

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

(1) DEPARTMENT Administrative Office	(2) MEETING DATE 7/12/2016	(3) CONTACT/PHONE Nikki J. Schmidt - 781-5496 Lisa Howe - 781-5025	
(4) SUBJECT Request to adopt recommended responses to the FY 2015-16 San Luis Obispo Grand Jury report titled "Minor Use Permits - An Oxymoron" and forward these responses to the Presiding Judge of the Superior Court by August 1, 2016. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board: (1) Approve staff's recommended responses to the FY 2015-16 Grand Jury report titled "Minor Use Permits - An Oxymoron"; (2) Adopt and file staff's recommended responses as the County Administrative Officer's and Board's responses; and (3) Direct the Clerk to forward the approved response to the Presiding Judge and the Grand Jury within 60 days of the Board's approval.			
(6) FUNDING SOURCE(S) N/A	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? No
(10) AGENDA PLACEMENT ☒ Consent ☐ Presentation ☐ Hearing (Time Est. ____) ☐ Board Business (Time Est. ____)			
(11) EXECUTED DOCUMENTS ☐ Resolutions ☐ Contracts ☐ Ordinances ☒ N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A ☐ 4/5 Vote Required ☒ N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? N/A	(16) AGENDA ITEM HISTORY ☒ N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW This item was prepared by the Administrative Office.			
(18) SUPERVISOR DISTRICT(S) All Districts			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Nikki J. Schmidt and Lisa Howe, Administrative Office

DATE: 7/12/2016

SUBJECT: Request to adopt recommended responses to the FY 2015-16 San Luis Obispo Grand Jury report titled "Minor Use Permits - An Oxymoron" and forward these responses to the Presiding Judge of the Superior Court by August 1, 2016. All Districts.

RECOMMENDATION

It is recommended that the Board:

- (1) Approve staff's recommended responses to the FY 2015-16 Grand Jury report titled "Minor Use Permits - An Oxymoron";
- (2) Adopt and file staff's recommended responses as the County Administrative Officer's and Board's responses; and
- (3) Direct the Clerk to forward the approved response to the Presiding Judge and the Grand Jury within 60 days of the Board's approval.

DISCUSSION

On May 26, 2016, the Grand Jury issued a report on "Minor Use Permits - An Oxymoron". This report reviews the notification process used in the issuance of a minor use permit (MUP) specifically the process used in notifying the public of a pending project or event.

The report contains ten (10) findings and five (5) recommendations. The County Administrative Officer and Board of Supervisors are required to respond to Recommendations 1-5. The Department of Planning and Building is required to respond to Recommendations 2-5. All responses conform to the language required under Penal Code section 933.

The responses from the Board of Supervisors are due to the Presiding Judge by August 1, 2016. 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 and County Administrative Officer's responses.

Permit Process

In an effort to ensure the vision of the General Plan is carried out, the Planning and Building Department operates a tiered system of review in which the Board of Supervisors delegates their approval authority to the Planning Commission, the Subdivision Review Board, or the Planning Director. This tiered process is necessary to avoid gridlock in processing permits and to effectively keep the County's economy and society moving while at the same time protecting the public interest from incompatible development. The level of review in this tiered system is not focused on the size of the project or its monetary value but instead it is based on a proposal's likely risk of not being compatible with other nearby uses or the public in general or its potential for significant environmental impacts. Not only is delegating approval authority necessary, it is an accepted process that to our knowledge is used in some shape or form by every planning and building department in the State.

The tiered permit review system in San Luis Obispo County is made up of the following review levels:

- **ZONING CLEARANCE** – “A Zoning Clearance is a ministerial land use permit. When a Zoning Clearance is required by this Title to authorize a development proposal, its approval certifies that the land use or development will satisfy all applicable provisions of this Title...”

Risk of neighborhood incompatibility: Very low.

Board Delegates Decision Authority to: The Planning and Building Director

Who Decides: Supervised staff planners at the counter under the authority of the Planning and Building Director.

Decision Type and Criteria for Approval: Ministerial (No discretion); Does the project, as designed, meet the requirements of the Land Use Ordinance?

Public Noticing/Public Hearing: None/None

- **SITE PLAN REVIEW** – “Site Plan Review is required ... for projects more intensive than those requiring a Zoning Clearance. Site Plan Review considers the greater effects these uses may have upon their surroundings, and characteristics of adjacent uses that could have detrimental effects upon a proposed use. Like the Zoning Clearance, a Site Plan Review is also a ministerial land use permit.”

Risk of neighborhood incompatibility: Low.

Board Delegates Decision Authority to: The Planning and Building Director

Who Decides: Supervised staff planners at the counter under the authority of the Planning and Building Director.

Decision Type and Criteria for Approval: Ministerial (No discretion); Does the project, as designed, meet the requirements of the Land Use Ordinance?

Public Noticing/Public Hearing: None/None

- **MINOR USE PERMIT** – “The Minor Use Permit review process provides for public review of significant land use proposals that are not of sufficient magnitude to warrant Commission review; and to insure the proper integration into the community of land uses which, because of their type or intensity, may only be appropriate on particular sites, or may only be appropriate if they are designed or laid out in a particular manner. The Minor Use Permit process shall include the opportunity for a public hearing before the Director. Action on a Minor Use Permit is discretionary, and may include: approval based on the standards of this Title; approval with conditions; or disapproval, based on conflict with the provisions of this Code, or information in the Tentative Notice of Action or public hearing testimony.”

Risk of neighborhood incompatibility: Moderate

Board Delegates Decision Authority to: The Planning and Building Director

Who Decides: An experienced and trusted supervisor or manager who has not directly overseen the processing of the application designated as a “Hearing Officer” by the Planning and Building Director.

Decision Type and Criteria for Approval: Discretionary; Criteria for Approval - A Minor Use Permit shall be approved only where the proposed use satisfies all applicable provisions of this Title, including but not limited to the findings in Section 22.62.060.C.4. 2.

Required findings.

- a. The proposed project or use is consistent with the Land Use Element of the General Plan; and
- b. The proposed project or use satisfies all applicable provisions of this Title; and
- c. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use; and
- d. That the proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development; and
- e. That the proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project.
- f. Any additional findings required by planning area standards in Article 9 (Community Planning Standards), combining designation (Chapter 22.14), or special use (Article 4).

Public Noticing/Public Hearing: Public noticing follows California Government Code Sections 65090-65096; Public Hearing if requested after receiving notice.

- **CONDITIONAL USE PERMIT** – “The purpose of a Conditional Use Permit is to: provide for public review of significant land use proposals; and to insure the proper integration into the community of land uses which, because of their type or intensity, may only be appropriate on particular sites, or may only be appropriate if they are designed or laid out in a particular manner. The Conditional Use Permit process includes a public hearing before the Commission. Action on a Conditional Use Permit is discretionary and may include: approval based on the standards of this Title; approval with conditions; or disapproval, based on conflict with the provisions of this Code, or information in the staff report or public hearing testimony.”

Board Delegates Decision Authority to: The Planning Commission

Who Decides: Five Planning Commissioners who are directly appointed by the Board of Supervisors.

Decision Type and Criteria for Approval: Discretionary; Criteria for Approval - The Review Authority shall not approve or conditionally approve a Conditional Use Permit unless it first finds that:

Required findings.

- a. The proposed project or use is consistent with the Land Use Element of the General Plan; and
- b. The proposed project or use satisfies all applicable provisions of this Title; and
- c. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use; and
- d. That the proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development; and
- e. That the proposed use or project will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project.
- f. Any additional findings required by planning area standards in Article 9 (Community Planning Standards), combining designation (Chapter 22.14), or special use (Article 4).

Public Noticing/Public Hearing: Public noticing follows California Government Code Sections 65090-65096; Public Hearing by the Planning Commission.

The level of review for each type of project is based upon the purpose of each land use category, compatibility with other uses in the same land use category, and expected impacts. The level of review is set by the Board of Supervisors by ordinance with input and recommendations from planning staff, the Planning Commission, and the public. As an extra level of administrative relief for the public, every decision is appealable to the Board of Supervisors.

In calendar year 2015, the Planning Department held 23 Planning Department Hearings that considered 106 projects. Following the process, 27 projects had requests for an actual hearing before the Hearing Officer. The data indicates that Minor Use Permits are appropriately processed and there was adequate opportunity for the public to exercise the right to participate in a public hearing.

OTHER DEPARTMENT INVOLVEMENT/IMPACT

The County Administrative Office coordinated with the Department of Planning and Building in the development of the recommended County Administrator's and Board responses to this report.

FINANCIAL CONSIDERATIONS

There are no financial considerations associated with this item.

RESULTS

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

ATTACHMENTS

1. Attachment 1 – Recommended Staff Responses
2. Definition of Minor Use Permit Tier Levels
3. Grand Jury's 2015-16 report "Minor Use Permits - An Oxymoron"

Recommended Responses to the San Luis Obispo Grand Jury's 2015-16 report titled "Minor Use Permits - An Oxymoron"

The County Administrative Officer and Board of Supervisors are required to respond to Recommendations 1-5. The Department of Planning and Building is required to respond to Recommendations 2-5. All responses conform to the language required under Penal Code section 933.

R.1. The Board of Supervisors should fund the update of the 1980 General Plan; incorporating appropriate amendments and make it easily accessible using an electronic search.

Recommended Response: The recommendation will not be implemented because it is not warranted or is not reasonable.

The County's General Plan addresses over 3,300 square miles of area ranging from coastal beaches to the Carrizo Plains. The document addresses four coastal area plans and four inland planning areas with 13 inland village and community plans.

It is not accurate to say that the General Plan is outdated. Due to the size and scale of the County, instead of comprehensive updates every 15 to 20 years, the County of San Luis Obispo has chosen the strategy to complete significant element updates on a rotational basis. The County has completed the following significant element updates:

- Land Use and Circulation Element Revised 2014
- Coastal Land Use and Circulation Element 2011
- Conservation 2010
- Housing 2014
- Noise 1992
- Open Space 2010
- Safety 1999

The County believes that the current General Plan is not only legally adequate but also very much a living and relevant document to guide the future of the County of San Luis Obispo. Additionally, the entire General Plan is available on the County's website and is completely searchable electronically.

That being said, the structure of the General Plan was based on a concept that integrated the Land Use Ordinance with the General Plan. A result of this framework is the need to amend the General Plan when the Land Use Ordinance is changed. This framework is unconventional and it can be argued that it has led to perceived inconsistencies, wide ranging interpretations, and a complex process.

A comprehensive update of the County's General Plan would cost between \$3 and 5 million and could theoretically be completed in less than 5 years. However, experience shows that the creation of a new General Plan for a county as complex as ours, could take up to a decade to complete due to changing political cycles and almost inevitable legal challenges under the California Environmental Quality Act (CEQA). Updating the General Plan would also require the creation of a new Land Use Ordinance in order to implement the new General Plan and probably should include a revision of the local CEQA guidelines. Another real drawback of the extended process is the uncertainty that is created for those

wishing to develop property when the old General Plan is still in effect but a draft of the new General Plan is being circulated.

Due to these concerns, consideration of overhauling the entirety of the General Plan should not be taken lightly and the Board of Supervisors should thoroughly discuss the potential benefits and risks. A discussion of updating the General Plan can be requested by the Board of Supervisors at their discretion including at future Strategic Planning Updates given twice per year by the Planning and Building Department.

R.2. An estimated project cost should be required on the application to assist the public in evaluating the project's impact.

Recommended Response: The Board of Supervisors and County Administrative Officer adopt the following response from the Department of Planning and Building as their response to this recommendation.

Department of Planning and Building Response

The recommendation will not be implemented because it is not warranted or is not reasonable.

We do not believe that project cost is a relevant indicator of project impacts. A more accurate indicator of potential project impacts is a detailed project description. A detailed project description is included on every public hearing notice.

R.3. The Board of Supervisors should direct the Department to ensure MUP fees cover all costs of the application process.

Recommended Response: The Board of Supervisors and County Administrative Officer adopt the following response from the Department of Planning and Building as their response to this recommendation.

Department of Planning and Building Response

The recommendation has been implemented.

The Department already recovers full staff cost including overhead for Minor Use Permits through fee development process.

The Department's fee schedule is intended to represent the full cost of processing various types of permits. The method used to calculate these fees is to complete and evaluate time and motion studies for each permit type.

Occasionally, the Department and/or the Applicant recognize that a case might be so simple or complex that an adjustment to a fee might be appropriate. In these instances, the Department and/or the Applicant may request that a "real-time" billing agreement be prepared. In this case, the Department and the Applicant agree to track the time associated with the application and to be billed for the time and costs associated with the case. This may result in either a higher or lower fee than the Department's fee schedule has established.

R.4. Tier III MUP projects should mandate a public hearing and not go on the Planning Department's consent agenda.

Recommended Response: The Board of Supervisors and County Administrative Officer adopt the following response from the Department of Planning and Building as their response to this recommendation.

Department of Planning and Building Response

The recommendation will not be implemented because it is not warranted or is not reasonable.

The MUP process is designed to let the public decide which projects will get public hearings and which ones will remain on the consent agenda. The process works by sending all neighbors within 300 feet of the project site a notice with a detailed project description and instructions for requesting a public hearing. To request a hearing, all a neighbor or member of the public has to do is send the Department a letter or email indicating his or her desire to request a public hearing on the matter. The item is then removed from the consent agenda and receives a public hearing.

The Department of Planning and Building's Fee Schedule has three tiers of Minor Use Permit (MUP) fees. The tiers are an accounting tool to more accurately recover the cost of processing the wide range of projects that require MUP approval. Tier III MUP projects generally take more time to process as they involve more in-depth land use, zoning consistency, and environmental analysis, include more technical studies to review, and require more complex conditions of approval. While Tier III MUP projects generally take more time to review and process, they do not necessarily generate more controversy or impacts compared to other MUPs. Tier III MUP projects (e.g. telecommunications facilities, new single family homes, and some wineries) are routinely approved on the consent agenda without opposition. On the other hand, some Tier I MUPs, such as residential vacation rentals, face significant opposition and become hearing items.

Automatically holding public hearings on all Tier III MUP projects would require the Department to prepare for and conduct public hearings on projects that have not generated controversy or public interest. This would be a less efficient process as it would increase workload without substantively adding to the public process.

This recommendation wrongly assumes that holding public hearings will somehow increase the level of public interest or involvement in a project. In reality, the nature of the project (not the process) determines the level of controversy. The process works by informing the public about the project and giving them the ability to determine the level of public hearings conducted.

R.5. The Department should increase public notification above what is required by the State of California as the MUP tier levels increase as follows:

- a) The fee tier level and estimated cost of the project should be on the mailer to allow the public to gauge the scope of the project;***
- b) The distribution area of the mailer should be appropriately increased in accordance with the tier level;***
- c) The type size of the newspaper notice should be increased in accordance with the tier level;***
- d) On-site signage containing the project information should be reinstated;***
- e) The applicant should be charged for all costs.***

Recommended Response: The Board of Supervisors and County Administrative Officer adopt the following response from the Department of Planning and Building as their response to this recommendation.

Department of Planning and Building Response

The recommendation will not be implemented because it is not warranted or is not reasonable, except for R.5(e), which has already been implemented.

The Department sends public hearing notices to: owners of properties within 300 feet of the project site; any community advisory council representing the area where the project is located; local, state, or federal agencies with an interest in the project; and individuals and organizations who have requested notification. The Department also publishes a legal notice in the newspaper. This procedure is consistent with what the State of California has determined to be adequate noticing of a project and is standard practice for all cities and counties in the state.

In some cases, the Department will exceed the State noticing requirements. For example, the Land Use Ordinance requires public notice to owners within 1,000 feet of any proposed winery project. It is also the Department's practice to exceed the 300 foot noticing requirement for projects in rural areas where the 300 foot radius would only capture the immediately adjacent parcels.

The purpose of the hearing notice is to inform the public about projects and how they can participate in the decision-making process. The best indicator of a project's scope is not the tier level, but rather the detailed project description that is included on every notice. As discussed above in response to recommendation R.4, MUP tiers are an accounting tool to more accurately recover the cost of processing projects of varying processing complexity and are not a good gauge of a project's impacts or potential controversy.

Construction cost is also not a reliable gauge of a project's impacts. For example, the impacts of a new a single family home or apartment building (e.g. traffic, noise, land use compatibility) will be about the same regardless of construction costs. Some Tier I MUP projects, such as using an existing single family home as a residential vacation rental, have no construction costs but raise significant neighborhood compatibility concerns.

The distribution radius of the mailer is intended to capture the properties that will be most directly impacted by the project. The cost or tier level of a MUP project does not generally affect the project's impact area. The impacts of a single family home (e.g. visibility, noise, traffic) will extend the same distance regardless of construction costs.

The cost of noticing is included in the MUP fees and already borne by the applicant. Since the tier level of a MUP is not a reliable gauge of a project's impacts or level of potential controversy, requiring a larger newspaper notice, or any of the other recommendations included in R.5, would be an added expense that would not improve the effectiveness of the public process.

Definition of Minor Use Permit Tier Levels

Tier I

Minor Use Permit - Tier I are small residential and commercial projects including residential decks, tree removal, well permit (private), small residential and commercial additions, and small residential accessory structures. The Planning Director shall have the discretion to determine projects that may be processed as Tier I or Tier II projects.

Tier II

Minor Use Permit - Tier II are residential single family projects including larger residential additions, day care centers, and accessory buildings. The Planning Director shall have the discretion to determine projects that may be processed as Tier I or Tier II projects.

Tier III

Minor Use Permit - Tier III are residential single family projects including new residences, minor use permit for adjustment of ordinance standards, agricultural exempt buildings, and site disturbance or impervious surface of one acre or more. This also includes multi-family projects, commercial and industrial projects, including interim management plans for surface mining operations.