

First Supplement to Memorandum 2002-24**Nonjudicial Dispute Resolution Under CID Law:
Procedural Fairness in Association Rulemaking and Decisionmaking
(Draft Tentative Recommendation)**

The staff recently reviewed a number of sample declarations actually in use by common interest developments of various types. One set of declarations provided that an application to alter a separate interest is deemed approved if (1) a written decision is not provided within 30 days, and (2) the application would not involve “alteration of the slope, grading, contour or drainage system of the applicable lot or provide for any improvement, or modification to existing improvements, which is expressly prohibited by this declaration.” This substantive limitation on deemed approval strikes the staff as reasonable, and the Commission should consider whether to include a similar limitation in the proposed law. Thus, proposed Section 1378.040(d) could be revised to read:

Within 45 days after receipt of an application, the reviewing body shall deliver a written decision to the applicant and to any project opponent. If the reviewing body does not deliver a written decision within 45 days after receipt of the application, the application is deemed approved on the 45th day. An application is not deemed approved under this subdivision if it involves alteration of the slope, grading, contour, or drainage system of a separate interest, or if it involves an alteration that is expressly prohibited by the governing documents.

One problem with this change is that it would undermine the purpose of deemed approval — providing certainty to member-applicants and putting pressure on the board to make a timely decision.

In addition to deciding whether the above revision should be made, the Commission should perhaps reconsider whether to make the proposed architectural review procedure mandatory. There is a risk that other sensible local variations could be overridden.

Respectfully submitted,

Brian Hebert
Staff Counsel