



# SPECIAL REPORT



## Effective Land Use Tools

Summer 2018 Special Edition

### Sticks and Stones—Your Words Matter

By: Eric Nelson, Dana Point Planning Commissioner

“Sticks and stones may break my bones, but words will never hurt me.” This was bad advice I received growing up, second only to naptime was a punishment. The truth is simple: words have the ability to hurt or help. Name calling hurts, disparaging others can hurt, and these actions will hurt you as well. Hurtful words undermine your character and credibility; they weaken your message.

As a Planning Commissioner, I start with the belief that people who show up and speak publicly have good reasons. This could be their first time speaking publicly for or against something, and most are residents, not professionals. Regardless, it is my responsibility as a decision maker to listen and base my judgement on all of the public comments, applicant plans, staff reports, and technical studies.

You may be in a hearing or public meeting and have that one chance to convey your message to decision makers. Your message may be the difference between the decision maker listening to, agreeing with, or marginalizing your comments. In many cases you will be timed and limited to 3-5 minutes. Don't make the mistake of name-calling and wasting your valuable time. Focus on your message.

At a recent Planning Commission hearing, a speaker noted that “anyone who thinks this traffic study is accurate is an idiot.” He went on to note that his friends agree and that for those reasons, we should vote “no.” Imagine for a minute that you were the decision maker and did not have

a concern with the study. You are now left with a choice, one that in my mind is simple—dismiss the comments.

This type of comment is based on personal feelings, not objective information. The same person with a different message is likely to be more persuasive and effective. An example of this would be pointing out a flaw or inconsistency in the traffic report, referencing a policy, or utilizing some objective information that provides the proof of your position.

Decision makers are people too. I believe negativity and name calling (terms like NIMBYs, greedy developers, bunny huggers, idiots, etc.) erode and undermine even the best message. I believe that when you label someone, it gets personal. Attacking a person is not only bad form, it also sheds light on the character of the person speaking and tarnishes the message.

As a decision maker, I have changed my mind, reevaluated my opinion, and added conditions to a project after hearing from a concerned resident. As I reflect, what resonated every time was a simple message: speakers articulating their concerns with the pending decision and providing some options, objective information, ideas on moving things forward, or even just a willingness to find common ground. In short, they were soft on the people and hard on the issues.

Words matter, and their presentation, can be the difference between successfully making a point that is heard or turning the focus instead toward an underlying negativity that distracts decision makers from performing their duty.

# Blueprint for Growth—The General Plan

By: Michael Wellborn, FHBP

California cities and counties are required by state law to have a legally adequate General Plan. General Plans must include seven elements: Land Use; Circulation; Housing; Conservation; Open Space; Noise; and Safety. Other elements may be added such as Public Services and Facilities, Recreation, and Environmental Justice.

Each element identifies objectives, policies, and programs that respond to state and local regulations. The Land Use Element includes a map and designates land uses. In most instances, general plan elements must



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be “internally consistent.” For example, the designations for the amount, density, and type of use (housing, commercial, industrial, etc.) in a Land Use Element

must be consistent with and not exceeding the Levels of Service for highway traffic volumes designated in a Circulation Element.

Layered underneath general plans, are the Zoning Codes with more specific requirements, while specific plans customize regulations for certain areas. All must be internally consistent with the general plan.

Public opposition often comes when plans to change the General Plan are proposed. For example, in the City of Orange the current proposal for the Sully Miller site amends the City’s General Plan and removes the project site from the Orange Park Acres Specific Plan (OPA Plan). For decades, both the General Plan and the OPA Plan have called for open space and recreational uses to be included on the site.

The proposed amendment intensifies uses beyond those envisioned and approved in the General Plan, which would directly undermine the integrity and internal consistency of the City’s planning and zoning documents. The proposal conflicts with fundamental policies of the General Plan and the OPA Plan, thereby violating the California Planning and Zoning Law.

## Using CEQA as a Tool

By: Dr. Terry Welsh, Banning Ranch Conservancy

In 1970, Governor Ronald Reagan signed into law the California Environmental Quality Act (CEQA). This law requires agencies to analyze and disclose environmental impacts of a proposed project before a decision is made. The most familiar analysis is written as an Environmental Impact Report (EIR). Adverse impacts must be avoided or mitigated, if possible. CEQA also requires opportunities for public participation.

Project impacts can include: decreased air quality, increased traffic, lack of a reliable water source, habitat destruction, and more. Ensuring all impacts are properly evaluated and mitigated is critical to the process. Public participation provides legal standing for a CEQA challenge. You can only file a lawsuit if you participated.

The Banning Ranch Conservancy (BRC) participated throughout the CEQA process when the 1,375 unit Banning Ranch project was considered by the City of Newport Beach. By building a solid administrative record, the Conservancy was poised for a legal challenge after the City approved the project and its EIR.

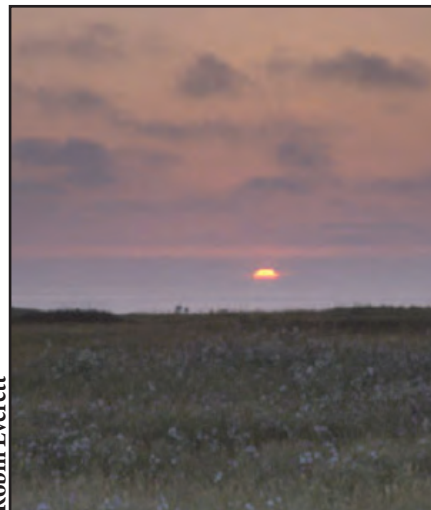
After winning at the Superior Court then losing at

the Appellate Court, BRC appealed to the State Supreme Court. In March 2017, the California Supreme Court unanimously ruled in favor of the BRC.

One critical element of the decision was important because the California Coastal Act requires protections to Environmentally Sensitive Habitat Areas (ESHA). Under the Coastal Act, developers are required to avoid ESHA, rather than build on them and mitigate for impacts elsewhere. The City refused to delineate ESHA on the

site—therefore under CEQA, the impacts weren’t analyzed. The court decision forced Newport Beach to vacate its project approvals.

Now, all agencies approving projects in the Coastal Zone must make a reasonable ESHA estimate prior to project and EIR approval.



Robin Everett



# Initiatives Protect the Public's Interest

By: Jean Watt, FHBP

One important tool used successfully at local and statewide levels is the initiative, granted in 1911 under Governor Hiram Johnson. This gave power to the people, through the initiative process, to assert direct control over the political process, a right granted under the California Constitution.

The most common definition of an initiative is a legislative measure that is proposed – initiated – by the voters. Initiative proponents draft a measure with the assistance of legal counsel. Then they collect signatures within 180 days and, if successful in collecting sufficient

valid signatures, require the legislative body to adopt the measure or place it on an upcoming ballot. Initiatives can only cover one topic and must be signed by a certain percent of the registered voters in the jurisdiction.

Residents of Newport Beach have been an incubator for ideas to protect this precious piece of California coast from overdevelopment and loss of beach access. For decades residents have fought to keep Upper Newport Bay as an important estuary, provide public access, and keep rich habitats in canyons and bluff lands.

In 2000, Newport residents were overwhelmed with applications for huge commercial projects. The “Greenlight” initiative, which passed resoundingly by voters, was the solution. This initiative caused developments over 40,000 square feet, 100 residential units, or 100 peak hour car trips, that were not already entitled in the General Plan, to go to a vote of the people.

Other cities have passed similar measures and, although not the entire answer to the intense pressure for development along the coast, these measures have been a significant part of the efforts to protect our unique residential and environmental heritage.



Melanie Schlotterbeck



# Overturning Decisions via Referendum

By: Tina Thompson Richards, FHBP

Citizens have a right to challenge decisions of their local governments via a referendum, a democratic process that gives voters the last word on questionable decisions. Referendums have been successfully used in Orange County land use battles to overturn zoning changes that eliminated parkland or increased housing density.

The referendum process can be undertaken by any group. Legal advice should be sought to draft a petition asking for the desired outcome. You have only 30 days from a decision to collect signatures from registered voters. You'll need a minimum of 10% of those registered within that jurisdiction, so it's wise to collect more than is required. The Registrar of Voters will reject signatures from non-registered voters or those that don't match voter files. Once the Registrar certifies the petition, the referendum can be placed on the ballot for the vote of the people or the elected body could rescind its prior decision.

When Orange Citizens circulated a referendum petition in 2011 to overturn an ill-advised zone change,

they needed 7,144 signatures, but collected over 12,000 for padding. Orange Citizens' ballot measure won with 56% of the vote, but the City Council ignored the voters and that zoning issue ended up in the California Supreme Court. The Court subsequently ruled in favor of Orange Citizens and the City was directed to restore the recreational open space zoning.

Most referendums do not require enforcement by the Supreme Court. In a different instance, Orange residents had previously challenged a 187-unit development proposal on land long envisioned as natural open space. A referendum was launched, more than enough signatures gathered, and the City Council withdrew its approval of the project rather than face a ballot measure.



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## Finding That Win-Win Before the Fight

By: Melanie Schlotterbeck, FHBP

When evaluating a project, look at the suite of options before you. Do you try to change the mind of the decision makers? Change the project during public testimony? Litigate? Referend? One cost-effective solution is to work with the developer to address your concerns before the public hearing process. This can be formalized as a pre-litigation settlement agreement, which is enforceable by law.

An example of a successful settlement agreement is one reached by the resident-based group, Protect Our Homes and Hills, and the landowner, North County BRS, over a proposed 83-unit project above Yorba Linda's hills. In 2008, residents were faced with a massive wind-driven firestorm that burned more than 30,000 acres and damaged or destroyed nearly 300 homes. Streets were gridlocked, people couldn't get out of the neighborhoods, so the mere thought of additional homes was untenable.

Residents outlined their concerns to the developer and a settlement agreement was reached preserving nearly half of the 84-acre site. The agreement also created a monthly

homeowner association fee to fund fire protection efforts, evacuation drills, etc. Residents also will collaborate with fire experts to

create a Community Wildfire Protection Plan. And, for these concessions, residents agreed not to oppose the project, but instead support the benefits of the agreement. They did this in subsequent public hearings.

With a pre-litigation settlement agreement, no one had to build an administrative record, hire experts and lawyers to fight the environmental document, or face off in court. This saved time and money with no substantial delay in the project's approval. And, the developer may have been more amenable to project concessions than if litigation occurred.



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