

Welcome



ALVAREZ-GLASMAN & COLVIN

ATTORNEYS AT LAW

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TOP 10 POINTERS FOR DEALING WITH CITIES AND COUNTIES

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DEALING WITH CITIES AND COUNTIES

THE TOP TEN LIST

- 1) Know the Land Use Designations
- 2) Understand Which Permits You Need
- 3) Understand Entitlement Procedures
- 4) Know Your Due Process Rights
- 5) Know Your Brown Act Rights
- 6) Remember CEQA Requirements
- 7) Understand “Vesting”
- 8) Know Your Rights to Public Records
- 9) Remember to Exhaust Administrative Remedies
- 10) Don’t Forget Contingency and Escape Clauses





POINT 1

Know the Land Use Designations



Know the Land Use Designations

- All projects must conform with the **General Plan** designation, and this is hard to change
- All project must conform with the **Zoning** designation, but it's easier to change
- What about “**grandfathered rights**”?
- Other designations might apply:
 - ▣ Specific Plans
 - ▣ Redevelopment Plans/Redevelopment Project Areas
 - ▣ Uncodified policies and general preference
 - ▣ Federal/State requirements in certain cases





POINT 2

Understand Which Permits You Need



Understand Which Permits You Need

- **Discretionary vs. Ministerial** permits
- Building permits, grading permits, etc.
- Business licenses
- Difference between **CUP's** and **Variances**
- Federal/State permits required in certain cases
 - Clean Water Act/Fill Permits
 - Endangered Species Act Permits
 - Air Quality Permits
 - DRE subdivision approvals
- **Other designations:**
 - Design Review requirements
 - Historic Preservation permits
 - Planned Developments
 - Development Agreements





POINT 3

Understand Entitlement Procedures



Understand Entitlement Procedures

- The “**standard procedure**”:
 1. Application submission
 2. Planning Commission decision
 3. Appeal to City Council
- Authority to impose “**conditions of approval**”
- Decisionmaker conflicts-of-interest
- Changing the project after entitlement
- Who bears entitlement costs?





POINT 4

Know Your Due Process Rights



Know Your Due Process Rights

- Due Process = Fairness
 1. Notice
 2. Opportunity to be heard
- Right to see evidence and cross-examine witnesses
- **Bias and the “appearance of bias”**
 - Commissions vs. Hearing Officers
 - “Prosecutor” vs. “Judge”
 - Role of attorney advisors
- Fees and fee waivers



How much “process” is “due”?

- Due Process “balancing test” (*Matthews v. Eldridge*) :
 1. Significance of the issue at stake and magnitude of the threatened action
 2. Risk of error and value of additional safeguards
 3. Burden of additional process and government’s interest in efficient adjudication
- Right to appeal
- How to challenge a violation?
- What’s the remedy?





POINT 5

Know Your Brown Act Rights

Know Your Brown Act Rights

- What is the Brown Act?
- General Rules:
 - No discussion unless agenda has been posted
 - No action on items not listed on the agenda
 - Public's right to participate
- Danger of collective concurrence and serial meetings
- Know your right to speak and submit evidence to the Council





POINT 6

Remember CEQA Requirements



Remember CEQA Requirements

- What is CEQA?
- The CEQA Process:
 1. Initial Study
 2. Environmental Review
 3. Certification
- Levels of CEQA Review:
 - Categorical Exemptions
 - Negative Declaration / Mitigated Negative Declaration
 - Environmental Impact Report





POINT 7

Understand “Vesting”



Understand “Vesting”

- “Vesting” means that City cannot stop your project even if they change the law

- Project is not “vested” until:

ALL PERMITS GRANTED + SIGNIFICANT WORK PERFORMED

- Vesting Tract Maps are available to lock in a project before work starts

- Danger of proceeding when a project is not vested





POINT 8

Know Your Rights to Public Records



Know Your Rights to Public Records

- ❑ **General Rule:** all city and county documents are public information
- ❑ **Exception:** privileges will prevent access to some records, especially confidential ones
- ❑ Includes electronic records like e-mails
- ❑ Uses for public records:
 - ▣ When general city/county information is needed
 - ▣ When facing a public hearing
 - ▣ When facing enforcement





POINT 9

Remember to Exhaust Administrative Remedies



Remember to Exhaust Administrative Remedies

- **General Rule:** if you have not raised your argument at the local level, you lose the right to bring it in court
- **Exceptions:**
 - ▣ If raising it before the city or county would be **futile**
 - ▣ If city or county has **pre-judged** the matter
 - ▣ If it involves a “**jurisdictional right**”
- Important to present your case up front at the city to avoid waiving it later





POINT 10

Don't Forget Contingency and Escape Clauses



Don't Forget Contingency and Escape Clauses

- Consider a local **land use contingency** in the deal
 - **Example:** Lease for autobody shop contingent on tenant obtaining CUP allowing for on-site autobody work
- Consider extending contingency to the date when statute of limitations expires
 - **Example:** Escrow for purchase of office building will not close until 90-days after buyer obtains city parking variance
- Failure adhere to local laws can terminate the deal
 - **Example:** Tenant's violation of CUP = grounds to terminate the lease





BONUS POINT

Understand how to Preserve Your
Development and Use Rights



Understand how to Preserve Your Development and Use Rights

- ❑ Make sure your project is vested
- ❑ Make sure you have all permits and entitlements
- ❑ Problem of lapse if you don't act on a permit
- ❑ Problem of losing a grandfathered status if you cease operations or change the use
- ❑ Be aware when other properties are up for development
- ❑ Know when the General Plan or Zoning designations are being amended
- ❑ Keep on good terms with local officials



About Alvarez-Glasman & Colvin

- A full service law firm founded in 1986
- Specialize in all aspects of real estate law
 - Redevelopment Law
 - Negotiations with Developers and Public Agencies
 - Commercial Lease Negotiation and Representation
 - Land Use and Environmental Law
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Thank you



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