CHAPTER 8

Findings

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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*, 58 Cal. App. 3d 817 (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

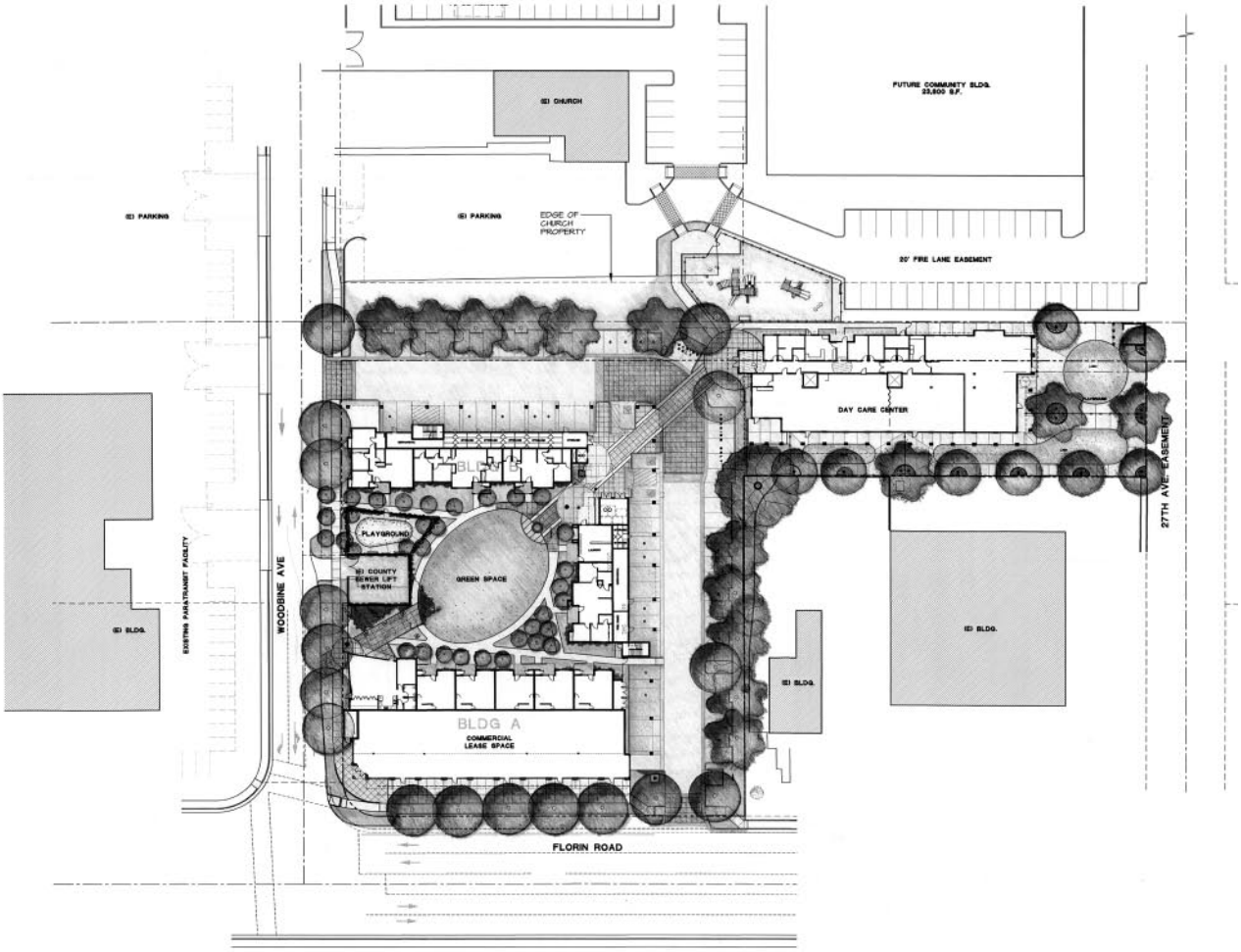
Toigo v. Town of Ross[9] involved a second application to subdivide a 36-acre hillside lot into five parcels. The owner had unsuccessfully sued the town after it denied the first application. The town found that the second application was not much different and, in some instances, more environmentally 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).



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