

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.



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Purpose of Findings

- Providing a framework for making decisions, thereby enhancing the integrity of the administrative process
- Facilitating orderly analysis and reducing the likelihood the city will leap randomly from evidence to conclusions
- Serving a public relations function by demonstrating that administrative decision-making is careful, reasoned, and equitable
- Enabling the parties to determine whether and on what basis they should seek judicial review and remedies
- Apprising 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)

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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.
- Make findings in approving and denying projects.
- Imposing conditions/fees or requiring dedication to development. Must demonstrate the condition has a "rough functionality" to the development's impact.

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Form

- Provide written findings.
- “Bridge the gap” between the evidence and ultimate decision.
- 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 Record of Proceedings upon which 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 Mitigated Negative Declaration/Initial Study; (2) the staff reports, City files and records and other documents, prepared for and/or submitted to the City relating to the Mitigated Negative Declaration/Initial Study, 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 Mitigated Negative Declaration/Initial Study, 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 Mitigated Negative Declaration/Initial Study 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.

Findings Required in SMA

If a city makes any of the following findings with respect to a tentative map or a parcel map, it must *DENY* approval of the map. Gov't code §66474.

- The proposed map or the design or improvements of the proposed subdivision are inconsistent with the applicable general and specific plans, or with a draft general plan being prepared under an OPR extension.
- The site is not physically suited for the proposed type or density of development. However, where such a finding has been made, the city may approve the map on conditions that will reduce the density.

Findings Required in SMA (cont.)

- The design or proposed improvements are likely to cause substantial environmental damage, or substantially and unavoidably injure fish, wildlife, or their habitats, or cause serious public health problems. A city may approve a map if an EIR was prepared and appropriate findings are made that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR.
- The design of subdivision improvements will conflict with public easements for access through or use of property within the proposed subdivision. A city may approve the map if alternative public easements will be provided.

Sample Findings

Finding No. 1 – General Plan Consistency Findings.

- **Bad Example** - The proposed Zoning District is consistent with the General Plan land use designation.
- **Good Example**- The proposed Zoning District is consistent with the applicable General Plan land use designation *because* the proposed Zoning District of R- 6 allows residential development at the same density as the General Plan land use designation of Residential 0-6 units/gross acre land. Both of these designations permit residential units at a density of up to 6 units per acre.

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- **Bad 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.

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- 2.1.10 - When considering large scale development projects, the City may, at its discretion, authorize a Specific Plan (SP) or Planned Unit Development (PUD) approach that allows flexibility within a project area. Under this approach, the distribution of land uses may vary from the land uses as designated on the Land Use Diagram. The SP/PUD approach shall not allow either an overall greater development density than allowed under the Land Use Diagram, or a combination of uses that undermines the overall intent of the project area as established under the General Plan policies and Land Use Diagram.
- 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.

Finding No. 2 – Findings Relating to Site Development Plan (SDP).

- **Bad Example** - Streets and pedestrian facilities are adequate to carry the quantity and type of 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 (explain condition). 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 pathway on Maple Street provides a connection between neighborhoods allowing for pedestrians to walk safely within and around the neighborhood.

- **Bad Example** - The proposed SDP concepts are reasonably suited to the specific characteristics of the site and the site is physically suitable for the type and density/intensity of development being proposed.
- **Good Example** - The proposed SDP concepts are reasonably suited to the specific characteristics of the site and 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 site only requires limited changes to topography to complete development because the site is flat and previously graded under an unrelated permit.

- **Bad Example** - The proposed SDP would produce a comprehensive development of superior quality than might otherwise occur from more traditional development applications.
- **Good Example** - The proposed SDP would produce a comprehensive development of superior quality than might otherwise occur from more traditional development applications 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 as well as different high quality architecture. 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.

- **Bad Example** - The location, access, density/building intensity, size and type of uses proposed in the SDP are compatible with the existing and future land uses in the surrounding neighborhood.
- **Good Example** - The location, access, density/building intensity, size and type of uses proposed in the SDP are compatible with the existing and future land uses in the surrounding neighborhood because this is an infill site that lends itself to the proposed type and density of development. It is compatible with existing development in the area because it will provide a housing opportunity site in an area that is largely built out and desirable. The area is easily served by existing roadway network and in close proximity to freeways.

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Conditions of Approval

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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

Who, What, When, Why and How

- **Who** has to implement 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...)?

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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]**.

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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.

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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].

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Exercise #1

- 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].

Exercise #2

- 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].

Exercise #3

- 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.