

PLANNING COMMISSION HANDBOOK

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Citizens should be thanked for taking on the job of a Planning Commissioner. The long hours and hard work may cause a person to wonder whether it's all worth it. **IT IS.** Planning Commissioners help to set directions for the community and make decisions that affect its residents and its future. The special role of the Planning Commission is confirmed by the authority given in state law and by local ordinance.

The job of the Planning Commissioner, in its larger sense, includes the responsibility of balancing individual rights with the public welfare; the challenge of making decisions that affect the future of the community; and the ability to analyze problems and resolve difficult situations. These may not characterize every Planning Commission meeting, but they show the scope of responsibility of a Planning Commission, and indicate the seriousness of the work that the Planning Commission undertakes.

Planning Commissions decide on land-use and development issues important to the future and well-being of the community. Planning Commissioners often are appointed without any prior training in planning or in their role as members of a public body. They must “learn the ropes” as best they can. While most Planning Commissioners learn how to do their jobs this way, and some excel, training and education can help Planning Commissioners with their job. **This Planning Commission Handbook** will help Planning Commissioners by providing information on planning and guidance on the conduct of the Planning Commission's activities. This handbook is not a formally adopted City of San Mateo document, nor does it set forth official City policy. Instead, it is intended to be a practical guide to some of the issues faced by Planning Commissioners.

Chapter 8 – MAKING A DECISION AND THE NEED FOR FINDINGS

Planning Commissioners must rely on legal standards and other guidelines in making decisions. These standards may be quite broad, such as constitutional guarantees of equal protection and due process, or they may be much more specific, such as the language contained within the municipality's code of ordinances. This chapter will discuss the importance of building a record, or findings of fact, to justify the Planning Commission's decisions.

Two Kinds of Planning Commission Decisions

Planning Commission decisions can be either legislative or adjudicative in nature.

Legislative Decisions. - For the Planning Commission, legislative decisions are decisions that make or interpret policy. These include general plan amendments, zoning reclassifications and zoning code amendments. The key element of legislative decisions is that they apply equally (or are meant to apply equally) to everyone in the community, not just to specific groups or individuals.

Administrative or Adjudicative (quasi-judicial) Decisions. - Generally, administrative decisions involve those that have a direct effect on the rights and liabilities of an individual or a small group of identified persons. Adjudication deals with a more limited set of facts such as those involved with individual planning applications which may involve variances, special use permits, planned developments and any accompanying environmental documents.

The Need for Findings

Findings are not needed for legislative decisions, although there are some exceptions that require findings. For example, state law requires specific findings should a city adopt a growth management plan that limits the number of newly constructed housing units.

Findings are required for adjudicative decisions, which involve over 95% of all the planning applications that the Planning Commission reviews.

Legal Adequacy of Findings

The California Supreme Court has laid down distinct, definitive principles of law detailing the need for adequate findings when a city approves or denies a project while acting in a quasi-judicial, administrative role. In *Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506 (1974) the court interpreted Code of Civil Procedure section 1094.5 to require that a city's decision be supported by findings, and the findings be supported by evidence. The court defined findings, explained their purposes, and showed when they are required.

Purpose of Findings

The Topanga court outlined five purposes for making findings, three relate to the decision making process, two relate to judicial (court) functions:

1. To provide a framework for making principled decisions, thereby enhancing the integrity of the administrative process
2. To facilitate orderly analysis and reduce the likelihood the agency will leap randomly from evidence to conclusions
3. To serve a public relations function by helping to persuade parties that administrative decision-making is careful, reasoned, and equitable.
4. To enable parties to determine whether and on what basis they should ask for judicial review and remedies.
5. To apprise the reviewing court of the basis of the agency's decisions.

Evidence in the Record to Support Findings

There must be evidence in the record to support the findings. Evidence may consist of staff reports, written and oral testimony, the EIR, exhibits and the like.

Boilerplate findings or findings that do not recite specific facts upon which the findings are based are not acceptable. Similarly, in *Honey Springs Homeowners Ass'n v. Board of Supervisors*, 157 Cal. App. 3d 1122, 1151 (1984) a finding that is made "perfunctorily" and "without discussion or deliberation and thus does not show the ...analytical route from evidence to finding will be struck down".

In summary, there is no presumption that a city's rulings rest upon the necessary findings and that such findings are supported by substantial evidence. Rather, cities must expressly state their findings and must set forth the relevant facts supporting them.

Findings in the Administrative Report

Findings are referred and attached to the Administrative Report of all public hearing items (see also Chapter 11 The Administrative Report). These include findings for the environmental document or exemption, consistent with the as requirements by the California Environmental Quality Act. The other findings are related to the San Mateo Municipal Code and the findings required for certain types of planning approvals: Site Plan and Architectural Review, Site Development Permit, Special Use Permit, etc.

In some cases (this is rare), alternative findings are provided should you wish to take an action different than that recommended by staff. Alternative findings are usually provided for projects which involve substantial public controversy and/or have a relatively equal potential of being approved or denied.

If alternative findings are not provided as part of the Administrative Report, staff can normally craft findings for an action different than that recommended by staff, based on statements made by the Planning Commission. However, these statements must relate to the specific findings for the requested applications.

***Topanga*: The Cornerstone for Findings**

Any discussion of findings and decisions affecting land use must begin with the seminal case of *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506. In *Topanga*, the court defined findings, explained their purposes, and showed when they are needed.

Definition

The *Topanga* court defined findings as legally relevant subconclusions which expose the agency's mode of analysis of facts, regulations, and policies, and which bridge the analytical gap between raw data and ultimate decision. (*Topanga, supra* at pp. 515 and 516.) In other words, findings are the legal footprints local administrators and officials leave to explain how they progressed from the facts through established policies to the decision.

Purpose

The *Topanga* court also outlined five purposes for making findings, two relevant mainly to the decision making process, two relevant to judicial functions, and the last relevant to public relations. Findings should:

1. Provide a framework for making principled decisions, enhancing the integrity of the administrative process;
 2. Help make analysis orderly and reduce the likelihood that the agency will randomly leap from evidence to conclusions;
 3. Enable the parties to determine whether and on what basis they should seek judicial review and remedy;
 4. Apprise a reviewing court of the basis for the agency's action; and,
 5. Serve a public relations function by helping to persuade the parties that administrative decision making is careful, reasoned, and equitable.
(*Topanga, supra* at pp. 514, 516, fn. 14, and 517.)
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Circumstances Requiring Findings

While the five purposes seem clear enough, state law has not clearly distinguished between situations which require findings and those which do not. Absent a specific legislative requirement for findings, the courts determine when they are necessary. In general, case law has required findings for land use decisions that are adjudicative in nature; these are also known as adjudicatory, quasi-judicial, or administrative decisions. In this type of decision, a reviewing body holds a hearing, as required by the Constitution, state statute, or local ordinance, takes evidence, uses discretion in determining the facts, and bases its decision on the facts. The decision involves applying a fixed rule, standard, or law to a specific set of existing facts. In land use cases, the 'existing facts' are often parcels of land. Adjudicative acts are also described as ones which "are necessary to carry out the legislative policies and purposes already declared by the legislative body." (*Fishman v. City of Palo Alto* (1978) 86 Cal.App.3d 506, 509.)

Examples of adjudicative acts include variances, use permits, Williamson Act contract cancellations, coastal zone development permits, Coastal Commission review of local coastal plans, and tentative tract and parcel maps. In each case local officials apply existing land use or other development standards to specific parcels.

Not only do these approvals constitute adjudicative acts, their denials are adjudicative as well. Especially in the case of tentative subdivision maps, if the decision making body makes certain statutory findings, it must deny the tentative map (Government Code Section 66474). If the body makes certain other findings, it has the option of denying the subdivision (Government Code Section 66474.6).

By comparison, findings are not necessary for legislative or quasi-legislative acts, unless specifically required by statute. (*San Francisco Ecology Center v. City and County of San Francisco* (1975) 48 Cal.App.3d 584; *Ensign Bickford Realty Corp. v. City Council* (1977) 68 Cal.App.3d 467, 473.) While legislative acts may also entail holding a legally required hearing, taking evidence, using discretion in determining the facts, and making a decision based on the facts, they contrast with adjudicative acts in one major way: legislative acts generally formulate a rule to be applied to all future cases rather than applying an existing rule to a specific factual situation or parcel. They are also described as declaring "a public purpose and mak[ing] provisions of the ways and means of its accomplishment." (*Fishman v. City of Palo Alto supra*, at 509.) Examples are the adoption or amendment of a general plan or zoning ordinance. Even though a zone change or general plan amendment may be specific to a particular parcel, it is still a legislative act because its underlying effect is legislative in nature, regardless of the size or geographic scope of the property affected. (*Arnel Development Company v. City of Costa Mesa* (1980) 28 Cal.3d 511, 514; *Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 799.) [Table I](#) lists examples of adjudicative and legislative acts as established by their case law precedents.

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[JUDICIAL STANDARDS OF REVIEW](#)

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Other Guidelines for Making Findings

Despite the uncertainty in statutory findings requirements for legislative actions and in land use controls by initiative and referendum, *Topanga* still provides the clearest direction for making findings. Other guidelines have emerged from case law in *Topanga's* wake to help local officials make sound, legally sufficient findings.

1. A final decision making body may use a subordinate body's findings, but it is not obligated to do so.

Final decision making bodies such as city councils are free to reject the findings of their planning commissions or boards of zoning adjustment, if they deem appropriate (*Foundation for San Francisco's Architectural Heritage v. City and County of San Francisco* (1980) 106 Cal.App.3d 893, 906), especially in light of new evidence submitted on appeal. (*Lagrutta v. City Council of Stockton* (1970) 9 Cal.App.3d 890, 895.)

Administrative appeals also involve issues of the adequacy of findings. The extent to which a subordinate body's findings govern the appellate body's decision will be determined by local procedures. If local regulations require a hearing de novo, the body conducting the hearing is not bound by the subordinate body's findings. In other jurisdictions, the appeal hearing may be limited to only those aspects of the decision actually appealed. In these cases, prior findings not raised on appeal are left undisturbed.

First corollary: Local procedures governing appeals may affect the proper adoption of findings.

Whitman v. Board of Supervisors of Ventura County (1979) 88 Cal.App.3d 397, 416, illustrates how local procedures governing appeals affect the adoption of findings. In *Whitman*, the Planning Commission and staff recommended that the Board certify an environmental impact report (EIR) and approve a conditional use permit with 59 conditions. The applicant appealed seven of the 59 conditions, but the Commission and staff recommended that the Board deny the appeal. The recommendation included findings to support the denials. In keeping with a local ordinance, the Board's approval of the conditional use permit automatically meant approval of the findings that the lower body, in this case the Planning Commission, made. The Board granted the appeal, thereby eliminating the seven conditions and retaining the rest. Acknowledging that the local ordinance resulted in the Board's automatic adoption of the lower body's findings, the Court held that when the Board certified the EIR and approved the conditional use permit, it also adopted the pertinent record and findings concerning the EIR and conditional use permit. Thus, the record lacked findings necessary to support granting the appeal, and the court remanded the decision for the Board to adopt the necessary findings.

Second corollary: When a decisionmaker declines to follow a staff recommendation that includes proposed findings, the decisionmaker may have to make additional findings.

Whitman also demonstrated that when a decisionmaker declines to follow a staff recommendation that includes proposed findings, the decisionmaker may be obligated to make additional findings. A subsequent case presented this same issue in the CEQA context. (*Environmental Council of Sacramento v. Board of Supervisors of Sacramento County* (1982) 135 Cal.App.3d 428.) Here, the Board adopted a supplemental EIR on a project, but contrary to staff's recommendation, concluded that the impacts had been reduced to insignificance. The court ruled that the Board must adopt complementary findings to meet the Public Resources Code Section 21081 requirement to show how the impacts had been mitigated.

2. Findings must be substantive, not just recitations of the law.

Generally, findings are not sufficient if they merely recite the very language of the local ordinance or state statute that requires them. (*Carmel-by-the-Sea v. Board of Supervisors of Monterey County* (1977) 71 Cal.App.3d 84, 92.) For example, whenever a statute requires a local legislative body to find that a proposal be consistent with the local general plan, the board or council cannot discharge its responsibility by simply stating that there is consistency. The decision making body must set forth the basis for the consistency between the project and the plan. The mere recitation of statutes is a self-serving exercise that is more conclusory than analytical. This same principle applies to CEQA findings. (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors of Orange County* (1982) 134 Cal.App.3d 1022.) A local agency must expressly reject as infeasible each mitigation measure or project alternative identified in an EIR but not adopted in a project approval in order to satisfy findings requirement of Public Resources Code Sections 21081 and 15088 (now Section 15091). This documentation discloses the decisionmaker's thinking process and satisfies the *Topanga* mandate because it provides the intermediate analytical step linking the basic data to the decision. However, there are some instances when statutorily required findings are so detailed and precise that merely reciting them would satisfy the *Topanga* mandate. (*Jacobson v. County of Los Angeles* (1977) 69 Cal.App.3d 374, 389-392.)

3. Findings need not be formal, but may be included in the agency's order or resolution.

A pre-*Topanga* zoning decision held that the findings of a local commission, composed of laymen, are expected to be informal, and that they are not required to meet the standards of judicial findings of fact. (*Swars v. Council of City of Vallejo* (1949) 33 Cal.2d 867, 872; and *County of Santa Barbara v. Purcell* (1967) 251 Cal.App.2d 169, 177.) In *Hadley v. Ontario* (1974) 43 Cal.App.3d 121, 128, the Court ruled that an administrative agency's findings need not be formal, but may be included in the agency's resolution. However, findings must be set forth clearly - they cannot be vague or ambiguous. (*Rural Land Owners Assn. v. City Council of Lodi* (1983) 143 Cal.App.3d 1013, 1023-1024.) Nevertheless, local agencies have discretion in the manner that they record findings. Thus, findings contained in the minutes and references to staff reports in motions will satisfy the courts. On the other hand, a legislative body's debate and oral remarks at a hearing are not sufficient to meet the *Topanga* requirements. (*Pacifica Corp. v. City of Camarillo* (1983) 149 Cal.App.3d 168, 179.) An early environmental case established a related guideline regarding the formality of findings, addressing EIRs and written findings required by local ordinance. (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 270.) The court determined that when an EIR provides the same informational benefits that locally required written findings do, no additional findings are required.

4. Administrative findings will not rescue a decision when an agency has not followed the procedure required by law.

Failure to proceed in a manner required by law is a separate ground for finding abuse of discretion. In a recent case, the court held that an additional or supplemental EIR should have been performed when, after EIR certification, a Board of Supervisors discovered that a proposed road would encroach on a significant wetland. (*Mira Monte Homeowners Assn. v. County of Ventura* (1985) 165 Cal.App.3d 357.) The fact that the Board had adopted findings addressing wetlands pursuant to the original EIR was insufficient to consider the full range of impacts, alternatives and mitigation measures when the wetland extended further than the original project description contemplated.

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[PREPARATION OF FINDINGS: A QUESTION OF TIMING AND JUSTIFICATION](#)

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