

# The Legal Framework for Land Use Decisions<sup>©</sup>

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# Overview

- **The Legal Framework**
  - Federal, State & Local laws
  - Police Powers
  - Limitations on Police Powers
- **The Planning Commissioners' Role**
  - Legislative
  - Quasi-Judicial

# The Legal Framework

## ■ **Federal Laws**

- National Environmental Protection Act
- Endangered Species Act
- Clean Water Act
- Clean Air Act
- Religious Land Use and Institutionalized Persons Act (RLUIPA)
- Federal Court Decisions

# The Legal Framework

- **State Laws**
  - Planning and Zoning Law
  - Subdivision Map Act
  - California Environmental Quality Act
  - Permit Streamlining Act
  - Mitigation Fee Act
  - California Coastal Act
  - Ralph M. Brown Act
  - Political Reform Act
  - State Court Decisions

# The Legal Framework

- **Local Laws**
  - General Plan
  - Special Plan
  - Zoning Ordinance
  - Other Ordinances & Regulations
    - Design Guidelines
    - Environmental Guidelines
    - Application Submittal Requirements

# The Legal Framework

- **The General Plan**
  - Known as the “local constitution.”
  - Must be internally consistent.
  - Consistency with General Plan required for land use projects and Zone Code.
- **The Commission must balance:**
  - The community’s collective vision expressed in the General Plan,
  - With the benefits and burdens of the specific project.

# The Legal Framework

- **General Plan Consistency**
  - A project is consistent with the GP if, considering all of its aspects, it will further the objectives and policies of the GP and not obstruct their attainment.
  - A project is inconsistent if it conflicts with a GP policy that is fundamental, mandatory, and clear.

# The Legal Framework

## ■ Hypothetical:

- A hillside housing project would require significant grading and retaining walls to support an access road that can accommodate emergency vehicles.
- Can this project be found consistent with the Hillsborough General Plan given the following policies?
  - Policy A: Minimize grading and retain natural contours of the land.
  - Policy B: Provide adequate emergency access.

# The Legal Framework

- **Zone Code**
  - Separates a city into districts to regulate the intensity of development, uses of land, and development standards.
  - **“By right”** - Allows certain uses without any discretionary review.
  - **“Conditional”** – Allows certain uses if specific conditions are met.
  - **Variances** – a limited waiver of zoning standards to accommodate unique physical characteristics of a property.

# The Legal Framework

## ■ **Police Power**

- The basis for all land use regulation.
- Authorizes local governments to take action to “protect the health, safety, and general welfare” of its residents.
  - U.S. Constitution, 10<sup>th</sup> Amend.
  - Cal. Const. Art. XI, §7.

# The Legal Framework

- **Limitations on the Police Power**
  - **Preemption** – local land use regulations may not conflict with state or federal law.
  - **Takings Clause** – requires compensation if regulations overly limit private property rights.
  - **Due process** – no deprivation of life, liberty or property.
    - Substantive – vested rights.
    - Procedural – notice and hearings.

# The Legal Framework

- **Limitations on the Police Power**
  - **Equal Protection** – requires similarly situated persons to be treated in equal manners.
  - **First Amendment** – allows freedom of speech and expression.

# The Planning Commissioners' Role

- **Commission's Primary Functions**
  - Legislative
  - Quasi-Judicial / Adjudicative
- Different ground rules will apply depending on which function is being fulfilled.

# The Planning Commissioners' Role

- **Legislative Function**
  - Involves policy making activity.
  - The Commission's legislative actions include: making recommendations about adoption of a General Plan or Zoning ordinances to the City Council.

# The Planning Commissioners' Role

## ■ **Legislative Function**

- Commission need not provide any special due process.
  - Following Brown Act procedures for notice and a hearing are all that is necessary, unless a public hearing is required.
- No requirement to provide evidence or findings to support policy decisions.

# The Planning Commissioners' Role

- **Legislative Act – Standard of Review**
  - Legislative acts are presumed valid without supporting findings.
  - A legislative action will be upheld unless the Commission / Council acted arbitrarily, capriciously or without evidentiary basis. (CCP § 1085).

# The Planning Commissioners' Role

## ■ **Quasi-Judicial Role**

- Involves applying general policy to a specific property, individual, interest or situation.
- Examples – Granting / denying a conditional use permit, variance, or allowing a non-conforming use for a particular property.
- Elements of a quasi-judicial decision: notice, evidence, and the findings.

# The Planning Commissioners' Role

- **Quasi-Judicial Role – Notice**
  - The affected property owners generally must receive notice of the hearing at least 10 days in advance.

# The Planning Commissioners' Role

- **Quasi-Judicial Role – Evidence**
  - The applicant must have an opportunity to present evidence to the Commission.
  - A Commissioner's decision must be guided by the evidence presented at the hearing.
    - Refrain from and disclose any *ex parte* contacts.
  - If a Commissioner has a personal bias that persists regardless of the evidence presented, he or she cannot participate in the decision.

# The Planning Commissioners' Role

- **Quasi-Judicial Role – Findings**
  - The Commission must adopt certain findings to make a final decision:
    - Findings are written statements of fact explaining how and why the Commission made a particular decision.
  - All land uses must be consistent with the General Plan and applicable zoning laws.
  - Specific findings may be required to approve certain uses.

# The Planning Commissioners' Role

- **Quasi-Judicial Act – Standard of Review**
  - A fair trial may have been denied if:
    - There is inadequate notice,
    - The hearing was unfair, or
    - The decision-makers are not impartial.

# The Planning Commissioners' Role

- **Quasi-Judicial Act – Standard of Review**
  - An “abuse of discretion,” is established if:
    - The agency has not proceeded in the manner required by law,
    - The order or decision is not supported by the findings, or
    - The findings are not supported by the evidence. (CCP § 1094.5)

# Summary

- A complex web of Federal, state and local laws govern the Commission's action.
- The police powers allow land use regulations, so long as it does not conflict with other laws.
- The legal standards governing a commissioner's actions differ depending on whether the role is legislative or quasi-judicial.

# Questions?

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