



August 2, 2010

Presiding Judge Charles S. Crandall
Superior Court of California
1050 Monterey Street
P.O. Box 4910
San Luis Obispo, CA 93403

SUBJECT: Response to Grand Jury Report - "Subdivision Review Board or Planning Commission: Who Decides?"

Dear Honorable Judge Crandall,

Thank you for the opportunity to provide comments on the Grand Jury report regarding the function and responsibilities of the County Subdivision Review Board (SRB) compared to the Planning Commission. As a member of the SRB, the San Luis Obispo County Air Pollution Control District (APCD) provided comments on the draft report in a letter to the Grand Jury dated May 19, 2010 (attached), which identified several incorrect or inaccurate statements and conclusions in the report. Unfortunately, those comments do not appear to be reflected in the final report, so some of them will be restated here.

The APCD is required to respond to Finding #6 and Recommendation #7 in the final report.

Finding #6: *"The Air Pollution Control District's representative on the SRB typically votes "no" on all development applications outside the designated urban reserve area."*

Response: The APCD wholly disagrees with Finding #6.

This finding is incorrect, as discussed in our May 19, 2010 response to the draft report. If the proposed subdivision is outside the urban reserve line (URL) and is greater than 20 acres, it is consistent with the land use strategies included in the APCD Clean Air Plan (CAP) and, therefore, is generally supported by the APCD. Conversely, subdivisions outside the URL that are less than 20 acres are inconsistent with the CAP and will usually result in a "no" vote from our agency unless there are extenuating circumstances. In this regard, there have been several subdivisions less than 20 acres outside the URL we have been able to support at SRB where conditions have been added to satisfy APCD concerns regarding the number of dwelling units allowed and associated vehicle trips. The following provides some background on our project evaluation process.

In reviewing projects for the SRB, we evaluate the physical characteristics and potential impacts of the project, as well as, its consistency with the County General Plan and the APCD Clean Air Plan. The CAP outlines emission reduction strategies and planning policies necessary to reach attainment of State health-based air quality standards. As such, it contains several transportation and land use planning policy recommendations

due to the direct link between residential and commercial development and motor vehicle emissions. One of those policies addresses the problem of increased vehicle trips and travel distances caused by urban sprawl, and recommends that residential development outside the URL not be allowed on parcels less than 20 acres in size. This policy speaks to the issue of cumulative impacts: while an individual subdivision that creates 4 rural parcels less than 20 acres each may not be significant by itself, the cumulative emissions from allowing such small-lot rural subdivisions countywide is a significant impact that is currently not addressed through environmental review.

This is one of several CAP policies that help guide our decision-making on SRB. We also consider the requirements of AB 32 and SB 375 when reviewing these projects for SRB. Those laws require local jurisdictions to enact land use planning policies and programs that secure per capita reductions in vehicle miles traveled and associated greenhouse gases – both directly linked to sprawling residential development. In addition, the County has also adopted a number of smart growth policies that promote compact development within urbanized areas, and are quite similar to the APCD land use planning recommendations contained in the CAP. Our decision-making process on SRB considers all these factors before determining how we will vote on a specific project; we do not just automatically vote no on all projects outside the URL.

Recommendation #7: *The Board of Supervisors direct the planning department to prepare an amendment to Title 21 providing that for the SRB, a quorum of four is required and a majority of the quorum is required for any action (Findings 5 & 6).*

Response: The APCD wholly disagrees with Recommendation #7.

APCD is opposed to this recommendation because it is based on an incorrect finding (finding #6, discussed above) and a faulty conclusion stated in the body of the report.

The primary rationale for recommendation # 7 above is found on page 8 of the report, which states that a “no” vote from APCD “*essentially reduces the SRB to four voting members.*” As a result, the report recommends the establishment of a “super-quorum” requirement for the SRB unlike any such requirement for similar administrative bodies. Such a conclusion is inappropriate and devalues the importance of the discretionary decision-making process. A “no” vote by any member of the SRB is a valid vote, just as it is on the Planning Commission and the Board of Supervisors; it should not be used as justification to imply a bias in the process, as suggested in this report. Applications that come before the SRB for approval are subject to the discretion of that Board; they are not guaranteed approval. To suggest that APCD’s use of this discretionary authority in the voting process somehow diminishes the effectiveness of the SRB is inappropriate. During the hearing process, the comments and discussions received from staff, public, project proponent, and other members of SRB are instrumental in determining the final vote voiced by each member, and the ultimate action taken by the SRB. A “no” vote by the APCD is no less valid than a “yes” vote, and is sometimes supported by other SRB members.

In addition to the required responses above, I would also like to point out a significant mischaracterization in Finding #2, which states: *High level applications which can be significant, complex and controversial **are often** combined with a low level application and decided by the SRB, thereby avoiding hearing before the planning commission.*

Complex, high level applications, such as those described in Finding #2, are rarely heard by the SRB. In the past dozen years of APCD participation on that Board, I can remember only a handful of such projects that were reviewed by the SRB. The vast majority of projects we see are small subdivisions of four parcels or less, with the potential for one or two residential units on each parcel. Occasionally, the SRB will review a project with potential for a small-scale commercial development, such as a winery facility or a rural gas station/food mart, but even those are infrequent.

In summary, I believe the report casts an unwarranted negative light on the operation of the SRB. The SRB is an efficient and effective decision-making body of senior level professional staff from the departments and agencies most relevant to the projects referred to that Board. The Board members have broad knowledge of applicable County ordinances, the General Plan and the requirements specific to their departments that must be addressed by the applicant. This helps streamline the decision-making process for small subdivisions while ensuring the resulting development does not cause significant environmental impacts and is consistent with the principles laid out in the General Plan. All of this takes place in the context of a properly noticed and advertised public hearing with adequate opportunity for public input.

Thank you once again for the opportunity to comment on the SLO Grand Jury Report. Please feel free to contact me if you have any questions or concerns regarding these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry R. Allen", with a long horizontal line extending to the right.

Larry R. Allen
Air Pollution Control Officer

cc: San Luis Obispo County Grand Jury