

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

(1) DEPARTMENT Administration		(2) MEETING DATE July 18, 2006		(3) CONTACT/PHONE Leslie Brown, Administrative Analyst (805) 781-5011	
(4) SUBJECT Request to approve recommended responses to findings and recommendations contained in the May Grand Jury report on the Area Advisory Council Resolution, and to forward the responses to the Presiding Judge of the Superior Court.					
(5) SUMMARY OF REQUEST The Grand Jury has prepared a report addressing the Area Advisory Council Resolution and issues related to the purpose, role and legal authority of these councils. The report directs that the Board of Supervisors respond to all six findings and seven recommendations of the report. The Grand Jury also requires that County Council and the Planning and Building Department respond to specific findings and recommendations. This item includes the departmental responses as well as recommended responses from the Board of Supervisors as required. Upon approval, the responses will be forwarded to the Presiding Judge.					
(6) RECOMMENDED ACTION It is recommended that your Board approve the attached responses and forward these responses to the Presiding Judge of the Superior Court.					
(7) FUNDING SOURCE(S) N/A		(8) CURRENT YEAR COST N/A		(9) ANNUAL COST N/A	
(10) BUDGETED? <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> N/A					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): The Grand Jury conferred with County Counsel and staff from the Planning and Building Department as part of their investigation. In addition, members of three Advisory Councils were interviewed by the Grand Jury. As noted above, both County Counsel and the Planning and Building Department have prepared responses to this report.					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) <input type="checkbox"/> 1st, <input type="checkbox"/> 2nd, <input type="checkbox"/> 3rd, <input type="checkbox"/> 4th, <input type="checkbox"/> 5th, <input checked="" type="checkbox"/> All			(14) LOCATION MAP <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A		(15) Maddy Act Appointments Signed-off by Clerk of the Board <input checked="" type="checkbox"/> N/A
(16) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(17) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions (Orig + 4 copies) <input type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input checked="" type="checkbox"/> N/A		
(18) NEED EXTRA EXECUTED COPIES? <input type="checkbox"/> Number: _____ <input type="checkbox"/> Attached <input checked="" type="checkbox"/> N/A			(19) BUDGET ADJUSTMENT REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		
(20) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) _____			(21) W-9 <input type="checkbox"/> No <input type="checkbox"/> Yes		(22) Agenda Item History <input checked="" type="checkbox"/> N/A Date _____
(23) ADMINISTRATIVE OFFICE REVIEW					

7-18-06

B-4

County of San Luis Obispo

COUNTY GOVERNMENT CENTER, RM. 370 • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5011



DAVID EDGE
COUNTY ADMINISTRATOR

TO: Board of Supervisors

FROM: Leslie Brown, Administrative Analyst

LB

DATE: July 18, 2006

SUBJECT: Response to the 2005-2006 Grand Jury Interim Report on the Area Advisory Council Resolution

RECOMMENDATION

Staff recommends that the Board of Supervisors adopt the attached responses (Attachments 1, 2 and 3) as the Board of Supervisors' response to the May 2006 Grand Jury report on the Area Advisory Council Resolution and forward these responses to the Presiding Judge of the Superior Court.

DISCUSSION

The Grand Jury issued an interim report in May of 2006. The interim report addressed the Area Advisory Council Resolution (96-485) adopted by the Board of Supervisors December 10, 1996. The Grand Jury has requested that the Planning and Building Department, County Council and your Board of Supervisors respond to six findings and seven recommendations related to the Area Advisory Council Resolution, training of Advisory Council members on the purpose, legal status and role of Advisory Councils, and circumstances for which legal defense and indemnification of the councils and their members is provided by the County.

After evaluating the Grand Jury report, staff has prepared a recommended Board of Supervisors' response found in Attachment 1. Also included are responses from the Planning and Building Department (Attachment 2) and County Counsel (Attachment 3) to the Grand Jury report.

The seven recommendations in the Grand Jury Report are based on the assumption that the Area Advisory Council Resolution (96-485) will remain in effect, and are stated before each response on the attached documents.

OTHER AGENCY INVOLVEMENT

The Grand Jury conferred with County Counsel and staff from the Planning and Building Department as part of their investigation. In addition, members of three Advisory Councils were interviewed by the Grand Jury. As noted above, both County Counsel and the Planning and Building Department have prepared responses to this report.

*B-4
2*

FINANCIAL CONSIDERATIONS

The Planning and Building Department will incur minor costs associated with the revision of Advisory Council training materials as suggested in the response from County Council (see Attachment 3). These costs will be absorbed within the adopted FY 2006/07 budget and no budget adjustment will be needed.

RESULTS

Adoption of the findings and recommendations will fulfill the County's obligation to respond to Grand Jury reports as specified in Section 933 of the Penal Code.

Attachments

1. Board of Supervisors' response to the Grand Jury Report on the Area Advisory Council Resolution
2. Planning and Building Department's response
3. County Counsel's response

B-4
3

County of San Luis Obispo

COUNTY GOVERNMENT CENTER, RM. 370 • SAN LUIS OBISPO, CALIFORNIA 93408 • (805) 781-5011



DAVID EDGE
COUNTY ADMINISTRATOR

To: The Honorable Rodger Piquet
California Superior Court, San Luis Obispo County

FROM: County of San Luis Obispo Board of Supervisors
Katchik "Katcho" Achadjian, Chairman

DATE: July 18, 2006

RE: 2005-06 Grand Jury Report – Area Advisory Council Resolution

Thank you for the opportunity to respond to the Grand Jury report on the Area Advisory Council Resolution (96-485) adopted by the Board of Supervisors on December 10, 1996. This memo is the County Board of Supervisors response to that report. The required responses from County Counsel and the County Planning and Building Department are also attached.

Response to Grand Jury Findings:

Grand Jury Finding 1

There is no method or mechanism for verifying whether applicants for council status, or existing councils, meet the recognition criteria set forth in The Resolution.

Board of Supervisor's response to Finding 1

The Board agrees that there is no formal mechanism or method in place to verify the information provided by Advisory Councils documenting their compliance with the recognition criteria set forth in The Resolution. It is incumbent on all Advisory Councils to submit accurate and valid information when requesting Board recognition, and that updated information on membership and council By-laws is submitted to the Board as it changes to maintain recognition status.

Grand Jury Finding 2

Multiple Groups can lay claim to advisory council status in the same area.

Board of Supervisor's response to Finding 2

The Board agrees with this Finding yet does not consider this to be a problem.

In addition, the Board adopts the responses to Findings 3, 4 and 6 prepared by the Planning and Building Department in their Board letter dated June 15, 2006 as well as

B-4
4

the responses to Findings 5, 6 and 7 prepared by County Counsel in their Board letter dated June 13, 2006. Both of these documents are attached, as mentioned earlier.

Response to Grand Jury Recommendations:

Grand Jury Recommendation 1

The Board of Supervisors should assume responsibility for assuring the conditions of The Resolution for recognition are met. The Resolution should be amended to establish a procedure for determining if groups applying for or claiming advisory council status meet the requirements of The Resolution (Finding 1).

Board of Supervisor's response to Recommendation 1

This recommendation will not be implemented because the Board members believe that the current relatively informal arrangements concerning Advisory Councils are sufficient.

Grand Jury Recommendation 2

The Board of Supervisors needs to implement a method of resolving conflicts which arise from applications for recognition by competing councils in the same area (Finding 2).

Board of Supervisor's response to Recommendation 2

This recommendation will not be implemented, because, as stated earlier, the Board does not view this situation as a problem.

In addition, the Board adopts the responses to Recommendations 3, 4, 5 and 7 prepared by the Planning and Building Department in their Board letter dated June 15, 2006 as well as the June 13, 2006 responses to Recommendations 5, 6 and 7 prepared by County Counsel.

B-4
5



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PLANNING AND BUILDING

VICTOR HOLANDA, AICP
DIRECTOR

MEMORANDUM

DATE: June 15, 2006

TO: Honorable Roger Piquet
California Superior Court

FROM: Department of Planning and Building
Victor Holanda, Director *Victor Holanda*

SUBJECT: San Luis Obispo County Planning and Building Department
Response to 2005 – 06 Grand Jury Report “Area Advisory Council Resolution”

In your memorandum of May 18, 2006 you requested that this department prepare a response to the Grand Jury Report relative to the specific Findings and Recommendations noted below.

FINDINGS

Finding #3. *Advisory Councils are listed as a “check-list item” on applications for county building permits. (Finding 3)*

Response: The Director of the Planning and Building Department disagrees with this statement. Within the Planning and Building Department a REFERRAL CHECKLIST – not an application form – is utilized as a method of insuring completeness in requesting comments on discretionary projects. The “check list” includes *Community Advisory Councils* as one of several interested parties in the land use development /entitlement process to be contacted. On Application Forms for a Building Permit, or *CONSTRUCTION PERMIT APPLICATION PACKAGE*, there is no reference to a Community Advisory Council.

Finding #4. *Advisory Councils receive training from the Planning Department. (Finding 4)*

Response: The Director of the Planning and Building Department agrees with this statement.

Finding #6. *Certain discretionary permit applications must be acted upon within time constraints defined by state law. (Finding 5)*

Response: The Director of the Planning and Building Department agrees with this statement.

A Attachment 2

*B-4
6*

RECOMMENDATIONS

Recommendation #3. *All check-off items and other references to advisory councils should be removed from all county permit application forms. A side-letter should be made available to all permit applicants informing them of the advisory councils purpose, legal status, and role (or lack thereof) in the approval process. (Finding 3).*

Response: This recommendation will not be implemented because there is no reference to advisory councils on county permit application forms. Public participation is a fundamental requisite the Board of Supervisors expects and has directed the Planning and Building Department to promote. Check lists are used by staff to insure thoroughness in distributing information as well as requesting comments from other offices, departments, or citizen groups such as Community Advisory Councils. At the time a discretionary permit application is issued an applicant is always advised by planning department staff that their application will be forwarded to a Community Advisory Councils for comments.

Recommendation #4. *The Planning Department should reassess training of advisory council members and the manual used for this purpose to assure they include an extensive section explaining the purpose, reason for existence, role in the approval process, and legal status of the councils. It should clearly explain their role in the approval process, and legal status of the councils. It should clearly explain their role is strictly confined to the soliciting community input for the purpose of giving advice during the approval process.*

The first sentence (and any subsequent sections) of the training manual for council members should be revised to eliminate any implication that official duties are assigned to the councils (Finding 4)

Response: The Planning and Building Department has already implemented the first part of this recommendation. At the previous Community Advisory Councils training session conducted on Saturday, April 1, 2006 the Planning and Building Department focused on the role of the Community Advisory Councils with an emphasis on their respective roles, purpose, reason for existence, role in the approval process, and legal status of the councils as being strictly advisory.

The Handbook and Training Manual will be expanded to include any recommendations suggested by County Counsel within sixty days of the new fiscal year by the Planning Department staff.

Recommendation #5. *Training should make clear that members are responsible for their individual actions on the council as well as the collective actions of the council. They should be apprised of the fact that there is a potential for legal liability for their actions. This portion of the training should be conducted by County Counsel (Finding 4 & 5)*

Response: The recommendation of clarifying the role of the Community Advisory Councils was discussed and brought to the attention of all participants at the previous training session for Community Advisory Council's on April 1, 2006. However; specific language suggested by County Counsel clarifying the role of the Community Advisory Councils will be inserted into the Community Advisory Council Handbook and Training Manual within sixty days of the new fiscal year by the Planning Department staff.

Recommendation #7. *Advisory councils should respond to issues within the same time frame as is required of the Planning Department if their advice is to be considered. (Finding 6)*

Response: The Planning and Building Department will implement this recommendation by requesting and emphasizing that Community Advisory Councils must respond to project referrals within 60 days of notification if they want their advice to be accepted and considered.

B-4
7



OFFICE OF THE

COUNTY COUNSEL

COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER, ROOM D320
SAN LUIS OBISPO, CA 93408
TELEPHONE (805) 781-5400
FAX (805) 781-4221

JAMES B. LINDHOLM, JR.
COUNTY COUNSEL

ASSISTANT
JAC A. CRAWFORD

CHIEF DEPUTY
R. WYATT CASH

DEPUTIES
JAMES B. ORTON
WARREN R. JENSEN
PATRICIA A. STEVENS
KATHY BOUCHARD
TIMOTHY MCNULTY
ANN CATHERINE DUGGAN
PATRICK J. FORAN
LESLIE H. KRAUT
RITA L. NEAL
PATRICIA GOMEZ
STACY MILLICH
SUSAN HOFFMAN
CHERIE J. VALLELUNGA

June 13, 2006

Honorable Roger Picquet
Presiding Judge
Superior Court of the State of California
County of San Luis Obispo
1035 Palm Street, Room 385
San Luis Obispo, CA 93408

Re: Response to Grand Jury Report

Dear Judge Picquet:

The San Luis Obispo County Counsel's Office submits the following responses to the Grand Jury concerning their Grand Jury's report regarding area advisory councils.

Finding #5: "County Council [sic] is obligated to defend legal actions against advisory councils and the County must indemnify councils against losses in litigation."

Response: County Counsel agrees that the County has decided that members of private associations who have undertaken the study of various land use projects and policies for the purpose of giving input to county officials will be provided defense and indemnity against claims and lawsuits arising from their advisory committee work as long as they are not acting with fraud, corruption or malice. This means that, for claims arising out of advisory decisions made by a recognized community advisory group or for activity directly related to those decisions, the County will be responsible for defending individual advisory group members who are the subject of claims or litigation.

Finding #6: "Certain discretionary permit applications must be acted upon within time constraints defined by state law."

Response: This office agrees with this finding.

Recommendation #5: "Training should make clear that members are responsible for their individual actions on the council as well as the collective actions of the council. They should be apprised of the fact that there is a potential legal liability for their actions. This portion of the training should be conducted by County Counsel. (Findings 4 & 5)"

Attachment 3

B-4
8

June 20, 2006

Response: The respondent disagrees partially with the finding. The recommendation will be implemented by adding additional content in training materials. The training materials will be supplemented within sixty (60) days, as outlined below. Training by this office should not be necessary. The Planning and Building Department publishes and distributes the "San Luis Obispo County Community Advisory Council Handbook," and also offers a training program to advisory council members. The handbook and training program materials could be expanded to include the following:

"Advisory groups in San Luis Obispo County are private associations which have undertaken the study of various land use projects and policies for the sole purpose of giving input to official County boards and commissions, such as the Planning Commission and Board of Supervisors. Such groups have assisted in all supervisorial districts by letting appointed and elected officials gain an understanding of each community's concerns.

The County has had a long-standing policy of treating County volunteers as employees for purposes of providing defense and indemnification from claims and lawsuits. The County has adhered to the Tort Claims Act by treating volunteers in the same fashion it does employees, by recognizing that a volunteer acting within the scope of their duties performed on behalf of the County would be entitled to defense and indemnity provided their actions have not been taken because of fraud, corruption, or malice. This means that for claims arising out of advisory decisions taken by a recognized community advisory group, and for activity directly related to those decisions, the County would be responsible for defending individual advisory board members who are the subject of claims or litigation. With regard to the provision that an advisory board member not act with fraud, corruption, or malice, this generally requires that advisory committee member avoid making recommendations on the basis of personal animosity or bias against a project proponent or opponent."

Recommendation #6: County Counsel should provide council members with an explanation clearly defining the conditions under which the county will, or will not, provide legal defense and indemnification to the councils and their members. (Finding 5)

Response: Please refer to the response to recommendation #5 as to defense of advisory committee members. We have not had any litigation filed against an advisory group or one of its members. However, if litigation were filed, each case would need to be analyzed on its own.

B-4
9

Honorable Roger Picquet
Re: Response to Grand Jury Report

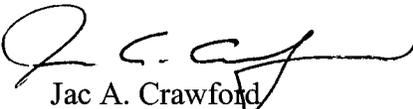
June 20, 2006

Recommendation #7: Advisory councils should respond to issues within the same time frame as is required of the Planning Department if their advice is to be considered. (Finding 6)”

Response: This office agrees with the recommendation.

Very truly yours,

JAMES B. LINDHOLM, JR.
County Counsel

By: 
Jac A. Crawford
Assistant County Counsel

JAC:pk

cc: Leslie A. Brown, County Administrative Office
Nikki Schmidt, County Administrative Office
Victor Holanda, Director, Department of Planning & Building

060871
8937pkltr.doc

B-4
10