

## **RED 351: Entitlements and Legal Aspects of Land Use**

**Units: 4**

**Spring, Wednesdays from 6:00 p.m. to 9:20 p.m.**

**Location:** VPD 116

**Instructor:** Nicole Kuklok-Waldman

Teaching Assistant: Mason Herleth (herleth@usc.edu)

**Office:** RGL Visiting Faculty Space, First Floor

**Office Hours:** By appointment. Please feel free to call!

**Contact Info:** [nkuklok@gmail.com](mailto:nkuklok@gmail.com), 818-468-1983 (mobile, so you can text). Please note that I don't always have access to my USC email, so always start with [nkuklok@gmail.com](mailto:nkuklok@gmail.com) to get a quick response.

### **Course Description**

This course will (1) introduce students to local and state legal concepts that are relevant in real estate law and (2) familiarize students with terminology, concepts and procedures. Although the primary focus will be land use and entitlement, the course will also cover other areas of law and policy relevant to urban planning, including real estate law, Constitutional law, environmental law, contract law, and administrative law. Because law is location-specific, and because laws are changing all the time, the course will focus on training students in general concepts and skills rather than specific laws. Nonetheless, the course's geographic focus will be primarily the United States and California.

### **Learning Objectives**

1. To provide a working knowledge of key legal concepts relevant for future real estate developers.
2. To familiarize students with the players and processes that shape laws.
3. For students to learn to "issue spot" legal issues and to apply known legal concepts to predict potential outcomes.
4. For students to problem solve in cases with multiple competing interests and to consider and weigh those competing interests.
5. For students to think critically about current issues in the law as they relate to urban planning and real estate development.

### **Course Notes**

The course will use Blackboard and PowerPoint slides and other materials will be posted online. Students will be required to attend a public planning hearing at a City of their choice, off campus, as part of the course completion.

### **Required Readings and Supplementary Materials**

#### **Primary Book:**

- Barclay and Gray, Curtin's Land Use and Planning Law, 2018 (available digitally) ("Curtin"). Don't go to Amazon. Go here to get the text: <https://solano.com/collections/featured-titles/products/california-land-use-planning-law-36th-edition>

#### **Cases:**

- *Village of Euclid v. Ambler Realty* (USSC)
- *Nollan v. California Coastal Commission* (USSC)
- *Dolan v. City of Tigard* (USSC)
- *Kelo v. City of New London* (USSC)

All cases will be available for download on BlackBoard.

#### **Other Readings:**

Other Articles and references will also be available on BlackBoard.

## Description and Assessment of Assignments

Assignments are to be submitted as follows:

**Planning Commission Assignment:** Each student is required to attend a Planning Commission or Zoning Administrator hearing of their choice and submit a report and other items detailed below. This hearing can be located in any City or jurisdiction, although a Santa Monica Planning Commission hearing has been included in the syllabus.

**Homework Assignments:** These assignments will be distributed at the class prior to when they are due and will also be posted on BlackBoard. Students not in attendance will be required to obtain the assignment on their own to complete and submit when due. Assignments are due at the beginning of the class following the class at which they were assigned and will be accepted in paper or electronically, at the student's preference.

Homework assignments will be graded on thoughtful attention to policy questions and detail, response to the actual questions asked and each component of the question asked, if a multiple-part question, and explanation of how conclusions were drawn. While points cannot be gained or lost on presentation, it is a good professional and future exercise to consider the appearance of your finished work, including use of headings, legible fonts, and professionally and neatly-printed materials.

**Final Exam:** The Final Exam will be held when assigned by the University Calendar. The Final Exam is mandatory and you must be present to take the exam unless prior accommodations have been made. The Final Exam is open book, open note.

## Grading Breakdown

Assignment	Points	% of Grade
Attendance	10	10
Planning Commission Assignment	20	20
Homework Assignment #1	10	10
Homework Assignment #2	10	10
Homework Assignment #3	10	10
Homework Assignment #4	10	10
Final Exam	30	30
<b>Total</b>	<b>100</b>	<b>100</b>

## Grading Scale

Course final grades will be determined using the following scale:

A	95-100
A-	90-94
B+	87-89
B	83-86

B-	80-82
C+	77-79
C	73-76
C-	70-72
D+	67-69
D	63-66
D-	60-62
F	59 and below

### Assignment Submission Policy

Printed assignments should be submitted at the beginning of the class at which they are due. Submittal by email prior to the beginning of the class at which they are due is also acceptable.

### Grading Timeline

Assignments are typically graded and returned the following class. Appeals of grades will be accepted by the Professor only if accompanied by a coherent argument as to why the grading should have differed. Argue your case!

### Additional Policies

Students are expected to attend all classes and participate as requested and expected. If a class is to be missed, please notify the Professor as soon as possible and obtain notes from a classmate to ensure you are up to speed with class material. Late assignments will be accepted with a 10% penalty. Please pay attention in class and minimize use of phones as possible. It's just courteous.

### Course Schedule: A Weekly Breakdown

<b>Class 1</b> <b>January 9</b>	<b>Introduction to Course and Instructor</b> <b>What is Law? Why is land regulated?</b> How did we get to the current legal context for land regulation, including a historical overview. Class Activity: Small group policy problem solving; identifying winners and losers BREAK <b>Property Law 101: The bundle of sticks</b> Different kinds of property rights and basic land rights, including ownership, covenants, leases, the right to exclude, and other components of property law. Class Activity: What are the sticks? <u>Reading Assignment: Curtin, pp. 1-9, 487-502; Sprankling, Understanding Property Law Excerpt</u>
<b>Class 2</b> <b>January 16</b>	<b>Basis of Legal Authority</b> Where the right to control land derives and how it is implemented, review of the Police Power. BREAK <b>Constitutional Rights and Property Law</b> The US Constitution and how property rights and controls are regulated by Constitutional Law.
<b>Class 3</b> <b>January 23</b>	<b>Government Structures</b> US Government structure including separation of powers, state legislatures, and local government structures, and why these are important to the regulation of property and property rights. BREAK <b>Players in the Planning Process</b> Roles of Elected Officials, Judges and Courts, Administrators, and the Public in the Planning Process. <u>Assignment: Policy problem solving activity</u>

- Class 4**  
**January 30**      **Outreach and Public Input**  
How the public participates in the Planning Process.  
Class Activity: Angry Neighbor Exercise  
BREAK  
**Municipal Codes**  
Review of how to research and review code requirements by hand and using GIS systems.  
Reading Assignment: Curtin, pp. 9-19, 29-32, 37-39
- Class 5**  
**February 6**      **Case Law and Common Law**  
Review of how to read a case and legislative and administrative documents leading to code changes; review of what is really “the law.” Review of administrative law as compared to statutory law and why this is significant. Review of common law overall.  
BREAK  
**Comprehensive Planning**  
The approach, General Plans, developing General Plans and Master Plans, and plan consistency.  
Reading Assignment: Curtin, pp. 43-51; Masters Disneyland Article  
Assignment: Prepare a one-page case brief of Penn Central
- Class 6**  
**February 13**      **Zoning**  
What zoning is and how it works, and the myth of spot zoning.  
Assignment: Zoning research activity using code and GIS  
BREAK  
**Flexibility Devices**  
Variances, Conditional Use Permits, Plan Approvals, Modifications.  
Reading Assignment: Behrens, How LA Became, Well, LA; Urban Planning of Los Angeles; Vallianatos, Forbidden City; Whittemore, A Brief History of Four Regimes
- Class 7**  
**February 20**      **Additional Planning Tools and Restrictions**  
Specific Plans, TODs, Plan Approvals, Overlay Zones, Interim Control Ordinances, Transfer of Floor Area Ratio (TFAR) and other ways to restrict property development in addition to zoning and standard flexibility devices.  
Reading Assignment: Rosenberg, All that Glitters is not Gold
- Class 8**  
**February 27**      **Historic Preservation Law**  
How the federal, state, and local governments protect historic properties consistent with US Constitutional Law. Review of *Penn Central*.  
BREAK  
**Legislative and Political Strategies**  
Community Benefit Agreements, Redevelopment Agency law, and legislative efforts to modify land use.
- Class 9**  
**March 6**      **Ballot Box Strategies**  
Planning by ballot box, including case studies and common pitfalls  
BREAK  
**Mid-term Review**  
Review of course so far; question and answer opportunity.  
Assignment: Create a strategy to get a project approved through the election process

<b>March 13</b>	<b>SPRING BREAK</b>
<b>Class 10 March 20</b>	<p><b>Vesting and Development Agreements</b> What vesting is and why it is significant. Development Agreements: what they are and why they are important. Brief discussion of <i>Avco Community Developers</i>.</p> <p><b>Challenging Land Use Decisions</b> Legal recourse, including the doctrine of exhaustion of remedies. BREAK</p> <p><b>Environmental Regulation</b> California Environmental Quality Act (CEQA) and National Environmental Protection Act (NEPA), and how these laws affect entitlement of property. Environmental considerations and litigation. How CEQA has changed the landscape through litigation.</p>
<b>Class 11 March 27</b>	<p><b>Improving Zoning</b> Challenges in current zoning schemes, changing and updating zoning, ballot box zoning, and other structural challenges BREAK</p> <p><b>Affordable Housing</b> Current state of the law, affordable housing standards, and inclusionary zoning. Supply and demand in housing shortages. <u>Reading Assignment: Siegler, <i>The New Housing Crisis, Shut Out of the Market</i>; Barthold: <i>Wake Up, Millennials, Rent Control is a Generational Con Game</i>; Dougherty, <i>In a Cramped and Costly Bay Area, Calls to Build Baby Build</i></u> <u>Assignment: Draft a proposal, consistent with your learnings in the course thus far, that would address the affordable housing crisis. Include discussion of your considerations of winners and losers and how your proposal considers various stakeholders.</u></p>
<b>Class 12 April 3</b>	<p><b>Preemption</b> Religion, free speech, and legally permissible entitlement restrictions. BREAK</p> <p><b>Subdivision Maps</b> What is subdivision, how it differs from entitlement, and why it is important. <u>Reading Assignment: Nollan, Dolan, and Kelo; Curtin, pp. 73-78</u></p>
<b>Class 13 April 10</b>	<p><b>Takings</b> Constitutional challenges in entitlement of property and limits on entitlements. Define eminent domain. Additional review of the Police Power, <i>Penn Central</i>. <u>Reading Assignment: Constitutional Law, Takings Excerpt</u></p>
<b>Class 14 April 17</b>	<p><b>Public Hearing</b> The Santa Monica Planning Commission meets on the 1st and 3rd Wednesday of each month at 7:00 P.M. in the City Council Chambers, City Hall, 1685 Main Street, Santa Monica, California. You can take the Expo Line or you can drive; please carpool with your fellow students. <u>Assignment: Students must submit a two-page report of his or her observations during a hearing, and must attach (1) a selfie showing him/her attending the hearing, (2) a copy of an agenda, and (3) a copy of a staff report. This assignment must be submitted prior to the administration of the Final Exam.</u></p>
<b>Class 15 April 24</b>	<p><b>Case Studies and Problem Solving</b> Review of tools and strategies to solve hypothetical problems. BREAK</p> <p><b>End of Term Review and Questions and Answers prior to Final Exam</b></p> <p><b>FINAL EXAM IS SCHEDULED FOR MAY 1, 7-9 p.m. BE THERE OR BE SQUARE!</b></p>

## Statement on Academic Conduct and Support Systems

### Academic Conduct:

Plagiarism – presenting someone else's ideas as your own, either verbatim or recast in your own words – is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Part B, Section 11, "Behavior Violating University Standards" <https://policy.usc.edu/scampus-part-b/>. Other forms of academic dishonesty are equally unacceptable. See additional information in *SCampus* and university policies on scientific misconduct, <http://policy.usc.edu/scientific-misconduct>.

### Support Systems:

*Student Counseling Services (SCS)* - (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. <https://engemannshc.usc.edu/counseling/>

*National Suicide Prevention Lifeline* - 1-800-273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. <http://www.suicidepreventionlifeline.org>

*Relationship and Sexual Violence Prevention Services (RSVP)* - (213) 740-4900 - 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. <https://engemannshc.usc.edu/rsvp/>

*Sexual Assault Resource Center*

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: <http://sarc.usc.edu/>

*Office of Equity and Diversity (OED)/Title IX Compliance* – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class. <https://equity.usc.edu/>

*Bias Assessment Response and Support*

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. <https://studentaffairs.usc.edu/bias-assessment-response-support/>

*The Office of Disability Services and Programs*

Provides certification for students with disabilities and helps arrange relevant accommodations. <http://dsp.usc.edu>

*Student Support and Advocacy* – (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. <https://studentaffairs.usc.edu/ssa/>

*Diversity at USC*

Information on events, programs and training, the Diversity Task Force (including representatives for each school), chronology, participation, and various resources for students. <https://diversity.usc.edu/>

*USC Emergency Information*

Provides safety and other updates, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible, <http://emergency.usc.edu>

*USC Department of Public Safety* – 213-740-4321 (UPC) and 323-442-1000 (HSC) for 24-hour emergency assistance or to report a crime.

Provides overall safety to USC community. <http://dps.usc.edu>

### *Academic Accommodations*

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 the instructor (or to a TA) as early in the semester as possible. DSP is located in STU 301 and is open 8.30 AM to 5.00 pm Monday through Friday. Website and contact information for DSP:

[http://sait.usc.edu/academicsupport/centerprograms/dsp/home\\_index.html](http://sait.usc.edu/academicsupport/centerprograms/dsp/home_index.html) (213) 740-0776 (Phone), (213) 740-6948 (TDD only), (213) 740-8216 (FAX), [ability@usc.edu](mailto:ability@usc.edu)