A stylized illustration of a whiteboard. The whiteboard is a large rectangle with a double-line border. Inside the whiteboard, the title 'Local Design Review: Getting Started' is written in a bold, black, sans-serif font. Below the title, the presenter's name and affiliation are listed: 'Lucinda Woodward', 'Office of Historic Preservation', 'San Francisco', and 'August 18, 2011'. The whiteboard is mounted on a wall with a decorative lattice pattern. Three silhouettes of people are shown cleaning the whiteboard. One person is on the left, holding a long-handled eraser. Another person is on the right, also holding a long-handled eraser. A third person is at the top center, holding a long-handled eraser. The entire illustration is set against a light blue background.

# Local Design Review: Getting Started

Lucinda Woodward  
Office of Historic Preservation  
San Francisco  
August 18, 2011

# Is this Happening in Your Community?

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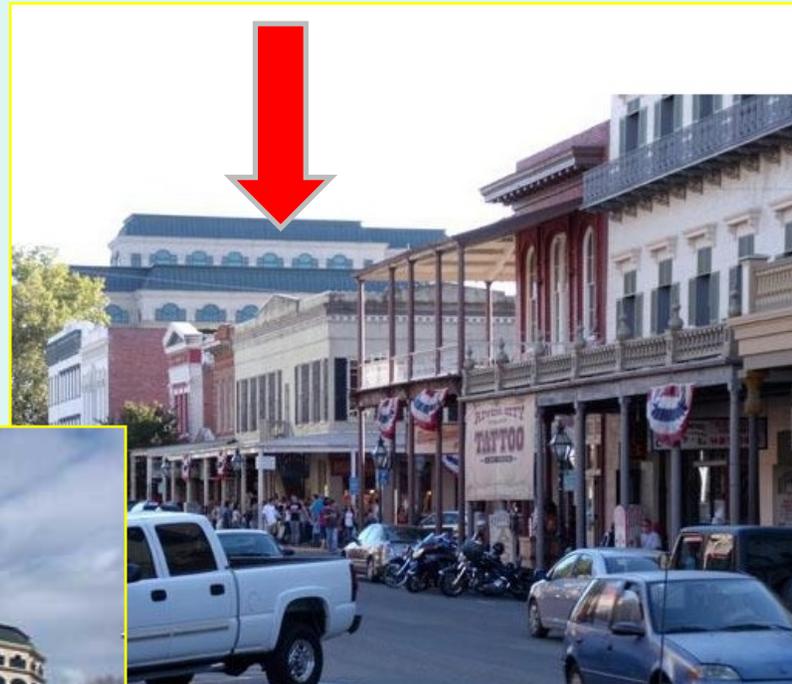
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# Is this Happening in your Community?

Inappropriate additions to traditional streetscapes



Old Sacramento

# Is this Happening in Your Community?



Inappropriate additions to buildings?

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# Is this Happening in Your Community?



Construction of out-of-character houses in a traditional neighborhood

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# Is this Happening in Your Community?



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# Design Review

## What is it?

A discretionary approval process

## Why?

To preserve landmarks, districts, neighborhoods and main streets

# Overview of California Land Use Planning and Regulation

- Police Power
- General Plan
- Specific Plan
  - Zoning
- Development Agreements
- Historic Preservation Ordinance
  - Design Guidelines

# Legal Considerations



- California's planning and regulatory framework
- "Non-statutory" land use approvals
- Police Power
- Legal authority for aesthetic regulation

# Police Power and Land Use

The California Constitution grants every city and county the “police power” which enables local governments to act to protect the public health, safety, and welfare of their citizens.

Land use regulations, including historic preservation, are authorized under the public welfare component of the police power.

In addition to police power, state statues specifically authorize local governments in California to protect historical resources.



# Police Power is Broad Enough to Include Aesthetics

“The concept of the public welfare is broad and inclusive.... The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”

*Justice William O. Douglas, Berman v. Parker, 348 U.S. 26 (1954)*

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# Legal Authority for Aesthetic Regulation

The U. S. Supreme Court upheld the constitutionality of New York City's preservation ordinance and found such an ordinance to be a "valid public purpose and legitimate function of local government."

*Penn Central Transportation v. New York City,*  
438 U.S. 104 (1978)

# Legal Authority for Aesthetic Regulation

- Standards of review in design review cases:
  - Acceptable degree of vagueness
  - Vague standards are permitted because they are sensitive to the need of government to delegate broad discretionary power to administrative bodies, such as historic preservation commissions, so that the community's design and zoning issues can be done without paralyzing the legislative process.

*Novi v. City of Pacifica, 169 Cal.App. Ed 678 (1985)*

# Legal Authority for Aesthetic Regulation

Court found city's "neighborhood compatibility" ordinance not be impermissibly vague, saying "...especially in regard to zoning matters, laws must be written broadly enough to allow substantial discretion to administrative bodies and need not be so rigid as to eliminate all possible differences of opinion."

*Briggs v. City of Rolling Hills Estates, 40 Cal.App. 4<sup>th</sup> 637 (1995)*

# Legal Authority for Aesthetic Regulations

- Design review is independent of zoning regulations
  - The court upheld denial of a discretionary building permit, finding that the City's compatibility review under that process was independent of the zoning ordinance.

*Guinnane v. City and County of San Francisco, 197 Cal.App. Ed 862 (1987)*

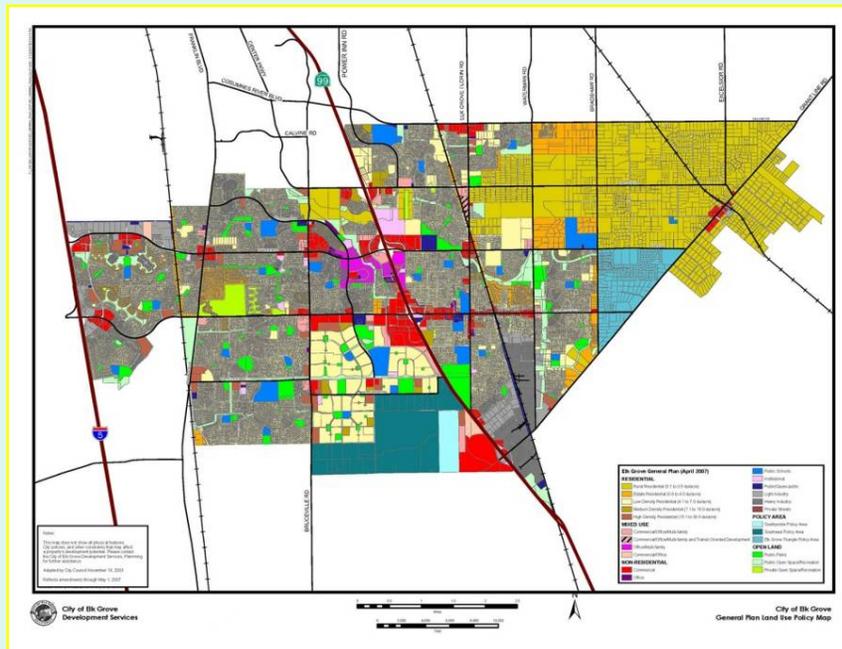
# Summary of Legal Considerations

- Police power is the basis for all local land uses regulation including design review.
- Exercise of police power will be upheld if reasonably related to public health, safety, and welfare and not in conflict with state or federal law.
- Public welfare is interpreted broadly to include aesthetics and other quality of life concerns.
- Courts have answered charges that aesthetic regulation is too vague.

# General Plan and Design Review

## Why?

- The General Plan is the “constitution” for development and resource conservation.



Elk Grove General Plan Land Use Map

## Where?

- Historic Preservation Element
- Land Use Element
- Design Element
- Resource Element

# General Plan and Design Review

## What should it include?

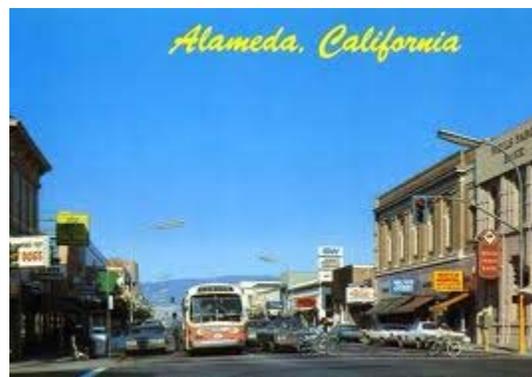
- Design issues
- Design objectives
- Principles and policies
- Actions and programs



# General Plan and Design Review

Develop detailed design guidelines to ensure protection of Alameda's historic, neighborhood, and small-town character. . . . Include special guidelines for older buildings of existing or potential architectural, historical or aesthetic merit which encourage retention of original architectural elements and restoration of any missing elements. The design guidelines include detailed design standards for commercial districts.

*City of Alameda General Plan*



# General Plan and Design Review

In addition to preserving actual historic buildings within Old Town, the City has adopted design guidelines that will ensure that future development in and adjacent to Old Town is compatible with its historic community character. Streetscape design features and building facade modifications will be applied to newer structures adjacent to Old Town to address design incompatibilities where modern architectural adversely clashes with Old Town's historic character

*City of Calabasas, Cultural Resources Element, 2030 General Plan*

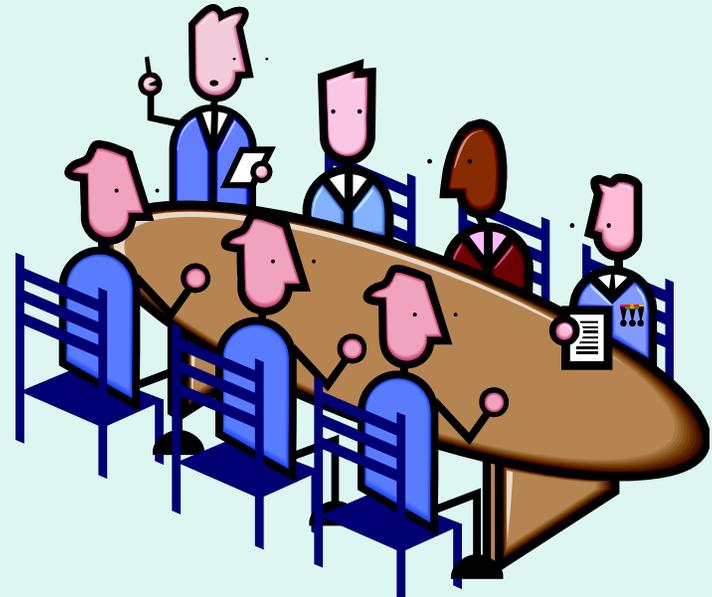
# Historic Preservation Ordinance and Design Review



- Provides authority
- Key Components
  - Objectives
  - Applicability
  - Responsibilities
  - Process
- Based on SOI's Standards
- Certificate of Appropriateness

# Historic Preservation Ordinance and Design Review

- **Who makes decisions?**
  - Historic Preservation Board or Commission
  - Planning Commission
  - Staff



# Historic Preservation Ordinance and Design Review

- **Certificates of Appropriateness (COA)**
  - Owners of locally designated properties must get approval from historic preservation commission for major alterations, additions, and new construction
  - Applications must meet design review criteria cited or outlined in the preservation ordinance the community has adopted
  - Review of project assisted by Design Review Guidelines

# Historic Preservation Ordinance and Design Review

- **How Local Governments Use The Secretary of Interior's Standards for the Treatment of Historic Properties**
  - Cited within the ordinance as part of design review criteria
  - Referenced in the ordinance as the required basis for development of local design guidelines
  - Use of Standards for Rehabilitation by themselves

# City of Sacramento

## Historic Preservation Ordinance

### 15.124.270 Historic District Plans.

- A. The Board shall promulgate and recommend to the Council for adoption a Historic District Plan for each Preservation Area existing as of the date of enactment of this Chapter, and for each Historic District designated pursuant to this Chapter. Each Historic District Plan shall include:
  - 1. A statement of the goals for review of development projects within the Historic District;
  - 2. A representation of the historical development of land uses, existing land uses, and any adopted plans for future land uses;
  - 3. A statement of findings, including the following:
    - a. The historical or pre-historical period to which the area is significant,
    - b. The predominant periods or styles of the structures or features therein, and
    - c. The Significant Features and Characteristics of said periods or styles, as represented in the Historic District, including, but not limited to, structure height, bulk, distinctive architectural details, materials, textures, archeological and landscape features and fixtures; and d. A statement, consistent with Article IV herein, of the standards and criteria to be utilized in determining the appropriateness of any development project involving a Landmark, Contributing Resource or Non-Contributing Resource within the Historic District.

# City of Eureka Historic Preservation Ordinance

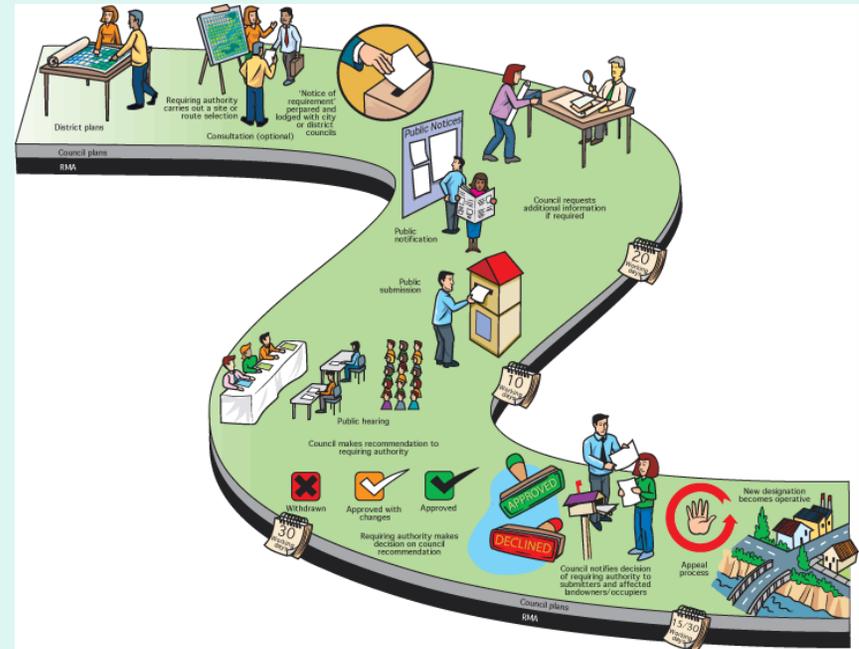
The Historic Preservation Commission may adopt guidelines for alterations and review of alteration applications, applicable specifically to designated properties and/or district properties. Except to the extent such guidelines provide differently, a proposed alteration shall be considered in light of its effect on the existing character of the affected structure as it relates to the streetscape.

# Design Review Process

Do your procedures look like this?



Or like this?



# Design Review Process



- Application requirements
- Timing and deadlines
- Preliminary review
- Public notice and hearings
- Review criteria
- Conditions of approval and/or limitations
- Findings
- Appeals
- Enforcement

# Common Design Review Problems in Historic Preservation Ordinance

- Lack of integration with zoning and environmental review
- Unclear objectives
- Inadequate or absent findings
- Inappropriate conditions
- Turf issues

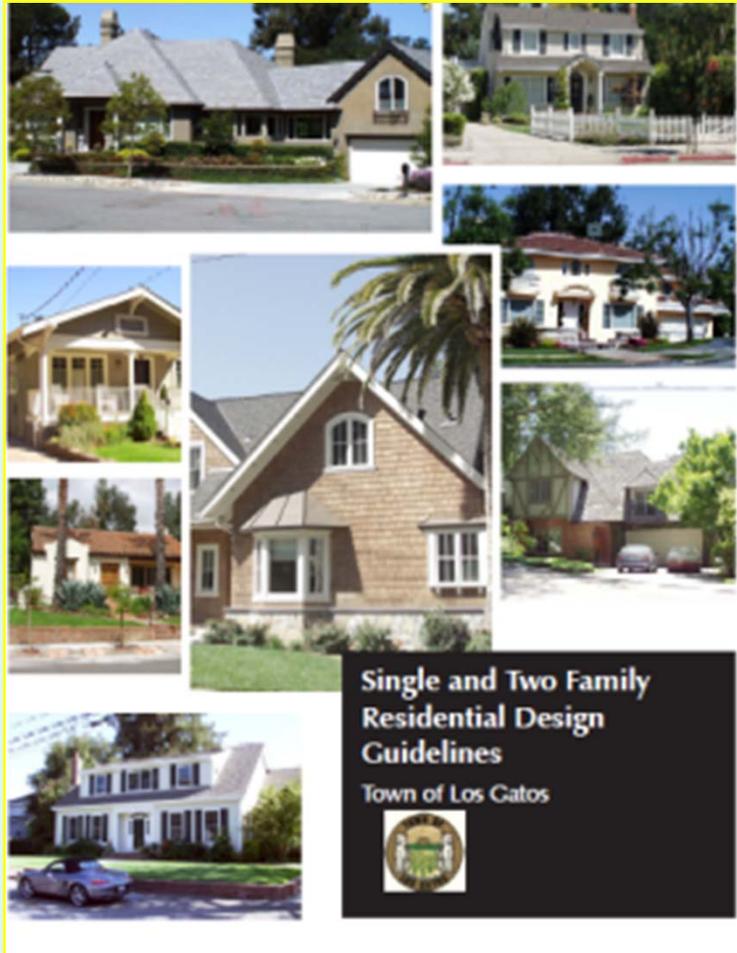
# Ordinance vs Design Review Guidelines

Shall	Should
Council Adopted	Council Adopted
Part of Municipal Code	Code appendix or freestanding
Mandatory, as specified	Mandatory or advisory
Standards—performance based (Should reference the SOI's Standards)	Guidelines—direction setters, prescriptive
Statutory basis for denial	May be statutory basis for denial
	Provide written and graphic information

# Why Design Review Guidelines?

- A basis for making fair decisions
- Consistency in design review
- Incentives for investment
- Property value enhancement
- A tool for education
  - Noré Winter, “Benefits of Design Review,” *Alliance Review*, July/August 2001

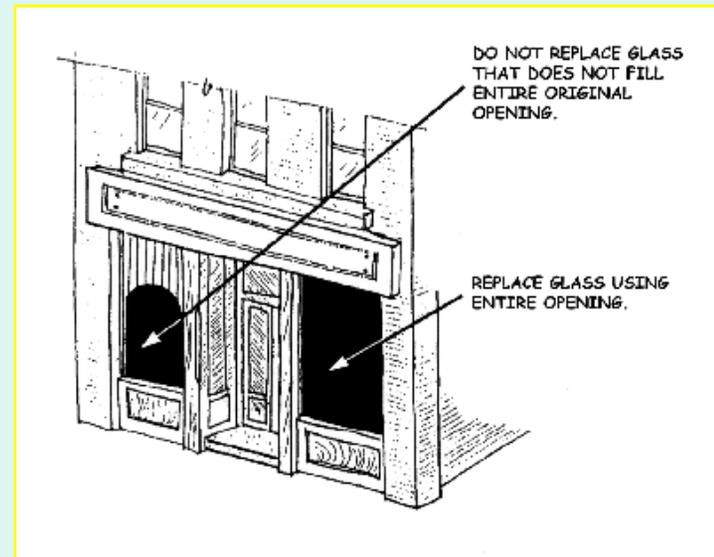
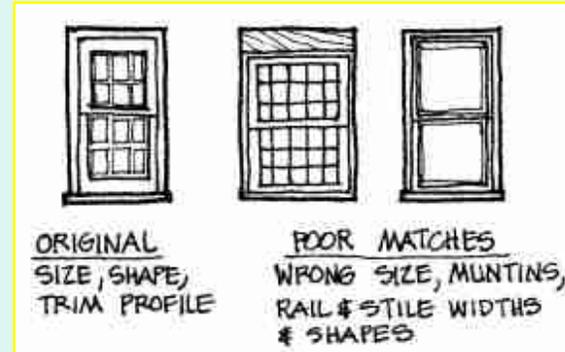
# Key Components of Design Review Guidelines



- Objectives
- Statement of principles
- Graphic examples
- Terms and definitions

# Scope of Design Review Guidelines

- Site design
- Bulk and height
- Massing
- Dimensions
- Architectural Features
- Landscaping



# Design Review Guidelines

Can	Cannot
Explain, expand, and interpret general design criteria in the historic preservation ordinance	Serve the same legal purpose as the design review provisions of the ordinance
Help reinforce the character of a historic area and protect its visual aspects	Limit growth or regulate where growth takes place; Guidelines address only the visual impact of projects on the character of the historic area
Protect the value of public and private investment which might otherwise be threatened by the undesirable consequences of poorly managed growth	Control how space within a building is used
Indicate which approaches to design a community encourages, as well as discourages	Always guarantee that all new construction will be compatible with a historic area or be of good design
Serve as a tool for designers to use in making preliminary design decisions	Guarantee “high quality” construction
Increase public awareness of design issues and options	

# Why you Need Specific Local Design Guidelines

- Secretary's Standards and design criteria in ordinances are very broad, general philosophical guidelines. (performance based)
- Local guidelines are developed for buildings, sites, and settings that share a common history, appearance and special meaning in time and place. (prescriptive)

# Write Specific Guidelines for your Community

- Design guidelines should address the special character of your district or community and the work needed to protect it.
- Draft an illustrated history that identifies significant characteristics and features.
- Use photos and drawings throughout to reinforce key points.
- Provide information on materials maintenance, repair and replacement, as well as guidance on new construction and restoration.
- Integrate treatment of landscape, including signage.

# Analyze Your Community's Character

- Have a clear understanding of the history of the area and how that history is reflected by its physical characteristics.
  - Architecture
  - Streetscapes
  - Setting
- Has the area evolved over time or does it represent one period of time?
- Decide exactly what it is that needs to be protected.



# Review Your Design Review Guidelines

- Review final draft.
  - Do they achieve original goals?
  - Are there administrative problems?
  - Do they conflict with the ordinance and other codes?
  - If Sec. of Interior's Standards are used, do your guidelines agree with the principles in the Standards?
  - Are they consistent with the particular needs of the district?
  - Will they meet with community support?
  - Are they advisory in nature or do you want to make them required?

# Common Problems with Design Review Guidelines

- Ambiguity
- Micro-design
- Unclear objectives
- “Themes” and contrivance
- Lack of policy fit
- Standards vs. Guidelines



# Zoning and Design Review

Zoning	Design Review
Local government is authorized to divide land into zones, each with a set of regulations governing the development of private land.	Local government is authorized regulate aesthetics.
Defines categories of uses, density, maximum size of buildings, setback, parking, etc.	Defines how the property looks, appropriate architectural/historical details, infill, landscaping.

# Zoning and Design Review

- Essential that zoning and design review be coordinated
  - Include a clause in both the zoning & historic preservation ordinance stating that if there is a conflict, the preservation ordinance takes precedence.
  - Downzoning
  - Special exceptions
- HPOZ

# Design Review Findings

## Making Legally defensible findings

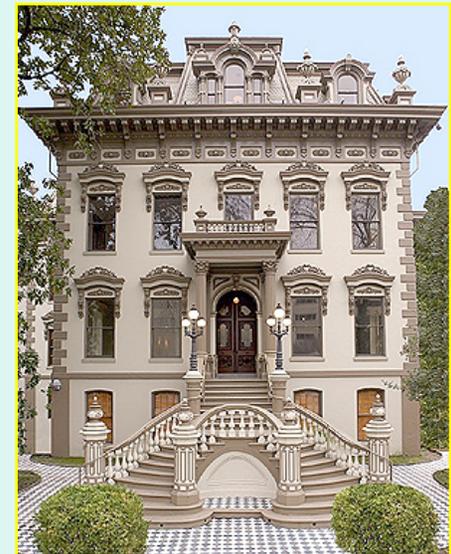
- Supported by evidence in the record
- Written
- Demonstrate an analytical route from evidence to finding



Groveland Hotel



Pleasanton



Stanford Mansion

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