

# Research on Pre-Approval Public Announcement in Territorial Spatial Permission

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**Abstract:** At present, the implementation of developing the system of territorial spatial planning still centers on three types of permits: site selection and pre-examination on the use of land permit, construction land planning permit, and construction project planning permit. As planning permissions involve a wide scope, extend over a long period, and directly affect the vital interests of residents in surrounding areas, the administrative authority must fulfill the requirement of conducting necessary pre-approval public announcement procedures in accordance with relevant regulations. Based on higher-level laws and related policies, various regions have further refined the pre-approval public announcement process, which can be categorized into two types: general public announcement and notification announcement. In the future, national and local legislation on developing the system of territorial spatial planning should further unify key procedural rules, and clarify the specific content of the general public announcement system and notification announcement system for planning permission. so as to promote the realization of procedural justice and substantive fairness in planning permits.

**Keywords:** Planning permission; Pre-approval public announcement; General public announcement; Notification announcement

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## 1. Introduction

China's urban and rural planning legislation has transitioned to territorial space planning as the territorial spatial planning initiative advances. On May 23, 2019, the Central Committee of the Communist Party of China and the State Council issued the "Guidelines on Establishing a Territorial Space Planning System and Supervising Its Implementation" which mandated the integration of key planning systems, including main functional zones, land use, and urban-rural planning, to achieve "Integration of Multiple Approvals" and strengthen the guiding and regulatory role of territorial space planning over specialized plans. On May 28, the Ministry of Natural Resources released the "Notice on Fully Launching Territorial Space Planning Work" (Document No.87 [2019]), officially initiating the compilation of territorial space plans. Currently, regions such as Zhejiang Province, Ningxia Hui

Autonomous Region, Ningbo City, Guangzhou City, Nanjing City, and Dalian City have enacted local legislation, while their implementation continues to follow the previous three core permits: site selection and pre-examination on the use of land permit, construction land planning permit, and construction project planning permit.

According to Article 36 of the “Urban and Rural Planning Law of the People’s Republic of China”: “As for a construction project which is subject to the approval or verification of the related department as required by the state provisions, if the right to use state-owned land is appropriated, the construction entity shall, before filing the project with the related department for approval, apply to the competent department of urban and rural planning for issuing a written proposal of location.” The written proposal of location serves as a legal document issued by urban planning administrative departments, legally certifying the location and layout of construction projects. As stipulated in Article 2 of the “Measures for the Administration of the Pre-examination on the Use of Land for Construction Projects”, pre-examination on the use of land for construction projects refers to an examination on matters concerning the use of land involved in a construction project, which is conducted by an department of land and resources at the stage of examination and approval, verification and approval or filing of a construction project. In September 2019, the Ministry of Natural Resources issued the “Notice on ‘Integration of Multiple Approvals and Integration of Multiple Certificates’ for Planned Land Use on the Basis of ‘Integration of Multiple Planning Systems’” (Natural Resources Regulation [2019] No. 2), which clearly stated: The written opinion letter on the site selection of construction projects and the written opinion on the pre-examination of construction land will be merged. The competent department of natural resources will uniformly issue the pre-examination of land use and the written opinion letter on site selection, and will no longer issue the two types of documents separately. According to the Standard for Basic Terminology of Urban Planning (GB/T 50280-98), the construction land planning permit is a legal authorization confirming a project’s location and land use scope, while the construction project planning permit certifies compliance with urban planning requirements.

The three types of planning permits collectively form China’s urban planning management system, serving as a critical mechanism to ensure the implementation of urban planning and the lawful advancement of real estate projects. Through review and approval procedures, these permits not only ensure that construction projects comply with urban planning requirements but also promote the rational use of land resources and the effective implementation of real estate projects, thereby optimizing the overall urban layout. Given that these three categories of planning permits have broad impacts, long-term effects, and are directly related to the realization of planning objectives and real estate rights, as well as major public interests and social order, administrative authorities must strictly follow the pre-approval public announcement procedures in accordance with the “Administrative License Law of the People’s Republic of China” and other relevant regulations before making planning permit decisions.

“Public announcement” refers to the dissemination of information requiring disclosure through designated channels for public awareness<sup>[1]</sup>. As a crucial element of administrative license procedures, public announcement is categorized into two types: general public announcement and notification announcement in current planning management, based on legal and local regulations. General public announcement is open to all members of the public without specific targets, typically applied during the planning formulation phase. Notification announcement, however, serves to safeguard the interested party’s rights to information and participation. It is issued only when the announcement materially affects the significant interests of the interested parties, and such cases require formal notification through public announcement.

## **2. The problem of the general public announcement in planning permission**

The general public announcement is mainly for identifying potential interested parties. It is usually used as a pre-approval procedure. The main purpose of this system design is to guarantee the right of the relevant subjects to know and participate in the procedure in advance, so that the administrative decision is based on the information and the procedure, and then improve its fairness and appropriateness.

### **2.1. General public announcement issues in site selection and pre-examination on the use of land**

Current national legislation lacks explicit requirements for public announcement of site selection and pre-examination of the use of land. While Article 29 of the Guangdong Province Urban and Rural Planning Regulations and Article 48 of the Guangzhou Municipal Territorial Space Planning Regulations mandate general public announcement for all three planning permits, some local regulations provide more detailed pre-approval general public announcement requirements. For instance, Article 42 of the Ningxia Hui Autonomous Region Territorial Space Planning Regulations requires a pre-approval general public announcement for site selection of major projects involving public safety, thereby safeguarding the public's right to information and participation.

Pre-approval general public announcement constitutes a prerequisite procedure for administrative license decisions, primarily applied at critical stages such as site selection and pre-examination on the use of land. The core purpose is to disclose proposed licensing matters in advance, enabling the public, especially potential interested parties, to understand the project's basic details and planning impacts, thereby ensuring scientific and democratic administrative decision-making<sup>[2]</sup>. For instance, in a case in Zhengzhou, Henan Province, the court held that the administrative authority had made the planning public announcement through its website and had provided written responses to the feedback from the public, including the plaintiff, which was in line with the law<sup>[3]</sup>.

Overall, judging from the policy development direction of “public participation” and “procedural justice” of the state, the institutional status of general public notice is gradually rising, and the trend of its transformation from “selective procedure” to “necessary procedure” is becoming increasingly obvious. This trend is particularly evident in regions with high-density construction projects and heightened social sensitivity, such as major cities like Shenzhen and Guangzhou, where pre-approval public announcements are likely to become standard practice in site selection and pre-examination on the use of land processes.

### **2.2. General public announcement issues in construction land planning permits**

National legislation and policies do not mandate a pre-approval public announcement for construction land planning permits. As previously noted, while the Guangdong Province Urban and Rural Planning Regulations and Guangzhou Municipal Territorial Space Planning Regulations provide general provisions for routine announcement of planning permits, no other regions have established requirements for such announcement during the planning permit stage for construction land.

### **2.3. General public announcement issues in construction project planning permits**

In contrast, the public announcement requirements for construction project planning permits are more detailed. First, Article 16 of the Ministry of Housing and Urban-Rural Development's regulatory document “Provisions on Public Announcement of Urban and Rural Planning” mandates pre-approval public announcement of detailed construction plans and master site plans. Second, local legislation has further refined these requirements: Guangdong, Shanghai, and Dalian require a pre-approval public announcement before issuing construction

project planning permits; Ningbo mandates post-approval publication after permit issuance; while Zhejiang and Guangzhou stipulate both pre-approval public announcement and post-approval publication for planning permit matters.

## **2.4. Contents and methods of general public announcement**

For a general public announcement, particular attention should be paid to both the content and the methods of announcement. The content of such an announcement is primarily governed by local regulations and judicial practices. For instance, the Ministry of Housing and Urban-Rural Development, Guangzhou, and Dalian require the public announcement of construction project master plans, while Shanghai mandates the announcement of engineering design schemes with itemized requirements. In judicial practice, a case in Zhanjiang, Guangdong, the court held that it is necessary to disclose the construction project planning permit (including the original, attachments, and drawings) and the construction project design plan. If they are not disclosed as required, it constitutes a procedural violation<sup>[4]</sup>.

Regarding public announcement methods, the “Guangdong Province Urban and Rural Planning Regulations”, “Zhejiang Province Territorial Space Planning Regulations”, and “Dalian Municipal Territorial Space Planning Regulations” require announcement on government websites and at construction sites. The “Guangzhou Municipal Urban and Rural Planning Procedures Regulations” stipulate that a pre-approval announcement must be posted in prominent locations within government information websites, construction land planning red lines, or major local newspapers. “The Ningbo Municipal Territorial Space Planning Regulations” mandate announcement at conspicuous locations on construction sites.

In addition to the legally mandated public announcement channels, information may also be disseminated through multiple platforms, including WeChat Official Accounts and government apps, with a minimum notice period of ten days. For any objections raised by the public after the announcement, feedback can be provided through written responses, text messages, etc., so as to achieve the public announcement goals of maintaining social fairness and justice, promoting scientific decision-making, and building a harmonious society.

## **3. The problem of notification announcement in planning permission**

### **3.1. Analysis of the premise of notification**

According to the provisions of Article 43 of “Zhejiang Province Municipal Territorial Space Planning Regulations” and Article 48 of “Guangzhou City Municipal Territorial Space Planning Regulations”, the premise of notification is to first judge whether it involves the important direct interests of the interested parties, and in the case of involving, the notification is made through the form of publicity.

Firstly, in the academic community, there are three main perspectives regarding the determination of interests: The first is the “two-element” theory, which requires both the existence of a protected interest and its direct impact by the administrative act<sup>[5]</sup>; The second is the “three-element” theory, which includes the administrative act, legitimate rights, and a causal relationship between them<sup>[6]</sup>; The third is the “four-element” theory, which adds the requirement that “legitimate rights are adversely affected” to the “three-element”<sup>[7]</sup>. In judicial practice, the Supreme People’s Court holds that the interest relationship refers to the possibility of being adversely affected by the administrative act, and three elements need to be considered: whether there is a right, whether such right is the subjective right of the plaintiff, whether it may be infringed upon by the administrative act in question, and whether the legitimate rights and interests need to face actual, special, and direct damage or adverse impact. To

summarize, interest relationship should meet four criteria: First, the third party asserts rights or benefits similar to rights, not mere personal preferences; Second, the rights belong to the third party claiming them, not others or public interests; Third, the third party's rights are protected by administrative regulations and fall within the scope of considerations when the administrative agency acts; Fourth, the rights may suffer actual, specific, and direct damage from the administrative act.

Secondly, the scope of what constitutes an important direct interest remains undefined. For applicants and third parties, many matters are deemed to involve their own important direct interests. "Administrative License Law of the People's Republic of China" grants administrative authorities discretion in determining such interests<sup>[8]</sup>. Among the three major planning permits, whether they constitute the important direct interests of the interested parties is analyzed as follows:

1. The site selection and pre-examination on the use of land permit belong to the pre-approval and macroscopic administrative approval, which usually does not directly set or change the rights and obligations of the third party, and does not produce the actual, special, direct damage or adverse effect, so there is no legal interest, nor does it constitute the important direct interests.
2. The construction land planning permit has already defined the land use nature, scope, and building scale. Although the degree of interest has been further clarified, since the construction land planning permit mainly determines the nature of the land use, the scope of the land use, and the scale of the building, the impact on the ventilation, lighting, and sunlight of third parties has not yet been determined. Therefore, claiming related rights may be regarded as having no interest relationship, and thus, it does not constitute important direct interests. For the applicant, however, according to judicial practice, the planning permit itself inherently involves an important direct interest.
3. The construction project planning permit has already determined the basic form of the building. Compared with the site selection and pre-examination on the use of land, as well as the construction land planning permit, its direct impact has already emerged. Therefore, the probability of being recognized as having important direct interests of interested parties is relatively high. Based on existing cases, during the stage of issuing construction project planning permits, the court held that as long as the owner or user adjacent to the project claims that their traditional adjacent rights, such as ventilation, lighting, and sunlight, have been infringed upon, it constitutes an important direct interest of the interested party.

### **3.2. Methods of notification announcement**

As analyzed above, in the stage of construction land planning permits, for the applicant, planning permission is of important direct interest. During the planning permission stage of construction projects, there is a considerable possibility that it will be recognized as an important direct interest of the interested parties. Although national-level laws and regulations have not yet established "notification announcement" requirements, local legislation has clarified this aspect. For instance, Article 48 of the "Guangzhou Municipal Territorial Space Planning Regulations" and Article 43 of the "Zhejiang Province Municipal Territorial Space Planning Regulations" grant legal validity to this procedure. Administrative authorities may employ methods such as on-site visits, phone notifications, text message alerts, or public notices at project sites and surrounding interested party areas (including communities and residential buildings) to ensure compliance.

It is worth noting that the public announcement issued by the administrative authority needs to specify the rights of the interested party to state, defend, and apply for a hearing. If it should be informed but not informed,

the court will hold that the administrative authority constitutes a procedural violation. In a case in Shenzhen, Guangdong Province, the court held that the principle of administrative licensing notification should be based on effective and actual notification. Although the administrative authority informed through an announcement on its official website, it failed to list the informed parties and did not correctly display the name of the environmental impact assessment documents, thus failing to effectively inform the owners of their right to a hearing. This constitutes a procedural violation<sup>[9]</sup>.

## 4. Conclusion

The public announcement mechanism in planning permits has been established through multiple local legislations, with particularly explicit requirements during the construction project planning permit phase. While announcement content varies across different stages, the regulatory objectives of safeguarding public rights to information and participation remain consistent. The announcement requirements for the site selection and pre-examination on the use of land, as well as the construction land planning permit phase, may be adapted from the relevant provisions governing construction project planning permits.

The determination of the important direct interests of interested parties in planning permits can be further refined in future legislation, clearly defining the criteria for identifying interested parties and the basis for determining important direct interests. On this basis, if it involves the important direct interests of the interested parties, in the future, provisions for notification announcement can be made through higher-level legislation, clearly defining the content, location, etc. of the announcement, so as to effectively safeguard the legitimate rights and interests of the relevant personnel.

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