

DATE: May 17, 2023

TO: Environmental Planning Commission

FROM: Krisha Penollar, Associate Planner

SUBJECT: **Development Review Process**

This memorandum includes an overview of the development review process.

DEVELOPMENT REVIEW AUTHORITY

Local governments can impose land use and zoning regulations to protect the public health, safety, convenience, and welfare of its residents. These regulations allow cities to forestall and address impacts to a broad range of issues, including, but not limited to:

- Noise, light, odors, and other sensory impacts;
- The provision of public services (e.g., utilities, trash service, roads, parks, schools);
- Aesthetics and neighborhood character;
- Public safety, such as fire safety and vehicle safety;
- Convenient access to destinations;
- Sustainability goals; and
- Privacy and other quality-of-life concerns.

In general, land use decisions are divided into three categories:

- **Ministerial decisions** are those made with no discretion. In other words, a project is reviewed simply for compliance with minimum requirements and cannot be denied if those requirements are met. In Mountain View, most single-family homes and duplexes, all accessory dwelling units, and some changes of use are ministerial projects.
- **Quasi-judicial (discretionary) decisions** are those made with some discretion within the bounds of existing law. These decisions are supported with findings that demonstrate how

the project meets City Code requirements and whether the project is consistent with the policies of the City. New developments, Heritage tree removals, conditional use permits, commercial facade upgrades, and many other projects that fit within the definition of “development review” are quasi-judicial.

- **Legislative decisions** are those that modify some law or policy of the City. These could include General Plan, Zoning, or Precise Plan amendments.

THE GENERAL PLAN, ZONING, AND PRECISE PLANS

The General Plan is a comprehensive, Citywide document that guides land use planning decisions. It includes policies related to the community’s development goals and identifies the distribution of land uses for future development. The General Plan looks at all aspects of a community, such as economics, physical design, transportation, open space, and housing for all. General Plans must be internally consistent, and all topical components of the General Plan should be balanced with one another with no specific action outweighing another action.

The General Plan is composed of General Plan Land Use Designations, which identify the intensity and types of uses permitted throughout the City. The General Plan also identifies areas for more intense redevelopment, such as the five Change Areas (San Antonio, El Camino Real, North Bayshore, Moffett, and East Whisman), four of which have new Precise Plans that allow for additional growth and planned public improvements.

The General Plan is primarily implemented through zoning. Zoning includes the regulations applicable for each property in the City, such as building location, height requirements, landscaping, open space, density, etc. Zoning must be consistent with the land use, vision, and policies of the General Plan as it is used to implement the long-term goals set forward by the community and decision makers. Precise Plans are area-specific zoning standards that address local conditions and unique circumstances.

STATE LEGISLATION

State laws prescribe much of the development review process. For example, General Plans (including Housing Elements) are required by the State and have a significant effect on land use regulation. One of the most important State laws for development review is the Permit Streamlining Act.

Permit Streamlining Act

The Permit Streamlining Act (PSA) sets time limits and procedures for review of development projects. Its key features include the following:

- Cities must publish “submittal requirements” or a list of application materials that must be submitted for the City to review a development project. Mountain View’s submittal requirements are here: www.mountainview.gov/depts/comdev/planning/application.asp.
- When an application is submitted, it is first reviewed against the relevant list of submittal requirements. If there are necessary materials that the applicant has not provided, the City must prepare a letter within 30 days of the submittal documenting those missing materials. While it is not required under State law, these letters also include compliance comments, i.e., aspects of a project that are not consistent with City codes and policies, and design feedback.
- When the applicant resubmits to address the missing materials, it begins another 30-day review process. This cycle happens until all necessary application materials are provided and the City deems the application “complete.”
- Once an application is deemed complete, the timing requirements under the California Environmental Quality Act (CEQA) take over for compliance with environmental review. This means the City, as Lead Agency, must determine if a project is “exempt” based on exemptions permitted in the State CEQA Guidelines or if preparation of an environmental document is required, such as an Initial Study or Environmental Impact Report. In practice, in Mountain View, the CEQA process begins before a project is deemed complete to streamline the process.
- Once the application is deemed complete and any CEQA process is complete, the PSA sets time limits for City action. If the City does not meet these time limits, the applicant has an opportunity to go through a process for the application to be deemed approved without City action.

Because there are multiple rounds of reviews and potential documents for CEQA review, projects vary on how long they take to get through the entitlement process, depending on the scope and complexities of the project. Ministerial projects typically take less than 30 days; quasi-judicial projects can range from three to six months for smaller discretionary projects (e.g., a Conditional Use Permit) and up to two years for a large, 5- to 10-acre development project. See the Process Flow Chart (Attachment 1).

These timeline requirements do not apply to projects requesting amendments to the General Plan, Precise Plans, or zoning. However, in practice, the City applies a similar process to these

projects once they are authorized through the “Gatekeeper” process. The typical review timeline for a Gatekeeper project is 18 months to two years.

Other State Laws

State legislation has superseded key aspects of the City’s zoning authority, including the following:

1. **ADU laws** have reduced the discretion cities have over accessory dwelling units, including applicable sites, development standards that can be applied, and review processes.
2. **SB 9** permits up to four units on existing parcels in single-family residential zoning districts.
3. **Density Bonus** permits developers to exceed the standard density requirements for housing projects if a certain percentage of the proposed housing units are affordable.
4. **Regional Housing Need Allocation (RHNA)** is part of the Housing Element, and mandates that cities zone for a minimum number of new homes and at certain affordability levels for those homes.
5. **Housing Accountability Act** sets special requirements for the review of residential projects, including review against objective development standards, deadlines for written notice of inconsistency with standards, and the basis for “Builder’s Remedy” (which states that residential densities cannot be regulated or limited when a city does not have a substantially compliant Housing Element).
6. **SB 330** includes legislation that is intended to support development of housing projects by ordering preservation of existing affordable housing, enhancing protections of occupants, and increasing certainty in the development review process. It allows for the submittal of “preliminary applications” which ensure the applicant can apply (and lock in) standards and impact fees in place at the time of application, and, until 2030, forbids cities from reducing the capacity or feasibility of residential zoning.
7. **SB 35** streamlines affordable housing projects in cities that have not met the State-mandated RHNA requirements by allowing qualifying affordable housing projects to go through a ministerial development review process.

DEVELOPMENT REVIEW PROCESS

Development review is the process in which the Planning Division, along with other City departments, reviews development projects for conformance with City codes, plans, and policies related to the General Plan, zoning (Chapter 36 of the City Code), Precise Plans, design,

Subdivision Map Act, California Environmental Quality Act, and all other applicable State and local regulations. The following projects require development review:

- New buildings or additions to multi-family and commercial buildings;
- Exterior changes to a building (such as material changes);
- Site modifications (new landscaping, parking lot changes, changes to fencing, etc.);
- Changes in the use of a building or property in nonresidential zoning districts; and
- New signage/modifications to existing signs.

The following projects are exempt from development review, though these projects may still be subject to some ministerial (nondiscretionary) review for compliance with standards and building codes:

- Single-family homes, duplexes, and ADUs;
- Changes of use, where the use is permitted in certain Precise Plans (such as Downtown and El Camino Real);
- Minor modifications, such as replacement of doors and windows; and
- Other minor projects, such as solar panels, electric vehicle charging stations, and accessory structures (e.g., swimming pools, hot tubs, and trellises).

The Development Review Process for new projects is broken into three separate phases: preentitlement, entitlement review, and postentitlement.

Preentitlement

During the preentitlement phase, an applicant may submit an informal application with project plans that include a site plan, conceptual elevations, and other key documents to the Planning Division. The project plans are reviewed by the Planning Division and other departments (including Public Works, Fire, and Community Services) to provide high-level feedback of necessary submittal requirements, required permits, and major issues that may result in significant impacts to the project and site design. Because the plans are very conceptual, early review by City staff allows for the applicant to make modifications to better address the City's adopted design objectives or City requirements. The informal application also provides the developers key information to help them determine whether to pursue the project. Informal application review is currently provided by the City *at no cost to the applicant*.

Projects that need changes to zoning or General Plan amendments are not subject to PSA. To provide greater certainty for these applicants, the City has a “Gatekeeper” application process—before submitting a formal Planning application, the project must be authorized for staff work by the City Council. This process does not apply to most affordable housing projects or certain developments two acres or less in size.

In addition to the informal application process, the preentitlement phase may include preliminary applications for SB 330 and SB 35 projects.

A developer may submit an SB 330 preliminary application in order to vest the local planning and zoning rules in place at the time the completed preliminary application is submitted. The SB 330 preliminary application consists of materials set by State law, including an application form, written project descriptions, legal property description, and project plans that include a site plan and elevations, number of affordable housing units, and basic environmental information.

An SB 35 preliminary application requires submittal of an application and preliminary plans. This application process is intended to allow tribal consultation through the Native American Heritage Commission to occur since ministerial projects are not otherwise subject to discretionary review and CEQA (which would otherwise include consultation with tribes). The preliminary application requirements for SB 35 follow those outlined in SB 330.

Entitlement Review

Although development review can begin at the preentitlement stage with an informal application, an applicant may choose to continue to pursue, or directly pursue, the project by submitting a formal application that includes a comprehensive set of project plans and information as well as payment of application fees to cover staff time for review. These plans are reviewed by Planning staff and submitted to all relevant City departments. Reviewers may include the following departments/divisions:

- ***Building Division:*** The Building Division is a part of the Community Development Department (CDD) and reviews construction projects for compliance with the Uniform Building, Mechanical, Plumbing, Electrical, and Fire Codes. The intent of these codes are to ensure buildings comply with fire and life safety standards. The Building Division includes Fire Protection Engineers who provide additional comments on fire and life safety requirements.
- ***Public Works Department:*** The Public Works Department consists of three divisions: Transportation and Business Services, Engineering, and Public Services Divisions. Their primary role in development review includes analysis of specific traffic impacts or utility impacts of development projects, changes to streets and intersection controls, impacts to

City streets and roadways, sidewalks, bikeways, public infrastructure requirements, and implementation of the Subdivision Map Act, including accuracy of plats and maps, and review of other engineering requirements for private development. The City operates the supply of, and/or dispersion of, water, wastewater (e.g., sewage), and recycled water. (NOTE: A small portion of the City has water supplied by CalWater.) All electrical service is provided by Pacific Gas & Electric (PG&E).

- *Housing Division:* The Housing Division is a part of the Community Development Department and administers the Below-Market-Rate (BMR) Housing Programs and administration of the Community Stabilization and Fair Rent Act (CSFRA). The Housing Division will ensure the tenant relocation requirements are met, the appropriate Housing Impact Fee is paid with new construction projects, and the proposed Below-Market Rate units comply with the City's BMR Guidelines.
- *Urban Forestry Division:* The Urban Forestry Division in the Community Services Department reviews projects and provides comments related to Heritage tree preservation and required mitigation measures for tree preservation. This staff also reviews arborist reports supplied by the applicant for completeness and accuracy.
- *Fire Department:* The Fire Department includes the Environmental Safety Section and Hazardous Materials Division. The Environmental Safety Section administers the City's water pollution prevention programs and implements State-mandated water pollution control programs to minimize pollutant discharged into creeks and the Bay. This includes stormwater treatment measures captured within the site and landscaping design for development projects for on-site treatment. The Hazardous Materials Division is responsible for review and permitting of storage and treatment of hazardous waste.

The Planning Division and other City departments will work on technical reviews, such as utility impact studies (to understand deficiencies that may be caused from a proposed development project on existing utilities), multi-modal transportation analysis (to review vehicle congestion effects and access requirements for pedestrians, bicycles, and transit), and environmental documents related to CEQA.

The California Environmental Quality Act is intended to mitigate and disclose environmental impacts of a project if the project is deemed to result in a change in the environment. Projects may be subject to different levels of required CEQA review based on project scope and environmental factors, and certain levels of review may take up to a year to complete. However, the CEQA review process is typically concurrent with the development review process in Mountain View. It is important to note that most development projects reviewed by the EPC will involve environmental review. Additional information regarding CEQA will be provided during the staff presentation.

In addition to the technical reviews and CEQA, Planning and other departmental staff review the project based on the following items:

- *Completeness:* Did the applicant submit all necessary application information for project review per the listed submittal requirements in the City's application checklist?
- *Codes and Regulations:* Does the project proposal conform to applicable development standards and regulations listed in the Zoning Ordinance, applicable Precise Plans, and any City-adopted design guidelines? Does the proposal comply with other City Code regulations from other departments and, if not, what impacts do the other departmental requirements have to the site and building design?
- *Context:* Are there site conditions or adjacent property conditions that may impact project design (i.e., adjacent buildings near the project, Heritage trees, circulation conflicts, etc.)?
- *Community Input:* What feedback from neighborhood groups, members of the public, or public bodies, such as the Development Review Committee or City Council, regarding project design did City staff receive? Has this feedback been incorporated or addressed in the project or not?
- *Nexus and Proportionality:* City requirements, especially project-specific requirements, generally must be related to and proportional to a project's impact on the community. For example, the City cannot require a developer of a small office building to build a new freeway overpass. Depending on the fee type, the City will prepare a "nexus study" to establish nexus and proportionality for some impacts ahead of development applications, so that a fee can cover those requirements on a "fair-share" basis.

Planning staff coordinates and compiles comments received to give a complete package to the applicant. The applicant must address the set of comments, provide a written response on how they have addressed each comment, and resubmit all necessary information with revised materials in their next submittal. The review process continues until all items have been submitted and the application is deemed complete to make a decision on the process. For larger-scaled projects, the entitlement process may take approximately 18 months.

DRC and Neighborhood Meetings

In addition to reviews by City staff, new development projects are required to be reviewed by the Development Review Committee (DRC) and be discussed at a neighborhood meeting. These meetings allow members of the community to provide input on the project design. A typical project may hold one neighborhood meeting and one to two DRC meetings. DRC meetings typically occur after major departmental issues have been resolved that may impact the site design.

- *Development Review Committee:* The Development Review Committee is an advisory body consisting of the Deputy Zoning Administrator who chairs the Committee, along with two consulting architects. Although the DRC meetings are a forum for any member of the public to comment on the design, the intent of the DRC meeting is to provide helpful feedback on site design and architecture to better meet the City's design guidelines and improve the project's compatibility to the surrounding neighborhood. The DRC is not the only opportunity for design input as staff will also iterate on the project design with the applicant throughout the review process.
- *Neighborhood Meeting:* The applicant team is also required to host a neighborhood meeting, which is an opportunity for neighbors to provide input on project design. Developers will invite neighbors within 750' of the project site as well as the surrounding neighborhood association. While Planning staff attends these meetings to answer questions related to the City process or requirements, the applicant team is responsible for running these meetings.

Approval Types and Bodies

Prior to approval of larger projects (those that require a public hearing as described below), the proposal must be publicized in the community through noticing.

- *Mailing Notice:* The City must mail postcards describing the project to residents and property owners within 750' of the project regarding an upcoming public hearing date, time, and location.
- *Newspaper Notice:* The City must include the text of the mailing notice in a newspaper (typically the *Daily Post*).
- *On-Site Project Sign:* Applicants must install a project noticing sign on the property with key project information and contact information. The project noticing sign includes staff and the developer's contact information if any member of the public has questions or wants to provide feedback on the project.
- *Other:* While not required, the City also publicizes projects through the website, email announcements, and direct interaction with community and stakeholder groups.

Projects range in size and complexity. The approval process is dependent on the project scope, size, and location. Most project approvals are nonlegislative and often can be approved at the staff level, but may require public hearings. These are discussed below:

- *Staff-Level Approvals* are those with limited potential impact on the community. They do not require noticing or hearings. Some examples include:
 - Signs;
 - Additions to nonconforming single-family homes;
 - Change in use from a permitted use to another permitted use;
 - Minor site modifications; and
 - Changes in exterior building facade materials.
- *Administrative Zoning Approvals* are most projects that do not need Council approval. Some examples include:
 - Use permits that are “conditional” or “provisional” uses in Precise Plan areas;
 - New buildings and large additions in most zoning districts;
 - Variances; and
 - Small Planned Unit Developments creating less than five lots (that are residential developments that include multiple single-family homes, condos, or townhomes with a common open area).

Any projects associated with a subdivision of less than five lots will require approval at a Joint Administrative Zoning/Subdivision Committee meeting.

- *Administrative Zoning Recommendation → City Council Approvals* include:
 - New buildings above a certain size in certain Precise Plan areas;
 - Planned Unit Developments creating five or more lots; and
 - Subdivisions creating five or more lots.

- *EPC Recommendation* → *City Council* include:
 - Some Bonus FAR projects in certain Precise Plans, and
 - Gatekeeper projects (projects requesting a General Plan/Zoning Amendment).

Postentitlement

Once a project is approved with a planning entitlement through the development review process, applicants begin the process of obtaining building permits and other postentitlement permits, such as excavation permits. During this phase, City staff coordinates with the applicant to ensure that any project conditions are addressed in the building permit plan sets. These conditions may include providing more detailed construction details for the Building and Fire Divisions or finalizing a construction management plan that addresses how construction parking or staging will take place on-site. During this phase, applicants may finalize legal agreements (indemnity agreements, below-market-rate agreements, improvement agreements, etc.) and pay relevant impact fees (housing impact fees, parking impact fees, and transportation impact fees). Once all conditions are fulfilled, the building permit may be issued. An applicant must start construction to vest their entitlements. If construction does not begin before entitlements expire, the entitlements are no longer valid, and the applicant must apply for a permit extension.

After a building permit is issued, construction may begin and periodic inspections from City staff are required. Planning staff does inspections to ensure the overall appearance of the project matches the approved entitlements or to select final material or paint colors as minor changes to the project may occur during construction. The Building Division and Public Works Department will also inspect the project throughout construction to ensure construction-related measures and conditions are followed and to ensure projects are built per the Building Code. Public Works issues excavation permits for work in the public right-of-way and inspects the work per the City Standard Specifications. Even after entitlements, the project may have conditions that must be followed after the project is built as part of ongoing operations. One example is Transportation Demand Management (TDM) monitoring and reporting, in which a project must continue to monitor how people are traveling to and from the site.

THE EPC'S ROLE

The role of the EPC is to provide a community-based perspective on the City's land use decisions based on established land use policies. In that capacity, the EPC's input is most effective at the policy level, focusing on high-level goals and outcomes which future development helps implement. Planning and other City staff are afforded the time and expertise to evaluate the best means to implement those high-level goals and outcomes.

As described above, the EPC will review some development projects. Generally, these fit into two main categories:

- ***Applications requesting amendments to the General Plan, Precise Plan, Zoning Ordinance text(s) and/or map(s):*** The EPC will usually review these projects twice, providing early input at a Study Session and making a final recommendation to the City Council at the end of the development review process.
- ***Development projects requesting Bonus FAR or Greater Tiers in key Precise Plans:*** The EPC will only usually see these projects once at the end of the development review process.

When the EPC reviews a project early in the process, there is greater opportunity to provide feedback on big-picture aspects of the project and design, including site planning, circulation, density/intensity, and setbacks. Staff will provide an analysis of key questions the EPC may wish to consider at this stage of the process.

This is not to say that EPC members should not express whatever input they may have regarding a project at any stage of the project review before them. However, the effect of that input may differ depending on the project and where it is in the process. Bigger-picture comments at the end of the process may still inform future legislative decisions by the City or legislative advocacy with the State.

CONCLUSION

The development review process is highly complex with many different aspects of a project and City requirements working in balance with one another. These different aspects include compliance with City codes, public outreach, public safety, State laws, and property owners' rights. As stewards of the City's land use planning policies, the EPC has an important role in this process.

KP/1/CDD

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Attachment: 1. Graphic of Development Review Process