

San Francisco's Downtown Plan: Environmental and Urban Design Values in Central Business District Regulation*

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INTRODUCTION

After several decades of decline, many of America's older urban business districts have recently entered a period of economic revitalization and growth.¹ In San Francisco, however, the phenomenon of intensive downtown growth is not of recent vintage, but rather dates back to the mid-1960's. In the past two decades, San Francisco has been able to maintain and even accelerate downtown growth. Today, the city's downtown growth rate ranks as the nation's highest.²

Although San Francisco, like most cities, has encouraged downtown development in order to reap economic and other benefits,³ the city has made concerted efforts to control the social and environmental costs of growth.⁴ In response, San Francisco has adopted numerous land use reg-

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1. See, e.g., Bluestone, *Employment Growth in Metro and Nonmetro America: A Change in the Pattern?*, 492 AGRI. ECON. REP. 4 (1982).

2. *S.F. Downtown Ranks Highest for New Growth*, San Francisco Examiner, June 19, 1983, Want Ad Supermarket, at 1, col 1.

3. The impetus behind the development boom in San Francisco was provided in part by public policies that encouraged growth. Vast amounts of money have been spent on the construction of new public transportation systems, including the Bay Area Rapid Transit (BART) system, linking San Francisco with Oakland and the commuter communities of Alameda and Contra Costa counties, and a municipal light rail system. Two recent large-scale redevelopment projects, Embarcadero Center and Yerba Buena Center, provide or will provide anchor facilities for commercial development in what formally were dilapidated residential or industrial districts. Finally, the high density zoning discussed at length in Part II of this Comment has permitted the construction of large-scale office buildings.

4. Growth has put intense pressures on the city's transportation systems, both public and automobile, and on its housing supply. The once graceful skyline is now dominated by bulky box highrises. Downtown's sidewalks receive less direct sunlight. Pedestrians face swirling winds while passing buildings that, even at street level, are increasingly homogenous and uninteresting.

ulations which, taken as a whole, may be more stringent than those in any other major city in the United States.⁵ San Francisco's regulations, however, have been enacted largely on a piecemeal basis and, as a result, have not comprised a coherent, comprehensive package of regulatory tools, nor have they protected the unique urban character of downtown San Francisco. Even projects that have been constructed in compliance with all current regulations have proved to be environmentally and aesthetically harmful. Moreover, there is currently no cogent means of managing the cumulative effects of downtown growth in San Francisco.

Recognizing the need for comprehensive development guidelines, the city's Planning Commission, on November 29, 1984, adopted a new downtown regulatory system, known as the Downtown Plan.⁶ The Downtown Plan and the proposed Planning Code Amendments,⁷ when finally adopted, will implement a more demanding and innovative downtown land use scheme than ever before proposed by a major American city.⁸ Growth will continue under the Plan, but at a slower pace, and at a significantly reduced cost to the city's environment. Not only does the Downtown Plan attempt to prevent the construction of environmentally destructive individual projects, but it also strives to control the cumulative effects of growth.

This Comment first describes San Francisco's current downtown regulations, how they function, their strengths, and their many flaws. This Comment will then describe the essential elements of the new Downtown Plan and analyze the Plan's potential for successfully preserving and enhancing the city's character and livability. The focus of this Comment is on aesthetics and urban design—the visual and human-

5. Director of City Planning Dean L. Macris has said: "I don't think there is any question that we have the toughest rules to build of any big city in the United States." Thorpe, *Rents Forcing Firms to Leave San Francisco*, Wall St. J., Nov. 8, 1983, at 27, col. 3.

The Department of City Planning administers land use regulation in San Francisco. CHARTER OF THE CITY AND COUNTY OF SAN FRANCISCO § 3.520 (1978). A seven member Planning Commission, with five at-large members appointed by the mayor and two ex officio members (the Chief Administrative Officer and the General Manager of Public Utilities), is responsible both for making general policy decisions and for approving or disapproving all conditional use permits and other major discretionary permits. The Commission appoints a Director of City Planning to head the professionally staffed Department. *Id.* §§ 3.521-.522.

6. SAN FRANCISCO DEP'T OF CITY PLANNING, THE DOWNTOWN PLAN: A PROPOSAL FOR ADOPTION BY THE CITY PLANNING COMMISSION (Nov. 29, 1984) [hereinafter cited as DOWNTOWN PLAN]. The Downtown Plan is an element of San Francisco's Master Plan. *See infra* note 93.

7. SAN FRANCISCO DEP'T OF CITY PLANNING, AMENDMENTS TO THE CITY PLANNING CODE TO IMPLEMENT THE DOWNTOWN PLAN: PROPOSAL FOR APPROVAL BY THE CITY PLANNING COMMISSION (approved Nov. 29, 1984) [hereinafter cited as PROPOSED SAN FRANCISCO PLANNING CODE]. These amendments have been recommended by the Planning Commission, and the San Francisco Board of Supervisors is expected to approve them, with some modifications, in mid-1985.

8. *See* Goldberger, *San Francisco Plans a Coherent Future*, N.Y. Times, Oct. 2, 1983, § H, at 34, col. 1.

izing elements of the physical urban environment. The Downtown Plan's response to socio-economic growth impacts, particularly transportation and housing problems, will not be extensively examined.⁹

Twenty years of sustained downtown growth have had significant and, growth opponents argue, deleterious effects on San Francisco's general aesthetic and environmental appeal. Most other cities have only recently experienced intense growth pressures or anticipate such growth in the future. But the environmental effects of continuing, minimally-regulated downtown growth will be similar in most cities. San Francisco's experience with moderate piecemeal regulation, as well as its new attempt to manage growth comprehensively through the Downtown Plan, can provide lessons for other planners, public officials, lawyers, and citizens concerned with enhancing those physical qualities that make their cities vibrant and inviting.

I

BACKGROUND: SAN FRANCISCO'S ARCHITECTURAL SETTING

Development in San Francisco has long been constrained by the city's distinctive topography. The city is a hilly 45.4 square miles occupying the northern portion of a peninsula bounded by the Pacific Ocean and the San Francisco Bay. A barren mountain straddles the fourth side. Narrow, light-colored buildings constructed on twenty-five foot lots have created a dense urban environment which suggests intimacy rather than overcrowding.¹⁰ Only in the relatively flat downtown area is the building pattern on a larger and, compared to the rest of the city, more organized scale. Until the late-1960's, however, highrises did not dominate the cityscape; aside from a few downtown and hilltop towers and two suspension bridges, hills and water were the city's outstanding visual landmarks.

Geographically, downtown San Francisco, located in the city's northeast corner, is small and well defined, containing only about two percent of the city's total land area.¹¹ To the north of downtown are North Beach and Telegraph Hill, both older small-scale residential neighborhoods which have been intensely developed. To the west and northwest are Russian Hill, another intensely developed neighborhood

9. This Comment also does not present a detailed analysis of the constitutional challenges which may be brought against the Downtown Plan. For a summary analysis of potential challenges, see *infra* note 283.

10. A. JACOBS, *MAKING CITY PLANNING WORK* 23-24 (1978). San Francisco's per capita density—about 16,000 per square mile—is second in this country to New York City.

11. SAN FRANCISCO DEP'T OF CITY PLANNING, *THE DOWNTOWN PLAN ENVIRONMENTAL IMPACT REPORT (VOL. 1: TEXT) IV.B.1* (1984) [hereinafter cited as *DOWNTOWN EIR (VOL. 1)*].

with a few residential towers on its crest, Nob Hill, with its luxury hotels and high-density apartments, and Chinatown. To the east is the waterfront and San Francisco Bay.

Market Street, a 120-foot-wide boulevard running diagonally from southwest to northeast, roughly forms the southern border of commercial downtown and serves as the axis from which much of San Francisco's activity emanates. Downtown's three functional hubs are north of Market Street: a financial district (centered at the corner of Montgomery and California Streets), a retail district (surrounding Union Square), and the Civic Center area (centered at City Hall). Industry, warehousing, and service uses are concentrated south of Market Street. Market Street also serves as the major downtown transit spine: a two-level underground public transport system connects downtown with the city's neighborhoods and suburbs.

Prior to the development boom which began in the mid-1960's, downtown San Francisco reflected an architectural cohesiveness uncharacteristic of other major American cities. The downtown was rapidly rebuilt after the 1906 earthquake and fire had virtually leveled the area.¹² Yet, despite the speed of reconstruction (largely completed by 1929), the design of new structures was carefully planned. The local architectural profession was dominated by former students of Paris' *Ecoles des Beaux-Arts* who were committed to implementing the ideals of the City Beautiful Movement. Faced with the practical task of rebuilding a commercial city center, these architects adopted the functional steel frame of the Chicago School skyscraper, but incorporated Classical Revival decoration to break up uniform facades.¹³

Most large buildings were designed using three-part vertical composition (base, shaft, and capital), fenestrated and articulated masonry curtain walls, terra cotta ornamentation, and, on the few "skyscrapers," multiple set-backs and sculpted rooftops. Buildings were designed to create, define, and interact with the space around them. Consistent belt-lines and cornices created a human-scaled pedestrian environment.

12. Nearly all of the downtown's Victorian buildings were destroyed in the fire. Only a handful of "modern" Chicago School skyscrapers of about 10 stories, such as the Mills Building on Montgomery Street, and Beaux Arts Classical Revival structures, such as the St. Francis Hotel on Union Square, remained to provide models for rebuilding. FOUNDATION FOR SAN FRANCISCO'S ARCHITECTURAL HERITAGE, *SPLENDID SURVIVORS* 31-34, 205 (1979) [hereinafter cited as *SPLENDED SURVIVORS*].

13. *SPLENDID SURVIVORS*, *supra* note 12, at 33, 49-52. The 14 story steel-frame Merchant's Exchange Building at 465 California Street, originally built in 1903 and rebuilt by Willis Polk after the fire, became a prototype emulated by many others. The Merchant's Exchange building exemplifies the "post-Chicago" style: a columned base topped by a prominent beltline at the third floor, single or paired windows punctuating the rusticated masonry curtain wall above, and an elaborate columned capital completing the three-part composition. *See id.* at 198.

Buildings defined the streetwall by extending to lot lines.¹⁴ The numerous smaller structures erected in the post-fire period generally incorporated the same broad ornamental and compositional treatment as the larger buildings.¹⁵

The Great Depression brought the era of rapid construction to a halt.¹⁶ Significant downtown growth did not resume until the 1960's, and as a result, the architectural character that San Francisco had developed by 1929 remained intact for almost forty years.

Building activity finally resumed in the mid-1960's in response to unprecedented demand for office space.¹⁷ In quick succession, three highrises rose above the existing skyline, each one taller than the last. In 1964, the thirty-three story box-shaped Hartford Insurance Building was constructed adjacent to Chinatown. In 1966, the Wells Fargo Building, a forty-three story tower with an uninterrupted facade of vertical aluminum ribbing, rose near the center of the financial district. Finally, in 1969 the massive fifty-four story Bank of America headquarters was completed on the northwest edge of the financial district. These buildings were a dramatic beginning to an office building boom that has continued largely unabated to this day.¹⁸

More than the size and height of buildings changed. In contrast to the architects from the Ecole des Beaux Arts, the architects of the 1960's and 1970's espoused the principles of the modern movement, and their large buildings followed the functionalist corporate International

14. See Hedman, *A Skyline Paved with Good Intentions*, 47 *PLANNING*, Aug. 1981, at 12, 12-13. See also *SPLENDID SURVIVORS*, *supra* note 12, at 33, 50.

15. *SPLENDID SURVIVORS*, *supra* note 12, at 34-35.

16. Building activity had diminished during World War I, but began again in the 1920's. Between 1925 and 1927 the skyline dramatically changed with the addition of seven skyscrapers containing 18 or more stories. Five of these towers were derivatives of Eliel Saarinen's influential Moderne second-place Chicago Tribune competition design of 1922. For a description of the contest and drawings of the entries, including Saarinen's, see S. TIGERMAN, *CHICAGO TRIBUNE TOWER COMPETITION AND LATE ENTRIES* (1981).

17. See generally C. HARTMAN, *YERBA BUENA: LAND GRAB AND COMMUNITY RESISTANCE IN SAN FRANCISCO* 29-43 (1974). Efforts by San Francisco's business community to encourage large corporations to locate their regional, national, or international headquarters in downtown San Francisco received a significant boost in the mid-1960's when local voters approved a 1.5 billion dollar bond for construction of the BART system. BART has made downtown San Francisco more accessible to suburban commuters.

18. Department of City Planning statistics reveal the extent of the building boom.

Style.¹⁹ Whereas previous architects had consciously designed buildings to relate to neighboring structures in creating and defining positive urban spaces, modern architects minimized the urban design element and sought to achieve contrasts rather than integration.²⁰ Buildings grossly out of proportion to their neighbors began to appear, and San Francisco's tradition of light-colored facades was broken. The city's architecturally cohesive and pedestrian-oriented downtown began giving way to sterile "tower-in-the-park" boxes often set in functionless plazas.²¹ By the late 1970's, the graceful pastel skyline, following the contours of the hills, was interrupted by bulky square towers, resembling, in one critic's mind, a refrigerator showroom.²²

<i>Year</i>	<i>Gross square feet of major office building construction</i>
1964	1,413,000
1965	1,463,000
1966	973,000
1967	1,453,000
1968	1,234,000
1969	3,256,000
1970	1,853,000
1971	— ^a
1972	1,961,000
1973	2,736,000
1974	2,065,000
1975	536,000
1976	2,429,000
1977	2,660,000
1978	— ^a
1979	2,532,000
1980	1,284,000
1981	3,029,000

a. No new office buildings were completed in the years 1971 or 1978. Telephone interview with Barbara Sahn, Office of Env'tl. Review, San Francisco Dep't of City Planning (June 13, 1985). SAN FRANCISCO DEP'T OF CITY PLANNING, RUSS TOWER: DRAFT ENVIRONMENTAL IMPACT REPORT 214 (1982). From 1980 to 1984, new office space averaged 2.69 million square feet annually. DOWNTOWN EIR (VOL. 1), *supra* note 11, at IV.B.3. In 1963, there was a total of about 25.3 million square feet of office space downtown. SAN FRANCISCO DEP'T OF CITY PLANNING, *supra*, at 214. By 1984, office space totaled approximately 55 million square feet. DOWNTOWN EIR (VOL.1), *supra* note 11, at IV.B.1.

19. For a biting criticism of the corporate International Style, see T. WOLFE, FROM BAUHAUS TO OUR HOUSE (1981).

20. Hedman, *supra* note 14, at 12-13.

21. The Crown Zellerbach Building, designed by Hertzka & Knowles and Skidmore, Owings & Merrill and completed in 1959, introduced Le Corbusier's tower-in-the park concept to San Francisco. Only one year earlier, Mies van der Rohe and Philip Johnson's acclaimed Seagram Building had done the same for New York City. While these initial incarnations are fine architecture and may have been refreshing in their unique openness,

the tower-in-the-park has proved to be an unfortunate prototype as its image has multiplied all over downtown and transformed the landscape from a thoroughly vital and urban place to a sometimes disharmonious landscape of jarring juxtapositions which is no longer traditionally urban in character.

SPLendid SURVIVORS, *supra* note 12, at 43.

22. Hedman, *supra* note 14, at 14.

II

DOWNTOWN REGULATION BEFORE THE DOWNTOWN PLAN

A. Zoning

Prior to 1968, downtown San Francisco was subject to minimal zoning controls. The entire downtown area was zoned as a single commercial use district, with no building height or bulk limits. The city did not restrict density until 1960, when it enacted an extremely generous base floor area ratio (FAR)²³ of 20:1.²⁴ The city further reduced the base FAR to 16:1 in 1963.²⁵ Then, in 1968, the city rezoned downtown.²⁶

1. 1968 Use and Density Districts

The 1968 zoning ordinance created four downtown use districts: the C-3-O office district in the financial area straddling lower Market Street, with a base FAR of 14:1; the C-3-R retail district around Union Square, requiring continuous ground level retail uses, with a base FAR of 10:1; the C-3-G general district encompassing mixed residential, commercial, office, hotel, and entertainment uses on the west and north sides of downtown, with a base FAR of 10:1; and the C-3-S downtown support district south of Market, composed largely of warehouses and light industry, with an FAR of 7:1.²⁷ Although the ordinance defined the four downtown districts by their primary uses, the density distinctions were more important than the use classifications. The ordinance generously permitted, as of right, nearly all commercial uses, including office towers of almost limitless height and bulk, throughout the downtown area.²⁸ The ordinance further permitted housing in all but the support district, where housing was listed as a conditional use.²⁹

Density bonuses, available only in the C-3-O office district, permitted developers to erect buildings with densities in excess of the base 14:1 FAR in exchange for the incorporation of any of the

23. The floor area ratio (FAR) measures the maximum density of a project by limiting floor area to a multiple of the lot size without specifying lot coverage. For example, under a 10:1 FAR, a 100,000 square foot building can be built on a 10,000 square foot lot. A 10 story building could cover the entire lot, or a 20 story building could cover half the lot. See SAN FRANCISCO, CAL., PLANNING CODE § 102.10 (1979).

24. FAR limits in other cities demonstrate the generosity of San Francisco's 20:1 FAR during the 1960's. Seattle has a 10:1 FAR. R. COOK, ZONING FOR DOWNTOWN URBAN DESIGN 72 (1980). New York City's highest base FAR is 15:1, *id.* at 87; Chicago's highest is 16:1, *id.* at 115; and Toronto's highest is 8:1, *id.* at 144.

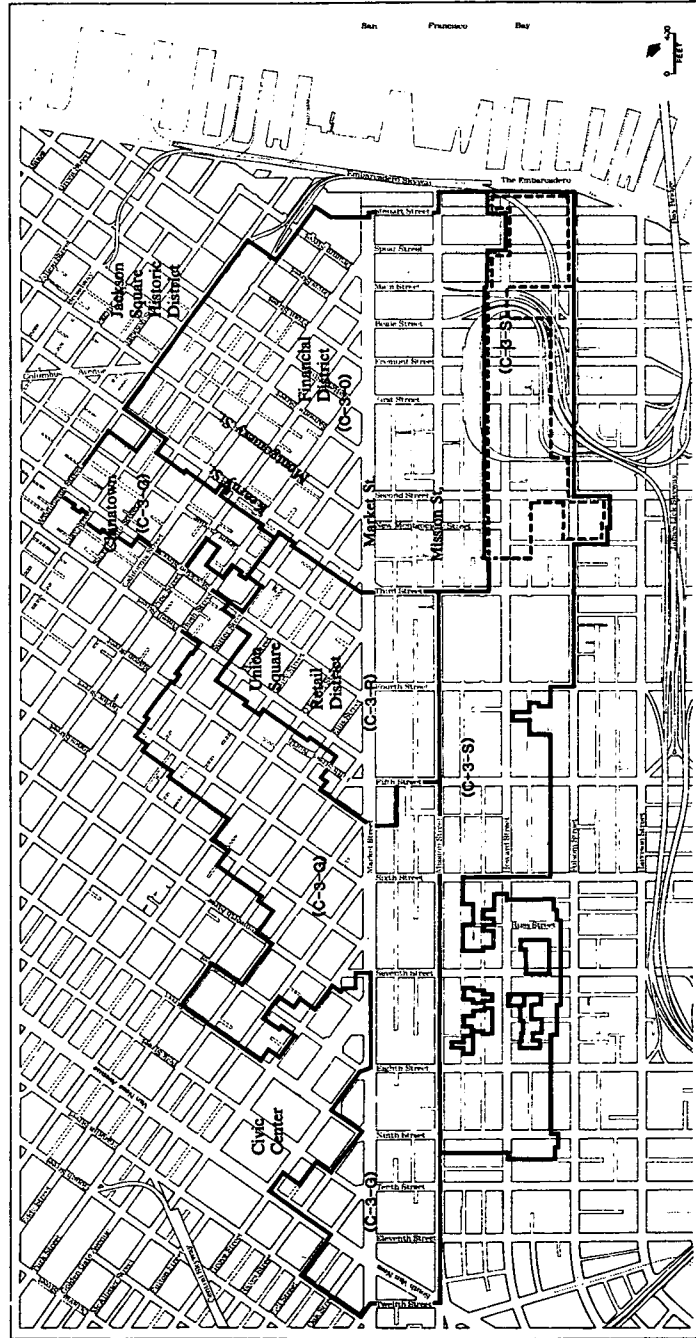
25. Svirsky, *San Francisco: The Downtown Development Bonus System*, in THE NEW ZONING: LEGAL, ADMINISTRATIVE AND ECONOMIC CONCEPTS AND TECHNIQUES 139, 140 (N. Marcus & M. Groves eds. 1970).

26. San Francisco, Cal., Ordinance 136-68 (May 29, 1968).

27. SAN FRANCISCO, CAL., PLANNING CODE §§ 124, 210.3, and 212(c) (1979). See Svirsky, *supra* note 25, at 141; see also R. COOK, *supra* note 24, at 128-31 (1980).

28. See SAN FRANCISCO, CAL., PLANNING CODE §§ 218-222 (1979).

29. *Id.* § 215.



Downtown San Francisco: Existing C-3 Use Districts

FIGURE II. C. 1:
DOWNTOWN STUDY AREA
AND C-3 USE DISTRICTS
 SOURCE: San Francisco Planning Code &
 Environmental Science Associates, Inc.

- C-3-O Downtown Office District
- C-3-R Downtown Retail District
- C-3-G Downtown General Commercial District
- C-3-S Downtown Support District
- - - Proposed Special Development District

following ten enumerated amenities: (1) direct tunnel access to a Market Street rapid transit station, (2) proximity to Market Street transit, (3) direct access to a parking structure, (4) multiple building entrances, (5) widening of sidewalks, (6) through-block walkways, (7) plazas, (8) building side setbacks, (9) smaller upper floors, and (10) observation decks.³⁰ All bonuses were voluntary; the assemblage of a lot large enough for the developer's purposes might negate any need to incorporate amenities and thus receive the added density rights.

2. *Transfer of Development Rights*

The 1968 zoning ordinances established a limited program of transferable development rights (TDRs).³¹ A developer could transfer up to half of the permitted base floor area of an underdeveloped C-3-O office district site to an adjacent lot, allowing for construction on the recipient site of buildings with FARs significantly higher than the base FAR applicable to the use district.³² Floor area bonuses, however, were not transferable.³³

3. *Urban Design Analysis*

The division of downtown into four use districts, each with a different density limit, was a necessary and desirable reform. The retail, support, and mixed-use areas have been largely preserved, promoting diversity³⁴ and "legibility."³⁵ The retail district's mandatory retail street

30. *Id.* § 126. See Svirsky, *supra* note 25, at 145-46; R. COOK, *supra* note 24, at 128-31. In lieu of the bonuses, a developer with a corner lot could use a 20% density premium without incorporating any amenities. SAN FRANCISCO, CAL., PLANNING CODE § 126(d) (1979). See Svirsky, *supra* note 25, at 154.

31. The transfer of development rights (TDR) concept is founded upon the notion that the right to develop a lot can be legally separated from the lot itself. The separate development rights can be transferred or sold to the fee owner of another lot who uses them to build to a greater density on the transferee lot than would be permitted without the added development rights. See generally J. COSTONIS, *SPACE ADRIFT: LANDMARK PRESERVATION AND THE MARKETPLACE* (1974). The Supreme Court impliedly approved the use of TDRs as compensation to owners of property whose development potential is reduced by government regulation in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 137 (1978). See Marcus, *The Grand Slam Grand Central Terminal Decision: A Euclid for Landmarks, Favorable Notice for TDR and a Resolution of the Regulatory/Taking Impasse*, 7 *ECOLOGY L.Q.* 731 (1979). The Court of Claims has approved outright the use of TDRs to compensate landowners whose land was made less valuable because of government regulation. *Deltona Corp. v. United States*, 657 F.2d 1184, 1192 n.14 (Ct. Cl. 1981), *cert. denied*, 455 U.S. 1017 (1982).

32. SAN FRANCISCO, CAL., PLANNING CODE § 127(a) (1979).

33. *Id.*

34. Emphasizing the importance of diversity within a city, one writer, Jane Jacobs, has criticized traditional zoning as imposing too much order and as leading to a distinctly non-urban rationality. She suggests, instead, the importance of preserving buildings of various uses and ages, of creating visually and functionally distinct districts, and of maintaining a mix of built and open space. See generally J. JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961).

35. The concept of a city's "legibility," as articulated by Kevin Lynch, involves a calculus

frontage requirement contributes to the preservation of a lively and diverse shopping streetscape.

In 1966, the Department of City Planning completed a comprehensive set of zoning studies which set out aesthetic and urban design goals.³⁶ These studies ultimately became the basis for the zoning ordinances enacted in 1968. Beyond the density restrictions and the retail district's ground level retail frontage requirement, however, the zoning ordinance neglected to require compliance with any of these urban design goals. As a result, the zoning ordinance has had limited success in promoting urban design goals.

For example, the C-3-O use district zoning has permitted high density development without adequate urban design amenities. The absence of a ground floor retail requirement in the C-3-O district has resulted in monotonous street level facades on many of the office towers. The city established the 14:1 FAR with no analysis of the environmental consequences of full buildout to that density.³⁷ Moreover, the 14:1 ratio was merely a base that a developer could substantially increase with bonuses. The density bonus program, although considered an important urban design innovation at the time,³⁸ has also been ineffective in promoting good urban design. Developers could choose any amenity, of any design, in order to gain density bonuses, even if the amenity was inappropriate for the particular site and of poor quality.³⁹ For example, the city automatically would grant a density bonus to a developer in exchange for a plaza, even if the public gain was minimal because the plaza was located so as to be virtually useless.⁴⁰

The TDR provision of the 1968 zoning ordinance was so restrictive

of architectural and urban design qualities that measures the relation of these qualities to the urban resident's identification with the community. Urban design qualities used in assessing legibility include: building scale, district boundaries, unobstructed views, and significant landmarks. K. LYNCH, *THE IMAGE OF THE CITY* (1960). In the successful city, according to Lynch, one should never have the occasion to feel lost. Rather, one should enjoy a "harmonious relationship" with the environment which gives "an important sense of emotional security." *Id.* at 4.

36. SAN FRANCISCO DEP'T OF CITY PLANNING, *DOWNTOWN ZONING STUDY, WORKING PAPER NO. 1*, at 60-78 (1966); SAN FRANCISCO DEP'T OF CITY PLANNING, *DOWNTOWN ZONING STUDY, WORKING PAPER NO. 2*, at 32-56 (1966).

37. SAN FRANCISCO DEP'T OF CITY PLANNING, *DOWNTOWN ZONING STUDY, WORKING PAPER NO. 1*, at 83-86 (1966).

38. See, e.g., Svirsky, *supra* note 25, at 142; Heyman, *Innovative Land Regulation and Comprehensive Planning*, 13 SANTA CLARA LAW. REV. 183, 208 (1972).

39. For a discussion of the inability of objective density bonus systems to produce good design without mandatory design review, see C. WEAVER & R. BABCOCK, *CITY ZONING: THE ONCE AND FUTURE FRONTIER* 300-03 (1979).

40. Open space in a dense urban core should be carefully sited and designed to create positive public space. The 1968 density bonuses accomplished just the opposite by inviting the random construction of plazas, widened sidewalks, and arcades. The ordinance did not re-

that in many cases there was a disincentive for developers to use it. Since a developer could transfer only half of the unused development rights of a small building to an adjacent lot, it often made economic sense to simply demolish the small building. Many architecturally significant buildings that did not fully use the allowable density are now gone for this reason,⁴¹ and the city's diversity, character, and identity have suffered in the process.

B. Height and Bulk Controls

Although height controls had been imposed on a few scattered areas of San Francisco since the 1920's,⁴² before 1972 there was no citywide height control system. In that year, following adoption of an Urban Design Plan,⁴³ the Board of Supervisors approved a citywide height and bulk ordinance.⁴⁴

1. Height Controls

The ordinance's height limits on downtown development contemplated an artificial hill form, thought consonant with the city's topography.⁴⁵ A seven block area at the center of the financial district was zoned at 700 feet, with a gradual lowering of heights at the office district's edge. Height limits in the retail district varied from 140 feet, surrounding Union Square, to 400 feet along a one block stretch of Market Street. Buildings along the waterfront were limited to eighty-four feet. Existing public space was zoned open space to preclude future development on those sites.⁴⁶

quire retail or food outlets on the open space frontages, nor did it require that such frontages receive a minimum amount of direct sunlight.

William Whyte's studies of urban open space demonstrate that the utility of such space depends not on its size, but on its quality. Whyte thus reveals that wide open tower-in-the-park plazas are often disfunctional. More than pure aesthetic or architectural integrity is necessary to create successful urban space. Whyte suggests that important factors to consider include: sunlight and other natural elements, a sense of enclosure, objects to congregate about (e.g., sculpture, stairs, fountains, and seats), and accessibility to eating establishments and surface transportation. W. WHYTE, *THE SOCIAL LIFE OF SMALL URBAN SPACES* (1980).

41. SAN FRANCISCO DEP'T OF CITY PLANNING, *THE DOWNTOWN PLAN: ENVIRONMENTAL IMPACT REPORT (VOL. 2: FINAL EIR APPENDICES) E.50 (table E.4) (1984)* [hereinafter cited as *DOWNTOWN EIR (VOL. 2)*].

42. Svirsky, *San Francisco Limits the Buildings to See the Sky*, 39 *PLANNING* 9 (1973).

43. See *infra* notes 125-42 and accompanying text.

44. SAN FRANCISCO, CAL. ORDINANCE 234-72 (Aug. 18, 1972) (enacting SAN FRANCISCO PLANNING CODE art. 2.5). For a discussion of the political and professional efforts to draft and adopt the ordinance, see A. JACOBS, *supra* note 10, at 227-44; see also Svirsky, *supra* note 42.

45. See A. JACOBS, *supra* note 10, at 228.

46. See SAN FRANCISCO, CAL., PLANNING CODE § 252 (1979); SAN FRANCISCO ZONING MAP sheet 1H (1979), reprinted in *DOWNTOWN PLAN*, *supra* note 6, at 81 (map 14).

2. Bulk Controls

In each height district, a set of bulk limits was also imposed. The bulk controls measured three dimensions: (1) the height above which maximum dimensions applied, (2) the maximum facade width, and (3) the maximum diagonal dimension (corner to opposite diagonal corner).⁴⁷ For example, in a 300-H district, such as the Portsmouth Corridor, a transition zone between the financial district and Jackson Square, buildings up to a height of 100 feet were permitted to have any bulk. Between 100 feet and the 300 foot height limit, buildings could have a maximum width of 170 feet and a maximum diagonal dimension of 200 feet.⁴⁸ The bulk ordinance provided for some flexibility in administration. The Planning Commission was authorized to grant conditional use permits for buildings exceeding the bulk limits.⁴⁹

3. Urban Design Analysis

The height and bulk controls have had their greatest urban design impact in residential neighborhoods. New development, although not necessarily compatible stylistically, has at least respected the generally small scale of San Francisco's residential pattern.⁵⁰ The height and bulk controls have also been fairly effective in channeling the construction of major commercial projects to the central downtown area, thus minimizing the disruptive impact such buildings would have adjacent to residential neighborhoods or along the waterfront. The controls have been instrumental in maintaining the borders of the office core as transitional zones characterized principally by buildings of moderate size. Structures approaching the size of the Bank of America headquarters or the 853 foot Transamerica Pyramid could no longer be built, as those buildings were, adjacent to lowrise neighborhoods.

The height and bulk limits have not adequately protected the central office district environment. Although no building as completely out of scale to its setting as the Federal Building⁵¹ has been constructed since

47. SAN FRANCISCO, CAL., PLANNING CODE § 270 (1979).

48. *Id.*

49. *Id.* § 271.

50. A comprehensive residential rezoning ordinance was enacted in 1978 requiring new neighborhood development to be consistent in scale, mass, and detailing with the character of San Francisco's existing neighborhoods. San Francisco, Cal., Ordinance 443-78 (Oct. 6, 1978), amending SAN FRANCISCO, CAL., PLANNING CODE arts. 1, 1.2. Together with the generally prevailing 40-foot height limit, see SAN FRANCISCO, CAL., PLANNING CODE §§ 206.1, 253 (1979), the controls have encouraged harmonious new neighborhood development.

51. The Federal Building, constructed in 1959 in the Civic Center, is that area's outstanding urban design failure. The rectangular building's dark blue facade rises uninterrupted to a height of 20 stories along an entire block. By contrast, the remainder of the Civic Center, as well as the dense residential area to the north, is generally limited to buildings of about six floors. The building's immense bulk is demonstrated by the fact that despite its height of only 20 stories, it has the largest floor area of any building in San Francisco.

1972, structures too large to be integrated successfully into the city's fiber have been approved under the ordinance.⁵² In addition, while channeling development to the downtown area, the height controls inevitably have contributed to the demolition of many structures of historic value. The largest concentration of significant historic buildings in the office district is at its very center, where height limits extend as high as 700 feet. Thus, to make way for the construction of new office towers, many older buildings were destroyed.⁵³

The height limits in the retail district also invited disaster because they were much higher than the heights of existing development. However, the combination of lower allowable floor area ratios and the retail district's continued vitality as a shopping area⁵⁴ deterred encroaching highrise office development.

The effort to encourage the downtown skyline to simulate an artificial hill form through the stepping down of height limits from 700 feet to eighty-four feet has not been successful. Most of the office core was zoned from 500 to 700 feet and now over a dozen box-shaped buildings rise from about 500 to 550 feet, creating a dense bench on the skyline which effectively blocks views of and from most smaller, and frequently more architecturally interesting, structures. The bulk limits have contributed to that benching. Although it is impossible to project what size buildings would have been built had the bulk ordinance not been enacted, rather massive buildings were built that did comply with the ordinance. The liberal bulk restrictions, height district configurations, and generous 14:1 base FAR, combined with an unwillingness on the part of developers voluntarily to construct slender towers, created a de facto prototype. The many box-shaped buildings that rise to about forty floors, uninterrupted by set-backs or other architectural embellishments which might lessen their apparent size, detract severely from the skyline's diversity, human scale, and interest.

52. For example, along the south side of Market Street, One Market Plaza, 333 Market Street, and the Standard Oil buildings conform to the present restrictions but stand out inappropriately in their settings.

53. DOWNTOWN EIR (VOL. 2), *supra* note 41, at E.50 (table E.4).

54. The Union Square shopping area generated over one billion dollars in sales during 1982. Stitzel & Blatman, *Union Square is Magic Jewel for Retailers*, San Francisco Examiner, June 19, 1983, Want Ad Supermarket, at 1, col. 4. The overall market strength of downtown San Francisco ranks third nationwide, behind New York and Chicago, and first in recent growth. *S.F. Downtown Ranks Highest in New Growth*, San Francisco Examiner, June 19, 1983, Want Ad Supermarket, at 8, col. 1.

C. Historic Preservation

1. Landmarks Ordinance

In 1967, the city enacted a cautious landmarks ordinance.⁵⁵ The ordinance set up a Landmarks Preservation Advisory Board⁵⁶ which, together with the Planning Commission, is empowered to recommend the designation of historic districts and landmarks.⁵⁷ Designations must receive the approval of the Board of Supervisors.⁵⁸

Once a landmark has been designated, its demolition or alteration requires a Certificate of Appropriateness from the Planning Commission.⁵⁹ While the Planning Commission may refuse to approve the alteration of a landmark,⁶⁰ it may not prohibit its demolition. Instead, the Commission may only delay approval of the Certificate of Appropriateness for up to 360 days while seeking voluntary public or private means to preserve the landmark.⁶¹

The alteration or demolition of structures within a historic district also requires a Certificate of Appropriateness from the Planning Commission.⁶² As in the case of landmarks, the Commission is authorized to deny petitions to make alterations to such structures, but it is powerless to prevent demolition. Again, where demolition is sought, the Commission may only delay the issuance of a Certificate of Appropriateness.⁶³ The Commission also evaluates proposals for new construction within a historic district and may reject proposals that are inconsistent with existing development.⁶⁴

The ordinance also authorizes the Planning Commission to "recognize" structures of historical, architectural, or aesthetic "merit" which are not officially designated landmarks.⁶⁵ Following surveys by the Department of City Planning⁶⁶ and a private group, the Foundation for San

55. San Francisco, Cal., Ordinance 27-67 (Jan. 26, 1967) (enacting SAN FRANCISCO, CAL., PLANNING CODE art. 10).

56. SAN FRANCISCO, CAL., PLANNING CODE § 1003 (1979).

57. *Id.* §§ 1004.2-.3.

58. *Id.* §§ 1004.4-7.

59. SAN FRANCISCO, CAL., PLANNING CODE § 1006 (1979).

60. *Id.* §§ 1006.6-7.

61. *Id.* § 1006.6(b).

62. *Id.* § 1006.

63. *Id.* §§ 1006.6-7.

64. *See id.* § 1006.7(c).

65. *Id.* § 1011.

66. Between 1974 and 1976, the Department conducted a citywide inventory of architecturally significant buildings. Following review by a committee of architects and historians, the results of the survey were entered in an unpublished 60 volume record, available for inspection at the Department of City Planning. The survey rated buildings for their overall architectural significance on a scale from zero (low) to five (high). Buildings rated three, four, or five are considered to represent the best two percent of the city's architecture. GROWTH MANAGEMENT ALTERNATIVES FOR DOWNTOWN SAN FRANCISCO: DOWNTOWN EIR CONSULT-

Francisco's Architectural Heritage (Heritage Foundation),⁶⁷ the Planning Commission in 1980 designated 236 downtown buildings as having "merit."⁶⁸ The Commission may take "such steps as it deems desirable . . . to encourage the protection, enhancement, perpetuation and use of any such listed structure."⁶⁹ But, as with landmarks and structures located in historic districts, the Commission cannot prevent the demolition of meritorious buildings.

2. *Urban Design Analysis*

The 1967 landmarks ordinance, for a number of reasons, has proved to be too weak to guarantee that San Francisco's valuable historic resources will remain intact. First, because the Planning Commission has no power to prevent the demolition of historic or meritorious structures, the authority that it does have to regulate extensive alterations is markedly circumscribed. For example, in 1982 the owner of the San Francisco Mining Exchange, a Greek temple-like landmark on Bush Street, proposed to partially demolish the landmark and to incorporate the Exchange's facade into a twenty-seven story office building.⁷⁰ However, after meeting strong opposition from the Planning Commission over the limited preservation of the building's facade and faced with the prospect that its permit application would be denied,⁷¹ the owner withdrew the proposal and threatened to seek a Certificate of Appropriateness for the outright demolition of the Exchange.⁷² Although the Planning Commission would have been able to deny a permit for the construction of the new tower incorporating the facade, it could only have delayed demolition of the entire Exchange.⁷³ The Commission might counter an owner's plans to demolish a landmark or building of merit by threatening

ANT'S REPORT (VOL. 1: TEXT) IV.H.1.1 (1983) [hereinafter cited as CONSULTANT'S EIR (VOL. 1)].

67. The Heritage Foundation conducted an architectural and historical survey of all downtown structures built before 1945. The survey was published in 1979, under the title *SPLENDID SURVIVORS*, *supra* note 12. Ratings were from A (highest importance) to D (minor or no importance). *Id.* at 12-13.

68. San Francisco, Cal., Planning Comm'n Resolution 8600 (May 29, 1980). Structures rated three, four, or five in the Department of City Planning survey (*see supra* note 66) or A or B in the Heritage Foundation survey (*see supra* note 67) were included on the list of meritorious buildings.

69. *Id.* § 1011.

70. *See* SAN FRANCISCO DEP'T OF CITY PLANNING: RUSS TOWER DRAFT ENVIRONMENTAL IMPACT REPORT (1982).

71. *Shorenstein Plan Triggers Free-for-all*, San Francisco Examiner, Jan. 28, 1983, § B, at 8, col. 1.

72. *Developers Want to Tear Down Official Landmark*, San Francisco Examiner, Apr. 25, 1983, § B, at 1, col. 1. The owner began a draft EIR for the certificate of Appropriateness, but the owner has delayed progress on the process pending the outcome of the Downtown Plan.

73. *See supra* notes 55-61 and accompanying text.

to disapprove any subsequent building permit application for the site,⁷⁴ but such tactics are of questionable legality.

A second difficulty with the current ordinance has been the politicization of the designation process. Landmark designation requires legislative action and is accordingly subject to the traditional political pitfalls of compromise, fiscal pressure, and minimal judicial review. Perhaps not surprisingly, results under the ordinance have been inconsistent. For example, two significant buildings on Union Square, both arguably of landmark quality, were denied landmark status and then demolished to make way for department stores⁷⁵ which, project supporters argued, would provide jobs and add tax revenue to city coffers.⁷⁶ In all, between January 1969 and October 1982, thirty-four arguably meritorious historic buildings were totally demolished and another three partially demolished.⁷⁷ Although no landmark has yet been demolished, only thirty-one commercial downtown buildings have been so designated.⁷⁸

The ordinance also has failed to protect adequately the character of many downtown areas containing groups of early twentieth century buildings which, though not individually worthy of landmark status, give such areas a distinctive flavor. Only Jackson Square, located between the financial district and Telegraph Hill (the only part of downtown to survive the 1906 earthquake and fire), has been designated as a historic district.⁷⁹

Despite the apparent weakness of the landmarks ordinance, the Heritage Foundation has concluded that, "in view of the amount of building that went on, San Francisco was lucky to have lost as few truly significant buildings as it did."⁸⁰ Credit can be attributed in part to the attachment that both the public and the commercial occupants have to historic buildings. Rather than tear down a symbol of their history in San Francisco, several hotels and corporations seeking to expand have voluntarily preserved their buildings and constructed towers on adjoining or adja-

74. Commission approval of the 101 Montgomery Street project illustrates this indirect process. The developer had proposed to demolish five architecturally important structures. Three of the structures were rated C by the Heritage Foundation and two were rated B. Commission approval was conditioned on preservation of the largest of the two B-rated structures and one of the C-rated structures. San Francisco, Cal., Planning Comm'n Resolution 8942 (May 7, 1981).

75. The 1896 City of Paris and 1923 Fitzhugh Buildings have been replaced by the Neiman-Marcus and Saks Fifth Avenue stores respectively.

76. San Francisco, Cal., Planning Comm'n Resolution 8150 (Jan. 11, 1979).

77. DOWNTOWN EIR (VOL. 2), *supra* note 41, at E.50 (table E.4).

78. GROWTH MANAGEMENT ALTERNATIVES FOR DOWNTOWN SAN FRANCISCO: DOWNTOWN EIR CONSULTANT'S REPORT (VOL. 2: APPENDICES) E.5 (table E.2) (1983) [hereinafter cited as CONSULTANT'S EIR (VOL. 2)].

79. SAN FRANCISCO, CAL., ORDINANCE 221-72 (Aug. 9, 1972) (enacting SAN FRANCISCO, CAL., PLANNING CODE art. 10, app. B).

80. SPLENDID SURVIVORS, *supra* note 12, at 46.

cent lots.⁸¹ Much conservation can also be attributed to the relative youth and size of San Francisco's historic core. Almost every historic building downtown was built or rebuilt after the 1906 earthquake, and many are over ten stories high. Developers have discovered that it may be economically feasible to restore these taller buildings rather than demolish them.⁸²

The presence of a city's physical ties to the past contributes to cultural stability and community identification.⁸³ City officials, planners, architects, and many developers in San Francisco seem conscious of the goals of historic preservation and, to a significant degree, have begun working together to fulfill these goals. That consensus is fragile, however, and the landmarks ordinance by itself will offer little assistance should this consensus collapse.

D. Environmental Review

1. The California Environmental Quality Act

San Francisco gained a significant means of influencing the design of private development when the California legislature enacted the California Environmental Quality Act (CEQA)⁸⁴ in 1970. CEQA requires preparation of an environmental assessment whenever public officials must exercise their discretion to approve or disapprove permits for new development.⁸⁵ Modeled after the National Environmental Policy Act of 1969,⁸⁶ CEQA originally was applied only to public projects. However, its scope was greatly enlarged by a 1972 California Supreme Court ruling⁸⁷ and subsequent legislative amendments⁸⁸ to require the preparation of an environmental impact report (EIR) before any public agency may issue a non-ministerial permit to a public or private developer of a project that may significantly affect the environment.

Although initially designed to augment existing planning and review procedures,⁸⁹ environmental review has emerged as a critical step in San Francisco's project approval process. Developers must refer their pro-

81. Notable examples are the Southern Pacific, Pacific Gas & Electric, St. Francis Hotel, and Fairmont Hotel projects.

82. See CONSULTANT'S EIR (VOL. 2), *supra* note 78, at G.10-25.

83. See Rose, *Preservation and Community: New Directions in the Law of Historic Preservation*, 33 STAN. L. REV. 473 (1981).

84. CAL. PUB. RES. CODE §§ 21,000-21,176 (West 1977 & Supp. 1984).

85. See *id.* § 21,080.

86. 42 U.S.C. §§ 4321-4370(a) (1982).

87. *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972). See Comment, *Aftermammoth: Friends of Mammoth and the Amended California Environmental Quality Act*, 3 ECOLOGY L.Q. 349 (1973).

88. 1972 Cal. Stat. 1154.

89. See Comment, *Reclaiming the Urban Environment: The San Francisco Urban Design Plan*, 3 ECOLOGY L.Q. 535, 558 (1973).

posals to the Department of City Planning's Office of Environmental Review (OER)⁹⁰ for initial assessment. OER conducts a standardized evaluation of potential impacts on specified environmental qualities.⁹¹ OER must consider the proposed project's land use and zoning compatibility, wind and sunlight effects, constructional and operational noise effects, energy consumption, seismic safety, hazardous uses, potential for disruption of biological and archeological resources, and impacts on historic and cultural resources, air and water quality, transportation, parking and pedestrian movement, employment, housing, and public services.⁹² In addition, OER evaluates the project's compatibility with the policies of the city's Master Plan,⁹³ including its Urban Design Element.⁹⁴ Thus, visual impacts on pedestrians, compatibility with neighboring structures, street frontage scale and use, and the building's bulk, color, and facade treatment are considered in the initial environmental review.

Following the initial review, OER determines whether any of the project's environmental effects may be "significant." CEQA defines a significant effect as "a substantial, or potentially substantial adverse change in the environment."⁹⁵ OER issues a "negative declaration" as to those potential impacts that will not have a significant effect on the environment.⁹⁶ If the negative declaration applies to all potential impacts, the developer need not prepare an EIR unless the Planning Commission overrules the negative declaration on appeal. If some or all project impacts may have a significant adverse effect on the environment, an EIR

90. SAN FRANCISCO, CAL., ADMIN. CODE § 31.05(b) (1973); *see also* CAL. ADMIN. CODE tit. 14, R. 15,050 (1983).

91. *See* SAN FRANCISCO, CAL., ADMIN. CODE § 31.23(b) (1973); CAL. PUB. RES. CODE §§ 21,001-21,002 (West 1977); *see also* CAL. ADMIN. CODE tit. 14, R. 15,002-15,003 (1983).

92. San Francisco Dep't of City Planning, Office of Env'tl. Review, Environmental Evaluation Checklist (Initial Study) 1 (Dec. 1982).

93. San Francisco's Charter requires the Planning Commission to adopt a comprehensive Master Plan "for the coordinated and harmonious development . . . of the city and county." SAN FRANCISCO, CAL., CHARTER §§ 3.524, 3.526 (1978). The Master Plan's elements include both citywide policy documents, such as the Urban Design Plan, *infra* note 125, and detailed area specific plans, such as the Downtown Plan. The Board of Supervisors must enact legislation implementing the Master Plan. *Id.* §§ 2.100, 2.101. The Commission, however, has the power to require compliance with the Master Plan in development proposals that come before it for approval. *See, e.g.*, SAN FRANCISCO, CAL., PLANNING CODE §§ 303(c)(3), 304(d)(1) (1979).

94. *See* SAN FRANCISCO, CAL., ADMIN. CODE § 31.26(c) (1973).

95. CAL. PUB. RES. CODE § 21,068 (West 1977) (emphasis added). *See also* CAL. ADMIN. CODE tit. 14, R. 15,382 (1983) ("An economic change by itself shall not be considered a significant effect on the environment." Rather, "environment" anticipates changes in the "physical conditions" of the area, "including land, water, minerals, flora, fauna, ambient noise, and objects of historic and aesthetic significance.").

96. CAL. PUB. RES. CODE §§ 21,064, 21,080(c) (West 1977 & Supp. 1984). Negative declarations may be appealed to the Planning Commission. If, following a hearing, the Commission finds the project *may* significantly affect the environment, it will require an EIR. Its decision is final. SAN FRANCISCO, CAL., ADMIN. CODE § 31.24-.25 (1973).

must be prepared to evaluate those impacts.⁹⁷ As a rule of thumb, most developments that exceed ten stories or that affect historic resources require an EIR.⁹⁸ If an EIR is required, the developer must hire a consultant, approved by the Department, to study the potentially significant effects and prepare a consultant's draft EIR. Following its "own review and analysis,"⁹⁹ OER rewrites the document and submits a draft EIR for review and comment to the Planning Commission, all relevant public agencies, and interested members of the public.¹⁰⁰

In practice, EIRs for major private developments in downtown San Francisco are quite detailed and often exceed 250 double-spaced pages. EIRs include a summary of the project's setting, a detailed discussion of the environmental impacts that did not receive negative declarations, an analysis of measures that can be used to mitigate identified environmental impacts, an assessment of the project's cumulative impacts, and a list of reasonable alternatives to the proposed project.¹⁰¹ Public comments suggesting amendments to the draft EIR are considered if submitted in writing or if made during a public hearing before the Planning Commission.¹⁰² OER, in consultation with the developer, responds to these comments and, where appropriate, amends the findings of the draft EIR. The public comments and OER's responses are added to the draft EIR and a final EIR is published¹⁰³ and submitted to the Planning Commission. The Commission must certify that the final EIR is complete,¹⁰⁴ and make findings that it is "adequate, accurate and objective."¹⁰⁵ Upon the basis of the EIR, the Commission determines whether or not the project will have a significant effect on the environment.¹⁰⁶

If the Commission finds that the project will have a significant effect

97. CAL. PUB. RES. CODE § 21,151 (West Supp. 1984). A finding of significance is mandatory "if the project has the potential to degrade the quality of the environment," has effects that are "individually limited but cumulatively considerable," or will "cause substantial adverse effects on human beings." *Id.* § 21,083.

98. R. COOK, *supra* note 24, at 134.

99. See CAL. ADMIN. CODE tit. 14, R. 15,084(e) (1983).

100. CAL. PUB. RES. CODE § 21,082.1 (West Supp. 1984). Environmentalists have argued that allowing a consultant to gather the data impermissibly biases EIRs in the developer's favor. The California Court of Appeal, however, held that the city's procedure does not conflict with CEQA. *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco*, 106 Cal. App. 3d 893, 908, 165 Cal. Rptr. 401, 409 (1980). The court found that the city's ultimate preparation of the draft EIR and the opportunity for public comment before the certification of a final EIR adequately guards against bias. *Id.*

101. Technically, CEQA only requires that project alternatives be analyzed if all significant environmental impacts will not be mitigated. CAL. PUB. RES. CODE § 21,080(c)(2) (West Supp. 1984). See *Laurel Hills Homeowners Assoc. v. City Council of Los Angeles*, 83 Cal. App. 3d 515, 521, 147 Cal. Rptr. 842, 846 (1978).

102. SAN FRANCISCO, CAL., ADMIN. CODE § 31.27(b)(1)-(3) (1973).

103. CAL. ADMIN. CODE tit. 14, R. 15,132 (1983).

104. CAL. PUB. RES. CODE § 21,151 (West Supp. 1984).

105. SAN FRANCISCO, CAL., ADMIN. CODE § 31.28(a)-(c) (1973).

106. CAL. PUB. RES. CODE § 21,151 (West Supp. 1984).

on the environment,¹⁰⁷ it may reject the project in favor of an alternative proposal, including the required "no project" alternative.¹⁰⁸ The Commission may approve a project with significant environmental effects only if it (1) requires design changes that will mitigate or avoid the significant effects, or (2) finds that specific economic, social, or other considerations make the mitigation measures or project alternatives identified in the EIR infeasible.¹⁰⁹ Thus, although the requirements of CEQA are mainly procedural, the authority CEQA grants San Francisco's Planning Commission to reject environmentally harmful development proposals gives the Commission an important substantive power beyond local zoning controls.

2. *Urban Design Analysis*

By requiring a standardized inquiry into potential environmental effects, CEQA provides an objective means of evaluating proposed development. However, CEQA does not address many urban design issues. First, CEQA defines a "significant" effect as one which causes an adverse change in physical conditions.¹¹⁰ In practice, though, subjective design decisions rarely, if ever, change physical conditions. Second, OER requires an assessment of visual impacts only if a proposal will have a "substantial, demonstrable negative aesthetic effect,"¹¹¹ using as a standard the principles of the city's Master Plan, including its Urban Design element.¹¹² To date, only clearly discernible impacts such as the destruction of significant historic structures¹¹³ and the casting of shadows on public parks¹¹⁴ have been certified as significant effects. Even if a finding of significant environmental effect is made, CEQA does not mandate that the Planning Commission choose a less harmful alternative.¹¹⁵ The

107. *See id.* "For the purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial adverse changes in physical conditions which exist within the area."

108. CAL. ADMIN. CODE tit. 14, R. 15,126(d)(2) (1983).

109. CAL. PUB. RES. CODE § 21,081 (West 1977). For a practical guide to the approval steps required by CEQA, see Bendix, *A Short Introduction to the California Environmental Quality Act*, 19 SANTA CLARA L. REV. 521 (1979). Selina Bendix was formerly Environmental Review Officer for the San Francisco Department of City Planning.

110. CAL. PUB. RES. CODE §§ 21,068, 21,151 (West 1977 & Supp. 1984). *See also* CAL. ADMIN. CODE tit. 14, R. 15,382 (1983).

111. Office of Env'tl. Review, San Francisco Dep't of City Planning, Environmental Evaluation Checklist (Initial Study) 1 (Dec. 1982).

112. Telephone interview with Barbara Sahn, Office of Env'tl. Review, San Francisco Dep't of City Planning (Mar. 8, 1984).

113. *See, e.g.*, San Francisco, Cal., Planning Comm'n Resolution 8150 (Jan. 11, 1979) (finding demolition of City of Paris building to have a significantly adverse effect on the environment).

114. Telephone interview with Barbara Sahn, *supra* note 112.

115. In affirming the Planning Commission's decision to approve the Neiman-Marcus store, the California Court of Appeal noted that CEQA does not require a decision "in favor of environmental values in each instance," and that the Commission's balancing of economic and

Commission need only proffer an overriding economic or social consideration to approve a proposed project.¹¹⁶

Another shortcoming of the CEQA-mandated environmental review process has been the Department of City Planning's failure to evaluate accurately the cumulative impact of the proposed development combined with other development in the area. Until recently Department practice had been to consider impacts only from projects either under construction or already approved but not yet under construction in its cumulative impact assessment.¹¹⁷ Those projects under review but not yet approved were excluded. This practice led to a serious underestimation of the cumulative impacts of development and, perhaps, to the inadequate consideration of mitigation measures and alternatives.¹¹⁸ The California Court of Appeal recently found this departmental practice to be insufficient and decertified four EIRs prepared using the truncated cumulative impact method.¹¹⁹ An all-downtown EIR, which was published in 1984,¹²⁰ analyzes the impacts of continued growth in San Francisco and should help to remedy this situation.¹²¹

Despite CEQA's weaknesses, the environmental review process has perceptibly increased the Planning Commission's power to require improvements in the design of new development. EIRs and negative declarations contain considerable urban design information which the Commission can use to evaluate a project's potential effects on the city's character. Even if an urban design impact is not significant and, hence, not subject to the controls of CEQA, the Commission can exercise discretionary review to mitigate the impact.¹²² Moreover, because CEQA requires the identification of feasible mitigation measures and alternatives

environmental values was not subject to judicial re-evaluation. *Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco*, 106 Cal. App. 3d 893, 913, 165 Cal. Rptr. 401, 412 (1980).

116. See *supra* note 109 and accompanying text. The City of Paris/Neiman-Marcus decision demonstrates this process. The Commission found that the project as proposed (demolition of the meritorious City of Paris Building and construction of the modernistic Neiman-Marcus store) would have a significant effect on the environment, but nonetheless approved it over all alternatives. San Francisco, Cal., Planning Comm'n Resolution 8150 (Jan. 11, 1979). See San Francisco Planning Comm'n, Discretionary Review Hearing on Neiman-Marcus Dep't Store 51-58 (Dec. 21, 1978).

117. See *San Franciscans for Reasonable Growth v. City and County of San Francisco*, 151 Cal. App. 3d 61, 68, 198 Cal. Rptr. 634, 636 (1984).

118. See *id.* at 72-80, 198 Cal. Rptr. at 638-644.

119. *Id.* at 81-82, 198 Cal. Rptr. at 645.

120. DOWNTOWN EIR (VOL. 1), *supra* note 11 and DOWNTOWN EIR (VOL. 2), *supra* note 41. The quality of cumulative impact analyses using the Downtown EIR will be superior to that required by the court of appeal. Telephone interview with Barbara Sahn, *supra* note 112. See *infra* notes 348-50 and accompanying text.

121. See DOWNTOWN EIR (VOL. 1), *supra* note 11, at II.9-.10.

122. See *infra* notes 150-64 and accompanying text. For example, even though the Commission found that the Crocker Center project, as proposed, would not have a significant effect on the environment, it conditioned approval on the developer's agreement to remove a struc-

that minimize or eliminate the adverse environmental effects of a project,¹²³ decisionmakers are no longer confronted with an absolute choice between unconditional approval and total rejection of a developer's design choice. When faced with that limited option, the Planning Commission customarily granted approval rather than confront the political outrage of the business community, labor unions, and others waving the banner of economic growth. Under the CEQA-mandated review process, however, the Planning Commission frequently requires developers to incorporate urban design modifications that the EIR described as project alternatives.¹²⁴

Finally, major developers are acquainted with CEQA's basic substantive and procedural requirements. Cognizant that a detailed project assessment will be made and that adverse impacts will be discovered, developers are encouraged to propose better projects and to incorporate mitigating measures voluntarily from the outset.

E. Discretionary Review

San Francisco's downtown use, density, height, and bulk controls fail to address the more subtle impacts of urban development, such as effects a project might have on the streetscape character, the harmony of adjoining facades, and the city's skyline. The more subtle aspects of building design, however, may well determine a city's character. Rather than leave urban design decisions to private developers and their architects, city planners in San Francisco have tried to fill the regulatory gap by creating a discretionary permitting system. This permitting system has three urban design components: (1) an Urban Design Plan, (2) informal Planning Department design consultation, and (3) the Commission's discretionary review power.

ture from one portion of the development site and replace it with a public terrace. *See infra* note 154 and accompanying text.

123. Unfortunately, adequate analyses of realistic alternatives are not always done during the environmental review process. Few projects generate enough public opposition for citizen groups to formulate alternatives, and developers have little incentive to analyze in detail alternatives they have rejected.

The extensive alternatives analysis prepared for the City of Paris/Neiman-Marcus store project is atypical. The Final EIR discussed eight alternatives, two of which were proposed by the developer, four by citizens groups, one by city planners, and one (no project) mandated by state law. SAN FRANCISCO DEP'T OF CITY PLANNING, NEIMAN-MARCUS DEPARTMENT STORE FINAL ENVIRONMENTAL IMPACT REPORT 91-99b (1978).

124. For example, the public terrace in the Crocker Center project, *see supra* note 122, was listed as an alternative in the EIR. SAN FRANCISCO DEP'T OF CITY PLANNING, CROCKER NATIONAL BANK NORTHERN CALIFORNIA HEADQUARTERS, FINAL ENVIRONMENTAL IMPACT REPORT 159 (1979).

1. *Urban Design Plan*

San Francisco's Urban Design Plan,¹²⁵ adopted by the Planning Commission in 1971, was the first of its kind in the country. Rather than projecting an image of what the city should look like in twenty or thirty years, the Urban Design Plan defines essential human needs in an urban environment, proposes public and private objectives to attain those needs, articulates fundamental urban design principles, and sets out a series of general design policies to guide the discretionary approval process. The Plan has four sections, each addressing specific needs and objectives:

City Pattern: The Plan's first objective is "[e]mphasis of the characteristic pattern which gives to the city and its neighborhoods an image, a sense of purpose, and a means of orientation."¹²⁶ Based on Kevin Lynch's theory of urban "legibility,"¹²⁷ this section assesses San Francisco's distinctive visual pattern. That pattern, "bound up in the image and character of the city,"¹²⁸ not only provides residents with a comfortable relationship to the physical environment, but also with an extension of their individual personalities.¹²⁹ Design policies encourage protecting views, street patterns, and open spaces, recognizing the interrelationship of buildings which create the city's unique character, and emphasizing the distinctiveness of various districts.¹³⁰

Conservation: The Plan's second objective is to promote the "[c]onservation of resources which provide a sense of nature, continuity with the past, and freedom from overcrowding."¹³¹ This section calls attention to the city's limited natural areas, historic buildings, and street space. Policies urge preservation of natural areas, limitations on development in remaining open spaces, preservation and renovation of historic structures and districts, new development that harmonizes with the old,¹³² and a strong presumption against abandoning street space.¹³³

Major New Development: The Urban Design Plan's third objective is the "[m]oderation of major new development to complement the city pattern, the resources to be conserved, and the neighborhood environ-

125. SAN FRANCISCO DEP'T OF CITY PLANNING, THE URBAN DESIGN PLAN FOR THE COMPREHENSIVE PLAN OF SAN FRANCISCO (1971) [hereinafter cited as URBAN DESIGN PLAN]. For a discussion of the Urban Design Plan, see A. JACOBS, MAKING CITY PLANNING WORK 189-224 (1975); Comment, *Reclaiming the Urban Environment: The San Francisco Urban Design Plan*, 3 ECOLOGY L.Q. 535, 538-47 (1973).

126. URBAN DESIGN PLAN, *supra* note 125, at 4.

127. *See supra* note 35.

128. URBAN DESIGN PLAN, *supra* note 125, at 3.

129. *Id.*

130. *See generally id.* at 2-15.

131. *Id.* at 20.

132. *Id.* at 24-25.

133. *Id.* at 28.

ment."¹³⁴ Reflecting concern that new development will disrupt the character of San Francisco, the Urban Design Plan urges that both objective and subjective elements of urban design, including scale, form, proportion, height and bulk, facade articulation, and gradual size transitions, be scrutinized in every instance to ensure a positive impact on the existing city pattern. In addition, the Plan both encourages building forms that respect the integrity of open space and the prominence of location, and discourages extreme contrasts and large lot assemblages.¹³⁵

Neighborhood Environment: The final section of the Urban Design Plan recognizes the importance of safe, quiet, well-maintained neighborhoods. The objective is "[i]mprovement of the neighborhood environment to increase personal safety, comfort, pride and opportunity."¹³⁶ The section's policies call for keeping heavy traffic out of the neighborhoods, emphasizing the importance of neighborhood shopping districts, avoiding incompatible new development, and providing adequate street lighting, landscaping, maintenance, and recreation areas.¹³⁷

* * * *

The Urban Design Plan thus established a set of general policy objectives to guide not only future planning and zoning regulation, but also individual project review. The Urban Design Plan has worked well in the former role. For example, height and bulk controls,¹³⁸ a residential rezoning plan,¹³⁹ and a northeastern waterfront plan¹⁴⁰ have implemented goals set out in the Plan. As a concrete set of policies to guide individual downtown project review, however, the Urban Design Plan is demonstrably inadequate.

The Plan fails to guide architects or to establish public review standards. Although some of the Urban Design Plan's policies clearly apply downtown, its objectives are citywide and thus extremely general. The Plan's policies are open to so many interpretations that almost any design falling within downtown's generous zoning restrictions can satisfy those policies.¹⁴¹ Further, the Urban Design Plan is only one of seven elements of San Francisco's Master Plan, and these elements often have

134. *Id.* at 32.

135. *Id.* at 30-40.

136. *Id.* at 43.

137. *Id.* at 52-57.

138. *See supra* note 44 and accompanying text.

139. *See* San Francisco, Cal., Ordinance 443-78 (Oct. 6, 1978).

140. *See* SAN FRANCISCO DEP'T OF CITY PLANNING, NORTHEASTERN WATERFRONT PLAN: A PART OF THE COMPREHENSIVE PLAN OF THE CITY AND COUNTY OF SAN FRANCISCO (1977).

141. According to Richard Hedman, the Department's chief urban design planner, "the very effort to cover all the bases in an evenhanded way ironically may be responsible for some of the plan's weakness. The objectives and policies are so generally stated that it is difficult to make the intent stick when it comes to a specific design issue." Hedman, *supra* note 14, at 16.

seemingly conflicting goals. Finally, the Planning Commission has complete discretion to choose which Master Plan policies to favor, unfettered by review in the state's courts.¹⁴²

2. *Informal Design Consultation*

In 1967, the Department of City Planning instituted a voluntary design review procedure to encourage developers to consult with city planners at each stage in the planning of new development. Developers and their architects are advised to inform the Department at the outset of their plans and development goals rather than wait until design plans are finalized and approval is sought. In return, the Department informs developers of specific public goals, such as the design criteria peculiar to the proposed site, that should be considered in addition to the objective zoning requirements.¹⁴³ Ideally, as design plans progress, developers and planners meet often, review plans, negotiate conditions, and eventually agree upon a mutually acceptable design.¹⁴⁴

The success of informal design consultation, like the success of most negotiation processes, depends ultimately on the political strengths of the particular parties. Thus, results vary, and it is difficult to generalize about the effectiveness of the procedure. Factors in the balance include: the urban design expertise of the planning staff and the concomitant respect accorded the staff by developers and their architects; the staff's ability to cull definitive standards from the Urban Design Plan; the Department's willingness to recommend disapproval of projects technically in compliance with zoning requirements; and the Planning Commission's willingness to reject projects based on negative Department recommendations. In the past, both the Department¹⁴⁵ and the Commission have been reluctant to reject projects that technically complied with zoning requirements.¹⁴⁶ Recently, however, departmental review has been exacting, and the threat of a negative staff recommendation is a

142. See *Foundation for San Francisco's Architectural Heritage v. City & County of San Francisco*, 106 Cal. App. 3d 893, 915-16, 165 Cal. Rptr. 401, 414 (1980):

The Board's decision to balance the elements of the Master Plan is within its discretion and not subject to our review. . . . What is required is the production of information sufficient to permit a reasonable choice of alternatives. . . . It is only required that the officials and agencies make an objective, good faith effort to comply.

143. See A. JACOBS, *supra* note 10, at 166.

144. Interview with Richard Hedman, Urban Design Planner, San Francisco Dep't of City Planning (Feb. 24, 1983).

145. Until fairly recently most planners hesitated to point out the urban design flaws inherent in modern highrise architecture. "[I]t was amazing how quickly the staff would cave in when the great totem of architectural integrity was raised in sacred intonations." Hedman, *supra* note 14, at 16.

146. Throughout the 1970's, the Planning Commission consistently approved projects that complied with quantifiable requirements, even when the Department recommended otherwise. The first time that a major office development, technically in compliance with zoning requirements, was turned down by the Commission occurred in 1979, when a proposal by Southern

powerful inducement for developers to achieve a project design acceptable to the Department.¹⁴⁷

Although technically they need not participate, most developers become involved in the informal design consultation process. To avoid excess carrying costs on their property and to fulfill their often contingent financial obligations, developers have a strong interest in securing expedient conflict-free approval of their permit applications. These economic motives, coupled with the possibility that the Planning Commission may ultimately exercise its power of discretionary review¹⁴⁸ to disapprove a project complying with objective zoning restrictions, have been reflected in the recent vitality enjoyed by the informal consultation process.¹⁴⁹

3. Discretionary Review Power

The Planning Commission possesses a broad power to review all permits, variances, and conditional use authorizations, even if the applicant has satisfied every objective zoning restriction. When aggressively used, this "discretionary review" power gives teeth to the Urban Design Plan and the Department's informal design review process.¹⁵⁰

Pacific to build a 33 story tower was sent back to the drawing boards. See *One S.F. Highrise OK'd—Another is Rejected*, San Francisco Chron., July 27, 1979, at 16, col. 5.

147. See *Planners Reject Highrise Design but not Project*, San Francisco Examiner, July 29, 1983, § B, at 1, col. 5.

148. See *infra* notes 150-64 and accompanying text.

149. For an account of the redesign of a major project during informal Department consultation, see Oney, *The Skyline That Ate San Francisco*, CALIFORNIA, May 1983, at 72.

150. The Planning Commission's discretionary review power is not based on a specific Planning Code section, but rather is drawn from the concurrent reading of a section of the city's Charter and a section of the city's generalized License Code (requiring all public license grantors to consider the effects of an applicant's project upon neighboring property and residents). SAN FRANCISCO, CAL., CHARTER § 7.400 (1978); SAN FRANCISCO, CAL., LICENSE CODE § 26 (1974). A 1954 City Attorney's Opinion interpreted those sections broadly and concluded that discretionary review of all permit applications was within the Commission's authority. 845 Op. San Francisco City Att'y 4 (1954). The 1954 opinion was reaffirmed in 1979. 79-29 Op. San Francisco City Att'y 2 (1979).

Discretionary review may be invoked by the Commission in three situations. First, it may be invoked when a party-in-interest (either a developer or an opponent) requests that the Commission review a pending or rejected permit. Second, the Commission may initiate discretionary review when the Department of City Planning indicates that it cannot adequately regulate the effects of a project through existing zoning provisions. When the Department is dissatisfied with the results of informal design consultation, it usually requests discretionary review. Third, the Commission may establish a policy of undertaking discretionary review of all projects in a specific area that is particularly sensitive to development impacts. Memorandum from R. Spencer Steele, Zoning Administrator, to Zoning Staff, San Francisco Dep't of City Planning (Apr. 1976) (entitled *Departmental Review Procedures*); see also Memorandum from Bob Passmore, Zoning Administrator, to Zoning Staff, San Francisco Dep't of City Planning (June 16, 1980) (entitled *Discretionary Review—Brief Summary*). Since 1980, all downtown projects have been reviewed under this third option. San Francisco, Cal., Ordinance 240-80 (June 1, 1980) (enacting SAN FRANCISCO, CAL., PLANNING CODE § 126(e)).

Though generally operating under more definitive legislative mandates, many other municipalities and regional and state bodies possess similar discretionary permitting powers. See

Discretionary review did not have much effect on urban design downtown until the late 1970's. Since then, increased reliance on discretionary review may be attributed, in part, to changes in modern architectural thought. During the mid-1970's, a rather devastating critique of the tower-in-the-park International Style was articulated.¹⁵¹ The strength of this critique was grasped quickly by the Department's planners and was reflected in the perceptible change that began to appear in their attitudes during the informal design review process.¹⁵² At the same time, the Commission began requiring significant alteration of some proposed designs during discretionary review. Two floors were removed from one proposal to preserve sunlight to a popular open space.¹⁵³ On another project, an old eleven floor addition to one building was removed and replaced by a public park as a condition for construction of a much larger addition next door.¹⁵⁴ In several other instances, the Commission mandated renovation of historic buildings, rather than demolition, as a condition for project approval.¹⁵⁵ In 1983, the Commission turned down a project even though it complied with all relevant zoning restrictions and had been redesigned thirty-nine times in response to earlier planning staff and Commission requests.¹⁵⁶ The Commission's willingness to use discretionary review to promote urban design and aesthetic goals has prompted developers to work closely with the Department to gain support for their designs.

Despite the recent successes of discretionary review, the process presents problems for both developers and planners. The process gives developers little certainty. Not only must they comply with zoning controls, but they must also hope that their more subjective design decisions meet with the Department and Commission's approval. With only the vague standards of the Urban Design Plan to guide them, developers and their architects have difficulty discerning what ultimately may be required of them. Early departmental review alleviates this problem somewhat, but there is no assurance that a design acceptable to the Department staff will meet with Commission approval. Developers may

M. MESHENBERG, *THE ADMINISTRATION OF FLEXIBLE ZONING TECHNIQUES* 25-29 (1976). See, e.g., CAL. PUB. RES. CODE §§ 30,000, 30,600.1 (West 1977 & Supp. 1984) (California Coastal Act).

151. See, e.g., B. BROLIN, *THE FAILURE OF MODERN ARCHITECTURE* (1976).

152. See Hedman, *supra* note 14; *Architect and his High-rise*, San Francisco Chron., Aug. 12, 1979, § B, at 4, col. 1.

153. San Francisco, Cal., Planning Comm'n Resolution 8647 (July 13, 1980) (approving 353 Sacramento building).

154. San Francisco, Cal., Planning Comm'n Resolution 8331 (July 26, 1979) (approving Crocker Center).

155. See, e.g., San Francisco, Cal., Planning Comm'n Resolution 8942 (May 7, 1981) (approving 101 Montgomery building).

156. *Planners Reject Highrise Design but not Project*, San Francisco Examiner, July 29, 1983, § B, at 1, col. 5.

be wise to select an architect not on the basis of talent, but on the basis of how well in tune the architect is with current Department and Commission thinking.¹⁵⁷ A related problem is that the urban design results of a discretionary review system lacking written standards totally depend on the attitudes of the individual Commission members. Although currently a majority of the Commission is sensitive to criticisms of the worst excesses of modern architecture, a new Commission might not be so inclined.

San Francisco's open-ended discretionary review process may well be open to a due process challenge. When administrative or quasi-judicial bodies, such as planning commissions, exercise discretion affecting constitutionally protected property rights, the dictates of procedural due process must be met.¹⁵⁸ To be constitutional, a discretionary permit system should contain three features: (1) clear advance standards to guide both property owners and decisionmakers;¹⁵⁹ (2) an opportunity for property owners as well as other affected citizens to be heard;¹⁶⁰ and (3) procedures ensuring that findings of fact¹⁶¹ are made by an impartial decisionmaking body.¹⁶² The current discretionary review system in San Francisco fulfills the latter two requirements. But the vagueness of the advance standards contained in the Master Plan may be inadequate to satisfy the first requirement. The policies of the Urban Design Plan and other elements of the Master Plan simply are not specific enough to offer clear guidance to either designers or planners, and the potential for arbitrary decisionmaking is evident.

In the past, courts have upheld imprecise discretionary systems as stop-gap devices to give a locality time to plan and enact permanent controls.¹⁶³ Despite the potential constitutional flaws in the discretionary

157. Following the rejection in 1981 of a small building designed by Daniel Solomon, a highly praised local architect, Peter H. Dodge, President of the local American Institute of Architects, remarked: "There is considerable unease among some of our members that the [Planning Commission] may . . . try to legislate taste or style without adequate prior written guidelines." *Controversial Building for Union Street Shot Down*, San Francisco Chron., Mar. 6, 1981, § B, at 1, col. 2.

158. *Board of Regents v. Roth*, 408 U.S. 564, 569-70 (1972); D. MANDELKER, *LAND USE LAW* § 2.34, at 39 (1982). See also *City of Eastlake v. Forest City Enterprises*, 426 U.S. 668, 682-83 (1976) (Stevens, J., dissenting).

159. See *Holmes v. New York City Hous. Auth.*, 398 F.2d 262, 265 (2d Cir. 1968); K. DAVIS, *ADMINISTRATIVE LAW* §16.04 (1951). See also *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 513-17, 522 P.2d 12, 16-19, 113 Cal. Rptr. 836, 840-42 (1974).

160. See *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

161. See *Wolff v. McDonell*, 418 U.S. 539, 563-65 (1974); *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 513-17, 522 P.2d 12, 16-19, 113 Cal. Rptr. 836, 840-42 (1974).

162. See *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973).

163. See *State v. Superior Court of Orange County*, 12 Cal. 3d 237, 254, 524 P.2d 1281, 1292, 115 Cal. Rptr. 497, 508 (1974); *Metro Realty v. County of El Dorado*, 222 Cal. App. 2d 508, 516, 35 Cal Rptr. 480, 485 (1963).

review process, a court might construe such review as a temporary measure, given the impending adoption of the Downtown Plan and comprehensive Planning Code amendments. Thus, San Francisco's use of discretionary review might be immunized from judicial invalidation.

Perhaps surprisingly, no challenge to the Commission's exercise of discretionary review has reached an appellate court in recent years. Rather, most developers have accepted the conditions imposed by the Commission during discretionary review. Even outright Commission disapproval of a proposal generally will not prevent ultimate project development. The Commission typically informs the developer of the conditions it will require before granting approval. To date, such conditions, particularly those involving project design, have been economically feasible,¹⁶⁴ and it has been advantageous for developers to redesign projects rather than suffer the delay of a court challenge to discretionary review.

F. Summary

Downtown regulation has been piecemeal, often inconsistent, and generally inadequate. In the last few years, environmental and discretionary review have been used aggressively to promote more sensitive building designs and to exact measures to mitigate development impacts. But often the changes and mitigation measures the city has required have been only marginally effective. Further, efforts to reshape individual projects have failed to address cumulative growth effects in a realistic or meaningful way.

III

THE DOWNTOWN PLAN

By 1980, the shortcomings of San Francisco's piecemeal approach to downtown regulation, manifested in part by the deleterious cumulative effects of rapid downtown growth on transportation, housing, and other environmental qualities, had become apparent. In that year, the Planning Commission and Board of Supervisors, perhaps responding to public clamor and political pressures,¹⁶⁵ commenced a concerted effort to remedy the city's regulatory shortfalls. As a stop-gap measure, the Commission subjected all downtown proposals to automatic discretionary review and limited the availability of C-3-0 office district density bonuses. To lay the groundwork for future regulation, the Board ordered the preparation of a comprehensive downtown EIR to analyze current environ-

164. For example, when the Pacific Gateway office tower was rejected by the Commission because of its insensitive design, the developer redesigned the project incorporating the changes demanded by the Commission. The redesigned project is now built.

165. The Proposition O downtown growth control ordinance garnered 46% of the popular vote in a 1979 city election. *San Francisco Chron.*, Nov. 7, 1979, at 1, col. 5.

mental qualities and assess the impact of continued development under existing controls and four alternative zoning plans. The Board further directed the Department of City Planning to undertake a downtown rezoning study.¹⁶⁶

In May 1981,¹⁶⁷ and again in July 1982,¹⁶⁸ the Department published preliminary rezoning proposals. Then in May 1983, the Downtown EIR Consultant's Report was released.¹⁶⁹ Finally, in August 1983 the Department published its proposed Downtown Plan for citizen and Commission review.¹⁷⁰ The Board of Supervisors imposed a moratorium on all downtown development proposals while public hearings and environmental assessment of the Plan proceeded.¹⁷¹ A Draft Downtown EIR analyzing the Plan was published by the Department in March 1984,¹⁷² and the Final EIR was certified on October 18, 1984.¹⁷³ On November 29, 1984, following additional hearings, the Downtown Plan, as amended, was adopted by the City Planning Commission.¹⁷⁴ The key features of the Plan are incorporated into proposed amendments to the Planning Code¹⁷⁵ which must be approved by the Board of Supervisors before the Plan has any legal viability. The Board is currently reviewing the code amendments and is expected to approve them, with some modifications, by mid-1985.

Under the Downtown Plan, building designs would be subject to demanding objective requirements. Principal features of the Plan affecting urban design include: a reduction in allowable density, redirection of office development south of Market Street, lower height limits, "post-Modern" bulk controls (requiring slender, sculpted towers), preservation of architecturally significant buildings, mandatory incorporation of open space and public art, retail or public service ground level uses, and preservation of direct sunlight to sidewalks and open spaces. The Downtown Plan leaves far less room for discretionary decisionmaking and provides detailed standards for that discretion which remains.

166. San Francisco, Cal., Ordinance 240-80 (June 1, 1980).

167. SAN FRANCISCO DEP'T OF CITY PLANNING, GUIDING DOWNTOWN DEVELOPMENT (May 1981).

168. SAN FRANCISCO DEP'T OF CITY PLANNING, GUIDING DOWNTOWN DEVELOPMENT (July 1982).

169. CONSULTANT'S EIR (VOL. 1), *supra* note 66, and CONSULTANT'S EIR (VOL. 2), *supra* note 78.

170. SAN FRANCISCO DEP'T OF CITY PLANNING, THE DOWNTOWN PLAN: A PROPOSAL FOR CITIZEN REVIEW (Aug. 1983). *See also supra* note 6 and accompanying text.

171. San Francisco, Cal. Ordinance 54-84 (Feb. 2, 1984) (adopting SAN FRANCISCO PLANNING CODE § 175.1).

172. DOWNTOWN EIR (VOL. 1), *supra* note 11, and DOWNTOWN EIR (VOL. 2), *supra* note 41.

173. San Francisco, Cal. Planning Comm'n Resolution 10,164 (Oct. 18, 1984).

174. San Francisco, Cal. Planning Comm'n Resolution 10,163 (Nov. 29, 1984).

175. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7.

A. Location of New Development

As adopted by the Planning Commission, the Downtown Plan does not propose to limit growth absolutely. Rather, the Plan would restrain growth by establishing rigorous development standards and then would vigorously manage the effects of that growth.¹⁷⁶ Significantly, the Plan would substantially decrease the allowable density of buildings in the existing downtown core and open up the previously industrial area south of Market Street for high density office expansion. Unlike current zoning controls, which have forced dense development into the downtown core, the Plan sets much of downtown apart as a valuable architectural and urban resource requiring protection from uncontrolled expansion.

1. Density Reductions

To shift development away from the existing office core, the Downtown Plan proposes a significant reduction of base floor area ratios (FARs) north of Market Street. In the office district, the current FAR of 14:1 would be reduced to 10:1,¹⁷⁷ or even 9:1.¹⁷⁸ At the same time, the bonus system¹⁷⁹ would be permanently scrapped. Similarly, the Plan recognizes that development in the retail district at the current FAR of 10:1 "would destroy the existing scale and character of the district."¹⁸⁰ Hence, a 6:1 FAR is recommended.¹⁸¹ To discourage large scale office uses from encroaching upon the retail district's supply of smaller office space for personal services (e.g., travel agencies, medical offices), only offices not exceeding 5000 square feet would be permitted as of right in the C-3-R district.¹⁸² The Plan proposes FAR reductions from 10:1 to 6:1 in the C-3-G general commercial area, and from 7:1 to 5:1 in the C-3-S support district south of Market Street.¹⁸³ To discourage the displacement of light industry and other desirable uses, new office buildings in the western portion of the C-3-S district would, at least temporarily, be restricted to a 2:1 FAR.¹⁸⁴ Density limits would not apply to housing in

176. DOWNTOWN PLAN, *supra* note 6, at 5.

177. *Id.* at 23-26; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 124(a).

178. On May 7, 1985, the Mayor proposed to the Board of Supervisors that the C-3-0 district base FAR be reduced in the Plan from 10:1 to 9:1. Letter from Mayor Dianne Feinstein to Board of Supervisors (May 7, 1985) (copy on file at Ecology Law Quarterly).

179. *See supra* note 30 and accompanying text.

180. DOWNTOWN PLAN, *supra* note 6, at 30.

181. *Id.*; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 124(a).

182. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 219(b). Larger personal service offices and other office uses would be permitted as conditional uses. *Id.* at §§ 219(b), (c).

183. DOWNTOWN PLAN, *supra* note 6, at 32-35; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 124(a). The proposed FARs would allow considerable development in these areas because existing development is far short of the 6:1 and 5:1 FAR limits.

184. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, §§ 246(g), 249.

both the general commercial and support districts.¹⁸⁵

To encourage large new development to locate in a small area south of Market Street, the Plan would rezone a portion of the C-3-S support district to a "Special Development" office district (C-3-O(SD)). Zoning controls applicable in the C-3-O office district would apply, except that the base FAR would be 6:1, rather than 10:1. Development rights from architecturally significant buildings throughout downtown would be transferrable to the Special Development district to substantially increase the permitted FAR up to a maximum of 18:1, subject only to relatively generous height and bulk limitations.¹⁸⁶

2. Reduction in Allowable Height

One of the goals of the Downtown Plan is to channel major new development to the Special Development district. The Plan proposes a significant reduction of height limits north of Market Street and a correlative increase in the Special Development district.¹⁸⁷ The Plan, however, also would permit height limits to be exceeded in all districts as an incentive to encourage slender, sculpted building tops.¹⁸⁸ By creating smaller districts of more varied heights, and by encouraging developers to depart from the typical box models of the past twenty years, the Downtown Plan seeks to avoid the benching effect created by the grouping of flat-topped highrises of similar height.¹⁸⁹

B. Building Form and Appearance

The Downtown Plan departs most radically from traditional zoning by setting out exacting standards for individual building design. The Plan would require new buildings to taper as they increase in height. To enhance the pedestrian environment, the Plan demands that new build-

185. DOWNTOWN PLAN, *supra* note 6, at 33, 35, 37-38; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 124(f). Projects exceeding the base FARs in the C-3-G and C-3-S districts would require conditional use approval. DOWNTOWN PLAN, *supra* note 6, at 38.

186. DOWNTOWN PLAN, *supra* note 6, at 26; PROPOSED SAN FRANCISCO PLANNING CODE *supra* note 7, §§ 123(c), 124(a), 248.

187. The Special Development district, currently zoned at 320 feet, would have maximum heights of 350 and 450 feet. DOWNTOWN PLAN, *supra* note 6, at 81 (map 14), 83 (map 15). For the financial district, currently zoned up to 700 feet along Market Street, the Plan proposes a 550 foot height limit in a small area one block south of Market Street, and heights tapering down in roughly concentric circles to a maximum of 200 feet on the office core edge. Height limits in the retail district around Union Square, currently 140 to 400 feet, would be reduced to 80 feet. Buildings up to 130 feet would be permitted as a conditional use if the additional height provides a transition to an adjacent higher building, is set back from the streetwall, and does not cast additional shadows on sidewalks and other open space. *Id.* at 81 (map 14), 83 (map 15), and 87; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 263.4(d).

188. See *infra* note 197 and accompanying text.

189. DOWNTOWN PLAN, *supra* note 6, at 82.

ings minimize both sidewalk wind acceleration and interference with direct sunlight access to sidewalks and open spaces. The Plan also imposes restrictions upon the design of building bases and requires developers to provide open space and public art at the street level. The Plan encourages developers to incorporate architectural projections and articulation into the facades of new buildings while at the same time ensuring contextual compatibility with neighboring structures. The Plan thus essentially spells the end of the corporate International Style slab highrise with its smooth skin, often indistinct base, and lack of harmony with neighboring buildings and open space.

1. Bulk Limits

The Plan's proposed bulk limits are intended to achieve visually interesting designs by mandating buildings that appear sculpted and increasingly slender as they increase in height.¹⁹⁰ Both absolute bulk maxima and percentage bulk reductions in upper floors are proposed.¹⁹¹ First, under the Plan, bulk limits would relate to the actual height of a proposed building,¹⁹² rather than the height district in which the building is to be constructed.¹⁹³ Thus, even a building significantly lower than the maximum allowable height in its height district will be governed by bulk controls tailored to buildings of its size. Second, rather than employing only one set of bulk maxima, the Plan proposes that structures in C-3 height districts be divided into base, lower tower,¹⁹⁴ upper tower, and an optional upper tower extension.¹⁹⁵ Different bulk limits would apply to each segment of the building shaft according to mathematical formulae which consider the width of the widest abutting street, the height of existing streetwalls, the height of the proposed building, and, if applicable, the developer's choice to build an upper tower extension.¹⁹⁶

If developers further reduce the area of the upper tower, the Plan permits them to exceed applicable height limits.¹⁹⁷ Vertical attachments,

190. *Id.* at 85.

191. *Id.* For a graph illustrating the proposed upper floor area reduction requirements see PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 270(d) (charts B and C).

192. DOWNTOWN PLAN, *supra* note 6, at 85; see also PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 270(d).

193. See *supra* notes 47-49 and accompanying text for a discussion of existing bulk controls.

194. For buildings less than 160 feet tall, only the lower tower bulk controls would apply above the base. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 270(d)(2)(A).

195. DOWNTOWN PLAN, *supra* note 6, at 85-86; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 270(d).

196. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 270(d). For a graph illustrating the proposed bulk limit requirements, see *id.*, chart B.

197. DOWNTOWN PLAN, *supra* note 6, at 85; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 263.7.

such as spires and flagpoles, could extend beyond maximum heights.¹⁹⁸ The Plan requires rooftop mechanical equipment to be screened and incorporated into the overall building design.¹⁹⁹

Project design review would further encourage distinctive building tops.²⁰⁰ Exceptions to the complex bulk controls would be allowed as conditional uses, provided that a building meets several strict criteria and incorporates mitigating design features.²⁰¹

Finally, the Plan mandates a minimum separation between adjacent towers on the same city block. The Plan would require a fifteen to thirty-five foot setback from interior property lines, starting at a height 1.25 times the width of the principal street which the building faces.²⁰²

2. *Building Appearance*

In addition to objective height and bulk requirements, the Plan contains detailed design policies to foster building forms that are visually interesting and harmonious with surrounding buildings.²⁰³ Building facades should relate to nearby structures in terms of proportions, massing, and decorative embellishments.²⁰⁴ The Plan recommends that the Planning Code be amended to encourage projections and other decorative facade features.²⁰⁵ Further, to maintain the "visual unity" of the city, the Plan calls for light-colored facades and discourages the use of highly reflective materials.²⁰⁶

198. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 260(b)(2)(H); *see* DOWNTOWN PLAN, *supra* note 6, at 85.

199. DOWNTOWN PLAN, *supra* note 6, at 85; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 141(a), (b).

200. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, §§ 270(d)(3)(D), 309(b)(1); *see generally* DOWNTOWN PLAN, *supra* note 6, at 82.

201. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 272. For example, exceptions will not be granted unless the developer can show that the building would not contribute significantly to shading of publicly-accessible open space, would not significantly increase ground level windspeed, would not significantly affect light or air to adjacent buildings, and would be compatible with the character of the surrounding area. *Id.*

202. DOWNTOWN PLAN, *supra* note 6, at 87; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 132.1(c).

203. DOWNTOWN PLAN, *supra* note 6, at 92.

204. *Id.*

205. *Id.*; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 136(d). Currently, cornices, beltlines, and other projections are restricted in size or are prohibited. SAN FRANCISCO, CAL., PLANNING CODE § 136(c)(1) (1979). Floor area calculations also discourage detailed facades because floor area is measured from the building exterior. The Plan recommends that floor area be measured instead from the average line of window glass and excludes one-third of the floor area of an extended bay window from the calculations. DOWNTOWN PLAN, *supra* note 6, at 92; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 102.8(b)(11).

206. DOWNTOWN PLAN, *supra* note 6, at 92.

3. *Public Art*

The Plan encourages civic art by proposing that two percent of all construction costs for new city and county buildings be committed to public art. The Plan also takes the innovative step of mandating that one and one-half percent of all construction costs for new private development be similarly invested in public art.²⁰⁷ The Plan lists sculpture, bas-relief, mosaics, murals, and fountains as examples of art that would satisfy this requirement.²⁰⁸

C. *The Pedestrian Environment*

Creating an enjoyable pedestrian experience is an important public goal. An inviting outdoor environment is vital to provide a place for relaxation and a means to escape the rigors of the workplace. In addition, walking is a major mode of transportation, and foot traffic is heavy in downtown San Francisco.²⁰⁹ The pedestrian experience may be greatly affected by the physical form and diversity of the street environment²¹⁰ and the congestion of overcrowded sidewalks and automobile traffic.²¹¹ The Downtown Plan proposes several detailed streetscape design policies and regulations to enhance the pedestrian environment.

1. *Ground Level Use Zoning*

The Downtown Plan would encourage retail or public service uses on ground floors in all four downtown use districts by allowing as of right only ground floor offices that provide direct on-site services²¹² and by excluding ground floor retail spaces of less than 5000 square feet from allowable floor area calculations.²¹³ Current ground level zoning controls, which only apply in the retail district, would be modified to ensure that district's preservation as a major pedestrian-oriented area. Ground floor retail uses with limited pedestrian interest (banks, airline ticket offices, and other business and personal services) would be restricted in size.²¹⁴ The Plan also would require window or display space along pe-

207. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 149(a).

208. DOWNTOWN PLAN, *supra* note 6, at 95.

209. See, e.g., CONSULTANT'S EIR (VOL. 1), *supra* note 66, at IV.E.6 (table IV.B.1), IV.E.15 (table IV.E.6).

210. See generally R. ARNHEIM, THE DYNAMICS OF ARCHITECTURAL FORM 76-81 (1977).

211. See generally DOWNTOWN PLAN, *supra* note 6, at 97-127.

212. DOWNTOWN PLAN, *supra* note 6, at 29, 33, and 35; see PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 219. Other ground floor offices would be conditional uses in the C-3-O, C-3-G, and C-3-S districts and would be prohibited on the C-3-R district.

213. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 102.8(b)(13); see DOWNTOWN PLAN, *supra* note 6, at 29. Ground floor retail space would be counted against allowable square footage only in the retail district.

214. DOWNTOWN PLAN, *supra* note 6, at 31; see PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 219(b).

destrian frontages in the retail district.²¹⁵

2. Open Space

High quality open space is relatively scarce in downtown San Francisco.²¹⁶ Many of the plazas built in the C-3-0 office district to acquire FAR bonuses are uninviting and underused because of inadequate sunlight, wind protection, seating, and other amenities.²¹⁷ By contrast, the Downtown Plan aims to ensure that every person living and working downtown is within 900 feet (approximately two city blocks) of a sunny, well-designed open space.²¹⁸ To fulfill this goal, the Plan would require developers to incorporate open space into most new projects.²¹⁹ The Plan describes a variety of desirable types of open space and outlines design criteria for open spaces.²²⁰ The Plan also recommends that the city create new parks and transform several underused street right-of-ways to pedestrian malls.²²¹

Recognizing that fiscal constraints may hinder public efforts to create adequate open space to meet the needs of an expanding downtown population, the Plan proposes that developers be required to create new open space as a condition of project approval. Each new downtown office or hotel project would be required to incorporate publicly accessible open space in an amount proportional to the building's size.²²² In the office, support, and general commercial districts, one square foot of open space would be required for each fifty square feet of building floor area. A 1:100 ratio is proposed for the retail district, already served by substantial open space.²²³ Since it may be infeasible to meet the open space requirement at the building site, the Plan would allow developers to create open space within 900 feet of the site.²²⁴

The Plan urges diversity in creating open space. Guidelines define eleven categories of open space: (1) urban gardens, (2) urban parks, (3) plazas, (4) view and/or sun terraces, (5) greenhouses, (6) small sunny sitting spaces called "snippets," (7) glass-roofed atria, (8) interior parks and sitting areas, (9) shopping gallerias, (10) arcades, and (11) pedestrian

215. DOWNTOWN PLAN, *supra* note 6, at 31.

216. See DOWNTOWN PLAN, *supra* note 6, at 47-48, 50 (map 11).

217. DOWNTOWN PLAN, *supra* note 6, at 49 (chart), 51 (map 11). See also W. WHYTE, *supra* note 40 (detailed study of the attributes of urban open space).

218. DOWNTOWN PLAN, *supra* note 6, at 49.

219. *Id.* at 53.

220. *Id.* at 48, 53-55.

221. *Id.* at 48, 56.

222. *Id.* at 58.

223. *Id.* PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 138(b). The open space area would not be counted against the project's maximum allowable gross floor area. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 102.8(b)(14).

224. DOWNTOWN PLAN, *supra* note 6, at 59; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 138(c).

walkways.²²⁵ The appropriateness of each of these categories depends on the open space's size, sunlight access, and function in the pedestrian network.²²⁶

The Plan proposes several policies to guide development of new open space. Design policies encourage spaces that minimize wind and maximize direct sunlight, provide adequate and varied seating, are easily accessible from streets, incorporate elements of the natural environment (such as landscaping and water), and, if they are indoor facilities, are open at least during business hours.²²⁷ The Plan recommends that deficient existing open spaces be improved to conform to these policies.²²⁸ The Plan discourages the tower-in-the-park mode of planning by requiring that open space be sited in a way that does not destroy downtown's traditional streetwalls. Instead, siting should reflect an awareness of the relationship between open space and building mass.²²⁹ To ensure that the policies of the Plan are implemented, the Department of City Planning would review the location, type, and design of all open space proposals. All open space designs would then need Planning Commission approval.²³⁰

3. Sunlight Preservation and Wind Reduction

The Downtown Plan recognizes that highrise construction has affected San Francisco's pedestrian microclimate. The city enjoys a moderate, breezy climate year-round,²³¹ and pedestrian comfort typically is not a concern so long as direct sunlight is unimpeded.²³² The construction of downtown skyscrapers, however, has steadily diminished the amount of direct sunshine reaching the street level²³³ and, at the same time, has caused a marked increase in wind speeds.²³⁴

Despite public concern aroused by the adverse effects of downtown growth on the availability of direct sunlight and on wind speeds,²³⁵ the

225. DOWNTOWN PLAN, *supra* note 6, at 54-55 (table 4); PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 138(d).

226. DOWNTOWN PLAN, *supra* note 6, at 54-55 (table 4); PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 138(d).

227. DOWNTOWN PLAN, *supra* note 6, at 56-58; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 138(d).

228. DOWNTOWN PLAN, *supra* note 6, at 48.

229. *Id.* at 57-58.

230. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, §§ 138(e), 309(b)(5).

231. The mean maximum temperature varies from 56.8 degrees in December to 68.8 degrees in September. Average wind speed varies from a low of 6.3 miles per hour in November to a high of 11.2 miles per hour in July. DOWNTOWN PLAN, *supra* note 6, at 89 (table 10).

232. *Id.* at 88 (figure 6).

233. CONSULTANT'S EIR (VOL. 1), *supra* note 66, at IV.H.3.1.

234. *Id.* at IV.H.3.8.

235. See, e.g., Adams, *The Battle of the Skyscrapers*, San Francisco Examiner, Jan. 28, 1979, at 1, col. 3.

present height and bulk restrictions do not offer a remedy. Lacking enforceable objective standards to mitigate these effects of downtown growth, city planners have resorted to their own persuasiveness during informal design consultation or have relied on the Commission to impose mitigation measures during environmental or discretionary review. On occasion, conditions have been successfully imposed during project review to prevent interferences with direct sunlight.²³⁶ More typically, however, the Commission has failed to require protection of the pedestrian microclimate, resulting in the continuing decline of pedestrian comfort.²³⁷

Consultants for the city made extensive sunlight studies in preparation for the Downtown Plan.²³⁸ The studies identified retail streets, streets and alleys with concentrations of lunchtime establishments, and several public open spaces for sunlight protection.²³⁹ The consultants determined the "sun access angle" necessary for direct east, west, and north sunlight to reach each identified retail street during the "critical time" (midday) between the spring and fall equinoxes. By multiplying the street's width by the tangent of the sun access angle, a maximum streetwall height was determined for each identified street. Under the Plan, new buildings would be shaped so that their mass remains behind the sloping plane of the sun access angle, unless to do so would result in minimal public benefit.²⁴⁰ For example, the streetwall of buildings on the south side of Market Street, which is 120-foot wide, may rise to 119 feet; above that height the building mass must be set back behind the fifty degree sun access angle. On the other hand, since Kearny Street is only seventy-five feet wide, its west streetwall could rise to only seventy-four feet.²⁴¹

Many of the Plan's sunlight protection policies for public open space were superseded by Proposition K, adopted by voters in June 1984.

236. See, e.g., San Francisco, Cal., Planning Comm'n Resolution 8647 (July 10, 1980) (approving 353 Sacramento building following removal of two floors to preserve sunlight to the public areas of Embarcadero Center); San Francisco, Cal., Planning Comm'n Resolution 9732 (June 30, 1983) (approving New Montgomery Place with top reshaped to avoid casting shadows on the Crocker Center's sun and view terrace).

237. See, e.g., San Francisco, Cal., Planning Comm'n Resolution 8348 (Aug. 9, 1979) (approving 101 California Street despite showing that the office tower would cast shadows on retail plaza at Embarcadero Center); *Planning Commission OKs Chinatown Tower*, San Francisco Examiner, July 22, 1983, § B, at 1, col. 1 (105 foot tower approved despite showing that it would block a significant amount of sunlight to a public playground). See generally *Experts Urge Planners to Require More Sunshine Downtown*, San Francisco Examiner, June 7, 1983, § B, at 1, col. 1.

238. INSTITUTE OF URBAN & REGIONAL DEVELOPMENT, UNIVERSITY OF CALIFORNIA AT BERKELEY, SUN AND LIGHT FOR DOWNTOWN SAN FRANCISCO (1983).

239. DOWNTOWN PLAN, *supra* note 6, at 89-91.

240. *Id.* at 90 (table 11); PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, §§ 146(a), (b).

241. See PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 146(a).

Proposition K prevents the Planning Commission from approving any structure over forty-feet tall that would cast a shadow on a city-owned public park, unless the Commission finds that the shadow's impact would be insignificant.²⁴² To provide similar but less strict protection to open spaces not covered by Proposition K, the Plan proposes that specific development proposals within the "shadow reach" of these open spaces be subjected to shadow studies during design review.²⁴³ In addition, the Downtown Plan generally would require massing studies during design review to encourage appropriate shaping and orientation of new buildings to minimize shadows.²⁴⁴

The Plan would mandate preparation of wind studies for proposed projects so that the Commission could require modification of building forms to minimize street level wind acceleration.²⁴⁵ In general, urban development, because of the drag and friction generated by buildings, reduces overall windspeed. Massive, free-standing, slab buildings, however, can intercept large volumes of moving air and cause wind speeds to accelerate dramatically at street level.²⁴⁶ To minimize increases in windspeed, the Commission may require the use of narrow or complex up-wind facades (with numerous setbacks and other detailing) and alteration of a project's siting on the building lot.²⁴⁷

4. *Design Policies*

A high quality pedestrian environment depends upon relatively subjective factors such as building scale, facade detail, a sense of street enclosure, and contrasts between building mass and open space. Each of these factors can be addressed through a number of different design solutions. Accordingly, many of the Downtown Plan's streetscape design recommendations are expressed as generalized policies to guide individual project review. The Plan's streetscape policies include the following: preservation of a traditional street-to-building relationship, as character-

242. DOWNTOWN PLAN, *supra* note 6, at 91; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 295.

243. DOWNTOWN PLAN, *supra* note 6, at 91; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 147.

244. DOWNTOWN PLAN, *supra* note 6 at 90; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 146(c).

245. DOWNTOWN PLAN, *supra* note 6, at 91; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 148. The proposed Code section articulates as an objective the shaping of new buildings so as not to cause ground level wind currents to exceed 11 miles per hour in areas of substantial pedestrian use and seven miles per hour in areas of public seating during working hours.

246. CONSULTANT'S EIR (VOL. 1), *supra* note 66, at IV.H.3.8. Notable examples in San Francisco include the areas surrounding Fox Plaza on Market Street and the Federal Building in the Civic Center.

247. CONSULTANT'S EIR (VOL. 2), *supra* note 78, at M.1-.3.

ized by buildings placed shoulder-to-shoulder at the property line;²⁴⁸ preservation of existing streetwalls by setting back the upper portion of taller new buildings behind a base of a similar height and facade treatment;²⁴⁹ creation of pedestrian-oriented streets by providing distinct pedestrian-scaled building bases;²⁵⁰ maintenance of the traditional pattern of projecting cornices on smaller buildings and projecting beltlines on tall buildings;²⁵¹ and use of visually interesting designs and materials at ground level, such as clear glass and textured walls.²⁵²

D. Historic Preservation

The Downtown Plan would significantly strengthen the city's ability to preserve downtown historical structures. The Plan combines stringent preservation requirements with generous TDR provisions. The tight controls proposed in the Plan address the failure of the existing landmarks ordinance to protect numerous structures of historical value.²⁵³ The Plan seeks to stem the steady decline in San Francisco's historical resources by focusing both on the preservation of individual buildings and on the comprehensive protection of much of the downtown's historical setting.²⁵⁴

The Plan outlines a new process by which the Board of Supervisors would designate architecturally important buildings over 40 years old in the C-3 downtown area.²⁵⁵ These buildings would first be classified either as *significant* or *contributory*. Within each classification, buildings would then be placed into one of two categories reflecting a variety of different factors.²⁵⁶ The Board would formally designate all buildings identified in the Plan as *significant* or *contributory* by adopting an amendment to the City Planning Code.²⁵⁷ Property owners will then have several months to appeal their buildings' designations to the Planning Commission and Board of Supervisors. Individual hearings will be pro-

248. DOWNTOWN PLAN, *supra* note 6, at 93.

249. *Id.*

250. *Id.*

251. *Id.* at 94.

252. *Id.*

253. *Id.* at 62. An annual average of only 2.3 downtown buildings have been designated as landmarks since the present ordinance was enacted in 1967. By contrast, an average of eight structures rated by the Heritage Foundation to be of the highest or of major importance have been demolished each year. *Id.* See also *supra* notes 55-82 and accompanying text.

254. DOWNTOWN PLAN, *supra* note 6, at 74.

255. *Id.* at 66-73; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, art. 11.

256. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 1102.

257. Proposed article 11 of the Planning Code would be entitled Preservation of Buildings and Districts of Architectural, Historical and Aesthetic Importance in the C-3 Districts. *Significant* and *contributory* buildings would be designated under § 1102.1 and listed in appendices to article 11.

vided for those owners who so appeal.²⁵⁸

A building in either of the two categories classified as *significant* would be permanently protected against demolition unless the Planning Commission finds that the structure has no reasonable economic or safe use.²⁵⁹ To be considered *significant*, a structure must be rated either "excellent" in architectural quality or "very good" in both architectural quality and relationship to the environment.²⁶⁰ The Plan distinguishes Category I *significant* buildings from those in Category II on the basis of lot size: structures sited on deep lots would fall into Category II. Additions to the rear of Category II buildings would be permitted.²⁶¹ All proposed alterations to the exterior of any *significant* building, however, would be reviewed for consistency with the building's architectural character.²⁶² The Plan nominates 251 downtown buildings for designation as *significant*.²⁶³ The total amount of unused development rights of a *significant* building's lot (the allowable base FAR times the lot size minus the *significant* building's actual square footage) would be transferable to any other lot not holding a *significant* or *contributory* building within the transferor lot's use district or to the Special Development District.²⁶⁴

To be designated as *contributory*, a building must be rated either "very good" in architectural design or "excellent" or "very good" in relation to the environment. Category III would consist of *contributory* buildings located outside a conservation district.²⁶⁵ Category IV would contain those buildings located within a conservation district considered either individually or contextually important.²⁶⁶ Although the Plan only prohibits demolition of *significant* buildings, alterations to *contributory* and *significant* buildings would be regulated in the same manner.²⁶⁷ The owner of a *contributory* building may also transfer TDRs, but once it has done so the building will be treated as if it were a *significant* building;

258. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, at § 1105.

259. DOWNTOWN PLAN, *supra* note 6, at 59; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 1112.7(a).

260. DOWNTOWN PLAN, *supra* note 6, at 65, 67; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, §§ 1102(a), (b). For the rating methodology and criteria, see DOWNTOWN PLAN, *supra* note 7, at 63-65.

261. DOWNTOWN PLAN, *supra* note 6, at 67; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 1102(c).

262. DOWNTOWN PLAN, *supra* note 6, at 71; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, §§ 1111.-1111.6.

263. DOWNTOWN PLAN, *supra* note 6, at 67, 68 (Table 5), 70 (Table 6); PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, art. 11, apps. A, B.

264. DOWNTOWN PLAN, *supra* note 6, at 67; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, §§ 1109(a), 128(c).

265. See *infra* notes 271-77 and accompanying text.

266. DOWNTOWN PLAN, *supra* note 6, at 71-72; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 1102(c), (d).

267. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 1111.6.

that is, it would be permanently protected from demolition.²⁶⁸ Thus, this provision encourages protection of *significant* buildings which otherwise might be torn down. The Plan nominates 183 buildings for designation as *contributory*.²⁶⁹

In comparison to the existing Planning Code, the Downtown Plan's proposed TDR scheme increases the amount of unused square footage which may be transferred from a designated building and allows developers to use TDRs in a more flexible manner. At present, a maximum of one-half of the unused development rights are transferable, and then only to an adjacent lot.²⁷⁰

The Plan also proposes a process by which the Board of Supervisors would designate "conservation districts" and nominates six such districts having concentrations of structures that "together create geographic areas of unique quality."²⁷¹ The largest of the six conservation districts is centered on Union Square.²⁷² Most of the area's post-fire structures remain intact, creating one of the best examples of Beaux-Arts "City Beautiful" urbanism in the country.²⁷³ Of the 324 buildings in the conservation district, 112 would be designated *significant* and 114 *contributory*, leaving only 98 buildings unrated.²⁷⁴ One conservation district is centered south of Market Street, on New Montgomery and Second Streets, and contains forty-seven buildings, forty of which the Plan would designate as *significant* or *contributory*.²⁷⁵ Another district consists of twelve buildings clustered around the Pacific Stock Exchange at Pine and Sansome Streets. The Plan identifies seven of these buildings as *significant*; the other five are *contributory*.²⁷⁶ The remaining three conservation districts, located within the densely developed office core, are lively, small scale pedestrian-oriented areas.²⁷⁷

To preserve the character of conservation districts, controls beyond those applicable to *significant* and *contributory* buildings are proposed. First, reduced height limits would be instituted in five of the six dis-

268. DOWNTOWN PLAN, *supra* note 6, at 67, 73; PROPOSED SAN FRANCISCO PLANNING CODE *supra* note 7, §§ 1109(b), 128(c).

269. DOWNTOWN PLAN, *supra* note 6, at 71 (Table 7), 72 (Table 8); PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, art. 11, apps. C, D.

270. *See supra* notes 31-33 and accompanying text.

271. DOWNTOWN PLAN, *supra* note 6, at 74-77; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, §§ 1103-1104.

272. DOWNTOWN PLAN, *supra* note 6, at 74-75; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 1103.1(a), art. 11, app. E.

273. *See* SPLENDID SURVIVORS, *supra* note 12, at 35.

274. DOWNTOWN PLAN, *supra* note 6, at 74.

275. *Id.* at 75; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 1103.1(b), art. 11, app. F.

276. DOWNTOWN PLAN, *supra* note 6, at 77; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 1103.1(f), art. 11, app. J.

277. DOWNTOWN PLAN, *supra* note 6, at 75-77; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, §§ 1103.1(c)-(f), art. 11v, apps. G, H, I.

tricts.²⁷⁸ Second, should any undesignated building within a conservation district be replaced or undergo compatible exterior renovations, its unused FAR would be transferable.²⁷⁹ Finally, all new construction and exterior building alterations within a conservation district would be reviewed by the Department of City Planning to ensure consistency in scale and design with the architectural quality of the district.²⁸⁰

E. Design Review

The Downtown Plan would replace the inconsistency, procedural confusion, and questionable legislative authority of the current Department and Commission discretionary review process with a mandatory formal design review procedure. To guide the review process, the Plan identifies many broad urban design concerns including: base, facade, and building top treatment; design and siting of pedestrian uses and open space; massing and orientation to maximize sunlight and minimize wind speeds; preservation of traditional streetwalls; and compatibility with neighboring structures and historic districts. Design review also would address view blockage, traffic circulation, sidewalk landscaping, and housing unit size.²⁸¹ The Plan would require the Department or the Commission to determine whether proposals for new development or substantial alterations to existing development address each of these urban design concerns.²⁸²

IV

URBAN DESIGN ANALYSIS OF THE DOWNTOWN PLAN²⁸³

Throughout its development, the Downtown Plan had been guided

278. DOWNTOWN PLAN, *supra* note 6, at 75-77, 83 (map 15).

279. *Id.* at 75-77; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 1109(b), (c).

280. DOWNTOWN PLAN, *supra* note 6, at 77; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, §§ 1111.6(c), 1113.

281. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 309.

282. *Id.*

283. This Comment focuses on urban design aspects and not the constitutionality of San Francisco land use regulations. In brief, though, the Downtown Plan will likely survive constitutional challenges based on violations of due process or equal protection, the takings clause, or the First Amendment's guarantee of freedom of expression, even though many features of the Plan will significantly restrict allowable land use.

When reviewing substantive due process or equal protection claims not involving a suspect classification or a fundamental right, courts use the "rational basis" test: if a land use technique or distinction is "rationally related" to a legitimate public purpose, the regulation passes constitutional muster. Under this test, if there is a plausible justification for the regulation, the courts will defer to legislative judgment. *See United States R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 174-79 (1980); *Arlington County Bd. v. Richards*, 434 U.S. 5, 7 (1977); *Lockard v. City of Los Angeles*, 33 Cal. 2d 453, 460-61, 202 P.2d 38, 42-43, *cert. denied*, 337 U.S. 939 (1949). The Downtown Plan provisions should not encounter any difficulties satisfying this relaxed test. *See, e.g., Penn Central Transp. Co. v. New York City*, 438 U.S.

by an assumption that physical and economic growth in downtown San Francisco will and should continue. Given this political acknowledgment, the Plan addresses most of the urban design deficiencies in the existing land-use regulations. At this early juncture, however, the success of the Plan's design, preservation, open space, and height, bulk, and density reduction proposals is impossible to predict. It is also not certain whether application of the discrete urban design policies articulated in the Plan during the formal design review process will promote a more attractive, invigorating urban environment.

A. Downtown Growth

San Francisco's downtown will continue to grow under the Plan, but not at the current hectic pace which critics have deemed "out of

104 (1978) (historic preservation); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (use restrictions); *William C. Hass & Co., Inc. v. City and County of San Francisco*, 605 F.2d 1117 (9th Cir.), *cert. denied*, 445 U.S. 928 (1979) (height restrictions); *Maher v. City of New Orleans*, 516 F.2d 1051 (5th Cir.), *cert. denied*, 426 U.S. 905 (1975) (anti-demolition ordinance); *Associated Home Builders v. City of Walnut Creek*, 4 Cal. 3d 633, 484 P.2d 606, 94 Cal. Rptr. 630, *cert. denied*, 404 U.S. 878 (1971) (open space requirements).

Even the aesthetic guidelines of the Plan, advancing qualities such as slender towers, skyline diversity, streetscape interest, and facade detailing, will likely withstand a substantive due process challenge. See *City Council v. Taxpayers for Vincent*, 104 S. Ct. 2118, 2129 (1984); *Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848, 862, 610 P.2d 407, 414, 164 Cal. Rptr. 510, 517 (1980), *rev'd on other grounds*, 453 U.S. 490 (1981). *But see* Costonis, *Law and Aesthetics: A Critique and a Reformulation of The Dilemmas*, 80 MICH. L. REV. 355, 424-30 (1982).

A successful procedural due process challenge is also unlikely since most Downtown Plan standards, including those regulating sunlight access, slender tower construction, and open space exactions, are legislatively mandated. In addition, the Plan requires public hearings and findings of fact for those variance and discretionary design decisions which are allowed.

A takings challenge is also unlikely to succeed. In *Penn Central*, 438 U.S. at 134-38, and in *Agins v. City of Tiburon*, 447 U.S. 255, 260-62 (1980), the Supreme Court identified several important factors to be considered in determining whether public regulation, in the absence of actual physical invasion of property, constitutes a taking. These factors include: (1) the public benefits of the regulation; (2) whether the property retains a reasonable beneficial use; and (3) whether the property owner receives reciprocal benefits from the imposition of the regulation on other owners in the community. The components of the Downtown Plan generally meet these requirements. First, even though the Plan contains density, height, and bulk restrictions, it still permits profitable development of downtown parcels. Downtown property will thus retain a reasonably beneficial use. Second, where development is severely restricted, TDRs are available to provide some relief to owners for their expectation losses. Third, the reciprocal benefits provided by the Plan should significantly mitigate the burdens imposed on individual owners.

A final constitutional challenge which could be raised concerns restrictions on freedom of expression—specifically, the architectural controls—embodied in the Plan. Some scholars have advanced the argument that urban design controls represent content-based restrictions on expression protected by the First Amendment. See Costonis, *supra* at 411-12; Williams, *Subjectivity, Expression, and Privacy: Problems of Aesthetic Regulation*, 62 MINN. L. REV. 1, 21-24 (1977). No court has reached this conclusion, however. All zoning controls restrict architectural expression to some extent, making it difficult for courts to define the scope of a rule protecting such expression. Too broad a rule would radically undermine established judicial attitudes toward zoning.

control."²⁸⁴ By the year 2000, total building area and employment downtown are projected to increase by 21.7 million square feet²⁸⁵ and 91,000 jobs,²⁸⁶ respectively. In contrast, under current controls an estimated 29.5 million square feet of new development²⁸⁷ and 106,300 new jobs²⁸⁸ are projected. Under the Plan, annual office building construction should be reduced to 840,000 square feet from the current figure of 1.645 million square feet.²⁸⁹ If the various urban design objectives of the Downtown Plan can be achieved, and new mass transit²⁹⁰ and housing²⁹¹ can be constructed, the adverse effects of anticipated growth should be appreciably mitigated.

Perhaps because it is uncertain whether the Plan will meet its objectives or be effective in managing San Francisco's burgeoning growth, vigorous efforts are now underway to add an objective growth limitation or annual development cap to the Downtown Plan. These efforts will probably succeed, because the Mayor has recently announced her support for an annual limit of 750,000 square feet of office development in the C-3 district, to be in effect for three years.²⁹²

284. Adams, *The Perpetual Crisis*, San Francisco Examiner, Aug. 28, 1983, California Living Mag., at 5, 6.

285. DOWNTOWN EIR (VOL.1), *supra* note 11, at IV.B.32.

286. *Id.* at IV.C.27 (table IV.c.10), VII.C.33 (table VII.C.1.).

287. *Id.* at VII.B.4 (table VII.B.2).

288. *Id.* at VII.C.3 (table VII.C.1).

289. *Id.* at VII.B.2 (table VII.B.1).

290. One chapter of the Plan is devoted entirely to transportation concerns. DOWNTOWN PLAN, *supra* note 6, at 97-127. For the growth projected under the Plan to be "manageable," the number of commuters per vehicle must increase from 1.5 to 1.7, and the percentage of commuters using public transit must increase from 64% to 70%. *Id.* at 103. To fulfill these objectives, the Plan recommends several capital and noncapital transportation improvements. The Plan does not, however, specify how these improvements are to be financed.

291. The demand for housing created by continued office development in downtown San Francisco is among the most significant environmental impacts of growth. To meet new housing demand, the Plan proposes that: (1) housing adjacent to downtown be protected from conversion to commercial uses; (2) mixed commercial-residential projects be built downtown; (3) housing be allowed to exceed the base FAR in the C-3-G and C-3-S districts; (4) underused industrial and commercial areas adjacent to downtown be converted to residential use; (5) high-density housing be built in several areas adjacent to downtown; (6) three neighborhoods near downtown be rezoned to preserve their residential character; and (7) office developers continue to be required to provide a certain number of housing units as a condition of project approval. DOWNTOWN PLAN, *supra* note 6, at 37-45. It is uncertain whether these policies will stimulate the construction of the 1000 to 1500 new units annually that will be required to meet demand. *Id.* at 37. In the decade from 1971 to 1980, only about 7250 dwelling units were added to the city's supply. Adams, *supra* note 284, at 6. During that period, housing costs increased significantly and many of the city's low-income residents were displaced. Critics charge that the Plan will be ineffective to reverse this trend. See, e.g., Beyeler, *San Francisco's Downtown Plan*, San Francisco Examiner, Jan. 15, 1984, § B, at 9, col. 1.

292. *Feinstein's Highrise Plan Allows Some Loopholes*, San Francisco Chron., May 8, 1985, at 1, col. 1. For an analysis of the impact of a 500,000 square foot and 1,000,000 square foot annual office space development cap, see DOWNTOWN EIR (VOL. 1), *supra* note 11, at V.A.1-.5.

More stringent growth controls, such as the proposed cap, would marginally ease the city's housing crunch²⁹³ and lessen the burden on congested streets and public transit systems.²⁹⁴ On the other hand, such controls would curtail employment opportunities and increase, perhaps intolerably, the price of commercial space downtown as the demand for space outpaced supply.²⁹⁵ Because of high commercial rents,²⁹⁶ downtown is already experiencing an exodus of marginally profitable office employers.²⁹⁷ Absolute growth limits probably would only exacerbate that trend.²⁹⁸ Executives would remain downtown while "back office" support employment would move to other areas of the city or region. These areas of secondary growth would then experience greater development impacts.

Even though the Plan would not restrict growth absolutely or by an objective formula, it does embody policies to limit growth. Implementation of the Plan would ultimately cause commercial rents to increase in San Francisco,²⁹⁹ thus accelerating the exodus of office support functions³⁰⁰ and contributing to the regional decentralization of office growth.³⁰¹

B. Office District Density and Building Size

Part II of this Comment identified three serious urban design problems in the C-3-O office district. First, the current high density limits have allowed growth to approach or exceed the area's capacity. Second, the existing height and bulk controls have encouraged the demolition of many significant but relatively small scale historic buildings. Owners of such buildings have often chosen, for economic reasons, to replace them with new development. Third, existing land use controls have permitted the construction of massive unarticulated structures that cast long shadows on the streets, overpower remaining small scale buildings, and create an austere benching effect that dominates the city skyline.

Although the Downtown Plan would not diminish the development

293. DOWNTOWN EIR (VOL. 1), *supra* note 11, at V.D.2.-.3.

294. *Id.* at V.E.2.-.3.

295. *Id.* at V.C.1.

296. The price of downtown commercial space in San Francisco is the second highest in the country. Thorpe, *Rents Forcing Firms to Leave San Francisco*, Wall St. J., Nov. 8, 1983, at 27, col. 3.

297. *Cf.* DOWNTOWN EIR (VOL. 1), *supra* note 11, at V.A.5 (rent increases will limit the amount of affordable space available).

298. *Id.* at V.C.3. Greater restrictions on growth also would increase pressures for the conversion of buildings currently devoted to retail, industrial, and residential uses to office space. *Id.* at V.A.1-.5.

299. *Id.* at IV.B.40-41.

300. *Id.* at IV.C.32.

301. *Id.* at IV.B.61.

growth rate anticipated through 1990,³⁰² it would significantly reduce density increases thereafter. If continued, the current 14:1 base FAR would result in the construction of nine million square feet of development from 1990 to 2000.³⁰³ By contrast, the Plan's proposed maximum 10:1 FAR and the permanent scrapping of density bonuses would result in an estimated 4.2 million square feet of construction during the same period, a forty-five percent reduction in projected growth.³⁰⁴ Without implementation of the Plan, growth would probably overload street and public transit capacities in the C-3-O district,³⁰⁵ result in demolition of numerous architecturally significant structures,³⁰⁶ deprive pedestrians of even more sunlight,³⁰⁷ and create further benching of the skyline.³⁰⁸ By reducing growth in the C-3-O district and imposing rigorous development standards, the Plan should substantially mitigate these impacts. The Plan would direct most new office development away from the current office district core to the new Special Development district.³⁰⁹ The industrial base of the Special Development district has been in decline for some time; increased office development would probably force the remaining industrial uses out of the area sometime after the year 2000. Diversity interests would thus be compromised to facilitate the correlative goals of permitting new growth to continue while at the same time encouraging preservation in the present office district.

The density restrictions on new construction, the expanding downtown business population, and mounting construction costs will place increasing pressure on building owners downtown and in the peripheral areas to convert structures used for other purposes into offices.³¹⁰ To preserve existing industrial, warehousing, retail, and housing uses it will probably be necessary to rezone some of these peripheral areas to limit office encroachment. The city is currently developing industrial preservation and residential plans for the North Beach, Tenderloin, and western South of Market Street areas to prevent excessive office conversions.³¹¹

302. The C-3-O district presently has 49.2 million square feet of development and will contain an estimated 55.5 million square feet by 1990, whether or not the Plan is implemented. *Id.* at VII.B.9 (table VII.B.3).

303. *Id.*

304. *Id.*

305. See CONSULTANT'S EIR (VOL. 1), *supra* note 66, at V.E.8-.22.

306. *Id.* at V.H.1.1-.3.

307. *Id.* at V.H.3.4.-.11.

308. *Id.* at V.H.4.2-.4.

309. Prior to the year 2000, this channelling of office development probably will not cause an appreciably greater shift than would be fostered by normal market pressures. See DOWNTOWN EIR (VOL. 1), *supra* note 11, at IV.B.38.

310. See *id.* at IV.B.41-.43, IV.B.56-.60.

311. San Francisco, Cal., Ordinance 574-83 (Nov. 28, 1983). See DOWNTOWN EIR (VOL. 1), *supra* note 11, at V.B.3-.4.

The innovative bulk requirements, more than any other element of the Downtown Plan, may cause architects to complain that city planners are dictating building design.³¹² Noted architectural critic Paul Goldberger expresses a different view. He sees the Plan as being "flexible enough to leave architects and real estate developers the leeway they should have."³¹³ Furthermore, the Plan recommends that if deviation from the bulk controls can achieve a "distinctly better design," that design should be allowed.³¹⁴

The present height and bulk limits downtown have encouraged repetitive, bulky, flat-topped office building designs.³¹⁵ Until the Planning Commission began using discretionary review to block some flat-topped structures in the early 1980's, few developers or their architects took advantage of the open-ended bulk controls to design distinctively shaped buildings. The Downtown Plan's proscription against flat-topped skyscrapers reflects more than simply the desire to institute a trendy post-Modern style.³¹⁶ Rather, the proposed bulk controls serve important civic and aesthetic interests by encouraging diversity and discouraging further benching in the city's skyline.³¹⁷

C. Retail District Preservation

Neither the existing density, height, and use controls nor the landmarks ordinance ensure preservation of the architecturally-outstanding midrise buildings surrounding Union Square. The base FAR of 10:1 and height limits up to 500 feet invite redevelopment of the area,³¹⁸ particularly since large offices and hotels are permitted as of right. The landmarks ordinance can delay demolition of designated city landmarks for only one year and completely fails to protect significant structures never designated as landmarks. By the early 1980's, office development began encroaching on the retail district's eastern edge.³¹⁹ Kearny Street,

312. Towers higher than 160 feet would have to taper, and all tower tops would have to be sculpted. See *supra* notes 190-96 and accompanying text.

313. Goldberger, *San Francisco Plans a Coherent Future*, N.Y. Times, Oct. 2, 1983, § H, at 34, col. 1.

314. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 272.

315. Interview with George Williams, Deputy Director for Plans and Programs, San Francisco Dep't of City Planning (Mar. 16, 1984). See DOWNTOWN PLAN, *supra* note 6, at 82.

316. See Temko, *New S.F. Plan Bows to Past*, San Francisco Chron., Oct. 8, 1983, at 4, col. 1.

317. DOWNTOWN EIR (VOL. 1), *supra* note 11, at IV.H.45, .47.

318. For example, a 23 story hotel was proposed in 1983 for the corner of Stockton and O'Farrell Streets, one block from Union Square. Adams, *High-rise Urged Near Big Stores Downtown*, San Francisco Examiner, Mar. 1, 1983, § B, at 1, col. 6. The proposal was withdrawn by the developer after the Director of City Planning warned that since the forthcoming Downtown Plan would not allow such intense development in the retail district, the Department would recommend against approval of the project. See Adams, *supra* note 284, at 8, 10.

319. For example, the W. J. Sloane furniture store on Sutter Street was recently converted from a multi-story retail outlet to an office building with ground floor retail use.

the boundary between the retail and office districts, is within the C-3-O office district. Much of the eastern side of Kearny Street has been redeveloped as office buildings.³²⁰

The Downtown Plan would preserve both the scale of development and the historic character of the retail district. Under the Plan, total growth in the C-3-R district between 1990 and 2000 would be about 690,000 square feet; without the Plan growth would be about 1.7 million square feet.³²¹ Height limit reductions would ensure that new development conforms to the midrise level of current structures. Further, the Plan nominates 226 of the area's 324 buildings as *significant* or *contributory*, and creates a conservation district covering essentially the entire C-3-R district.³²² This should preserve most of the architecturally distinctive buildings in the district while maximizing compatibility between new and existing structures. The Plan would discourage conversion of structures in the retail district to intensive office uses.³²³ The Plan also would influence the siting of large hotels.³²⁴ Through the conditional use procedure, large hotels would be allowed in the retail district only if their adverse effects are reduced or eliminated.³²⁵ Even though Kearny Street would remain in the C-3-O office district, controls on intensive development would be significantly tightened. Height limits would be reduced from 500 feet to 130 feet or fifty feet,³²⁶ and new development on Kearny Street would be subject to sunlight access angle requirements.³²⁷ In addition, portions of Kearny Street would be included within a proposed conservation district.³²⁸

320. For example, the Crocker Center's 500 foot tower is on the east side of Kearny Street at Post Street; on the other side of Post Street, San Francisco Federal Savings & Loan is constructing its 21 story headquarters. In 1983, the Planning Commission informally adopted an American Institute of Architects' (AIA) recommendation to lower height and density limits on Kearny Street. Adams, *Developers Stew Over Height, Density Limits*, San Francisco Examiner, Mar. 11, 1983, § B, at 1, col. 2. Subsequently the Commission exercised discretionary review power to turn down a proposed 315 foot tower at the corner of Kearny and Sutter Streets. *Planners Reject High-Rise Design but not Project*, San Francisco Examiner, July 29, 1983, § B, at 1, col. 5.

321. DOWNTOWN EIR (VOL. 1), *supra* note 11, at VII.B.9 (table VII.B.3).

322. See DOWNTOWN PLAN, *supra* note 6, at 68 (table 5), 70 (table 6), 71 (table 7), and 72 (table 8); PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, art. 11, apps. A, B, C, D.

323. DOWNTOWN EIR (VOL. 1), *supra* note 11, at IV.B.42.

324. *Id.* at IV.B.46.

325. See DOWNTOWN PLAN, *supra* note 6, at 31; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 216(b).

326. DOWNTOWN PLAN, *supra* note 6, at 83 (map 15). The Plan proposes a 50 foot height limit, in the Kearny-Belden Conservation District (between Pine and Bush Streets). Elsewhere on Kearny, the height limits would be 80 feet, with additional variances up to 130 feet as long as the building would not have an adverse effect on the scale of the area or sunlight access to public parks and sidewalks. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 263.6.

327. See *supra* text accompanying notes 240-41.

328. DOWNTOWN PLAN, *supra* note 6, at 74-76.

D. Mandatory Urban Design Amenities

The requirements proposed in the Downtown Plan represent a radical shift from voluntary to mandatory urban design amenities. The voluntary system granted density bonuses to developers who incorporated amenities such as arcades, plazas, and transit access into project design. This system suffered from several shortcomings.³²⁹ Bonuses were granted for amenities of poor quality and inappropriate design. On the other hand, developers who assembled large enough lots failed to incorporate any amenities because density bonuses were unnecessary. Further, many urban design qualities, such as streetscape and sunlight concerns, were simply not considered in the bonus system.

The Downtown Plan would completely eliminate the voluntary density bonus system and require good design and appropriate amenities as conditions of development.³³⁰ Quality open space, public art, and retail uses on ground floors throughout the C-3 district would enhance pedestrian comfort and convenience as well as the visual and experiential qualities of downtown. Objective amenity requirements and formal design review also would address such factors as sunlight access, streetscape interest, skyline diversity, and facade compatibility. In general, attention to the entire design, massing, and siting of a structure should ensure that new buildings enhance, rather than detract from, the human quality of the downtown.

The amenity requirements proposed in the Plan are estimated to raise construction costs six to ten percent.³³¹ The added costs to developers, however, may be partially offset by the growth-constricting impacts of the Plan, particularly anticipated rental increases.³³² Analyses indicate that even with higher construction costs, continued construction downtown will remain economically viable.³³³

E. Historic Preservation

The Downtown Plan's historic preservation strategies would avoid much of the inconsistency and uncertainty that plague present regulatory attempts to conserve San Francisco's architectural heritage. The Planning Commission's ability to preserve architecturally important buildings would not be circumscribed by restrictive enabling provisions, like those in the present landmarks ordinance granting authority to prohibit facade

329. See *supra* notes 30, 38-40 and accompanying text.

330. The Department concluded that any amenities worth encouraging with bonuses were so essential to the downtown environment that they should be required. Interview with George Williams, *supra* note 315.

331. DOWNTOWN PLAN (VOL. 1), *supra* note 11, at IV.B.37.

332. *Id.* at IV.B.40.

333. See *id.* at IV.B.39.

alteration but only to delay demolition.³³⁴ Preservation efforts would not be vulnerable to the vicissitudes of developer cooperation and the attendant uncertainties of discretionary review. Under the Plan, very simply, none of the 251 downtown buildings designated *significant*³³⁵ would be torn down or adversely altered unless found to be unsafe or economically unviable.³³⁶

The Plan's protections for *significant* buildings may even be too inflexible. No mechanism is proposed that would permit the Planning Commission to approve the replacement of an economically viable *significant* building with new development or open space of superior design or public benefit. Not all the buildings nominated by the Plan for *significant* designation are absolutely essential to maintain the character of downtown. It may be desirable to provide some flexibility, subject to stringent conditions, by allowing occasional exceptions to the demolition prohibition.

The economic costs of retaining *significant* buildings would be largely offset by the correlative right to transfer, bank, or sell all unused development rights up to the site's total base FAR. The substantial reductions in base FARs throughout downtown, plus the incentives for projects in the Special Development district to accept TDRs, should make all TDRs from designated buildings marketable within twenty-five to thirty-five years,³³⁷ provided additional density limits on nonhistoric buildings are avoided.

The Downtown Plan also addresses the failure of the current landmarks ordinance to protect that aspect of San Francisco's historic character created by the combined effect of the city's many older buildings. The design of these older buildings commonly reflects a concern for neighborhood compatibility and the traditional San Francisco streetwall. The Plan strives to preserve this unique character in three ways. First, the *significant* or *contributory* buildings nominated by the Plan cover much of downtown.³³⁸ Second, the six conservation districts proposed by the Plan would preserve the scale of those areas and ensure the compatibility of new development. Third, the Plan's streetscape and open space siting policies should promote retention of downtown's traditional streetwall pattern.

334. See *supra* notes 55-69 and accompanying text.

335. See *supra* note 263 and accompanying text.

336. The Downtown EIR estimates that between 1990 and 2000, no A-rated buildings and only seven B-rated buildings will be lost in the entire C-3 zone under the Plan. DOWNTOWN EIR (VOL. 1), *supra* note 11, at IV.H.26 (table IV.H.3).

337. *Id.* at IV.B.67-.70. The ability of owners of *contributory* buildings to use the generous TDR provisions would encourage preservation of those structures, but in many cases may not offset the economic incentive to redevelop the site. *Id.* at IV.B.71-.73.

338. See *supra* notes 263, 269 and accompanying text.

F. The Pedestrian Environment

Perhaps the most unfortunate urban design consequence of the building boom that began in 1964 was the degradation of the pedestrian environment. Downtown San Francisco's older buildings, mostly built in the earlier building boom following the 1906 earthquake, are typically midrises. These buildings do not cast excessive shadows nor do they cause sidewalk wind acceleration. They were built shoulder to shoulder to the lot line, creating a traditional street-to-building relationship defined by relatively consistent heights, beltlines, and cornices. Tall older buildings have detailed facades and distinct bases, shafts, and capitals. By contrast, the tower-in-the-park highrises, so prominent during the late 1960's and 1970's, "established an entirely new urban landscape that was anti-urban in its openness and denial of the proximity of buildings and activities that gives cohesiveness and a sense of community to the city."³³⁹ These newer buildings often lack discrete bases, have two-dimensional smooth skins which emphasize their monumental scale, and seldom incorporate pedestrian-oriented services into their ground floors.³⁴⁰ The much heralded plazas, strongly encouraged by density bonuses, are too often shady, windy, and as blank and uninteresting as the building facades.³⁴¹ Neither objective Planning Code requirements nor articulated design policies addressed these problems.

The Downtown Plan squarely rejects the tower-in-the-park model and, by establishing both mandatory controls and detailed discretionary standards, should encourage a return to traditional street patterns. The open space requirements proposed in the Plan should result in open space which enhances rather than disrupts the streetscape. The Plan would reduce wind impacts³⁴² and would protect direct sunlight to retail streets, lunchtime alleys, and major public open spaces.³⁴³ The ground level retail use and public art requirements, and the facade design policies should promote a more visually interesting, human-scaled pedestrian environment.

The economic and cultural diversity of San Francisco's downtown continues to disappear, however, and the Downtown Plan does not ex-

339. *SPLENDID SURVIVORS*, *supra* note 12, at 44.

340. Perhaps due in part to the Department's efforts during informal design review, many of the newest buildings in downtown San Francisco reflect a genuine sensitivity to pedestrian concerns. For example, Crocker Center has continuous retail uses on its ground floor, a three story shopping galleria, colorful ground level awnings, and a distinctive base; the 101 Montgomery Street building features a ground floor retail arcade and brass grillwork on the second level; and the new Federal Reserve Bank includes an arched colonnade along its entire Market Street facade.

341. See Hedman, *supra* note 14, at 15-16. For example, the 101 California Street building includes a shady plaza facing a sleek facade.

342. *Id.* at IV.H.38.

343. *DOWNTOWN EIR (VOL. 1)*, *supra* note 11, at IV.H.43.

PLICITLY address this problem. As the limitations on growth cause the price of downtown space to increase, the trend of "[t]wo-dollar sandwich shops [being] replaced by six-dollar hamburger brasseries"³⁴⁴ will likely increase. On the other hand, the Plan's requirement that the ground level of new buildings contain retail uses should facilitate development of the 1.4 million square feet of retail space projected to be built between 1984 and 2000 in the C-3 zone.³⁴⁵ It is hoped that this expanded supply of space will make it possible for a wide range of retail uses to survive.

G. Facade Appearance

The facades of San Francisco's modern office buildings are similar to those of large office buildings in every American city: an emphasis on smooth glass, steel, and concrete skins; minimal articulation of structural bays; and an avoidance of architectural projections, decorative embellishments, and any attempt to relate new to old. The result is an alienating blandness. Throughout the 1960's and early-1970's, city planners were reluctant to exert influence over facade design. Such intervention was not within the planner's traditional scope of responsibility. But just as importantly, a theory of modern architecture had not yet emerged that provided an alternative approach to urban design.³⁴⁶ Only in the late-1970's and early-1980's have building designs concerned with detailing, articulation, and harmony with surroundings reappeared in downtown San Francisco. At the same time, the Department of City Planning tentatively began to encourage such designs through informal design consultation.³⁴⁷ With only vague policies to guide them, however, planners have been only marginally successful in discouraging the construction of additional bland facades.

The Downtown Plan encourages richer facade design. Provisions of the Planning Code that discourage projections and other detailing would be eliminated. The Plan's facade policies would give architects specific guidance and provide planners with standards for design review. Public intervention in an area as susceptible to personal taste as facade design, however, should be cautious. The satisfaction of conflicting tastes tends to water down innovation and leave safe, but perhaps less imaginative, architecture. Therefore, planners should limit their efforts to ensuring that the policies of the Plan are fulfilled and avoid redesigning buildings themselves.

344. Adams, *supra* note 284, at 7.

345. DOWNTOWN EIR (VOL. 1), *supra* note 11, at IV.B.17 (table IV.B.6), IV.B.31 (table IV.B.9), IV.B.43-45.

346. Hedman, *supra* note 14, at 16.

347. See *supra* notes 143-49 and accompanying text.

H. Environmental and Discretionary Review

The Downtown Plan's design policies should result in projects that have fewer potential adverse impacts on the urban environment than do projects built pursuant to existing zoning requirements. In general, the height, bulk, and density of proposed buildings would be lower, fewer historic structures would be demolished, proposed development would minimize obstruction of direct sunlight and leave open spaces intact, and designs would be more visually sensitive. Thus, the Plan would mitigate many of the identified cumulative effects of downtown growth. In addition, theoretically, more projects should receive negative declarations on all or most potential impacts.

The Downtown EIR, which analyzes the impacts of continued growth in San Francisco,³⁴⁸ should provide important information that previously had to be gathered at great expense for each individual project.³⁴⁹ The comprehensive studies carried out in preparation for the Downtown Plan, such as those for sunlight access and open space needs, should also facilitate the preparation of accurate, relatively inexpensive individual EIRs and negative declarations.³⁵⁰

The Downtown Plan addresses some of the difficulties experienced by city planners in the discretionary and environmental review processes. Under the Plan, Department of City Planning design review would become mandatory. Developers no longer would be able to circumvent the Department's consultation by seeking project approval directly from the Planning Commission. Because the Plan provides detailed design criteria and implementing guidelines, the Department should not have difficulty identifying projects that fail to meet those standards. The Department will probably consider any violation of the policies set out in the Plan to be a significant environmental impact³⁵¹ requiring appropriate design modifications.

Of course, the recommendations in the Downtown Plan that cannot be translated into objective Planning Code requirements, such as the provisions encouraging harmonious facades, lively streetscapes, and interesting building tops, remain mere general policies. Their effect will depend on the sincerity with which developers and architects heed them, the diligence and political tenacity of the city's planners and Planning Commission, the vigilance of the public, and, perhaps, the willingness of courts to police the process. In the past, San Francisco's planners have been ac-

348. See *supra* notes 11, 41 and accompanying text.

349. In particular, the Downtown EIR provides, for the first time, accurate cumulative impact analyses. This comprehensive information should more than satisfy the recent judicial mandate for more complete cumulative impact assessment in individual project EIRs. See *supra* note 120.

350. Telephone interview with Barbara Sahm, *supra* note 112.

351. *Id.*

cused of drawing up marvelous plans, but failing to implement them when difficult concrete decisions must be made.³⁵² It should be fairly difficult, however, to ignore the Plan's detailed policies during individual project review.

The Downtown Plan would not limit the Planning Commission's authority to impose conditions on a development proposal prior to project approval. The Commission would be able to consider a project's response to the Plan's design policies and to require mitigation of impacts not addressed by the Plan's objective requirements.³⁵³ Thus, even after complying with the Plan's stringent density, height, bulk, setback, and preservation requirements, a proposal technically could face a completely open-ended review. A limitation on the scope of Commission review may have been advisable to impart some certainty to developers.

In nearly all other respects, on the other hand, the overall emphasis of the Plan is on urban design certainty, not on discretionary flexibility.³⁵⁴ Most of the Plan's proposed controls are mandatory and cannot be modified by the Commission based on findings of other overriding public interests. For example, the bulk controls prescribe only one type of tower, incorporating setbacks and a sculpted top. Even for extraordinary designs that clearly would enhance the city's skyline, failure to meet the Plan's bulk limits would generally mean permit denial.³⁵⁵ Similarly, the Commission could not approve a major alteration that would detract from a *significant* building's architectural character, even though the alteration might create important public benefits.³⁵⁶

The certainty that the Plan mandates is an understandable response to the inconsistent results obtained under the existing discretionary review system. Yet, a degree of flexibility in land use regulation is desirable. It is simply impossible to gauge the needs and peculiarities of future development proposals. Should the lack of flexibility prove unwieldy in the future and prevent desirable development, there may well be efforts to incorporate more discretion into the Plan.

CONCLUSION

No universally applicable planning formula can be culled from San Francisco's downtown zoning experience. City planning must reflect the

352. See Adams, *supra* note 284.

353. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 309.

354. The Planning Department is wary of potential political pressures that could be brought to bear on the at-large members of the Commission, *see supra* note 5, to grant exceptions to objective Plan requirements. Consequently, the Plan minimizes the opportunity for such exceptions. Interview with George Williams, *supra* note 315.

355. Exceptions to the bulk controls would be permitted as conditional uses, but only if the proposal conforms to the general set-back and sculpted top model. DOWNTOWN PLAN, *supra* note 6, at 95; PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 272.

356. PROPOSED SAN FRANCISCO PLANNING CODE, *supra* note 7, § 1111.6.

distinctive features of each urban area. In addition, market strength varies in each city, so that planning strategies feasible in San Francisco may prove impractical elsewhere. Every city should seek, however, to achieve a balance between "the public's right to a coherently planned, civilized place"³⁵⁷ and the urban economy's need to develop and profit from valuable central city land. San Francisco's experience offers an example of one city's continuing effort to achieve that balance. Perhaps other cities can learn from the Downtown Plan's comprehensive and studied approach to central business district zoning.

It is too early to predict how successful the Downtown Plan will be in achieving the proper planning/development balance. Even if the Plan should require further modification to achieve this balance, its importance lies in the city's ambition—to guarantee that its growing downtown becomes not a dull and uncomfortable concrete wasteland, but an inviting, vital, diverse urban environment. No city should seek less.

357. Goldberger, *San Francisco Plans a Coherent Future*, N.Y. Times, Oct. 2, 1983, § H, at 34, col. 1.