

## 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.

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***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It is not accurate to say that the General Plan is outdated.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.

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***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.

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***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.

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***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.

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***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.