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California Land Use & Development Law Report

# General Plan's Size Ranges for Shopping Centers a "Flexible" Policy, Not a Rigid Mandate

The City of Modesto's General Plan includes a policy providing that certain neighborhoods "should" include a "7-9 acre neighborhood shopping center, containing 60,000 to 100,000 square feet." The Fifth District Court of Appeal upheld against challenge the city's determination that development of an approximately 170,000 square foot shopping center on about 18 acres in one such neighborhood would be consistent with that policy. [Naraghi Lakes Neighborhood Preservation Ass'n v. City of Modesto](#). Over neighborhood opposition, the city approved a general plan amendment and rezoning to allow construction of the shopping center. In upholding the city's findings that these actions were consistent with its general plan, the court first stated that the project was compatible with general plan policies aside from its identification of acreage and square footage figures. The court then deferred to the city's interpretation of the latter policy as offering "flexible descriptions to provide a basic model or pattern to guide the future development of the applicable neighborhood," rather than "rigid development mandates." The court found this interpretation was supported by the plain language of the general plan, including its use of the permissive word "should" in place of the mandatory "shall." The record also contained substantial evidence, the court determined, that the city consistently applied the acreage and square footage figures flexibly, as it previously had approved shopping centers larger than the stated ranges. The court's decision reinforces existing case law emphasizing the significant discretion a local agency enjoys when considering whether a proposed development is consistent with its general plan.

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