

# LEGAL ENVIRONMENT OF PLANNING PPD 529

UNIVERSITY OF SOUTHERN CALIFORNIA  
SCHOOL OF POLICY, PLANNING AND DEVELOPMENT

Fall 2009 Syllabus

Professor James A. Kushner

## I. TEXT:

Selmi, Kushner & Ziegler, Land Use Regulation: Cases and Materials (3d ed. 2008)

## II. COURSE DESCRIPTION

The course will focus on the laws regulating land use and development. Throughout the course state and federal laws that significantly impact land use and development will be studied. These laws cover planning, zoning, subdivision, building, environmental, aesthetics, historic preservation, affordable housing, agricultural land preservation, eminent domain and redevelopment. Within the context of these laws, the course will also review material discussing case law in the areas of vested rights, regulatory takings, exactions, dedications and development fees. Finally, the course will include a review of federal laws that add to the legal environment of planning, including freedom of expression and religion and civil rights and equal opportunity.

## II. COURSE OUTLINE AND ASSIGNMENTS:

The following is a general estimate of materials and the order of materials to be covered. Please do not expect this general syllabus to be an accurate prediction of coverage as class discussion may frequently frustrate anticipated plans.

Class 1 - Tue. 8-25 **Introduction** Selmi, Kushner & Ziegler (3d ed.), Chapter 1  
3-43,

Class 2 - Thur. 8-27 **Zoning:** Euclid & Nectow. Chapter 2, 47-59; Next American City Video

Class 3 - Tue. 9-1 **Zoning Forms of Action - Interpretation, Special  
Exceptions & Prior Nonconforming Uses,  
Amendments, Spot Zoning & Variances:** Gaffney, Covington,  
Janssen & Drews 59-84

Class 4 - Thur. 9-3 **Conditional Use Permits, Floating Zones, PUD's,  
Contract & Conditional Zoning & Site Plans:** Unitah, Rodgers,  
Peters & Summa 84-106

- Class 5 - Tue. 9-8 **Subdivision:** Chapter 3: Loftin, Garipay. & Burrell, 107-126
- Class 6 - Thur. 9-10 **Vested Rights, Streamlining & Vesting Maps:** Western Land, Norco, Kaufman & Broad 126-147  
Mid-Term Examination to be distributed - Due Tuesday
- Class 7 - Tue. 9-15 **Infrastructure & Exaction Takings, Impact Fees, Special Assessments, FBAs & BID:** Chapter 4: Nollan, Dolan, Ehrlich Volusia & Strauss 149-191  
Mid-Term Examination due, hand in hard copy or e-mail before 4:00 p.m.
- Class 8 - Thur. 9-17 **The Comprehensive Plan — Implementation & Consistency:** Chapter 5: Wolf, Twain Harte Homeowners, Haines & Pinecrest Lakes 193-233
- Class 9 - Tue. 9-22 **Judicial Review:** Chapter 6: Frito-Lay, Kearnes-Tribune, Sunderland & Davisco 237-262, omit 262-270, read 270-275
- Class 10 - Thur. 9-24 **Regulatory Takings** Chapter 7: Mahon, Penn Central, Lucas, Tahoe-Sierra, Palm Beach, First English, Brevard & McPherson 299-360
- Class 11 - Tue. 9-29 **Speech & Religion:** Chapter 8: Alameda Books, Metromedia, First Covenant, Civil Liberties & Guru Nanak 361-413
- Class 12 - Thur. 10-1 **Federal Decisionmaking:** Chapter 9 Preferred, **Growth Management, Sprawl & Smart Growth:** Chapter 11 Ecogen, Petaluma, Golden & 1000 Friends, omit 415-459, Read 459-470, omit 471-527, read 531-578; Video
- Class 13 - Tue. 10-6 **Affordable Housing:** Chapter 12: Mount Laurel I and II, City of Oceanside & Commercial Builders 579-613
- Class 14 - Thur. 10-8 **Discrimination:** Chapter 13, Arlington Heights, Cleburne, Olech, Belle Terre, Huntington & Advocacy Center 617-655
- Class 15 - Tue. 10-13 Chapter 15 **Urban Redevelopment:** Castel, Poletown, Southwestern, Kelo & Hathcock 707-748  
Final Exam to be distributed. Due Thursday.
- Thur. 10-15 Final Exam Due. E-Mail by 6:00 p.m.

#### IV. ATTENDANCE AND PREPARATION:

Students are discouraged from taking any absences as it takes you out of the rhythm of the class making you intimidated from full participation at the next class as well as missing potentially valuable discussion. There is a steep learning curve due to new concepts and analysis and the half-semester course must cover a great deal of material each class.

## V. CLASS PREPARATION AND GRADING:

I design my classes for regular student participation. Volunteer contributions or inquiries are always welcome. You will find that your legal reasoning facility will develop more rapidly if you spend your class time following the discussion and anticipating questions and responses. Merely attending lectures without study of the text will prove insufficient to understanding concepts.

The entire grade for the course will be based on a one hour essay-type open-book mid-term examination and a similar final examination. It is my policy not to read practice examinations. I will post old exams and grading sheets on BlackBoard. It is recommended that following your completion of an outline of the course materials that as part of your memorization process that you write old examinations and thereafter compare your answers with your outline to reinforce your understanding of the rules and their application. Note that grading sheets are generic and students should not seek to discuss each item listed.

## VI. CLASS MEETINGS:

Class will meet on Tuesdays and Thursdays for the first half of the semester according to the university calendar. Classes will meet in Room **RGL 101** from 4:00 p.m. to 5:50 p.m.

## VII. EXAMINATION SCHEDULE:

The open-book, take-home Mid-Term examination will be distributed on Thursday, September 10 during class and is due by 4:00 p.m. on Tuesday September 15. The examination must be submitted in hardcopy. The final examination will be distributed during class on Tuesday, October 13 and is due by 6:00 p.m. on Thursday, October 15. The final examination must be received electronically by e-mail.

## VIII. OFFICE HOURS:

No appointment will be necessary. Students are encouraged to come to my office in room RGL 107A and discuss any issues, questions, problems or ideas at any time. I am generally available in my office on Tuesdays from 10:00 a.m. to 4:00 p.m. Should an appointment be necessary please e-mail or call me (213) 738-6824, stop by or e-mail me as to when you might stop back or desire an appointment and if I cannot be available at that time I will e-mail a counter-proposal. Greatest accessibility will be assured on Tuesdays. I am pretty good in responding to E-mail: [kushner@usc.edu](mailto:kushner@usc.edu) or [jkushner@swlaw.edu](mailto:jkushner@swlaw.edu), and based on recent experience it is the communication device of choice.

## IX. OUTSIDE READING:

The best hornbook in recent years has been Daniel R. Mandelker, *Land Use Law* (Lexis-Nexis 5th edition 2003 & Supp. 2007). Two other books offering a general overview are Julian C. Juergensmeyer & Thomas E. Roberts, *Land Use Planning and Development Regulation Law* (2d ed. Thomson West 2007) and Peter W. Salsich, Jr. & Timothy J. Tryniecki, *Land Use Regulation: A Legal Analysis & Practical Application of Land Use Law* (American Bar Association 1998). Student response suggests that some benefit from the overview of Barlow Burke, *Understanding the Law of Zoning and Land Use Controls* (2d ed. LexisNexis 2009) and the Nutshell: John R. Nolon & Patricia E. Salkin, *Land Use in a Nutshell* (2006). For my personal analysis of many issues covered in the course see my treatise *Subdivision Law and Growth Management* (2d ed. 2001 & Supp 2006) (two-vol.). There is a comprehensive, albeit

simplified, textual overview of American land use law in my casebook James A. Kushner, *Comparative Urban Planning Law* (Carolina Academic Press 2003). For additional reading on the contemporary policy considerations surrounding land use, planning, and development you might consider any of the following: For a critique of traditional American planning & community design: Andrés Duany, Elizabeth Plater-Zyberk & Jeff Speck, *Suburban Nation* (2000), James Howard Kunstler, *The Geography of Nowhere* (1993 ) and Joel Garreau, *Edge City: Life on the New Frontier* (1991). For excellent discussions of land use in the context of Los Angeles: William Fulton, *The Reluctant Metropolis* (1997) and Mike Davis, *City of Quartz: Excavating the Future of Los Angeles* (1992).

I recommend use of hornbooks (treatises summarizing areas of the law in a single volume) and other secondary summaries and study aids in the PPD or the neighboring Gould School of Law Library, perhaps when outlining after each segment of the course. Should the volumes prove valuable you might consider purchase.

A problem with hornbooks is that they sometimes fail to convey a sense of developing trends in the law. The authors generally base their comments upon decided cases, even when underlying law or factual context for those cases has changed. Thus, you should be cautious about accepting what a hornbook says as "the law." Hornbooks in other areas, such as torts and contracts, tend to predict the law and spot developments more successfully than the land use text.

For the typical question which follows a case reading or a line of seemingly inconsistent rulings, "what did she say,?" the Hornbook is the fastest route to the answer. To resolve further confusion or to gain greater insight into the problem or area, consult one of the law review articles cited in the appropriate hornbook section. Students often find that an overview recent article places the subject in a clear understandable context. If you are still baffled, a consultation with your professor will resolve the problem, providing either the answer or reinforcement that all are baffled.

"Canned" course outlines and briefs for land use have not been published.

Of course, if you rely on the hornbook or the Nutshell, you would not learn how to translate static legal principles into problem solving technique. Only the classroom experience, repeated again and again, can provide the necessary background to develop the fundamental skill in legal analysis-the ability to predict. Intensive preparation for and participation in the classroom will develop skills that will stay with you long after you have forgotten what you memorized about "the law." Much of what you memorize will be out of date by the time you would need it.

## **X. STUDENTS WITH DISABILITIES**

Any student requesting academic accommodations based on a disability is required to register with Disability Services and Programs (DSP) each semester. A letter of verification for approved accommodations can be obtained from DSP. Please be sure the letter is delivered to me as early in the semester as possible. DSP is located in STU 301 and is open 8:30 a.m. - 5:00 p.m., Monday through Friday. The phone number for DSP is (213) 740-0776.