

CONTINUITY – THE LINK FROM GRAND JURY TO GRAND JURY; A REVIEW OF RESPONSES TO 2009-2010 GRAND JURY RECOMMENDATIONS

“An essential element of continuity is lost if the subsequent grand jury does not assess whether recommendations made by the prior grand jury are implemented by the target governmental agencies/departments.”¹

Agencies and government entities are required by Penal Code section 933, subdivision c (Appendix A) to respond to findings and recommendations in Grand Jury Final Reports. Succeeding grand juries monitor those responses and determine if they meet the statutory compliance requirements of California Penal Code Section 933.05 (Appendix B). The impact and effectiveness of the previous grand jury’s work is measured in this way.

The 2010-2011 Grand Jury reviewed for adequacy the 200 agency responses to all 67 recommendations contained in the 14 final reports of the 2009-2010 Grand Jury to determine if they met state requirements (Graph, page 2). Follow-up was done to assess implementation of the recommendations with which agencies concurred and/or to request clarifications to responses. This report summarizes the agency responses in three separate tables.

Two of the tables demonstrate the ends of the response spectrum. The third includes noteworthy responses that fell between those two poles. The first table indicates selected agencies that responded effectively and have made outstanding efforts to implement recommendations they believed were in their constituents’ best interest. These examples were not chosen simply because the agency agreed with the Grand Jury. This report does not intend to suggest that these changes were made solely based on the recommendations of the Grand Jury. It is safe, however, to conclude that the agencies agreed that there was a public benefit to be derived from implementing the recommendations.

The second table identifies those agencies that did not fully meet their statutory obligation for a response. In some cases, the agency provided no or inadequate justification for negative responses. While such responses were few, the Grand Jury believes they do merit illumination.

The majority of agency responses fell in the third category, (Table 3) somewhere between the exemplary ones reflected in Table 1 and the inadequate ones reflected in Table 2. These responses were well thought out and indicated a willingness to implement some recommendations while rejecting others. A small number of the responders took the position that because of budget cuts and financial constraints, it would be impossible to implement any of the recommendations, even some that were revenue neutral. Others stated they required time for further analysis or the recommendations would be implemented at a later date. Most agencies made an effort to comply and/or to explain their non-compliance when they disagreed with the recommendations.

Responses to all reports are available on the Grand Jury website at www.slocourts.net/grand_jury

¹ Grand Jury Training Manual – Revised February 2010

Agency Responses to Recommendations

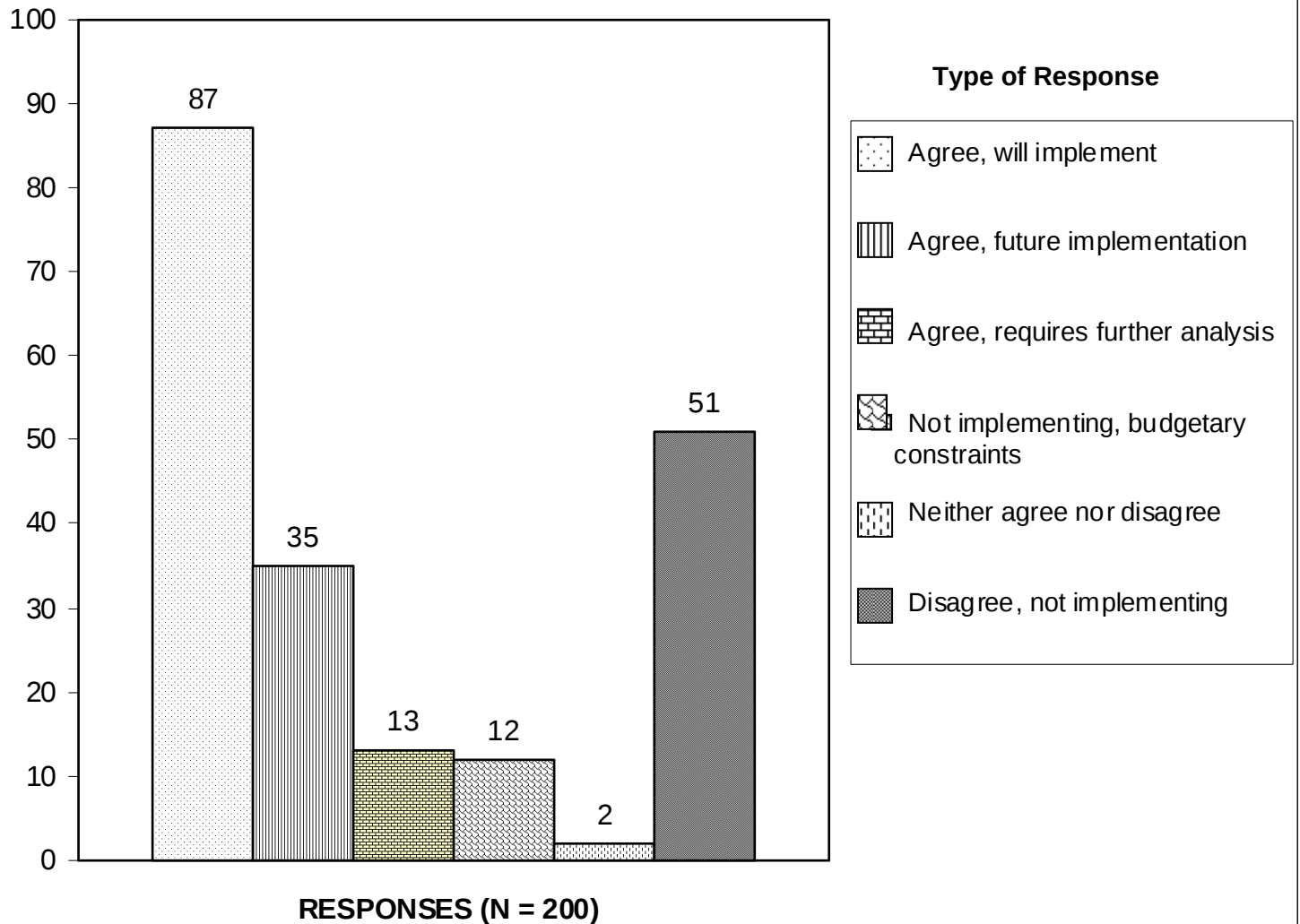


TABLE 1
EXEMPLARY RESPONSES

REPORT TITLE/SUMMARY	
ELECTING CITY TREASURERS AND CLERKS The Grand Jury investigated the value and appropriateness of electing (vs. appointing) city clerks and treasurers in general law cities in San Luis Obispo County	
RECOMMENDATION	AGENCY RESPONSE
4. "City councils in Arroyo Grande, Atascadero and Paso Robles should consider trying again to convince the electorate to make at least the position of treasurer appointive, while educating the electorate about qualifications needed in a treasurer and committing the city to require appointed treasurers to possess those qualifications."	Arroyo Grande City Council: "The City Council has approved placing measures on the November 2, 2010 ballot to make the City Treasurer and City Clerk positions appointive. The Grand Jury findings are cited in the approved ballot argument...The City Council has directed staff to prepare an Ordinance delegating the appointive authority to the City Manager if the measures are successful. Therefore, the City's established process for recruitment and hiring will be utilized in the future to ensure appointed treasurers and city clerks will possess the necessary qualifications."
	BENEFICIAL OUTCOME On November 2, 2010, Measure C (Clerk) was approved 58.74% to 41.26%, and Measure D (Treasurer) was approved 55.94% to 44.06% by the voters in Arroyo Grande, making the City Treasurer and City Clerk positions appointive. ²
REPORT TITLE/SUMMARY	
PROGRESSIVE DISCIPLINE OF COUNTY STAFF: POLICY AND PERFORMANCE With more than 2,400 people on the payroll, the county government is San Luis Obispo County's largest employer. Employees who fail to perform (along with a few who cheat, steal or otherwise go astray) face progressive discipline.	
RECOMMENDATIONS	AGENCY RESPONSES
1. "The County should continue to require training in progressive discipline to all supervisors and managers."	Human Resources Department, San Luis Obispo County: "...agrees and has already implemented this recommendation. This mandated course remains in effect for the FY 2010-11. The Human Resources strategic training plan provides for this course to continue into ensuing fiscal years."
2. "The amount of training should be increased and all supervisors and managers should, on a regular basis, receive "refresher" training which reinforces the importance of the immediate supervisor for an effective Progressive Discipline program."	"...agrees...In addition to the mandated Basic Supervisory Course...two additional supervisory courses will be added in the FY 2010-11...A third course, focusing on progressive discipline, is also under development...The Human Resources department will continue to develop courses until an entire Supervisory Academy...is offered...It is anticipated that the Leadership Academy components will be finalized in the next fiscal year."

² Official Tally of San Luis Obispo County Election Results,
[http://www.slocounty.ca.gov/Assets/CR/Elections/November+2\\$!2c+2010+General+Election/SOVC/SOVC+City+of+AG.pdf](http://www.slocounty.ca.gov/Assets/CR/Elections/November+2$!2c+2010+General+Election/SOVC/SOVC+City+of+AG.pdf)

	BENEFICIAL OUTCOME 1. Two additional supervisory courses titled “Establishing Performance Standards” and “Implementing Performance Standards” were rolled out in February 2011. 2. “Progressive Discipline” course still on target to be completed and presented to employees in FY 2011-2012. 3. The original Basic Supervisory course, along with three other courses, will result in a total of four course offerings by the end of FY 2011-2012. 4. Basic Supervisory class being offered quarterly remains mandatory for new supervisors and is also available to existing supervisors.
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TABLE 2
INADEQUATE RESPONSES

REPORT TITLE/SUMMARY	
TO “GO SOLAR” OR NOT TO “GO SOLAR” The many and varied incentives to “go solar” – from saving the planet to saving a buck – are being looked at by homeowners, utility companies and government agencies alike. Stimulated by the state’s mandate to achieve the goal of obtaining 20% of our energy from renewable sources by 2010 and 33% by 2020, all parties are urgently looking at the alternatives.	
RECOMMENDATIONS	AGENCY RESPONSE
3. “The County Board of Supervisors and City Councils of all the county’s incorporated cities need to inventory all government building rooftops as potentials for solar installation.”	City of Pismo Beach: “The recommendation has not been implemented. It is estimated that within one year an inventory of all government building rooftops in Pismo Beach with the potential for the installation of solar panels could be completed. The City feels, however that it is necessary to point out that it is a coastal community and subject to more days of foggy weather than a city further inland. Due to this, the installation of solar panels may not be as attractive from an economic standpoint because it takes longer to realize a return on investment given that the fog impacts the ability of those solar panels to generate energy.”
	INADEQUACY OF RESPONSE The response from the City of Pismo Beach was perfunctory and inadequate. The assertion that foggy weather hampers the value of solar panels is not borne out by scientific fact. The efficiency of solar panels depends on four separate factors: 1. The quality of the energy conversion cells 2. Air temperature 3. Length of day 4. Thickness and density of cloud cover, or fog Fog and clouds, unlike shade, allow some sunlight to reach the roof. Even in an area with lots of foggy days, what matters is how much sunshine a roof receives over the course of a whole year, not on a given day. According to solar experts, depending on the type of fog, it may give solar panels an advantage. Near the coast, marine fog in the early morning can actually help boost production. That is because the early morning sun hits a roof at an obtuse angle, and the fog helps more light reach the panels than it would if the sky were clear.³

³ “10 Myths About Solar Energy,” One Block Off The Grid (<http://howsolarworks.1bog.org/solar-myths/>; accessed 1/26/11)

REPORT TITLE/SUMMARY

FAILING GRADE: ATASCADERO UNIFIED SCHOOL DISTRICT

The Grand Jury received a citizen complaint regarding the Atascadero Unified School District's (AUSD) hiring of high school Principal E.J. Rossi. The complaint cited allegations that Mr. Rossi misused Atascadero High School (AHS) school activity funds. Further, the complainant reported a pattern of misappropriation of funds by Mr. Rossi, citing his history at his former employer, the San Ardo Union School District (SAUSD) in Monterey County. . Mr. Rossi was the subject of a SAUSD internal audit and Monterey County District Attorney investigation that ended with Mr. Rossi agreeing to restitution of funds to SAUSD. The complainant questioned AUSD's failure to consider this background when promoting Mr. Rossi to principal.

RECOMMENDATIONS

AGENCY RESPONSES

2. "The AUSD Board should implement a new policy requiring that when a civil or criminal complaint is lodged against a staff member, the superintendent conduct a full investigation and submit findings and recommendations to the board."

Atascadero Unified School District:

"In this issue...the District is unaware that any complaint, civil or criminal, was filed with any court."

INADEQUACY OF RESPONSE

While the District's assertion that they were unaware that any complaint, civil or criminal, was filed with any court, thus absolving them of the responsibility to conduct a full investigation is technically correct, it is disingenuous.

Since the allegations cited resulted in restitution of funds to SAUSD, it is reasonable to assume that some unlawful activity had occurred and to expect additional scrutiny by the AUSD Board. It is also reasonable to expect the results of that investigation to be submitted to the Board prior to the hiring of the principal.

TABLE 3
SELECTED ADEQUATE RESPONSES

REPORT TITLE/SUMMARY	AGENCY RESPONSE SUMMARY
Subdivision Review Board or Planning Commission- Who Decides? The report is a review of the San Luis Obispo County Planning Department's ordinances and operational procedures with respect to the subdivision review board. Agreed and disagreed with recommendations	Based on a recommendation in the Grand Jury report, the Board of Supervisors initiated ordinance changes. These will allow the Planning Director to elevate controversial or complex development decisions from the Subdivision Review Board to the Planning Commission. Responses to another recommendation, however, did not address the multiple conflicting ordinance provisions specifically identified in a chart, text and appendix. These inconsistent provisions are in each of the two land use ordinances and stipulate different decision makers for identical development applications.
Port San Luis: A Tarnished Jewel The Grand Jury sought to determine whether the Harbor District is operating efficiently and whether there are areas of operation that need improvement. The investigation raised issues involving the District's boatyard contract and operation, boat launch access, votes cast by Harbor Commission members who are customers of the boatyard, and financial reports that lack detail. Disagreed publicly, but sought legal advice privately	While the Harbor Commission publicly rejected the recommendations of the Grand Jury, it sought advice from its legal counsel on the issue of conflict of interest. That opinion included this cautionary statement: 'We believe the report useful as a reminder that conflicts of interest are serious matters and should be explored whenever there is any question as to the propriety of a vote. Moreover, when it is likely that a legitimate vote may be perceived as a conflict of interest, it would seem to be appropriate to advise the public of the issue and provide the grounds as to why a conflict does not preclude voting. Such actions might avoid a perceived conflict of interest such as those raised in the Grand Jury report.'
Leaf Blower Hazards in San Luis Obispo County The Grand Jury recommended that the San Luis Obispo County Board of Supervisors and all incorporated cities initiate a gradual phase-out of two-cycle gasoline powered leaf blowers for landscape and cleanup operations. Postponed implementation pending further analysis	The City of San Luis Obispo directed a phase-out of its two-cycle blowers used for maintaining city facilities. More than half the other cities required to respond, however, indicated that they were waiting for the Air Pollution Control Board's (APCB) report on a multi-pollutant clean air plan which was scheduled to be presented to the San Luis Obispo County Supervisors in December 2010. They stated they would comply based on the recommendations in that report. The APCB postponed work on the Clean Air Plan until next year, explaining "it is unlikely to be completed until mid-2012" and the affected cities will wait for the report.
School Evacuations: Working to Stay Prepared Concerned about recent budget and spending cuts, the Grand Jury investigated whether reduced school funding could affect the ability of San Luis Obispo County schools to safely evacuate students in the event of an emergency. Not implementing recommendations based on budgetary constraints	Insufficient funds due to the budget situation were cited by the County Superintendent of Schools as the reason for not implementing the recommendation that necessary funds be provided for equipment and to reserve a radio frequency to allow bus drivers to communicate directly with one another and with the County Emergency Operations Center in the event of an evacuation emergency. No cost analysis was done.

APPENDIX A

California Penal Code 933:

(a) Each grand jury shall submit to the presiding judge of the superior court a final report of its findings and recommendations that pertain to county government matters during the fiscal or calendar year. Final reports on any appropriate subject may be submitted to the presiding judge of the superior court at any time during the term of service of a grand jury. A final report may be submitted for comment to responsible officers, agencies, or departments, including the county board of supervisors, when applicable, upon finding of the presiding judge that the report is in compliance with this title. For 45 days after the end of the term, the foreperson and his or her designees shall, upon reasonable notice, be available to clarify the recommendations of the report.

(b) One copy of each final report, together with the responses thereto, found to be in compliance with this title shall be placed on file with the clerk of the court and remain on file in the office of the clerk. The clerk shall immediately forward a true copy of the report and the responses to the State Archivist who shall retain that report and all responses in perpetuity.

(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.

(d) As used in this section "agency" includes a department.

APPENDIX B

California Penal Code 933.05(a):

For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decisionmaking authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.
- (d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.
- (e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.
- (f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.