

**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:  <div style="margin-left: 20px;"> (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. </div>			
(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 <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ___) <input type="checkbox"/> Board Business (Time Est. ___)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: N/A <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? N/A	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> 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"