International Municipal Lawyers Association

Advancing Excellence in the practice of Local Government Law

Institute for Local Government Lawyers

Wednesday, October 19, 2022
9:55 – 10:55 am PST



Land Use Law 101

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Thanks to Dwight Merriam for use of images and slides from past ILGL presentations

Private Regulation

- Covenants and easements
- Common interest communities
- "The right to dry" issue
- Dog amortization



GHC 20020160665 24 pgs

016-71-1566

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
THE LAKE AT SAN JOAQUIN, SECTION ONE

THIS DECLARATION made as of the date hereinafter set forth by D. R. HORTON-TEXAS, LTD., a Texas Limited Partnership (hereinafter referred to as "Declarant"):

WITNESSETH:

Other Powerful Controls

- The market
- Infrastructure
- Taxes
- Government spending









The Planning Process

1. Where are we now?

Community Profile



Descriptive Information

Community Values

2. Where are we going?

Trend Analysis



Trend Data

Identify issues

Probable Scenarios

3. Where do we want to be?

Community Vision

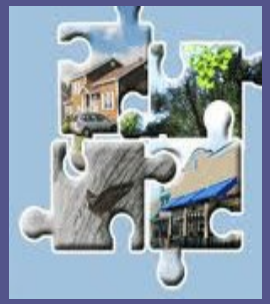


Vision Statement

Preferred Scenario

4. How do we get there?

Comprehensive Plan



Goals, Objectives and Policies

Map Series

5. How are we Doing?

Plan Implementation



Amendments

Land Development Regulations

Evaluation & Appraisal

Why Plan?

- Develop a clear **vision** stated and shared by all.
- Assessment of **community needs.**
- Identify factors that shape and influence the community's future.
- Identify areas of agreement, competing interest and **difficult trade-offs**.
- Identify **community values**, aspirations, goals, and objectives.
- Instills community **confidence** in the future.
- Provides a public guide to **community decision making**.
- **Blueprint** for a community's physical development.
- **Greater certainty** about where, how and when development will occur

Why Plan?

- Identify **land use conflicts & impacts** and define methods to mitigate them.
- Protect **private property rights.**
- Protect and enhance **community assets** and **natural resources.**
- **Quality of life** is maintained and improved.
- **Economic development** is encouraged and supported.
- Help to ensure a future that is **fiscally sustainable and resilient.**
- Plan for **Infrastructure** based on current needs and projected demand.
- Identify hazards and plan for **mitigation** and **resiliency.**
- **Continuously updated** as conditions change.

What Happens without Planning?

- Sprawl
- Congestion
- No sense of place
- Incompatible land uses / conflicts
- Disconnected development patterns
- Degradation or loss of natural resources
- Infrastructure and service deficiencies.
- Lost economic development opportunities.
- Property values increase at lower rates.

IF YOU WANT A GREAT COMMUNITY, YOU MUST PLAN FOR IT.

Define Goals and Objectives

Define Problem, System (Constraints, Inputs, Outputs, Functions, Values, Evaluation Criteria)

Generate Solutions

Analyze Solutions

Evaluate Alternatives

Select Alternative

Implement

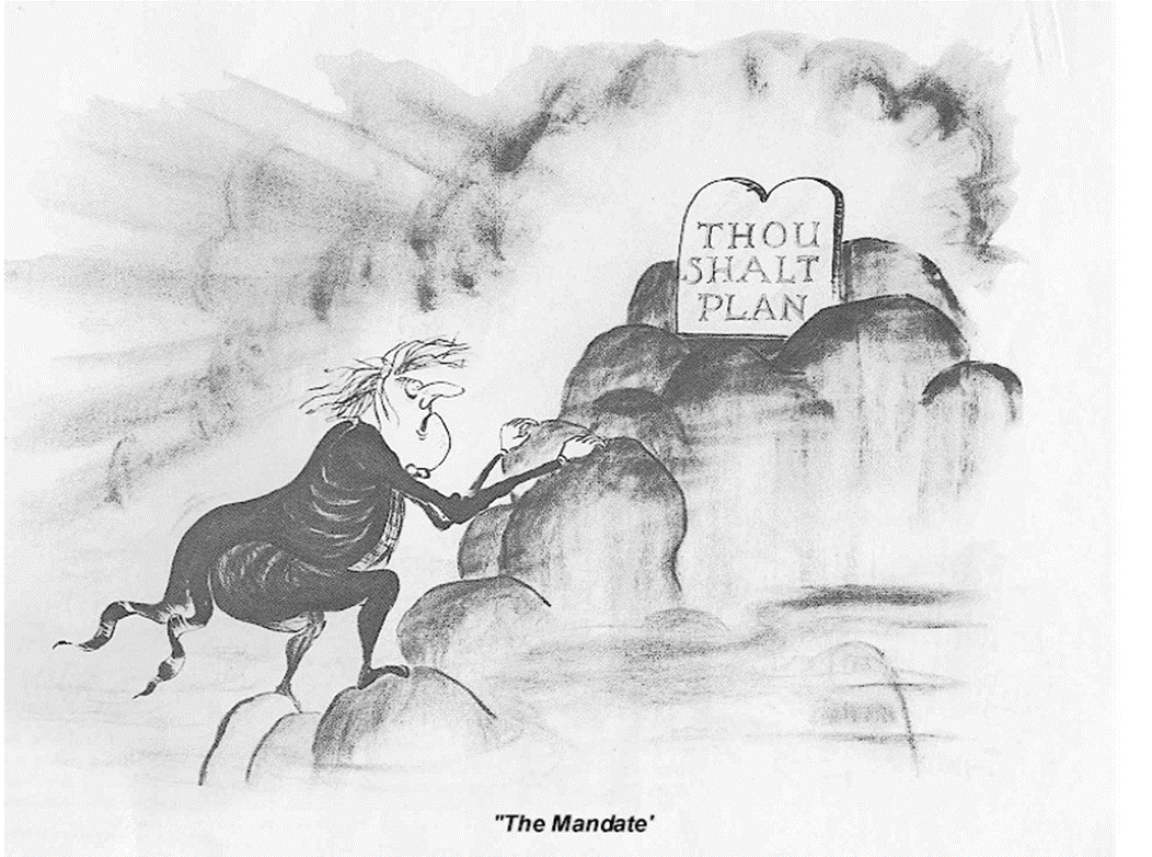


Principles for Effective Planning

1. Begin with the public.
2. Develop a clear community vision.
3. Proactive not reactive.
4. Be thorough and consistent.
5. Make it easy to do the right thing.

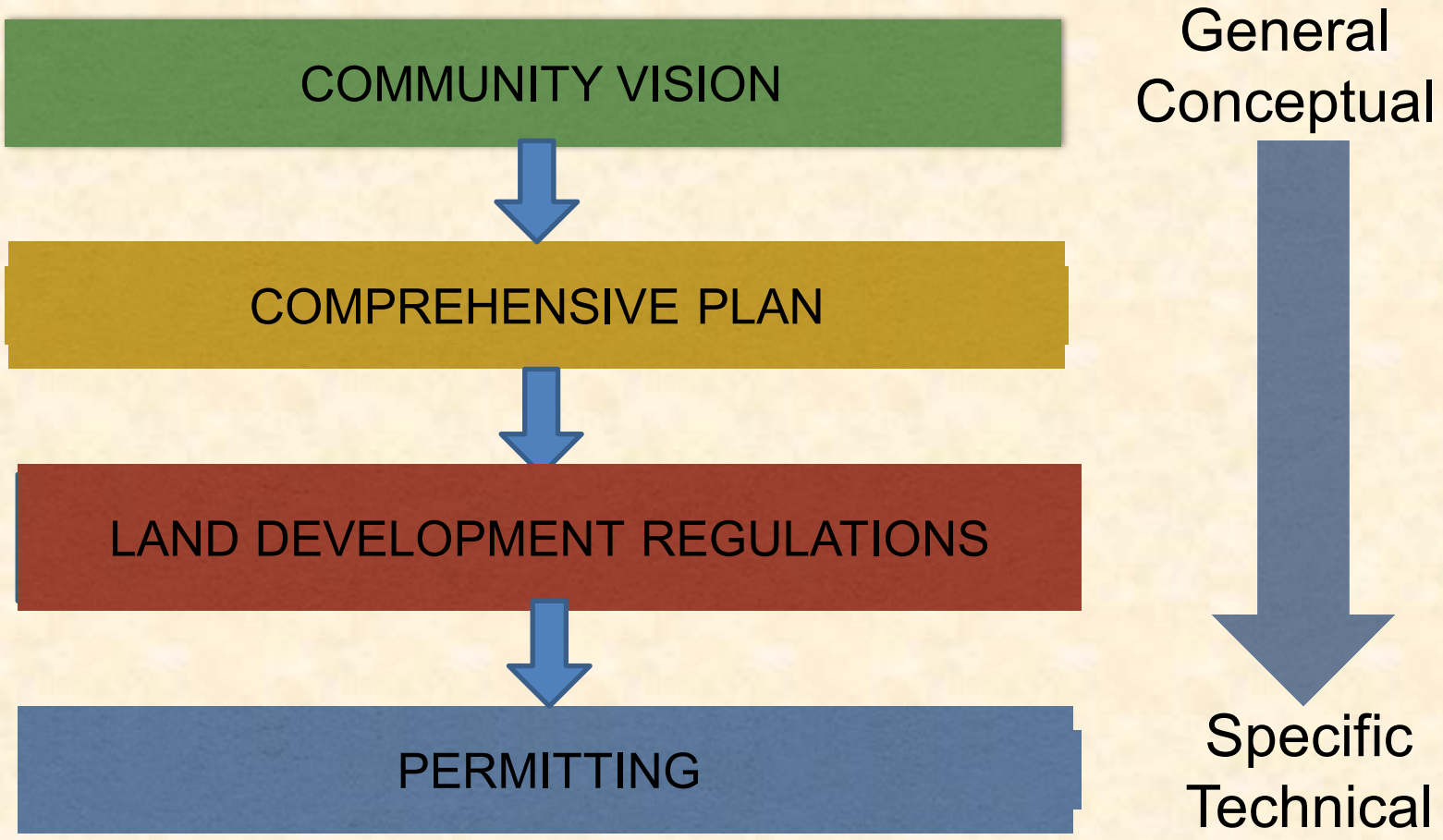
Legal Status of the Plan

- Mandatory planning doctrine
- Consistency doctrine



"The Mandate"

Layered Planning System



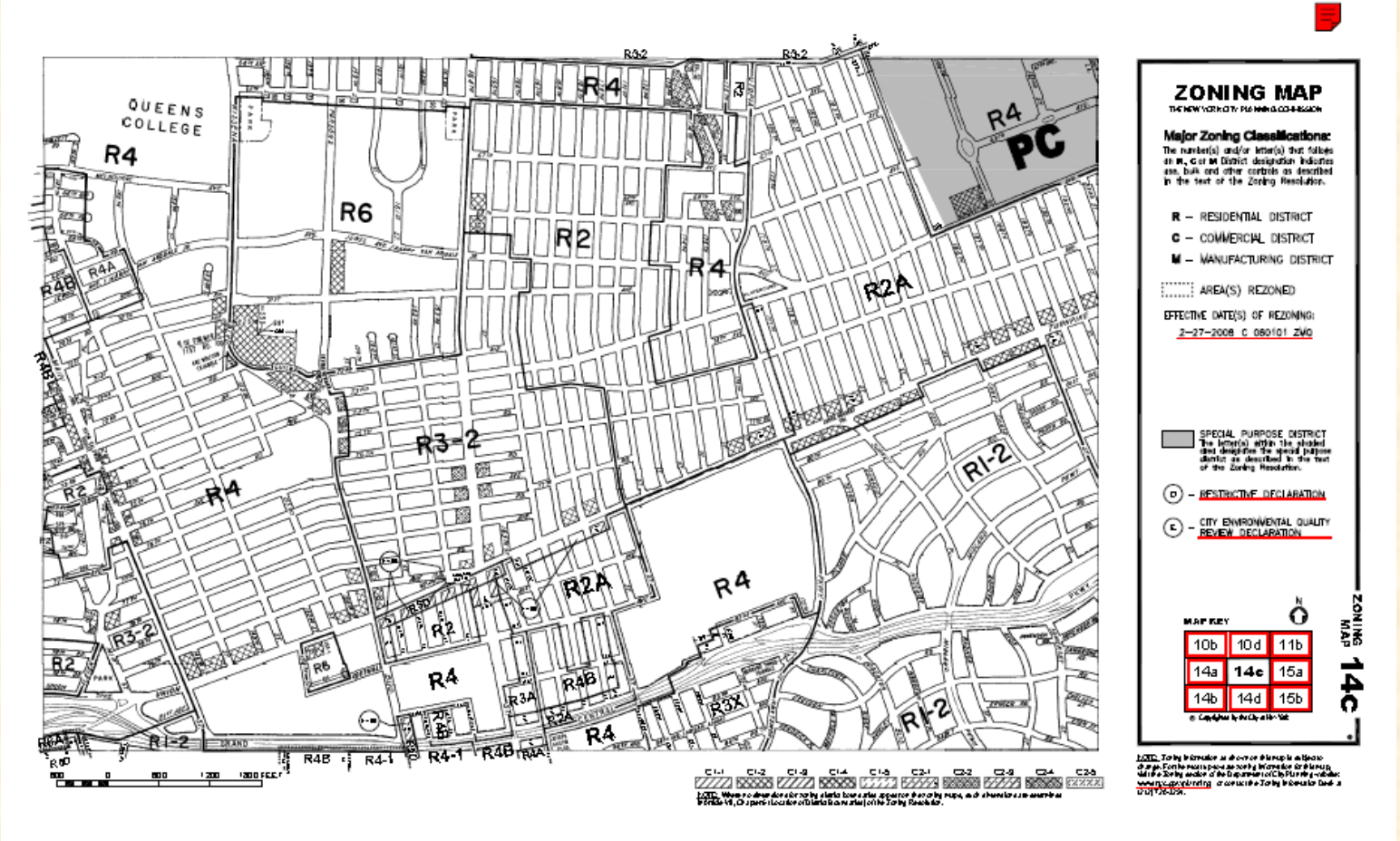
Florida Example: Integrated Planning System



Plan Implementation Policy Issues

- Balance of competing interests / Difficult trade-offs
- Urban sprawl / urban infill
- Predictability versus flexibility
- Level of review
- Public involvement

Zoning



QUEENS COLLEGE
R4
R6
R2
R4
R2A
R3-2
R1-2
R4B
R4A
R3A
R3X
R4-1
PC
ZONING MAP
THE NEW YORK CITY PLANNING COMMISSION
Major Zoning Classifications:
The number(s) and/or letter(s) that follows an R, C or M District designation indicates use, bulk and other controls as described in the text of the Zoning Resolution.
R – RESIDENTIAL DISTRICT
C – COMMERCIAL DISTRICT
M – MANUFACTURING DISTRICT
AREA(S) REZONED
EFFECTIVE DATE(S) OF REZONING:
2-27-2008 C 080101 ZMQ
SPECIAL PURPOSE DISTRICT
The letter(s) within the shaded area designates the special purpose district as described in the text of the Zoning Resolution.
D – RESTRICTIVE DECLARATION
E – CITY ENVIRONMENTAL QUALITY REVIEW DECLARATION
MAP KEY
10b
10d
11b
14a
14c
15a
14b
14d
15b
ZONING MAP 14c

A Brief History

- Before zoning
- *Euclid v. Ambler*



The Power to Zone

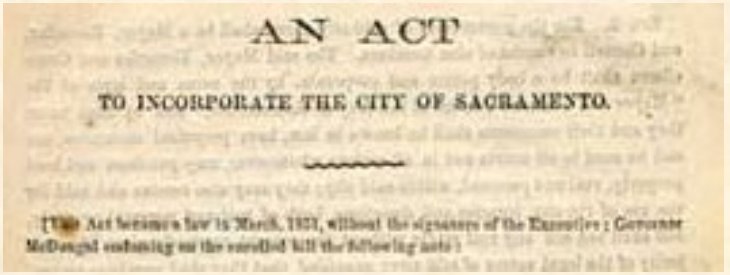
The police power…



- To preserve, promote, protect…the public health, safety and general welfare…

The Power to Zone

- Standard Zoning Enabling Act
- Inherent and implied powers
- Charter
- Home rule
  - Initiative and referendum
  - Extraterritorial zoning
  - Annexation and prezoning


AN ACT

TO INCORPORATE THE CITY OF SACRAMENTO.





Purposes of Zoning

- Preserve property value
- Preserve character
- Traffic safety
- Regulation of competition
- Fiscal zoning
- Growth management
  - Rate and sequence





Zoning

- Use
- Bulk, density, dimension
- Cumulative v. exclusive use



Common Issues in Zoning

- Accessory uses
- Home occupations
- Definition of family
- Group homes
- Agricultural uses









And Not-So-Common Issues in Zoning

- Medical and recreational cannabis
- Hookah lounges
- Nudist camps
- Gun clubs
- Doggy day care





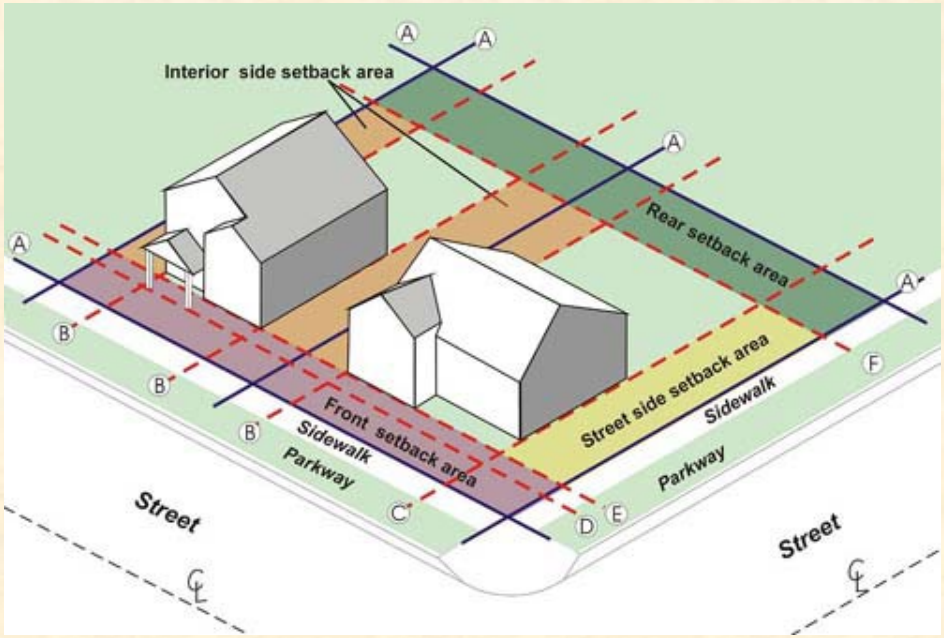






Height, Bulk, Setback Controls

- Setbacks, sideyards
- Frontage
- Height
- Lot coverage
- Floor area ratios
- Open space ratios



Toolbox of Techniques



- The basics
  - Legislative: making law
  - Administrative
  - Quasi-judicial: applying law
- Increasing due process



Increasing Flexibility

- As-of-right
- Site plan
- Conditional use
- Overlay zone
- Floating zone
- Planned Unit Development
- Special Development District

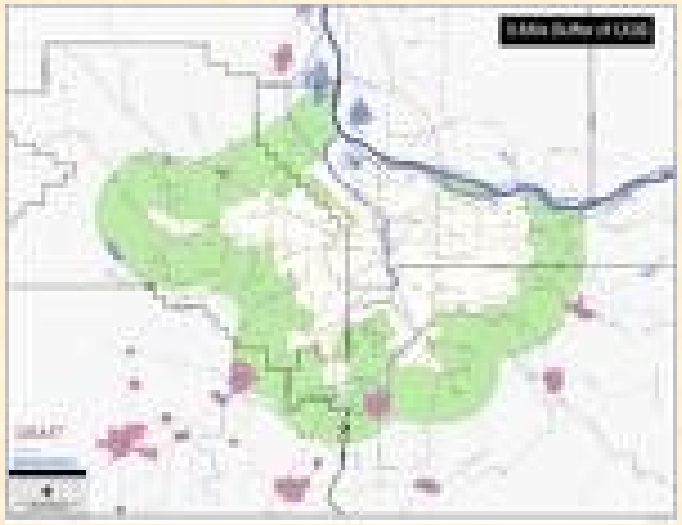


…and more…

- Incentive zoning
- Performance zoning
- Interim and holding zones







…and more…

- Moratoria
- Affordability
- New urbanism
- Traditional neighborhood design
- Transit oriented development
- Form-based codes



Constitutional Issues: State and Federal

- Procedural due process
- Substantive due process
- Equal protection
- First Amendment
  - Signs, religion, adult
- Fifth Amendment
  - Takings
  - 2017 *Murr* decision
  - 2019 *Knick* decision



Caselaw: Exactions

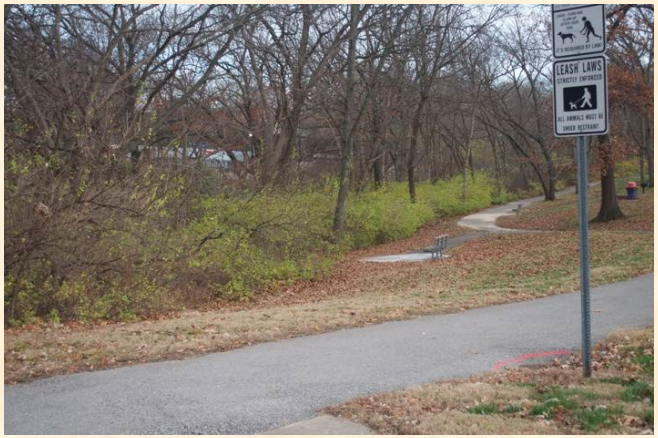
Nollan v. California Coastal Commission

(US Supreme Court – 1987)

Coastal easement

Rational Nexus





Dolan v. City of Tigard, Ore.

(US Supreme Court – 1994)

Bike path easement

Rough Proportionality

Koontz v. St. Johns River Water Management District (US 2013) (wetland mitigation): *Nollan/Dolan* applies to denials and to monetary conditions

Subdivision

- To make orderly land sales and descriptions
- Assure adequate infrastructure



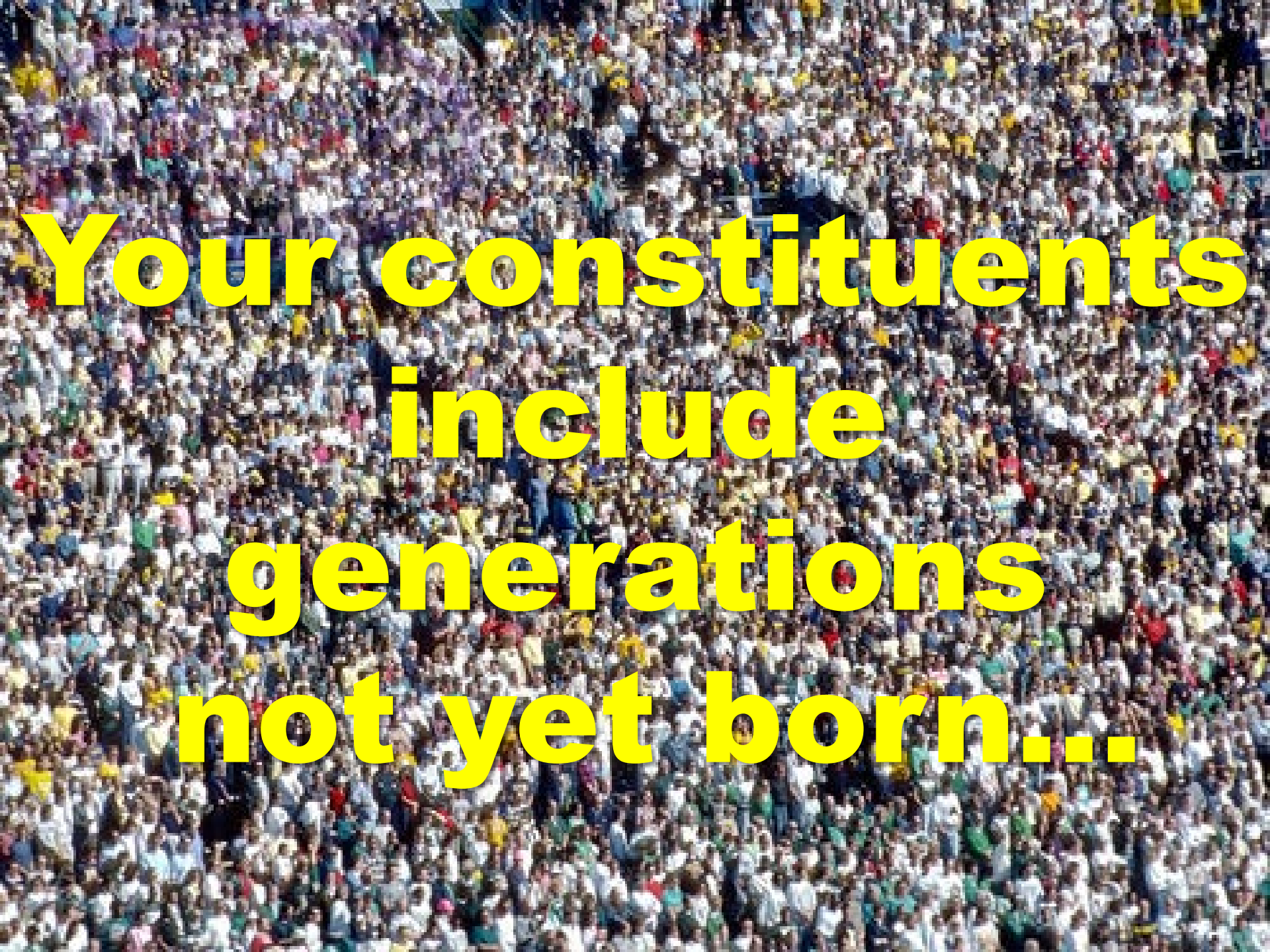
Permitting

- The application of regulations which set forth minimum requirements for the use of land and construction, including site design & layout, subdivision of land, access & roads, buildings, surface water management, flood control, etc.

Federal Statutory Overlay



- Fair Housing Act
- Religious Land Use and Institutionalized Persons Act
- Clean Water Act
- Americans with Disabilities Act


Your constituents include generations not yet born...