

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Administration/Planning and Building and County Counsel		(2) MEETING DATE July 14, 2009		(3) CONTACT/PHONE Vincent Morici (805) 781-5020	
(4) SUBJECT Request to approve recommended responses by the Board of Supervisors to the 2009 Grand Jury report titled <i>Examining Planning Commissioner Conduct</i> . The request includes forwarding the Board's recommended response along with the responses by the Planning and Building Department and County Counsel to the Presiding Judge of the Superior Court by July 24, 2009.					
(5) SUMMARY OF REQUEST The 2009 Grand Jury prepared a report that examined the conduct of members of the County Planning Commission. The Grand Jury requested that the Board of Supervisors, Planning and Building Department and County Counsel respond to findings and recommendations contained in the report. This item includes responses by the Planning and Building Department and County Counsel. The item also includes recommended responses by the Board of Supervisors to the report.					
(6) RECOMMENDED ACTION It is recommended that you Board adopt the recommended responses to the Grand Jury report titled <i>Examining Planning Commissioner Conduct</i> and transmit this response to the Presiding Judge of the Superior Court, with copy to the Foreperson of the Grand Jury, together with the responses by the Planning and Department and County Counsel.					
(7) FUNDING SOURCE(S) N/A		(8) CURRENT YEAR FINANCIAL IMPACT N/A		(9) ANNUAL COST N/A	
(10) BUDGETED? ☐ No ☒ Yes ☐					
(11) OTHER AGENCY INVOLVEMENT/IMPACT (LIST): The Administrative Office worked with the staff of the Planning and Building Department as well as County Counsel as part of the examination of the Grand Jury's Findings and Recommendation for this report.					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? ☒ No ☐ Yes, How Many? _____ ☐ Permanent _____ ☐ Limited Term _____ ☐ Contract _____ ☐ Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) ☐ 1st, ☐ 2nd, ☐ 3rd, ☐ 4th, ☐ 5th, ☒ All			(14) LOCATION MAP ☐ Attached ☐ N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board ☐ N/A
(16) AGENDA PLACEMENT ☒ Consent ☐ Hearing (Time Est. _____) ☐ Presentation ☐ Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS ☐ Resolutions (Orig) ☐ Contracts (Orig + 3 Copies) ☐ Ordinances (Orig) ☒ N/A ☐ Email Resolution and Ordinance to CR_Board_Clerk (in Word)		
(18) NEED EXTRA EXECUTED COPIES? ☐ Number: _____ ☐ Attached ☒ N/A			(19) BUDGET ADJUSTMENT REQUIRED? ☐ Submitted ☐ 4/5th's Vote Required ☒ N/A		
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____			(21) W-9 ☐ No ☐ Yes		(22) Agenda Item History ☐ N/A Date N/A
(23) ADMINISTRATIVE OFFICE REVIEW OK					

County of San Luis Obispo

COUNTY GOVERNMENT CENTER, RM. D430 • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5011



JIM GRANT
INTERIM COUNTY ADMINISTRATOR

To: Board of Supervisors

From: Vincent Morici, Administrative Analyst *V.M.*

Date: July 14, 2009

Subject: Responses to 2008-09 Grand Jury Report – “Examining Planning Commissioner Conduct”

RECOMMENDATION

It is recommended that your Board of Supervisors adopts the recommended responses identified as Attachment 1 to this Board letter as the Board of Supervisor's responses to the 2008-09 Grand Jury report titled "Examining Planning Commissioner Conduct" and forward the Board's response, along with the responses by Planning and Building and County Counsel (Attachments 2 and 3), to the Presiding Judge of the Superior Court and the Grand Jury by July 24, 2009.

DISCUSSION

The Grand Jury issued a report on May 25, 2009 based upon their investigation of complaint alleging misconduct by a County planning commissioner. The report did not find evidence of possible criminal conduct or willful or corrupt misconduct by any planning commissioner. However, the report did identify what the Grand Jury believes are deficiencies in the training and education of planning commissioners relating to due process requirements for the quasi-judicial function of the Planning Commission. The report also identifies what the Grand Jury believes are concerns about planning commissioner bias.

The report requires the responses to Findings and Recommendations as identified below:

- San Luis Obispo Department of Planning and Building is required to respond to Findings 1-9 and Recommendations 1-4.
- San Luis Obispo County Counsel is required to respond to Recommendations 1, 3, 4, 5, and 6.

- San Luis Obispo Board of Supervisors is required to respond to Findings 1-9 and Recommendations 1-6.

This report includes the following Attachments.

Attachment 1 – Recommended Response by the Board of Supervisors to the Grand Jury Report

Attachment 2 – June 24, 2009 Planning and Building Department Responses to the Grand Jury Report

Attachment 3 – July 14, 2009 County Counsel Response to the Grand Jury Report.

Attachment 4 – 2008-09 Grand Jury report titled “Examining Planning Commissioner Conduct”

Responses from the County Department of Planning and County Counsel are due to the Presiding Judge by July 19, 2009. The responses from the Board are due to the Presiding Judge by August 18, 2009. The County Administrative Office procedures include coordinating the departmental responses to Grand Jury reports and preparing recommended responses on behalf of the Board of supervisors. The departmental responses to this Grand Jury report are attached and where appropriate, incorporated as the Board’s response.

OTHER AGENCY INVOLVEMENT/IMPACT

The County Administrative Office reviewed the responses to the Grand Jury report prepared by the Department of Planning and Building and County Counsel in the development of the recommended Board responses to this report.

FINANCIAL CONSIDERATIONS

Costs for preparing this response are included in the current department budget.

RESULTS

This response will meet the legal requirements and time frames for responding to a Grand Jury report with findings and recommendations.

ATTACHMENT 1

July 14, 2009 Recommended Response by the Board of Supervisors to the Grand Jury Report of May 2009 on *Examining Planning Commissioner Conduct*

Grand Jury Findings and Recommended Board Responses

1. The facts established by the Grand Jury investigation of planning commissioner conduct did not constitute either evidence of possible criminal conduct or willful or corrupt misconduct in the office by any planning commissioner.

Recommended Response

The Board of Supervisors agrees with this finding.

2. One or more planning commissioners have never seen, received or used the Planning Commissioner's Handbook that was provided to the Grand Jury by the Planning Department.

Recommended Response

As the Department of Planning and Building is responsible for the distribution of the Planning Commissioner's Handbook, the Board adopts the response from the Department of Planning and Building as its response and agrees with this finding (see attached responses from the Department of Planning and Building and County Counsel).

3. The Planning Commissioner's Handbook does not explain the difference between the quasi-legislative and quasi-judicial roles of the Planning Commission and the possibility that the same planning commissioner conduct which is appropriate in one role may violate one or more due process requirements applicable to the other role.

Recommended Response

The Board of Supervisors agrees with this finding.

4. The Planning Commissioner's Handbook does not describe or explain how ex parte contacts by planning commissioners may violate the due process requirements for quasi-judicial hearings.

Recommended Response

The Board of Supervisors agrees with this finding.

5. The Planning Commissioner's Handbook does not describe or explain the concept of a non-economic conflict of interest or how such a conflict of interest may violate due process requirements for quasi-judicial hearings.

Recommended Response

The Board of Supervisors agrees with this finding.

6. The 2005 revision to the Planning Commission Rules of Procedure deleted an explanation of how ex parte contacts by planning commissioners might violate due process requirements for quasi-judicial hearings and adversely affect the actions and decisions of the Planning Commission.

Recommended Response

The Board of Supervisors adopts the Department of Planning and Building response as the Board's response to this finding (see attached response from the Department of Planning and Building).

7. Planning commissioners do not always include sufficient detail in their disclosures to provide adequate information as to the substance of their ex parte contacts as required by the Planning Commission Rules of Procedure.

Recommended Response

Based upon the response from the Planning and Building Department, the Board of Supervisors agrees with this finding. However, the Board notes that the Planning Commissioners do, in fact, disclose ex parte contacts although there may be some inconsistency in the level of detail provided by these disclosures.

8. Ex parte contacts and a pre-hearing comment by one planning commissioner raised a legitimate concern that this planning commissioner had an unacceptable probability of actual bias by possibly deciding to deny one of more Conditional Use permit applications before the public hearings on the applications.

Recommended Response

The Board of Supervisors does not agree with this finding. The Grand Jury did not provide evidence that would clearly support this finding. The Grand Jury states that it "believes" a statement made by a planning commissioner suggested that the commissioner had already decided to vote against the project. The conclusion reached by the Grand Jury is more conjecture than fact and as such lacks the clear and factual evidence needed to be considered a supportable finding.

Grand Jury Recommendations and Recommended Board Responses

1. The Planning Department, with the assistance of County Counsel, should revise and update the Planning Commissioner's Handbook to include explanations of the following:

- a. The quasi-legislative and quasi-judicial roles of the Planning Commission and the reasons why planning commissioner conduct in one role is not necessarily acceptable in the other role.
- b. The due process requirements and legal standards of conduct for quasi-judicial proceedings conducted by the Planning Commission, including but not limited to the right of an applicant to hear and respond to evidence being considered by the planning commissioners and the right to reasonably impartial, non-involved reviewers.
- c. The reasons why ex parte contacts by planning commissioners have the potential to violate due process requirements.
- d. Non-financial conflicts of interest such as loyalties to groups or organizations with positions on land use planning and regulation.

Recommended Response

Recommendations 1a, 1b, and 1c have been implemented. Recommendation 1d will not be implemented as it is not warranted. The Board of Supervisors adopts the response from the Department of Planning and Building and the response from County Counsel as the Board of Supervisor's response to this recommendation (see attached responses from the Department of Planning and Building and County Counsel).

2. The Planning Department should assure that copies of the updated and revised Planning Commissioner's Handbook are provided to each planning commissioner.

Recommended Response

Based upon input from the Planning Department, this recommendation has already been implemented by the Department of Planning and Building.

3. The Planning Department, with the assistance of County Counsel, should provide annual training sessions for planning commissioners that provide more detailed education and training on the topics of due process and lack of bias that are identified in the ethics training program required by the enactment of AB 1234.

Recommended Response

This recommendation will not be implemented as it is not warranted. The Board of Supervisors adopts the response from the Department of Planning and Building and the response from County Counsel as the Board of Supervisors' response to this recommendation (see attached responses from the Department of Planning and Building and County Counsel).

4. The Planning Commission, with the assistance of the Planning Department and County Counsel, should revise its Rules of Procedure concerning ex parte contacts to define or limit the ex parte contacts which can be initiated by planning commissioners and improve the adequacy of planning commissioners' disclosure

of the substance of their permitted ex parte contacts when functioning in their quasi-judicial role.

Recommended Response

This recommendation will not be implemented as it is not warranted. The Board of Supervisors adopts the response from the Department of Planning and Building and County Counsel as the Board of Supervisors' response to this recommendation (see attached responses from the Department of Planning and Building and County Counsel).

5. County Counsel should educate planning commissioners on the importance of not making ex parte contacts or pre-hearing comments which might reasonably be perceived as suggesting that a planning commissioner has made a decision on a project before the planning commissioner has had an opportunity to hear and weigh all of the evidence on the project which will be presented at a public hearing.

Recommended Response

This recommendation will not be implemented because it is not warranted. The Board of Supervisors adopts the response from County Counsel as the Board of Supervisor's response to this recommendation (see attached response from County Counsel).

6. County Counsel should provide assistance and advice to individual planning commissioners in resolving their questions or concerns as to whether or not they have a non-financial conflict of interest or an actual bias with respect to an application for a discretionary decision.

Recommended Response

This recommendation will not be implemented because it is not warranted. The Board of Supervisors adopts the response from County Counsel as the Board of Supervisors' response to this recommendation (see attached response from County Counsel).