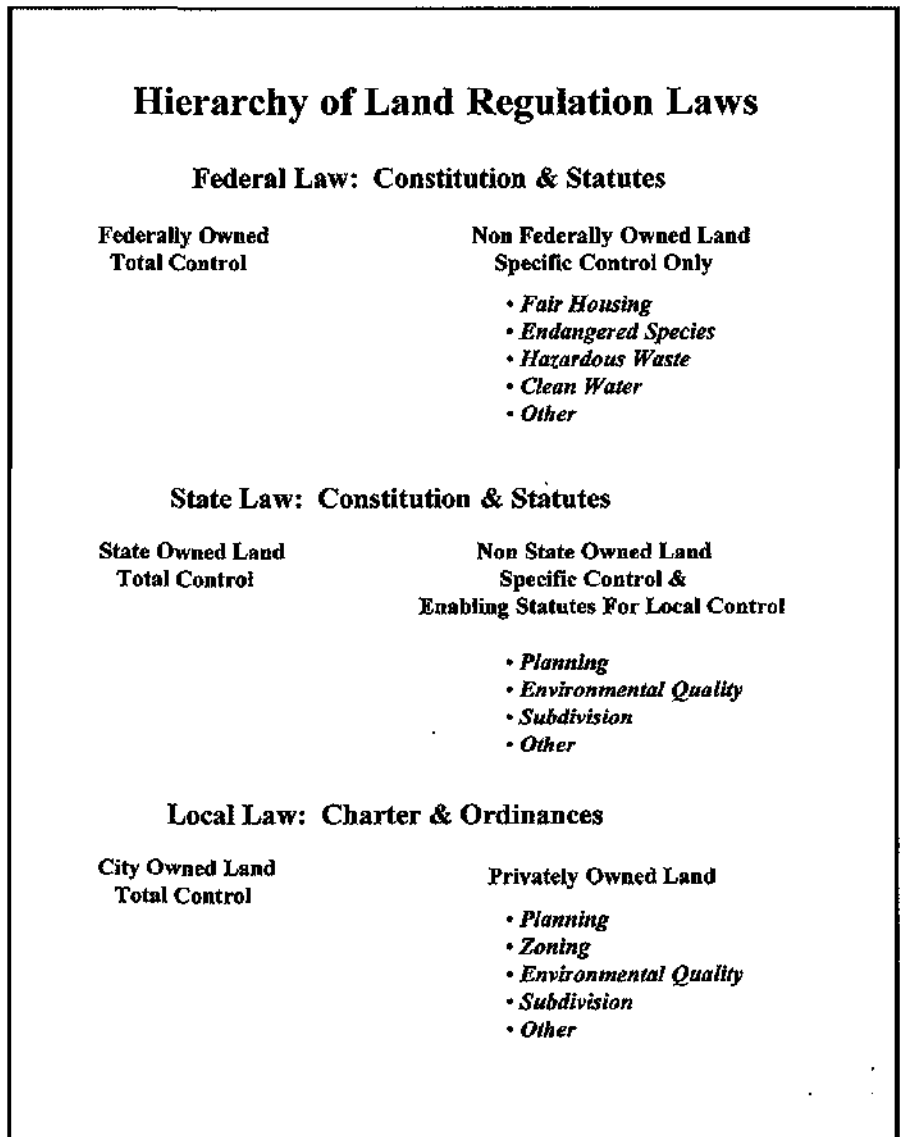


Figure 2. Location of Los Angeles and San Diego in the United States.

As mentioned, San Marino is an extreme example of land use regulation. However, landowners who wish to develop their land in any state in the United States must comply with a wide variety of land use laws which will be discussed below.

The United States has federal law regulating the development of land. In addition, the United States is comprised of fifty states each of which has a different set of law regulating land. These states are comprised of local governmental entities, usually called cities, counties or townships. These local governments also regulate the use of land. **Figure 1** depicts the hierarchy of land use regulations. A developer must comply with federal, state, and local land use law.

Because of the wide variety of land use laws, it would be impossible to describe all of the land use regulations existing in the United States. Instead, this article will discuss one set of regulations applying to one residential development in order to demonstrate the type of regulations with which a landowner must comply when developing his or her property.

Let us assume that Ms. Smith wishes to build 120 houses on 30 acres of land she owns in Scripps Ranch which is a neighborhood located in San Diego, California. San Diego is located on the Pacific Coast. Its downtown area is approximately 120 miles south of Los Angeles and approximately 20 miles north of the Mexican border (**Figure 2**). Scripps Ranch is a geographic area of the City of San Diego, and it is located approximately 20 miles north of the City's downtown area.

California has a population of approximately 32 million people (2). San Diego has a population of approximately 1.25 million people and contains approximately 212,000 acres (3). Scripps Ranch has a population of approximately 20,000 people and contains about 10,000 acres (4).

2. As of July 1, 1998, the U.S. Bureau of Census, <http://www.census.gov/cgi-bin/data-map> (1999).

3. Information provided by Mary Slupe, Senior Drafting Aide for the Long Range Planning Department of the City of San Diego (June, 1999).

4. Curtis C. Sproul and Katharine N. Rosenberry, advising California Condominium and Home-Owners Associations 1.29 (Continuing Education of the Bar, 1991).

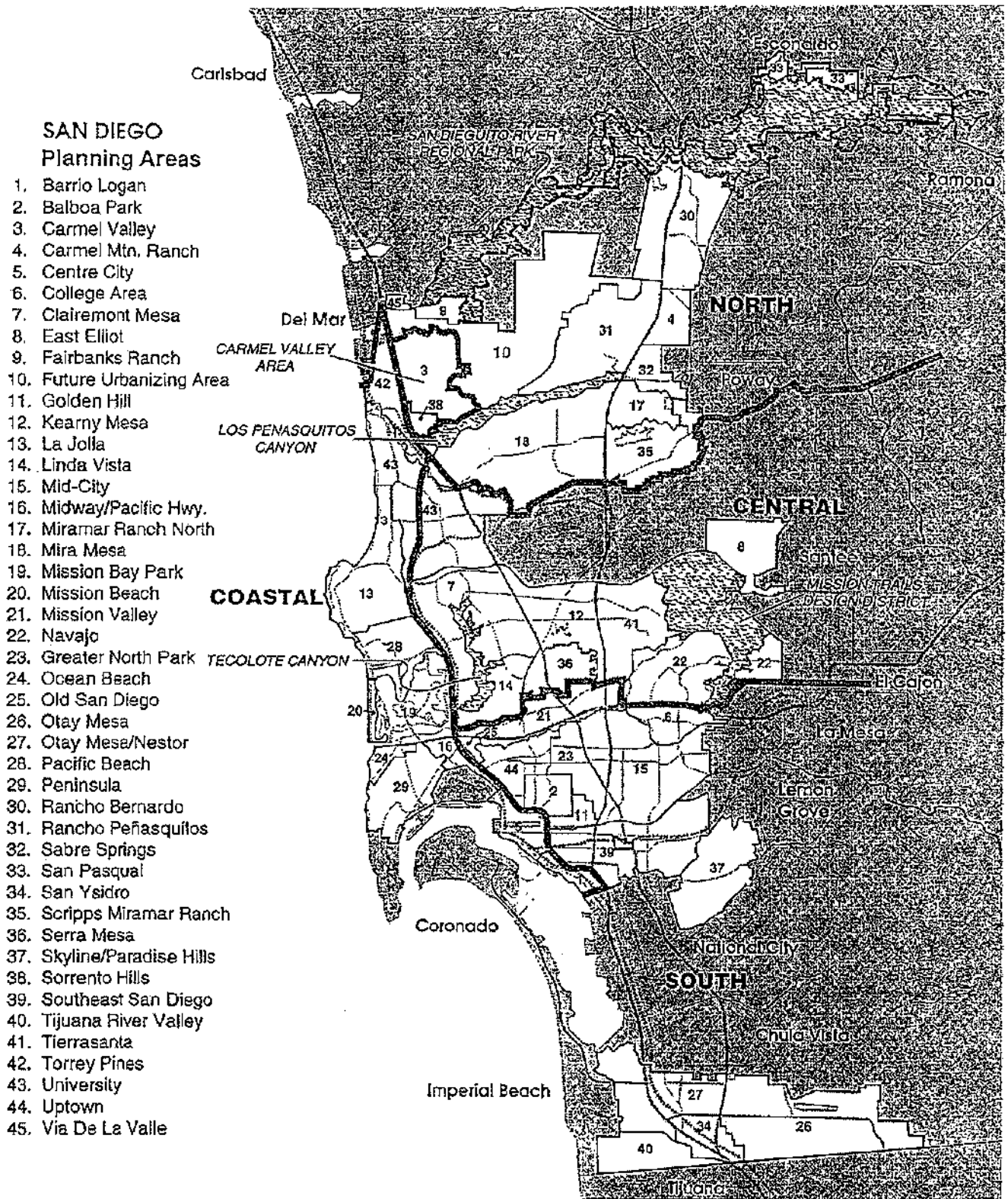
5. 24 Code of Federal Regulations (**100.204-100.205).

FEDERAL REGULATION

The first level of governmental regulation that Ms. Smith must consider occurs at the federal level. Federal law applies to all 50 states and takes precedence over state laws that conflict with it. Most federal laws do not directly affect the development of non-federal land. Some federal laws, however, do. For example, if Ms. Smith wishes to build attached housing containing four or more units, she will have to comply with the federal *Fair Housing Act* (5).

The federal *Fair Housing Act* prohibits discrimination on the basis of handicap, among other things. This Act imposes requirements on new construction containing four or more residential units. Requirements include the obligation to install an elevator if there is more than one floor, reinforce walls for grab-bars in the bathrooms, build doorways and cabinets that are wheelchair accessible, and build ramps from the street curbs to the building containing the residential units (33 U.S.C. *1251).

Regardless of the type of homes Ms. Smith wishes to build, she also will have to comply with the *Federal Water Pollution Control Act Amendments of 1972* (commonly known as the *Clean Water Act*) if her property is located in wetlands. The *Clean Water Act* requires a property owner to seek permission from the Army Corps of Engineers before he or she is permitted to develop land in a manner that will discharge any pollutants into navigable waters (33 U.S.C. **1311, 1342). 'Navigable waters' includes wetlands. The definition of wetlands includes isolated wetlands if there is some connection between those wetlands and interstate



LAND DEVELOPMENT REVIEW - GEOGRAPHIC ORGANIZED SECTIONS



This map was prepared by
the City of San Diego,
Community & Economic Development Dept.



Figure 3. City of San Diego, Land Development Review.

6. 33 C.F.R. pt. 328 (1994). See *Utah v. Marsh*, 740 F.2d 7999, 804 910th Cir. 19840; *National Wildlife Federation v. Laubscher*, 662 F. Supp. 548 (S.D. Tex. 1987); *Leslie Salt Co. v. U.S.* 55 F.3d 1388 (9th Cir. 1995) cert. denied 116 S. Ct. 407 (1995).

commerce (6). In other words, if Ms. Smith's property contains any wetlands that could eventually enter a flow of water that enters navigable water she will need a permit from the Corps of Army Engineers before she can develop her property. Other types of federal statutes that could affect her development include the *Telecommunications Act* (47 U.S.C. *251) if she intends to install antennas or satellite dishes, the *Hazardous Waste Act* (42 U.S.C. **6921-6931) if she has any hazardous waste on her property, and the *Endangered Species Act* (16 U.S.C. **1531, *et seq.*) if she has any endangered species on her property.

Assuming that Ms. Smith does not wish to build attached units, does not have wetlands on her property, is not installing antennas or satellite dishes on the homes she is going to build, and does not have hazardous waste on her property, she next will be concerned with state and local regulation. Endangered species will be discussed below.

STATE AND LOCAL REGULATION

A. General Plan And Community Plan

While federal law controls the development of federally owned land and some aspects of privately owned land in the United States, it is the state and local governments that have the greatest control over the development of privately owned land.

The fifty states vary dramatically in the extent of control they exert over land development. Some states leave almost all the control over land development to the local governments. In some of these states the local governments exert relatively little control over new construction (7). Other states, such as California have significant regulation at both the state and local levels.

As mentioned, California has approximately thirty-two million people. The state is divided into local jurisdictions called counties. These counties are further divided into incorporated cities and unincorporated land that is any land outside the incorporated cities. The cities have jurisdiction over land development in their boundaries, and the county has jurisdiction over land development in the unincorporated areas. For example, in the County of San Diego there are 18 cities. San Diego is one of those cities, and it controls the development of land in its jurisdiction. San Diego County controls the land not contained within the 18 cities.

While it is logical to assume that all land development within a City or county should proceed according to a preconceived plan, the majority of states in the United States do not require local governments to adopt a comprehensive plan prior to making land use decisions (8). In some states, if the local government has adopted a plan its land use regulation must be consistent with that plan (9). In yet other states, such as California, state law requires cities to plan. Each City and county must have a planning department, and each local government must adopt a General Plan for the development of land within its boundaries (10).

State law requires the local government's General Plan to be a comprehensive, long-term plan for both the physical development of land within the local government's jurisdiction and the physical development of land outside the boundaries of the city or county which relate to its planning (CAL. GOV'T. CODE *65300). The General Plan must state the development policies for the City and include diagrams as well as text (CAL. GOV'T. CODE *65302). It must be internally consistent (CAL. GOV'T. CODE *65300.5). The General Plan is

7. Edward J. Sullivan and Thomas G. Pelham, *Comprehensive Planning and Growth Management*, 28 Urb. Law 819, 121 (1996); *Bogan v Sandoval County Planning and Zoning Commissions*, 890 P.2d 395 (N. M. Ct. App. 1995). Wyoming, for example mandates cities and counties to develop land use plans, but provides few requirements for what a plan must include, in effect allowing for broad local discretion to do little (WY ST 9-8-301, 1999).

8. Peter W. Salsich, Jr., and Timothy J. Tryniecki 25 *Land Use Regulation* (American Bar Association, 1998).

9. See also Joseph DiMento, 1982.

10. Cal. Gov't. Code (*65300) states: '...the legislative body of each county and city shall adopt a comprehensive, long-term general plan...'

Accordingly, the plan must also include land outside its boundaries if it relates to its planning.

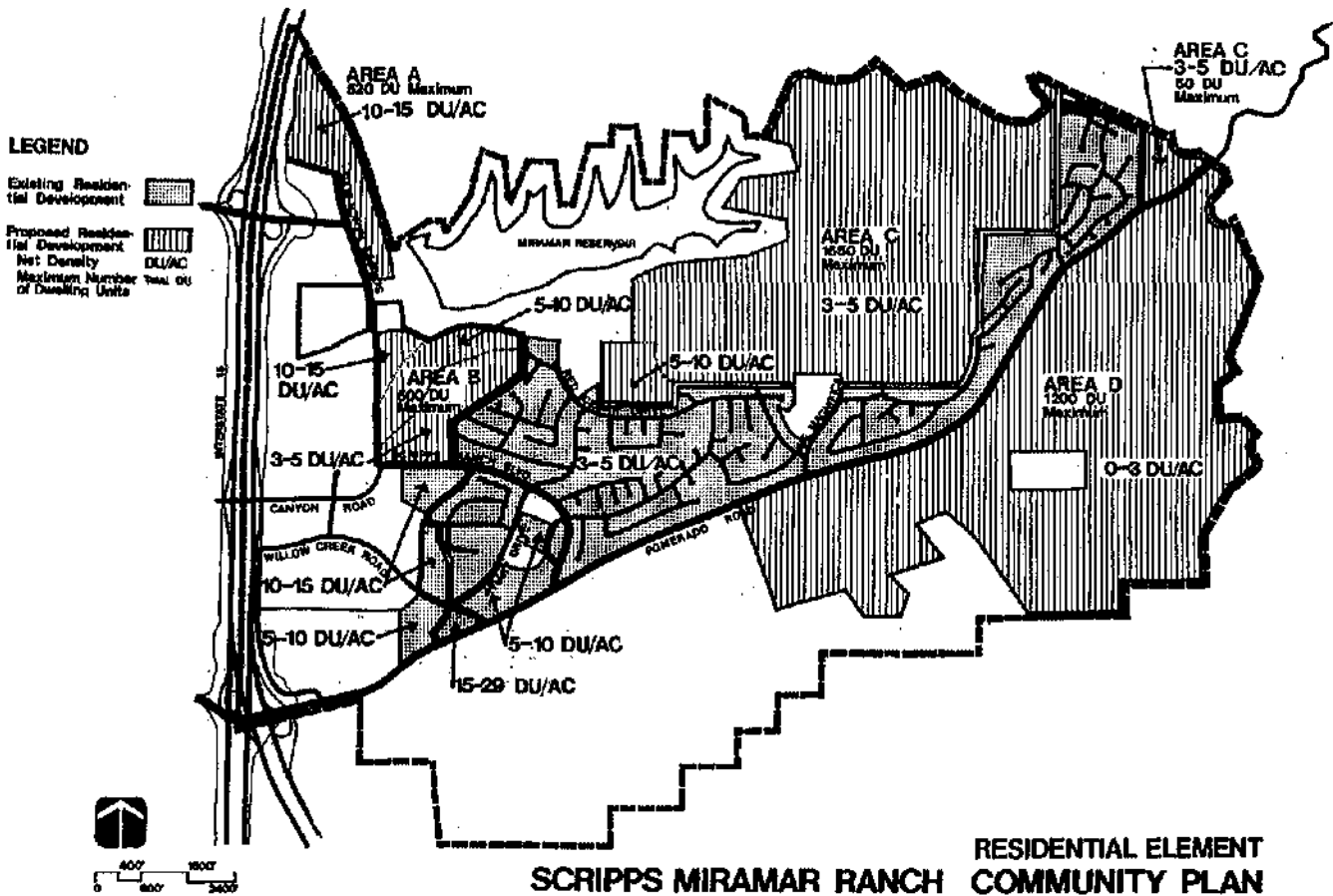


Figure 4. Scripps Miramar Ranch Community Plan.

11. *Leitr Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531 (1990) and *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553 (1990).

12. See *City of Carmel-by-the-Sea v. Board of Supervisors*, 137 Cal.App. 3d 964 (1982); *Walter Camp v. Board of Supervisors*, 123 Cal. App. 3d at 334 (1981); *Save El Toro Ass'n v. Days*, 74 Cal. App. 3d 64 (1977).

13. Only a few states require the local governments to create a General Plan and also require that plan to control all development. Other states require the local governments to prepare a General Plan, but do not require the local governments to follow the plan. Still other states do not require a General Plan. Wyoming, for example, requires local governments to prepare a plan, but does not specify elements, thereby granting virtually total discretion to cities and counties to do what they wish. The small state of Vermont, by contrast, manages most planning at the state level according to a state-wide plan. See Thomas R. McKeon, "State Regulation of Subdivisions: Defining the Boundary Between State and Local Land Use Jurisdiction in Vermont, Maine and Florida", 19 B.C. ENVTL. AFF. L. REV. 385, 392, 411 (1991).

not merely a zoning plan; it is the Constitution upon which land development must be based (11).

Until a local government has an approved General Plan, it may not approve any construction within its jurisdiction (12). Once a city or county has adopted a General Plan, all of its policies and land development approvals must be consistent with the General Plan (CAL. GOV'T. CODE **65300.5, 65300.7) (13). The General Plan must contain seven mandatory sections called elements:

- 1) a Land Use Element that identifies where various uses (such as housing, industry and open space) will occur and the intensity of those uses;
- 2) a Circulation Element that identifies roads and other local public facilities (such as bicycle paths and the location and type of public transit);
- 3) a Conservation Element that identifies natural resources and ways to conserve them;
- 4) an Open-Space Element that identifies recreational facilities, open space and ways in which open space can be preserved;
- 5) a Noise Element that calculates the noise levels from railroads, airports, highways, and other noise producing uses;
- 6) a Safety Element that establishes policies to protect the public from natural disasters such as earthquakes; and
- 7) a Housing Element that identifies the existing housing stock, the existing need for additional affordable housing, and the policies for satisfying the existing needs (CAL. GOV'T. CODE *65300). While State law dictates that the above sections must be included in the General Plan, it permits local governments to determine the specific content of the various elements, to combine elements, and to add additional elements (CAL. GOV'T. CODE *65303).

14. The numbered areas in Figure 3. are part of the City of Diego. Not all parts of the City are contiguous. For example, areas 27, 28, 36 and 44 are not. The map identifies separate incorporated cities such as Coronado, Imperial Beach and Poway that are not part of the City of San Diego.

15. Progress Guide and General Plan for the City of San Diego (June 1989, amended Oct. 1, 1992, page 243).

In addition to a General Plan, a city or county also may adopt a Community Plan which is a plan covering specific geographic areas of the city or county (CAL. GOV'T. CODE *65303, 65454). The Community Plan must be consistent with the General Plan.

The City of San Diego is divided into 49 areas (Figure 3) (14). Some of these areas are large parks, but most are neighborhoods. Each neighborhood has a citizen planning group. These citizen groups participate in the creation of detailed plans for development within their individual neighborhoods with the assistance of staff from the local government planning department. Once the local government approves a Community Plan for a neighborhood, all new construction must be consistent with both the General Plan and the Community Plan (CAL. GOV'T. CODE **65300.5, 65300.7).

Thus, California state law requires all local governments to adopt a General Plan with specific Elements, and permits them also to adopt Community Plans for individual neighborhoods within the city. It is the local government, not the state government that actually does the planning.

The City of San Diego has adopted a General Plan containing all the required Elements. It is a 420 page, detailed document containing text, maps and diagrams. An example of the level of detail in the General Plan can be found in the Housing Element which contains 246 pages and is the largest element in the plan. The Housing Element contains a statistical analysis of the number of persons per household, a statement as to whether the household is headed by a female, male or married couple, the distribution of households by annual gross income, the median family income by ethnicity, housing occupancy by structure type, the apartment vacancy rate, the distribution of government assisted housing, the percentage of home ownership, and the median price of homes as well as many other facts.

It also assesses in detail the need for a variety of housing types and the manner in which the local government will satisfy that need. For example, the General Plan states that the City must provide fifty beds for the homeless in shelters located in designated areas of the City during the three winter months (15).

Other sections are shorter but still detailed. For example, the Urban Design Element provides guidelines and standards for builders. Builders must:

- 1) Recognize and protect major views in the City paying particular attention to views of open space and water;
- 2) recognize that buildings, when seen together, produce a total effect that characterizes the City and its communities;
- 3) emphasize the unique character of each community;
- 4) protect and promote open space systems that define communities;
- 5) increase the visibility of major destination areas and other points for orientations; and
- 6) recognize the relationship of land to structure and the nature and importance of natural land forms and the natural environment (16).

Ms. Smith's desire to build housing at Scripps Ranch is consistent with the General Plan. The area is designated in the General Plan as a predominately residential area, and through careful design she can make her housing development consistent with the other sections of the General Plan.

16. Progress Guide and General Plan for the City of San Diego (June 1989, amended Oct. 1, 1992, pages 372-374).

Making her housing development consistent with the Scripps Miramar Ranch Community Plan will be more difficult because the Community Plan is far more



Figure 5. Scripps Ranch is East of the freeway, West of the Miramar Lake (Air photo, 10.19.1998; North is top of the page).

17. Scripps Miramar Ranch Community Plan (City of San Diego, 1978, amended 1993).

18. 30 gross acres minus 40 percent for streets and open space is 18 net acres.

detailed than the General Plan (17). Scripps Ranch is Area 17 on Figure 3. Figure 4 is a more detailed map of Scripps Ranch. Assume Ms. Smith's property is located in the portion of area C designated 'low density' that permits three to five dwelling units per net residential acre. Net residential acres are calculated by subtracting 15 percent of the gross acreage for streets and 25 percent of the gross acreage for open space. The Community Plan permits area 'C' to have a total of 1650 new dwelling units.

Ms. Smith owns 30 acres which means she has 18 net residential acres (18). She wishes to build 120 homes, but the Community Plan only permits her to construct 90 homes on her property. Consequently, she will have to readjust her expectations. Further, her property is designated as 'low density' which includes primarily single-family residential development (Scripps Ranch Plan, 10). Therefore, she will not be able to build apartment buildings to achieve a higher density.

Ms. Smith also will have to consider other sections of the Community Plan such as the Open Space Element. Scripps Ranch has a hilly terrain which makes it impossible to build on many of the slopes. These slopes must be left as open space according to the Open Space Element. One of the objectives of the Open Space Element is to assure the creation of an open space network throughout the entire area to permit walking between the various community facilities (Scripps Ranch Plan, 28). This means that Ms. Smith may be required to design her housing development in a way that permits the creation of an open space network.

The Open Space Element is even more specific when discussing vegetation. A portion of Scripps Ranch has Eucalyptus trees. The Community Plan provides that builders such as Ms. Smith should plant one hundred eucalyptus trees per acre in the open space to expand the forest of eucalyptus trees. The Open Space Element also encourages Ms. Smith to install picnic tables or play structures in the open space and to support the development of neighborhood and regional parks. All of the requirements and suggestions may further limit the number of houses she can build.

The Schools, Public Facilities and Transportation Elements identify where schools, libraries, roads and other public facilities should be located. The Community Environment Element recommends, among other things, that homes located within the 60 decibel CNEL (Community Noise Equivalent Level) of the Military Air Station be insulated to meet the California Noise Insulation Standards (Scripps Ranch Plan, 59).

The Design Element provides that approximately 25 percent of the required open space should be usable. Usable is defined as

[E]asily traversed and broad enough in dimension to preserve a feeling of freedom and lack of confinement . . . (Scripps Ranch Plan, 10).

Further, all houses within the view of the water reservoir located at Scripps Ranch should be one story structures with landscaping in clusters at a density of at least three trees per lot (Scripps Ranch Plan, 66). This requirement ensures that those on the sidewalks and streets will have a view of the reservoir which looks like a lake surrounded by natural vegetation. The Design Element also identifies the desirable design of street scenes and provides that houses should be made of natural materials with earth-tone colors or natural stained wood (Scripps Ranch Plan, 73).

There are many more requirements and recommendations in the Community Plan. The above discussion is sufficient, however, to make the point that the



Figure 6. Artist's conception of the Miramar Lake, Park, Recreational Facilities and environs



NEIGHBORHOOD PARK

18-acres with soccer and ball fields, basketball and volleyball courts, playground, exercise course, restrooms and picnic areas.



BUTTERFLY GARDENS



CANYON VIEW



NEIGHBORHOOD PARK

20-acres with soccer and ball fields, playground, recreation center and picnic areas.



DRY CREEK



NEIGHBORHOOD PARK

6-acres with hiking trails winding through chaparral-covered open space to Miramar Lake below.



OAK CLEN

Illustration is artist's conception only. Park acreages and amenities are proposed and subject to change.

19. The San Diego Municipal Code (hereafter SDMC) (*101.0407) imposes many more requirements and permits some exceptions, but only the major requirements and exceptions are discussed.

General Plan and Community Plan play a major role in determining the number of houses Ms. Smith may build and in determining the location and design of the houses, open space, and streets.

B. Zoning

Assuming Ms. Smith can comply with the requirements in the General and Community Plans, she must next be certain that she can comply with the zoning ordinances. The City is divided into zoning districts. Zoning regulations control the physical characteristics of structures and the use of the land within these districts. Major zones included several types of residential, commercial, and industrial zones. The City of San Diego also has 'overlay' zones which impose additional controls. Overlay zones generally apply when the land contains unique features such as sensitive historical and environmental areas, hillsides, and flood plains, among others. Currently the City has approximately 65 different zones designations.

The Community Plan recommends that Ms. Smith's property be zoned R-1-6000 which the City has done (19). This zone is a residential zone requiring that lots be a minimum of 6000 square feet, with a minimum 60 foot street frontage and 95 foot depth. Each lot may contain only one dwelling unit, and the dwelling must be set back at least 15 feet from the front lot line and five feet from the side and rear lot lines. The house cannot cover more than 60 percent of the lot or be over 30 feet in height (SDMC *101.0407). Each dwelling must have two parking spaces on the premises, and the driveway to the parking spaces can not be more than 25 feet wide (SDMC *101.0407).

If a person wishes to store certain material or equipment related to residential uses in the yard, he or it must screen the material or equipment by 'a legally installed and maintained solid fencing, walls, buildings, landscape features or combination thereof' (SDMC *101.0407 E3). The Code only permits one screened area per lot. Further, if an owner wishes to install external lighting on the lot, the lighting must be directed or shaded so that it does not fall onto adjacent properties without the permission of the adjacent owner (SDMC *101.0407 D6).

If Ms. Smith wishes to set up a sales office on her property, she may only use one building for temporary sales purposes and only six houses for model homes. The use must end within two years after she files her subdivision map (which is discussed below) or two years after the first building permit is issued (SDMC *101.0407 B3a).

Ms. Smith's property is near a military airport and has steep hillsides. Therefore, she also will have to comply with the Airport Environs Overlay Zone and Hillside Review Overlay Zones. The Airport Environs Overlay Zone requires Ms. Smith to take advantage of topography and other site design features to minimize the noise in the houses from the military airport through the use of insulation and other sound mitigation methods (SDMC *101.044 I2). The ordinance also requires her to minimize the outdoor space where people would be subject to high levels of noise (SDMC *101.0444 I3).

The Hillside Review Overlay zone (SDMC *101.0454) applies to her property because the property has slopes with a natural gradient in excess of twenty-five percent and a minimum elevation differential of fifty feet (SDMC *101.0454 B). The purpose of the Hillside Overlay Zone is to assure that development occurs in a manner that protects the topographic and environmental identity of the area.

It is also designed to prevent flooding problems, slide damage, and severe cutting or scarring.

The Hillside Review Overlay zone requires Ms. Smith to get a special 'HR' permit from the City before she can develop her land. The application for the HR permit has to be accompanied by site plans, grading plans, and the drawings of exteriors of the houses. In order to obtain the permit, Ms. Smith will have to demonstrate that her property is physically suitable for the development, and that the grading and excavation 'will not result in soil erosion, silting of lower slopes, slide damage, flooding, severe scarring or other geological instability . . .' (SDMC *101.0454 E5). She must also show that her development will retain the visual and aesthetic qualities of the area. Because of these requirements, Ms. Smith may not be permitted to build the ninety houses that she could have built if her property were flat.

If Ms. Smith is able to convince the City to grant her a Planned Residential Development Permit, (PRD permit) however, she still may be able to build ninety houses. As mentioned, Ms. Smith's property is zoned R-1-6000 which requires lots with a minimum of 6000 square feet and side setbacks of five feet and front setbacks of fifteen feet. In order to maximize the number of houses each lot will contain no, or little more than, the requisite number of square feet, and because of the setback requirements each house will be located in approximately the same spot on its lot. If she obtains a Planned Residential Development Permit, she may be allowed to deviate from this uniformity and cluster the homes in one or more areas of her property (SDMC *101.0900...).

San Diego encourages Planned Residential Developments because they can preserve open space and protect hillsides while still permitting the construction of housing. If Ms. Smith is able to obtain a Planned Residential Development (PRD) Permit she may be able to build all 90 houses by clustering them, or at least she will be able to build more homes than she otherwise could build if she didn't cluster them.

In order to obtain a PRD Permit, however, she will have to submit additional documentation as part of the subdivision process. For example, in addition to submitting a tentative map, which is discussed below, she will have to submit a plot plan identifying the following:

- 1) The location, name and width of existing and proposed streets, alleys, easements and interior pedestrian ways;
- 2) the location of existing and proposed buildings, signs and structures if development is multi-family;
- 3) a concept plan for proposed landscaping;
- 4) proposed off street parking;
- 5) the height and location of proposed fences and wall;
- 6) a grading plan;
- 7) the various dwelling types; and
- 8) the open spaces indicating the square footage and various grades (SDMC *101.0901 D4).

The City will approve a PRD Permit if it finds that the proposed development is consistent with the General and Community Plan and will not be detrimental to the area (SDMC *101.0901 E2). Because the Community Plan for Scripps Ranch encourages Planned Residential Developments, the City is likely to grant a PRD Permit to Ms. Smith.

20. Cal. Pub. Res. Code (*21002) See also *Rio Vista Farm Bureau v. County of Solano*, 5 Cal. App. 4th 351, 376, 7 Cal. Rptr. 307 (1992).

21. See Cal. Pub. Res. Code (**2110 and 21151).

22. *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 248 Cal. Rptr. 352 (1988).

23. Cal. Pub. Res. Code (*21061) and 14 Cal. Admin. Code (*15362).

C. Environmental Review

Next Ms. Smith must be concerned with the requirements imposed by the California State Environmental Quality Act (Cal. Pub. Res. Code **21000-21177) and local environmental regulations. The California Environmental Quality Act has several purposes. In enacting the Environmental Quality Act, the legislature stated its goals were:

- 1) To maintain a quality, healthful environment that is aesthetically pleasing;
- 2) to identify critical thresholds for health and safety;
- 3) to provide the public with clean air, water and freedom from excessive noise;
- 4) to protect fish and wildlife;
- 5) to have decision makers and the public understand the relationship between a high quality environment and the general welfare of the people;
- 6) to require all agencies, including local governments which regulate development, to give major consideration to potential environmental damage; and
- 7) to require the long-term protection of the environment while providing residents with a decent home and satisfying living environment (Cal. Pub. Res. Code **21000 and 21001). The state law provides that local governments ordinarily should not approve projects as proposed if there are feasible alternatives or mitigation measures that would be more environmentally sensitive (20).

When Ms. Smith seeks permission from the City to develop her land, the City will begin an environmental review process. The City will initially determine if her project is exempt. Her project is not exempt because it does not fall within the exemptions that are listed in the statute (Cal. Pub. Res. Code *21080). Exempt projects are generally ones that are undertaken to respond to an emergency situation or ones that are ministerial in nature where the local government does not have the power to approve or disapprove the project.

Next the City will do an initial environmental review to determine if Ms. Smith's project may have a significant impact on the environment (21). If the City concludes her project could not have a significant effect, then the City would file a Negative Declaration and the review process would be completed. Because it can be fairly argued that the development of ninety houses may have a significant impact on the environment, it will be necessary for the City to prepare a draft Environmental Impact Report (22). The purpose of the Environmental Impact Report is to provide information to the public and decision makers about the environmental impacts of a project and information about possible alternatives to the project that will be less damaging to the environment. The local government must consider this information before it makes the decision to approve or disapprove the project (23).

Because the Environmental Impact Report must be capable of being understood by the public, it must be written in understandable English. It usually contains maps and diagrams to more fully explain the environmental impacts. State regulations enacted in accordance with the California Environmental Quality Act suggest what should be included in the draft Environmental Impact Report (Cal. Admin. Code *15122). These regulations provide that the draft should contain:

- 1) An executive summary of the report;
- 2) A project description, including its objectives, location and characteristics;
- 3) An environmental impact analysis, including the existing conditions, significant unavoidable impacts on the environment, significant irreversible environment damage, and mitigation measures;
- 4) the significant cumulative impacts;
- 5) the growth inducing impacts; and
- 6) alternatives to the proposed project.

There is not a mandatory length for Environmental Impact Reports. James Longtin, an expert in the field, recommends that an Environmental Impact Report normally should be less than 150 pages, and if a project is unusually complex it should be less than 300 pages (Longtin, 1998). Environmental Impact Reports, however, are often longer than these suggested lengths. These reports are so lengthy because they contain detailed discussions of environmental impacts, traffic studies, evaluation of archaeological sites, mitigation programs, alternatives to the project among other things.

When the Environmental Quality Act was originally enacted, developers had to pay for a full Environmental Impact Report even when the identical information was contained in previously prepared reports. To reduce costs and duplication of effort, the State legislature changed the law to permit the preparation of a Master Environmental Impact Report for particular areas of the City (Cal. Pub. Res. Code *21157.6). Master Environmental Impact Reports may be between 1000 and 3000 pages. Focused Environmental Impact Reports which cover projects within these areas can still be an additional 100 to 200 pages.

Because there is a Master Environmental Impact Report covering the Scripps Ranch area, Ms. Smith's costs will be substantially less. She will only have to pay for an analysis of the extent to which her project adds additional environmental impacts or can provide additional mitigation measures or alternatives that were not discussed in the Master Environmental Impact Report (Cal. Pub. Res. Code **21158-21158.5).

The Master Environmental Impact Report for Scripps Ranch cost approximately \$500,000 and focused Environmental Impact Reports cost approximately \$100,000 depending on the size of the project (24). Because Ms. Smith's proposed development is not large, it is likely to cost somewhat less than \$100,000 for an Environmental Impact Report. While the City directs the preparation of both the Master and focused Environmental Impact Reports, it is the developer who ultimately pays the costs of both.

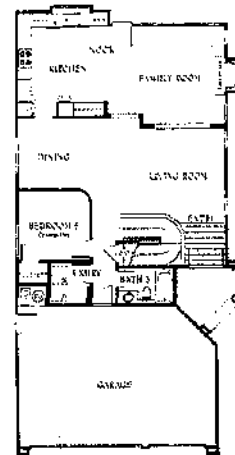
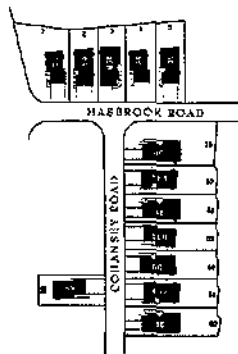
California in general, and San Diego in particular, is an environmentally sensitive area. It is the home of several animals such as the 'gnat catcher', the 'quinot checker spot butterfly' and the 'arroyo toad' that are listed on the national Endangered Species List (25). If Ms. Smith's property contained the habitat or a population of one of these animals she would be severely restricted in the development of her property because the City would require her to preserve at least part of the habitat.

Another habitat that the City protects is vernal pools. It rarely rains from the end of April until November in San Diego. Therefore, throughout much of the year vernal pools are dry depressions in the earth. When it does rain, however, these depressions fill with water and become home to such endangered species as the 'fairy shrimp' and to rare plants such as 'mesa mint'. If Ms. Smith had vernal pools on her land she would only be able to destroy them if she purchased land containing vernal pools elsewhere in the City and dedicated those lands to the City. For example, if she had a vernal pool with a two acre drainage area the City may require her to purchase between six and ten acres of land containing vernal pools elsewhere to dedicate to the City as a condition for approval of her development. If she destroyed the habitat prior to obtaining approval to avoid purchasing additional land, she would be subject to substantial fines and a prison sentence of up to a year (16 U.S.C *1540b; 18 U.S.C. *3559a6).

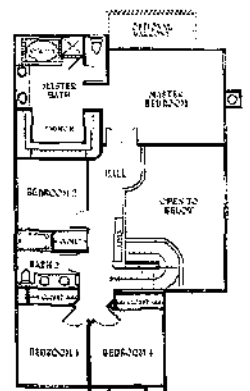
Ms. Smith is fortunate. Her land does not contain habitats for any endangered species, and it does not contain vernal pools. She, however, will have to be

24. Telephone conversation with Lyle Gabrielson, President of Rick Engineering, the Engineering Firm that was involved in the development of much of Scripps Ranch, March 26, 1999.

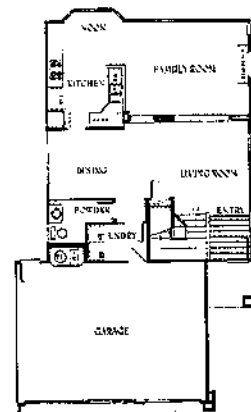
25. Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Arroyo Southwestern Toad, 59 FR 64859 (50 C.F.R., pt. 17, 1994); Determination of Endangered Status for the Laguna Mountains Skipper and Quino Checkerspot Butterfly, 62 FR 2313 (50 C.F.R., pt.17, 1997).



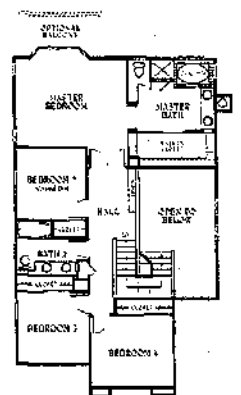
LOWER LEVEL



UPPER LEVEL



LOWER LEVEL



UPPER LEVEL

Figure 7. Heatherwood group of dwelling types (ranging from 192'900 to 229'900 US\$) at Scripps Ranch Villages (McMillan Communities, commercial pamphlets). The Stanwyck: 5 bedrooms, 3 bath, 2253 square feet (above). The Essex: 4 bedroom, 2 1/2 bath, 2009 square feet.

26. Cal. Pub. Res. Code (**21091, 21092, 21092.3, 21092.6, 21104, 21153) and Cal. Code Regs. tit. 14 (**15086-15087).

27. Cal. Pub. Res. Code (**21100, 21150) 14 Cal. Code Regs. tit. 14 (**15089, 15132).

28. See also *No Slo Transit, Inc. v. City of Long Beach*, 197 Cal. App. 3d 241, 242 Cal. Rptr. 760 (1987).

concerned about the environmental damage that will result from cutting the hillsides and filling the valleys in order to create building pads.

After the local government prepares the draft Environmental Impact Report, the government circulates the draft to all the affected governmental agencies, such as the fire department, the parks department, and the transportation department for comment. The local government also distributes the draft to the public for review and comment (26). Once all the comments are received, and the government responds to the comments, where appropriate, the comments and responses are incorporated into a final Environmental Impact Report (27). At this point the government may hold a public hearing on the adequacy of the Environmental Impact Report (Cal. Code Regs, tit. 14 *15087g).

The person or persons who have the power to approve or disapprove Ms. Smith's housing development must certify that they have considered the final Environmental Impact Report before making a decision on Ms. Smith's. If the decision-maker (the City Council) finds that the project will have a significant, unavoidable impact on the environment, it can still approve the project but must find that overriding economic, legal, social or technological factors make it infeasible to mitigate one or more adverse impact (Cal. Pub. Res. Code *21081) (28). A decision maker might make this type of finding when a housing project will produce an unavoidable significant impact on the environment but is needed to fulfill a need for low or moderate income housing for the community.

D. Subdivision Regulation

While the environmental review process is taking place, the local government also will be reviewing the design of Ms. Smith's project to see if it complies with the California Subdivision Map Act (Cal. Gov't. Code **66510-66498.58) and local subdivision regulations. The state Subdivision Map Act gives local governments the power to regulate the design and improvement of subdivisions within their boundaries (Cal. Gov't. Code *66411). The design of a subdivision includes the following:

- 1) street alignments, grades and widths; 2) drainage and sanitary facilities and utilities, including alignments and grades thereof; 3) location and size of all required easements and rights-of-way; 4) fire roads and firebreaks; 5) lot size and configuration; 6) traffic access; 7) grading; 8) land to be dedicated for park or recreational purposes; and 9) such other specific physical requirements in the plan and configuration of the entire subdivision as may be necessary to ensure consistency with, or implementation of, the General Plan or any applicable specific plan (Cal. Gov't. Code *66418).

29. If Ms. Smith has her engineers put the words 'vesting tentative map' on her tentative map, the City may not impose additional conditions once it has approved the tentative map except for certain health and safety issues. See Cal. Gov't. Code (**66498.1-66498.9). This provision was added to the state law because a city previously could change zoning development regulations after approving the tentative map and thereby impose new conditions on the development. Thus, during the two or three years it can take to process a tentative map, the City could continue to make Ms. Smith change her development plans by adding requirements. The City can no longer do this if Ms. Smith submits a 'vesting tentative map'.

The term 'development' includes the uses of the land, the buildings constructed on it and all changes in the land. Therefore, the City of San Diego has the power to control the design of Ms. Smith's proposed development and require her to construct public purpose improvements as a condition of receiving permission to develop its property (SDMC *102.0200).

In order to build 90 homes Ms. Smith will have to subdivide her property. She must receive approval from the City to subdivide her property. In order to receive approval she will have to provide the City with a Tentative Map or Vesting Tentative Map (29). The main difference between a Tentative Map and a Vesting Tentative Map is that a Vesting Tentative Map gives the same protection against the City changing the development regulations between the time it approves the Vesting Tentative Map and the time Ms. Smith begins to build (Cal. Gov't. Code **66498.1-66598.9).

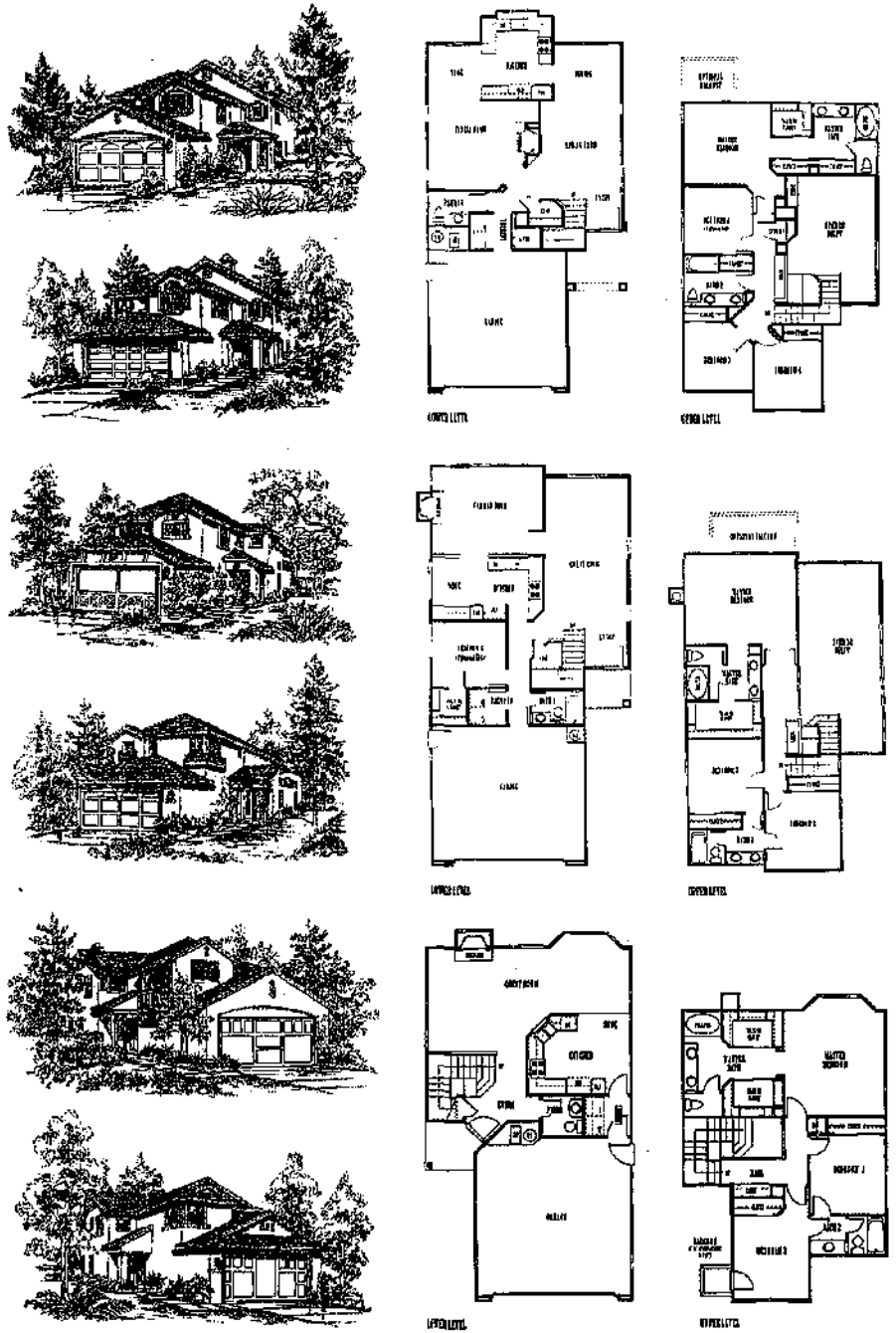
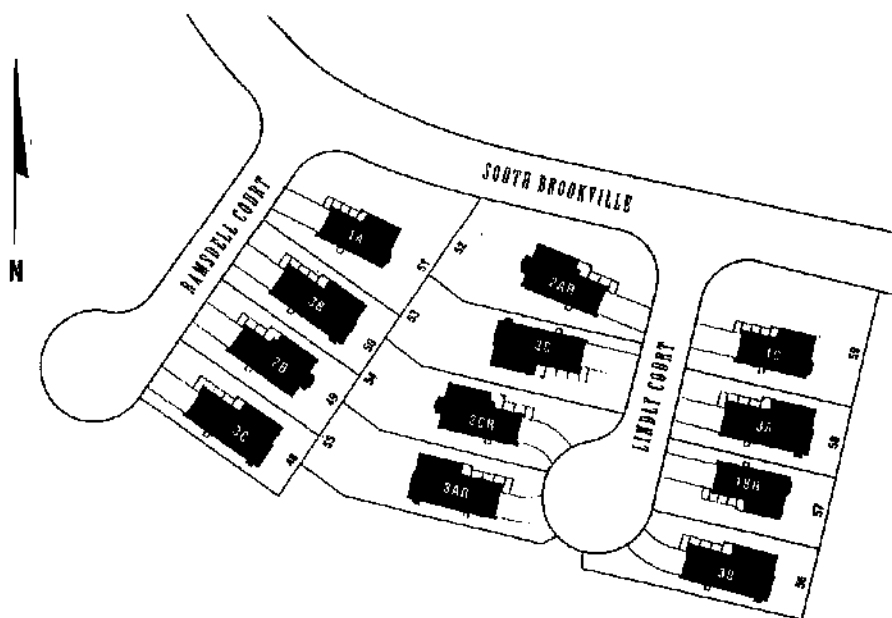


Figure 8. Larkspur group of dwelling types (varying from 204'900 to 245'900 US\$) at Scripps Ranch Villages (McMillan Communities, commercial pamphlets).
 The Marigold: 4 bedroom, 2½ bath, 1754 square feet.
 The Goldenrod: 4 bedroom, 3 bath, 1928 square feet.
 The Sunflower: 3 bedroom, 2½ bath, 1490 square feet.

Figure 9. Heatherwood Phase 1, layout
(from commercial pamphlets).



Ms. Smith will choose to give the City a Vesting Tentative Map. Because she has chosen to submit a Vesting Tentative Map, she must also submit all the documents required for a PRD Permit. As she is already going to apply for the PRD Permit, filing a Vesting Tentative Map will not impose additional burdens.

The following information is the type of information that Ms. Smith must include in the Vesting Tentative Map and supplementary documents:

- 1) The location of each lot;
- 2) the street and sidewalk design;
- 3) the open space design;
- 4) a list of all proposed uses;
- 5) architectural elevations (including the size and height of the structures and a list of major exterior building materials);
- 6) grading plans;
- 7) geological reports;
- 8) preliminary landscape and irrigation plans;
- 9) flood control plans;
- 10) a list of proposed sewer and water services, site plans;
- 11) street and road improvement preliminary plans, and a
- 12) timing, phasing and financing plan for all public capital improvement facilities (SDMC *102.0301).

Once Ms. Smith submits her Vesting Tentative Map and supplemental documentation, the information is circulated to the various City departments and other agencies such as the San Diego City School District. Each department and agency evaluates the Tentative Vesting Map and proposed subdivision from its own perspective. During this process, the developer, particularly one developing a large scale project, will enter into extensive negotiations with the various City departments. An effort will be made to strike a balance between the needs of the City to protect the infrastructure and environment and the needs of the developer to make a profit. For example, the fire department could determine that one of the proposed *culs-de-sac* in Ms. Smith's development does not have a sufficient

turning radius. The department may believe she should eliminate five houses. She, on the other hand, may be able to persuade the City that she can provide a sufficient turn around and by only eliminating three houses. After these negotiations the various City departments will report their opinions to the decision maker.

Armed with this information the City can either deny Ms. Smith's request, approve it, or approve the proposed development subject to conditions. When the City approves a housing development, it generally approves it subject to conditions.

According to State and local law, the City may not approve the Vesting Tentative Map if the City makes any of the following findings:

- 1) The proposed map is not consistent with the applicable general and specific plans; 2) the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans; 3) the site is not physically suitable for the type of development; 4) the site is not physically suitable for the proposed density of development; 5) the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat; 6) the design of the subdivision or the type of improvement is likely to cause serious public health problems; or 7) the design of the subdivision or the type of improvements will conflict with easements acquired by the public at large, for access through or use of the property within the proposed subdivision (Cal. Gov't. Code *66474 and SDMC *102.0401).

Let us assume that the City does not make any of the above findings, and that they are willing to approve Ms. Smith's subdivision and grant her a Planned Residential Development Permit. If the City also finds that Ms. Smith's development satisfies the requirements of the California Environmental Quality Act, Ms. Smith will file a Final Subdivision Map which completes the subdivision process.

Ms. Smith's must next be concerned with the requirements imposed by the building code. State law creates a Model Building Code (Cal. Health and Safety Code *18941.5) which cities may modify to reflect local physical conditions (Cal. Health and Safety Code *17958.5). Building codes regulate the construction of buildings, chimneys, and foundations, the construction of drains and sewers, the electrical systems used among other things. They also create fire safety standards, and earthquake standards. Ms. Smith will have to comply with these requirements before she can obtain building and occupancy permits.

At each step in the process Ms. Smith will be required to pay fees that the City charges for processing her application. For a prototype home valued at \$181,600 she will have to pay fees of approximately \$26,464 for sewers, parks, schools, and other infrastructure. In addition she will have to pay approximately \$45,200 for fees incurred in processing the subdivision map (30).

In addition, Ms. Smith will have to prove, ordinarily through the posting of a bond, that she will make all the improvements represented on the Vesting Tentative Map such as streets, sidewalks, street trees, storm drains and public transit. If she is unable to make the improvements, for example because she is insolvent, the entity that issued the bond will have to pay to complete the improvements. She also will have to dedicate any necessary easements to the City.

30. 1998-99 Fee Survey San Diego County, p. 8 (San Diego Building Industry Association, 1999). The fees were based on a prototype house which is built as part of a 50 unit development on 10 acres. The prototype house contains 2000 square feet of living space, 400 square feet of garage space, a 240 square feet of covered patio, 3 bedrooms, 2 baths, a fireplace, gas and electric hookups and wood frame construction. This house is a typical house at Scripps Ranch except many houses have more than three bedrooms.

31. Table A: 'New Housing Units, and Residential and Nonresidential Building Permit Valuations by Year' prepared by the Construction Industry Research Board (1999).

32. Information provided by Mary Slupe, Senior Drafting Aide for the Long Range Planning Department of the City of San Diego (June, 1999).

33. 'Public Report Card', Builder, The Magazine of the National Association of Home Builders, p. 151 (Hanley-Wood, Inc. 1999).

34. *City of Monterey v. Del Monte Dunes At Monterey, Ltd.* US (1999 WL 3210798, 1999). The United States Supreme Court is the highest court in the United States.

After reading the above discussion, the reader may wonder if any development occurs in San Diego. From 1980 to 1998 there were 318,420 new residences constructed in San Diego (31). The population rose from 875,538 in 1980 to approximately 1.25 million in 1998 (32).

In the United States in 1998 public home builders had an average gross profit margin (the percentage of revenue left after paying all direct production expenses) of 19.23 percent. During this same year the net profit margin (the percentage of income after taxes divided by total revenue) was 4.51 percent (33).

Thus even with the extensive land use regulations, homes are built and developers make profits. One reason is that the land development law permits flexibility. Several of the regulations provide guidance; they do not mandate a certain result. For example, while the Scripps Ranch Community Plan provides that a residential project should have eucalyptus trees in the open space, the Plan permits the City to approve a residential development without eucalyptus trees.

The approval of a large development is the product of a negotiation process. Cities want to protect the infrastructure and environment, but they also want developers to build housing. The City recognizes that developers will not provide housing unless they make a profit. So the two engage in extensive negotiations to discover that optimum point where the needs of both are satisfied.

Developers do not necessarily agree that the optimum point is being achieved. They point out that the fact housing needs identified in the City's General Plan are not being met and contend that with less regulation more housing would be built. The City points out that one of the great inhibitors of development is an increasing scarcity of developable land in San Diego.

United States and California Constitutions also guarantees that development will occur. The United States Constitution prevents a city from requiring a developer to give fees and land as a condition of development unless those fees and land are roughly proportional to the impact the development project will produce (*Dola vs. City of Tigard*, 512 U.S. 374; 1994). A recent United States Supreme Court (34), involving the City of Monterey, California, ruled that a jury may award a land owner money if the jury finds that the City's denial of a development plan is not related to legitimate public purposes or denies a land owner of all economically viable use of his or her land. In this case the City of Monterey was forced to pay a landowner \$1.45 million because the City excessively regulated the ability of the land owner to develop its land.

Although houses are built and developers are generally able to make a profit, the above discussion should disabuse the reader of the notion that the U.S. is a 'free market society' with little land use regulation. The various states differ in the extent of regulation, and there are differences of opinion among individuals within each state about the extent to which land should be regulated. There is, however, widespread public acceptance in the United States of the concept that government should regulate the development of land.

SERBEST PİYASA ORTAMINDA ARAZİ KULLANIMI DÜZENLEMESİ

ÖZET

Alındı : 7. 6. 1999
Anahtar Sözcükler: Çevre Mevzuatı, Çevre Denetimi, Planlama Yasa ve Yönetmelikleri, ABD.

Toplumsal ilişkilerin yönlendirilmesinde serbest piyasanın egemen olduğu Amerika Birleşik Devletleri'nde arazi kullanımının da özgürce piyasaya bırakıldığı izlenimi vardır. Ancak bu yanlış bir algılamadır. Bu yanlışın boyutlarının görülebilmesi için Güney Kaliforniya'da San Marino'daki düzenlemeleri bir karşı uç örnek olarak vermek olasıdır. San Marino'da çöp tenekelerinin ya da klima cihazlarının açıkta görünmesi, çim alanların kurumasına yol açılması, bisikletlerin ağaçlara dayalı olarak bırakılması gibi durum ve davranışlar yasalarca yasaklanmıştır. Tabelalardaki sözcüklerin yüzde sekseninin İngilizce olması zorunlu tutulduğu San Marino'da kaldırımların islatılması da suçtur. Ağaçlar izinsiz kesilemez. Uygunsuz budama yapanlar, zorunlu 'budama kursu'na gönderilirler. Mutfaklar zemin katta yer almak koşuluyla ve tek hanehalkı oturmak üzere yalnızca müstakil evlerin yapımına izin verilmektedir. Yaklaşık 13'000 bin kişinin yaşadığı şehirde, 1998 yılında 700'den fazla yönetmelik ihlali davası yer almıştır. Düzenlemelerin böylesine bir yoğunluk kazanmasının nedeni, doğrudan yine San Marino'luların kendi tercihleridir.

Amerika Birleşik Devletleri'nde arazi kullanımı Federal, eyalet ve yerel yönetimlerin düzenlemeleriyle denetlenmektedir. Bu yapılanma içinde, yerden yere düzenleme farklılıkları görülebilmektedir. Bu yazıda düzenleme çeşitliliğini göstermek amacıyla, San Diego şehrinde varsayımsal bir örnek ele alınmakta ve bayan Smith'in 12 hektarlık Scripps Ranch arazisinde 120 konut yapmak üzere işlemek zorunda kaldığı aşamalar anlatılmaktadır.

Bayan Smith'in uymak zorunda olduğu ilk ve en üst düzeydeki kurallar Federal yasalardır. Federal Konut Yasası, dört ve daha fazla sayıda konut biriminin üretilmesi girişimlerinde özürülülerin korunması amacıyla birden fazla katlı yapılarda asansör yapımını, banyo ve helalarda tutunma elemanları takılmasını, rampaların, kapı ve dolap kapaklarının tekerlekli iskemle kullananlarca erişilebilir ölçülerde tutulmasını öngörmektedir. Smith, sulak bir arazide inşaat işlerine girişmekte ise, 'Su Kirlenmesinin Denetimi' mevzuatına göre izinler almak zorundadır. Bunun gibi, anten ya da radar çanakları kullanacaksa 'İletişim Yasası'na, zararlı atıklar söz konusu ise 'Tehlikeli Atıklar Yasası'na, arazisinde özel canlı türleri varsa 'Tehlike Altında Bulunan Türler Yasası'na uymak zorundadır.

Eyaletler arasında farklılıklar bulunmakla birlikte, arazi kullanımına ilişkin koşulları ağırlıklı olarak belirleyen, eyalet ve yerel yönetimlerin düzenlemeleridir. Arazi kullanımı kararları için kapsamlı bir planın varlığı gerekli görülse de kimi eyaletlerde böyle bir zorunluluk yoktur. Ne var ki, bir plan yapılmışsa arazi kullanım kararlarının buna uyması da kaçınılmazdır. Kaliforniya Eyaleti'nde, Eyalet yasalarına göre tüm yerel yönetimlerin planlama birimlerine sahip olmaları ve şehir planları hazırlamaları gerekmektedir. Yerel yönetim sınırları içinde ve dışındaki fiziki gelişmeleri gösterir, kapsamlı, iç tutarlılığa sahip ve uzun dönemli bir Genel Plan yapılması öngörülmüştür. Genel Plan, bir bölgeleme haritasından ibaret değil, tüm arazi kullanım ve yatırım kararlarını bağlayan bir anayasadır. Yerel yönetimler onanlı bir Genel Plan edinmedikçe yapılaşmaya izin verme yetkilerini kullanamazlar. Bu onama gerçekleşmişse, arazi kullanım kararlarının da bu plana uyması zorunludur. Bir Genel Plan'ın yedi ayrı ögesi bulunur:

1. Arazi Kullanım Ögesi: konut, sanayi, açık alanlar gibi kullanımların yerleri ve yoğunluklarını belirler.
2. Dolanım Ögesi: kamu taşıma sistemleri, bisiklet yolları gibi yol ağları, güzergahları ve bağlantıları ile kamu hizmet yapıları arasındaki ilişkileri gösterir.

3. Koruma Ögesi: doğal kaynakları ve bunları korumak için öngörülen yöntemleri belirler.
4. Açık Alan Ögesi: rekreasyon yapıları, açık alanlar ve bu alanların özelliklerinin korunması için izlenecek yöntemleri açıklar.
5. Gürültü Ögesi: tren yolları, hava alanları, otoyollar ve diğer gürültü kaynaklarını ve çıkan ses düzeylerini belirler.
6. Güvenlik Ögesi: doğal afetler ve depreme maruz alanları ve bunların vereceği zararlardan korunma yöntemlerini belirler.
7. Konut Ögesi: mevcut konut stokunu, ödeme gücüne göre konut gereksinmelerini ve uygulanacak politikaları belirler.

Federal yasalar bu ögelerin Genel Plan'da yer almasını zorunlu tutmakla birlikte, yerel yönetimlerin de bunları dilediklerinde genişletme ve birleştirmelerine olanak tanır. Yerel yönetimler Genel Plan'a ek ve bununla uyumlu olarak kendi alanlarındaki yerel topluluklar için ayrı planlar da geliştirebilirler. San Diego şehri böyle 49 alana ayrılmıştır. Bunların bir bölümü bütünüyle büyük park alanları oluştururlar; ancak çoğunluğu 'mahalle' (*neighborhood*) birimleridir. Her mahalle biriminde bir 'halk planlama grubu' (*citizen planning group*) kurulmuştur. Bu gruplar, yerel yönetim görevlilerinin de yardımlarıyla mahallelerin ayrıntılı planlarının hazırlanmasına katılırlar. Yerel yönetimler, bu planların (*community plan*) onanmasıyla her türlü yapılaşmayı bunlara uyumlu yürütmekle yükümlüdürler.

San Diego şehrinde Genel Plan ve ögeleri 420 sayfalık ayrıntılı bir rapor, harita ve krokilerden oluşmaktadır. Konut ögesi, planın 246 sayfalık en geniş bölümüdür. Bu bölümde hanehalkı büyüklükleri, reisleri, gelirleri, etnik grupların gelirleri, yapı türlerine göre doluluk, apartman birimlerinde boşluk oranları, ev sahipliği oranları, konut fiyatları gibi göstergelere yer verilmiştir. Bunlara dayanılarak farklı konut tiplerine olan gereksinimler bulunur. Planın öbür bölümleri daha kısa tutulmuştur.

Smith'in Scripps Ranch projesinin, Genel Plan ile uyumlu bulunduğunu varsayalım. Bu projenin daha ayrıntılı 'Miramar Çiftliği Mahalle Planı' ile uyumlu tutulması daha zor olacaktır. Düşük yoğunluk (7-12 konut/hektar) verilmiş bulunan bu plana göre, Smith'in brüt 12 hektarlık alanı, terk edilecek yüzölçümleri düşüldünce net 7.2 hektara indirgenecektir. Bu kısıtlar, Smith'in 120 konut yapma hayallerinin suya düşmesine neden olacaktır. Kaldı ki, Plan'ın başka ögelerinin de göz önüne alınması zorunludur. Açık alan ögesindeki eğimli arazide yapı yasağına, açık alanların ve ortak hizmet alanları arasındaki yaya yolları ve patikaların sürekliliğinin sağlanması kurallarına uymak gerekecektir. Planda hektar başına 250 ağaç dikilmesi koşulu yer almaktadır. Ayrıca açık alanların %25'i kadarının yol ve patikalar yanısıra kullanıma açık biçimde düzenlenmesi, piknik masaları, çocuk oyun mobilyaları sağlanması yükümlülüğü verilmektedir. Gölet çevresindeki yapıların, yaya yollarından olan görünümü engellemeyecek biçimde konumlandırılmaları ve tek katlı olmaları gerekmektedir.

Böylece Genel Plan ve mahalle planı, çeşitli konularda getirdikleri kısıtlarla Smith'in yapabileceği konut sayısını düşürmektedir. Bu planlarda öngörülen koşulların doyurulduğu varsayılırsa, sıra bölgeleme kurallarına gelmektedir. San Diego şehri 'olağan kullanım bölgeleme düzenlemeleri' dışında, bir de ek kısıtlara sahiptir. Smith arazisi asgari yaklaşık 700m² arsa yüzölçümünde birimlere ayrılması, 20m cephe, 35m derinlik, 5m çekme ölçülerinde ve bir parselde tek yapı olmak üzere konut kullanımına ayrılmış bir bölgede bulunmaktadır. Bu bölgede yapılar, arsanın en fazla %60'ı kadar taban alanına ve 10m yüksekliğe sahip olabilir. Her konutun en az iki adet otopark yeri olacaktır. Bahçede depo yapılmak istenirse, arsa sınırının ancak bir bölümü kapatılabilir. Bahçe aydınlatması yapılırsa, komşular izinsiz olarak ışık altında bırakılamaz.

Smith'in, arazisinde kazı yapabilmesi için, bu işlerin 'erozyona, su baskınına, zemin dengesizliklerine yol açmayacağına ilişkin' şehir yönetiminden onay alması gerekir. Yamaçların görünümünün bozulmaması ilkesi, Smith'in arazisi düz olsaydı yapabileceği 90 konuttan daha azına izin verilmesine yol açabilir. Ancak, arsa büyüklükleri ve gruplandırma yöntemlerine başvurularak yetkililer estetik gerekçelerle ikna edilebilirler. Smith, yapı (PRD, *Planned Residential Development*) izni almak için şu belgeleri sunacaktır:

1. mevcut ve öneri yollar, güzergah, adı ve genişlikleri; 2. mevcut ve öneri yapılar, işaretler; 3. peyzaj ana fikir planı; 4. öneri yol üstü otoparklar; 5. öneri çit ve duvarların yer ve yükseklikleri; 6. arazi tesviye planı; 7. konut birimlerinin planları; 8. açık alanlar, yüzölçümleri, nitelikleri. Bu verilerin Şehir İdaresi tarafından yerel plan ile uyumlu bulunması durumunda konut yapım ruhsatı (PRD) verilecektir.

Kaliforniya çevre yasalarında belirtilen hedeflere öncelikle uyulmak zorundadır. Yönetim, bir 'çevresel etki raporu' ile projenin trafik, doğa, arkeolojik değerler, zarar görebilirliğin azaltılması konularındaki özellikleri hakkında bilgi ve seçeneklerin belirlenmesini ister. Bu raporun maliyeti (100-500 bin\$) genellikle müteahhit tarafından karşılanır. San Diego, bazı nadir kelebek ve kurbağa türlerinin doğal yaşam alanıdır. Bu türlerin herhangi bir arazide bulunması, yapılaşmanın orada büyük ölçüde kısıtlanmasına yol açar. Smith bundan kurtulmuştur, ancak kazı ve dolgu işleri sorun olacaktır. Hazırlanan rapor, yönetimin yangın, parklar, ulaşım dairelerinin görüşlerini aldıktan sonra 'kesin çevre etki raporu' elde edilir. Bu noktada Yönetim gerekli görürse ayrıca bir halk bilgilendirme (*public hearing*) toplantısı düzenler. Smith projesini imzalarıyla onayan yetkililer, bu raporu da okumuş olduklarını belgelemek zorundadırlar.

Bu sırada Yönetim, ifraz işleri için gerekenleri ister: 1. yol eksenlerinin koordinatları, eğim ve genişlikler; 2. drenaj sistemi; 3. irtifaklar, geçiş hakları vb. 4. yangın yolları ve bölgelemesi; 5. parseller; 6. yollar; 7. eğimler; 8. açık alanlar ve parklar; 9. Genel Plan'a uyumlu olmak üzere diğer fiziki öğeler. Smith yapı izni almak için ise şu belgeleri sunmak zorundadır: 1. her parselin yerini gösterir vaziyet planı; 2. sokak ve kaldırım projeleri; 3. açık alan projeleri; 4. önerilen kullanımların listesi; 5. mimari cephe çizimleri; 6. tesviye planları; 7. jeolojik raporlar; 8. peyzaj ve sulama ön projeleri; 9. taşkın önleme planı; 10. su, pıssu altyapı planları; 11. yol ve anayol ön planları; 12. kamu yatırımlarının takvim, aşamalar, finans programları.

Smith'in başvurusu, Yönetim'in tüm dairelerini ve kimi dış birimleri (örneğin, bölge okulları birimini) dolaşır. Projeler, bu dairelerle uzlaşma noktasını bulma çabası içindedirler. Gelen görüşlere göre Yönetim, başvuruyu kabul, red, ya da koşullu olarak kabul eder. Ancak Federal ve Eyalet yasaları hangi uyumsuzluk durumlarında başvuruların kabul edilemeyeceğini ayrıca belirlemiştir. Diyelim Yönetim, Smith'in başvurusunu uygun gördü. Bu kez, 'ifraz uygulama planı'nın sunulması ayırma işlemlerinin yapılması sırası gelir. Artık 'yapı yönetmeliği'nin kısıtları göz önüne alınacaktır. Temeller, bacalar, drenaj, pıssu, elektrik sistemi ve ayrıca yangın ve deprem standartlarına uyulması, oturma izninin alınabilmesi için zorunludur. Her adımda Smith harçlarla karşı karşıyadır. Değeri 181'600\$ olan bir ev için 26'464\$ altyapı, 45'200\$ ifraz işleri hakları ödenecektir. Ayrıca kamu leyhine kimi irtifak hakları kurulacaktır.

Amerika Birleşik Devletleri'nde konut yapımcıları 1988 yılında ortalama %19.23 brüt, %4.5 net kar oranı elde etmişlerdir. Konut yapımı piyasada yeterince karlı bir iş ise de, yapım işlerinin özgürce yürütülebildiği yargısı ciddi bir yanılgıdır. Kamunun, arazi kullanımı ve yapılaşma alanlarında düzenlemeler yapması politikası, geniş bir kesimin zorunluluk gördüğü bir konudur.

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