

Miller Starr Regalia's 2014 Annual Land Use Program Northern California – January 9, 2014



Presenters:

- **Nadia Costa** – Miller Starr Regalia
- **Art Coon** – Miller Starr Regalia
- **Bryan Wenter** – Miller Starr Regalia
- **Bill Dean (Special Guest)** – City of Tracy

Moderator:

- **Wilson Wendt** – Miller Starr Regalia



**MILLER STARR
REGALIA**

KEY CEQA DEVELOPMENTS IN 2013



Legislative CEQA Reform Efforts

- *Thesis* – SB 731 (Steinberg) – proposed CEQA Modernization Act of 2013.
- *Antithesis* – SB 617, SB 754, AB 543, AB 380, AB 667, etc.
- *Synthesis* – SB 743 (Steinberg) – Transit-Oriented Development and Leadership Projects

Selected CEQA Case Law Developments

Environmental “Baseline”

- *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439

Selected CEQA Case Law Developments

CEQA-In-Reverse

- ❑ *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (1st Dist., Div. 5, 2013) 218 Cal.App.4th 1171, **rev. gtd. Nov. 26, 2013 (Supreme Ct. Case No. S213478)**.
- ❑ *Parker Shattuck Neighbors v. Berkeley City Council* (1st Dist., Div. 4, 2013) ___ Cal.App.4th ___, filed 11/7/13, pub. order 12/4/13 (rec'd from court 12/30/13).

Selected CEQA Case law Developments

Scope of CEQA Review/Discretion

- ❑ *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (1st Dist. 2013) 218 Cal.App.4th 1171 (adoption of CEQA thresholds of significance is not a CEQA “project”), **rev. gtd. limited to other issue 11/26/13.**
- ❑ *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (4th Dist. 2013) 215 Cal.App.4th 1013 (project’s impacts on parking may constitute adverse physical changes in environment requiring CEQA analysis)



Selected CEQA Case law Developments

- *Tuolumne Jobs and Small Business Alliance v. Superior Court (Wal-Mart Stores, Real Party in Interest* (5th Dist. 10/30/12) ____ Cal.App.4th _____, 2012 WL 5350450, **rev. gtd. 2/13/13 (Supreme Ct. Case No. S207173)** (Supreme Court grants review in Fifth District case that created split in authority by holding CEQA review is required if City opts under Elections Code to adopt without change legislative project approvals proposed by qualified citizen initiative petition).

Selected CEQA Case law Developments

Standard of Review of Exceptions To Categorical Exemptions

- *Berkeley Hillside Preservation v. City of Berkeley* (**Supreme Ct. Case No. S201116**) (Supreme Court grants review and will interpret CEQA's "unusual circumstances" exception to categorical exemptions).

Selected CEQA Case Law Developments

- *Save the Plastic Bag Coalition v. County of Marin* (1st Dist., Div. 3, 2013) 218 Cal.App.4th 209 (holding CEQA categorical exemptions for regulatory actions to protect the environment apply to Marin County's plastic bag ban ordinance, and recognizing case law split on standard of review for exceptions to exemptions).
- *Save the Plastic Bag Coalition v. City and County of San Francisco* (1st Dist., Div. 2, filed 12/10/13, cert. for pub. 1/3/14) ___ Cal.App.4th ___, Case No. A137056.



Selected CEQA Case Law Developments

Recirculation/Alternatives

- ❑ *South County Citizens for Smart Growth v. County of Nevada* (3d Dist. 2013) 221 Cal.App.4th 316 (CEQA does not require recirculation based on staff-recommended alternative raised after preparation of FEIR)

Selected CEQA Case Law Developments

Legal Feasibility of Agricultural Conservation Easements As Mitigation

- *Masonite Corporation v. County of Mendocino* (1st Dist., Div. 3, 2013) 218 Cal.App.4th 230 (holding agricultural conservation easements constitute legally-feasible mitigation for direct loss of prime farmland).

Selected CEQA Case Law Developments

Statute of Limitations/Request for Hearing

- *Alliance for the Protection of Auburn Community v. County of Placer, et al.* (3rd Dist. 2013) 215 Cal.App.4th 25 (missing CEQA statute of limitations is not excusable neglect)

Selected CEQA Case Law Developments

- ❑ *Comunidad Enaccion v. L.A. City Council* (2d Dist. 2013) 219 Cal.App.4th 1116 (trial court abused its discretion by denying discretionary relief under CCP § 473 for counsel's failure to comply with CEQA's mandatory requirement to file written request for hearing within 90 days of filing petition due to "excusable" failure to calendar the deadline).



Selected CEQA Case Law Developments

- *May v. Milpitas* (6th Dist., 2013) 217 Cal.App.4th 1307 (CEQA challenge to a resolution approving amendments to approvals for a residential development project where a notice of exemption had been filed was time barred; shorter and more specific 30-day statute of limitations period set forth in Gov. Code, § 65457 controlled).

Selected CEQA Case Law Developments

Attorney-Client Privilege/Work Product Protection/Waiver In Development

Entitlement Process

- *Citizens for Ceres v. Superior Court of Stanislaus County (City of Ceres, et al. Real Parties in Interest)* (5th Dist. 2013) 217 Cal.App.4th 889, depub. request den. 10/16/13 (no common interest in CEQA compliance exists prior to project approval and privileges are therefore waived as to City/developer communications occurring prior to that date; decision conflicts with prior Third District precedent and common practice).



KEY LAND USE DEVELOPMENTS IN 2013



**MILLER STARR
REGALIA**

Land Use Developments

- ❑ *City of Riverside v. Inland Empire Patients Health and Wellness Center*, 56 Cal.4th 729 (2013)
 - ❑ California's medical marijuana laws do not preempt local ordinances that ban medical marijuana facilities.

Land Use Developments

- ❑ *Koontz v. St. Johns River Water Management District*, ___ U.S. ___ (2013)
 - ❑ The government's demand for property from a land-use permit applicant must satisfy the *Nollan* and *Dolan* requirements even when it denies the permit.
 - ❑ Monetary exactions are subject to the same *Nollan/Dolan* analysis as land exactions.

Land Use Developments

- ❑ *Sterling Park, L.P. v. City of Palo Alto*, 57 Cal.4th 1193 (2013)
 - ❑ Inclusionary housing requirements may be challenged as conditions under the California Mitigation Fee Act.

Land Use Developments

- ❑ *California Building Industry Association v. City of San Jose*, 216 Cal.App.4th 1373 (2013); review granted
 - ❑ Inclusionary housing ordinances are valid if they are "reasonably related" to a "legitimate public purpose."

Land Use Developments

- ❑ *Cresta Bella, LP v. Poway Unified School District*, 218 Cal.App.4th 438 (2013)
 - ❑ School impact fees may not be imposed on replacement housing unless a study shows that replacement housing will generate new students.

Land Use Developments

Cities Cannot Impose Heightened Requirements on Developers Seeking to Obtain a Density Bonus

- ❑ *Latinos Unidos del Valle de Napa y Solano v. County of Napa*
 - ❑ In calculating how many units a developer must provide to qualify for a density bonus under state law, the local agency must count any units that are being provided in order to comply with that city's inclusionary ordinance.

Land Use Developments

Cities Have Significant Discretion in Determining General Plan Consistency

- ❑ *Orange Citizens for Parks and Recreation (Supreme Court granted petition for review)*
 - ❑ Courts will typically give local agencies a tremendous amount of deference in making a determination of General Plan consistency, and will not require the agency to demonstrate precise conformity with every policy so long as overall harmony with the General Plan can be shown.

Land Use Developments

Local Agencies Have Substantial Discretion In Making Findings Necessary to Justify Williamson Act Cancellation

- ❑ *Save Panoche Valley v. San Benito County*
 - ❑ Courts will typically defer to agency's findings that the public interest outweighs the harm in cancelling a Williamson Act contract.

Land Use Developments

Limitations on Awards of Attorneys' Fees

- ❑ *Norberg v. California Coastal Commission*
 - ❑ No award of attorneys' fees under private attorney general doctrine for landowner who sued to invalidate permit conditions since he brought claim to protect own interest, not for public benefit.

Land Use Developments

Limitations on Awards of Attorneys' Fees

□ *Honchariw v. County of Stanislaus*

- The attorneys' fee provision in the Anti-NIMBY statute applies *only* to the developers of *affordable housing projects* who prevail in litigation under the statute, not developers of market-rate residential projects.



Land Use Developments

Decision Makers Exercising Their Discretion Have Absolute Immunity

□ *Freeny v. City of San Buenaventura*

- Legislative decision makers exercising their discretion have absolute immunity from tort liability, even in the case of actual fraud, malice or corruption.

Land Use Developments

Life of Tentative Maps are Automatically Extended for an Additional 24 Months (AB 116)

- Subdivision Map Act was amended to provide for automatic extensions for all tentative maps and vesting tentative maps that were approved on or after January 1, 2000 and that had not expired before July 11, 2013 for an additional 24 months.

Land Use Developments

Agencies Are Given More Flexibility in Forming Community Facilities Districts (SB 692)

- ❑ Eliminates the need for a public hearing and other procedural requirements where an agency seeks to establish a CFD that consists solely of territory proposed for annexation, and where owners of said land unanimously support a CFD.



Land Use Developments

Local Agencies Can Compel Cleanup of Contaminated Properties (AB 440)

- Cities, counties and some housing authorities can compel cleanup of blighted contaminated properties and can recover the full costs of cleanup (including staff time and attorneys' fees).

How to Make Your City a Better Business Partner

Mutual Success is the Goal

□ Presented by Bill Dean

□ City of Tracy



What's Happening in Tracy?

Winco – 100,000 sf grocery store

- building permit:
submitted on 3/1/10
- issued on 4/21/10
- occupancy 11/10

Amazon – 1.2 million sf fulfillment center

- building permit:
submitted on
10/22/12
- issued on 12/10/12
- occupancy 9/27/13

Cordes Ranch - 1,790 acre business park

- NOP 11/11
- Annexed 9/13



Overview and Purpose

What does it mean to be business friendly?

What does partnership mean in the municipal context?

Leave you with ideas and a test to gauge your City.



Site Selection Criteria

2013 9th Annual Area Development Magazine Site Selection Consultant Survey

Surveyed over 120 national site selection consultants

- Expertise in Manufacturing, Healthcare, Life Sciences, Data Centers, etc.

Findings identified

- 26 Site Selection factors and 9 Quality of Life factors used to make location decisions



Site Selection factors (priority ranking)

- 
- | | |
|---|---|
| 1. Highway Accessibility | 14. Availability of Advanced ICT Services |
| 2. Available Skilled Labor | 15. Environmental Regulations |
| 3. Labor Costs | 16. Proximity to Suppliers |
| 4. Proximity to Major Markets | 17. Availability of Buildings |
| 5. Expedited or “Fast-Track” Permitting | 18. Training Programs |
| 6. State and Local Incentives | 19. Inbound/Outbound Shipping Costs |
| 7. Tax Exemptions | 20. Right-to-Work State |
| 8. Corporate Tax Rates | 21. Proximity to Technical College/Training |
| 9. Energy Availability | 22. Raw Materials Availability |
| 10. Low Union Profile | 23. Availability of Long-term Financing |
| 11. Occupancy or Construction Costs | 24. Availability of Unskilled Labor |
| 12. Available Land | 25. Railroad Service |
| 13. Accessibility to Major Airport | 26. Waterway or Oceanport Accessibility |

What Makes a City Business Friendly?

- ✓ Prioritizing Economic Development Efforts
- ✓ Saving Businesses Money
- ✓ Saving Businesses Time
- ✓ Providing Regulatory Guidance
- ✓ Making Information Easy to Get
- ✓ Outstanding Quality of Life
- ✓ A constant dialogue with residents, businesses and other economic development stakeholders



“The Tracy Winco project was completed approximately 60 days faster than any previous store project.” - Rich Sommers, Winco Contractor

Prioritizing Economic Development

1. Economic Development Strategy

- Job Creation
 - Business Retention, Attraction and Start-Ups

2. Availability of Land (long-term)

- Maintaining a land supply for future growth

3. Regional & Local Partnerships

- WorkNet
- Chamber of Commerce
- Small Business Development Center
- Education – TUSD, Delta, UOP, CSUS
- Tracy City Center Association
- Council of Governments
- San Joaquin Partnership



Saving Businesses Money

1. Minimize Local Business Taxes

- No Utility User Tax

2. Resources to Assist Business Development

- Qualified and Diverse Workforce
- Grow Tracy Fund
- Resource Connections
 - Small Business Development Center
 - Micro Loan Programs
 - Financial Management Seminars

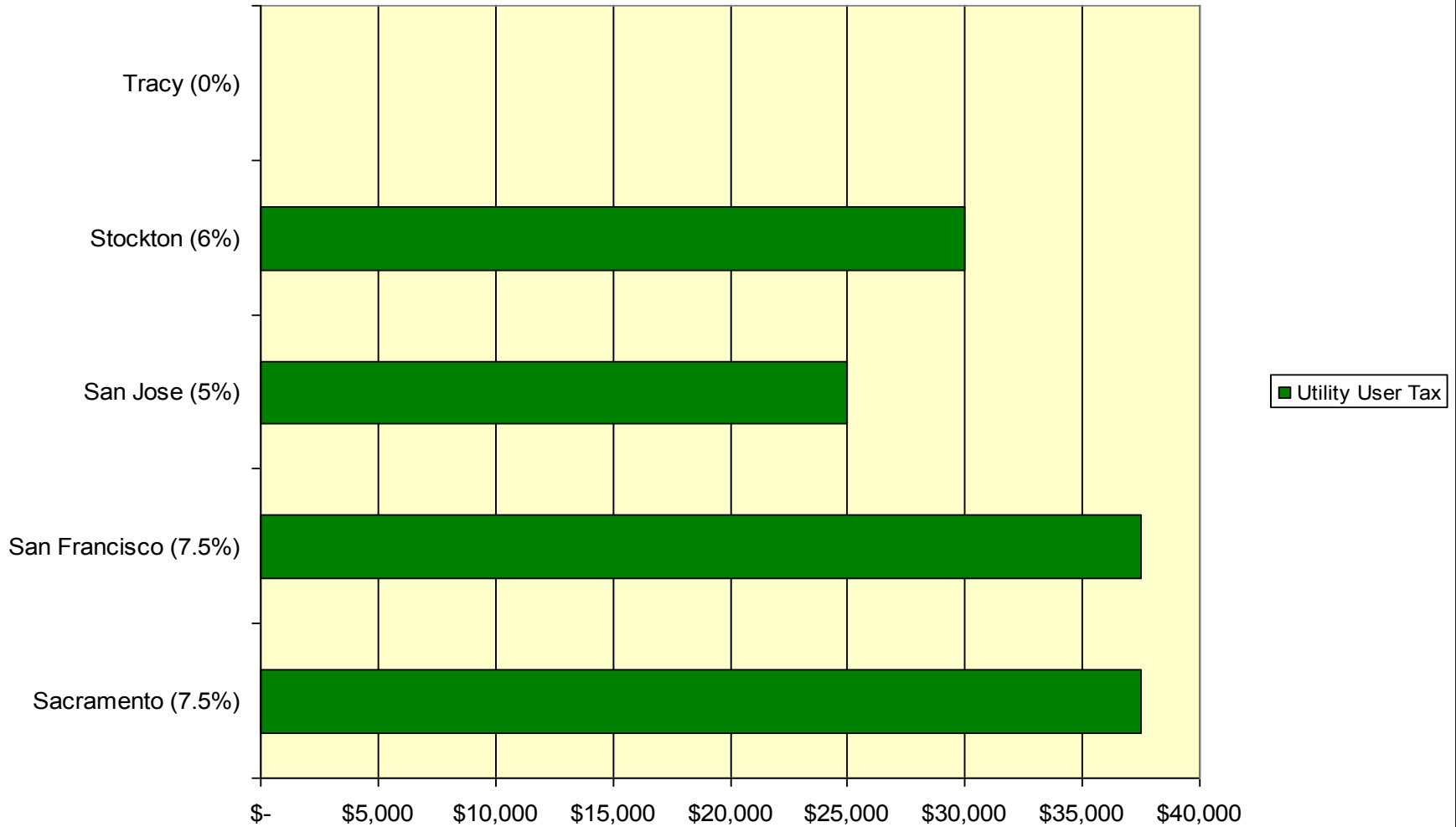
3. Incentives

- When it make sense....

“The City staff was great to work with. They went above and beyond to assist me with this project.” -

Matt Potkonjak, Sperbeck Chiropractor

Utility User Tax (Assumes Annual Wet Utility Cost of \$500K)



“The response and helpfulness of the City personnel was great.” –

Tom Howard, Macy’s Project Manager

Saving Business Time

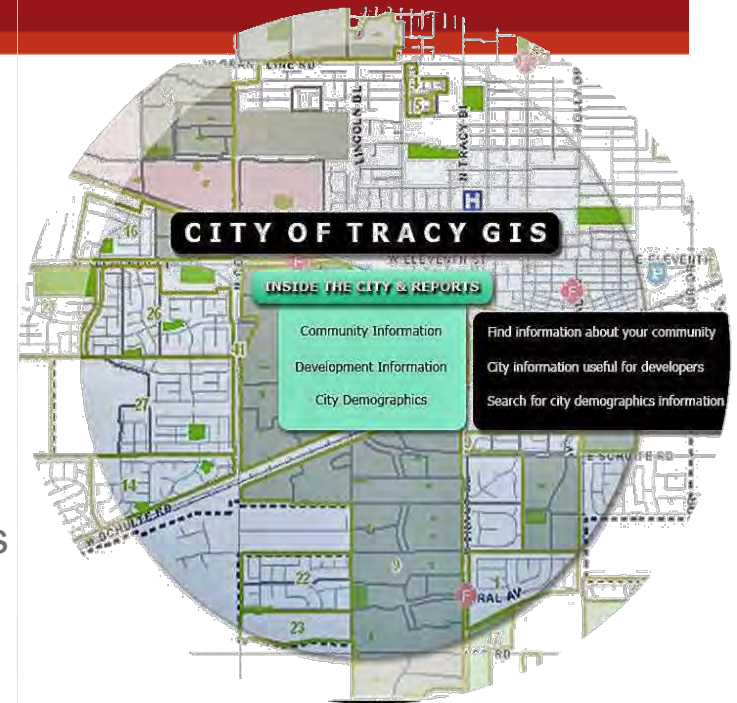
1. Culture of Partnership

- Facilitator vs. Regulator
- Single Point of Contact
- Permit Assistance Center

2. Investment in Technology

- Permit & Inspection Streamlining Process
 - E-Trackit
 - Mobile Laptops for Inspectors
- GIS: Access to City Demographics, Zoning Maps and other Community Info
- Updated Website

“Thank you for all you did to help us get the necessary approvals so quickly. Thanks to staff we were able to open before the Holidays.” – Ken Robe, Burlington Coat Factory Contractor



Saving Business Time

3. Process Improvements

- Greater Transparency
- Greater Accountability
- Meet scheduled timelines
- Greater Consistency



Providing Regulatory Guidance

- **Local Codes that Reflect Local Priorities (City controlled)**
 - Local Preference Ordinance from 5% to 10%
 - Zoning Codes
 - Re-zone Property as needed
 - Sign Ordinance
- **State and Federal Regulations (no control/law mandated)**
 - CA Green Building Codes
 - CA Fire Codes
 - Fed. ADA Codes

90% of the code requirements for construction projects in the community come from State and Federal regulations. Tracy cannot change these regulations, but we can certainly guide you through the process.

Outstanding Quality of Life

- Location
- Low Crime Rate
- Diverse Housing Mix
- Quality Schools
- Cultural & Recreational Amenities
 - Grand Theatre for The Arts
 - Over 260 Acres of Quality Park Land
 - Variety of arts, education, athletics & aquatics programming



A Constant Dialogue

- Stakeholder Meetings
- Customer Surveys
- Development Review Team (DRT Mtgs.)
- Industry Specific Focus Groups
- Business Retention Visits

Our economy has diversified. From its roots in agriculture and railroads, to its present day identity as a job center for many corporations...

Is There Another Way of Looking at this?

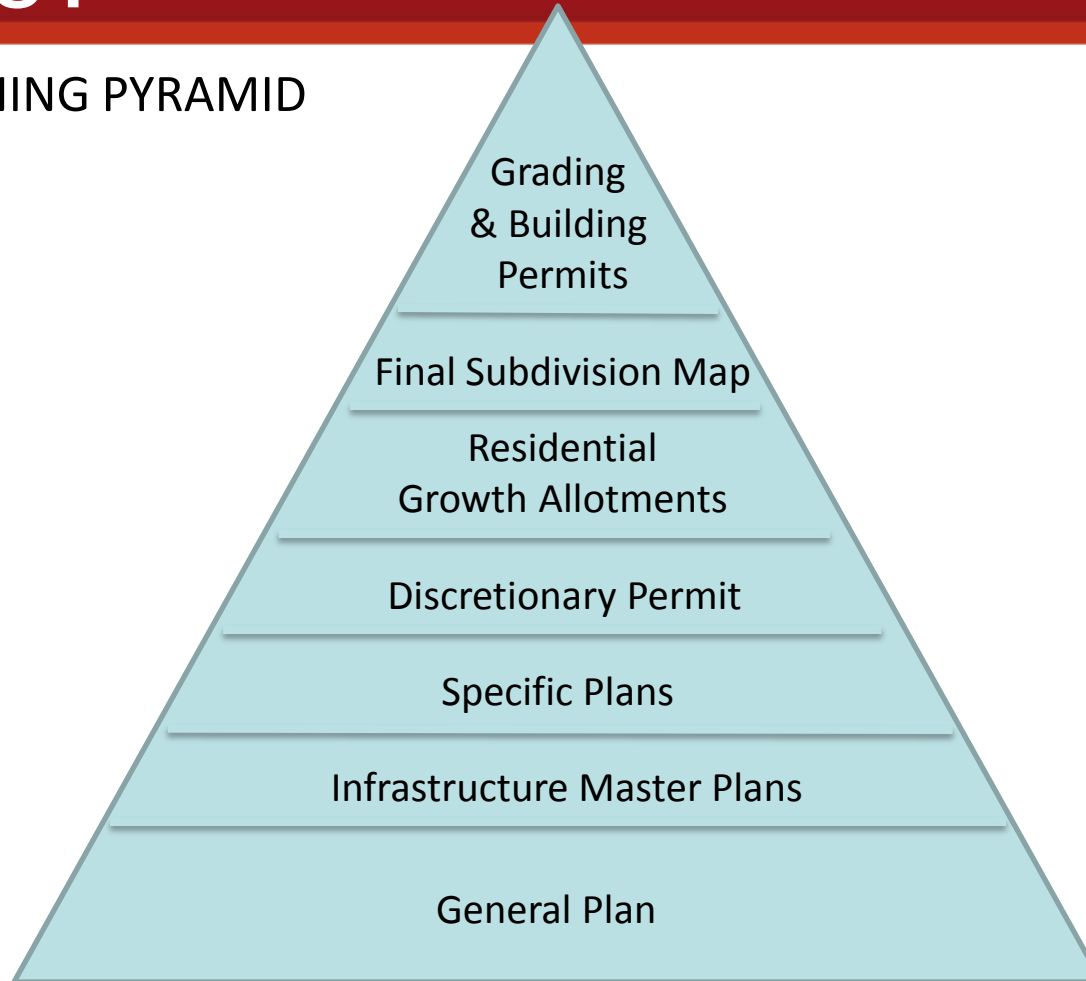
- Very few of the aforementioned is relevant to the development process.

Litmus Test for City/Developer Partnerships

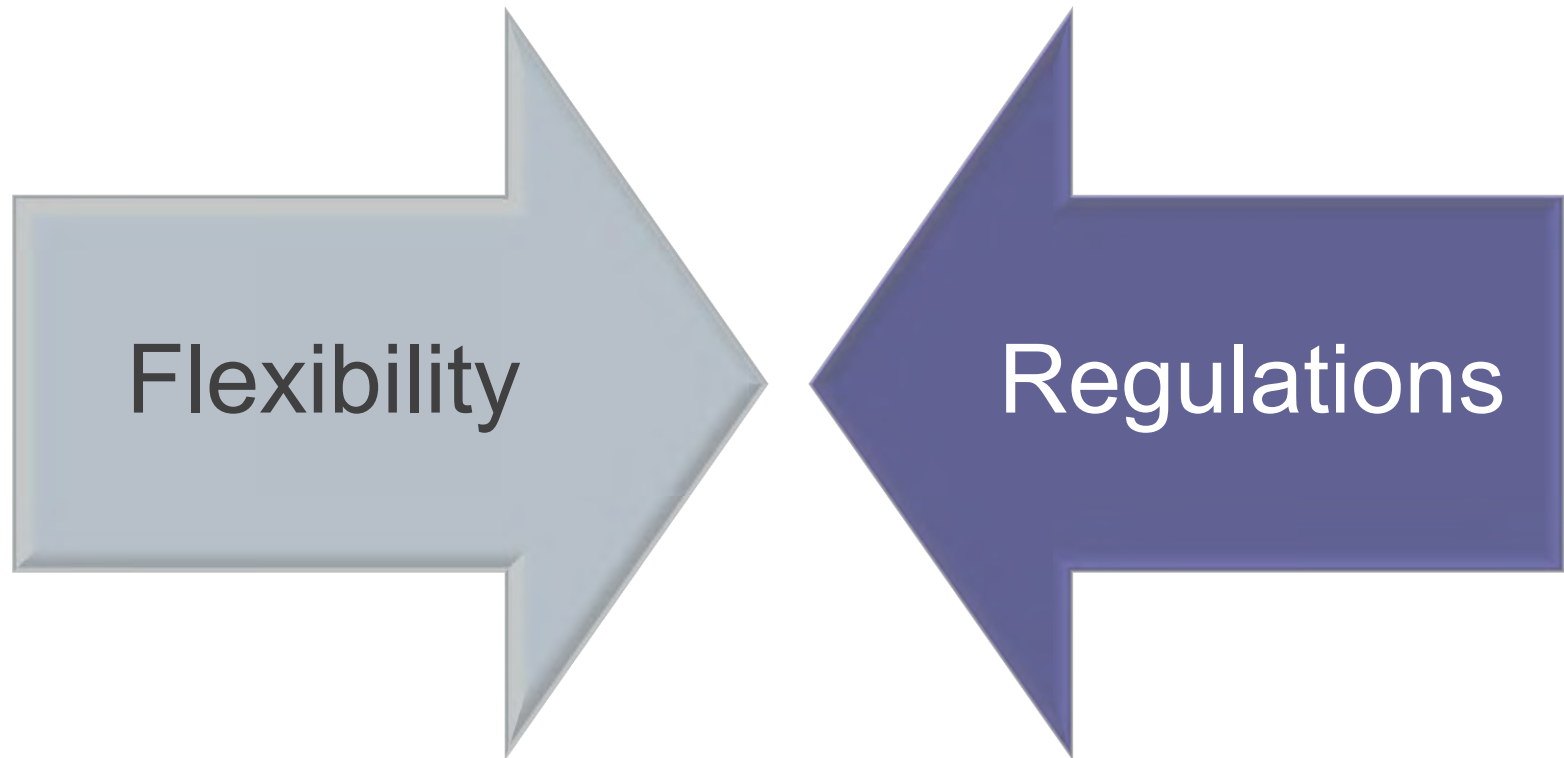
- 5 questions to ask yourself if you intend on succeeding with the development community...

#1 Are you flexible in the right places?

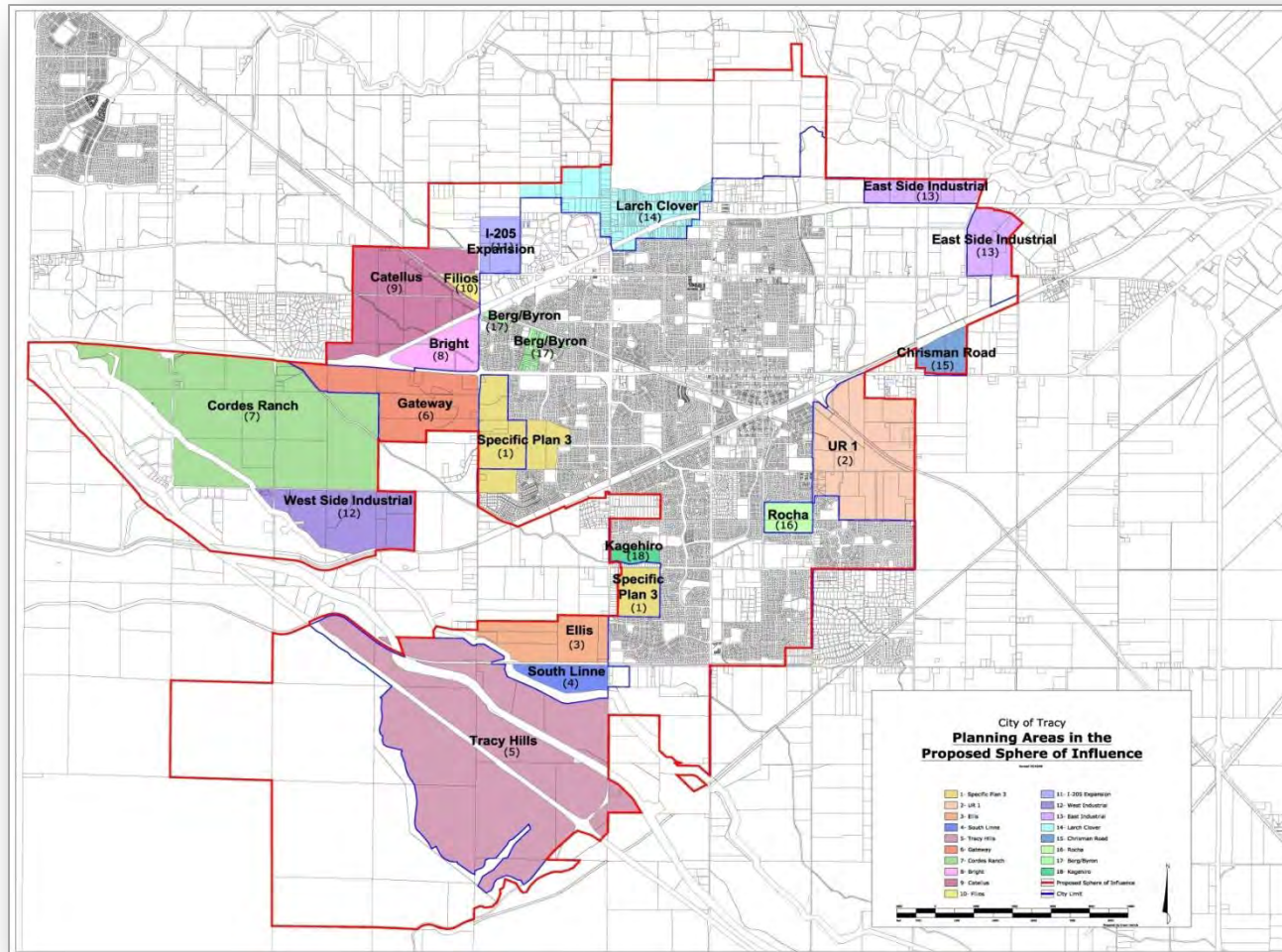
PLANNING PYRAMID



Does Zoning Respond to the Market or Does it Impede its Flow?



#2 Have You Prepared the Playing Field?



#3 Have Both Parties Set Development Expectations Up Front?

Developers

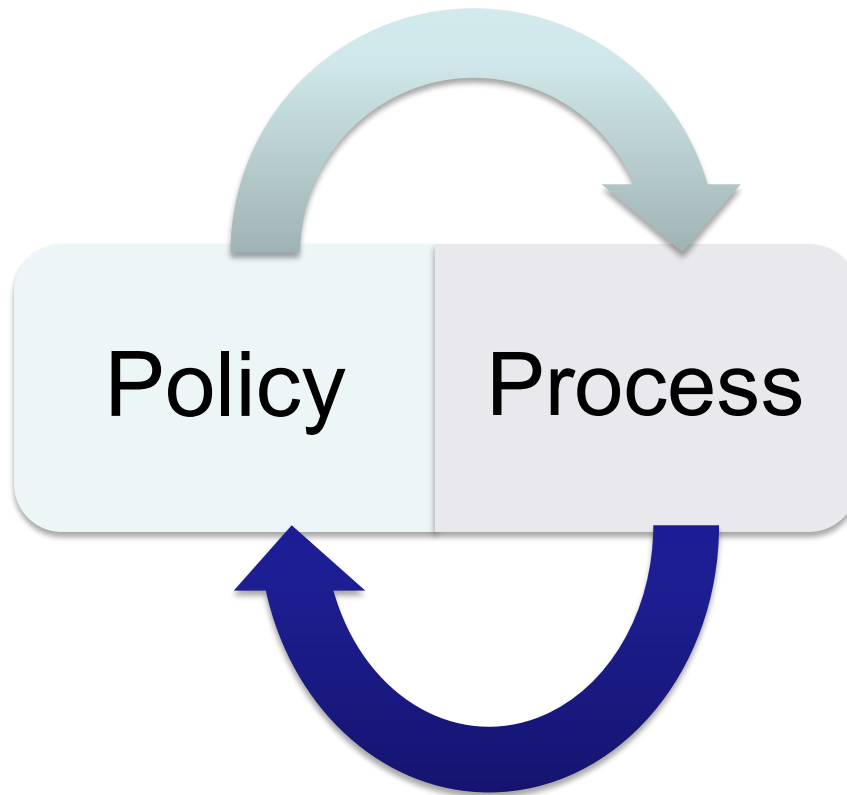
Need to know what it means to be a part of a community

Cities

Need to know what it takes to run a business

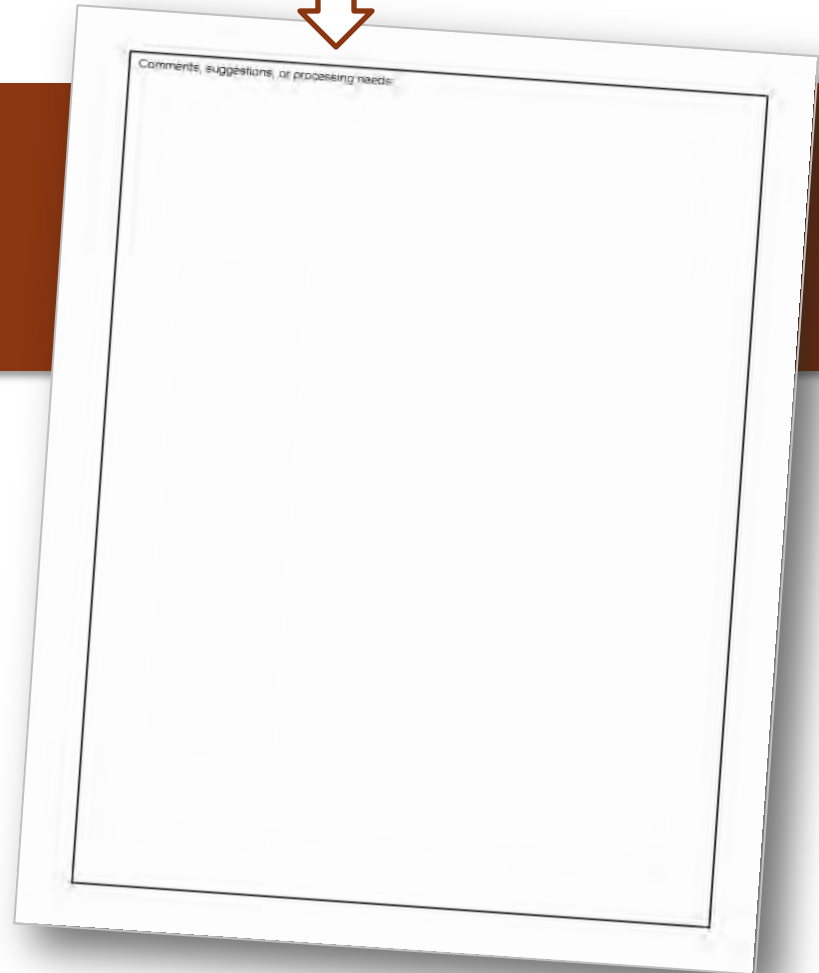


Policies are Real, Process is Phony



#4 Is Your City a Good Listener?

- The best compliment we can pay is to ask what your needs are.



Comments, suggestions, or processing needs:



#5 Do You Develop Your Staff?

Is your staff energized to make decisions?

How is this related to the formation of partners?

Tracy W.I.N.S.

Schedule At-a-Glance 2014



Schedule At-a-Glance 2014

New and Continuing Programs to Super-Charge Your Career!

Workshops for Supervisors & Managers

Type/Title	Date/Time	Where
Supervisor Survival Guide: Session 1 **	Mar 6, 2014 8:15am - Noon	Council Chambers
Supervisor Survival Guide: Session 2	Apr 24, 2014 8:15am - Noon	Council Chambers
Supervisor Survival Guide: Session 3	Apr 24, 2014 1:00 - 4:00 pm	Council Chambers
Supervisor Survival Guide: Session 3	May 15, 2014 8:15am - Noon	Council Chambers
Supervisor Survival Guide: Session 2	May 15, 2014 1:00 - 4:00 pm	Council Chambers

** Available to all employees

Workshops for All Employees

Speed Coaching	Apr 9 • 1:30 - 3:30pm	Community Cntr
Resume & Interview Strategies	TBA	TBA

1-to-1 Coaching (Ongoing)

For more information & list of available coaches: wri.ci.tracy.ca.us

Webinars (Cal-ICMA)

Type/Title	Date/Time	Where
TBA in February 2014	Dates TBA	CR #203

Regional Academies

For more information: *** wri.ci.tracy.ca.us
 *** Currently in session. 2014/15 application submittal process TBA in June 2014. Classes start in October.

Tracy Performance Institute (TPI) - 2014

Type/Title	Date/Time	Where
Government 101	Jan 9 • 8:15 - Noon	CR #203
High Performance Organizations (HPO)	Feb 13 • 8:15 - Noon	CR #203
Coaching & Mentoring Course	Mar 13 • 8:15 - Noon	CR #203
Council Priorities	Apr 10 • 8:15 - Noon	CR #203
Writing & Delivering Performance Evaluations	May 8 • 8:15 - Noon	CR #203
Customer Service	Jun 12 • 8:15 - Noon	CR #203
History of Tracy	Jul 10 • 8:15 - Noon	CR #203
Time Management	Aug 14 • 8:15 - Noon	CR #203
Personnel Policies, Procedures & MOUs	Sep 11 • 8:15 - Noon	CR #203
Budgeting 101	Oct 9 • 8:15 - Noon	CR #203
Communications	Nov 13 • 8:15 - Noon	CR #203



5 Things Developers Can Do to Better Partner

- 1) Involve your attorneys early on!
- 2) Bring decision makers to meetings
- 3) Clarity in your business needs
- 4) Agree to higher contingencies in budgets
- 5) Make your consultants available to City staff

Conclusion

With attention to these systems, we've developed a culture and attitude that excels at forming partnerships

Thank You!

For more information on Tracy, visit:

www.ThinkInsideTheTriangle.com

Contact Information

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- ❑ Nadia L. Costa (Speaker) - nadia.costa@msrlegal.com
- ❑ Bryan W. Wenter (Speaker) - bryan.wenter@msrlegal.com
- ❑ Wilson F. Wendt (Moderator) - wilson.wendt@msrlegal.com

❑ **City of Tracy**

- ❑ Bill Dean (Speaker) – william.dean@ci.tracy.ca.us

