

WORKSHOP AGENDA
HUNTINGTON BEACH PLANNING COMMISSION
WEDNESDAY, MARCH 31, 2010

AGENDA ITEM NO. 5

DEVELOPING ADEQUATE FINDINGS

ATTACHMENTS:

- 1. HBZSO SECTION 241.10 – REQUIRED FINDINGS**
- 2. CURTIN’S CALIFORNIA LAND USE AND PLANNING LAW:
CHAPTER 11 - NECESSITY OF FINDINGS**
- 3. INSTITUTE FOR LOCAL GOVERNMENT: BEST PRACTICES FOR
MAKING INFORMED LAND USE DECISIONS, CHAPTER 8 -
FINDINGS**

241.04 Authority of Planning Commission and Zoning Administrator

The Planning Commission or the Zoning Administrator, as the case may be, shall approve or conditionally approve applications for conditional use permits or variances upon finding that the proposed conditional use permit or variance is consistent with the General Plan, and all applicable requirements of the Municipal Code, consistent with the requirements of Section 241.10. The Planning Commission shall act on all variances except the Zoning Administrator may act on variances not exceeding twenty percent deviation from site coverage, separation between buildings, height, setback, parking, and landscape requirements. (3334-6/97, 3410-3/99, 3712-6/05)

241.06 Initiation

Applications for conditional use permits and variances shall be initiated by submitting an application and necessary accompanying data as prescribed by the Director and the required fee.

241.08 Notice and Public Hearing

- A. Public Hearing and Notice Required. The Planning Commission or Zoning Administrator shall hold a duly-noticed public hearing on an application for a conditional use permit or variance consistent with the requirements of Chapter 248.
- B. Multiple Applications. When applications for multiple conditional use permits or variances on a single site are filed at the same time, the Director may schedule a combined public hearing.

241.10 Required Findings

An application for a conditional use permit or variance may be approved or conditionally approved if, on the basis of the application, plans, materials, and testimony submitted, the Planning Commission or Zoning Administrator finds that:

- A. For All Conditional Use Permits.
 - 1. The establishment, maintenance and operation of the use will not be detrimental to the general welfare of persons working or residing in the vicinity nor detrimental to the value of the property and improvements in the neighborhood;
 - 2. The granting of the conditional use permit will not adversely affect the General Plan;
 - 3. The proposed use will comply with the provisions of the base district and other applicable provisions in Titles 20-25 and any specific condition required for the proposed use in the district in which it would be located.

B. For Variances.

1. The granting of a variance will not constitute a grant of special privilege inconsistent with limitations upon other properties in the vicinity and under an identical zone classification.
2. Because of special circumstances applicable to the subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification.
3. The granting of a variance is necessary to preserve the enjoyment of one or more substantial property rights.
4. The granting of the variance will not be materially detrimental to the public welfare or injurious to property in the same zone classification and is consistent with the General Plan.

C. Mandatory Denial. Failure to make all the required findings under (A) or (B) shall require denial of the application.

241.12 Conditions of Approval

In approving a conditional use permit or variance, conditions may be imposed as necessary to:

- A. To make it consistent with the General Plan;
- B. Protect the public health, safety, and general welfare; or
- C. Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area.

241.14 Effective Date; Appeals

A conditional use permit or variance shall become effective ten days after action by the Planning Commission or Zoning Administrator, unless appealed in accord with Chapter 248.

241.16 Time Limit; Transferability, Discontinuance; Revocation

- A. Time Limit. A conditional use permit or variance shall become null and void one year after its date of approval or at an alternative time specified as a condition of approval after its date of approval unless:
 1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or
 2. The use is established; or
 3. The conditional use permit or variance is extended.

Necessity for Findings

Background

Land use decisions are frequently challenged in court. Accordingly, courts require an adequate “record” upon which to exercise judicial review, especially when the city is acting in an adjudicatory or nonlegislative role. This means that the documentation supporting an adjudicatory approval or denial of a project must include findings that explain how the city processed the evidence presented when reaching its decision. The courts want to see the method by which the city analyzed the facts and applied its policies in reaching a particular conclusion.

The findings requirement applies equally to planning commissions, zoning boards or administrators, design review commissions, and city councils when they act in a nonlegislative, adjudicatory role. Findings also are required for certain legislative acts, as explained below.

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Topanga: The Cornerstone for Adjudicatory Findings Under Code of Civil Procedure Section 1094.5

The California Supreme Court has set forth distinct, definitive principles of law detailing the need for adequate findings when a city approves or disapproves a project while making certain quasi-judicial, administrative decisions. See *Topanga Ass’n for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506 (1974). In *Topanga*, the Court interpreted Code of Civil Procedure section 1094.5,¹ which requires that certain adjudicatory decisions be supported by findings, and that the findings be supported by evidence. The Court found that a zoning board did not render findings adequate to support its ultimate ruling in granting a variance. *Id.* at 513. The Court defined findings, explained their purposes, and showed when they are required.

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Purpose of Findings

The *Topanga* court outlined the following five purposes for making findings:

1. See chapter 21 (Land Use Litigation) for a discussion of the types of adjudicatory decisions to which section 1094.5 applies.

- Providing a framework for making principled 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 helping to persuade parties that administrative decisionmaking 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

11 Cal. 3d at 514

One court emphasized how important it is not only to prepare adequate findings, but to ensure that they are made easily available for a court to review. In *Protect Our Water v. County of Merced*, the court could not determine from the record what the county's findings were and whether they complied with CEQA. "The board of supervisors did appear to adopt [findings], but it is impossible to determine from this record what those findings are." 110 Cal. App. 4th 362, 373 (2003). The consequences were drastic: "Because we cannot discern the required findings under CEQA, we reverse the [county's approval]." *Id.* See chapter 21 (Land Use Litigation) for a discussion of preparation of an adequate record.

CEQA = California Environmental Quality Act
 EIR = Environmental impact report

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.

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. Findings are proper if they incorporate a staff report. See *McMillan v. American Gen. Fin. Corp.*, 60 Cal. App. 3d 175, 184 (1976). One court held that a summary of factual data, the language of a motion, and the reference in a motion to a staff report can constitute findings. However, the court made clear that the transcript of a council debate was not adequate. See *Pacifica Corp. v. City of Camarillo*, 149 Cal. App. 3d 168, 179 (1983). "The Council debate, although reflective of the views of individual councilmen, is not the equivalent of *Topanga* findings." *Id.*

The city's written findings are not the sole means by which Topanga requirements can be satisfied.

However, the city's "written findings" are not the sole means by which *Topanga* requirements can be satisfied. See *Harris v. City of Costa Mesa*, 25 Cal. App. 4th 963 (1994). The *Harris* court said that in addition to the findings stated in the city council resolution, it could look to the transcript of the hearing for findings contained in statements made by council members. The court further held that it is proper to look for findings in oral remarks made at a public hearing where both parties were present, which were recorded, and of which a written transcript could be made. *Id.* at 971. The court noted that opinions of neighbors may constitute evidence, and that sufficient evidence can be found in presentations by neighbors seeking to deny a project. *Id.* at 973.

Relevant personal observations also may be evidence. An adjacent property owner may testify to traffic conditions based upon personal knowledge. See *Citizens Ass'n for Sensible Dev. of Bishop Area v. County of Inyo*, 172 Cal. App. 3d 151, 173 (1985). Also, testimony at a public hearing describing various problems

posed by the proposed development, including increased flooding and traffic, security problems, and health and safety risks, can support a city's findings in denying a development plan. See *Lindborg/Dahl Investors, Inc. v. City of Garden Grove*, 179 Cal. App. 3d 956, 962–63 (1986); *Placer Ranch Partners v. County of Placer*, 91 Cal. App. 4th 1336, 1342 (2001) (holding that the opinion of area residents was an appropriate factor to consider in making zoning decisions, citing *Stubblefield Construction Co. v. City of San Bernardino*, 32 Cal. App. 4th 687, 711 (1995)). See also *Browning-Ferris Indus. v. City Council*, 181 Cal. App. 3d 852, 865 (1986) (a city may rely upon staff's opinion as substantial evidence in reaching decisions).

Findings must relate to the issue at hand. In striking down findings that were not legally sufficient to justify a variance, the court stated:

[D]ata focusing on the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district.

Orinda Ass'n v. Board of Supervisors, 182 Cal. App. 3d 1145, 1166 (1986)

Boilerplate or conclusory findings that do not recite the specific facts upon which the findings are based are not legally sufficient. See *Village Laguna, Inc. v. Board of Supervisors*, 134 Cal. App. 3d 1022, 1033–34 (1982). Similarly, a finding that was made “perfunctorily” and “without discussion or deliberation and thus does not show the Board's analytical route from evidence to finding” will be struck down. *Honey Springs Homeowners Ass'n v. Board of Supervisors*, 157 Cal. App. 3d 1122, 1151 (1984).

For example, in *City of Poway v. City of San Diego*, the City of Poway alleged that San Diego's findings on a land use project were insufficient under the *Village Laguna* standard. 155 Cal. App. 3d 1037 (1984). The court disagreed and held that San Diego's written findings, as dictated in the record, provided enough comprehensive information and factual discussion of the issues before the city. *Id.* at 1049. This comports with *Craik v. County of Santa Cruz*, in which the court stated that “findings need not be stated with judicial formality. Findings must simply expose the mode of analysis, not expose every minutia.” 81 Cal. App. 4th 880, 884 (2000).

Similar findings also were upheld in *Jacobson v. County of Los Angeles*, 69 Cal. App. 3d 374 (1977). In this case, the ordinance pertaining to conditional use permits required the zoning board to reach seven specific subconclusions and described these as the “findings” that must be made. *Id.* at 391 (citing *Topanga*, 11 Cal. 3d 506 (1974)). The court found these specific subconclusions sufficient.

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. See *J.L. Thomas, Inc. v. County of Los Angeles*, 232 Cal. App. 3d 916, 926 (1991).

PRACTICE TIP

Conclusory findings are not acceptable under Code Civ. Proc. § 1094.5. The findings should refer to the specific evidence upon which they are based.

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When Are Findings Required?

Legislative Acts

Findings are not required for legislative acts unless a statute or local ordinance so requires.

Findings are not required for legislative acts unless a statute or local ordinance so requires. See *Mountain Defense League v. Board of Supervisors*, 65 Cal. App. 3d 723, 732, fn.5 (1977). Thus, findings are generally not required for approval of zoning ordinances since they are legislative in nature. See *Ensign Bickford Realty Corp. v. City Council*, 68 Cal. App. 3d 467, 473 (1977) (disapproved on other grounds by *Hernandez v. City of Hanford*, 41 Cal. 4th 279, 297 (2007)); *Towards Responsibility In Planning v. City Council*, 200 Cal. App. 3d 671, 685 (1988) (summary of fiscal finding is not required in a general plan amendment or a rezoning).

Under certain circumstances, however, local ordinances or state law mandate findings for a legislative act. For example, state law requires findings when a general plan limits the number of newly constructed housing units, when a local ordinance has an effect on the housing needs of a region, or when a housing development project that complies with the applicable general plan and zoning is disapproved because it would have an adverse effect on public health or safety. Gov't Code §§ 65302.8, 65863.6, 65589.5(j). See also *Mira Dev. Corp. v. City of San Diego*, 205 Cal. App. 3d 1201, 1222 (1988) (Government Code section 65589.5 does not require findings to support denial of a rezoning application, citing *Arnel Dev. Co. v. City of Costa Mesa*, 28 Cal. 3d 511, 522 (1980)). Findings are not required if the housing limitation is adopted by an initiative. See *Building Indus. Ass'n v. City of Camarillo*, 41 Cal. 3d 810, 823-24 (1986). The Mitigation Fee Act requires that certain determinations be made by the legislative body when it establishes or increases development impact fees. Gov't Code § 66001.

CEQA requires that certain findings be made whenever a project is approved and an EIR has been prepared that identifies significant impacts.

Other statutes require that certain determinations be made regardless of whether the decision at issue is adjudicatory or legislative. For example, CEQA requires that certain findings be made whenever a project is approved and an EIR has been prepared that identifies significant impacts. Pub. Res. Code § 21081. The Water Code requires, for certain large projects, that the city "shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses." Water Code § 10911(c).

Nonlegislative Acts

Findings are required whenever a city acts in its nonlegislative (quasi-judicial, adjudicatory or administrative role) as opposed to its legislative capacity. A city usually acts in its legislative capacity when it establishes a basic principle or policy, such as a general plan adoption or amendment, or a rezoning. See *Ensign Bickford*, 68 Cal. App. 3d at 474. The nonlegislative or quasi-judicial capacity usually involves applying a fixed rule, standard, or law to a specific parcel of land. Examples of such nonlegislative actions include granting or denying variances, use permits, subdivision maps, design proposals, and the like. See chapter 21 (Land Use Litigation) for further discussion of the difference between adjudicatory and legislative approvals.

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Dedications or Ad Hoc Impact Fees

In the landmark exaction case *Dolan v. City of Tigard*, the United States Supreme Court for the first time held that a city must prove that development conditions, especially relating to dedications, placed on a discretionary (nonlegislative) permit have a “rough proportionality” to the development’s impact. 512 U.S. 374, 391 (1994). If conditions are not roughly proportional, then a “taking” may occur. When imposing conditions to development, the city can meet its burden of proof by making appropriate findings based on the record and by quantifying its findings in support of the particular dedication. The city may not rely on conclusory statements that the dedication “could” offset the burden. This rule also is applicable when a city imposes a fee on an ad hoc basis not based on a generally applicable legislative enactment. See *Ehrlich v. City of Culver City*, 12 Cal. 4th 854 (1996). For a thorough discussion of *Dolan* and claims for an inverse taking, see chapter 12 (Takings) and chapter 13 (Exactions).

For excellent discussions on findings, see Governor’s Office of Planning and Research, *Bridging the Gap: Using Findings in Local Land Use Decisions* (1989) (available at http://ceres.ca.gov/planning/Bridging_Gap/Bridging_Gap.html) and *Special Issues Under Takings Law: Findings, Fees and Dedications*, Institute for Local Self Government (1999).

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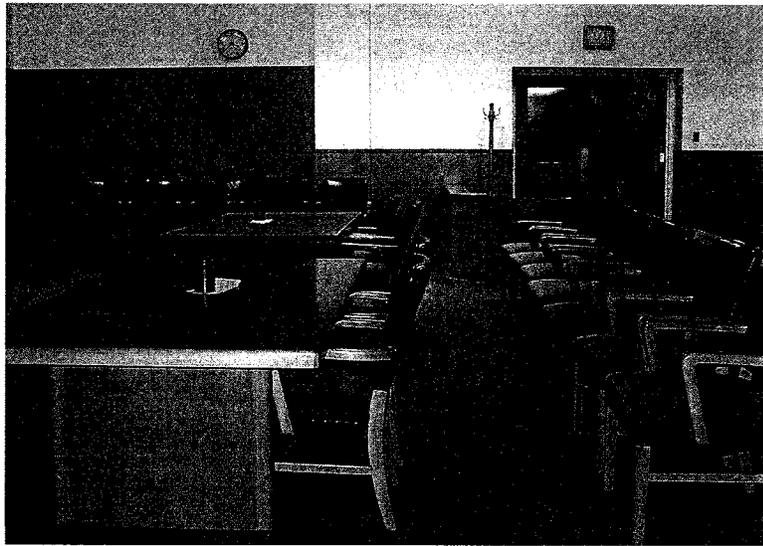
CHAPTER 8

IN THIS CHAPTER

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Findings



Findings are written explanations of why—legally and factually—local agencies made a particular decision. They map how the agency applied the evidence presented to reach its final conclusion. As a result, findings must trace a logical path—or “bridge the analytic gap”—between the evidence presented to the agency decision-makers and their ultimate decision.¹

Findings facilitate orderly analysis and assure that agency actions are grounded in reason and fact. They also offer an important opportunity to show how the agency’s decision promotes the public’s interests. In addition, findings:²

- **Assure Process Integrity.** Findings impose a certain discipline on decision-making processes, enhancing the integrity of the process and assuring principled decision-making.
- **Encourage Interagency Communication.** Findings can explain the basis of the agency’s decision.

¹ *Topanga Association for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506 (1974).

² *Id.*

- **Assure That Standards Are Met.** Some laws require that certain findings must be made before the agency can take a particular action.
- **Help Courts Interpret the Action.** Courts often look to the findings to determine the underlying rationale for an action or requirement. Findings provide support for a local agency's decisions and an opportunity to tell its side of the story.

Thus, findings should be developed with at least five audiences in mind: the agency governing body, the general public, interested parties, other governmental entities, and courts. In addition, it is sometimes a good idea to develop findings even when they are not required, particularly for decisions that may be controversial or lead to litigation.

Form and Adequacy

Findings should always cover the basic requirements of any decision. For quasi-judicial decisions, the findings must be supported by substantial evidence in light of the entire record.³ Findings are always required when local agencies are acting in their quasi-judicial capacity—like the approval of an individual permit. Although findings are not generally required for most legislative decisions, they are sometimes required by statute in certain circumstances, such as when an agency adopts a moratorium. However, a findings requirement does not transform a legislative decision into a quasi-judicial act.⁴

Findings must adequately describe the reasoning for the decision. Thus, ambiguous, conclusory or “boiler plate” language is inadequate.⁵ They also should address *all* the relevant criteria governing the decision. However, the decision-making body does not need to develop “new” findings in each circumstance. For example, it's appropriate for a council to adopt by reference the findings of the planning commission when they make the same decision (for the same reasons).⁶



Findings should be thought of strategically, particularly if the threat of litigation looms. Ultimately, if the agency's action is challenged in court, the court will look to the findings to determine whether there is substantial evidence to support the agency's decision. As a result, the findings should include detailed information that connects the dots as to why the agency took the action:

- Why was the regulation adopted, rejected, or amended?
- Why was the application approved or rejected?
- How does the decision meet relevant statutory requirements?
- How is the decision consistent with the general plan?
- What is the connection between the action and the benefits of the project?
- What public policy interests are advanced by the decision?

³ *Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4th 1205 (2000).

⁴ *ABS Inst. v. City of Lancaster*, 24 Cal. App. 4th 285 (1994).

⁵ *Honey Springs Homeowners Assn. v. Board of Supervisors*, 157 Cal. App. 3d 1122 (1984).

⁶ *Dore v. County of Ventura*, 23 Cal. App. 4th 320 (1994); *Carmel Valley View Ltd. v. Board of Supervisors*, 1976

Avoid equivocal phrases like “could cause,” “might result in,” or “may increase.” Public agencies must support decisions with evidence and language that is more certain. In one notable case, the U.S. Supreme Court took issue with one city’s finding that the dedication of land for a bicycle path “*could* offset” the traffic demand caused by the proposed development.⁷ The indefinite nature of the finding did not establish that there was the necessary reasonable relationship between the dedication and the impact of the proposed development.

Another issue that arises is how thorough the findings should be. In many cases, such as deciding to deny a tentative map, there are multiple grounds upon which the denial may be authorized. A negative finding on any one ground is sufficient to support the denial. In almost all cases, however, the decision-maker should make findings on each issue. There are at least two advantages to doing so. First, assuming that there are additional grounds for the denial, it will provide an alternative basis for upholding the decision in the event that a court later invalidates one of the grounds for the decision. Second, making both negative and positive findings regarding different requirements indicates to the courts that the agency evaluated the application fairly.

Just Because

One of the simplest techniques to assure that findings sufficiently draw a connection between action and underlying impact or rationale of the proposed action is to use the word “*because*.” This word naturally connects the reasoning to the legal principle. For example:

- “The project is inconsistent with Section III (A) of the housing element *because* only 3 percent of the units will be affordable instead of the required 15 percent.”
- “The 100-foot-wide buffer does not threaten bird and wildlife migration *because* the biologist’s report notes on page 32 that 65 feet is sufficient for each species in the project area.”

Timing Issues

How findings are drafted and adopted varies—there is no perfect way to do it. Given that one of the several roles of findings is to assure orderly decisions that draw logical connections between evidence and conclusions, the findings should be formed *before* the final decision is made. Of course, in the give and take of the land use process, there is not always time for the decision-maker to develop the appropriate findings from scratch after the public hearing has closed.

Instead, the staff report typically includes a proposed set of findings that support staff’s recommendation. These suggested findings help decision-makers identify the appropriate information, policies, and regulations governing the proposed project and guide them in making the necessary findings.⁸ Assuming that the decision-maker reaches the same conclusions and decision as staff, the draft findings will need little or no change. But when the decision-maker elects to take a different approach, new findings will need to be drafted.

In either case, it’s typical for the body to make a tentative decision and explain its reasoning to staff. Staff can then draft the findings and return them to the agency at the next meeting, where the decision can be finalized and the findings adopted. To be safe, decision-makers should take the time at the subsequent meeting to objectively review—and when necessary—revise the draft findings to make sure that they accurately reflect both the evidence in the record and their own conclusions. This process also affords staff the opportunity to closely review the decision-making rationale. If evidentiary gaps are identified during the drafting process, staff can raise them at the subsequent meeting before the final decision is made.

⁷ See *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (emphasis added).

⁸ See James Longtin, *Longtin’s California Land Use* § 11.53 (2d ed. 1987 & Supp.).

In some instances, however, the timelines for making the decision imposed by the Permit Streamlining Act may not allow the issue to be postponed to the next meeting. In these cases, decision-makers must articulate their findings orally at the meeting for staff to record. The challenge in such a situation is to develop findings “on the fly” that specifically describe the reasoning for the decision or actions taken. The following five-step process, however, will help in such situations:

- State the impact (either positive or negative) of the project.
- Cite the source of the information (for example, a study, testimony, or other evidence).
- Refer to the relevant governing statute, regulation, or ordinance.
- Link findings to general plan goals and objectives.

- Describe in detail why or how the project’s impact either meets or fails to meet the requirements included in the statute, regulation, or ordinance.

Another approach is to include two proposed sets of findings in the staff report. For contentious issues, the report can identify the nature of the controversy and propose a set of findings for each decision that could be made. For the typical project application, there would be a set of findings if the project was approved and an alternative set of findings if the project was denied. This method, however, has at least three drawbacks. First, it creates more work for staff. Second, the unused set of findings provides a “blueprint” for anyone who wants to appeal or challenge the decision in court. Finally, it can be confusing to the public; many will find it hard to understand how the same set of facts can be used to support findings for opposite outcomes.

Top Ten Practice Tips for Findings

10. **Do a Risk Assessment.** “Perfect” findings cannot be drafted for every decision. When pressed for time, actions that pose the most risk should have the best findings. Assess potential risk by evaluating the level of controversy, complexity of the decision, location, size of project, public interest, or other relevant factor.
9. **Involve Everyone.** Findings usually have both a legal and factual element. Thus, all relevant agency staff should review findings to assure factual accuracy and sufficiency in the legal context.
8. **Allow Adequate Time to Prepare.** Ideally, the legislative body will issue a tentative decision and allow staff time to draft specific findings in support of the body’s decision. When such time is not available, staff should anticipate the most likely outcomes and be prepared for each.
7. **Include Findings in the Staff Report.** Including findings in the staff report makes it easier for the legislative body to respond to and augment the findings.
6. **Incorporate Staff and Public Testimony.** Staff and public testimony is often important to the final decision. Where possible, incorporate arguments and facts provided by such testimony into the record.
5. **Incorporate Expert Testimony.** Consider having the agency’s experts make a short statement at the hearing regarding their conclusions.
4. **Don’t “Parrot” the Statutory Language.** Instead, specifically explain how the language applies to the decision at hand.
3. **Provide a Complete Record For Appeals.** On appeal to the governing body, make sure that there is as complete a record before the city council or board of supervisors as there was before the planning commission.
2. **Incorporate by Reference.** Findings may be incorporated by reference where such findings are directly on point. But, it is still a good idea to add additional findings that are specific to the decision or action at hand.
1. **Never Use Humor.** Findings aren’t funny.

A Case on Point: Toigo v. Town of Ross

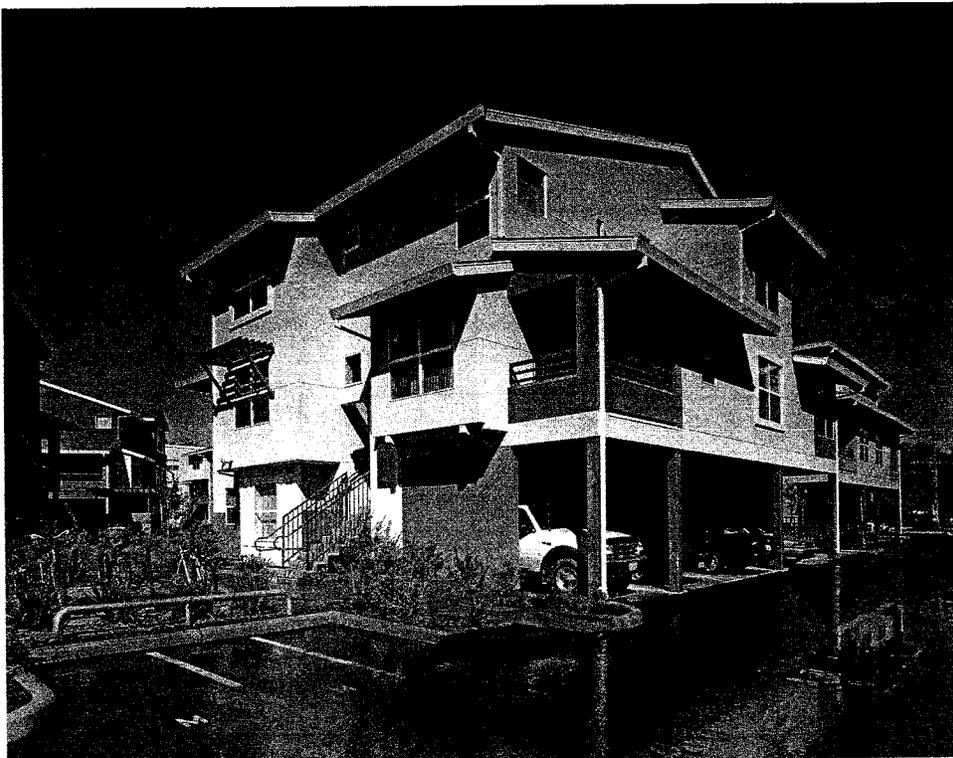
*Toigo v. Town of Ross*⁹ involved a second application to subdivide a 36-acre hillside lot into five parcels. The owner had unsuccessfully sued the town after it denied the first application. The town found that the second application was not much different and, in some instances, more environmentally severe than the first. Thus, the town council was inclined to deny the proposal a second time.

This placed the town in a difficult position. A second denial could expose the town to litigation. (For purposes of takings claims, courts sometimes determine a decision is "final" after the second application has been denied). In response, the town drafted a set of findings that was 38 pages long—hardly a typical response to the denial of a five-unit subdivision. The findings detailed how the proposal was inconsistent with six subdivision standards, two zoning provisions, eleven roadway and driveway

design standards, eight hillside lot criteria, and ten design review standards.

Was the scope of these findings too detailed for a denial of a five-unit subdivision? Probably not in light of the threat of litigation. Ultimately, the town prevailed. An appellate court dismissed the takings claim as unripe. In its opinion, the court held that the owner had failed to submit a "meaningful application" and "made no attempt to alter their vision" of the intensity of development.

This case demonstrates that a well-reasoned set of findings can be the "ounce of prevention that prevents a pound of cure;" in this case a takings liability claim. The town's care also created a positive legal precedent that will benefit other public agencies and underscores the importance of findings as a key point in the entire process where the agency can lay out its side of the story.



⁹ *Toigo v. Town of Ross*, 70 Cal. App. 4th 309 (1998).