



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

For the meeting of: August 16, 2011

Date: August 4, 2011
To: Board of Supervisors
From: Phillip Smith-Hanes, County Administrative Officer
Subject: Response to 2010-11 Grand Jury Report 2011-CD-02

RECOMMENDATION(S):

That the Board of Supervisors:

- 1. Review and modify the proposed response (Attachment 2) from the Board of Supervisors to Grand Jury Report 2011-CD-02;
2. Review and modify the proposed Grand Jury responses from departments under the appointment authority of the Board of Supervisors;
3. Approve the documents, as may be modified, as the response;
4. Direct the Clerk of the Board, within five working days, to submit the final response with an accompanying Board Order, to the Presiding Judge of the Superior Court; and
5. Direct the Clerk of the Board, within five working days, to submit two copies of all responses to the County Clerk/Recorder, one of which will be forwarded to the State Archivist, together with a copy of the original report.

SOURCE OF FUNDING: General Fund

Prepared by Phillip Smith-Hanes
CAO Approval [Signature]
REVIEW: Auditor County Counsel Personnel Risk Manager Other

TYPE OF ITEM:
[] Consent
[X] Departmental
[] Public Hearing
[] Other
BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor
Seconded by Supervisor
And unanimously carried by those members present,
The Board hereby adopts the recommended action
contained in this report.

PREVIOUS ACTION/REFERRAL:

Board Order No.
Meeting of:
Dated:
Kathy Hayes, Clerk of the Board
By:

DISCUSSION:

The Grand Jury has requested a response from your Board to report 2011-CD-02 (Attachment 1). A draft response is attached for consideration and modification as the Board deems appropriate (Attachment 2). Your Board is also authorized to modify proposed Grand Jury responses from departments under the appointment authority of the Board of Supervisors. One such proposed response is included from Community Development Services (Attachment 3).

FINANCIAL IMPACT:

There is no financial impact related to compilation of the responses. Some individual responses may require expenditures.

OTHER AGENCY INVOLVEMENT:

All County departments and outside agencies referenced in the Grand Jury Reports are involved.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board may elect to modify any response pertaining to matters under its control.

ATTACHMENTS:

1. Grand Jury Report 2011-CD-02
2. Proposed Board of Supervisors Response
3. Draft Response from Community Development Services

cc: Grand Jury



COUNTY OF HUMBOLDT
County Administrative Office
Interoffice Memo

DATE: August 3, 2011
TO: Board of Supervisors
FROM: Phillip Smith-Hanes, County Administrative Officer *PSH*
SUBJECT: **Response to 2010-11 Grand Jury Report 2011-CD-02**

The 2010-11 Grand Jury issued report 2011-CD-02 and the Board of Supervisors is required to respond to findings A through K and recommendations A through H of this report. I recommend that the Board respond as follows:

Finding A:

The Planning Commission has not been receiving timely information from the Planning Department to prepare for upcoming meeting.

Response to Finding A: The Board of Supervisors disagrees with the finding.

All available materials are presented to the Planning Commission prior to meeting dates. The Community Development Services Department mails out all documents which have been submitted the Wednesday before the following week's meeting. The Department posts all recent items mailed out to the Planning Commission online the Friday before the next meeting. Some supplemental materials containing public input are submitted after the mailing date for hearing materials, and these items are delivered to the Planning Commission the night of the subject hearing and made available to the public at or before the hearing as required by the Brown Act. The Board of Supervisors understands the Planning Commission's desire to receive all materials in a timely fashion and encourages the Department to adhere to this schedule.

Finding B:

Failure by Humboldt County Planning Department to provide complete, accurate, and timely information requested by Planning Commissioners. The Commissioners were refused requested information by staff and director saying it's not relevant. In addition, commissioners were frequently not given materials for scheduled meetings until the last moment, thereby preventing the commissioners from having time to research for that night's meeting.

Response to Finding B: The Board of Supervisors disagrees with the finding.

Attachment 2

The Grand Jury report does not document specific instances of staff refusal to provide materials, and the Board has not been notified of any incident in which the Director of Community Development Service refused information or said it was not relevant.

Finding C:

Inaccurate claims in the DEIR were made concerning agreement on certain aspects of the DEIR. The claims involve the following departments:

- 1) City of Eureka
- 2) Caltrans
- 3) California Department of Fish and Game
- 4) Humboldt County Fire Department District #1
- 5) Humboldt County Department of Public Work

Response to Finding C: The Board of Supervisors disagrees with the finding.

Development of an Environmental Impact Report (EIR) is an incremental process. The EIR is continually refined throughout the process, and written comments received from participating agencies on the Draft Environment Impact Report (DEIR) are responded to in the Final Environmental Impact Report. Readers can review comments and submit corrections to perceived false comments. If a participating agency feels that their written or verbal comments are mischaracterized, they can submit corrections in the Final EIR process. The Board expects the Department to review all comments and respond appropriately.

Finding D:

Humboldt County Planning Department and the Forster/Gill Developer have excluded concerned parties from involvement in the planning process from the beginning.

Response to Finding D: The Board of Supervisors disagrees with the finding.

The Community Development Services Department's response to this finding documents a pattern of inclusion of interested parties dating back five years. Decisions about this project, however, are ultimately made in a public forum before the Planning Commission and/or the Board of Supervisors. Both of these bodies conduct open public meetings, and neither the Department nor the developer could exclude interested parties from making their concerns known to the decision makers, even if they were inclined to do so.

Finding E:

Lack of a Citizen Advisory Group in the planning process, as outlined in CEQA that would aid in assisting the Planning Commissioners in solving issues arising with the F/G project.

Response to Finding E: The Board of Supervisors disagrees with the finding.

Pursuant to the County's General Plan, citizens' advisory committees are utilized in community plans and other legislative planning activities, not in quasi-judicial matters such as a project approval.

Finding F:

Used the threat of eminent domain to a homeowner to acquire a portion of that property for ingress and egress to the Forster/Gill project.

Response to Finding F: The Board of Supervisors disagrees with the finding.

The Board of Supervisors has not been informed of an instance in which the Community Development Services Department or the developer threatened eminent domain to a homeowner to acquire a portion of their property for ingress and egress to the Forster/Gill project. Moreover, use of eminent domain is a governmental action taken by a legislative body and would not be within the discretion of either the Department or the developer.

Finding G:

Information obtained indicated that due to economic constraints the project was put on hold in January 2010. Several months later, a DEIR was issued without the participation or notification of concerned agencies.

Response to Finding G: The Board of Supervisors partially disagrees with the finding.

The developer did ask the Community Development Services Department to stop work on the project due to economic concerns. After a two-month hiatus the project resumed. However, the DEIR was circulated to concerned agencies upon completion as required by law.

Finding H:

Outdated growth calculations from the Eureka City Plan of 1995 were used to determine the assessment value of each parcel for utilities, etc. There is no determination as to who will fund the required infrastructure cost if the particular assessed values are to be found inadequate.

Response to Finding H: The Board of Supervisors disagrees with the finding.

The Community Development Services Department examined various growth scenarios to evaluate the potential effects of the development. The scenarios were compared to 1995 projections, but the projected growth rates were based on current data. Any individual interested in reviewing these data can download the DEIR from the County's website. The growth projections can be found in Chapter 14 of the DEIR. Costs for infrastructure necessary to serve the project, as well as the project's share of any community infrastructure burdened by the project, will be assessed against the project as a requirement for the project to move forward. These costs may be specially assessed against structures built within the project boundaries.

Finding I:

Concerned agencies were not invited to participate in the cultivation of the Development Agreement.

Response to Finding I: The Board of Supervisors disagrees with the finding.

Attachment 2

There will be a public release of any development agreement for the project before it goes before the Planning Commission, which will conduct a public hearing. No date has been set for the release or public hearing.

Finding J:

Possible violations, including but not limited to those listed: CEQA, Brown Act, and Humboldt County Updated Codes:

Response to Finding J: The Board of Supervisors does not understand the finding.

The Grand Jury lists these laws and infers that the Department of Community Development Services and/or the Planning Commission violated these laws, but does not include specific examples. Without further information the Board cannot make a definitive answer as to whether anyone acting on behalf of the County violated these laws. If a member of the public wishes to present specific instances of violations of these laws, the individual can provide an oral or written statement to the Board of Supervisors. Once this information is presented, it can be adequately evaluated.

Finding K:

The Planning Commission is not given the opportunity to present their reasons as to why a negative decision was made (Planning Commission Role GP-P3) to the Supervisors in a contested decision by the applicant. According to County officials, "This is the way it's always been done" - only the applicant, the Director and the staff of the Humboldt Planning Department are allowed to speak or answer questions from the Supervisors.

Response to Finding K: The Board of Supervisors disagrees with the finding.

The Humboldt County Planning Commission is welcome to address the Board of Supervisors. An official delegate may represent the Planning Commission at a Board of Supervisors' project appeal hearing. The Board of Supervisors also receives the entire record of a Planning Commission action on an item appealed to the Board and may review the entirety of the taped Planning Commission hearing on the specific item up for appeal.

Recommendation A:

The Receipt of complete, accurate, and timely information to the commissioners by the Planning staffer the director.

Response to Recommendation A: This recommendation has been implemented and will continue to be implemented.

The response to Finding A documents the current method for providing information to the Planning Commission. The Board directs Community Development Services to continue to try and provide information to the Planning Commission in as complete, accurate and timely a fashion as is reasonably possible.

Recommendation B:

Give the Commissioners what they need to complete their tasks. Telling the Commissioners they do not need certain information is not the decision of the Planning Department staffer Director. This has been a recurring comment throughout our interviews.

Response to Recommendation B: This recommendation has been implemented and will continue to be implemented.

The Community Development Services Department states that staff does not tell the Planning Commission it does not need certain information. The Board agrees that this is proper and further encourages the Department to ensure prompt responses when delivering important information to Commissioners.

Recommendation C:

Include local and state agencies concerned with a project and stop the questionable statements when preparing a DEIR. This compromises transparency in government. The Grand Jury strongly urges this be corrected, so the public will have confidence in its local government.

Response to Recommendation C: This recommendation has been implemented and will continue to be implemented.

Local and state agencies should be and will continue to be involved in projects, especially when preparing the DEIR. A list of past involvement is included in the Department's response to Finding D and the Board expects that the future level of involvement will be conducted in accordance with State law.

Recommendation D:

Institute a Citizen Advisory Group. Because of the substantial public interest in this project, lack of a Citizen Advisory Group with qualified individuals for the Forster/Gill project appears inappropriate and restricts input from the public.

Response to Recommendation D: This recommendation will not be implemented because it is not warranted.

This recommendation is not warranted as the Planning Commission serves as a quasi-judicial project review committee. County General Plan policies do not call for the formation of citizens' advisory committees on specific projects. Citizens' advisory committees are used in community plan preparation activities consistent with Section 1500 of the County's General Plan.

Recommendation E:

Allow the Planning Commission (GP-P3) to present their opinions and decisions to the Supervisors when the Commission says no to a project, instead of limiting the questions and answers to the Planning Department and the applicant.

Response to Recommendation E: This recommendation has been implemented and will continue to be implemented.

Attachment 2

In the current process, Planning Commissioners memorialize their opinions and decisions in the resolution they approve on each project. This includes resolutions the Commission approves which deny applications. Individual Commissioners, or the Chair speaking on behalf of the majority, may attend Board of Supervisors meetings to clarify Commission opinions and decisions for the Board.

Recommendation F:

Use current data to determine the cost of each parcel; calculate the cost and who would pay the infrastructure cost, which could be far more than the current assessment per parcel.

Response to Recommendation F: This recommendation has been implemented and will continue to be implemented.

If the project is approved and progresses through the permitting process, new development will be required to pay its calculated fair share of infrastructure requirements.

Recommendation G:

Invite all concerned agencies to participate in the Development Agreement including the public and collaborate openly.

Response to Recommendation G: This recommendation will be implemented as such time as the development agreement draft is released prior to Planning Commission hearing.

As stated in response to Finding I, there will be a public release of any development agreement for this project and it will go before the Planning Commission for a public hearing. No date has been set for the public release or a public hearing.

Recommendation H:

Correct all violations that may have occurred including but not limited to: See Appendix A.

Response to Recommendation H: This recommendation will not be implemented because it is not warranted.

This recommendation is not warranted because the Grand Jury offers no specific instances in which representatives of the County violated the laws and policies in Appendix A. If the Board is notified of specific instances in which County representatives violated codes and policies, the Board will take appropriate action.