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A scenic view of the San Francisco skyline across the water, with a sailboat in the foreground. The text is overlaid on this image.

Findings

How to Bridge the Analytical Gap Between Raw Evidence and the Decision

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What Is A Finding?

(Pub. Resources Code, § 21156; State CEQA Guidelines, § 15091)

- A written statement
- Made by the decision-making body
- Explains how each significant impact and alternative were dealt with




What Is A Finding?

(Pub. Resources Code, § 21156; State CEQA Guidelines, § 15091)

- Prepared by the lead agency and responsible agencies.
- Prepared for each significant environmental impact identified in an EIR.
- Made for each significant impact if the project has been changed.
 - Including adoption of mitigation measures to avoid or substantially reduce the magnitude of the impact.

What Is A Finding?

(Pub. Resources Code, § 21156; State CEQA Guidelines, § 15091)

- Ensures adopted measures are fully enforceable through permit conditions, agreements, or other measures.
 - If findings cannot be made, the lead agency or responsible agency must:
 - Make the finding that either changes to the project are within another agency's jurisdiction and such changes have been made or should be adopted; or
 - Considerations make the mitigation measure or alternative infeasible.
- 

What Is A Finding?

(Pub. Resources Code, § 21156; State CEQA Guidelines, § 15091)

- Show how the agency addressed every significant impact and alternative
 - Clear and well-organized manner
 - Easy to understand



What Is A Finding?

(Pub. Resources Code, § 21156; State CEQA Guidelines, § 15091)

- If a mitigation measure or an alternative is infeasible
 - Explain the specific reasons for rejecting an identified mitigation measure or alternative

Remember...the mere fact that an alternative may be more expensive does not necessarily make it infeasible!

Uphold our Heritage v. Town of Woodside
(2007) 147
Cal.App.4th 587

Preservation Action Council v. City of San Jose (2006) 141
Cal.App.4th 1336

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

The basic rule of CEQA findings is the same basic rule that governs all public agency findings.

— the *Topanga Rule*



- A property developer applied for and received a zoning variance to build a mobile home park.
- A community association challenged the variance.
- The court held that the planning commission's fact summary regarding the variance did not include sufficient data to satisfy Government Code, § 65906 variance requirements.

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

- The *Topanga* court emphasized that findings serve several functions:
 - Facilitate orderly analysis by the agency;
 - Enable a reviewing court to trace and examine the agency's analysis;
 - Enable parties to the administrative decision to determine whether and on what basis to seek judicial review; and
 - Serve a public relations function by demonstrating that administrative decision-making is careful, reasoned, and equitable.
- Findings that fail to bridge the analytic gap between evidence and the final decision are insufficient.

Why Are Findings So Important?

- In *Topanga*, the court held that Code of Civil Procedure, § 1094.5 implicitly requires an agency rendering a decision to “set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (11 Cal.3d at 516.)



What is Raw Evidence?

- Raw Evidence is: **FACTS**
- Facts are:
 - Size, Location, Color, Number, Time, Amount, etc.
 - Verifiable and have a source
- Facts are not:
 - Assumptions, Beliefs, Ideas



EXAMPLE 1: Conditional Use Permit (CUP) For Alcohol Sales

BAD FINDING

FACTS PRESENT

1. History of calls;
2. Police Department reports this history;
3. There are convenience stores that sell beer and wine, similar to project request; and
4. There are neighborhoods around the project.



FACTS NOT PRESENT

1. What the history of calls says;
2. What the nature of the calls were;
3. Whether the nature of the calls relates to the request at hand;
4. Whether the nature or number of calls relates to public health, safety, general welfare, environmental quality, or quality of life.

EXAMPLE: Conditional Use Permit (CUP) For Alcohol Sales

BETTER FINDING

FACTS PRESENT

1. There were 6 calls in the past year;
2. None of the calls were related to alcohol (which was the request);
3. There are conditions of approval present to govern the operation of the use;
4. The police department has access to security videos to allow for monitoring; and
5. There is a provision that additional conditions can be added, if needed.



What Types Of Findings Does CEQA Require?



- No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. (State CEQA Guidelines, § 15091.)

Possible Findings

1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
(State CEQA Guidelines, § 15091(a)(1))
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
(State CEQA Guidelines, § 15091(a)(2))
3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.
(State CEQA Guidelines, § 15091(a)(3))

Possible Findings

- The findings required shall be supported by substantial evidence in the record.
(State CEQA Guidelines, § 15091(b))



Findings Regarding Impacts Requiring Mitigation

- CEQA requires that an agency adopt mitigation measures, when feasible, to “avoid or substantially lessen” significant impacts. (Pub. Resources Code, § 21002)
- An agency is not required to find that a significant impact is entirely avoided.
 - The question is whether the impact has been reduced to a level that is less than significant.

Findings Regarding Impacts Requiring Mitigation



APPROVED

- If an agency adopts all the recommended measures in an EIR and the EIR concludes that they will avoid or substantially lessen each of the identified significant impacts, nothing more in the way of findings should be required as long as the evidence and the analysis supporting the agency's ultimate findings are set forth in the EIR.

Findings Regarding Impacts Requiring Mitigation



- In most circumstances, findings will be needed to describe the agency's reasoning on specific issues, such as:
 - Rejection or modification of recommended mitigation measures;
 - Determination that a mitigation measure will lessen an impact but will not avoid or substantially reduce it;
 - Adoption of new mitigation measures not recommended in the EIR; or
 - Clarification or modification of the EIR's conclusions about the effectiveness of a recommended mitigation measure.

Findings Regarding Less Than Significant Or No Impact

- Findings not required for less than significant impacts
- If none of the impacts are significant, further findings on the feasibility of mitigation measures or project alternatives not required. (Pub. Resources Code, § 21081)



BEST PRACTICE:

Make findings so that you have evidence in the record explaining how you reached the less than significant or no impact conclusions. Without that evidence, you have an analytic gap that could be the demise of the approval.

What Are Statements Of Overriding Considerations?

(State CEQA Guidelines, § 15093)

- A lead agency cannot approve a project if it will have significant effects on the environment
 - Unless it finds that the benefits outweigh the unavoidable adverse environmental effects.
- Environmental impacts from the project can be balanced against project benefits.



What Are Statements Of Overriding Considerations?

(State CEQA Guidelines, § 15093)



- Written Statement
 - Explaining why the agency is willing to accept each significant effect.
 - Sets forth the specific overriding social, economic, legal, technical, or other beneficial project aspects supporting the agency's decision.
 - Based on substantial evidence in the final EIR or elsewhere in the record.
 - Begins with a summary of the unavoidable impacts and then lists the factors that justify approving the project despite these impacts.

What Are Statements Of Overriding Considerations?

(State CEQA Guidelines, § 15093)

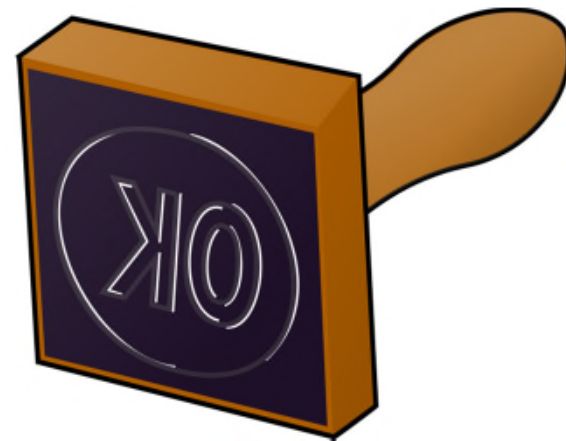


- **Example:** A development project would result in unavoidable impacts, but potential benefits could include: creation of local jobs, construction of a new school, and/or increase to the tax base.
- **Findings required:** Benefits outweigh impacts.
- **Note:** A statement of overriding considerations is not a substitute for the required findings on the feasibility of mitigation measures.

Certification Of Final EIR

(State CEQA Guidelines, § 15090)

- Prior to approving a project the lead agency shall certify that:
 1. The final EIR has been completed in compliance with CEQA;
 2. The final EIR was presented to the decision-making body of the lead agency and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project; and
 3. The final EIR reflects the lead agency's independent judgment and analysis.
- When an EIR is certified by a non-elected decision-making body within a local lead agency, that certification may be appealed to the local lead agency's elected decision-making body, if one exists.



Mitigation Monitoring And Reporting Program

(State CEQA Guidelines, § 15097)



- Agency shall also adopt a program
 - Reporting on or monitoring the required changes in the project; or
 - Made a condition of approval to avoid or substantially lessen significant environmental effects.
- These measures must be fully enforceable through permit conditions, agreements, or other measures.
(State CEQA Guidelines, § 15091(d))

Findings For Exemptions

- If a project is exempt under a statutory or categorical exemption, a finding should state that the project is exempt from CEQA.
 - Include a citation to the appropriate section of the State CEQA Guidelines or statute under which it is found exempt.
- A brief statement of reasons to support the finding should also be included.
- There is no requirement that an agency put its exemption determination in writing.
 - An exemption determination is more likely to withstand judicial review if it contains a thorough, well-reasoned statement of why the exemption applies.

Findings For Addendums



- If a project changes, changed circumstances, or new information are so minor as to require no further CEQA document.
- Public agency explains in findings its reasoning and creates a record showing why no further CEQA was done. Typically, this is done in a staff report or other written format.

Findings Regarding Recirculation

- When an agency certifies an EIR:
 - It is not required to make an express finding that there is no significant new information that would require the EIR to be recirculated.
 - Such a finding is implied from the agency's decision to certify the EIR without recirculating it.



BE AWARE!

Although an agency need not make a finding that there is no significant new information that would require recirculation when it certifies an EIR, written findings can assist a reviewing court in the event of a legal challenge.

What Can I Do To Make My Findings Strong?

1. The agency must make the ultimate finding called for by Pub. Resources Code, § 21081 and State CEQA Guidelines, § 15091.
2. The finding must be supported by substantial evidence in the record; and
3. The agency must provide some explanation linking the ultimate finding and the evidence in the record.



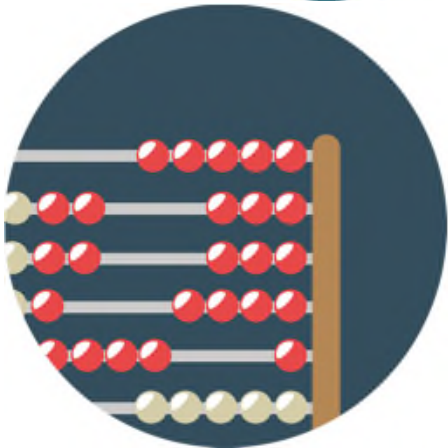
Make explicit written findings!

What Can I Do To Make My Findings Strong?

PROPOSED STRUCTURE:

- Introduction
- Certification of the EIR
- Adoption of mitigation measures
- Findings on insignificant impacts
- Findings on potentially significant impacts that will be mitigated or avoided
- Findings on significant impacts
- Findings on rejected mitigation measures
- Findings on mitigation measures that are within the responsibility and jurisdiction of another agency
- Findings on project alternatives
- Statement of overriding considerations
- Statement on location and custodian of documents

What Can I Do To Make My Findings Strong?



- Facts, Facts, Facts!
- Ensure that the record includes evidence supporting the finding.
- Detailed findings on an issue are not required
 - if the basis for the agency's decision is found in the EIR
 - the agency's findings incorporate or adopt the EIR's discussion and analysis.
- If the agency's findings are based on a different rationale than what is set forth in the EIR, then those findings should refer to, and be supported by, evidence in the record other than the EIR.

Recent Cases Where Courts Said Findings Were Legally Deficient

- ***Woodward Park Homeowners Association, Inc. v. City of Fresno*** (2007) 150 Cal.App.4th 683
 - Court held that the City's finding regarding superior economic benefits of the proposed project versus the project alternatives as an overriding consideration was not supported by substantial evidence.
- ***Spring Valley Lake Association. v. City of Victorville*** (2016) 248 Cal.App.4th 91
 - Court held that EIR's conclusion that the project would have less than significant effects from GHG emissions was not supported by substantial evidence.



Let's Draft Some Findings!



EXAMPLE 2: Less Than Significant Impact



- ***General Plan Policy: 2.2.8***
Natural Features-
Residential developments
should preserve and
incorporate as amenities
natural site features, such as
land forms, views, creeks,
wetlands, wildlife habitats,
and plants.

EXAMPLE 3: Less Than Significant Impact With Mitigation

BIOLOGICAL RESOURCES

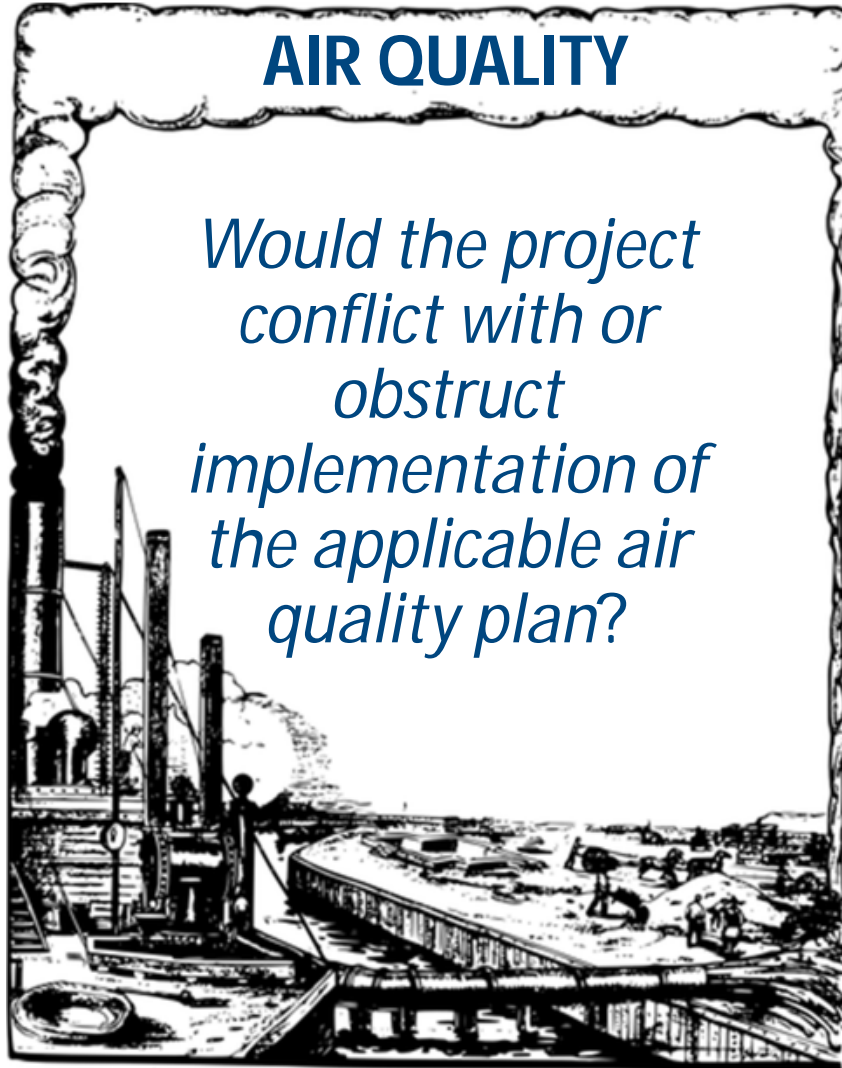
Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?



EXAMPLE 4: Significant and Unavoidable Impact

AIR QUALITY

*Would the project
conflict with or
obstruct
implementation of
the applicable air
quality plan?*



Thank you for attending.

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