

# Fire Planning and the General Plan Guide

## 2013

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The intent of this guidebook is to:

- Assist local jurisdictions in developing General Plan Safety Elements
- Coordinate strategic fire planning efforts across jurisdictional and topical plans
- Provide a framework for reviewing current projects and making appropriate comments
- Provide information about development law in the context of fire and resource protection
- Develop comprehensive, cohesive plans that integrate local, state, and federal levels of strategic fire planning.

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### Introduction

“The Legislature hereby finds and declares the following...

- (a) ...Since fires ignore civil boundaries, it is necessary that cities, counties, special districts, state agencies, and federal agencies work together to bring raging fires under control. Preventative measures are therefore needed to ensure the preservation of the public peace, health, or safety.
- (b) The prevention of wildland fires is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead, a matter of statewide concern...” (Section 51175, California Government Code)

“The purpose of this chapter is to classify lands in the state in accordance with whether a very high fire hazard is present so that public officials are able to identify measures that will retard the rate of spread, and reduce the potential intensity, of uncontrolled fires that threaten to destroy resources, life, or property, and to require that those measures be taken.” (Section 51176, California Government Code)

“The purpose of this article is to provide for the classification of lands within state responsibility areas in accordance with the severity of fire hazard present for the purpose of identifying measures to be taken to retard the rate of spreading and to reduce the potential intensity of uncontrolled fires that threaten to destroy resources, life, or property.” (Section 4201, Public Resources Code)

“The Legislature finds and declares all of the following:

- (a) Fire protection of the public trust resources on lands in the state responsibility areas remains a vital interest to California...
- (b) The presence of structures within state responsibility areas can pose an increased risk of fire ignition and an increased potential for fire damage within the state’s wildlands and watersheds. The presence of structures within state responsibility areas can also impair wildland firefighting techniques and could result in greater damage to state lands caused by wildfires.” (Section 4210, Public Resources Code)

“(c) The Legislature further finds and declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public’s need for timber and other forest products, while giving consideration to the public’s need for watershed protection, fisheries, and wildlife, employment opportunities, regional economic vitality, and recreational opportunities alike in this and future generations.” (Section 38101.5, Revenue and Taxation Code)

“(a) The Legislature further declares that to fully realize the productive potential of the forest resources and timberlands of the state, and to provide a favorable climate for long-term investment in forest resources, it is the policy of this state to do all of the following...

- (2) Discourage premature or unnecessary conversion of timberland to urban and other uses.
- (3) Discourage expansion of urban services into timberland.
- (4) Encourage investment in timberlands based on reasonable expectation of harvest.” (Section 51102, California Government Code)

“The Legislature finds and declares all of the following...

- (c) The [California Global Warming Solutions Act of 2006] scoping plan proposes to maintain the current 5MMTCO<sub>2</sub> annual sequestration rate through 2020 by implementing “sustainable

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management practices,” which include potential changes to existing forest practices and land use regulations.

- (d) There is increasing evidence that climate change has and will continue to stress forest ecosystems, which underscores the importance of proactively managing forests so that they can adapt to these stressors and remain a net sequester of carbon dioxide.” (Section 4512.5, Public Resources Code)

"The Legislature also finds that decisions involving the future growth of the state, most of which are made and will continue to be made at the local level, should be guided by an effective planning process, including the local General Plan, and should proceed within the framework of officially approved statewide goals and policies directed to land use, population growth and distribution, development, open space, resource preservation and utilization, air and water quality, and other related physical, social, and economic development factors. “ (Section 65030.1, California Government Code)

"The legislature finds and declares that California's land is an exhaustible resource, not just a commodity, and is essential to the economy, environment, and general well-being of the people of California. It is the policy of the state and the intent of the Legislature to protect California's land resource, to insure its preservation, and use in ways which are economically, and socially desirable in an attempt to improve the quality of life in California.” (Section 65030, California Government Code)

The language of the Legislature above compels those involved in community planning to consider the competing interests of development and wildfire protection. This dilemma also been compounded by the effects of climate change over the last twenty years. Development has encroached on particularly vulnerable landscapes while fires have become more frequent and more volatile. In an effort to accommodate urban development into the Wildland-Urban Interface (WUI) while simultaneously protecting homeowners from wildfires, the Legislature has continued to adopt new laws regarding the use of General Plans as a tool for strategic fire prevention and fire protection planning. Most recently, SB 1241 requires General Plan Safety Elements to make particular findings supporting a community's resilience to the effects of wildfires.

There is a large body of statutory and case law, described above and later in this document, that influences the development and planning process. This Guide, and other available information through the Board of Forestry and Fire Protection and the Governor's Office of Planning and Research, has been developed to assist CAL FIRE and Contract County personnel in understanding local planning and development laws, as well as evaluating development decisions – especially those made by communities in their General Plan Safety Elements. Use of this guide will aide communication with local government planners and elected officials when evaluating land use decisions that affect key CAL FIRE missions.

Chapter 1: Presents requirements for General Plans and their evaluation criteria

Chapter 2: Describes important laws relating to General Plans and other legal aspects of local development

Chapter 3: Outlines the fundamental concepts of strategic fire planning and shows how those concepts can be used in the General Plan to improve fire and resource protection

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## Chapter 1 Structure and Content of General Plans

### 1.1 Introduction

The General Plan is the master document that governs land use and development in a given jurisdiction. State law gives counties wide latitude in the way a General Plan can be put together, but there are fundamental requirements that must be met. These requirements include seven mandatory “elements,” described in the Government Code, and guidelines from the Office of Planning and Research set forth the “required contents” of each element. CAL FIRE and Contract County input can affect the direction of the Housing, Land Use, Circulation, Open Space, Conservation, and Safety elements; the remaining mandatory element is Noise.

There are many existing opportunities for resource protection and fire prevention and suppression that are not fully utilized in General Plans. As communities expand human development deeper into unoccupied land, plans that utilize community planning as a way to address resource protection, fire prevention, and fire suppression are increasingly important. This chapter describes ways to evaluate a General Plan and three common subordinate planning tools to locate weaknesses and provides suggestions that can improve consideration and mitigation of issues related to wildfire.

For over 100 years federal and state courts have upheld the authority of local governments to regulate their own internal affairs, subject only to compliance with state and federal laws. Described as “Police Powers” by the courts, these local authorities govern planning (among other things) and the regulations that control the type, size, character, and location of development. In California, the Legislature has found that local governments are obligated to use Police Powers to provide orderly and safe development. The Legislature and the courts have further defined the General Planning process as one of many ways to accomplish that obligation.

The primary purposes for General Plans are:

- 1) Identify the community’s land use, circulation, environmental, economic, and social goals and policies as they relate to land use and development.
- 2) Provide a basis for local government decision-making, including decisions on development approvals and conditions.
- 3) Provide citizens with opportunities to participate in the planning and decision-making processes of their communities.
- 4) Inform citizens, developers, decision-makers, and other cities and counties of the ground rules that guide development within a particular community.

General Plans have been defined by the courts as the “Constitution for local development.” This grants great power and prestige to the General Plan, and also means that all development decisions must flow downward from it in a logical manner. All land use designations, zoning, development ordinances, and implementation or mitigation conditions or requirements must be “consistent” within the General Plan. “Consistent” means that no part of the process can be contradictory to, or uncoordinated with, any other part. For example, a General Plan would be inconsistent if it recognized the need for emergency evacuation as a potential safety measure but did not address adequate transportation routes as a basic goal of the jurisdiction.

California law gives local governments wide latitude in designing or formatting General Plans.

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However, there are several commonalities throughout Plans the law requires. The Plans must be comprehensive, internally consistent and consistent with other area plans, and have a long-term perspective. The text of a Plan should include goals and objectives framed in terms of policies and implementation measures. However, there are several different ways to write the Plan, and many ways to place requirements in relation to others. Cities may adopt portions of County Plans or other agencies' plans or elements.

Local differences also add diversity to the content: mountain counties may include avalanche concerns and coastal counties may include tsunami issues. Optional elements may be included if the community feels they address unique needs. It is rare to find two General Plans that look alike or read in similar format.

The variety of formats and the legal latitudes granted local government make many General Plans appear confusing or difficult to fully understand. However, the knowledge of a few key fundamentals will help interpret any General Plan and make it easier to evaluate.

There are two sets of requirements that must be present in all Plans. These are:

- 1) The guidelines from the Governor's Office of Planning and Research (OPR) describing the "required contents" for each element, and
- 2) The seven mandatory elements required in Section 65000 of the Government Code. As noted, these may not be easy to find in a General Plan because of the latitude allowed for format, but they must be there. The seven elements are Land Use, Housing, Circulation, Open Space, Conservation, Safety, and Noise.

### **1.2 Office of Planning and Research (OPR) Requirements**

OPR guidelines require that "the Plan should focus on those issues that are relevant to the planning area," including "not only those issues described in the planning statutes but regional issues as well." Here again, there is wide discretion allowed in the ways this can be done, but the intent of OPR is clear: if wildland fire is a concern, then it must be covered in the Plan. Wildfire is often a regional issue as it crosses between federal lands, unincorporated Local Responsibility Area (LRA), and cities.

OPR requires that a General Plan be made up of text describing goals and objectives, principles, standards, and Plan proposals, as well as maps and diagrams. Each identified issue should be addressed in the data collection and analysis phase, as goals are formulated and refined, and during implementation. See Figure 1 for a flow chart and abbreviation description of each step in the General Plan process.

#### **Collect and Analyze Data**

Collecting data is a requirement if Plan developers are to accurately assess issues, constraints, opportunities, and a community vision that sets the direction of the General Plan. Data collected should include the existing physical conditions, regulatory requirements, and existing plans, including plans of other agencies. Background information for all the elements should be referenced in the General Plan.

Characterization and analysis of the threats and impacts of wildfire can be enhanced in this phase of the General Plan process if the data and analysis portion evaluates the wildland fire

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environment in detail: fire history, slopes, fuel loadings, average/worst fire danger, rates of spread, potential for structure threat, ingress and egress access issues and the boundaries of Local Responsibility and State Responsibility Areas (LRA and SRA). Post-fire threat (flooding, landslides, etc) potentials could also be examined. The data and analysis section may include narrative descriptions, numerical data, maps, charts, and any other means of providing information about the issue of concern.

The data and analysis section is the starting point for the goals and policies that will eventually be implemented as part of the General Plan. The more complete the analysis, the stronger the justifications for action will be. If the data and analysis are weak or incomplete, then everything else that follows will also be weak. This section is the starting point for better evaluation and analysis of the threat and impacts of wildfire.

### Formulate and Refine Goals

Formulating goals for a community's development is an ongoing process during the creation of a General Plan. Goals are an expression of community values and set the direction for a community's "ideal future." Goals can be formulated as a result of the data collected and analyzed, or as a response to a community-identified need. They may be at the directive of a legislative body, or a reaction to an acute event, such as the realization of environmental hazards or infrastructure or housing needs. Goals should be vague end objectives, not action items. As data is collected and public input gathered, clear objectives, policies, and proposals are developed to meet the goals.

### Policies and Alternatives Analysis

General Plan objectives and goals provide the direction for a community's growth and development. After issues or concerns are described in the data and analysis, there must be policies that state the jurisdiction's decision to act, control, or mitigate the defined problems. Every aspect of a problem must have some kind of coping policy identified. For example, if fuel loading was identified in the data and analysis section as a problem, there should be some statement(s) to the effect that development will be designed or controlled to reduce the fuel volume. If access was identified as a problem, there should be policies to improve road design.

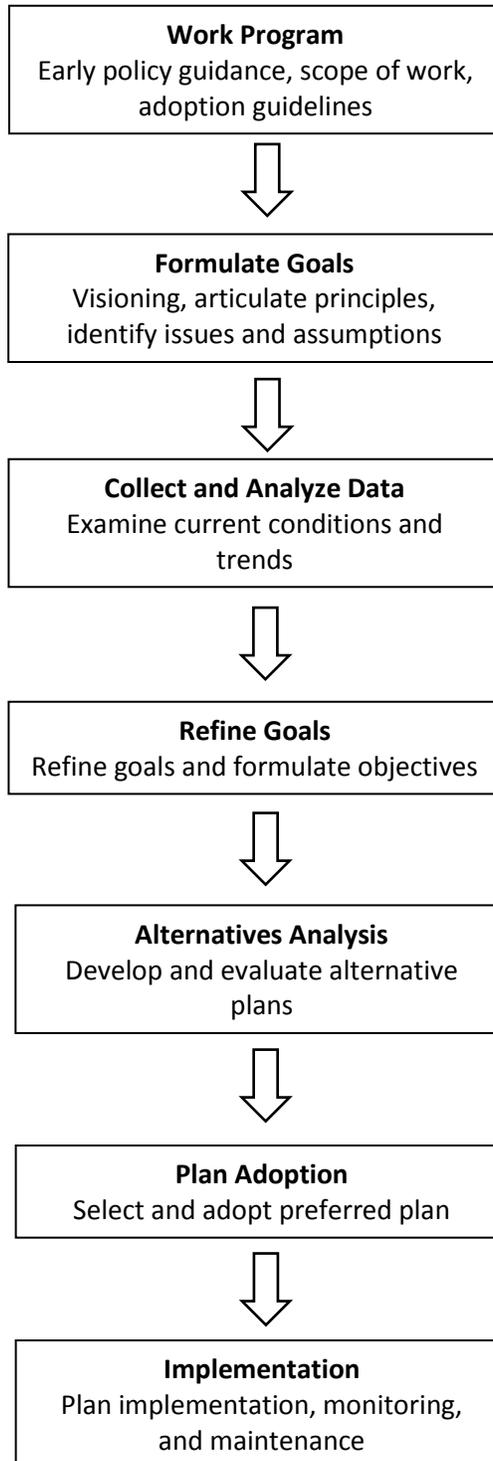
In order to go through the complete General Plan process, alternatives to the identified policy proposals must be considered. Stakeholders, including local fire agencies, should be given the opportunity to review the different directions the General Plan could pursue and weigh in on the various policy proposals. Alternatives can vary in their nature and detail, but should be consistent with the other parts of the General Plan.

### Implementation

These are the actual steps local government will take to implement their defined policies. Each policy described must have at least one implementation measure, and may have several. For example, if a policy calls for improved emergency vehicle access, then the implementation measure might be to improve local ordinances beyond the road and street design requirements in the California Code of Regulations Title 14, or a policy calling for more ignition resistant buildings would be implemented by going beyond the building requirements in Title 19 and Title 24, with recommendations from "Structural Fire Prevention Field Guide." If a policy requires fuel reduction measures, then key ridges might be zoned for fuel breaks, and the zoning ordinance could require construction and maintenance by the

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**Figure 1: Components of a General Plan Update  
Office of Planning and Research Guidelines**



developer.

This is an overview of the requirements of the General Plan contents, and can be used to evaluate a General Plan in development. If the data, goals, and implementation measures do not adequately describe the problem, what to do about it, and how to do it, then the Plan is weak and may be legally inadequate. In the past, courts have found General Plans inadequate because of missing mandatory elements (*Guardians of Turlock's Integrity v. Turlock City Council*, 1985), because the Housing element did not address housing for all economic segments of a community (*Camp v. Mendocino County Board of Supervisors*, 1981), or because elements were inconsistent with one another (*Concerned Citizens of Calaveras County v. Board of Supervisors of Calaveras County*, 1985). For more on defining the goals and policies of a General Plan, see OPR's "General Plan Guidelines 2003."

### **1.3 Government Code Requirements**

Section 65000 of the Government Code is referred to as the Planning and Zoning Law. Section 65302 of the code defines seven mandatory elements that must be included in each General Plan. Each of the elements must contain text that incorporates descriptions, policies, objectives, and standards. The text must be accompanied by, and consistent with, descriptive "diagrams." Planning law does not require detailed maps, only these "diagrams" approximating the planning intent. The diagrams were authorized by the Legislature so that planning and zoning descriptions do not require costly surveys and cartographic treatment.

Six of the mandated seven elements are pertinent to CAL FIRE's mission. The seventh, "Noise," is not. The important six are described below, along with comment on their importance to fire and resource protection and some sample evaluation criteria. A brief introduction to the opportunities for including fire and resource protection in General Plan elements follows in Figure 2.

#### **Land Use**

The land use element is a guide to planners, the general public, and decision-makers for the ultimate build-out patterns of development. The land use element has the broadest scope of the mandatory elements: it tells how the jurisdiction will designate and separate various uses such as commercial, industrial, and residential. Natural resource, agriculture, timber production, and flood plain areas (if any) must be included. The land use element's objectives and policies provide a long-range context for the short-term actions of zoning, subdivision, and public works decisions. Its major intent is to design areas for development that are compatible with one another. For example, "heavy industrial" areas should be separated from, and not adjacent to, residential areas. On the other hand, "light commercial" or "shopping center" designations may be compatible with residential uses. Sometimes commercial areas are designated as buffers or gradual-change uses between residential and industrial areas.

Importance:

Examination of the land use element in comparison with State Responsibility Area (SRA) and Local Responsibility Areas (LRA) with Very High Fire Hazard Severity Zones (VHFHSZ) lands, as designated by department recommendation or local ordinance, may show conflicts with fire and resource protection. All too frequently, the "compatibility" of uses is violated where development encroaches into wildlands. All types of uses may be designated in, or adjacent to, hazardous fire areas without

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buffer zones or other mitigating measures. Land use policies should consider and reduce these conflicts. Since zoning districts are derived from land use designations, it is important to assure that those designations, policies, and ordinances address the threats and impacts of wildfire. For example, Residential, Open Space, Agriculture, and Timber Production land uses could be designated to include fuel break and fuel reduction zones.

Sample Evaluation Criteria:

Does the land use element include wildland fire risks and hazards in the data and analysis section? Do policies include requirements to reduce hazard levels by various means? Are recreation areas (parks, golf courses) and agricultural uses (pastures, irrigated tree farms) located to provide “buffers” between development and wildlands?

### Housing

This element is required to designate how the government will regulate density and intensity of residential development. It includes provisions for low income groups and for those of limited mobility. In order for the private sector to address housing needs and demands, local governments must adopt housing elements that provide opportunities for, and do not constrain, housing development for *all* income groups. It must be updated every five years.

Importance:

In fire hazard areas, this element may prioritize housing needs, such as affordable housing, over reducing vulnerability to fire. Vehicle access, construction standards, and design requirements might be lowered by the local jurisdiction in an effort to comply with the needs for affordable housing. If so, those developments should be located in an area with limited fire hazards.

Sample Evaluation Criteria:

Does the data and analysis section for this element describe fire-vulnerable areas for housing? Do the policies recognize these areas so that this type of development is prohibited there? Are required construction standards in conflict with defined fire protection needs (access, ignition resistant building materials, residential sprinklers, fire flow)? If so, what compensating mitigation measures are required to provide safety?

### Circulation

This element consists of the general location of existing and planned transportation routes and public utilities. Designations, policies, and implementation measures in this element (and all others) must correlate – or be consistent – with the land use element. The information is usually displayed on maps or diagrams to show how the transportation system serves the various land use designations.

Importance:

This is the primary designator of access routes and road design requirements – not engineering standards. Government Code Section 14000 requires that the circulation element provide transportation facilities that reduce hazards to human life and minimize damage to natural resources.

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This provides the opportunity to make strong recommendations about transportation routes and design requirements such as turn-outs, roadway materials, and street signs. The Circulation element also provides information about the location of public utilities, including their proximity to VHFHSZs and accessibility to emergency responders.

Sample Evaluation Criteria:

Does the element plan for satisfactory ingress and egress, as well as evacuation routes and access for emergency equipment? Do the standards for circulation in SRA meet the requirements in California Code of Regulations, Title 14? Are policies defined to limit the number and length of one-way roads? Are heliports and helispots designated in areas that will facilitate suppression and other emergency needs? Are public utilities located where they are accessible to emergency responders? Are the utilities and road networks arranged such that damage to utilities – such as wind-driven breakages – does not impact major evacuation routes?

### Conservation

This element reconciles conflicting demands on both renewable and nonrenewable resources. It describes how the jurisdiction intends to protect and conserve its natural resources. The element should cover water, soils, forests, wildlife, and fisheries. Potential fire and flood impacts on all resources should be included. It overlaps the land use, open space, safety, and circulation elements.

Importance:

This element ties directly to the CAL FIRE mission of protecting SRA lands, as well as adjacent LRA lands into which and from which wildfire can burn. It should be written to facilitate that mission. As with all other elements, this one must be consistent with the overall General Plan. It has to “make sense” in the way it relates the natural resource management policies to everything else. The element should protect the specific resources in the planning area, but also be inclusive of the natural systems that produce these valuable resources.

Sample evaluation criteria:

Does the element discuss resource values? Are potential resource losses from wildfire (soil loss, sedimentation, local flooding, timber production, wildlife habitat, etc) included in the data and analysis section? Do policies include management options of prescribed fire, vegetation treatment, and fuel breaks to enhance protection?

### Open Space

This element designates areas for preservation and managed production of natural resources, outdoor recreation, and public health and safety. Open space land is defined in Section 65560 of the Government Code as any parcel or area of land or water that is essentially unimproved and devoted to open-space use. The important difference between Conservation and Open Space elements is the very specific inclusion of public health and safety requirements, among others, in Open Space. Section 65560.4 of the Government Code dictates that the element should include designation of “areas that require special management because of fire risks.” When open space is adjacent to development, prescription land management projects can be implemented in order to minimize fire risk. The Open

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Space element can establish fuel breaks, vegetation management programs, and programs to maintain the landscape. The Code authorizes the connecting or linking of these areas into complete networks in the interest of public safety.

Importance:

The Open Space element offers the opportunity to analyze conflagration potential and to design fuel break and fuel reduction zones and access and water systems into strategic fire defense improvement systems. Developers can be required to construct and maintain the improvements. This element has the detailed intent of the Housing element and the breadth of the Land Use element, and inclusion of strategic defense improvements in the Open Space and Safety Elements will lead to zoning for such improvements. Communities with Timber Production Zones can use the Open Space element to determine appropriate structure locations within or near TPZs, to limit the impacts of development on timber production and reduce fire risk to the forest.

Sample Evaluation Criteria:

Does the element relate to fire safety and suppression effectiveness? Is it linked with the Housing, Land Use, Safety, and Conservation elements to provide integrated resource and public protection improvements? Does the element contain policies and implementation measures requiring dedication, construction, and/or maintenance of these improvements on all projects?

### Safety

The Safety element defines community protection measures in relation to fire, flood, seismic, and geological hazards. It must include provisions for evacuation routes, military installations, peakload water supply requirements, and minimum road widths and clearances. It should include mapping of fire hazard severity zones, and could include analyses of minimum suppression resources required. Ultimately, the fire hazard section of the Safety Element should include goals, policies, objectives, and implementation measures to protect the community from the unreasonable risk of wildfire.

Importance:

The element can be used to strengthen or further justify other elements. It is an excellent place to include project design requirements to reduce hazard levels and provide for mitigation measures not included elsewhere in the General Plan. It may also be used to justify strategic fire defense systems zoning or fire safe ordinances.

Sample Evaluation Criteria:

Does the element correlate with others to facilitate suppression actions? Does it recognize evacuation needs? Does it address the traditional suppression problems and include policies and implementation measures to eliminate those problems? Does the element include or reference local fire safe building codes and ordinances? Almost all of the suggestions and evaluation criteria for the other elements can be applied to the safety element as well.

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Figure 2: Opportunities for Fire and Resource Protection in General Plan Elements

<u>Element</u>	<u>Opportunities</u>
Land Use	Use greenbelts as fuelbreaks or buffer zones, reduce fuel loads, establish water supply requirements,
Housing	Definition of Hazard Areas, fire safe building codes and ordinances, evaluate adequate locations for housing
Circulation	At least two access roads, road design using fire safe regulations, helibases, helispots, evacuation routes (ground and air), location of public utilities
Conservation	Fuelbreaks, fuel reduction zones, additional design requirements for development near commercial timber zones, air tanker base locations, helibases and helispots
Open Space	Fuelbreaks, fuel reduction zones, strategic access and water supplies, off-site linking of strategic improvements
Safety	Evacuation routes, water supplies, road standards, fuel reduction buffer zones, air access, definition of hazard areas and mitigation requirements

#### **1.4 General Plans Must Be “Legally Adequate”**

California courts have continually upheld the provisions of Government Code Section 65860, which requires that General Plans be “internally consistent.” From a practical standpoint, the requirement for internal consistency has two important meanings. First, it means that elements cannot contradict or conflict with each other; there must be clear indication that all parts of the Plan are integrated, that all parts offer mutual support to others, and that there has been a coordination of Government intentions in each and every part of the Plan. Second, it means that the actions which follow general planning, such as zoning and development ordinances, must meet the intent of the Plan’s policies and mitigation measures.

The courts have ruled that a lack of consistency invalidates a General Plan and that an invalid (or “inadequate”) Plan means that no development can be approved by the jurisdiction as long as the weaknesses exist. There are many legal rulings in this regard, and two of those make the point very well. In the case of *Resource Defense Fund v. Santa Cruz (1982)* the court said, “...the absence of a valid General Plan or elements thereof, precludes any enactment of zoning ordinances and the like.” In *Camp v. County of Mendocino (1981)* the court ruled that “The County may not approve subdivisions since some of the General Plan elements are inadequate in that they do not meet criteria in state law.”

The significance of these decisions is critical. If any General Plan element or elements is judged inadequate, development in the jurisdiction may be shut down until the courts find that the deficiencies have been corrected. This is a powerful incentive for any jurisdiction to improve its Plan before someone brings suit.

#### **1.5 Subordinate Planning Tools**

California courts have placed the General Plan “atop the hierarchy of local government law regulating land use.” It is clearly established that all other types and character of planning, including zoning and other ordinances, are subordinate to the General Plan. Thus, when other planning tools are being considered, the basic policies and implementation measures of the Plan must be followed. Three common subordinate planning tools are Area Plans, Specific Plans, and Development Agreements.

##### **Area Plans**

An Area Plan is usually prepared by the local government to further define planning for a particular part of the jurisdiction. They are generally prepared for unincorporated areas with strong growth potential. An Area Plan puts a “magnifying glass” on General Plan land use designations, and may modify those designations to some small degree. Also, zoning districts may be revised slightly, but there is no change in zoning ordinances or development conditions. Area Plans will consider all appropriate land use, and are prepared without any particular developer(s) in mind. Utility locations or infrastructure is not specified in any more detail than that contained in the General Plan (which is minimal). Area Plans are approved and amended by the same procedure as General Plans.

Area Plans usually adopt or incorporate the same data and analysis, policies, and implementation measures as those in the General Plan. However, the preparation of an Area Plan offers opportunity to strengthen weaknesses in the General Plan requirements in the planning area. For example, a new Area Plan could be written with stronger fire and resource protection requirements than those in the current General Plan, so long as those requirements were not contradictory to the

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Plan's existing language.

For example, the 2012 Berkeley Downtown Area Plan is a specific document to guide development in Downtown Berkeley. It builds on the strengths of the 1990 Downtown Plan, which was successful in making downtown a recognized cultural center, preserving its historic assets, and bringing new housing to the area. The Downtown Area Plan (DAP) is a way to implement the broad policies of the General Plan while working toward specific goals for downtown. The DAP also supports collaborative development with Downtown's neighbor, the University of California, Berkeley, as both communities try to manage the historic setting, build appropriate housing options, and support economic development in Downtown.

The adoption of the DAP was coordinated with the adoption of zoning code updates, design guidelines, impact fees, and a Streets and Open Space Improvement Plan. This type of strategic planning won the community a Best Practices Award of Excellence from the American Planning Association – California, Northern California Section in 2013. The plan is available online through the City of Berkeley.

### Specific Plans

Specific Plans may be prepared by either the jurisdiction or a developer. The local government would prepare one to show in detail how land is to be developed. Frequently, they are used as a “selling tool” by the jurisdiction to show interested parties what kind of development is acceptable or desired. Development interests may also prepare a Specific Plan to indicate precisely what they intend to construct.

This type of plan is called “specific” because it must describe utilities, transportation systems, and other infrastructure in detail. While Area Plans can only be evaluated in terms of General Plan policies and implementation measures, Specific Plans have to show exact design of improvements such as road widths and alignments, fire flow, structure layout, and other information in both narrative and map formats. Although Specific Plan proposals may modify zoning boundaries to some degree, the entire Plan must be consistent with General Plan policies.

Specific Plans “may be amended as often as deemed necessary by the legislative body” (Government Code Section 65453). This offers opportunity to propose improvement in fire protection requirements whenever they can be justified.

For example, the City of La Verne developed the Old Town La Verne Specific Plan in order to encourage development that preserves Old Town as the historic heart of La Verne, but that also took advantage of nearby transit and the Los Angeles County Fairplex, and also supported expansion of the University of La Verne. A Specific Plan for a historic area such as Old Town is an important tool in implementing the General Plan; it aids La Verne in developing economic and housing opportunities in Old Town while preserving its unique characteristics. The Old Town La Verne Specific Plan won the an Award of Merit from the American Planning Association – California Los Angeles Section award for Comprehensive Plan Award, Small Jurisdiction in 2013. It is available on the City website.

### Development Agreements

These are initiated by developers, primarily for long term projects. They are used to “lock-in” zoning and development conditions. The developer may plan a ten-year project and wants to assure

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that the jurisdiction will not alter zones or change requirements during that time period. Development Agreements do not require the detail and precision of Specific Plans in terms of infrastructure design and location, but again, they are subject to General Plan policies.

The Government Code contains three sections that are important controls on Development Agreements.

Section 65865.1 requires annual review of progress and compliance, and “good faith effort” by the proponent. The Agreement may be modified or terminated if project conditions are not met. Thus, even though the Agreement is frequently viewed as “untouchable” after approval, that is not the case. Enforcement (and change) options exist if the Agreement is not complied with. This could be extremely important on some prior developments that have not been completed as planned.

Section 65865.2 allows “dedication of land for public purposes and the terms and conditions for applicant financing of public facilities.” This offers the opportunity to require mitigations that deal with resource protection and issues related to the threat and impact of wildfire facilities, and on-going maintenance. The requirements can be applied to both the new proposals and to revise those where original compliance has not been met.

Section 65866 establishes that the terms and conditions applied to the Development Agreements “shall be the rules, regulations, and official policies in force at the time of execution of the Agreement.” This is the “lock-in” aspect of the Agreement that protects the developer from later changes. Since many Agreements include phased development taking years to complete, they usually show the first phase in some detail with later phases less well defined. Whenever this occurs, and later phases cannot be fully evaluated at the time of initial approval, it is extremely important to word protection conditions very carefully. Wording such as “Fire protection requirements for subsequent phases will be established when the proponent provides detailed plans for those phases” should be included in all project reviews.

For example, any new development in an agency served by the Orange County Fire Authority is required to be protected by a Fuel Modification Zone. During the design process, land owners and builders are required to design, implement, and maintain a landscape Fuel Modification Zone – a strip of land where combustible vegetation has been removed or modified and replaced with adequately spaced, drought-tolerant, fire-resistant plants. Exact programs can vary, but one way to communicate a development’s program is through a Developer Agreement submitted to the Orange County Fire Authority with details about the Fuel Modification Zone.

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## Chapter 2 Other Planning Related Laws

### 2.1 Introduction

The California Environmental Quality Act (CEQA) and the Subdivision Map Act are only two of many statutes that govern planning. However, these two laws have strong influence on the actions taken under the Planning and Zoning Law. Together with the code sections illustrated in the Introduction and the laws governing California General Plans, CEQA and the Subdivision Map Act can potentially have a strong influence on development and land use decisions in the state. The basic intent of both CEQA and the Map Act is to fully describe development projects and allow local government to require changes that will decrease environmental impacts or enhance public health and safety. Both Acts contain progressive levels of detail that are applicable to projects of increasing size or complexity. At each of the progressive levels there is opportunity for professional review and comment to evaluate, and probably improve, fire and resource protection requirements for any given project.

The two Acts have some important interrelationships. CEQA requires the use of “scientific and professional data” when making environmental decisions and allows for changes to be required in the design and/or the improvements on a project. The Map Act defines those “design” and “improvements.” The Map Act defines “minor subdivisions” as those with four or fewer lots and leaves requirements for these minor subdivisions up to the discretion of local government, whereas a “major” subdivision of five or more lots has strict mapping and processing standards. However, even a minor subdivision is a “project” under CEQA, and thus design and improvements on the project may be conditioned to protect public safety and the environment, even if those conditions are not in the local subdivision ordinance.

The case law themes reviewed in this chapter are fundamental influences on planning and development. The themes show how the courts view the rights and limitations of government. They show “what’s fair and what’s unfair” and “what’s right and what’s not right.” While local government has great power to control development, the law requires government to be precise and systematic about how it applies its powers, which avoids the potential problems of “takings” and abuses of private property rights can be avoided. Perhaps the most important aspect of all the themes is that government must have a “legitimate legislative goal” before it can use its powers to control development. That concept ties directly back to the General Plan, and shows how important it is to completely describe fire and resource protection needs in that document.

### 2.2 The California Environmental Quality Act

Section 21000 of the Public Resources Code defines the statutory requirements for the California Environmental Quality Act. Guidelines for the implementation of the Act are found in Section 15000 of the Administrative Code. The Act and the implementation guidelines combine to establish a set of procedures that are quite complex. The purpose of this writing is only to expose the basics of CEQA and the potential for its application to further consideration of resource protection and dealing with the threat and impacts of wildfire.

CEQA was designed to 1) disclose the environmental effects of proposed activities, 2) identify and prevent environmental damage, 3) disclose agency decision making, 4) enhance public participation, and 5) foster intergovernmental coordination. An important part of the Act defines “projects” as any action(s) that may possibly have a “significant” impact on the environment. The definition of “project”

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includes, but is not limited to, General Plan amendments, zoning ordinances and zoning changes, and most other development actions such as parcel splits and subdivisions. CEQA sets up a three-phase process for evaluating projects; the three phases move from the simple to the complex. The first two phases are usually done by the local Planning Department staff. The third may be done by staff or contract consultants. The three phases are described below and outlined in Figure 3.

The first phase is determining whether or not a project is even subject to CEQA. The Act contains a listing of project types that are exempt from review. These include actions such as adopting timber production zones, designating wilderness areas, and actions taken to protect the environment or natural resources. If a project is subject to CEQA and may have environmental impacts, the lead agency moves on to the second phase.

The second phase is preparation of an “Initial Study,” which examines the proposed projects in relation to the environmental factors it will impact. The environmental effects to be studied include the direct, reasonably foreseeable indirect, cumulative, and growth-inducing impacts of the project. A project with potential positive and negative effects must still prepare an EIR; in *County Sanitation District No. 2 of Los Angeles County v. County of Kern (2005)*, the California Court of Appeals held that a project with potentially positive and negative effects still required an EIR. Initial Studies must be documented for public record, and the documentation must include sufficient information and evidence to support its conclusions. A 1988 Court of Appeals decision (*Sundstrom v. Mendocino County*) directed more attention to the detail that must be included in Initial Studies. In effect, the ruling called for more detailed written conclusions about each possible impact and its mitigation measures, and offers reviewers a better chance to understand the reasoning and conclusions of the person(s) doing the Initial Study.

There are two possible outcomes from Initial Studies that begin the third phase of the CEQA process: either there is, or there is not, chance for significant environmental impact. If the Study finds no chance of impact then a “Negative Declaration” can be prepared and no further review will be required. The findings in the Initial Study must support the Negative Declaration. Unfortunately, many local government planners have little wildland fire awareness, and issues related to resource protection and wildfire threat and impact may be overlooked and mitigating opportunities may be lost. Thus, Negative Declarations should be carefully and critically reviewed, and not just accepted as fact. If there is ANY probable impact, then a Mitigation Negative Declaration or an Environmental Impact Report needs to be prepared.

A “Mitigated Negative Declaration” is a sort of “fix-it-up” process when there are some environmental impacts, but not enough to require extensive project review. In such cases, a few changes in the design of the project or the addition of development conditions may be all that is necessary to eliminate the impacts. The changes and/or additional requirements become the “Mitigation” attached to the Negative Declaration. As it is with Initial Studies and Negative Declarations, these Mitigated Negative Declarations need careful review. There is a tendency to oversimplify mitigation requirements. The review should find that potential impacts are actually mitigated, and not just softened by a few requirements.

The last, and most complex, option in phase three is the preparation of an Environmental Impact Report (EIR). The purpose of the EIR is to provide more detail on possible impacts, and to offer enough information so that the governing body and the interested public (including public agencies) can make intelligent decisions on project design and mitigation. Section 15160 of the Administrative Code

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**Figure 3: Steps in the Environmental Review Process Under CEQA**  
Adapted from *CEQA Deskbook: Third Edition*

Phase I	<b>Preliminary Review</b>	
	Application Submitted to Lead Agency	
	Application Determined to be Complete (30 days)	
	Determination that project is subject to CEQA; review project for exemptions	
Phase II	<b>Initial Study</b>	
	Consultation with responsible and trustee agencies	
	Decision to prepare EIR or Negative Declaration (30 days)	
Phase III	<b>Environmental Impact Report</b>	<b>Negative Declaration</b>
	Notice of Preparation sent to responsible and trustee agencies	Mitigation measures identified and agreed to by project proponent
	Responses to NOP sent to Lead Agency (30 days)	Draft Negative Declaration prepared
	Draft EIR prepared	Public notice and review (20-30 days)
	DRAFT EIR reviewed by Lead Agency; Notice of Completion Filed	Responses received
	Public notice and review of EIR; optional public hearing (30-45 days); written comments received	Comments considered
	Final EIR certified by Lead Agency (within 1 year after acceptance)	Negative Declaration completed (180 days from acceptance)
	Lead Agency makes decision on project (6 months after final EIR certification)	Mitigation reporting and monitoring program adopted
	Findings adopted; mitigation and monitoring program adopted	Lead Agency makes determination on project (2 months from Negative Declaration adoption)
	Notice of Determination filed (within 5 days of project approval) and posted	Notice of Determination filed (5 days from project approval) and posted
	Responsible Agency makes decision on project (180 days from Lead Agency decision)	Responsible Agency makes decision on project (180 days from Lead Agency decision)

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describes ten categories of EIRs. Three of those ten are most common for local government projects. They are 1) the Project EIR, which consists of two parts, the “Draft” and the “Final” product, 2) the Subsequent EIR, which is prepared when circumstances change or new information becomes available, and 3) the Supplemental EIR, which is used to address changes in conditions that are minor in nature.

### Local Authority to Declare “Overriding Considerations”

Section 15093 of the California Administrative Code gives local officials the authority to approve projects despite unavoidable impacts. The section does, however, require the decision-makers to clearly state “specific reasons” for their decision to allow the impacts. The specific reasons must be documented in a “Statement of Overriding Considerations” that makes the opinions of the officials a matter of public record, and, as one court decision put it “...enable the public to determine the environmental and economic values of their elected officials thus allowing for appropriate action come election day should a majority of the voters disagree.” (*People v. County of Kern, 1976*)

### CEQA and General Plans

General Plans and their amendments are subject to CEQA. The CEQA process must consider the environmental effects of any adoption or amendment on the entire jurisdiction. Local governments must analyze the General Plan’s significant environmental impacts and, when feasible, present mitigation solutions. Wildland-structure-intermix fire issues are newly recognized as a General Plan concern but not always appropriately evaluated or mitigated. California’s fire history clearly illustrates the severe environmental, economic, fiscal, and social impacts of unmitigated development. General Plans and their accompanying CEQA review process provide a new opportunity to evaluate the recurrent threat of wildland fire to public safety and natural resources.

### CEQA and Development Projects

Development projects include almost anything that is done to change the character of the land. The definition includes major and minor subdivisions as well as the improvements that will result from those actions. The process for individual projects is the same as that for General Planning except that the focus (size) of the evaluation is limited to the project area and any impacts that may be expected off-site.

CEQA and the Subdivision Map Act (discussed later) are legally interrelated in a way that can provide a strong influence over safety requirements applied to development. CEQA requires that impacts be identified and mitigated where feasible and that public agencies use “scientific and professional data” in making environmental decisions (Section 15064). Section 15041 empowers local government to require changes in either (or both) the design of the development and the improvements that will serve the project. The Map Act defines “design” and “improvements.”

These related statutes can be applied at the second or third phase of the CEQA process.

Examples:

1. Local government may be ready to approve a small project by Negative Declaration that could be detrimental because it has not considered or offered mitigations for issues related to resource protection and the threat and impact of wildfire. A detailed review may show

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that the planned design and improvements, or lack thereof, could be modified in ways that enhance resource protection. In this case, comment to local government defining the weaknesses and acceptable mitigation requirements would be appropriate. The comment should request that the design modifications be included in an Amended Initial Study or a Mitigated Negative Declaration. In some cases, it might be appropriate to request that an EIR be prepared.

2. Review of a planned 20-lot subdivision shows numerous cul-de-sacs, but the Initial Study finds “no impact.” In this case, appropriate comment should point out that professional opinion on fire risks does show impact and request further review. Comment could also indicate ways to mitigate the impacts, such as requiring more two-way access routes and elimination of many or all cul-de-sacs. It could also be appropriate to request one or more cul-de-sacs be designed as helispots with adequate water supply.
3. A Draft EIR on a planned shopping center shows roads and parking areas on the interior of the project and structures on the outside, adjacent to wildland fuels in areas where wildfire is a threat. The comment made here could be similar as the one in example 2. Professional judgment indicates impacts that could be mitigated by alternate design – fuel break on the exterior or access and parking on the outside and buildings in the interior. Comment should be strong enough in detailing weaknesses to require that local government declare “overriding considerations” if they choose to approve the EIR without following these recommendations.

### CEQA and “Cumulative Impacts”

Section 15355 of the Administrative Code states that “cumulative impacts” can result from individually minor but “collectively significant” projects. Section 15358 requires consideration of indirect or secondary impacts that may occur later in time or farther removed in distance. The same section specifically includes consideration of impacts on “other natural systems, including ecosystems.”

Unfortunately, the terms “cumulative” and “significant” are not defined in CEQA. Their definitions are left to the subjective opinions of local decision makers – who are strongly influenced by their education and awareness of the issues. However, the Board of Forestry and CAL FIRE have established, under the Forest Practice Rules, a detailed methodology to get at cumulative resource impacts. This methodology has been approved as “functionally equivalent” under CEQA, and can be used to evaluate past and future projects and their mitigations to determine the cumulative impact of development.

The effect of increased development in the wildland-urban interface is a growing wildland fire suppression problem. Suppression failures caused by poor access, inadequate water supplies, and heavy fuel loading show that unmitigated development adds to higher costs, public and private property losses, and resource damages. If a cumulative impact analysis can be conducted to show the effects of increased development and density on wildland areas, it may be easier to illustrate the importance of mitigation to local officials.

### **2.3 The Subdivision Map Act**

Government Code Sections 66410 through 66499.58 are called the “Subdivision Map Act.” The Act describes the statewide procedures for mapping and approval of all land divisions.

The Act defines “major” subdivisions as five or more lots and “minor” subdivisions as four or fewer. Strict requirements are established for the mapping and processing of major subdivisions, and local governments may not alter or ignore those standards. The Act also establishes minimum standards for the technical aspects of mapping minor divisions, but allows local government to set up their own specific conditions and requirements. *In both major and minor subdivisions, local actions and approval procedures must be consistent with the General Plan and conform to CEQA guidelines.*

Section 66418 requires that the design of subdivisions (specifically including “fire roads and fire breaks”) and their improvements (access, water supply) to be developed in ways which “ensure consistency with, or implementation of, the General Plan or any applicable specific plan.”

Section 66474(e) requires that local governments deny projects which “are likely to cause substantial environmental damage.”

The legislative separation of “major” and “minor” subdivisions in the Act has created a backlog of serious problems. Historically, local governments have been much less restrictive with minor divisions and that has resulted in negative consequences. Minor divisions have usually not been subjected to the strict conditions required of major divisions: access, water, environmental, and/or fire concerns have gone unaddressed and unmitigated. This has allowed thousands of unsafe scattered parcels and structures throughout wildlands and is a significant contributor to major fire losses. However, this can be mitigated by conditioning the minor subdivisions.

Section 66411 says, in part, “Each local agency may by ordinance regulate and control [minor] subdivisions, provided that such regulations are not more restrictive than the regulations for those subdivisions for which a tentative and final or parcel map are required.”

Section 66411.1 says, in part, “Whenever a local ordinance requires improvements for a division of land which is not a subdivision of five or more lots, such regulations shall be limited to the dedication of rights-of-way, easements, and the construction of reasonable off-site and on-site improvements for the parcels being created.”

CAL FIRE Units have an important role in reviewing and approving subdivisions and small lot divisions, which provides opportunities to have major impacts on fire protection mitigations in developing communities. As stated above, it is possible to condition minor subdivisions if the parcel map does not indicate appropriate vehicle ingress or egress, road widths, or water supply. Some of the biggest impacts to fire protection in the WUI come about because of development conditions such as those. CAL FIRE Units can also affect development by working with city officials to develop ordinances that enshrine these conditions into law.

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In 1978, the Attorney General stated that the purposes of the Act were “(1) to encourage orderly community development by providing for the regulation and control of the design and improvement of a subdivision with a proper consideration of its relation to adjoining areas; (2) to insure that areas within the subdivision that are dedicated to public purposes will be properly improved by the subdivider so that they will not become an undue burden on the community...”

Thus, local government can pass minor subdivision ordinance(s) that meet the higher standards set for major divisions. Dedications of land, mitigation fees, and construction and maintenance of improvements (both on- and off-site) can be required to promote public safety and resource protection.

The Act describes four types of maps used for land division. All of them are subject to the requirements discussed above, but each type also has individual significance during the review and approval process. The four types are:

1) Parcel Map

For subdivisions of four or fewer lots. While all state laws such as PRC 4290 and 4291 apply, local ordinances govern any additional fire and resource protection conditions that may be applied. If the local ordinance(s) are not in place, or are not sufficient to provide the needed protection, then additional conditions will be difficult to obtain. Action can be taken to initiate new or revise existing ordinances.

2) Tentative Map

Required by the Subdivision Map Act for all major subdivisions. They are prepared by the subdivider to describe the property and the general intent of the subdivision. They are subject to any and all conditions that are justifiable under state law. With a Tentative Map, additional conditions and development requirements may be attached to the project at any time up until the Final Map is approved, which may be as long as two years. The rules for Tentative Maps provide a relatively long-term opportunity for reviewers to recommend design changes (road locations and standards, for example) and/or additional improvements such as helispots, water sources, or fuel breaks that may be justified by the CEQA process.

3) Vesting Tentative Map

A Vesting Tentative Map can be filed instead of a Tentative Map. Approval of a Vesting Tentative Map confers the right to proceed with development in compliance with the ordinances, policies, and standards in effect at the time the map is approved. The conditions on the development may only be changed under a few specific conditions. One of those specific conditions is found in Section 66498.1, which says “...failure to (add conditions) would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.” Vesting Tentative Maps should be reviewed with somewhat more scrutiny and attention to fire protection detail than that given Tentative Maps.

4) Final Map

These are prepared based upon the conditions required on the Tentative or Vesting Tentative Map. The Final Map may be further conditioned for health and safety reasons (Section 66498.1). It should be reviewed closely for compliance with conditions recommended at the Tentative Map stage, the General Plan, CEQA, and local ordinances.

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This is the last chance to review and comment and to assure that all appropriate conditions are included.

The content of the Subdivision Map Act is long and detailed; however, these selected points emphasize the value of proper General Plan preparation and the adoption of implementation measures that protect the public and natural resources.

### 2.4 Case Law

Over the years these and other planning laws have been tested in state and federal courts and more detail and definition about the laws have resulted. Each court decision adds to the understanding, interpretation, and application of the total body of planning law. While each case is specifically different, there is a consistent theme of compatible decisions that have taken shape. These themes have established that government has the power to regulate, but that the regulation must be “reasonable” and fair to citizens.

Four case law themes are discussed below. They represent fundamental planning and development issues. A good understanding of these four principles is a major part of understanding the entire planning process.

#### Police Powers

Article XI, Section 7, of the California Constitution gives counties and cities nearly as much power as that given the Legislature to promote public health, safety, and welfare. Controls on land use and development may be applied as long as those controls are properly enacted and do not violate other laws. Courts have held, however, that exercise of Police Powers must be “related to a legitimate legislative goal.” This means that there must be a clear statement on record (in the policies and implementation measures of a General Plan or in ordinances, for example) of government’s intent, reasoning, and objective(s). More on legislative goals will be discussed in the next few pages.

Key concepts: Local government has extensive power to improve public safety and resource protection. Wildland/structure fire safety and resource protection represent “legitimate legislative goals.” General Plans and ordinances can be written to describe and implement those goals.

#### Private Property Rights

There is a strong legal distinction between individual rights on existing properties and the “rights” associated with changes in use or character to a property. Those who want to alter or change the character of land uses sometimes complain that their “rights” are being abused when regulatory conditions are applied to their proposals. Case law clearly establishes that development is a privilege and not a right, and the privilege is subject to Police Powers. The legal theory is that existing, unchanged properties carry with them the rights to privacy, security, and legitimate uses. However, a proposed change in use or character reintroduces the land to regulatory review and possible change in controls or conditions.

Example:

If Mr. Jones buys 30 acres of agricultural land, he is entitled to all the uses and freedoms granted under the agricultural zoning ordinance. He has significant property rights as

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long as he keeps the property in the same land use category. But, if Mr. Jones later proposes to build a shopping center on part of his 300 acres, then he subjects himself to all of the laws, requirements, and conditions that local government applies to other projects of that nature.

If, for instance, the jurisdiction has General Plan policies and implementation measures calling for improved access, adequate water supply, and fuel reduction, Mr. Jones could be required to include improvements such as helispots, water storage, public utilities, and fuel breaks in his new entitlement.

If Mr. Jones refuses to comply with these requirements, then Mr. Jones's proposal may be denied. His property would remain in an agricultural zone, with all of its inherent rights, which is exactly what he purchased in the first place.

This example shows how the courts see development as voluntary in nature. Persons are not required to develop land, or lot split, or change zoning. They choose to do those things, and frequently the choice is made in anticipation of profit. Since development (or modification) usually creates additional cost and workload burdens on government, the courts say it is reasonable to apply controls to offset that burden. The controls may be in the form of dedications, fees to pay related government costs, in construction of certain community improvements, in maintenance of those or other improvements, or all of these. Controls over "design" may also be applied, which includes not only building regulations but also the way a project is sited, or "laid-out." In addition, the required improvements may be "off-site;" they need not be limited to the exact property.

The courts have set two broad limitations on this issue. Government must show that development requirements "substantially advance a legitimate government purpose," and that the property owner is not denied "viable economic use" of the property. A good illustration of the balance between government control and these limitations is found in Tuolumne County's wildlife habitat mitigations:

In 1987, the County adopted a General Plan amendment to protect wildlife habitat. The amendment included categories of habitat delineated by professional biologists (data and analysis), declared these areas and wildlife as valuable natural resources that required protection (legitimate government purpose), and required that up to 20 percent of the property being rezoned or developed could be dedication for that protection (policy statement in the General Plan).

Dedications are zoned "Open Space," and use restrictions apply. Under some conditions, dedication of habitats in other areas may be contributed as a substitution for habitat on the actual project (one of several implementation measures).

In less than 18 months after the adoption of the amendment, nearly 40 miles of Open Space zoning (ranging from 50'-200' wide) for habitat protection had been dedicated. Since at least 80 percent of all affected properties remain for the "viable economic use" of the owners, there is no question of property rights violations. Although there are differences between wildlife habitat corridors and fire protection systems, this example illustrates how rapidly new zoning is occurring in wildland areas. The same planning process can be used to enhance fire safety.

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Key concepts: Any and all new projects are subject to government control and conditions. The conditions must “advance a legitimate purpose” and may eliminate use of the property. In terms of fire and resource protection:

- 1) Land uses may be conditioned to protect the public and natural resources
- 2) Appropriate and complete coverage of need in the General Plan will document “legitimate purpose”
- 3) Actual construction and/or maintenance of improvements and/or fees to fund staff and operations may be collected
- 4) Requirements may include off-site contributions for improvements and maintenance and
- 5) The acceleration of development can be utilized to obtain many of the requirements needed for adequate protection.

### “Nexus” and “Rough Proportionality”

Nexus is the legal term used to describe “relationship” or “connection.” It means that development conditions must relate to need: the “legitimate purpose” must justify the requirements. Courts have been strong in defending government authority to require conditions. Two examples:

In a 1971 decision (*Associated Home Builders v. City of Walnut Creek*), it was ruled that “...a dedication can be required based on a general and broad public welfare measure...”

In the case of *Georgia-Pacific Corporation v. California Coastal Commission (1982)*, the decision indicated that “a regulatory body may...require a dedication of property in interest of the general welfare as a condition of permitting land development.”

However, the courts have been equally strong in supporting individual property rights by demanding that the conditions are closely related to the need.

Example:

In a 1987 landmark decision, *Nollan v. California Coastal Commission*, the United States Supreme Court rules that there must be a clear and close relationship between required dedications and the stated “legitimate government purpose.” In this case, the Coastal Commission had the stated purpose (an official goal and policy) of allowing the public to view the beach. When the Nollans applied for a permit to enlarge their existing home, the Commission demanded an easement across the property to provide public **access** along the beach. The Nollans objected and fought the case. The Supreme Court sharply defined the nexus issue here when it decided in favor of the Nollans. The Court ruled that since the Commission’s purpose was to allow people to see the beach, a dedication requiring access was not related closely enough to that purpose. The Court did not dispute the Commission’s authority to require conditions, and even suggested some that could have been constitutionally applied: “a height limitation, a width restriction, or a ban on fences...(or)...the requirement that the Nollans provide a viewing spot on their property...”

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Rough proportionality, on the other hand, is a term requiring development conditions to be related both in nature and extent to the impact of the proposed development. If a local government places development conditions on a permit, the government must show a “required reasonable relationship” between the conditions imposed on the development and the development’s impact.

Example:

In a decision now often referred to with *Nollan* as “Nollan and Dolan,” the US Supreme Court decided in *Dolan v. City of Tigard (1994)* that an Oregon town’s condition, placed on a permit granted to expand Dolan’s bicycle store and pave her parking lot, was not proportional to the effect Dolan’s store expansion would have on the area. The permit conditions required dedication of land for a public greenway and a bike path. The Supreme Court decided this was an unconstitutional taking of Dolan’s property, and coined the term “rough proportionality” for the standard they applied. Despite this new nation-wide standard, California and many other states had been following the idea of “rough proportionality” for years.

Key concepts: Governments can have a wide range of approaches to land use in their jurisdiction. In regards to protection of resources and dealing with wildfire threat and impact, 1) those policies and their implementation measures must be clearly stated, 2) any required dedications must be unquestionably linked to the policies, and 3) professional management practices can be achieved on the ground if they are properly defined and integrated into the General Plan and subordinate ordinances.

### “Taking” of Property

Each of the preceding case law themes is related to the “taking” issue. In essence, a taking results from either the careless application of police powers, abuse of private rights, or failure to meet the nexus or rough proportionality requirements. In California, the courts decide whether taking has occurred or not from the standpoint of “what’s left for the owner’s use?,” rather than “what is required to be dedicated?” If the remainder of the property (after any dedications) still provides the opportunity for living and “economic viability,” then a taking has not occurred. As noted above, “economic viability” is not tied to profit, only the ability to use, maintain, and perhaps resell the property.

Example:

In 2013, the United States Supreme Court expanded “takings” to include the *denial* of a permit based on unmet conditions. In *Koontz v. St. Johns River Water Management District (2013)*, the Court held that *Nollan* and *Dolan* (or, a nexus and rough proportionality) apply whether or not the agency is approving or denying a permit. The Court also expanded takings to include requirements for property owners to pay money, not just a taking of property. This case was highly divisive in the Supreme Court, and it remains to be seen how “takings” of money, not just land, will be contested and adjudicated in the future.

Key concepts: Land use designations, zoning, and required dedications for fire and natural resource defense systems (fuel breaks, fuel reduction areas, access, water) which may overlay properties are not a taking as long as they allow use, are properly defined as legitimate legislative goals, and further the government purpose of public safety and resource protection.

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## Chapter 3 Strategic Fire Protection Planning

### **3.1 Introduction**

Development patterns on California's State Responsibility Area (SRA) wildlands and the push of development into the wildland-urban interface (WUI) and intermix has challenged traditional fire suppression operations and increased the assets and lives at risk. The Southern California Fire Siege of 2003 is just one example of the devastating losses of life and property that will continue to occur in the future unless the overall development process incorporates more extensive fire planning.

This chapter outlines ways to utilize the General Plan process and Strategic Fire Protection Planning to develop design and implementation measures that will help to mitigate wildfire risk in new development areas. Strategic Planning is the integration of pre-planning into the legal and procedural aspects of local government development decisions. The Strategic Planning solutions described here are based on all of the legal frameworks, opportunities, and obligations that are discussed in Chapters 1 and 2, as well as the *2010 Strategic Fire Plan for California*.

By incorporating strategic fire planning into the General Plan process, fire protection professionals and urban planners can support growth and development in a region while also protecting residents, economic centers, and wildland from fire risk. This chapter will discuss how General Plan development and fire planning intersect, and includes ways to enhance collaboration between planners and fire professionals. As we plan for a changing climate, it is increasingly important that the risks of natural disasters such as fire (and its potential after-effects, such as landslides and floods) be considered when communities contemplate new development.

The *2010 Strategic Fire Plan for California* states seven goals that can be accomplished in whole or in part by incorporating fire safe planning into local General Plans. This guide is ultimately meant to explain the General Plan process, the legal requirements of General Plans, and, in this chapter, how to adapt the goals in the *Strategic Fire Plan* to local planning efforts. It also explores how momentum from the General Plan process can be harnessed to create Community Wildfire Protection Plans.

Achieving the Department's mission becomes more difficult as people and structures move to wildland areas. All indications are that, given current policies and procedures, the challenges inherent in trying to protect both resources and life and property will be compounded in the decades ahead. Developing a collaborative relationship where community development and fire planning are better coordinated and integrated will aid in suppression efforts and reduce the risk to lives and property.

### **3.2 Why Strategic Fire Planning is a Priority**

As population in California continues to grow, development continues to expand into the Wildland Urban Interface (WUI). Areas threatened by wildfire that once contained mostly natural resources now include life and property at risk. Responsibility for fire protection falls not just on fire protection agencies but on the local community and individual land/home owners. Incorporating fire protection measures into local planning can foster a collaborative environment for resource professionals, community planners, and landowners to share best practices, lessons learned, and create a cohesive, integrated plan.

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Protecting the local population is increasingly important as climate changes impact weather systems and fire seasons. Multiple years of drought have reduced the moisture content of vegetation, increasing its flammability. Additionally, drought-stressed vegetation is more vulnerable to insects and diseases – as vegetation mortality increases, so does the buildup of dead woody material that is ready to burn. Research on climate change and what it means for fire risk is ongoing, but the trend of longer, hotter, and more severe fires looks to continue into the future. Although local agencies cannot stop climate change singlehandedly, strategic planning is an important tool to making resilient environments.

In large part, strategic fire protection planning reflects fire behavior knowledge, wildfire history, suppression experience, and the application of planning law. It can be the vehicle for suggesting wildfire mitigations/requirements into General Plans and all the subordinate planning of a local jurisdiction.

There are three goals of strategic planning to deal with wildfire treatment and impacts:

- 1) To provide professional wildland suppression advice to local governments
- 2) To bring a more balanced approach to wildland planning and development
- 3) To provide suppression forces with the best and safest chances for stopping wildland fire

There are two important beneficial results that properly developed strategic planning can achieve: First, it will provide (over time) an integrated network of defense improvements that will increase suppression effectiveness. Second, it will allow local governments, working together with CAL FIRE, to determine the best mitigation improvements for their planning area.

### **3.3 Goals of Strategic Fire Planning**

Strategic fire protection planning can be way to bridge gaps in planning and preparedness between fire departments, including CAL FIRE, and local planning departments, as well as between adjacent communities that may be affected by a major fire. Strategic fire planning raises the local conscious about the need for fire preparedness, and creates a series of cohesive community plans. Figure 4 demonstrates how fire protection planning can be a common thread in three types of community plans – the General Plan, CWPPS, and Climate Action/Adaption Plans.

#### **Identifying Assets at Risk**

By utilizing existing and emerging data, CAL FIRE and cooperating partners can identify and evaluate wildland fire hazards and fire risk. Facilitating the sharing of similar data collection and analyses helps consistency between plans and information.

If partners can work together to share data and evaluate hazards, a comprehensive plan for protection policies may begin to emerge. The minimum key elements to achieve a fire safe community should be identified and incorporated into land use planning, as well as Community Wildfire Protection Plans and other regional, county, and Unit fire and community plans. As these minimum protection policies are disseminated, local fire protection professionals should engage further with the development, review, and adoption of local land use plans in order to promote the concept of land use planning as it relates to fire risk.

#### **Integrating Plans**

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Participating in local planning is the first step to establishing a common problem statement, which then shapes efforts to share information and make fire protection a priority. Moving that forward to integrating local land use plans with wildland fire protection plans and other local, county, and regional plans will potentially lead to greater mitigation of fire risk over a larger land use area.

Local fire plans can be documented in several different ways – as a Unit Fire Plan, a Community Wildfire Protection Plan (CWPP) or other county or regional fire plan. Community members and professional planners should be encouraged to be active in local fire safe councils, community emergency response teams, and other community-based efforts to develop readiness plans and educate homeowners. Supporting and participating in collaborative plan development will help create consistent, integrated wildfire protection planning across the entire plan spectrum.

Integrated planning can increase the effectiveness of fire protection planning. Land use and fire protection plans that have been developed in concert with one another can have the ability to develop fire and fuels management practices that are aligned with landowner priorities and jurisdictional practices. Regulatory processes may be streamlined, resources may be better organized and managed, and land management programs may have greater support from a wider variety of stakeholders.

Fire protection *during* an active fire and post-fire recovery priorities can also be enhanced through integrated strategic planning. Because assets and values at risk were identified during the planning process and were established as valuable throughout all applicable plans, the level of fire suppression resources necessary to protect them can be determined long before an active fire appears. Including post-fire responsibilities for natural resource recovery also allows communities to effectively utilize resources and restore the land to a functioning ecosystem. This type of pre-planning can also help justify the implementation of new technology, training, personnel, and equipment, if all the plans for a particular region support the protection of the same community assets.

### Increasing Knowledge

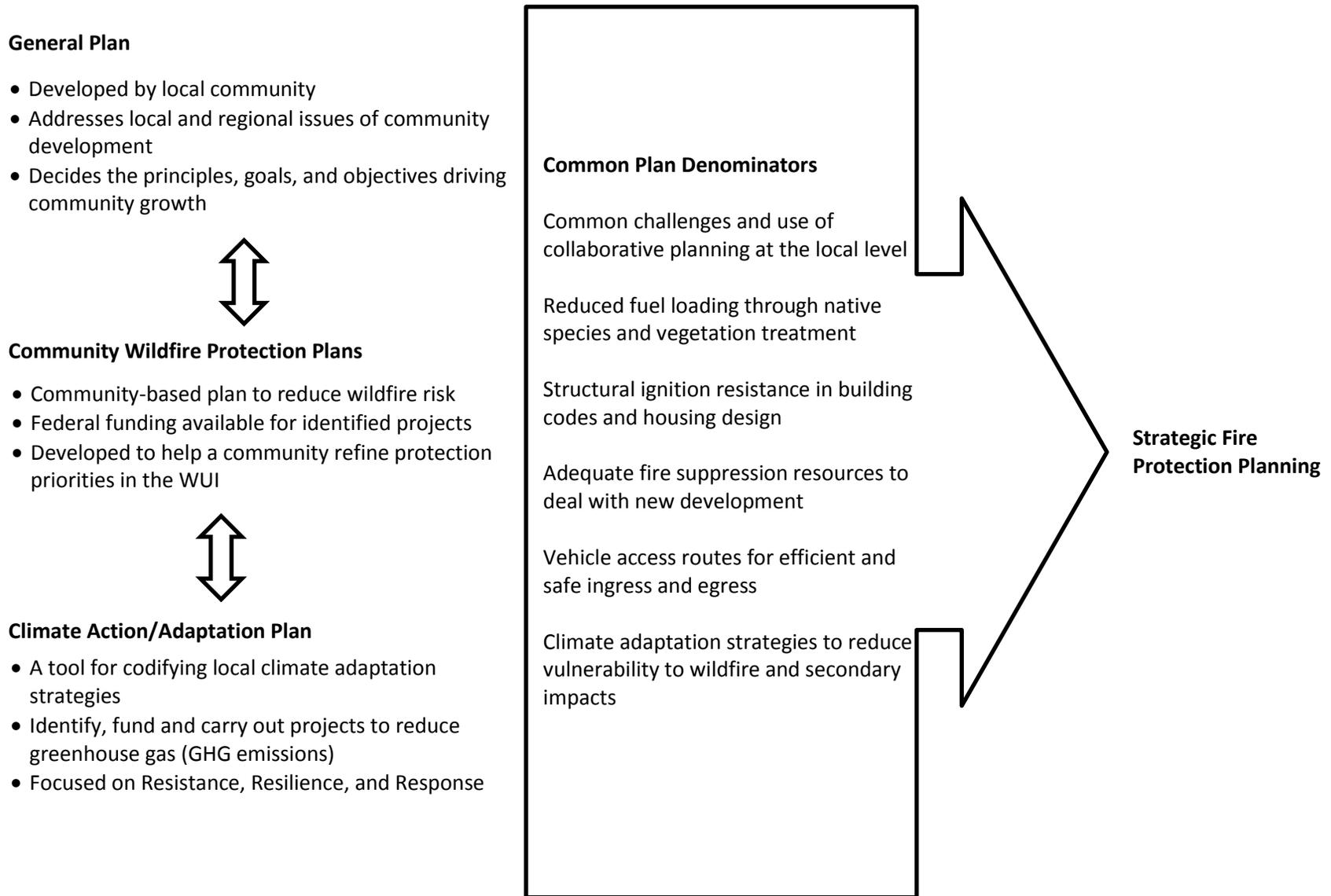
Collaboration in the General Plan process allows State, Federal and local agencies to share information during the data collection and analysis phase of planning. In addition to sharing data, working together on strategic plans encourages the transfer of information like best practices, lessons learned, and unique fire protection solutions. By collaborating with CAL FIRE, local planning agencies can learn about fire protection policies in other jurisdictions that may be applicable to their needs, and agencies can also tout unique fire protection mitigation practices they've applied locally.

Strategic fire protection planning can lead to plans that have a basis in the same facts, establish common goals, and puts forward cohesive, coordinated policies and solutions.

### **3.4 Strategic Fire Planning and the General Plan Elements**

The goals of the *2010 Strategic Fire Plan for California* can be integrated into each of the six required General Plan elements that relate to fire and natural resource protection. While the Safety Element should certainly include detailed information about risk reduction measures, there are opportunities for discussion of fire safe development policies in the Land Use, Housing, Circulation, Open Space, and Conservation elements as well. In addition to supporting the *Strategic Fire Plan*, incorporating fire protection planning into the entire General Plan also achieves the goals of the Legislature outlined in the Introduction.

Figure 4: How Strategic Fire Planning Fits into Current California Plans



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Incorporating strategic fire planning into all the required elements of the General Plan is easier than it seems – many fire safe development options accomplish other planning priorities, including economic development, public health, and climate adaptation. Siting community economic assets away from fire-vulnerable areas may encourage long-term economic growth in the area, and will likely lead to a shorter recovery time should disaster occur. Fire safe development can also protect public health. Promoting native vegetation and avoiding habitat conversion and fragmentation aids air quality, and limiting development near wildland areas reduces the inorganic particulates that become part of a smoke cloud if an area burns. If faced with pushback about the importance of including fire protection planning in the General Plan process, highlighting these areas of overlap may help fire professionals gain traction with city councils, other local agencies, and urban planners and development specialists who have possibly never seriously considered these strategies.

Ways to use each of the elements to accomplish the *Strategic Fire Plan* are detailed below.

### Land Use

The Land Use element is one that has great potential for mitigating assets at risk from wildfire. By using benchmark data from Cal-Adapt, the web-based climate adaptation planning tool, jurisdictions can examine potential climate change risks in their area and evaluate their land use decisions. Communities should compare their build-out projections and rates of growth with Cal-Adapt's exposure models, and anticipate not just future vulnerability to fire but also post-fire threats such as landslides or flooding. When developing the General Plan Land Use Element, consider project alternatives that avoid residential or high-value economic development in those areas that have been identified as potentially at-risk for climate change-related events.

This element can also be used to adapt already-built areas to climate risks. Land use designations can be changed to break up high-risk areas, and California's Office of Emergency Services *Adaptation Planning Guide: Planning for Adaptive Communities* has more strategies for communities to utilize as they try to adapt to climate change.

### Housing

Jurisdictions can use the Housing element to improve the zoning code to require fire safe design for homes, neighborhoods, and streets and up-to-date building codes to require ignition-resistant materials and methods. It can also be a place to consider how to support the retrofit of existing buildings that do not meet current requirements. Reducing structure ignitability is also a required component of Community Wildfire Protection Plans, presenting another opportunity for strategic fire planning across topical plans.

If a community has a need for specific development, particularly affordable housing, lowering the construction, design, or vehicle access requirements is allowable if it would facilitate that type of development. However, those developments should be located away from fire hazard areas and it is highly encouraged that the jurisdiction prepare a Statement of Overriding Considerations regardless of where the development is ultimately situated.

### Circulation

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The Circulation element is a vital tool to ensure new development is outfitted with proper emergency access options. Emergency ingress *and* egress should be provided for, so that evacuation of citizens does not hamper responding resources and vice versa. Fire safe street design is discussed in the California Public Resources Code Section 4290 and California Code of Regulations Title 14, but communities are encouraged to evaluate their local fire suppression equipment and evacuation needs and go above and beyond what the PRC requires, if necessary.

### Open Space

The Open Space element can be place to encourage the reduction of fuel loads in the jurisdiction through the growth of native species and vegetation management programs in the planned open space. Fuel reduction is also a CWPP requirement, placing even more emphasis on the importance of integrating fire protection planning into the General Plan.

Open Space, however, can also be a fire threat. Any open space should present a different fire risk than the adjacent wildland or human development. Fire protection mitigations such as larger setbacks or fuel breaks should to be incorporated between open space and other land uses to reduce risk.

### Conservation

The Conservation element is primarily aimed at preserving natural resources, but a Conservation element can also reduce a community's wildfire risk when it encourages the growth of native species and biodiversity, and minimizes habitat conversions and fragmentation. The Conservation element can address fuel loading issues and what kinds of vegetation management programs will be undertaken in order to establish an ecologically vibrant and fire-resistant landscape. Much like the Open Space element, the Conservation element should consider the fire risk of adjacent land uses and mitigate fire risk through fuel breaks and other practices.

### Safety

In 2012, the Legislature passed SB 1241, requiring that the Safety element demonstrate compliance with fire protection regulations in Sections 4290 and 4291 of the Public Resources Code, the availability of adequate structural fire suppression services, and subdivisions' conformance to ingress and egress road standards for fire equipment. In addition to those three findings, the Safety Element should highlight other fire protection plans that the jurisdiction has developed and discuss any strategic, coordinated fire protection planning they've undertaken with other agencies. The Safety Element is required to have a detailed history of fire activity in the planning area, as well as fire hazard severity zone maps and the planned land uses in Very High Fire Hazard Severity Zones and SRA land. It should include goals, policies, and objectives to protect the community from the unreasonable risk of wildfire, and feasible implementation measures to carry out those goals, policies, and objectives.

### **3.5 Strategic Fire Planning, The General Plan, and Climate Adaptation**

The *2009 California Climate Adaptation Strategy* identifies a three-pronged climate adaptation program for forestry management in the state, and the elements of the General Plan are important tools in implementing them. Incorporating the tenants of strategic fire protection planning –

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collaboration, coordination, information sharing, awareness raising – into the local General Plan process can accomplish the goals of many statewide resource management and climate change programs.

The first strategy of the climate adaptation program, resistance, is considered a near-term strategy to protect key areas from harm related to climate change. Avoiding development in at-risk areas (Land Use) and incorporating fire safe building codes (Housing) accomplishes this strategy as the immediate and near-term growth of a community is considered.

The second strategy, resilience, is focused on transforming vulnerable systems into less vulnerable ones. In jurisdictions with SRA or VHFHSZ, the Housing and Circulation elements are vital to reducing vulnerability. Fire safe building codes, coupled with adequate road design to allow ingress and egress, can assist in protecting both the lives and property of vulnerable communities. Another resilience consideration is the ecological resilience of forestland. Mitigations that encourage the long-term health of the forest should be included in General Plans.

The third strategy is response, which is the long term accommodation and adaptation to a changing climate. If done thoughtfully, the Open Space and Conservation elements should result in an ecosystem that is allowed to respond naturally to changing environmental conditions without threatening human development or local species. If the Open Space and Conservation elements are developed with the goal of creating a dynamic ecosystem, rather than scattered green space in fulfillment of basic element obligations, the long term vulnerability to fire risk and other climate changes will be reduced.

### **3.6 The General Plan and Community Wildfire Protection Planning**

In addition to state-wide goals articulated in the *2010 Strategic Fire Plan* and the *2009 California Climate Adaptation Strategy*, the General Plan can also be utilized to develop a comprehensive Community Wildfire Protection Plan (CWPP). A CWPP helps a community use collaborative, coordinated community planning in order to refine its priorities for the protection of life, property, and critical infrastructure in the WUI. When the General Plan, Community Wildfire Protection Plans, Local Hazard Mitigation Plans, and other plans have established the same assets at risk, community vulnerabilities, and protection priorities, communities are better protected from wildfires and can recover quickly with minimal losses.

Encouraging communities to develop a CWPP is one of the best ways to establish collaborative planning relationships or to continue ones from the General Plan process. An approved CWPP requires three entities to mutually agree to the final contents of the Plan – the local government, local fire district, and the state entity responsible for forestry management – as well as the input and involvement of local US Forest Service and Bureau of Land Management representatives. In addition to being a catalyst for coordinated strategic fire planning, a CWPP is crucial to accessing federal funding for mitigation projects and to establishing Fire Adapted Communities.

A CWPP helps a community identify its life, property, and critical infrastructure priorities and discuss land and watershed management options. It is required to have three components: 1) Collaboration, 2) Prioritized fuel reduction, and 3) Treatment of structural ignitability. In order to facilitate consensus on a CWPP and its components, these issues can be brought up as a community develops its General Plan and then, using the momentum from that process, can be efficiently incorporated into a CWPP. Both fuel reduction programs and structural ignitability issues can be

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addressed through different elements in the General Plan; Open Space and Conservation can discuss fuel loading mitigation, while Housing can talk about new ignition-resistant building codes.

### **3.7 Additional Community Plans**

Besides the General Plan, there are a variety of other community-based plans that would benefit from strategic fire protection planning. The Local Hazard Mitigation Plan is a natural place to find fire protection measures that fit in the General Plan – the mitigation strategies codified in the LHMP should match the goals and policies identified in the General Plan. A Climate Action Plan or Climate Change Adaptation Plan can also codify adaptation strategies relating to wildfire risk, particularly in communities trying to manage growth into the wildland urban interface with increasing fire risk. Many plans have the same or similar components as the General Plan and information or data from the General Plan can be “crosswalked” into other local or regional plans.

There are other plans open to communities facing particular challenges that may benefit from strategic fire protection planning. A Capital Improvement Plan/Program (CIP) can be produced for an adaptation strategy(ies) that require capital expenditures, such as relocating utilities, building community cooling centers, etc. Local Coastal Programs (LCPs), required by local governments in the Coastal Zones, should incorporate fire protection when discussing guidelines for future development and the protection of coastal resources. LCPs should discuss a variety of climate change impacts, including sea level rise and impacts on other natural resources. An Integrated Regional Water Management Plan (IRWMP) coordinates information and collaboratively addresses regional water management issues. By incorporating activities to provide resource protection and deal with the threat and impact of wildfire, IRWMPs can more adequately address issues that affect water post-burn, such as landslides and flooding.

There is also the possibility for strategies that do not require administrative board action (such as a vote by the County Board of Supervisors) to be incorporated through regulation and procedure changes. The Zoning Code should be updated to reflect any relevant mitigation procedures included in the General Plan, and other land development codes, ordinances, and resolutions should reflect the fire and resource protection policies outlined in the General Plan.

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### In Closing

The General Plan, and other community-oriented plans, is the place where Federal, State and regional planning policies turn into action “on the ground.” The *Strategic Fire Plan for California* establishes state fire protection policies, while CAL FIRE personnel assist jurisdictions in finding locally-oriented solutions for their particular fire mitigation needs within those guidelines. Strategic planning is critical to establishing plans that are consistent internally, are consistent with nearby jurisdictions (i.e., community General Plans are consistent with the County General Plan), and are consistent with other thematic plans the community has developed – hazard mitigation plans, watershed management plans, or a climate adaptation plan.

A decentralized planning approach such as this maintains local autonomy in planning decisions, but also recognizes that linking fire protection priorities across California creates a more resilient state. Strategic fire planning better protects us *all* from wildland fire disasters.

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