

HOW TO PREPARE FINDINGS AND CONDITIONS OF APPROVAL

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FINDINGS

- Findings explain how a city processed evidence presented in reaching a decision.
- Documenting the city's thought process.
- “Bridge the gap” between the evidence and ultimate decision.



PURPOSE OF FINDINGS

- Provides a framework for making decisions, thereby enhancing the integrity of the administrative process
- Facilitates orderly analysis and reducing the likelihood the city will leap randomly from evidence to conclusions
- Serves a public relations function by demonstrating that administrative decision-making is careful, reasoned, and equitable
- Enables the parties to determine whether and on what basis they should seek judicial review and remedies
- Apprises the reviewing court of the basis for the city's decisions. See *Topanga Ass'n for a Scenic Community v. Central Los Angeles*, 11 Cal.3d 506 (1974)

WHEN ARE FINDINGS NECESSARY?

- Decisions made in a nonlegislative/adjudicatory role (variances, use permits, subdivision maps, design proposals).
- Not **required** for legislative acts (general plan adoption, rezoning) unless required by statute or local ordinance. Law requires specific findings when reducing number of housing units or not approving a housing project.
- Imposing conditions/fees or requiring dedication to development. Must demonstrate the condition has a “rough functionality” to the development’s impact.

FORM

- Provide written findings.
- Conclusory findings are not adequate. Need to explain how the agency derived at its decision.
- Use the word “because” - “The proposed project subject to the use permit is consistent with the General Plan because . . .”.
- Tie the findings to requirements in the city’s plans, standards and/or codes.

IMPORTANT TO MAKE A CLEAR RECORD

The City Council bases its decision includes, but is not limited to: (1) the **Mitigated Negative Declaration/Initial Study** and the appendices and technical reports cited in and/or relied upon in preparing the MND/IS; (2) the **staff reports**, City files and records and other documents, prepared for and/or submitted to the City relating to the MND/IS, and the Project itself; (3) the evidence, facts, findings and other determinations set forth in this **resolution**; (4) the **General Plan** and its related EIR, and the Municipal Code; (5) all designs, plans, studies, data and correspondence submitted to the City in connection with the MND/IS, and/or the **Project** itself; (6) all documentary and **oral evidence received at public** workshops, **meetings**, and hearings or submitted to the City during the comment period relating to the MND/IS and/or the Project itself; (7) all **other matters of common knowledge to the to the City**, including, but not limited to, City, state, and federal laws, policies, rules, regulations, reports, records and projections related to development within the City and its surrounding areas.

SAMPLE FINDINGS

General Plan Consistency Findings.

No. 1 -

- **Poor Example** - The proposed single family project of 12 units is consistent with the General Plan land use designation.
- **Good Example**- The proposed Project is consistent with the applicable General Plan land use designation because the proposed Project includes 12 units which is within the density range allowed by the General Plan land use designation of Residential 0-6 units/gross acre land.

No. 2 –

- **Poor Example** The proposed rezoning to light industrial is consistent with all applicable General Plan policies.

- **Good Example** – Re-designating the site from business/office to light industrial is consistent with the General Plan because it is consistent with the following applicable General Plan policies:
 - 2.1.1 - Promote a combination of employment and residential uses that provide both jobs and housing for the City's residents.
 - 2.1.4 - Promote the placement of the most intensive non-residential development (Light Industrial) in the Planning Area as defined in Figure 2-3.

- 2.4.1 - The City does not support or accommodate general Heavy Industrial uses. The City does allow and encourage Light Industrial and uses in appropriate locations.
- 2.4.3 - Ensure there is adequate land available to accommodate industrial development.
- 5.1.3 - Actively recruit businesses and industries that are compatible with the General Plan's land use and implementation goals and policies.

Site Development Plan Findings

No. 1 -

- **Poor Example** - Streets and pedestrian facilities are adequate to carry the traffic expected to be generated by the SDP.
- **Good Example** - Streets and pedestrian facilities are adequate to carry the quantity and type of traffic expected to be generated by the SDP because the existing streets will be improved as required by condition of approval no. 10 that requires the widening of the street to four lanes with a separate sidewalk along the eastern side of the street. These modifications to the street widths will carry traffic safely in and out of the site as explained at page 17 of the traffic report attached to the Staff Report. Furthermore, the proposed landscape buffer and meandering sidewalk will provide a connection between neighborhoods allowing for pedestrians to walk safely within and around the neighborhood.

No. 2 -

- **Poor Example** - The site is physically suitable for the type and density/intensity of development being proposed.
- **Good Example** - The site is physically suitable for the type and density/intensity of development being proposed because the proposed development is similar in size and intensity to the residential development surrounding the site. The proposed development allows 10,000 sq. ft. lots with 1 dwelling unit and the surrounding existing development consists of 10,000-12,000 sq. ft. lots with 1 dwelling unit.

No. 3 -

- **Poor Example** - The proposed planned unit development (PUD) would produce a development of superior quality than might otherwise occur from more traditional development applications.
- **Good Example** - The proposed PUD would produce a comprehensive development of superior quality than might otherwise occur from the strict application of the zoning standards requiring 5,000 sq. ft. lots because the proposed development clusters density at the center of the site allowing for more open space at the perimeter, thereby preserving the visual character along Main Street. In addition, the project proposal includes varied types of housing, one and two story and duplexes. This development provides an opportunity for single, elderly and first time homeowners to locate in the city. In addition, the project provides five acres of public open space with picnic facilities and bathrooms and seven miles of walking trails along the perimeter of the development.

Housing Accountability Act ("Anti-NIMBY Law") (Gov. Code § 65589.5)

Precludes denial of a housing project or reducing its density if it complies with "applicable, objective general plan and zoning standards and criteria, including design review standards," without making specific written findings based on a preponderance of the evidence, even if the project does not include affordable housing. Sect. 65589.5(j)

Can only deny housing project if:

- A) Project would have a specific, adverse impact on public health or safety.

A “specific adverse impact” means a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions in existence on date application was deemed complete.

- B) There is no feasible way to satisfactorily mitigate or avoid the adverse impact other than disapproving the project or lowering its density.

Affordable Housing Projects

A City shall not disapprove an affordable project, or condition approval in a manner that renders the housing development project infeasible for development of the affordable units, unless it makes written findings, based upon a preponderance of the evidence in the record.

Can only deny an affordable housing project if:

- The City has adopted a housing element in accordance with Government Code § 65588, is in substantial compliance with the Housing Element law, and the City has met or exceeded its share of the regional housing need of the income category proposed for the housing project.
- The project would have a specific adverse impact upon the public health or safety that cannot be satisfactorily mitigate without rendering the housing development project unaffordable, or development of the emergency shelter financially infeasible; inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon public health or safety.

- The denial of the project or imposition of conditions is required in order to comply with state or federal law (e.g., CEQA), and there is no feasible method to comply without rendering the housing development project unaffordable.
- The project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agriculture or preservation purposes, or the site does not have an adequate water or wastewater facility to serve the project.
- The project is inconsistent with both the city's zoning ordinance and general plan land use designation as specified in the general plan as it existed on the date the application was deemed complete, and the city had adopted a revised housing element in accordance with §65588 that is in substantial compliance with the Housing Element law.

CONDITIONS OF APPROVAL



WHAT ARE CONDITIONS OF APPROVAL?

- Requirements placed on discretionary projects (use permits, development plans, etc...)
- Must be consistent with federal, state and local laws
- Detail the requirements for implementing the approved project

WHO PREPARES CONDITIONS OF APPROVAL?

- Planning staff in coordination with other City departments
- Applicant may have input to ensure conditions of approval are feasible to implement
- Most agencies have standard conditions of approval that are provided to the applicant early in the review process
- Decisionmakers may also add conditions during the hearing process

WHO, WHAT, WHEN, WHY AND HOW

- **Who** implements the condition (applicant) and who is responsible for reviewing and approving (local agency)?
- **What** is the condition trying to implement ?
- **When** will it be implemented (e.g., timing, triggers)?
- **Why** is the condition needed (end result)?
- **How** will compliance be demonstrated (plans, agreement, etc...)?

GOOD EXAMPLE

- Prior to the issuance of the first building permit **[when]** the applicant **[who]** shall design and submit for review plans for a pedestrian access corridor between Blocks F and G **[what]**. Approval of the access corridor shall provide connectivity between the Plaza District (Block F) and Central Park (Block G) **[why]**. The corridor shall be consistent with the design of the Plaza District mixed use concept, be well lit and include appropriate site amenities as set forth in the Plaza District Master Plan in Section 3 **[how]**. Prior to the submittal of construction documents, the Applicant(s) shall obtain preliminary approval of the design by the Zoning Administrator **[who]**.

SAMPLE COA #1

WHAT IS MISSING...?

- The applicant shall submit a residential parking plan designating portions of the common area parking for exclusive use by Phase 2 residents. The plan shall specify parking allocations by unit and any restrictions necessary to preserve the parking rights established for individual residential unit.

(Hint two things...)

REVISED CONDITION

- Prior to issuance of a building permit [**when**], the applicant(s) [**who**] shall submit a residential parking plan [**how**] designating portions of the common area parking for exclusive use by the Phase 2 residents [**why**], for review and approval of the Zoning Administrator [**who**]. The plan shall specify parking allocations by unit and any restrictions necessary to preserve the parking rights established for individual residential unit [**what**].

SAMPLE COA #2

WHAT IS MISSING . . . ?

- A landscaping and irrigation plan for all areas shown on the site plan shall be prepared. The landscaping plan shall include the project's frontage and side yards.

REVISED CONDITION

- The applicant **[who]** shall prepare a landscaping and irrigation plan for all areas shown on the site plan for review and approval of the Community Development Director **[who]** prior to the issuance of shell building permits **[when]**. The landscaping plan shall include the project's frontage and side yards **[what]** and conform to the City's Water Efficient Landscape Ordinance and the Guidelines for Implementation of the City Water Efficient Landscape Ordinance **[why]** and shall be installed prior to final occupancy. The plan shall be prepared by a licensed landscape architect and shall be certified to be in compliance with the City's Water Conservation Ordinance **[what]**.

SAMPLE COA #3

WHAT IS MISSING . . . ?

- Public art shall be designed and located at the entry of the project so that it can be viewed by the public at large.

REVISED CONDITION

- Prior to recordation of the final map **[when]**, the applicant **[who]** shall submit a design **[what]** for review and approval of the Zoning Administrator **[who]** the design and location of the public art piece. The design shall preserve and the character and integrity of the historic Main Street bridge **[why]**. The art shall be located in such a manner that it is visible from Main Street and not obstructed by landscaping **[how]**.

SAMPLE COA #4

WHAT IS MISSING . . . ?

- Prior to building permit issuance, the applicant shall revise the project plans, to demonstrate a reduced breezeway width between the existing garage and the proposed garage.

REVISED CONDITION

- ▶ Prior to building permit issuance **[when]**, the applicant **[who]** shall submit for review and approval of the Zoning Administrator **[who]** revisions to the project plans **[how]**, date-stamped “Received April 3, 2014”, reducing the breezeway width to 5 feet between the existing garage and the proposed garage **[what]** to ensure architectural compatibility with the existing home **[why]**.

SAMPLE COA #5

WHAT IS MISSING . . . ?

- Applicant shall investigate the historical landslide area located on the property and ensure proposed improvements will not cause any landslide risk. Applicant will be responsible for implementation of any mitigation measures outlined by the geotechnical engineer.

REVISED CONDITION

- Prior to issuance of the final map **[when]**, applicant **[who]** shall contract with a licensed Geotechnical Engineer to **[how]** investigate the historical landslide area located on the property and ensure proposed improvements will not cause any landslide risk to the property or surrounding properties **[why]**. The geotechnical findings and remediation recommendations **[what]** shall be submitted for review and approval of the City Engineer **[who]**. The applicant will be responsible for implementation of any mitigation measures as outlined by the geotechnical engineer to ensure long term stability of the site.

CONTACT INFORMATION

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Thank you!