

Making Findings that Stand Legal Challenge

Amara Morrison

Wendel, Rosen, Black & Dean LLP
Land Use Attorney

Niroop K. Srivatsa

Interim City Manager
City of Lafayette

League of California Cities
Planning Commissioner's Academy

March 7, 2019

1

Findings

A statement of the
**standards, facts, and
conclusions** used in
making a decision.

2

What are Findings?

- ✓ “Findings of fact” are a city’s written explanation of a land use decision.
- ✓ Findings explain how a decision-maker processed the evidence presented to reach its decision.



It is very important to have an adequate “record” when a land use decision is challenged in court.

3

Purpose of Findings

- Provides framework for making **principled decisions**, thereby enhancing the integrity of the administrative process
- Facilitates **orderly analysis** and reduces likelihood that the city will leap randomly from evidence to conclusions
- Serves a public relations function by helping to persuade parties that administrative **decision-making is careful, reasoned, and equitable**
- Enables 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)

4

Finding relating to disapproval of a dense housing project that is consistent with general plan and zoning.

Example 1 – The project will have an adverse impact upon the public health and safety.

Example 2 - The project will have an adverse impact upon the public health and safety *because* is proposed to be located in a “high fire danger” area and the plans contain only one narrow entry point into the project. A secondary access is not feasible due to the steep grade and adequate sight distance for entering onto the main road cannot be provided along any point of the project. The one entry road is not adequate to allow sufficient access in case of a fire or other type of emergency.

5

When are Findings Necessary?

- Decisions made in a **nonlegislative/adjudicatory role** (variances, use permits, subdivision maps, design review)
- **Not required for legislative acts** (general plan adoption, rezoning) unless required by statute or local ordinance
- Law requires **specific findings** when general plan limits number of housing units and in disapproving certain housing projects
- 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.

6

Findings Required in Subdivision Map Act

If a decision-maker 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.

1. 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.
2. 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.

7

Findings Required in Subdivision Map Act (continued)

3. 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.

4. 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.

8

How to Make Good Findings



Put findings in writing

Show your work...bridge the gap between the evidence/facts and the ultimate decision

Don't parrot the legal standard... **always use "because"**

The project is consistent with the General Plan
because...

Tie them back to city plans, statutory standards and codes

9

FUN WITH FINDINGS



Finding relating to General Plan consistency

Example 1 - The proposed Zoning District is consistent with the applicable General Plan land use designation.

OR

Example 2 - The proposed Zoning District is consistent with the applicable General Plan land use designation ***because*** the proposed Zoning District of R-6 allows the same density of development 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.

Which is better?

10

FUN WITH FINDINGS

Finding relating to General Plan consistency

Example 1 -The proposed Zoning District is consistent with General Plan policies.

OR

Example 2 - The proposed Zoning District is consistent with applicable General Plan policies **because**:

a) The General Plan land use designation allows residential uses on the project site; and

b) The Area Specific Plan supports and sets forth policies that residential use is appropriate (*specifically identify the policies and explain how the policies are being met*):

- Policy LU-1 encourage sites to be developed with multifamily residential uses.
- Finding – the proposed Zoning District “High Density Multifamily” provides the opportunity for multifamily residential uses.

Which is better?



11

FUN WITH FINDINGS

Findings relating to consistency with a specific plan

Example 1 – The project is consistent with the Downtown Specific Plan.

OR

Example 2 – The project is located in with the boundaries of the Downtown Specific Plan. The Downtown Specific Plan characterizes the project site as a mixed use zone within walking distance to BART and downtown amenities. The project is consistent with the goals of the Downtown Specific Plan **because** it is a mixed use development consisting of 66 for-sale residential units, 10 of which are affordable, a full-service restaurant and commercial space on the ground floor – all within walking distance to BART.

Which is better?



12

FUN WITH FINDINGS



Findings relating to a land use permit – dog park will not create a nuisance or enforcement problem.

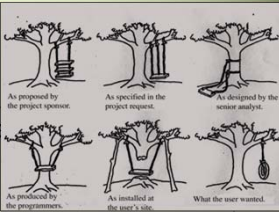
Example 1- The dog park will not result in a nuisance or enforcement problem within the neighborhood.

OR

Example 2 - The dog park will not result in an enforcement problem *because* it is isolated unto itself and is not part of an existing neighborhood. The nearest residence is located over 2,000 feet away from the dog park. The police department has reviewed the proposal and requires as mitigation measures a private security system with cameras and operating hours from dawn to dusk. The parks department will maintain the play areas and parking lot on a weekly basis and will pick up waste daily.

Which is better?

FUN WITH FINDINGS



Findings relating to consistency with design guidelines

Example 1 - The project promotes a character that is informal with variations in architectural styles, massing, setbacks, and upper story step-backs.

OR

Example 2 – The project is consistent with the design guidelines *because* it has varying setbacks from the boulevard which contributes to an informal pattern of development and provide opportunities for landscaping and the creation of public gathering spaces. The residential building is set back between 28 and 52 feet from the street. The third story has varied step backs ranging from 5 to 10 feet; the step back in many cases are used as terraces or balconies. The stepped-back third floor has a lighter appearance with large glass openings, french doors leading to the balconies, light wall colors, awnings and transparent railings.

Which is better?

FUN WITH FINDINGS

Finding relating to disapproval of a dense housing project that is consistent with general plan and zoning.

Example 1 – The project will have an adverse impact upon the public health and safety.

OR

Example 2 - The project will have an adverse impact upon the public health and safety because is proposed to be located in a “high fire danger” area and the plans contain only one narrow entry point into the project. A secondary access is not feasible due to the steep grade and adequate sight distance for entering onto the main road cannot be provided along any point of the project. The one entry road is not adequate to allow sufficient access in case of a fire or other type of emergency.

Which is better?

15

Questions?



16