

RESPONSES
to the
MONTEREY COUNTY
2005
CIVIL GRAND JURY
FINAL REPORT

PLEASE DO NOT REMOVE FROM
GRAND JURY OFFICE

MONTEREY COUNTY



COUNTY ADMINISTRATIVE OFFICE

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March 21, 2005

The Honorable Stephen A. Sillman
2005 Presiding Judge of the Superior Court
County of Monterey
240 Church Street, North Wing, Room 318
Salinas, CA 93901

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MAR 24 2006

MONTEREY COUNTY
GRAND JURY

Re: Response to 2005 Monterey County Civil Grand Jury Report

Dear Judge Sillman:

Attached please find the Monterey County Board of Supervisors' response to the Monterey County Civil Grand Jury 2005 Final Report. The Board of Supervisors approved the response, which complies with all requirements set forth in Sections 933 and 933.05 of the California Penal Code, on March 14, 2006.

The Board approved response should be deemed and accepted by the Presiding Judge of the Superior Court of Monterey County and the Monterey County Civil Grand Jury as the response of the Board of Supervisors, County Administrative Officer, and appointed County department heads.

For informational purposes, I have also included the Board Report and Board Order, which accompanied this item at their hearing on March 14, 2006.

Sincerely,


Lew C. Bauman
County Administrative Officer

LCE/ad

Attachments: Response, Board Report, Board Order

cc: Maria Robledo, Grand Jury Liaison

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MONTEREY COUNTY
GRAND JURY



Monterey County Board of Supervisors'

Response to the

**Monterey County Civil Grand Jury
2005 Final Report**

March 14, 2006

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SECTION: Administration

REPORT TITLE: Monterey County Planning and Building Inspection Department

RESPONSE BY: Monterey County Board of Supervisors

RESPONSE TO: Findings 1-79

Senior Management

Finding 1: After 15 years, one Planning Director retired, and a new Planning Director was hired in 1999. In 2000, that Planning Director was replaced with a Planning Director operating out of the County Administrative Office with two Assistant Planning Directors operating the Department. In 2001, a new Planning Director was hired to operate within the Department with a new Chief Assistant Planning Director, an Assistant Director for Planning and an Assistant Planning Director for Building and Inspections.

Response: The respondent agrees with the finding.

Finding 2: The Planning Director and Chief Assistant Planning Director formed an Executive Committee consisting of themselves and the Assistant Planning Directors of Planning and Building Inspection Divisions.

Response: The respondent agrees with the finding.

Finding 3: Development of the General Plan was moved to the County Administrator's Office (CAO) in 2001 but later was returned to the Department in 2005. Additional staff was not allocated to PBID for the General Plan Update (GPU) assignment.

Response: The respondent disagrees partially with the finding. The GPU was initiated in the CAO's office with staff transferred from PBID. Subsequently in 2004 when the GPU was transferred to PBID, additional staff (one Senior Planner and one Senior Office Assistant) was allocated to the Department. However, during the same period of time approximately 20 positions were deleted in PBID due to budget reductions.

Finding 4: In early 2005, the newly appointed County Administrative Officer announced consolidation of agencies dealing with land use issues into the Resource Management Agency (RMA) to be composed of Planning and Building Inspection Department, Redevelopment, Capital Projects, and Public Works. In addition, liaison personnel for Environmental Health and Water Resources Agency have been designated to work with the new RMA. A new director for RMA assumed responsibilities for the Agency in October.

Response: The respondent agrees with the finding. It is noted that the RMA also includes the Housing Program.

Finding 5: The CAO moved responsibility for financial management, human resources and administrative operations into the RMA office. Each department will have a human resources person who will report to the Human Resources Manager in the RMA.

Response: The respondent agrees with the finding. It is noted that the official title of the RMA human resources manager is Administrative Operations Manager.

Finding 6: *The CAO was the appointing authority for the Planning Director prior to the creation of RMA; now the Planning Director is appointed by the RMA Director. The most recent Planning Director was appointed by the immediate past County Administrative Officer. There was no job description or outside recruitment for the position. It should be noted that the Planning Director has announced his retirement at the end of 2005.*

Response: The respondent disagrees partially with the finding. While there was no official job description, there was a job description that was used in the recruitment for the Director of Planning and Building Inspection.

Finding 7: *The Chief Assistant Director was appointed by the Planning Director 3 1/2 years ago. While the recruitment announcement included a brief job description, there was no official job description and, in fact, a job description remains in draft form. The Chief Assistant Director's primary responsibilities are as a lead project planner, e.g., Rancho San Juan, September Ranch, East Garrison, and GPU.*

Response: The respondent disagrees partially with the finding. The Chief Assistant Director's primary responsibilities included Rancho San Juan, September Ranch, East Garrison, General Plan Update, and oversight of contracts, human resources, and administrative functions.

Finding 8: *The Building and Inspection Director, employed since 2003, left in mid-2005.*

Response: The respondent agrees with the finding. It is noted that the official title of the position is Assistant Director of Planning and Building Inspection/Building Official.

Finding 9: *The focus of senior management is on processing major projects, developing the County General Plan and related policies rather than on day-to-day operations and administration of the Department.*

Response: The respondent disagrees partially with the finding. Senior management is fully involved in the day-to-day operations and administration of the Department in addition to processing major planning and development projects.

Finding 10: *The majority of those interviewed stated that there is a lack of leadership and knowledge of land use and building inspection within senior management.*

Response: The respondent partially disagrees with the finding. While the opinions of individuals who were interviewed are not disputed, the perception that senior management lacked knowledge is not accurate. Three of the four members of senior management had extensive knowledge and experience in land use, environmental science and regulations, and building inspection. Their cumulative professional experience exceeded 75 years.

Middle Management and Line Staff

Finding 11: From 1999 to 2004, 183 employees left the Department (37 per year on average). Based on these data there has been an equivalent of 100% turnover rate every 3½ years.

Response: The respondent agrees with the finding.

Finding 12: Turnover of middle-management and Senior Planners positions is low; however, turnover among Assistant and Associate Planners is among the highest. At one point in 2005, all 14 Associate Planner positions were vacant.

Response: The respondent disagrees partially with the finding. In 2005, the turnover rate of middle management, including Senior Planners, was 16%. During the same period the turnover in Associate Planner positions was significantly higher, but at no time were all 14 Associate Planner positions vacant.

Finding 13: Reasons for turnover include workload, stressful work environment from both internal and external pressures, cost of living in the Monterey Bay region, lack of job satisfaction, lack of operational management structure, lack of leadership, and complex and numerous regulations. This list of deficiencies has contributed to low morale among members of the staff.

Response: The respondent disagrees partially with the finding. Additional factors that contributed to the relatively high turnover rate included release of employees during their probationary period, promotions to positions within the County, higher pay in other public jurisdiction or private sector employment, retirement, family or personal reasons, and terminations.

Finding 14: Because PBID did not have a current compensation study, the Grand Jury undertook a comparison of compensation for Monterey County planners with the coastal counties of Ventura, Santa Barbara San Luis Obispo, and Santa Cruz and found compensation to be comparable. Additionally, former employees interviewed did not indicate compensation as the primary reason for leaving the PBID.

Response: The respondent disagrees partially with the finding. In the counties identified, compensation is comparable for certain positions. However, exit interviews conducted by PBID managers indicate that a number of employees left because they can obtain a higher salary elsewhere. This is particularly true within the Building Division.

Finding 15: Overall, professional planning staff has requisite educational credentials. However, many are entry level planners without experience, and the Department serves as an arena within which planners gain experience to proceed to new positions elsewhere.

Response: The respondent agrees with the finding.

Finding 16: Formal training programs for line-staff are available from many sources, but the training budget was significantly reduced in the previous 3 years. Because of the lack of training funds, internal departmental education is the primary training resource. Furthermore,

planners and lower level managers are often forced into a choice of devoting time to training as against taking time away from the demands to respond to applicants' needs.

Response: The respondent disagrees partially with the finding. We agree that, due to budget constraints, the outside training budget was significantly reduced in the last three years. However, internal training has always been a primary source of training, and will remain so even with a recent infusion of funding for outside training. Training is an investment in making staff more effective and efficient.

Finding 17: *About 4,000 building permit applications are received every year. As of March 14, 2005, case load per Planning Manager ranged from 11 to 62; Senior Planners ranged from 8 to 55; Associate Planners ranged from 28 to 70; Assistant Planners ranged from 13 to 40. Case load does not reflect tracking over 1,350 projects which are inactive over 80 days to determine if they comply with permit conditions. The case load for planners increased significantly later on in the year with the loss of planning staff with some planners having a case load as high as 170 projects. A consulting firm was hired to assist with the backlog of permits.*

Response: The respondent agrees with the finding.

Finding 18: *In March, Code Enforcement had 120 active cases for the Peninsula and had 242 active cases for North County. Code Enforcement/Building Inspectors average 59 building violations and 91 grading violations. Building Inspectors had 12 to 16 inspections/day.*

Response: The respondent agrees with the finding.

Finding 19: *Public records requests demand more and more time of staff. It was reported that there were 140 such requests between September 2004 and February 2005.*

Response: The respondent agrees with the finding.

Finding 20: *While every planner is required to implement requirements of the California Environmental Quality Act (CEQA), few planners have the opportunity to attend CEQA classes presented by experts. There is a general lack of detailed knowledge of CEQA within the Department. Compliance with CEQA can be a time and cost driver for many permit applications, and applicants need to be informed in the initial phases of an application whether or not the project is subject to CEQA and related requirements.*

Response: The respondent disagrees partially with the finding. Approximately four to five planners annually attend California Environmental Quality Act (CEQA) training. In addition, many staff attend local and state conferences each year. Furthermore, CEQA training is a core portion of the Department's internal training program. Each executive and middle manager has no less than 16 years of experience with CEQA. Applicants are advised at the beginning of the process whether their project is subject to CEQA.

Finding 21: *The Building and Inspection Division certifies that all permit conditions from the Planning Department and all other agencies are in compliance. When compliance is complete,*

the Division issues building permits. Building Inspectors are required to validate that construction is in accordance with site and building plans permitted and in compliance with the permit and that there are no code violations.

Response: The respondent agrees with the finding.

Finding 22: *Inspectors are required to have current certification in the crafts that are required for project inspection (e.g., structure, plumbing, electrical, etc.). There are between 15 and 20 different certificates held by some inspectors. The Grand Jury found that of the 12 inspectors, available certifications and their dates of record varied widely, with some having many up-to-date certifications, others with a minimal number of certificates, and some having certificates dating back many years. All inspectors do not have the full array of current certifications to assure that projects are in compliance with the latest codes. In addition, if inspectors do not have the full array of certificates, a project site might require inspection by multiple inspectors at different times instead of one visit to certify compliance. This situation can result in delays for builders and additional costs to the County and applicant. Courses in any of the required certification are available from several different professional organizations and are reimbursed by the County.*

Response: The respondent disagrees partially with the finding. There are four basic areas for certification - plumbing, building, electrical and mechanical. There is an additional certification for accessibility, which is not a basic certificate. There is variation among the building staff with respect to the number of certificates they hold. Inspectors are required to attend training each year to keep their certifications up to date, at County expense. The Supervising Inspector assigns staff to inspect projects and will determine if special expertise is required. There are Senior Inspectors who have more certificates and expertise.

Finding 23: *Based on interviews, it appears that many non-exempt planners work overtime without compensation even though they were instructed otherwise. Unauthorized overtime work was undertaken simply to stay on top of the workload.*

Response: The respondent agrees with the finding. It is noted though that the practice has been reduced by increased oversight of the planning staff and assuring that overtime is authorized first.

Organizational Structure

Finding 24: *Permit processing staff is divided into four teams - Inland, Coastal, Special Projects, and Permit Coordinating, and the teams are managed by Planning and Building Managers. The Grand Jury noted the effectiveness of this organizational structure.*

Response: The respondent agrees with the finding. Please note, however, that there is an additional team, the Permit Center team.

Finding 25: *The Chief Assistant Director is a project planner for several major projects, which would normally be handled by the teams. Staff used from various teams must stop processing applications from their already heavy workload to work on those major projects.*

Response: The respondent disagrees partially with the finding. The Chief Assistant Director served as the lead planner for several projects that would normally have been assigned to planning teams. The complexity and sensitivity of the projects and the loss of staff due to turnover require high level attention. The participation of members of the planning teams was limited and resulted in much less of their time than what would have otherwise been required if the Chief Assistant Director was not involved.

Finding 26: *An Administrative Permit Team to process simple permit applications was eliminated due to budget constraints even though the team facilitated the permitting process.*

Response: The respondent disagrees wholly with the finding. The Administrative Permit Team was eliminated to provide greater opportunity for the less experienced planners to broaden their skills and benefit from the interaction with more experienced planners on the geographic teams.

Finding 27: *It should be noted the Marina Office will remain open primarily to issue minor building permits as a convenience to applicants on the Monterey Peninsula at a cost of \$650,000 annually.*

Response: The respondent disagrees partially with the finding. The Marina Office includes a permit center and building inspectors who serve the Monterey Peninsula and coastal communities. The office is a convenience to both customers of the permit center and County building inspectors responsible for the coastal area.

Internal Operations

Finding 28: *Of the 17 current and former employees interviewed (excluding the Planning Director and Chief Assistant Planning Director), 12 did not have annual performance evaluations as required for all employees by County Personnel Policies.*

Response: The respondent agrees with the finding.

Finding 29: *Of the employees for which we requested evaluation dates from PBID, four had one evaluation during the last five years and one had one evaluation during the previous two years. One former employee stated he had no evaluations in the two years he was employed. Reviews were sporadic in occurrence for the rest. Several employees reported making repeated requests for performance reviews over extended periods of time without success. Planners received limited official feedback on performance, and based on the number of performance reviews conducted, planners overwhelmingly received salary step increases unrelated to their job performance. Because of this practice, it is difficult to release under-performing employees without evaluations and documentation conducted over an extended period of time, as is standard procedure for the conduct of human resources management.*

Response: The respondent disagrees partially with the finding. The preparation of performance evaluations was inconsistent due to a lack of systematic procedure in the system to notify managers of the due dates of evaluations. This has been remedied and a new simplified performance review form has been established to streamline the completion of performance

reviews. Outside of the formal evaluation process, planning staff receive ongoing feedback from their supervisors during team meetings and during individual consultations. In the Planning Division, the individual meetings occur at least twice per month and cover quality of work and areas where improvement is needed.

Finding 30: *Non-management employees receive automatic pay steps even if they do not receive a performance review. There is a departmental "tickler" system that alerts managers when reviews are due.*

Response: The respondent disagrees partially with the finding. Pay raises are not approved without either a completed evaluation or a determination by the individual's manager or supervisor that his/her performance is satisfactory. There was a lack of a systematic procedure in the PBID system to notify managers of the due dates of evaluations. This has been remedied as indicated above.

Finding 31: *Performance Evaluations for the Assistant Managers were prepared only once every two years.*

Response: The respondent agrees with the finding. It is noted that Monterey County Personnel Policies provide for the granting of step increases for executive management employees (Unit Y) biennially. The Assistant Directors of Planning and Building Inspection are part of Unit Y. Formal evaluations, however, are still required annually.

Finding 32: *One senior employee acknowledged holding outside employment. Personnel Policies and Practices Resolution No. 98-394 requires annual notice of outside employment. This notice must be approved by the department head. Only two have been filed, one in 2001 which was not signed by the Planning Director, and one in 2003.*

Response: The respondent agrees with the finding.

Finding 33: *The Grand Jury made at least two requests to PBID for copies of internal administrative procedures, but none were provided. While written procedures related to permit processing abound, there appear to be limited procedures for the day-to-day or standard operations of the Department.*

Response: The respondent disagrees partially with the finding. There are two documents that contain administrative procedures that affect PBID staff. The Planning Division prepared one and the Building Division prepared a second. However, neither document is up to date. It is noted that the RMA is preparing a document that contains the administrative policies that affect the Agency's staff. It is further noted that new employees receive instruction in these policies during their orientation at the time of hire or shortly thereafter.

Finding 34: *The Grand Jury questioned employees about the policy for use of e-mail. Employees had limited awareness that an e-mail policy existed, but had either not seen it or not received orientation as to its application.*

Response: The respondent disagrees partially with the finding. While employees who were interviewed may have expressed limited awareness of the County's e-mail policy, they should have been aware. As an outgrowth of the Department's increased consciousness of record keeping procedures with regard to the Public Records Act, an e-mail policy regarding retention of e-mail records was drafted in 2004. The policy was reviewed with all PBID staff. PBID's policy was designed to augment the County's e-mail policy, which is a chapter in the policies manual prepared by the Information Technology Department (ITD). The ITD manual is a comprehensive document addressing County technology and its use.

Finding 35: *As of June 1, 2005, there were four consultant contracts in arrears because documentation of schedule changes and/or changes in permit conditions was not completed within the contractual time lines by the project planner. When this occurs, a consultant is not paid, and progress on the project stops. However, it was reported to the Grand Jury that some consultants work without pay to maintain progress on projects. (Note that consultants are hired both by the County to prepare environmental documents required by the CEQA and by applicants for non-CEQA studies, but in either case the consultant is paid directly or indirectly by the applicant. Those hired by the County are not paid if the contract is in arrears due to County delays.) Senior management had various and inconsistent explanations for the Department's failure to process consultant contracts in a timely manner.*

Response: The respondent disagrees partially with the finding. In most instances, where payment to consultants was delayed it was because the applicant was not paying their invoices in a timely manner. The contract procedure was changed in January 2005 to require a deposit up front towards completion of the first major work product. In 2005, the contract management function has been centralized within the RMA, which has enhanced the effectiveness of this function. No consultants to the County are paid directly by applicants. All contracting and payment goes through County personnel as governed by a reimbursement agreement with applicants.

Finding 36: *Members of the Board of Supervisors generally have a hands-off policy as it relates to dealing directly with changing operations within the Department, leaving this responsibility to the County Administrative Officer.*

Response: The respondent agrees with the finding.

Finding 37: *No studies comparing staffing levels, public record requests, and the number of lawsuits filed with comparable county planning and building inspection departments have been undertaken.*

Response: The respondent agrees with the finding.

Finding 38: *Preparation of recent budgets did not involve all members of senior management. Additionally, one senior manager did not receive a copy of the adopted budget after several requests and consequently was unaware of funds budgeted for staff training. Budget preparation for the next fiscal year and fiscal administration was assigned to staff in the Public Works*

Department in mid-year and will be moved to the Resource Management Agency (RMA) when that department becomes functional. This change should improve PBID operations.

Response: The respondent disagrees partially with the finding. The four members of the PBID senior management staff were fully involved in FY05-06 budget preparation.

Permit Processing

Finding 39: *An overwhelming number of those interviewed said obtaining a permit takes too long, frequently beyond the time frames of the State Permit Streamlining Act, and that there is a lack of consistency in implementing General Plan policies and zoning ordinances.*

Response: The respondent agrees with the first part of the finding, that processing some planning permits takes too long. It is noted though that there are three significant factors outside the control of the Department including: incomplete applications; the complexity in the preparation, public input and scrutiny of an Environmental Impact Report (EIR); and the high turnover of Planning staff.

The respondent agrees partially with the second part of the finding, that there is a lack of consistency in implementing General Plan policies and zoning ordinances. The primary reasons for the perception of inconsistencies are the nearly three-dozen County documents that contain policies and regulations directly applicable to development/permit processing. This includes one General Plan, nine area plans, the Coastal Act, four coastal land use plans, ten primary and multiple lesser County ordinances, as well as, CEQA, the Subdivision Map Act, and a body of State planning law. It is not the interpretation or application, but distinct differences in the regulations themselves that leads to the perception of inconsistency. Moreover, each project and individual site is evaluated by staff on a case-by-case basis based on the application's own merits and circumstances.

Finding 40: *The Grand Jury heard testimony from numerous people interviewed that the permitting process resulted in capricious and inconsistent application of regulations and codes. For example, multiple soil reports by different experts have been required for no apparent reasons; reports from certified experts have been rejected and replaced with staff's own decisions even when staff does not have expertise in those areas, and decisions by other permitting agencies or sister agencies with particular expertise have been overruled. Such action added significantly to applicants' costs and delays.*

Response: The respondent disagrees partially with the finding. The belief that there are inconsistencies may be related to the reasons described in the previous finding that, for convenience, is repeated below. The primary reasons for the perception of inconsistencies are the nearly three-dozen County documents that contain policies and regulations directly applicable to development/permit processing. This includes one General Plan, nine area plans, the Coastal Act, four coastal land use plans, ten primary and multiple lesser County ordinances, as well as, CEQA, the Subdivision Map Act, and a body of State planning law. It is not the interpretation or application, but distinct differences in the regulations themselves that leads to

the perception of inconsistency. Moreover, each project and individual site is evaluated by staff on a case-by-case basis based on the application's own merits and circumstances.

In the unusual circumstance where more than one report for a technical subject, like soils, is required by PBID staff, the reason for the additional work is always provided to the applicant. In cases where an applicant retains a consultant directly, PBID staff will perform an assessment of the report to assure its objectivity and completeness. And lastly, PBID staff does not overrule the decisions of other departments or agencies that are authorized to make those decisions.

Finding 41: *There appears to be no internal mechanism to assure consistent interpretation of regulations from one team to the next.*

Response: The respondent disagrees partially with the finding. As noted in the Response to Finding 39, the primary reasons for the perception of inconsistencies are the nearly three-dozen County documents that contain policies and regulations directly applicable to development / permit processing. Nonetheless, work is ongoing by the Department to reduce these inconsistencies. The Building Division has a manual. In recent months, Planning Division staff has identified this as an important need. A collection of regulatory interpretations is now maintained to assist planning staff interpret regulations. Interpretations are made collectively by the Planning and Building Services Managers and are now placed on the staff Intranet website. It is noted that interpretations often apply to a specific site, question and/or development proposal.

Finding 42: *A manual with unofficial written interpretations of zoning ordinance and General Plan policies made by planning staff over the years is not updated regularly or readily accessible to staff. The Grand Jury requested a copy of this unofficial document, but it was not provided.*

Response: The respondent disagrees wholly with the finding. There are numerous documents including forms with instructions, written interpretations of policies and regulations as well as renderings (e.g., height of structure, slope, etc.) addressing policies and regulations for planning, building and code enforcement. These documents are posted on either (or both) the Planning and Building Inspection Department's public and staff websites. Instructions and procedures are updated on the websites on an as needed basis.

Finding 43: *The permit tracking system is incomplete. For example, a log is not maintained by reviewing agencies such as Environmental Health and Water Resources Agency for dates that permit applications are sent by the PBID for review and returned by reviewing agencies.*

Response: The respondent disagrees wholly with the finding. Permits Plus, which is a permit tracking system, is complete, up-to-date, and utilized on a regular basis. This database is continually augmented and has become increasingly sophisticated and useful. All County land use agencies and selected fire districts have access to and utilize Permits Plus.

Finding 44: *The State Permit Streamlining Act requires permitting agencies to determine if applications are complete or incomplete within 30 days. Multiple agencies are frequently*

involved for even a single family residence and even more for minor and major subdivisions. It was reported to the Grand Jury that agencies have been known to find applications "incomplete" to comply with the 30 day rule, although the application might not have been reviewed. Some of those County agencies are also reported to be seriously understaffed for this function or not staffed by knowledgeable individuals.

Response: The respondent disagrees partially with the finding. We are not aware of any County agency/department that made a determination that an application was incomplete without first reviewing the application. While there are instances that agencies/department have been temporarily short staffed due to vacant positions, there is always an adequate level of knowledge within the agency/department to make an informed decision.

Finding 45: *Land Use Technicians are used at the counter to accept applications. Lack of training and land use knowledge of these entry level employees jeopardizes correct, efficient and timely permit processing.*

Response: The respondent disagrees partially with the finding. Land Use Technicians accept applications for minor projects, design approvals, and building permits. In those instances where delays in the processing of an application have occurred, new employees appear to have lacked the experience of the more seasoned technicians. On going training is provided to address this issue

Finding 46: *Those who regularly deal with the permitting process are able to facilitate the issuance of permits by seeking out planners they have worked with successfully in the past and who have good knowledge of regulations and procedures.*

Response: The respondent disagrees partially with the finding. It is true that some applicants who regularly deal with the planning permitting process attempt to influence the assignment of planners. New planning permit applications, however, are assigned on a rotational basis taking into account geographic location, complexity, and the workload of staff.

Finding 47: *Applicants consistently complain about continual changes in planners and/or building inspectors assigned to their project. Such a loss of continuity complicates and delays the process. Some applicants reported up to nine different planners for the same project.*

Response: The respondent agrees with the finding. It is noted that the change in project planners is directly related to the relatively high turnover of staff.

Finding 48: *Interviewees stated that the permitting process is not user-friendly, appointments are cancelled without notification, and phone calls are not returned in a timely manner, if at all, and public records not readily accessible. While this may in part be due to stress caused by excessive workloads, the public is nevertheless adversely affected.*

Response: The respondent disagrees partially with the finding. It is acknowledged that there were instances where attendees were not notified of cancelled appointments and phone calls were not returned in a timely manner. This behavior, however, is not typical and absolutely not

condoned. Most public record requests are processed within the regulatory time frame for compliance. Delays are generally due to a relatively high volume of requests.

Finding 49: *Coordinating with the various departments involved in the permitting process is cumbersome. Once an application is found to be incomplete, it is up to the applicant to work with various and sometimes numerous agencies to determine what additional information is needed.*

Response: The respondent disagrees partially with the finding. The distribution and review of applications through the Interdepartmental Review Processes (IDR) is well coordinated. If an application is determined incomplete, the applicant is provided a written synopsis of the additional information that is required and has the option of working directly with the applicable department(s). Applicants also have the option of working with their planner to coordinate the process.

Finding 50: *Coordination among the various departments involved in land use permits has improved with the move to the new offices in Salinas. Public Works and the PBID are located on the same floor and Environmental Health has staff present to assist applicants.*

Response: The respondent agrees with the finding.

Finding 51: *Some applicants can complete the permitting process prior to a hearing without providing assurance that a long-term and sustainable water supply is available. Others are required to provide this information prior to finding their applications complete. Addressing this issue at the end of the process rather than at the beginning means that applicants can spend thousands of dollars only to have their permits denied because of inadequate water availability.*

Response: The respondent agrees with the finding. It is noted that in most cases, proof of water is required prior to an application for subdivision is deemed complete. However, in complex land use situations, at the express request of the applicant, there have been exceptions. In these situations, the environmental process was begun recognizing that the EIR itself will address the issue of an adequate water supply. Applicants are apprised of the risk of proceeding.

Finding 52: *The County's General Plan and zoning requirements are complex, numerous and vary from one planning area to another which in part accounts for delays in issuing permits particularly for new planners.*

Response: The respondent agrees with the finding.

Finding 53: *The Grand Jury recognizes the tremendous pressure on PBID due to a growing county, superimposed on a political struggle among pro-agriculture, slow growth, and pro-growth groups. As a result there is an active constituency for chaos with a legal and consulting industry built around the complexity and uncertainty of the permitting process.*

Response: The respondent agrees with the finding.

Finding 54: *One major draft report, the Zucker Report (2003), and other reports initiated by staff on making the permitting process more efficient have been prepared. The Zucker Report was never finalized, and staff recommendations were not implemented.*

Response: The respondent disagrees partially with the finding. There were numerous recommendations in the Zucker Report that were implemented with respect to the operations of the Building Division. A decision was made by the former CAO and the former PBID Director to put the larger Zucker Report aside and initiate a different process of improving overall system efficiency that involved a consultant from Zucker Systems and several staff task groups. All of these recommendations were implemented and are in place.

Finding 55: *The role of the 12 Land Use Advisory Committees (LUACs) established to review projects in the Planning Areas has been marginalized because of limited staff resources and lack of a strong commitment to the structure by the Department. This leaves the Department without valuable input from local communities where land use issues can be more effectively addressed. Additionally, LUACs frequently are not provided with all the reports and information necessary to make recommendations.*

Response: The respondent disagrees partially with the finding. The Board of Supervisors approved, after extensive staff consultation with LUAC representatives and based upon the recommendations of the Planning Commission, interim guidelines that reduced the number of minor applications referred to LUACs. The guidelines were again reviewed with the LUACs in the summer of 2004. The decrease in PBID staff resources due to budget reductions was considered. The guidelines are scheduled to be reevaluated in the summer of 2006.

Finding 56: *Complex regulations, onerous time requirements, and costs for obtaining permits encourage people to avoid the permitting process altogether and undertake illegal building activities.*

Response: The respondent disagrees partially with the finding. While there are undoubtedly some people who have knowingly avoided obtaining the necessary building permits to save time and costs, the large majority of the public adheres to the County regulations. Efforts toward reducing the time to process building permits will continue.

Finding 57: *Fees for appealing Planning Commission decisions to the Board of Supervisors are excessive and discourage public participation.*

Response: The respondent disagrees wholly with the finding. There is no evidence that the fee to appeal a decision has discouraged public participation, and there is no fee required to appeal a decision in the coastal zone pursuant to state regulations. A revised fee schedule was considered by the Board of Supervisors in public session and subsequently adopted by the Board during each of the last four years.

Finding 58: *Based on information provided as part of the public record on the Revised Rancho San Juan Plan and updated by the Grand Jury, there are about 3,650 dwelling units currently being processed by PBID and about 2,000 approved, and not built, in unincorporated Monterey*

County. Adding the 7,400 potential dwelling units that could be built on current legal lots of record brings the total of foreseeable dwelling units that Planning and Building Inspection must process to about 13,100.

Dwelling units currently being processed and approved, but not built, within cities total about 8,540. Thus countywide, there are about 21,600 dwelling units that are foreseeable. The number of dwelling units contained in recently adopted general plans for Soledad and Greenfield; Boronda, Castroville, and Pajaro Community Plans; preliminary Spheres of Influence for King City and the City of Salinas; California State University at Monterey Bay and the Army total about 38,000.

Adding all of these units together, the County of Monterey has the potential for at least 59,600 units with an estimated population of almost 187,100 persons or about 47,300 persons in excess of Association of Monterey Bay Area Governments' 2025 forecast. Note, that the buildout from older general plans for other cities is not included, so that these numbers underestimate the total buildout downstream from today.

In addition to new dwelling construction, PBID must also process permit applications for remodels, expansions and demolitions followed by replacement dwellings. Other workload includes commercial, industrial and agricultural construction. The Grand Jury did not attempt to estimate the numbers of these projects, which today constitute a major part of the workload.

Response: The respondent disagrees partially with the finding. The larger Rancho San Juan development has downsized to a much smaller Butterfly Village project. There are approximately 7,400 lots of record in the unincorporated area of the County. AMBAG estimates that a fraction of these lots will be developed within the next 20 years.

Code Enforcement

Finding 59: *As of this writing, there is a backlog of 1,050 code enforcement cases. Fees and penalties are collected for code violations. Enforcement of many cases has been held in abeyance for many years because a decision was made in the past to enforce them only if the property were transferred to a new owner. This status results in either deferred revenue or a loss of revenue to the County. A reputation for timely code enforcement by the County is an important preventive stimulus. In some cases these issues are required to be cleared prior to transfer, others after.*

Response: The respondent disagrees partially with the finding. There is a current backlog of 1,088 cases (February 2006), but this statistic includes a high percentage of minor building or grading infractions that can be rectified by owners applying for the necessary building permits or amendments to their existing building and grading permits. These are handled at the permit center and resolved expeditiously. There is no policy or practice to defer enforcement until a change in ownership occurs. Efforts to expedite the resolution of code violations are continuing. The Board of Supervisors are scheduled to consider a revised Code Enforcement Ordinance in 2006 that will provide additional tools for timely enforcement and collection of fines.

Finding 60: *Five positions were added to the Building and Inspection Department budget in early 2005 to help address workload.*

Response: The respondent agrees with the finding.

Finding 61: *Code enforcement personnel establish their own priorities for pursuing enforcement cases when there is a backlog and they are unable to complete all assignments.*

Response: The respondent disagrees partially with the finding. Code enforcement staff is directed to follow the priorities established by the Board of Supervisors in 1996. The priorities are: 1) to address immediate threat to health, safety or environmental resources; 2) to address the potential threat to health, safety or environmental services; and, 3) to address minor and technical code violations.

Finding 62: *The Planning Director reported that long deferred enforcement has recently been activated. In the past year numerous cases were cleared that brought \$200,000 in additional revenue to the County.*

Response: The respondent agrees with the finding.

Finding 63: *Several hundred other unresolved enforcement cases were closed in 2004 later to be reinstated after a lawsuit was filed. Tabling unresolved enforcement cases results in unequal enforcement of regulations.*

Response: The respondent agrees with the finding. It is noted that the manager who made the decision to close the cases is no longer with the County, and that the priorities established by the Board of Supervisors (see finding 61) guide the efforts of code enforcement staff.

Finding 64: *Code violations have occurred resulting in nominal penalties where it is less costly to the applicant to pay penalties than to comply with regulations.*

Response: The respondent agrees with the finding. It is noted that there are some property owners who violate County codes ostensibly in the hope that they will not be caught or who are not deterred by the amount of penalties. In these cases, the regular fee is doubled to clear violations. The Board of Supervisors are scheduled to consider a new Code Enforcement Ordinance in 2006 that would impose higher penalties for violations.

Information Technology

Finding 65: *The Grand Jury found during inquiry into PBID Information Technology (IT) operations, that County land use databases, as needed by PBID for its operations, are not accessible, not existent or not up-to-date. The Grand Jury's findings unavoidably have to include findings concerning the greater County land use system, due to its impacts on PBID operations.*

Response: The respondent disagrees partially with the finding. The County Assessor's database, including sales and transfers, has not been more than five days behind County

recordings since June 15, 2005, and before that date was current within a reasonable period of time. This information is currently transferred into PBID's Permits Plus database every three months. In addition, the Assessor has made data views available to all requesting agencies, including ITD.

Updates to the parcel boundary file were five to six months out of date due to the loss of a GIS staff person in the Assessor's office. The Assessor's Office, however, recently contracted services to maintain the parcel boundary files and it is now current.

Updates to ArcIMS, which includes all geographic based information, was performed upon special request only due to interdepartmental transfers affecting staff availability. However, a contract is now in place with an outside contractor to perform data updates on a regular basis.

Finding 66: *The County Information Technology Department (ITD) maintains servers that contain data from departments and agencies in a Geographical Information System (GIS). The GIS is fully functional from the point of view of a supportive infrastructure, structured as a pyramid, as shown in the table below.*

<i>Pyramid Order</i>	<i>Lead Body</i>	<i>Pyramid Components</i>	<i>Status of Pyramid Components</i>
<i>Top</i>	<i>County Coordinating Committee</i>	<i>Databases</i>	<i>Maintained by agencies and departments. Some data bases not kept up-to-date</i>
	<i>Each Department</i>	<i>Applications</i>	<i>Not fully implemented; 911 is</i>
	<i>IT Dept. focus</i>	<i>Platforms</i>	<i>Servers, high capacity, in place</i>
	<i>IT Dept. focus</i>	<i>Storage</i>	<i>Plenty of storage available</i>
<i>Bottom</i>	<i>IT Dept. focus</i>	<i>Network</i>	<i>Complete; accessible, high speed, large bandwidth</i>

Response: The respondent agrees with the finding.

Finding 67: *The County's IT Department acts as a centralized repository for storing computerized information including GIS data, but neither leads nor coordinates centralized information system database development. A position to coordinate GIS programs among departments and agencies was eliminated two years ago due to budget constraints, and the coordinating committee composed of some Department Heads rarely meets. County departments and agencies are not utilizing the full potential power of GIS into which the County has invested considerable funds. Proactive coordination is lacking to complete the integration of GIS throughout County departments and agencies and to establish and maintain GIS data.*

Response: The respondent agrees with the finding. Development of a GIS strategic plan is underway. The GIS User Group has been particularly active in this regard.

Finding 68: *Departments and agencies maintain the databases for their functions. Key and extensive information in several of these databases is required by PBID for its operations. However, not all departments or agencies utilize the GIS or maintain databases. PBID, Water*

Resources Agency, Public Works, and the Agricultural Commission each have separate GIS databases, which are not maintained.

Response: The respondent disagrees partially with the finding. Each department and agency maintains their respective databases; some databases are shared and linked. In contrast to the finding, the critical GIS databases are maintained. Many GIS data layers are static and require no maintenance (e.g. geology).

Finding 69: *Planners require access to a substantial amount of information in order to process permit applications. These data, in addition to what is accessible in the PBID database, are scattered among several departments and agencies within the County. To access and use this information planner must be computer literate. New and inexperienced planners require in-depth and extensive training to learn diverse land use databases from multiple sources.*

Response: The respondent disagrees partially with the finding. It needs to be clarified that a planner need not know the database or information from other departments. Staff from those departments analyze their data and provide a recommendation to PBID. The planners do not duplicate their work and do not have to learn their databases. The planners do need access and training to utilize PBID databases and GIS, which is provided on an ongoing basis.

Finding 70: *Two programs were purchased some time ago from software vendors for use by PBID. The online permitting system accessible by applicants was terminated because it did not correctly identify the location of parcels and property addresses. This caused difficulty to differentiate between incorporated and unincorporated areas and resulted in inspections being issued in cities.*

Response: The respondent disagrees partially with the finding. Velocity Hall (on line permit information system) is still available for permit status, but has substantial limits for permitting because of inaccurate address information. Property disclosure requests are still being accepted on line and can be accessed for permit status.

Finding 71: *Currently, PBID utilizes four IT sources to process a permit application.*

- A. The main working program for a planner is a vendor supplied permit data system. This program has no interface the County GIS.*
- B. The ARC IMS Viewer that contains the State supplied archeological, biological and geological information in the County.*
- C. The Assessor's database, accessible through a website address that accesses the County GIS.*
- D. County GIS accessible through the County Intranet.*

Response: The respondent disagrees partially with the finding. Item B is partially correct. However, the State only supplies information regarding biological resources. Archaeological information is obtained from Area Plans with some updates as new information becomes available. Geological information is from a County consultant hired for the General Plan Update and from Area Plan data. For item C, the Assessor's database is integrated into the GIS and Permits Plus, but is also available through the referenced website address.

Finding 72: *The following table summarizes the main features of programs used by planners.*

System	Data Available in System	Source	Comment
Commercial Planning Software "Data System Program"	Principal program used by planners. Applicant's project information. Office Link data from agencies and departments	Planner input. Accepts documents through Office Link sent by agencies, departments. Places information into a matrix for the project, (e.g.; conditions required and compliance, mitigation, etc.).	No maps. No access to GIS. Lack of personnel to maintain system.
ARC IMS Viewer	Parcel based system, with resource maps. Provides topographical, biological, archeological, geological database	State of California	Lack of personnel to maintain the database and maintain liaison with IT Dept
Assessor's database	APN number, owner's address	Assessor. Public Works assigns addresses; Assessor enters addresses into its database	APN address is address of owner. No situs address for non-resident owners. 18 to 24 months behind in updates. Lacks history of parcel. Data not in GIS.
County GIS	GIS database. For some departments and agencies	Maintains network, servers, and stored databases. Includes area plans, zoning, fire districts, local archeological information, fire service responsibility, lot maps, parcel reports.	Limited central coordination for development of improved databases, database updates and accessibility by planners.

Response: The respondent disagrees partially with the finding. Permits Plus is continuously maintained, with up to a three month delay in some Assessor's information. The departments each write recommendations to Office Link, which is a file location to store these documents. The program doesn't physically create or link the documents. The planner synthesizes the recommendations into a single document. GIS gets very little of its information from the State of California. A consultant has been hired to maintain IMS. The delay in transferring Assessor's information into PBID systems is three months for Permits Plus and five to six months for IMS. The contractor is available for more frequent updates provided new data is available. All data is accessible to the staff at PBID.

Finding 73: *Parcel information in ARC IMS includes zoning, different levels of overlay, geological hazards, slopes, land use planning, road, land ownership, fire districts and other information. Planners utilize this program extensively. ARC IMS database is not kept up-to-date due to the loss of the trained and experienced person who previously maintained it. No position is available for a successor. ARC IMS is up to 24 months out-of-date. If State and other information are not up-to-date in the database, planners may not be aware, and permits*

may not be complete. Discovery of omissions late in the planning process causes delays and additional costs.

Response: The respondent disagrees partially with the finding. The County has hired an outside contractor to maintain/add GIS data layers. ARC IMS is not 24 months out of date. Some of the parcel boundary information from the Assessor's office is five to six months behind.

Finding 74: *Addressing of County parcels in the Assessor database is poor. The Assessor maintains the parcel owner's address, but if the owner is a non-resident, planners do not have access to the situs address. Additionally, addresses are not promptly entered into the database. The assessor database is 18 to 24 months behind in updating Assessor's parcel number (APN) information.*

Response: The respondent disagrees partially with the finding. The 18 to 24 month delay has been explained in earlier responses. The Assessor enters situs addresses for many parcels based on information provided by Public Works; however, the addresses are not validated and can be inconsistent. Overall the system needs improvement, but it is noted though that of the 89,672 residential parcels, only 8.26% do not have situs information. Of the 32,141 vacant, agricultural, industrial, and commercial parcels, 16.66% do not have situs information.

Finding 75: *There is no in-house staff in PBID to maintain a "permits data system." This software program contains historical data only back to 1997. Historical files are stored at Natividad Hospital and must be manually retrieved. Old files are also stored on microfiche. Other historical parcel files are stored in the Public Works database. These Public Works data are stored in a large PBID file, but the file is not updated.*

Response: The respondent disagrees partially with the finding. The permits data system is constantly maintained by all the users of the system. Building permit data in this system goes back to 1998, but all planning data was imported from the old mainframe system. The location of physical files outlined in the finding is accurate. The reference to Public Works data appears to be related only to recorded maps. They are not kept in a PBID file, and the database is updated by Public Works. The County is exploring a web-based approach for maintaining its data.

Finding 76: *Lack of database updating adds significant time to the planning process.*

Response: The respondent disagrees wholly with the finding. If database information is unavailable or out of date, non-database information is available to fill in any missing data. This should add, at most, one hour to permit processing times. The applicant would not notice this delay, as it would be incorporated into the processing time.

Finding 77: *The information in the "permits data system" does not provide sufficient information to determine which projects have been approved but not yet constructed. This information is needed for long-range planning purposes.*

Response: The respondent disagrees wholly with the finding. The permits data system provides sufficient information. Extracting the data requires familiarity of both the planning and the building files.

Finding 78: *Not all parcels in the 100-year flood plain are noted on maps. If a flood plain boundary extends beyond the boundary of the parcel map, a planner does not know if a parcel is in the flood plain, because the flood plain is not noted on the parcel map.*

Response: The respondent disagrees wholly with the finding. The GIS maps do include all floodplain areas. In addition to GIS data, which is useful for information and prior to any application, the Water Resources Agency always informs the planners of floodplain issues associated with any applications.

Finding 79: *GIS has been a positive factor for access to topography, soil information, biological and geological data.*

Response: The respondent agrees with the finding.

SECTION: Administration

REPORT TITLE: Monterey County Planning and Building Inspection Department

RESPONSE BY: Monterey County Board of Supervisors

RESPONSE TO: Recommendations 1-36

Senior Management

Recommendation 1: *The Board of Supervisors and CAO should take a pro-active role in assuring the efficient operation of the PBID and assure future organizational stability once a structure and process are established.*

Response: The recommendation has been implemented. The Board of Supervisors created the Resource Management Agency to improve the delivery of land use services by all County departments and offices. The CAO appointed the Agency's first director. The CAO and the Board of Supervisors regularly communicate with the Agency's Director.

Recommendation 2: *A Planning Director job description should be prepared requiring extensive knowledge of land use planning and building inspection and several years of management experience.*

Response: The recommendation has been implemented. The formal job description of the Director of Planning and Building Inspection includes knowledge of land use planning and building inspection and a minimum of five years management experience.

Recommendation 3: *The job description for the Chief Assistant Planning Director should include responsibilities for developing clear internal operating policies and procedures, enhancing internal communications, overseeing training and certifications, developing and maintaining a complete tracking data base for permit applications and status, and developing standards of performance for annual performance reviews and to assure that annual performance reviews are conducted. Qualifications for the position should include necessary management experience for managing a large department and knowledge of the land use and building inspection process.*

Response: The recommendation has been implemented. The salient points prepared by this Grand Jury have been incorporated in the formal job description of the Chief Assistant Director of Planning and Building Inspection.

Recommendation 4: *All planners should be scheduled to attend courses offered by outside professionals that provide a working knowledge of CEQA and other courses deemed essential to the planning process.*

Response: The recommendation has not yet been implemented, but will be pursued in 2006. CEQA and related subject matter is part of the current Planning and Building Inspection Department internal training program for all planners. The training is provided by qualified Monterey County planning professionals. Opportunities to augment this training through outside courses and programs will be pursued in 2006.

Recommendation 5: *Code Enforcement personnel should be scheduled for training programs, including those offered by the California Association of Code Enforcement.*

Response: The recommendation has been implemented. The code enforcement staff completed an intensive six-week training program in January 2006. In addition, all code enforcement staff are scheduled to attend the training required by the State of California for certified code enforcement officers. The training is anticipated to be completed by June 2006.

Recommendation 6: *Building Inspectors should be scheduled to attend courses that will lead to expanding their array of certifications and updating their current certifications.*

Response: The recommendation has not yet been implemented. As soon as the currently vacant position of Assistant Director of Planning and Building Inspection/Building Official is filled, a program of updating and expanding, as needed, relevant certifications for building inspection staff will be prepared and implemented. It is anticipated that the position will be filled during this fiscal year and a program established.

Recommendation 7: *The County should allocate funding each year to carryout ongoing training.*

Response: The recommendation has been implemented. The RMA has allocated \$70,000 in the FY05-06 budget for training and professional development of PBID staff. Another \$7,000 is allocated to fund in-house County Administrative Office professional development training, including a Supervisor Development Program. In addition, approximately \$250,000 of PBID staff resources are allocated to in-house training. Within the constraints of future County budgets, professional development will be a priority of the RMA.

Recommendation 8: *The CAO should review costs and benefits of maintaining the Marina office and consider reallocation of funds to programs that have the highest priority.*

Response: The recommendation has not yet been implemented. A preliminary evaluation was conducted in late 2005. This evaluation will be completed by June 2006, including stakeholder input, and appropriate actions taken in FY06-07 subject to budget constraints.

Organizational Structure

Recommendation 9: *Studies should be undertaken by the CAO and the RMA Director comparing staffing levels and number of lawsuits filed and public record requests made with comparable county planning departments to evaluate how efficiently and competently PBID operates and to determine what organizational changes, if any, should be made.*

Response: The recommendation has not yet been implemented. The benchmarking of the PBID against other comparable public organizations will be performed as part of the RMA's strategic plan to be a performance driven organization. Major elements of the plan include performance measures and reporting systems, stakeholder communications, organizational capacity building, and personnel and group accountability. This effort will be led by the new Director of Planning

and Building Inspection, with oversight by the RMA Director. Benchmarking is anticipated to occur in 2006 and 2007.

Recommendation 10: *Major projects should be assigned to appropriate teams and not assigned to personnel outside of those teams.*

Response: The recommendation has been implemented. There is a central Department team, which handles most of the County's major complex planning projects. Senior planners, however, on the Department's geographic teams may be assigned a major project because of the workload of the major project team or because of the special expertise of those senior planners.

Internal Operations

Recommendation 11: *All personnel should be made aware of legal requirements for overtime work and these requirements should be followed.*

Response: The recommendation has been implemented. Clear identification of overtime eligible and overtime exempt positions has been made. As of January 2006, appropriate schedule changes have been implemented.

Recommendation 12: *Written standard operating procedures should be prepared and available to all staff members.*

Response: The recommendation has not yet been implemented. Policies regarding personnel matters and standard operating procedures are being accumulated for inclusion in an RMA procedures manual and will be available to all RMA staff by spring 2006. Refresher briefings will be reintroduced into the PBID bi-weekly staff meetings.

Permit Processing

Recommendation 13: *The CAO and the RMA Director should coordinate the interactions among the departments and agencies required to carry out an efficient permitting system.*

Response: The recommendation has not yet been implemented. While the activities of the Monterey County land use departments, agencies and offices are being coordinated through the RMA, a greater level of efficiency will occur as performance measurement and reporting systems are implemented. Significant levels of improvements in the performance of planning and building permits are anticipated by June 2006.

Recommendation 14: *The administrative permitting process should be streamlined by reestablishing the minor permit project team and having well trained staff at the counter to accept permit applications.*

Response: The first part of the recommendation requires further analysis, with respect to the reestablishment of a minor permit team. It will be done within the context of examining the organization of the Department. The anticipated time frame for the completion of this effort is

June 2006 and will be done under the purview of the new Director of Planning and Building Inspection.

The second part of the recommendation has not yet been implemented, with respect to the recommendation to have well trained staff at the permit counters. Building counter staff are well trained. It is noted that continuous training of Planning counter staff is ongoing to enhance their skills and knowledge.

Recommendation 15: *With regard to CEQA and other planning requirements, applicants should be informed at the beginning of the permitting process concerning the issues related to processing their applications before unnecessary costs are incurred.*

Response: The recommendation has been implemented.

Recommendation 16: *Environmental Health should be added to the Resource Management Agency.*

Response: The recommendation will not be implemented because it is not warranted. While the Environmental Health Division is a part of the Health Department, and not the RMA, it is anticipated that the delivery of land use services provided by the Health Department and the RMA will be coordinated so that the services appear seamless to the public. To facilitate coordination, a new position, an Environmental Health Specialist IV, was assigned to the Health Department. It is also noted that a new position was assigned to the Water Resources Agency to facilitate the coordination of land use services. The effectiveness of the above organizational arrangement with the Health Department, the Water Resources Agency, and the Resource Management Agency will be monitored.

Recommendation 17: *On-line permitting should be reinstated once the issue of project addresses is resolved.*

Response: The recommendation has not yet been implemented. There are several technical issues that need to be resolved including project addresses, software modification, and reanalyzing the process for issuance of permits. It is anticipated that these issues will be addressed by December 2006 at which time on-line permitting will be reinstated.

Recommendation 18: *Professionals trained in transportation, hydrogeology, and biology should be hired to facilitate the planning process, review consultant reports, and provide in-house consultation. The addition of this expertise would also reduce costs to many applicants.*

Response: The recommendation requires further analysis. The land use agencies in Monterey County have staff with expertise in traffic, hydrology, and archaeology. Additionally, there is a degree of expertise in biology. These staffs, however, are not devoted entirely to processing permits and review of reports. Additional staff resources, either as employees or through contract would be desirable, especially in biology and forestry. This addition will be considered as part of the FY06-07 budget process, subject to fiscal constraints.

Recommendation 19: *To facilitate the permit application process and save applicants unnecessary costs, proof of a long term and sustainable water supply should be required prior to finding all applications complete.*

Response: The recommendation has been implemented. It is noted that an exception will be considered at the request of an applicant and to determine the adequacy of water supply and quality as part of an environmental report.

Recommendation 20: *Efforts to improve customer service including keeping appointments, returning phone calls in a timely manner, and making public records readily accessible should continue.*

Response: The recommendation has been implemented. It is noted though that the “common courtesies” needs to be continuously reinforced by management.

Recommendation 21: *An ombudsman should be appointed to provide assistance to the public and to help relieve Board members in addressing their constituents’ complaints about the permitting and code enforcement process.*

Response: The recommendation has not yet been implemented. An ombudsperson is anticipated to be appointed by June 2006. The position will provide assistance to customers in need of extra attention and identify where process improvements are needed. The Ombudsperson will report directly to the RMA Director.

Recommendation 22: *The County needs to complete a new General Plan and revised zoning ordinances to implement the General Plan. The new General Plan should be precise, clear and eliminate ambiguity to improve the efficiency and cost of the permitting process.*

Response: The recommendation has not yet been completed. The County’s Draft General Plan update has been completed. Environmental review, additional public input, and the adoption of the Plan by the Planning Commission and the Board of Supervisors is currently scheduled to be complete in 2006.

Recommendation 23: *Staff and County Counsel interpretations of planning regulations should be made a formal Department document, maintained, and made readily available to staff.*

Response: The recommendation has been implemented. There is a PBID manual to assist planning staff interpret regulations. The Planning and Building Services Managers approve items placed into the manual collectively. The information is also placed on the staff website, and is readily accessible.

Recommendation 24: *Reviewing agencies for permit applications should maintain a date log of applications received and returned to PBID and a tickler system.*

Response: The recommendation has not yet been implemented. While PBID has a monitoring system, Permits Plus, that has the capability to track permit applications, some of the partners

within and outside the County do not. A comprehensive system will be developed, including an automatic tickler mechanism system that involves all of the entities in the permitting process. The targeted completion date is June 2006.

Recommendation 25: *A mechanism should be established to assure consistent application or regulations among the teams.*

Response: The recommendation has not yet been implemented. In addition to the PBID manual to assist planning staff interpret regulations, and the on going internal training, there will be focused effort to retain professional staff. This will be an on going effort.

Recommendation 26: *Responsibilities of LUACs should be reinstated to those established prior to the adoption of the 2004 interim procedures.*

Response: The recommendation requires further analysis. Representatives of the Land Use Advisory Committees (LUAC) and the County's Planning Commission are tentatively scheduled to meet in the summer of 2006 to discuss modifications to the LUAC guidelines. It is anticipated that the Board of Supervisors will consider potential changes, if any are ultimately recommended, in the fall of 2006.

Recommendation 27: *LUACs should be provided with all reports and environmental documents prior to scheduling of projects for consideration.*

Response: The recommendation has been implemented. The County's Land Use Advisory Committees are provided with the technical reports and environmental documents that are part of the application process prior to the scheduling of projects for consideration by the Planning Commission.

Recommendation 28: *Appeal fees should be reassessed in light of their adverse impact on public participation.*

Response: The recommendation has been implemented. An assessment was performed which indicated that the fees do not appear to be a deterrent to public participation. Moreover, the fees are set to recover the County's cost of the appeal program. The cost recovery of services is a countywide policy.

Recommendation 29: *PBID must be organized, managed and staffed in order to process this total, increased workload in unincorporated Monterey County in a timely, consistent and efficient manner.*

Response: The recommendation has not yet been implemented. The appointment of the new Director of Planning and Building Inspection is anticipated to occur by spring 2006. Applicable changes in staffing and organization will occur within the first year of the Director's appointment.

Code Enforcement

Recommendation 30: *Code enforcement complaints and violations should be promptly investigated, and penalties should be promptly enforced and be onerous enough to deter violations. When there is insufficient staff to keep up with the workload, Executive Management should establish priorities for undertaking investigations.*

Response: The recommendation has not yet been implemented. While a system has been established to set priorities of investigations, to improve the processing of violations, the Board of Supervisors will consider a new Code Enforcement Ordinance. It is anticipated that the Board will consider the Ordinance in 2006.

Information Technology

Recommendation 31: *The Board of Supervisors should assign to the appropriate agency the responsibility and authority to proactively coordinate, integrate and maintain GIS, promote the creation of databases lacking in GIS, establish communication among databases and maintain databases. The Board of Supervisors should provide long-term budgets for personnel and on-going maintenance required to carry out recommendations.*

Response: The recommendation requires further analysis. While it is generally accepted that the Information Technology Department (ITD) has the role of maintaining the County's GIS repository and index of layers, no revenue stream to support the operation, maintenance, and further development of this data and technology has been established. In late 2004, the GIS Coordinating Council was charged with development of a funding methodology and making recommendations to the Board of Supervisors on this matter, but as noted earlier, the Council has been inactive. The RMA will collaborate with ITD and determine appropriate budget and staffing levels to accomplish the recommendation. There may be significant budget constraints that cannot be overcome in any single year.

Recommendation 32: *The Board of Supervisors should commission an outside consultant with knowledge and experience with GIS used in California counties to study county operations requiring GIS and make recommendations required to structure operations and integrate GIS throughout County departments and agencies so that PBID and other entities can utilize GIS efficiencies. The consultant should work through the appropriate agency designated by the Board of Supervisors.*

Response: The recommendation has not yet been implemented. As noted in the response to Recommendation 31, the RMA will collaborate with ITD and determine an appropriate budget to accomplish the recommendation. Outside consultants have been hired at various times over the last few years, prior to and during installation of the current system. However, after having operated the GIS system for a couple years, we concur that it would be valuable to take a fresh look at the optimum use of the system. Any consultant retained should interface with staff at all levels.

Recommendation 33: *The Board of Supervisors should provide a budget to commission an outside consultant, or utilize the consultant recommended in item 32 above, to review in depth the structure and functioning of PBID IT systems, capital acquisitions and software and recommend how to integrate them into GIS so PBID can access databases it requires for more efficient operation.*

Response: The recommendation has not yet been implemented. As noted in the response to Recommendations 31 and 32, the RMA will collaborate with ITD and determine an appropriate budget to accomplish the recommendation

Recommendation 34: *The Board of Supervisors should provide long-term capital and operating budgets necessary to implement recommendations of consultants, including budgets for personnel required to maintain databases required by PBID. PBID should provide a budget for consideration by the Board of Supervisors.*

Response: The recommendation has not yet been implemented. In the FY06-07 budget process, PBID will submit a proposal for personnel required to maintain critical databases. The capital requests will be considered in the County's ITD strategic plan.

Recommendation 35: *PBID should review database content to assure that information in Permits Plus is comprehensive, complete, up-to-date and in consistent format for projects in its database and should provide permit applicants access to all database information concerning the status of their permit applications.*

Response: The recommendation has been implemented. Staff constantly monitors and maintains the Permits Plus database. Permit applicants currently have access to their permit status on the web. Information regarding public hearings, including staff reports, is posted on the web within one or two days of the information being posted to the permit tracking system.

Recommendation 36: *PBID should develop necessary training budgets for IT systems and establish dedicated professional training for personnel to understand and operate them and provide on-going training to all affected personnel for system changes and updates.*

Response: The recommendation has been implemented, although not as a separate line item in the budget dedicated to ITD training. In-house training has been in place for several years, but will be expanded. The department, when it moved to the Salinas building in mid-2005, implemented a staff-training day every Friday afternoon.

SECTION: Heath and Social Services

REPORT TITLE: West Nile Virus and North Salinas Valley Mosquito Abatement District

RESPONSE BY: Monterey County Board of Supervisors

RESPONSE TO: Recommendation 1

***Recommendation 1:** Funding should be provided to allow the Monterey County Health Department's Environmental Health Division to budget for equipment, education, supplies, and aerial spraying.*

Response: The recommendation has not yet been implemented, but is expected to be implemented within six months. The Health Department - Environmental Health Division is currently working with the State Department of Health Services, Vector Control Branch to identify additional grant opportunities to support its vector control responsibilities in the approximately two-thirds (2/3) of Monterey County for which it has jurisdiction. The North Salinas Valley Mosquito Abatement District (NSVMAD) continues to support Environmental Health's efforts through training and other logistical support.

SECTION: Health and Social Services

REPORT TITLE: Child Placement in Monterey County "What is best for the troubled youth in Monterey County?"

RESPONSE BY: Monterey County Board of Supervisors

RESPONSE TO: Findings 1-19, 22-26, 28 and 29

Monterey County Department of Social and Employment Services

Finding 1: *The Monterey County Department of Social and Employment Services deals with many social facets in the county, such as military and veterans affairs, aging and adult services, Calworks, medical, food stamps, housing subsidiary, and General Assistance. The Grand Jury inquired into Family and Children Services, specifically, placement. This service provides assistance to victims who are at risk of abuse, neglect or exploitation. It is the purpose of this service to promote a safe, nurturing and permanent home for all children in need in Monterey County. The Services represent a continuum of prevention, assessment, intervention and treatment.*

The Service's first priority is to keep children in their homes. Family maintenance allows the child to remain at home with counseling, treatment, intervention and education. Child welfare workers evaluate the child, and Family Reunification works to reunite the family. When a child cannot remain at home or return home, guardianship with a relative is the next choice. Relative adoption is preferred. Family-to-Family is a program that is based on the belief that children are best served if they live in their home community. If this is not successful, other adoptive homes are sought. In all cases, the goal is to return the child to a safe home.

Response: The respondent agrees with the finding.

Finding 2: *As of August 2005, there are approximately 108 licensed foster homes in Monterey County. To date, of 470 wards of the Court, 27 are out-of-county, 62 are in group homes, and the remainder are in foster homes. There are 13 group homes in the county, seven for probation and six for child services. Foster homes, group homes or a voluntary family agreement can be ordered by the Probation Department.*

Response: The respondent agrees with the finding. The following technical correction is offered: the 470 children referenced are dependents of the Court, not ward of the court.

Finding 3: *The number of children in care of the Monterey County Department of Social Services as of July 1, 2004 was 3.9 per thousand, less than one half of the state rate.*

Response: The respondent agrees with the finding.

Finding 4: *For 2004, 79.3% of children were reunited with their families within 12 months, compared to 65.9% at the state level. During this time period, 67% of the children who were adopted from a foster care setting were adopted within 24 months, compared to 28% at the state level.*

Response: The respondent agrees with the finding.

Finding 5: *Of the children placed in foster care during this period, 80.5% had no more than two different placements, compared to 84.3% at the state level. Also during this time period, of those who exited foster care, 9.5% were subsequent entries within 12 months, compared to 10.3% at the state level.*

Response: The respondent agrees with the finding.

Finding 6: *In 2003, the recurrence of substantiated maltreatment by children's families within 12 months was 8.6% in Monterey County as compared to 13.1% in the state. The rate of recurrence of abuse and/or neglect in homes where children were not removed, but received child welfare services, was 5.8% compared to 8.7% at the state level.*

Response: The respondent agrees with the finding.

Finding 7: *The new Emergency Response program, adopted in 2004, can deal with the child in immediate danger. Emergency response deals in physical abuse, sexual abuse, exploitation, general neglect, severe neglect of malnutrition, emotional abuse, and the lack of supervision. An investigation is completed within 10 days. Immediate response compliance for 2004 was 96.8% in the county, compared to 95.3% in the state; 10-day response compliance was 88.8% in the county, compared to 90.9% in the state.*

Response: The respondent agrees with the finding. To clarify, "an investigation that is completed within ten days" only applies to non-emergency cases and general neglect. Immediate response cases must be completed within 24 hours.

Finding 8: *Social workers are required to visit a child in foster placement once a month. For 2003, the compliance rate was 67.1% in the county; in 2004, the compliance rate was up to 90.2%. Compare this to the state rate in 2003 which was 72.2% and up to 89.4% in 2004.*

Response: The respondent agrees with the finding.

Finding 9: *When children are 16 years of age, they can be referred to an Independent Living Program (ILP). This program offers education, job and life skills that prepare the youth for adulthood. This is a program that is below the state average; 17% in Monterey County receive high school diplomas as compared to the state average of 21%. There were 11% enrolled in college, compared to the state average of 14%. The Department has developed strategies that increase communication regarding ILP services with interagency, community partners, and youth. However, there is no mechanism for tracking eligibility and participation in the Independent Living Program.*

Response: The respondent partially disagrees with the finding. The referenced statistics are correct. However, the Department of Social and Employment Services is able to track the eligibility and participation of youth eligible for and enrolled in the Independent Living Program.

The status of the youth once they have emancipated and exited from the foster care system cannot be tracked.

Finding 10: *On August 15, 2005, Family and Children's Services implemented the Specialized Care Program (SCP). Its purpose is to enhance support to care givers for those who have children with special needs through a periodic assessment of the needs of the child, specific training to care givers, and increased monthly stipends, where appropriate. The current Specialized Care rate is \$730 per month for children of all ages regardless of the child's needs. The new Specialized Care Program has specific criteria for each of three levels based on the severity of the child's needs or problems. The rate of each level is an increment added to the basic rate, based on the age of the child.*

Response: The respondent agrees with the finding.

Finding 11: *In 2004, the Department implemented a State program called the "Differential Response Program". This new approach to evaluating family and child well-being enhances a community's ability to keep children safe.*

Response: The respondent disagrees with the finding. The Department of Social and Employment Services is currently in the process of planning and developing a Differential Response Program. It is anticipated that this program will be piloted on a limited scale in Monterey County during spring-fall 2006.

Finding 12: *The overall impressions of the Department of Social Services personnel are they are dedicated to their vocations.*

Response: The respondent agrees with the finding.

Finding 13: *Monterey County does not have a secured psychiatric unit for emergency placement of seriously disturbed children. Referrals have to go to out-of-county facilities at a higher cost.*

Response: The respondent disagrees partially with the finding. While it is true that Monterey County does not have a secured psychiatric unit for emergency placement of seriously disturbed children, it is inaccurate to characterize placements to out-of-county facilities as being at higher cost. Previous studies have concluded that the expense of developing and building a secured facility, coupled with the associated staffing and other costs would result in the County spending more for a local facility for the placement of seriously disturbed children than the current cost of placing these clients out-of-county.

Children's Behavioral Health Interagency Placement Committee

Finding 14: *The critical life-affecting decisions of where to place children are made by the Interagency Placement Committee. This Committee of Supervising Social Workers meets weekly and is familiar with the children and their history.*

Response: The respondent agrees with the finding.

Finding 15: *One of the Committee's biggest accomplishments for children first coming to its attention is the CHERISH Center, a 23-hour assessment program. It is the hope of the Committee that these children feel protected and cared for. This short-term time frame gives the system time to give health care and screening. It gives time to find relatives who can intervene and keep children out of foster care. Two hundred and thirteen children have gone through this program from October 2004 to May 2005.*

Response: The respondent agrees with the finding.

Child Care Facilities

Finding 16: *The Department of Social Services contracts with residential group homes providing various levels of care. For example, a facility classified Level 14 accommodates children requiring the greatest care.*

Response: The respondent partially agrees with the finding. The Department of Social and Employment Services (DSES) places children in group homes providing various levels of care. However, DSES does not contract with each group home provider. When a foster child is placed in group care, a placement agreement is completed. There are no contractual agreements requiring DSES to place in any specific group home facility.

Finding 17: *The Grand Jury visited a Level 12 home providing care for girls age six through eighteen. The facility was in two spacious adjoining homes in a tranquil neighborhood close to schools. These children were diagnosed as seriously emotionally disturbed or with developmental disabilities. There were specially designed programs to address their needs. As the children improved they could be classified to a lower level of care, thereby saving the County the expense of the more intense care.*

Response: The respondent agrees with the finding.

Finding 18: *The Grand Jury visited a Level 14 home in Monterey County which provides up to 90 days of therapeutic evaluation and care in two well maintained homes in a rural part of the county. There is an on-site classroom and a teacher assigned by the Monterey County Office of Education (MCOE). The goal is to provide a safe and nurturing environment for high-risk children with the hope that they can return to their families or a lower level group home.*

Response: The respondent agrees with the finding.

Finding 19: *The Grand Jury found there are complex contractual arrangements between Monterey County and services provided by foster care agencies.*

Response: The respondent agrees with the finding. Where contractual arrangements exist they are not for foster care placement services. Contracts that exist with foster care agencies are for services outside of foster care placement.

Probation Department

Finding 22: *The Grand Jury visited Juvenile Hall, which was reopened in 2004. It houses youth under 19 years of age who are awaiting processing in Juvenile Court or transferring to another facility. They are there for criminal acts or probation violations. Typically, the stay is 90 days or less. An on-campus school is provided by the MCOE. Graduate Equivalency Diplomas (GED) or a high school diploma is achievable.*

Response: The respondent agrees with the finding.

Finding 23: *The Grand Jury visited the Youth Center that has residents who have a need for academic and vocational help and behavioral support. It provides help to high risk minors and their families. It is a low security, residential treatment facility for boys and girls, ages 13 to 18. The minimum stay is 120 days. Education is emphasized. One of the programs is culinary training.*

Response: The respondent agrees with the finding. The Youth Center is a low security residential treatment facility for boys ages 13 to 18. The minimum stay is 270 days. Santa Lucia is a residential intensive treatment program for females. Even though Santa Lucia is on the same campus as the Youth Center, it is not a secure or locked facility.

Finding 24: *The Probation Department's Silver Star Program is now housed at Rancho Cielo, which is a ranch in the foothills above Salinas supported by both private and public funding. The goals are to encourage youth to increase self-esteem, to learn marketable life skills, to become productive members of the community, and to continue their education. Youth are referred to these programs by the Probation Department, courts, schools, and parents. They are transported there for the day and are provided academic and physical activity. Caring for horses is one of the programs that helps develop responsibility. Rancho Cielo is being renovated. There exists significant deferred maintenance, e.g., the gymnasium needs ventilation and a new roof.*

Response: The respondent agrees with the finding. The roof of the gymnasium building has been replaced.

Finding 25: *The Probation Department's Resource Center works to support services for youth and their families by having probation officers assigned to schools to assess problems, conduct home visits, educate parents, and refer youth and families to counseling and other services.*

Response: The respondent agrees with the finding.

Finding 26: *The Grand Jury observes that the leadership of the Probation Department is strong and dedicated in all areas of child care reviewed by the Grand Jury.*

Response: The respondent agrees with the finding.

California State Assembly Bill 290

Finding 28: *Preschool age children in foster care placement should be mandated to attend preschool.*

Response: The respondent disagrees with the finding. Although the Board of Supervisors agrees that the experience of preschool enhances educational outcomes for children and would be encouraged to see funding made available by the State to make this possible, it is not authorized under the Welfare and Institutions Code to mandate a compulsory educational opportunity nor does it have sufficient funds to reimburse the costs to families.

Finding 29: *There are gaps in the education of Monterey County children in foster home situations. Many children's records never follow them, and a great deal of time is spent facilitating enrollment.*

Response: The respondent agrees with the finding.

SECTION: Health and Social Services

REPORT TITLE: Child Placement in Monterey County "What is best for the troubled youth in Monterey County?"

RESPONSE BY: Monterey County Board of Supervisors

RESPONSE TO: Recommendations 1-8

Recommendation 1: *Monterey County should perform an in-house operational and financial audit of services provided by contractors for all levels of child care.*

Response: The recommendation will not be implemented. The Department of Social and Employment Services (DSES) does not contract with individual group homes and cannot enforce state licensing requirements. The level of care is determined by the group home's application to the California State Department of Social Services Community Care Licensing bureau. This application requires certain services for specific levels of care. It is the responsibility of the California Department of Social Services Community Care Licensing Division to audit and monitor their licensed agencies. DSES analysts and fiscal staff review the invoices for payments to ensure that the service requested is the service provided. DSES social workers monitor child well-being while in placement and keep the court updated.

Recommendation 2: *Educational institutions and group homes should receive training on implementing AB 490. The Monterey County Superintendent of Schools should hold a conference on the implementation of AB 490 with participants to include group home administrators, Department of Social Service social workers, Probation Department, CASA, parents, and guardians.*

Response: The recommendation will not be implemented, as it pertains to activity by the Monterey County Superintendent of Schools. The Board of Supervisors agrees that AB 490 training should be made available to group home administrators, Department of Social and Employment Services social workers, Probation Department, CASA, parents, and guardians and will work with the Monterey County Superintendent of Schools to implement the recommendation by December 2006.

Recommendation 3: *Classrooms and on ground schools located at group homes should be monitored monthly by the Monterey County Board of Education for compliance with AB 490.*

Response: The recommendation will not be implemented, as it pertains to activity by the Monterey County Board of Education. The County does not have statutory authority to pursue such monitoring, but will work collaboratively with the Monterey County Superintendent of Schools to support their process.

Recommendation 4: *Monterey County should have a secured psychiatric unit for emergency placement of seriously disturbed children.*

Response: The recommendation requires further analysis in order to fully assess the extent to which such a facility is needed, alternative approaches, and cost comparisons. Such examination will require a minimum of six months to complete.

Monterey County has a continuum of mental health services for seriously disturbed children that includes several alternatives to a secured psychiatric unit for emergency placement. The Monterey County Board of Supervisors is aware of the particular interest of the Juvenile Justice Court for establishing a separate unit and will be initiating a feasibility study for developing such a unit. In reviewing the feasibility, the first step is to know what is currently available in the County and what additional facilities are used out-of-County.

For children and adolescents in the County, the Health Department - Behavioral Health Division includes a 24/7 Crisis Team, which responds to the emergency psychiatric needs of children and adolescents. This Team works with families, institutions (such as hospitals) and other service providers to reduce the psychiatric consequences of children and adolescents in crisis. In-County resources include a short term residential crisis house in North County, 24/7 staff available to intervene in crisis situations, and a safe room at Natividad Medical Center's emergency department to provide a secure place for an adolescent or child while investigating an appropriate out of County placement. It was recently learned that Community Hospital of the Monterey Peninsula's (CHOMP) inpatient adolescent program has closed and this local resource is no longer available. The Health Department - Behavioral Health Division has used this facility for lower risk youth on 26 occasions for short-term admissions. County staff continues to actively explore intensive crisis services that can substitute for these admissions at the same time working with Bay Area hospitals around procedures that insure expedited admission processes when hospitalization is required.

In the past, County staff has explored the licensing, reimbursement, and other requirements for establishing a secured inpatient adolescent mental health facility. Those findings will be updated in a future report. However, in summary they indicate that the staffing, program, and facility requirements were cost prohibitive with reimbursements not keeping pace with costs. It was also determined that Statewide, secured facilities for children and adolescents are closing. In the last few years, over 120 beds have been lost in the Bay Area region alone. Two principle reasons are the concerted effort to have alternative non-secured placements and the lack of demand for such facilities even in high population areas with a critical mass of children.

Recommendation 5: *Monterey County should increase funding and staff in the Probation Department in areas related to juvenile issues.*

Response: The recommendation has been implemented. As part of the current fiscal year budget process, funding was added to the Probation Department budget for Juvenile Institutions Officer positions to appropriately staff the Juvenile Hall and Youth Center. This was accomplished with the assistance of the Auditor-Controller, Treasurer-Tax Collector, Revenue Division, County Administrative Office, and the Board of Supervisors' Budget Committee.

Recommendation 6: *Monterey County should increase funding to rehabilitate and maintain facilities at Rancho Cielo. It should also take steps to promote funding from the private sector.*

Response: The recommendation has been implemented. The County is in a unique partnership with Rancho Cielo, a 501(c)(3) not-for-profit agency. Rancho Cielo has taken the responsibility for renovation and development of the grounds and facilities, while the County (Probation

Department) with its collaborative agencies operates the program, which provides services to at risk youth. Major improvements have been made and efforts continue with the assistance of the private sector. At present a lease extension is in the works, which will continue the cooperative partnership between the County and Rancho Cielo.

Recommendation 7: *Social services should create a tracking method for eligibility and participation in the Independent Living Program. The need is to increase cooperation among the Probation Department, Office of Employment, California State University Monterey Bay, Hartnell Community College, and Monterey Peninsula College to use their cross resources to make a commitment to reach each youth.*

Response: The recommendation has been implemented. A tracking method for eligibility and participation in the Independent Living Program is in place. The Department of Social and Employment Services currently facilitates an oversight committee dedicated to the Independent Living Program and Permanence for Youth. This committee consists of representatives from the Office of Employment and Training, Children's Behavioral Health, Probation, Peacock Acres group home, Hartnell College and a youth representative. Representatives from California State University Monterey Bay, and Monterey Peninsula College are being invited to all future meetings.

Recommendation 8: *The Department of Social Services should review programs that may have overlapping functions and/or may not be effective.*

Response: The recommendation has been implemented. Program evaluation is an ongoing process in the Department of Social and Employment Services (DSES). DSES is in the midst of a System Improvement Plan, which requires ongoing program evaluation. DSES also works very closely with its county and community partners to coordinate services and reduce possible duplications.

SECTION: Health and Social Services

REPORT TITLE: Monterey County Environmental Health – Public Food Safety

RESPONSE BY: Monterey County Board of Supervisors

RESPONSE TO: Findings 1-4

Finding 1: According to the Department of Environmental Health, the major dangers of food-related illness are illegally imported foods and unlicensed caterers.

Response: The respondent agrees with the finding as it references food distribution at the retail level. (*Environmental Health is a Division of the Monterey County Health Department.*)

Finding 2: Rather than publish a complex numeric evaluation system like those of some other health departments in California, Monterey County initiated a “Gold Seal” program to recognize facilities that demonstrate substantial compliance with the California Retail Food Facilities Law and the California Health and Safety Code. Qualifiers are awarded a prominent decal and encouraged to place it on public display.

Response: The respondent agrees with the finding. The new voluntary “Gold Seal” program has proven to be a positive incentive for retail food establishments to “raise the food safety bar”. The retail food industry and the public have embraced this program, which has created much greater participation by the food industry and the public in assisting the Health Department - Environmental Health Division to assure food safety.

Finding 3: The Consumer Health Protection Services completed 1,870 retail food inspections from April 15, 2005 to July 15, 2005. Fifty seven percent of 1,060 were awarded the “Gold Seal”.

Response: The respondent agrees with the finding. The “Gold Seal” program is designed to require a higher standard of sanitation and food safety than required by current State law. Subsequent to the initial implementation of the “Gold Seal” program, there has been a substantial increase of retail food establishments qualifying for the Seal, demonstrating the effectiveness of the program. Currently, 70% of the retail food establishments in Monterey County have qualified for the “Gold Seal”.

Finding 4: The Division has challenges recruiting and retaining public health professionals because of the high cost of living in Monterey County.

Response: The respondent agrees with the finding. The high cost of housing and the differential in salaries vis-à-vis adjacent counties has negatively impacted the Division, particularly in the area of retention. The California Health and Safety Code requires all Environmental Health Specialists to be registered; and to that end, also requires extensive on-the-job training before a trainee is allowed to sit for the Statewide environmental health specialist registration examination. In order to provide the requisite training, the Environmental Health Division dedicates approximately nine hundred hours of staff time per trainee. Unfortunately, retaining Environmental Health Specialist trainees once they complete the mandated training and registration has been problematic. One of the principle causes cited by exiting staff has been the

attraction of the much higher salary ranges offered by adjacent counties. Currently the Division is attempting to recruit whenever possible, qualified candidates whom have family roots in Monterey County and that have their housing needs met at pre-employment. The Division is also providing information to Health Department Human Resource Services to assist their study of the comparative salary issues.

SECTION: Law Enforcement
REPORT TITLE: Law Enforcement in Monterey County
RESPONSE BY: Monterey County Board of Supervisors
RESPONSE TO: Findings 16-18 and 22-25

County Jail

Finding 16: *The Sheriff's Department is understaffed due to budget constraints. The staff is short 17.5 full-time positions.*

Response: The respondent disagrees with the finding. The figure of 17.5 full-time positions is not an analytically supported number. The Board of Supervisors has approved and authorized the County Administrative Officer and Sheriff to jointly contract with an outside consultant to review Sheriff's Office staffing and overtime issues and develop a comprehensive staffing plan and relief factor analysis. This study should produce validated staffing requirements.

Finding 17: *Low salaries create difficulties in recruiting.*

Response: The respondent disagrees partially with the finding. It is true that low salaries create difficulties in recruiting, however low salaries cannot be fairly isolated as the sole cause. The cause of recruitment difficulties is complex and is not always a wage issue. Higher paying police agencies also are experiencing recruitment difficulties.

The County has in the past and continues to make conscientious efforts to keep pace with market forces; this includes a wage formula in current safety contracts that endeavors to keep pace with police salaries in the cities of Salinas, Monterey, and Seaside

Finding 18: *The cost of housing in this area is another factor in maintaining employees.*

Response: The respondent agrees with the finding. Monterey County has an affordable housing problem. Soaring home prices have put homeownership out of reach for a large segment of the County employees and created issues related to attracting new or retaining existing staff. As one potential example, the Sheriff's Office estimates approximately one-third of its existing workforce has chosen to live outside of Monterey County due, in part, to the high cost of housing.

To help address this issue, the Monterey County Board of Supervisors has initiated a multifaceted program. The Board has prioritized completion of the Castroville Community Plan and implementation of the East Garrison Specific Plan. These two areas have the potential to create 3,000 new dwelling units. The Board recently approved a new innovative workforce housing program strategy statement that will provide an incentive program intended to encourage developers to construct projects that contain significant amounts of affordable and workforce housing. Finally, the County continues to implement a first time homebuyer program (down payment assistance) that should enhance workers ability to buy new units that are scheduled to come on line in the near future.

Finding 22: *Persons arrested in a Monterey County city on a Friday evening for a non-bailable offense are placed in the County jail until arraigned on the following Monday. The County then bills the particular city for the booking fee. Since the State has reduced the amount of reimbursement to \$110, the County does not receive the total cost for incarcerating the inmates from cities. County General Fund is then paying for the additional cost of housing and feeding these inmates.*

Response: The respondent disagrees partially with the finding. The figure of \$110 dollars is incorrect. All city law enforcement agency arrests that are not released by the arresting agency are processed (booked) and housed in the Monterey County Jail. When the arrestee cannot bail out or is not released on their "own recognizance", they remain in County Jail until their arraignment or until they are released as a no filing (usually within 48 hours). California Government Code Section 29550 authorizes counties to bill the cities for the cost of booking arrestees into the county jail. On July 1, 2005 Section 29550 of the Government Code was amended to restrict the County to only billing the cities half of the actual cost of the booking process. The actual cost of booking a Monterey County arrestee is \$244.80. The cities are therefore billed for half of that amount, which is \$122.40. The County General Fund absorbs the other half of the cost. The booking process cost does not address the costs of housing an inmate. The daily inmate housing cost of \$68.22 is a Monterey County General Fund expense.

Monterey County Probation Department

Finding 23: *Information was obtained on Monterey County's salary structure and compared to eight comparable counties as identified by the Board of Supervisors. Monterey County Probation Department salaries are lower than the average of their counterparts in comparable counties.*

Response: The respondent disagrees partially with the finding. It can be misleading (and inaccurate) to compare base salaries without looking at other cash contributions. The best practices of compensation parity involve a review of other cash contributions including wages, benefit, retirement, and scope of duties analysis.

While no sanctioned study has been completed, historically Monterey County has not fared well against the eight comparable counties. This is due to the fact that included in the eight counties are two of the highest paying public entities in the State of California: Santa Clara and San Mateo counties.

The County has in the past and continues to make conscientious efforts to keep pace with market forces; this includes a wage formula in current safety contracts that endeavors to keep pace with police salaries in the cities of Salinas, Monterey, and Seaside.

Finding 24: *The Probation Department is housed in a very old building with deferred maintenance and a substandard, overcrowded working environment.*

Response: The respondent agrees with the finding.

Finding 25: *This Department is also understaffed. The Department has difficulty retaining good people because staff leaves to work for other offices that offer higher compensation within and outside County government.*

Response: The respondent agrees with the finding.

SECTION: Law Enforcement
REPORT TITLE: Law Enforcement in Monterey County
RESPONSE BY: Monterey County Board of Supervisors
RESPONSE TO: Recommendation 1

Recommendation 1: *Monterey County should build a new County Jail.*

Response: The recommendation requires further analysis. Consideration will be given to implementation during the next fiscal year. The construction of a new jail or jail expansion is identified as a high priority in the Monterey County Five Year Capital Improvement Plan of 2006. The Board Of Supervisor's Capital Improvement Committee, County Administrative Office and the Sheriff's Office are collaborating in order to initiate a Facilities Needs Assessment for the jail. The completion of a Facility Needs Assessment is the first step in the planning process for new jail construction or jail expansion and renovation.

The first phases of the present Monterey County jail facility were constructed in 1970 and 1977. Expansions occurred in 1987, 1993 and 1995. The State of California's Corrections Standards Authority *board rated capacity* for the Monterey County Jail is 813 inmates. The current daily population average is 1,150 inmates. The current daily inmate population average equates to 141% of the rated capacity. The construction of a new jail or jail expansion and renovation should ease overcrowding and provide a safer environment for the inmates, staff and public as well as address future population growth.



MONTEREY COUNTY BOARD OF SUPERVISORS

MEETING: March 14, 2006	AGENDA NO:
SUBJECT: a) Consider approval of the response to the Monterey County Civil Grand Jury 2005 Final Report; and b) Authorize the County Administrative Office to file the approved response with the Presiding Judge of the Superior Court, County of Monterey, on or before April 3, 2006.	
DEPARTMENT: County Administrative Office	

RECOMMENDATIONS:

It is recommended that the Board of Supervisors:

- a) Consider approval of the response to the Monterey County Civil Grand Jury 2005 Final Report; and
- b) Authorize the County Administrative Office to file the approved response with the Presiding Judge of the Superior Court, County of Monterey, on or before April 3, 2006.

SUMMARY/DISCUSSION:

The Monterey County Civil Grand Jury 2005 Final Report was issued on January 3, 2006. By law, the Board of Supervisors and County departments, excepting those with elected department heads, are required to respond to specific findings and recommendations as directed therein. Within 90 days of Report issuance, by April 3, 2006, the response must be filed with the Presiding Judge of the Superior Court of Monterey County.

The County Administrative Office prepared the recommended response to the Monterey County Civil Grand Jury 2005 Final Report on behalf of the Board of Supervisors. The Board of Supervisors' approved response should be deemed and accepted by the Monterey County Civil Grand Jury and the Presiding Judge of the Superior Court of Monterey County as the response of the Board of Supervisors, County Administrative Officer, and appointed County department heads.

By law, elected County department heads, in this case the Assessor and Sheriff, were required to file responses to the Grand Jury Report independently by March 3, 2006. The Board will receive informational copies of the Assessor and Sheriff responses by way of a separate item appearing on the Board's March 14, 2006 Consent Agenda.

The recommended response is intended to reflect staffs' understanding of Board policy. Should the Board wish to modify the recommended response, the Board should direct the County Administrative Office to do so and return with those changes at its March 28, 2006 meeting.

OTHER AGENCY INVOLVEMENT:

The County Administrative Office prepared the recommended response to the Monterey County Civil Grand Jury 2005 Final Report with the assistance, input and appropriate review by the following County departments: Assessor; Department of Social and Employment Services; Resource Management Agency (Planning and Building Inspection & Housing and Redevelopment); Health; Probation; and Sheriff.

Members of the 2005 and 2006 Monterey County Civil Grand Juries were invited to attend the Boards' hearing of this matter.

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

- a) Consider approval of the response to the Monterey)
County Civil Grand Jury 2005 Final Report; and)
- b) Authorize the County Administrative Office to file the)
approved response with the Presiding Judge of the)
Superior Court, County of Monterey, on or before)
April 3, 2006.....)

Upon motion of Supervisor Calcagno seconded by Supervisor Potter, and carried by those members present, the Board of Supervisors hereby:

- a) Approves the response to the Monterey County Civil Grand Jury 2005 Final Report; and
- b) Authorizes the County Administrative Office to file the approved response with the Presiding Judge of the Superior Court, County of Monterey, on or before April 3, 2006.

PASSED AND ADOPTED on this 14th day of March 2006, by the following vote, to-wit:

AYES: Supervisors Armenta, Calcagno, Potter and Smith

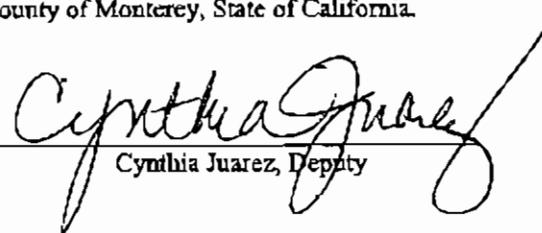
NOES: None

ABSENT: Supervisor Lindley

I, Lew C. Bauman, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof Minute Book 73, on March 14, 2006

Dated: March 15, 2006

Lew C. Bauman, Clerk of the Board of Supervisors,
County of Monterey, State of California.

By 
Cynthia Juarez, Deputy

RECEIVED FEB 22 2006

MONTEREY COUNTY



OFFICE OF THE ASSESSOR

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(MONTEREY PENINSULA RESIDENTS MAY DIAL 647-7719)

STEPHEN L. VAGNINI
ASSESSOR

TO GRAND JURY

February 10, 2006

The Honorable Stephen A. Sillman
Presiding Judge of the Superior Court -2005
P.O. Box 414
Salinas, CA 93902

RE: Response to 2006 Grand Jury Report on Monterey County Planning and Building Inspection
Department

Dear Honorable Sillman;

As per subdivision (b) of Section 933 of the Penal Code I am submitting the following responses to Recommendations 2 and 3 in the section of the 2005 Grand Jury Report pertaining to the Monterey County Planning and Building Department.

Responses to Findings 65

65. The Grand Jury found during inquiry into PBID Information Technology (IT) operations, that County land use databases, as needed by PBID for its operations, are not accessible, not existent or not up-to-date. The Grand Jury's findings unavoidably have to include findings concerning the greater County land use systems, due to its impact on PBID operations.

Response: The Assessor's Office maintains land use information in a SQL database that is linked to and shared with PBID's Permits Plus database. In addition, the Assessor's Office has a history of making its data views available to all requesting agencies, including the County IT Department. The Assessor's Office database, including sales and transfers, has been updated within five days of County recordings since June 15, 2005, and before that date, was current within a reasonable period of time.

Please let me know if you have any questions.

Sincerely,

Stephen L. Vagnini
Monterey County Assessor County Clerk-Recorder
831-755-5803
vagninis@co.monterey.ca.us

CITY HALL
BOX CC
CARMEL-BY-THE-SEA, CALIFORNIA 93921

March 8, 2006

The Honorable Stephen A. Sillman
2005 Presiding Judge of the Superior Court
County of Monterey
240 Church St., North Wing, Room 318
Salinas, CA 93901

Dear Judge Sillman:

The City of Carmel-by-the-Sea is in receipt of the 2005 Grand Jury Report. In a section of that report, entitled "Open Government", the Grand Jury reviewed the "open and participative" procedures for all city governments within Monterey County. The Report concluded that the published procedures for each city "appear to be adequate but may be circumvented or arbitrarily executed in certain instances resulting in lack of open debate, delayed or inadequate follow-up and no resolution."

The following is submitted by the City of Carmel-by-the-Sea in response to the above-referenced section of the 2005 Grand Jury Report:

Ralph M. Brown Act / Open Meeting Act: City councils, commissions and boards, as well as the elected and appointed bodies of the County of Monterey, all special districts within the County, and the State of California are required to follow the Ralph M. Brown Act, also known as the Open Meeting Act. The California State Legislature adopted the Brown Act in the early 1950s, and it remains the hallmark of open government today.

The Legislative intent, as set forth in California Government Code Section 54950, reads as follows:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

In applying the regulations of the Brown Act, the Act defines a "local agency" as a county, city, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

The Act further defines a "legislative body" as:

"the governing body of a local agency or any other local body created by state or federal statute;

a commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body;

a board, commission, committee, or other multimember body that governs a private corporation or entity either created by the elected legislative body or that receives funds from a local agency and whose governing body membership includes a member of the legislative body appointed to that body by the legislative body of the local agency;

the lessee of any hospital... where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority."

California Government Code Sections 54950-54962 proceed to set forth guidelines for all meetings of local agency legislative bodies, which includes the notice and posting of agendas. Section 54954.2 reads in pertinent part as follows:

"(a) At least 72 hours before a regular meeting, the Legislative body...shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights... In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.."

All meetings of cities, including the County of Monterey, as well as all other special districts located within the County, apply the Ralph M. Brown Act to insure that the public has an opportunity to participate and to observe the public business being conducted.

With respect to a city council, a city council person is elected by the public; however, that individual only has one vote on matters coming before the city. The chief executive officer of the city is known as the City Manager or City Administrator. City council members, as a general

rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager or City Administrator for response at a later time as the item most often is of a personal nature to the individual as opposed to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2 as set forth above.

California Government Code Sections 54954.3(a) and (b) read in pertinent part as follows:

“(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda...”

“(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.”

As a general rule each public agency has a three-minute rule which can be extended at the request of a member of the city council and approval by the city council.

City Council meetings are open to the public, *and* their tapes or film are retained for a minimum period of 30 days consistent with California Government Code Section 54953(b) which reads in pertinent part as follows:

“(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act..., but... may be erased or destroyed 30 days after the taping or recording..”

Subsection (a) of the same code section insures that any person attending the meeting has the right to record the proceedings. Subsection (a) reads in pertinent part as follows:

“(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera...”

The legislative bodies of each city or local agency are required to pay strict attention to the Ralph M. Brown Act. Individual concerns expressed at a city council meeting by members of the public are typically responded to by staff in a timely fashion as appropriate to the particulars of the item. There is no guarantee, however, that the solution can or will necessarily meet with the individual's approval. Nonetheless, as noted by the Grand Jury, there are written procedures for both individuals and members of a city council or local agency to address items of concern on a city council or public agency agenda.

Mayors have only one vote on matters coming before the City Council, however, it is the duty and responsibility of the Mayor, generally in concert with the vice mayor, city manager or city administrator and the city clerk, to set the city or agency's agenda. In that regard, items requested for placement on an agenda by council members or members of the public should be considered when setting the agenda, but need not be immediately placed on an agenda and could be deferred. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

GRAND JURY FINDINGS: The Grand Jury has noted 7 Findings with respect to this study. The City is required to respond to the Findings to indicate agreement or disagreement.

Finding 1: Interviews disclosed that a pattern of obstacles exist that make it difficult to schedule, discuss, document for the record, and gain appropriate resolution of topics or issues presented by the public.

Response 1: The City cannot speak to the content of interviews since it did not participate in the interviews; however, the City does not agree with this finding. Any member of the public may request an item be placed on a future agenda. City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager or City Administrator for response at a later time. The item may or may not be of personal interest to the individual as opposed to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 2: All cities have a three-minute speaking limit at council meetings for individuals to bring issues to the attention of city councils on items not on the agenda. In certain cases, this allotted time might not be adequate for the topic by the public.

Response 2: The City agrees that there is a Public Comment period at Council meetings which is typically a 3-minute speaking period. This limit may be extended with a vote of

the Council. In general, the time limit is sufficient to note the item and referral for follow-up/action, if any. As noted above, the opportunity always exists for a member of the public or council to request that an item be placed on a future agenda. Also as previously noted from California Government Code Section 54954.2, ...”No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights... In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda..”

Finding 3: It is unclear what happens to a public comment topic if follow-up is necessary.

Response 3: The City cannot speak to the judgment of the statement; however, as previously noted, there is a procedure for items noted during Public Comments. California Government Code Section 54954.2 states, in part, “ a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda..” As noted elsewhere in this letter, any member of the public may request an item be placed on a future agenda. City council members, as a general rule, refer matters presented by the public during their respective agency’s public or oral comment period to the City Manager or City Administrator for response at a later time. The item may or may not be of personal interest to the individual as opposed to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 4: It is also unclear what happens to a public comment topic if follow-up is necessary.

Response 4: The City cannot speak to the judgment of the statement; however, as noted

throughout this letter, City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager or City Administrator for response at a later time. Any member of the public, or the city council or any member of the city council may request the item be placed on a future agenda consistent with California Government Code Section 54954.2. The item may or may not be of personal interest to the individual as opposed to the general public. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 5: Cities do not record three-minute public comment topics in the recording secretary's minutes. Other than a videotaped record (if taping occurs), there generally is no written public record of the topic or any commitment to follow-up by city administrators.

Response 5: The City of Carmel generally agrees with the finding with respect to recording in the secretary's minutes in this city. Please note that although an item may be of importance to an individual, it may or may not be of importance to the public within the context of the purpose of government doing the public's business in public. At all times, however, an individual retains the right to address an item in public during the public comment period of all meetings. City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager or City Administrator for response at a later time. Any member of the public, or the city council or any member of the city council may request the item be placed on a future agenda consistent with California Government Code Section 54954.2.

Finding 6: All cities have a published procedure and a form for the public to place items on city council agendas. It is understood that, in the interests of time and efficiency, city councils cannot immediately schedule every topic for discussion. The setting of agendas is critical in determining what and when issues are discussed.

Response 6: The City agrees with this Finding.

Finding 7: Over-control of this process by mayors is not in the public interest.

Response 7: The City generally agrees with this Finding; however, it is important to note that the purpose of public meetings is to do the business of the city and the public, in public. As referenced throughout this letter, not all items raised may require or necessitate the same level of importance and urgency when put in the context of

individual interest and general public interest. Mayors have only one vote on matters coming before the City Council, however, it is the duty and responsibility of the Mayor, generally in concert with the vice mayor, city manager or city administrator and the city clerk, to set the city or agency's agenda. In that regard, items requested for placement on an agenda by council members or members of the public should be considered when setting the agenda, but need not be immediately placed on an agenda and could be deferred. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

GRAND JURY RECOMMENDATIONS: The Grand Jury has made 5 Recommendations with respect to its study. The City is required to respond to the Recommendations to indicate whether the Recommendation has been implemented, has not been implemented, requires further analysis, or will not be implemented.

Recommendation 1: The public should be allowed to register topics and have them included on council agendas for discussion in the Public Comment period. The presentation of these topics should still be limited to reasonable times limits set by the cities.

Response 1: The Recommendation is generally implemented. The public at all times retains the right to address any item of interest/concern during the Public Comment period of meetings of a legislative body. To the extent that the public wishes to address their item(s) during the Public Comment period, the topic(s) is/are included in the session of the legislative body. Separate advance listing of an item of interest on the agenda during Public Comment is not considered feasible and warranted. As previously noted in this letter, the purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. Also as previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings. Advance listing would be required prior to posting a meeting agenda, as required by law. Such advance listing could be considered to have a chilling affect on persons wishing to comment, and could become infeasible, overly cumbersome and time consuming for both the public and staff. California Government Code provides opportunity for any member of the public to present an item under Public Comment.

Discussion of the item presented may or may not be needed or appropriate. The law is clear that items not listed on an agenda cannot be discussed or added without specific findings and procedure. Items may be received, referred for additional information or follow-up from staff, or can at any time be requested to be placed on a future agenda by the public or a council member.

Recommendation 2: Discussion topics should be recorded in council minutes so as to provide a written and time-stamped record of such discussion.

Response 2: The Recommendation is generally already implemented. Minutes of meetings by public agencies and districts are maintained. Minutes typically take the form of "action minutes" as compared to detailed discussion minutes. Action minutes assure recording of any action taken on an item that is noted on an agenda. Per the city's existing policy, all audio and video meeting records are retained for a minimum of 10 years. As noted above, the California Public Records Act requires only a minimum 30-day retention period.

Recommendation 3: Within a reasonable time period, the topic should be assigned, if follow-up or resolution is required, to a city council person as a contact point to represent the citizen's interest and work with city staff to attain an appropriate resolution.

Response 3: The Recommendation is generally already implemented. Please refer to information provided earlier in this response letter regarding the ability and roles of council and staff members as well as action typically taken in referral of matters noted by the public. Council members set policy. A council member is one member of a legislative body and has no authority except as authorized by the body as a whole. The City Manager is the person charged with implementation of policy and the administration of the city. Follow-up to items raised by the public or council is done by staff on behalf of the Council as a whole. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. That same person or any other person may be dissatisfied or disappointed in an action or feel his/her concerns have not been resolved on the matter of interest to that individual. This should not mean that the topic must be repeatedly brought to the council on an agenda nor repeatedly addressed in subsequent meetings. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Recommendation 4: A written public record of unresolved items, the status of the discussion topic, and responsible city council person should be provided.

Response 4: The Recommendation will not be implemented because it is not warranted and reasonable. Please refer to information previously provided in this response letter regarding council members and staff members and actions typically taken in referral of matters noted by the public. Please also refer to Response 3 above.

Recommendation 5: The procedures and forms to be used by the public to place items on city agendas should be made available at council meetings.

Response 5: This Recommendation is implemented. Please refer to information noted in this letter regarding the process used with respect to items noted by the public. We are confused as to the purpose of the Recommendation given the Grand Jury's Finding # 6 which states: "*All cities have a published procedure and a form for the public to place items on city council agendas...*"

On behalf of the City Council and community of the City of Carmel-by-the-Sea, thank you for the time taken by the 2005 Grand Jury members to review and comment on procedures used by jurisdictions in Monterey County, including the City of Carmel-by-the-Sea, with respect to open government.

Sincerely,



Sue McCloud, Mayor

City of Carmel-by-the-Sea, California



CITY OF DEL REY OAKS

650 CANYON DEL REY RD • DEL REY OAKS, CALIFORNIA 93940
PHONE (831) 394-8511 • FAX (831) 394-6421

OFFICE OF
The Mayor

RECEIVED

MAY 05 2005

MONTEREY COUNTY
GRAND JURY

March 28, 2006

The Honorable Stephen A Sillman
2005 Presiding Judge of the Superior Court
County of Monterey
240 Church Street, North Wing, Room 318
Salinas, California 93901

Re: City of Del Rey Oaks - Response, 2005 Final Report,
Monterey County Civil Grand Jury

Dear Judge Sillman:

Thank you for the opportunity to respond to the section ("Open Government") of the referenced Grand Jury Report concerning the City of Del Rey Oaks. As you know, there are in the Report certain findings and recommendations (pp. 19-20) regarding the process and follow through practiced by Monterey County cities when dealing with a citizen's request to agendaize and/or respond to an item or items importance to the citizen.

The Del Rey Oaks City Council does not agree that there are any considerable obstacles impeding the ability of our citizens to approach the City Staff or Council with an issue subject to City's jurisdiction. Staff are generally well experienced and are able to respond to items brought directly to them. Issues brought to the Council, either to individual members or to the Council as a body in a public meeting, are listened to and handled as appropriate.

As to items brought before the full Council (and this appears to be the Grand Jury's main focus) our experience is that the three minute public comment period is adequate to allow expression of the comment, question or complaint. If the matter can be quickly answered at the meeting, it is. If referral to Staff is deemed the appropriate response, that is done. If the matter is of a character that requires further discussion by the Council, the Council will consider setting a time and date at a future meeting.

As elected representatives of the City, members of the Council are subject to numerable obligations, one of which is to decide which items are of sufficient import to merit further

discussion by the City's governing body. We do not take this obligation lightly and when making such a decision will always lean to the public's right to petition its local government.

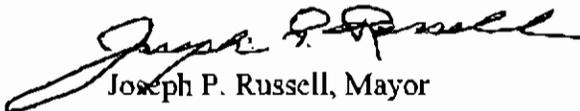
Our procedure for placing matters on the agenda is that the mayor, city manager or city attorney may agendaize a matter. A Council member, with the consent of the mayor or manager, or, when this consent can not be obtained, by obtaining the consent of another Council member, may also place an item on the agenda. This all provides wide latitude for the Council and senior staff to address all matters of interest, including direct citizen requests.

Except for our public comment period, we do not have a procedure in place for members of the public to directly place items on the agenda. This is typical, and quite appropriate. Being mindful, as noted above, of our obligation to address citizen comments, etc., we always respond at an appropriate level. There are matters brought to our attention that merit little or no further staff or Council time or effort. There are, however, many that do, and we respond in kind.

With respect to items brought to our attention during public comment period, we do not keep a separate log. It simply has not been necessary as the number is so low that we haven't been in danger of losing track. If this changes, we will of course consider a more formal listing.

If you have any further questions, please advise. Thank you again for the opportunity to respond.

Very truly yours,



Joseph P. Russell, Mayor

JPR:get



City of Gonzales

P.O. BOX 647
PHONE (831) 675-5000

147 FOURTH ST.
FAX: (831) 675-2644

GONZALES, CALIFORNIA 95926
www.ci.gonzales.ca.us

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APR 28 2006

MONTEREY COUNTY
GRAND JURY

March 6, 2006

Matt Gourley
Mayor

The Honorable Stephen A. Sillman
Presiding Judge, Superior Court
Of California, County of Monterey
240 Church Street
Salinas, CA 93901

George A. Worley
Mayor Pro Tem

RE: City of Gonzales Response to the 2005 Grand Jury Report

Maria Olascoaga
Councilmember

Dear Judge Sillman:

... Gamble
Councilmember

We are in receipt of the Final Report of the 2005 Grand Jury Report. In a section of that report, entitled "Open Government", the Grand Jury reviewed the "open and participative" procedures for all city governments within Monterey County. The Report concluded that the published procedures for each city "appear to be adequate but may be circumvented or arbitrarily executed in certain instances resulting in lack of open debate, delayed or inadequate follow-up and no resolution."

Delta Gutierrez
Councilmember

Before moving on to our response, on behalf of the City Council and community of the City of Gonzales, thank you for the time taken by the 2005 Grand Jury members to review and comment on procedures used by jurisdictions in Monterey County, including the City of Gonzales with respect to open government.

Rene L. Mendez
City Manager

Sincerely,

Matt Gourley
Mayor
City of Gonzales

cc: Kevin H.T. McCabe
Presiding Juror
2005 Grand Jury
County of Monterey
P.O. Box 414
Salinas, CA 93902

**CITY OF GONZALES
RESPONSE TO THE 2005 GRAND JURY REPORT**

The following is submitted by the City of Gonzales in response to the 2005 Grand Jury Report section entitled "Open Government" pertaining to all the cities in Monterey County.

Ralph M. Brown Act / Open Meeting Act: By way of background City councils, commissions and boards, as well as the elected and appointed bodies of the County of Monterey, all special districts within the County, and the State of California are required to follow the Ralph M. Brown Act, also known as the Open Meeting Act. The California State Legislature adopted the Brown Act in the early 1950s, and it remains the hallmark of open government today.

The Legislative intent, as set forth in California Government Code Section 54950, reads as follows:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

In applying the regulations of the Brown Act, the Act defines a "local agency" as a county, city, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

The Act further defines a "legislative body" as:

"the governing body of a local agency or any other local body created by state or federal statute;

a commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body;

a board, commission, committee, or other multimember body that governs a private corporation or entity either created by the elected legislative body or that receives funds from a local agency and whose governing body membership includes a member of the legislative body appointed to that body by the legislative body of the local agency;

the lessee of any hospital... where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority."

California Government Code Sections 54950-54962 proceed to set forth guidelines for all meetings of local agency legislative bodies, which include the notice and posting of agendas. Section 54954.2 reads in pertinent part as follows:

"(a) At least 72 hours before a regular meeting, the Legislative body...shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights... In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda..”

All meetings of cities, including the County of Monterey, as well as all other special districts located within the County, are required to apply the Ralph M. Brown Act to insure that the public has an opportunity to participate and to observe the public business being conducted.

With respect to a city council, a city council person is elected by the public; however, that individual only has one vote on matters coming before the city. The chief executive officer of the city is known as the City Manager or City Administrator. City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager or City Administrator for response at a later time as the item most often is of a personal nature to the individual as opposed to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2 as set forth above.

California Government Code Sections 54954.3(a) and (b) read in pertinent part as follows:

“(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda....”

“(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.”

As a general rule each public agency has a three-minute rule which can be extended at the request of a member of the city council and approval by the city council.

City Council meetings are open to the public *and* their tapes or films are retained for a minimum period of 30 days consistent with California Government Code Section 54953(b) which reads in pertinent part as follows:

“(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act..., but... may be erased or destroyed 30 days after the taping or recording..”

Subsection (a) of the same code section insures that any person attending the meeting has the right to record the proceedings. Subsection (a) reads in pertinent part as follows:

“(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera...”

The legislative bodies of each city or local agency are required to pay strict attention to the Ralph M. Brown Act. Individual concerns expressed at a city council meeting by members of the public are typically responded to by staff in a timely fashion as appropriate to the particulars of the item. There is no guarantee, however, that the solution can or will necessarily meet with the individual's approval. Nonetheless, as noted by the Grand Jury, there are procedures for both individuals and members of a city council or local agency to address items of concern on a city council or public agency agenda.

Mayors have only one vote on matters coming before the City Council, however, it is the duty and responsibility of the Mayor, generally in concert with the vice mayor, city manager or city administrator and the city clerk, to set the city or agency's agenda. In that regard, items requested for placement on an agenda by council members or members of the public should be considered when setting the agenda, but need not be immediately placed on an agenda and could be deferred. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

GRAND JURY FINDINGS: The Grand Jury has noted 7 Findings with respect to this study. The City is required to respond to the Findings to indicate agreement or disagreement.

Finding 1: Interviews disclosed that a pattern of obstacles exist that make it difficult to schedule, discuss, document for the record, and gain appropriate resolution of topics or issues presented by the public.

Response 1: Disagree wholly with the Finding.

The City cannot speak to the content of interviews since it did not participate in the interviews; however, the City does not agree with this finding. Any member of the public may request an item be placed on a future agenda. City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager or City Administrator for response at a later time. The item may or may not be of personal interest to the individual as opposed to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 2: All cities have a three-minute speaking limit at council meetings for individuals to bring issues to the attention of city councils on items not on the agenda. In certain cases, this allotted time might not be adequate for the topic by the public.

Response 2: Partially agree with the Finding.

The City agrees that there is a Public Comment period at Council meetings which is typically a 3-minute speaking period. This limit may be extended with a vote of the Council. In general, the time limit is sufficient to note the item and referral for follow-up/action, if any. As noted above, the opportunity always exists for a member of the public or council to request that an item be placed on a future agenda. Also as previously noted from California Government Code Section 54954.2, ..."No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights... In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda."

Finding 3: It is unclear what happens to a public comment topic if follow-up is necessary.

Response 3: Disagree wholly with the Finding.

The City cannot speak to the judgment of the statement and therefore disagrees with the finding. As previously noted, there is a procedure for items noted during Public Comments. California Government Code Section 54954.2 states, in part, " a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda." As noted elsewhere in this letter, any member of the public may request an item be placed on a future agenda. City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager or City Administrator for response at a later time. The item may or may not be of personal interest to the individual as opposed to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings. In addition, City staff endeavors to keep the public member informed when the item might be placed on the agenda (as or if needed) or frequently is provided a specific timeframe by the Council when to respond.

Finding 4: It is also unclear what happens to a public comment topic if follow-up is necessary.

Response 4: Disagree wholly with the finding.

The City cannot speak to the judgment of the statement and therefore, disagrees with the finding. However, as noted throughout this letter, City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager or City Administrator for response at a later time. Any member of the public, or the city council or any member of the city council may request the item be placed on a future agenda consistent with California Government Code Section 54954.2. The item may or may not be of personal interest to the individual as opposed to the general public. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 5: Cities do not record three-minute public comment topics in the recording secretary's minutes. Other than a videotaped record (if taping occurs), there generally is no written public record of the topic or any commitment to follow-up by city administrators.

Response 5: Disagree wholly with the finding.

The City of Gonzales records the public comment topics in the secretary's minutes and any commitment made to respond. Depending on the topic brought up, the recording in the minutes might be a summary or reflect more verbatim detail. However, please note that although an item may be of importance to an individual, it may or may not be of importance to the public within the context of the purpose of government doing the public's business in public. At all times, however, an individual retains the right to address an item in public during the public comment period of all meetings. City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager or City Administrator for response at a later time. Any member of the public, or the city council or any member of the city council may request the item be placed on a future agenda consistent with California Government Code Section 54954.2.

Finding 6: All cities have a published procedure and a form for the public to place items on city council agendas. It is understood that, in the interests of time and efficiency, city councils cannot immediately schedule every topic for discussion. The setting of agendas is critical in determining what and when issues are discussed.

Response 6: The City agrees with this Finding.

Finding 7: Over-control of this process by mayors is not in the public interest.

Response 7: The City agrees with this finding.

GRAND JURY RECOMMENDATIONS: The Grand Jury has made 5 Recommendations with respect to its study. The City is required to respond to the Recommendations to indicate whether the Recommendation has been implemented, has not been implemented, requires further analysis, or will not be implemented.

Recommendation 1: The public should be allowed to register topics and have them included on council agendas for discussion in the Public Comment period. The presentation of these topics should still be limited to reasonable times limits set by the cities.

Response 1: The Recommendation is generally implemented.

The public at all times retains the right to address any item of interest/concern during the Public Comment period of meetings of a legislative body. To the extent that the public wishes to address their item(s) during the Public Comment period, the topic(s) is/are included in the session of the legislative body. Separate advance listing of an item of interest on the agenda during Public Comment is not considered feasible and warranted. As previously noted in this letter, the purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. Also as previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings. Advance listing would be required prior to posting a meeting agenda, as required by law. Such advance listing could be considered to have a chilling affect on persons wishing to comment, and could become infeasible, overly cumbersome and time consuming for both the public and staff. California Government Code provides opportunity for any member of the public to present an item under Public Comment. Discussion of the item presented may or may not be needed or appropriate. The law is clear that items not listed on an agenda cannot be discussed or added without specific findings and procedure. Items may be received, referred for additional information or follow-up from staff, or can at any time be requested to be placed on a future agenda by the public or a council member.

Recommendation 2: Discussion topics should be recorded in council minutes so as to provide a written and time-stamped record of such discussion.

Response 2: The recommendation is generally already implemented.

Minutes of meetings by public agencies and districts are maintained. Minutes typically take the form of "action minutes" as compared to detailed discussion minutes. Action minutes assure recording of any action taken on an item that is noted on an agenda. Per the city's existing policy, all audio and video meeting records are retained for a minimum of 10 years. As noted above, the California Public Records Act requires only a minimum 30-day retention period.

Recommendation 3: Within a reasonable time period, the topic should be assigned, if follow-up or resolution is required, to a city council person as a contact point to represent the citizen's interest and work with city staff to attain an appropriate resolution.

Response 3: The Recommendation is generally already implemented.

Please refer to information provided earlier in this response letter regarding the ability and roles of council and staff members as well as action typically taken in referral of matters noted by the public. Council members set policy. A council member is one member of a legislative body and has no authority except as authorized by the body as a whole. The

City Manager is the person charged with implementation of policy and the administration of the city. Follow-up to items raised by the public or council is done by staff on behalf of the Council as a whole. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. That same person or any other person may be dissatisfied or disappointed in an action or feel his/her concerns have not been resolved on the matter of interest to that individual. This should not mean that the topic must be repeatedly brought to the council on an agenda nor repeatedly addressed in subsequent meetings. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Recommendation 4: A written public record of unresolved items, the status of the discussion topic, and responsible city council person should be provided.

Response 4: The Recommendation will not be implemented because it is not warranted and reasonable.

Please refer to information previously provided in this response letter regarding council members and staff members and actions typically taken in referral of matters noted by the public. Please also refer to Response 3 above.

Recommendation 5: The procedures and forms to be used by the public to place items on city agendas should be made available at council meetings.

Response 5: This Recommendation has been implemented.

Please refer to information noted in this letter regarding the process used with respect to items noted by the public. We are confused as to the purpose of the Recommendation given the Grand Jury's Finding # 6 which states: "*All cities have a published procedure and a form for the public to place items on city council agendas...*"



City of Greenfield

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MAY 03 2006

MONTEREY COUNTY
GRAND JURY

May 1, 2006

Grand Jury
County of Monterey
P.O. Box 414
Salinas, CA 93902

RE: Response to the 2005 Grand Jury Report

Dear Monterey County Civil Grand Jury:

The City of Greenfield is in receipt of the 2005 Grand Jury Report. In a section of that report (pages 18-20), entitled "Open Government", the Grand Jury reviewed the "open and participative" procedures for all city governments within Monterey County. The Report concluded that the published procedures for each city "appear to be adequate but may be circumvented or arbitrarily executed in certain instances resulting in lack of open debate, delayed or inadequate follow-up and no resolution."

The following is submitted by the City of Greenfield in response to the above-referenced section of the 2005 Grand Jury Report:

Ralph M. Brown Act / Open Meeting Act: City councils, commissions and boards, as well as the elected and appointed bodies of the County of Monterey, all special districts within the County, and the State of California are required to follow the Ralph M. Brown Act, also known as the Open Meeting Act. The California State Legislature adopted the Brown Act in the early 1950s, and it remains the hallmark of open government today.

The Legislative intent, as set forth in California Government Code Section 54950, reads as follows:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

In applying the regulations of the Brown Act, the Act defines a “local agency” as a county, city, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

The Act further defines a “legislative body” as:

“the governing body of a local agency or any other local body created by state or federal statute;

a commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body;

a board, commission, committee, or other multimember body that governs a private corporation or entity either created by the elected legislative body or that receives funds from a local agency and whose governing body membership includes a member of the legislative body appointed to that body by the legislative body of the local agency;

the lessee of any hospital... where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.”

California Government Code Sections 54950-54962 proceed to set forth guidelines for all meetings of local agency legislative bodies, which includes the notice and posting of agendas. Section 54954.2 reads in pertinent part as follows:

“(a) At least 72 hours before a regular meeting, the Legislative body...shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights... In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities.

Furthermore, a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.”

All meetings of cities, including the County of Monterey, as well as all other special districts located within the County, apply the Ralph M. Brown Act to insure that the public has an opportunity to participate and to observe the public business being conducted.

With respect to a city council, a city council person is elected by the public; however, that individual only has one vote on matters coming before the city. The chief executive officer of the city is known as the City Manager or City Administrator. City council members, as a general rule, refer matters presented by the public during their respective agency’s public or oral comment period to the City Manager or City Administrator for response at a later time as the item most often is of a personal nature to the individual as opposed to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2 as set forth above.

California Government Code Sections 54954.3(a) and (b) read in pertinent part as follows:

“(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body’s consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda....”

“(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.”

As a general rule each public agency has a three-minute rule which can be extended at the request of a member of the city council and approval by the city council. Greenfield actually provides five minutes.

City Council meetings are open to the public, *and* their tapes or film are retained for a minimum period of 30 days consistent with California Government Code Section 54953(b) which reads in pertinent part as follows:

“(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act..., but... may be erased or destroyed 30 days after the taping or recording..”

Subsection (a) of the same code section insures that any person attending the meeting has the right to record the proceedings. Subsection (a) reads in pertinent part as follows:

“(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera...”

The legislative bodies of each city or local agency are required to pay strict attention to the Ralph M. Brown Act. Individual concerns expressed at a city council meeting by members of the public are typically responded to by staff in a timely fashion as appropriate to the particulars of the item. There is no guarantee, however, that the solution can or will necessarily meet with the individual’s approval. Nonetheless, as noted by the Grand Jury, there are written procedures for both individuals and members of a city council or local agency to address items of concern on a city council or public agency agenda.

Mayors have only one vote on matters coming before the City Council, however, it is typically the Mayor in concert with city manager and the city clerk, who set the city’s agenda. In that regard, items requested for placement on an agenda by council members or members of the public should be considered when setting the agenda, but need not be immediately placed on an agenda and could be deferred. The purpose of doing the public’s business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

GRAND JURY FINDINGS: The Grand Jury has noted 7 Findings with respect to this study. The City is required to respond to the Findings to indicate agreement or disagreement.

Finding 1: Interviews disclosed that a pattern of obstacles exist that make it difficult to schedule, discuss, document for the record, and gain appropriate resolution of topics or issues presented by the public.

Response 1: The City cannot speak to the content of interviews since it did not participate in the interviews; however, the City does not agree with this finding. Any member of the public may request an item be placed on a future agenda. City council members, as a general rule, refer matters presented by the public during their respective agency’s public or oral comment period to the City Manager for response at a later time. The item may or may not be of personal interest to the individual as opposed to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2. It is possible that a matter may be resolved prior to placement of an item on an

agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 2: All cities have a three-minute speaking limit at council meetings for individuals to bring issues to the attention of city councils on items not on the agenda. In certain cases, this allotted time might not be adequate for the topic by the public.

Response 2: The City agrees that there is a Public Comment period at Council meetings which is typically a 3-minute speaking period. Greenfield has a five-minute limit which may be imposed on each speaker other than staff members. This limit may be extended with a vote of the Council. In general, the time limit is sufficient to note the item and referral for follow-up/action, if any. As noted above, the opportunity always exists for a member of the public or council to request that an item be placed on a future agenda. Also as previously noted from California Government Code Section 54954.2, ...”No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights... In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda..”

Finding 3: It is unclear what happens to a public comment topic if follow-up is necessary.

Response 3: The City cannot speak to the judgment of the statement; however, as previously noted, there is a procedure for items noted during Public Comments. California Government Code Section 54954.2 states, in part, “ ... a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda..” As noted elsewhere in this letter, any member of the public may request an item be placed on a future agenda. City council members, as a general rule, refer matters presented by the public during their respective agency’s public or oral comment period to the City Manager for response at a later time. The item may or may not be of personal interest to the individual as opposed

to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 4: It is also unclear who determines if follow up is justified, or if the topic might be placed on the agenda for future council consideration.

Response 4: The City cannot speak to the judgment of the statement; however, as noted throughout this letter, City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager for response at a later time. Any member of the public, or the city council or any member of the city council may request the item be placed on a future agenda consistent with California Government Code Section 54954.2. The item may or may not be of personal interest to the individual as opposed to the general public. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 5: Cities do not record three-minute public comment topics in the recording secretary's minutes. Other than a videotaped record (if taping occurs), there generally is no written public record of the topic or any commitment to follow-up by city administrators.

Response 5: The City of Greenfield disagrees with this finding. The City of Greenfield's minutes reflect the speaker and a summary of the speaker's comments.

Finding 6: All cities have a published procedure and a form for the public to place items on city council agendas. It is understood that, in the interests of time and efficiency, city councils cannot immediately schedule every topic for discussion. The setting of agendas is critical in determining what and when issues are discussed.

Response 6: The City agrees with this Finding.

Finding 7: Over-control of this process by mayors is not in the public interest.

Response 7: The City generally agrees with this Finding; however, it is important to note that the purpose of public meetings is to do the business of the city and the public, in public. As referenced throughout this letter, not all items raised may require or necessitate the same level of importance and urgency when put in the context of individual interest and general public interest. Mayors have only one vote on matters coming before the City Council; however, the Mayor in concert with the city manager and the city clerk, set the city's agenda. In that regard, items requested for placement on an agenda by council members or members of the public should be considered when setting the agenda, but need not be immediately placed on an agenda and could be deferred. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

GRAND JURY RECOMMENDATIONS: The Grand Jury has made 5 Recommendations with respect to its study. The City is required to respond to the Recommendations to indicate whether the Recommendation has been implemented, has not been implemented, requires further analysis, or will not be implemented.

Recommendation 1: The public should be allowed to register topics and have them included on council agendas for discussion in the Public Comment period. The presentation of these topics should still be limited to reasonable times limits set by the cities.

Response 1: The Recommendation is generally implemented. The public at all times retains the right to address any item of interest/concern during the Public Comment period of meetings of a legislative body. To the extent that the public wishes to address their item(s) during the Public Comment period, the topic(s) is/are included in the session of the legislative body. Separate advance listing of an item of interest on the agenda during Public Comment is not considered feasible and warranted. As previously noted in this letter, the purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. Also as previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment

period of all meetings. Advance listing would be required prior to posting a meeting agenda, as required by law. Such advance listing could be considered to have a chilling affect on persons wishing to comment, and could become infeasible, overly cumbersome and time consuming for both the public and staff. California Government Code provides opportunity for any member of the public to present an item under Public Comment. Discussion of the item presented may or may not be needed or appropriate. The law is clear that items not listed on an agenda cannot be discussed or added without specific findings and procedure. Items may be received, referred for additional information or follow-up from staff, or can at any time be requested to be placed on a future agenda by the public or a council member.

Recommendation 2: Discussion topics should be recorded in council minutes so as to provide a written and time-stamped record of such discussion.

Response 2: The City of Greenfield already complies with this recommendation. Minutes of meetings are maintained which include comments from the public. Minutes typically take the form of "action minutes" as compared to detailed discussion minutes. Action minutes assure recording of any action taken on an item that is noted on an agenda. Per the city's existing policy, all audio and video meeting records are retained for a minimum of 10 years. As noted above, the California Public Records Act requires only a minimum 30-day retention period.

Recommendation 3: Within a reasonable time period, the topic should be assigned, if follow-up or resolution is required, to a city council person as a contact point to represent the citizen's interest and work with city staff to attain an appropriate resolution.

Response 3: The Recommendation is generally already implemented. Please refer to information provided earlier in this response letter regarding the ability and roles of council and staff members as well as action typically taken in referral of matters noted by the public. Council members set policy. A council member is one member of a legislative body and has no authority except as authorized by the body as a whole. The City Manager is the person charged with implementation of policy and the administration of the city. Follow-up to items raised by the public or council is completed by staff on behalf of the Council as a whole. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. That same person or any other person may be dissatisfied or disappointed in an action or feel his/her concerns have not been resolved on the matter of interest to that individual. This should not mean that the topic must be repeatedly brought to the council on an agenda nor repeatedly addressed in subsequent

meetings. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Recommendation 4: A written public record of unresolved items, the status of the discussion topic, and responsible city council person should be provided.

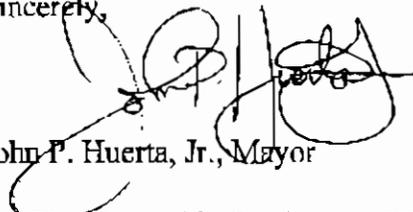
Response 4: The Recommendation will not be implemented because it is not warranted and reasonable. Please refer to information previously provided in this response letter regarding council members and staff members and actions typically taken in referral of matters noted by the public. Please also refer to Response 3 above.

Recommendation 5: The procedures and forms to be used by the public to place items on city agendas should be made available at council meetings.

Response 5: This Recommendation is implemented. Please refer to information noted in this letter regarding the process used with respect to items noted by the public.

On behalf of the City Council and community of the City of Greenfield, thank you for the time taken by the 2005 Grand Jury members to review and comment on procedures used by jurisdictions in Monterey County, including the City of Greenfield, with respect to open government.

Sincerely,



John P. Huerta, Jr., Mayor

Cc: The Honorable Stephen A. Sillman
2005 Presiding Judge of the Superior Court
County of Monterey
240 Church Street, North Wing, Room 318
Salinas, CA 93901

Greenfield City Council

City of Marina

211 HILLCREST AVENUE
MARINA, CA 93933
TELEPHONE (831) 884-1278
FAX (831) 384-9148

RECEIVED

APR 03 2006

MONTEREY COUNTY
GRAND JURY



March 23, 2006

THE HONORABLE RICHARD A. SILLMAN
SUPERIOR COURT JUDGE
PO BOX 414
SALINAS CA 93902

RE. Open Government – 2005 Grand Jury
City of Marina Responses

Dear Judge Sillman:

Please find enclosed the City of Marina's response the 2005 Grand Jury Report relative to Open Government.

If you have any questions please do not hesitate to contact me at 831-884-1278, ext 225 or 831-884-9042.

Sincerely,

A handwritten signature in black ink, appearing to read "Ila Mettee-McCutcheon".

Ila Mettee-McCutcheon
Mayor

Enclosure

City of Marina

211 HILLCREST AVENUE
MARINA, CA 93933
TELEPHONE (831) 884-1278
FAX (831) 384-9148

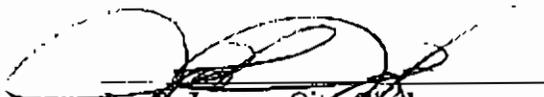


CERTIFICATE OF THE CITY CLERK

I, JOY P JUNSAY, CITY CLERK OF THE CITY OF MARINA, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of *Resolution No. 2006-58*, accepting responses to 2005 Final Report - Monterey County Grand Jury for the City of Marina and directing that the responses be forwarded to the presiding judge of the Superior Court relative to open government, adopted by the City Council of the City of Marina at a regular meeting duly held on March 21, 2006, that the original appears on record in the Office of the City Clerk.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MARINA

Dated: March 24, 2006


Joy P. Junsay, City Clerk
City of Marina

RESOLUTION NO. 2006-58

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
ACCEPTING RESPONSES TO 2005 FINAL REPORT – MONTEREY
COUNTY GRAND JURY FOR THE CITY OF MARINA AND
DIRECTING THAT THE RESPONSES BE FORWARDED TO THE
PRESIDING JUDGE OF THE SUPERIOR COURT

WHEREAS, the City received a copy of the 2005 Final Report – Monterey County Grand Jury, and;

WHEREAS, the Final Report contained one item requiring attention by the City of Marina consisting of review and written response relative to Open Government;

WHEREAS, Pursuant to California Penal Code Section 933(c), the City of Marina is required to prepare written responses to these two findings and submit these written responses to the Presiding Judge of the Superior Court Terrance Duncan no later than April 3, 2006.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina hereby:

1. Accept response to the 2005 Final Report – Monterey County Grand Jury for the City of Marina (“EXHIBIT A”), and,
2. Direct that the responses be forwarded to the Presiding Judge of the Superior Court Stephen A. Sillman no later than April 3, 2006.

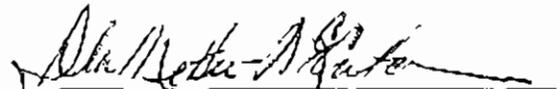
PASSED AND ADOPTED by the City Council of the City of Marina at a special meeting duly held on March 21, 2006 by the following vote:

AYES, COUNCIL MEMBERS: Gray, Morrison, Wilnot, McCall and Mettee-
McCutchon

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None


Ila Mettee-McCutchon, Mayor

ATTEST:


Joy B. Junsay, City Clerk

Exhibit A

City of Marina Attachment 1

Response to Findings and Recommendations: 2005 Grand Jury Report on Open Government

Grand Jury Findings:

1. Interviews disclosed that a pattern of obstacles exist that make it difficult to schedule, discuss, document for the record, and gain appropriate resolution of topics or issues presented by the public.

City of Marina Response:

The City cannot speak to the content of interviews since it did not participate in the interviews. However, any member of the public may request an item be placed on a future agenda. This does not automatically get a matter placed on the Council's agenda, but City Council members, as a general rule, refer matters presented by the public during public or oral comment period to the City Manager or appropriate Department Director for response at a later time. The City Council or any member of the City Council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2, and this could be done at the request of a member of the public. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

2. All cities have a three-minute speaking limit at council meetings for individuals to bring issues to the attention of City Councils on items not on the agenda. In certain cases, this allotted time might not be adequate for the topic by the public.

City of Marina Response:

The City of Marina Resolution No. 80-71, Section 27a, states: "Each person desiring to address the Council shall step up to the speaker's rostrum... state name ... and subject... and, unless further time is otherwise specifically provided for in these rules or is granted by majority vote of the Council, shall limit remarks to three (3) minutes."

As noted above, the opportunity always exists for a member of the public or council to request that an item be placed on a future agenda. Matters placed on the agenda, even at the request of an individual council member, are not acted on nor is any staff work done when initially on the agenda, if when the matter is then heard, solely for placement on a future agenda, two other council members also request that the matter be placed on a future agenda, it is then placed on a future agenda for full discussion and possible action, and the staff is then authorized to do the necessary background work to give information and advice to the council. In addition, the Mayor opens the floor for public comment on every item following staff presentation for questions and/or comment; as well as following motions of the Council.

When the allotted three-minute limit is not sufficient for a give matter, the Mayor or the Council have the discretion, which they often exercise, to grant a speaker an additional amount of time as may be appropriate (as, for example, when one person is addressing the council on behalf of a larger group of persons).

3. It is unclear what happens to a public comment topic if follow-up is necessary.

City of Marina Response:

The Mayor of the City of Marina encourages and invites the individual to leave contact information with the City Clerk for staff to coordinate a convenient time to meet with the City Manager and/or designated staff to discuss specific issues in more detail. On many occasions, the issues are resolved administratively. Concerns raised on matters not on the agenda may be deferred to a later date to allow time to gather information or produce data, etc. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

4. It is also unclear who determines if follow-up is justified, or if the topic might be placed on the agenda for future City Council consideration.

City of Marina Response:

The City of Marina City Manager meets regularly with Department Directors to discuss public comment issues raised at City Council meetings. If issues are not resolved administratively, the matter and/or specific request is researched further and brought to the City Council for discussion and/or consideration.

5. Cities generally do not record three-minute public comment topics in the recording secretary's minutes. Other than a videotaped record (if recording occurs), there generally is no written public record of the topic or any commitment to follow-up by city administrators.

City of Marina Response:

The City of Marina Minutes of the City Council are simple action Minutes. However, in the area of "Communications From The Floor", Minutes include the full name of the

individual speaking, subject matter and specific request of the individual. On many occasions, the individuals have provided a letter. City Council meetings are tape recorded (maintained by the City Clerk) and video taped by Access Monterey Peninsula for playback on the City of Marina Government Access Channel, 25.

Tape recordings are maintained up to 90 days after the official Minutes are adopted and available for public review and/or upon request, a copy of the recording(s).

City Council meetings may be viewed at 12:30 p.m. and 3:00 p.m. on Cable Channel 25 on the Sunday following the Regular City Council meeting date. In addition, Council meetings can be viewed at 6:30 p.m. every Monday, Tuesday and Wednesday.

6. All cities have a published procedure and a form for the public to place items on City Council agendas. It is understood that, in the interests of time and efficiency, City Councils cannot immediately schedule every topic for discussion. The setting of agendas is critical in determining what and when issues are discussed.

City of Marina Response:

The City of Marina Resolution No. 81-71, Section 6, addresses such a process. From these basic rules, a process was developed.

As note in item #1 above, any member of the public may request an item be placed on a future agenda. This does not automatically get a matter placed on the Council's agenda, but City Council members, as a general rule, refer matters presented by the public during public or oral comment period to the City Manager or appropriate Department Director for response at a later time. The City Council or any member of the City Council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2, and this could be done at the request of a member of the public.

The City of Marina City Manager meets regularly with Department Directors to discuss public comment issues raised at City Council meetings. If issues are not resolved administratively, the matter and/or specific request is researched further and brought to the City Council for discussion and/or consideration.

7. Over-control of this process by mayors is not in the public interest

City of Marina Response:

The purpose of public meetings is to do the business of the city and the public, in public. The Mayor has only one vote on matters coming before the City Council, however, it is the duty and responsibility of the Mayor, generally in concert with the vice mayor, city manager or city administrator and the city clerk, to set the city or agency's agenda. In that regard, items requested for placement on an agenda by council members or members of the public should be considered when setting the agenda, but need not be immediately placed on an agenda and could be deferred. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is

important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. The item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Grand Jury Recommendations

The Brown Act (Government Code Section 54950 et seq.) is the law that requires elected officials to let the public speak. Section 54954 of the Act governs Regular Meetings and includes conditions for scheduling and public notice, but it does not include requirements for scheduling agenda items from the public.

The recommendations which follow generally go beyond current procedures, including the Brown Act, and focus on changes or modifications that city governments can implement which will create an environment where topics or concerns can be brought forward for open discussion with a higher level of visibility and accountability: in effect, a more open government.

1. The public should be allowed to register topics and have them included on council agendas for discussion in the Public Comment period. The presentation of these topics should still be limited to reasonable time limits set by the cities.

City of Marina Response:

The public at all times retains the right to address any item of interest/concern during the Public Comment period of meetings of a legislative body. To the extent that the public wishes to address their item(s) during the Public Comment period, the topic(s) is/are included in the session of the legislative body. Separate advance listing of an item of interest on the agenda during Public Comment is not considered feasible and warranted. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. The item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. The individual retains the right to continue to address the item during the public comment period of all meetings. Advance listing would be required prior to posting a meeting agenda, as required by law. Such advance listing could be considered to have a chilling Effect on persons wishing to comment, and could become infeasible, overly cumbersome and time consuming for both the public and staff. California Government Code provides opportunity for any member of the public to present an item under Public Comment. Discussion of the item presented may or may not be needed or appropriate. The law is clear that items not listed on an agenda cannot be discussed or added without specific findings and procedure. Items may be received, referred for additional information or follow-up from staff, or can at any time be requested to be placed on a future agenda by the public or a council member.

2. Discussion topics should be recorded in council minutes so as to provide a written and time-stamped record of such discussion.

City of Marina Response:

Minutes of meetings by the City of Marina are maintained. Minutes typically take the form of "action minutes" as compared to detailed discussion minutes. Action minutes assure recording of any action taken on an item that is noted on an agenda.

3. Within a reasonable time period, the topic should be assigned, if follow-up or resolution is required, to a City Council person as a contact point to represent the citizen's interest and work with city staff to attain an appropriate resolution.

City of Marina Response:

Council members set policy. A council member is one member of a legislative body and has no authority except as authorized by the body as a whole. The City Manager is the person charged with implementation of policy and the administration of the city. Follow-up to items raised by the public or council is done by staff on behalf of the Council as a whole. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. That same person or any other person may be dissatisfied or disappointed in an action or feel his/her concerns have not been resolved on the matter of interest to that individual. This should not mean that the topic must be repeatedly brought to the council on an agenda nor repeatedly addressed in subsequent meetings. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

4. A written public record of unresolved items, the status of the discussion topic, and responsible City Council person should be provided.

City of Marina Response:

Please also refer to Response 3 above.

5. The procedures and forms to be used by the public to place items on city agendas should be made available at council meetings.

City of Marina Response:

As note in item #1 above, any member of the public may request an item be placed on a future agenda. The City of Marina does not have a form, however, encourages and invites the public to make a request personally by phone, office visit, email and/or letter/correspondence.

NOTE: The City Council approved and passed Resolution No. 2003-120 on August 5, 2003 adopting Preamble to Ralph M. Brown Act Open Meetings Law as City Council policy. The Preamble is framed and proudly hangs in Marina City Council Chambers. The Preamble reads:

"The Marina City Council finds and declares that the City Council and Commissions of this City exist to aid in the conduct of the people's business. It is the intent of the City Council that their actions be taken openly and that their deliberations be conducted openly. The people of Marina do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."



MAR 23 2006
RECEIVED

MAR 23 2006

MONTEREY COUNTY
GRAND JURY

March 22, 2006

Mayor:
DAN ALBERT

Councilmembers:
CHUCK DELLA SALA
LINDY DOWNEY
JEFF HATFIELD
CLYDE ROBERSON

City Manager:
FRED MELNER

The Honorable Stephen A. Sillman
2005 Presiding Judge of the Superior Court
County of Monterey
240 Church Street, North Wing, Room 318
Salinas, CA 93901

Subject: City of Monterey Response to 2005 Grand Jury Report - Open Government

Dear Judge Sillman:

Thank you for the invitation to respond to the *Open Government* section of the *2005 Monterey County Civil Grand Jury Final Report*. The comments contained in this letter were approved by the Monterey City Council at their meeting of March 21, 2006.

Before responding to the specific findings and recommendations contained in the report, I would like to say that the City Council and staff take pride in our efforts to conduct the public's business in an open and public way. We also view the requirements of the law as absolute minimums and regularly work to exceed these minimums, simply because it is good business to do so. We also work hard to improve on our track record, and welcome the Grand Jury's inquiry as part of our continuing self-evaluation.

With these thoughts in mind, our comments follow in the order that they were presented in the Report. The actual report language is displayed in **bold type** for readability.

FINDINGS

1. Interviews disclosed that a pattern of obstacles exist that make it difficult to schedule, discuss, document for the record, and gain appropriate resolution of topics or issues presented by the public.

To the best of our knowledge and research, none of the Grand Jury's interviews involved stakeholders related to the City of Monterey. We are not aware of any concerns like these being directed to our attention. In fact, our citizen surveys through the years tell us that our organization is highly responsive to community needs and interests. If such concerns were to be expressed, it would certainly be in our interest to take them very seriously and do everything reasonable to resolve them.

2. All cities have a three-minute speaking limit at council meetings for individuals to bring issues to the attention of city councils on items not on the agenda. In certain cases, this allotted time might not be adequate for the topic by the public.

Our city also has a "Public Comment" period at our City Council meetings with a three minute speaking limit (that can be extended at the pleasure of the Council) to discuss items not on the agenda. While we know that some individuals would prefer a longer speaking limit, it is important to remember that the Public Comment period is certainly not the sole (nor, we believe, the primary) vehicle to bring matters to the City's attention.

We have a 24-hour Suggestion Hotline accessible via phone, email, and fax, and have a number of tools to provide comment to the City accessible on our web site. We also welcome walk-in visits during business hours and our Council members and staff are available by phone and email. Even our *City Focus* newsletter, published three times a year and sent to every address in the City, has frequent reader response cards to encourage comment back to the City. Lastly, our City Council holds periodic Town Hall meetings that are either focused on a specific topic of community interest or designed to simply afford an open platform to those who choose to address City officials.

Taken together, these vehicles offer a comprehensive, multi-faceted system enabling our residents, businesses, and visitors to share their comments, questions, and concerns with the City.

3. It is unclear what happens to a public comment topic if follow-up is necessary.

In Monterey's case, our staff logs all Public Comments made at the City Council meetings. We have a policy that each of these comments is appropriately answered within a reasonable period, usually in writing. In some cases, the matter returns on a future City Council Agenda. Many items can be resolved through other means.

4. It is also unclear who determines if follow-up is justified, or if the topic might be placed on the agenda for future city council consideration.

The determination about whether follow-up is justified is a shared responsibility of the City Council and staff. When in doubt, we always attempt to defer to the interest of the party expressing the concern. With regard to placement of items on the City Council Agenda, the final determination is made by the Mayor in consultation with the staff several days before the Agenda is published.

5. Cities generally do not record three-minute public comment topics in the recording secretary's minutes. Other than a videotaped record (if recording occurs), there generally is no written public record of the topic or any commitment to follow-up by city administrators.

This is not the practice in Monterey. All public comments are logged into the official minutes of our City Council meetings and these minutes are posted on our web site after approval. In addition, we are the only agency in our region that broadcasts our Council meetings live on the local cable system and the Internet. Our meetings are also replayed on cable and the Internet, and a growing archive of our meetings is viewable on-demand over the Internet.

6. All cities have a published procedure and a form for the public to place items on city council agendas. It is understood that, in the interests of time and efficiency, city councils cannot immediately schedule every topic for discussion. The setting of agendas is critical in determining what and when issues are discussed.

We concur. Our City Council and staff do our best to schedule Agenda items in a timely fashion while keeping in mind the policy priorities of the City. We pay particular attention to scheduling items at times when it is most convenient for the public to participate.

7. Over-control of this process by mayors is not in the public interest.

We concur. We do not believe this is the case in Monterey and have never heard this expressed as a concern here.

RECOMMENDATIONS

1. The public should be allowed to register topics and have them included on council agendas for discussion in the Public Comment period. The presentation of these topics should still be limited to reasonable time limits set by the cities.

This is an interesting idea, but we do not quite understand the purpose that it would serve. The Brown Act expressly requires that we reserve a time during our meetings for public comment on

items *not* on the agenda. We offer these Public Comment periods in *both* the afternoon and evening sessions of our City Council meetings, and do not close this portion of our Agenda until all who wish to address the City Council have had the opportunity to do so. The Public Comments section of the Agenda is consciously kept near the beginning of each City Council session. In addition, members of the public are given an opportunity to speak on any agenda item while it is being considered by the City Council.

2. Discussion topics should be recorded in council minutes so as to provide a written and time-stamped record of such discussion.

We concur with this recommendation. It has been part of our normal practice for many years

3. Within a reasonable time period, the topic should be assigned, if follow-up or resolution is required, to a city council person as a contact point to represent the citizen's interest and work with city staff to attain an appropriate resolution.

While, from time to time, each of our City Council Members becomes involved in case management activities, we do not believe that this is consistent with our principal role to serve as the policy-making and legislative representatives of our electorate. In the Council-Manager form of government, the City Council employs a City Manager to serve as the City's chief executive officer. The City Manager and his staff are responsible for the day-to-day operation of the City, which includes constituent casework. We have the highest confidence in our staff and their capability to fulfill these responsibilities with distinction.

4. A written public record of unresolved items, the status of the discussion topic, and responsible city council person should be provided.

We concur that this is a worthwhile goal, but the compilation and maintenance of a centralized case management log is an extraordinarily labor intense effort. Frankly, in this era of growing demands for service, and resources that are becoming all-the-more scarce, we would prefer to focus our limited capacity elsewhere. We are, however, pursuing the acquisition and deployment of an automated customer resource management system that would be able to generate such a log *and* be a productive management tool for our staff. We hope to have such a system in place within the next few years.

5. The procedures and forms to be used by the public to place items on city agendas should be made available at council meetings.

We concur with this recommendation. The procedures to address the City Council and participate in the policy-making process are published on every City Council Agenda. No forms are required.

We hope that this information satisfactorily addresses the Grand Jury's findings and recommendations. We concur that "open government" is an important obligation for every level of government, be it local, state, or federal, and are extremely proud of our track record of making our processes, records, staff, and decision makers open and accessible to those we serve. If we can answer any questions or furnish additional information, please let us know.

Respectfully,



Dan Albert
Mayor

c: City Council



CITY OF PACIFIC GROVE

300 FOREST AVENUE
PACIFIC GROVE, CALIFORNIA 93950
TELEPHONE (831) 648-3100
FAX (831) 657-9361

RECEIVED

MAR 22 2006

MONTEREY COUNTY
GRAND JURY

March 15, 2006

2005 Grand Jury
County of Monterey
P.O. Box 414
Salinas, CA 93902

Dear Grand Jury Members:

The City of Pacific Grove is in receipt of the 2005 Grand Jury Report. In a section of that report, entitled "Open Government", the Grand Jury reviewed the "open and participative" procedures for all city governments within Monterey County. The Report concluded that the published procedures for each city "appear to be adequate but may be circumvented or arbitrarily executed in certain instances resulting in lack of open debate, delayed or inadequate follow-up and no resolution."

The following is submitted by the City of Pacific Grove in response to the above-referenced section of the 2005 Grand Jury Report:

GRAND JURY FINDINGS: The Grand Jury has noted 7 Findings with respect to this study. The City is required to respond to the Findings to indicate agreement or disagreement.

Finding 1: Interviews disclosed that a pattern of obstacles exist that make it difficult to schedule, discuss, document for the record, and gain appropriate resolution of topics or issues presented by the public.

Response 1: The City does not agree with this finding. Any member of the public may request an item be placed on a future agenda (see Municipal Code Section 2.04.050, copy attached). City Council Members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager for response at a later time. Any member of the City Council may also request the item be placed on a future agenda.

Finding 2: All cities have a three-minute speaking limit at council meetings for individuals to bring issues to the attention of city councils on items not on the agenda. In certain cases, this allotted time might not be adequate for the topic by the public.

Response 2: The City agrees with this finding as it pertains to the City of Pacific Grove.

Finding 3: It is unclear what happens to a public comment topic if follow-up is necessary.

Response 3: The City does not agree with this finding. Municipal Code Section 2.04.050 clearly states that any Council Member may request that a public comment item be placed on a future agenda.

Finding 4: It is also unclear who determines if follow-up is justified, or if the topic might be placed on the agenda for future city council consideration.

Response 4: The City does not agree with this finding. Municipal Code Section 2.04.050 clearly states that any Council Member may request that a public comment item be placed on a future agenda.

Finding 5: Cities do not record three-minute public comment topics in the recording secretary's minutes. Other than a videotaped record (if taping occurs), there generally is no written public record of the topic or any commitment to follow-up by city administrators.

Response 5: The City does not agree with this finding. Our written minutes include each person who spoke during public comment and a brief description of the topic.

Finding 6: All cities have a published procedure and a form for the public to place items on city council agendas. It is understood that, in the interests of time and efficiency, city councils cannot immediately schedule every topic for discussion. The setting of agendas is critical in determining what and when issues are discussed.

Response 6: The City agrees with this Finding.

Finding 7: Over-control of this process by mayors is not in the public interest.

Response 7: The City generally agrees with this Finding.

GRAND JURY RECOMMENDATIONS: The Grand Jury has made 5 Recommendations with respect to its study. The City is required to respond to the Recommendations to indicate whether the Recommendation has been implemented, will be implemented with an estimated timeframe, requires further analysis, or will not be implemented.

Recommendation 1: The public should be allowed to register topics and have them included on council agendas for discussion in the Public Comment period. The presentation of these topics should still be limited to reasonable times limits set by the cities.

Response 1: The Recommendation will not be implemented because it is unwarranted. The City of Pacific Grove's current process, which allows any member of the public to present an item during the Oral Communications section of the agenda, allows reasonable access to raise issues. If any member of the Council determines that the matter warrants further consideration, the Municipal Code provides the procedure for agendaizing an item. In an effort to balance open access to the government, with the efficient management of the Council's, staff's and public's time, the City has found an appropriate balance.

Recommendation 2: Discussion topics should be recorded in council minutes so as to provide a written and time-stamped record of such discussion.

Response 2: The Recommendation is implemented.

Recommendation 3: Within a reasonable time period, the topic should be assigned, if follow-up or resolution is required, to a city council person as a contact point to represent the citizen's interest and work with city staff to attain an appropriate resolution.

Response 3: The Recommendation is already implemented. Council Members self select to either set the matter for a future agenda, or direct staff to resolve the issue, when warranted.

Recommendation 4: A written public record of unresolved items, the status of the discussion topic, and responsible city council person should be provided.

Response 4: The Recommendation requires further analysis, which will be concluded within six months. The City of Pacific Grove will be considering the adoption of goals on April 5, 2006. Two of those proposed goals: *Provide responsible, competent*

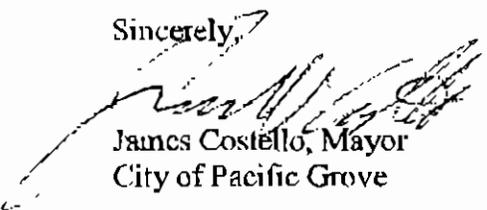
management of the city's business and resources, and Restore the public trust, could result in the creation of a database to monitor the efforts in achieving the goals and objectives developed by the Council.

Recommendation 5: The procedures and forms to be used by the public to place items on city agendas should be made available at council meetings.

Response 5: This Recommendation is implemented.

Thank you for the opportunity to respond to this report.

Sincerely,



James Costello, Mayor
City of Pacific Grove

cc: The Honorable Stephen A. Sillman
2005 Presiding Judge of the Superior Court
County of Monterey
240 Church Street, North Wing, Room 318
Salinas, CA 93901

PACIFIC GROVE MUNICIPAL CODE

2.04.050 Agenda and consideration of unlisted matters.

(a) **Order of Agenda.** The city manager shall prepare, circulate and post in conformity with the provisions of the Ralph M. Brown Act and council policy, not less than seventy-two hours before any regular council meeting, an agenda, which shall list and describe the items to be considered at the meeting.

(b) **Emergency Matters.** Items not listed on the agenda, but determined by a majority of the council to be necessary as a result of an emergency situation as defined at Section 54956.5 of the California Government Code, may be handled as regular agenda items.

(c) **Request.** Any councilmember may place items on the agenda by requesting the city manager to do so by 12:00 noon on Wednesday of the week preceding a regular council meeting, and three days in advance of any special meeting, except that special meetings called during any meeting of the council shall have those items on the agenda for which request has been made in open council meeting without further request. The city manager may also place items on the agenda which he or she deems of interest to the council.

(d) **Comments from the Audience.** The purpose of the city council agenda item allowing comments from the audience is to provide the public an opportunity to address the council on matters within the subject matter jurisdiction of the city. Comments will be received on items either on or not on the agenda. (Comments on non-consent agenda items will be heard when the matter is addressed by council.) Whenever possible, letters should be submitted to the council in advance of the meeting. The following rules and regulations govern the comments from the audience item on the agenda:

(1) The subject matter must be a matter of concern or interest to the city and/or within the purview of the council's authority to determine policy. It shall be the responsibility of the chair to stop the speaker if there is a deviation from such subject matter.

(2) Persons wishing to address the council must come to the podium and will be asked to state their name, address and subject matter of their communication. (Refusal to provide any or all of this information is not grounds to deny speakers' privileges.)

(3) Comments to the council under this section shall be limited to three minutes.

(4) Council or staff may briefly respond (but shall not engage in discussion or dialogue) to statements or questions, may ask questions for clarification, and may refer matters raised by statements for further consideration at a later date.

(5) These rules regarding comments from the audience may be suspended at any time by an affirmative vote of no fewer than four councilmembers.

(Ord. 01-08 § 1, 2001; Ord. 1953 N.S. § 2, 1994; Ord. 1832 N.S. § 2, 1992; Ord. 1812 N.S. § 2, 1991; Ord. 1806 N.S. § 2, 1991; Ord. 1774 N.S. § 2, 1991; Ord. 1556 N.S. § 1, 1986; Ord. 1493 N.S., 1985; Ord. 1338 N.S. § 1, 1983; Ord. 1101 N.S. § 1, 1979; Ord. 1047 N.S. § 1, 1978; Ord. 920 N.S. § 1, 1977; Ord. 847 N.S. § 1, 1975; Ord. 541 N.S., 1966).



City of Salinas

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MAR 24 2006

MONTEREY COUNTY
GRAND JURY

March 21, 2006

Honorable Stephen A. Sillman, Presiding Judge
Monterey County Superior Court
Monterey County Civil Grand Jury
P. O. Box 414
Salinas, CA 93902

RE: Response to 2005 Grand Jury Final Report regarding "Open Government"

Dear Judge Sillman:

On March 21, 2006, the Salinas City Council approved the following responses to the findings and recommendations in the 2005 Grand Jury Final Report regarding "Open Government." The responses follow the findings and recommendations found on pages nineteen and twenty of the Final Report.

Findings:

1. "Interviews disclosed that a pattern of obstacles exist that make it difficult to schedule, discuss, document for the record, and gain appropriate resolution of topics or issues presented by the public."

Response: The City Council disagrees with this finding as it pertains to the City of Salinas.

The Grand Jury Final Report indicates that the Grand Jury interviewed Carmel's complainants and residents. It is unclear that this finding is applicable to Salinas or other Monterey County cities.

The City Council has no reason to question any Monterey County city's compliance with the spirit of the Ralph M. Brown Act open meeting law (Government Code §54950-54963) and is committed to scrupulously following it itself. The Salinas City Council is highly responsive to issues brought forward by Salinas' residents and other members of the public. Every regular meeting agenda provides an opportunity for the public to directly address the City Council on any item of interest to the public (§54954.3(a)). Salinas Municipal Code §2-1, Article 1 (attached) provides for public comment on items that are not on the agenda at the beginning of the City Council's agendas (§2-1, Rule 3, (b)). Additionally, the public is invited to comment on scheduled items as they are considered.

Resolution No. 15096 (attached) outlines the City's policy for scheduling of agenda items. The City Council, individual Councilmembers, or the City Manager may schedule items. (Resolution No. 15096, Paragraph 2.D.) The City Council refers issues raised under public comments to City staff for response as appropriate. Government Code §54954.2(a)(2) allows public comments to be directed to staff to either report back or to place a matter of business on a future agenda.

Any direction to staff is reflected in the City Council's detailed meeting minutes. City staff responds to both the City Council and the parties raising the issue by written correspondence, telephone, or in person, as applicable. City Council requests for follow-up are separately tracked. If action is appropriate, issues may be resolved either by administrative action or City Council action.

Additionally, Councilmembers' contact information is readily available on the City's website or from the Salinas City Clerks' Office. The current Mayor and all of the Councilmembers are employed in full-time positions, in addition to holding elected office. Yet individual Councilmembers dedicate considerable time communicating with constituents by telephone, mail, and at individual and community meetings. As reflected in the Council meeting minutes, Councilmembers frequently bring forward constituents' concerns on their behalf. Staff reports on the status of the City's response to these concerns to both the City Council and involved parties, as appropriate.

Not all concerns may be addressed to the satisfaction of individual(s) raising concerns. Some issues may fall outside of the City's jurisdiction. Additionally, the City's General Fund budget has been reduced by twenty-five percent over the last two years. The City may not have the fiscal or staff resources to address all issues that are raised, or it may take longer to respond. Ultimately, the City Council, as elected by the voters, is responsible for establishing goals and direction for the community and determining whether an issue may be accommodated in the City's priorities.

2. "All cities have a three-minute speaking limit at council meetings for individuals to bring issues to the attention of city councils on items not on the agenda. In certain cases, this allotted time might not be adequate for the topic by the public."

RESPONSE: The City Council agrees that three minutes may not always be adequate time to fully express an issue under public comment.

The Brown Act and City policy vest the Mayor with the responsibility to preserve order at meetings and to set appropriate limits for public testimony. Historically, a three-minute limit on comments has been observed as a guide. However, the speaker is often allowed additional time to conclude. As presiding officer, the Mayor may ask the speaker to remain concise and on point or impose an appropriate time limit. With narrow exceptions,

Government Code §54954.2(a)(1) prohibits the City Council from discussing items that are not on the agenda other than to briefly respond, ask questions, or refer the item to staff for response or scheduling for a future agenda.

3. "It is unclear what happens to a public comment topic if follow-up is necessary."

RESPONSE: The City disagrees, as there is a procedure for items noted during public comment.

As outlined in the response to Finding 1, the Mayor will refer speakers to staff as appropriate. Any such referral is noted in the minutes. Frequently, speakers will be referred to and speak with staff who are present at the time of the meeting. Staff advises both the involved parties and the City Council of the status of the response to the issue.

4. "It is also unclear who determines if follow-up is justified, or if the topic might be placed on the agenda for future city council consideration."

RESPONSE: The City disagrees as the City's procedures for follow-up are clearly established.

As provided for by Resolution 15096, the City Manager follows up on Council's direction as appears indicated, including scheduling items for Council's action. Alternatively, the City Council or individual Councilmembers may direct that an item be scheduled on an agenda.

5. "Cities generally do not record three-minute public comment topics in the recording secretary's minutes. Other than a videotaped record (if recording occurs), there generally is no written public record of the topic or any commitment to follow-up by city administrators."

RESPONSE: The City Council disagrees as it pertains to Salinas.

The practice in the City of Salinas is to note the City Council's direction to staff in minutes of meetings. The minutes reflect brief summaries of comments, as the primary purpose of meeting minutes is to record Councils' findings and actions. The minutes include public comments that are public commentary but that may not present issues for subsequent action or resolution. The meetings are also televised in their entirety on Channel 26 on the Saturday following the meeting.

The Brown Act gives individuals the right to make their own recording of proceedings, provided that they do not disrupt the meeting (Government Code §54953.5(a)).

6. "All cities have a published procedure and a form for the public to place items on city council agendas. It is understood that, in the interests of time and efficiency, city councils cannot immediately schedule every topic for discussion. The setting of agendas is critical in determining what and when issues are discussed."

RESPONSE: The City agrees that not every item can be scheduled for discussion immediately.

Salinas does not require the public to submit a form to be included on the agenda. As outlined in the response to Finding 1, the Council or the City Manager may direct that the public's request be included on a future agenda.

7. "Over-control of this process by mayors is not in the public interest."

RESPONSE: The City Council agrees that any excessive control by a Mayor does not serve the public's interest.

Salinas' policy allows the entire Council, individual Councilmembers, and the City Manager to include items on agendas for the City Council's consideration.

Recommendations

1. "The public should be allowed to register topics and have them included on council agendas for discussion in the Public Comment period. The presentation of these topics should still be limited to reasonable time limits set by the cities."

RESPONSE: This recommendation has already been implemented to the extent that Government Code §54954.3(a) allows the public to address the legislative body on any item of interest to the public. Items appropriate for Council action are placed on a future agenda unless they meet the Brown Act requirements for immediate action (Government Code §54954.2(b)). Requiring the public to register topics that they wish to raise may conflict with the intent and provisions of the Brown Act.

2. "Discussion topics should be recorded in council minutes so as to provide a written and time stamped record of such discussion."

RESPONSE: This recommendation has already been implemented, as this is an existing City practice.

3. "Within a reasonable time period, the topic should be assigned, if follow-up or resolution is required, to a city council person as a contact point to represent the citizen's interest and work with city staff to attain an appropriate resolution."

RESPONSE: As outlined in the response to Finding 1, this recommendation has already been implemented to the effect that Councilmembers currently communicate constituents' concerns to City staff when appropriate and as demands on their time will allow. Salinas has a Council-Manager form of government, in which the City Council establishes policy, which is implemented by the full-time City Manager. It is the staff's responsibility to follow up with constituents and the City Council as appropriate.

4. "A written public record of unresolved items, the status of the discussion topic, and responsible city council person should be provided."

RESPONSE: This policy has already been implemented to the degree that any communication as outlined in Finding 1 is a public record.

5. "The procedures and forms to be used by the public to place items on city agendas should be made available at council meetings."

RESPONSE: This recommendation has been implemented.

The current agenda language inviting public comments has been amended to clarify that the public may request the City Council to schedule an item for consideration at a future meeting.

On behalf of the City Council and community of the City of Salinas, thank you for the opportunity to review and comment on the findings and recommendations of the 2005 Grand Jury concerning procedures used by the City of Salinas with respect to open government.

Sincerely,



Anna M. Caballero
Mayor

AMC/vv

cc: City Manager Dave Mora
City Attorney Vanessa W. Vallarta

Sec. 2-1.

- 2-43. Meetings; conduct of business.
- 2-44. Repealed.
- Article VIII-A. Youth Advisory Commission.**
- 2-45. Created.
- 2-46. Purpose and duties.
- 2-47. Composition; appointment; chair.
- 2-48. Terms; vacancies; removal.
- 2-49. Meetings; conduct of business.
- Article IX. Standard Specifications and Design Standards for Public Works.**
- 2-50. Definitions.
- 2-51. Purpose of article.
- 2-52. Compliance required.
- 2-53. Adoption by resolution; where filed.
- 2-54. Approval of alternate specifications or design standards—Authorized.
- 2-55. Same—Findings required.
- 2-56. Same—Appeal from disapproval.
- Article X. Code Enforcement Officers.**
- 2-57. Authorization of code enforcement officers; limitations.

For provisions pertaining to powers over the airports, see §§ 4-1 to 4-4 of this Code. For provisions pertaining to the poundmaster, see § 7-13. For requirements that city manager enforce provisions pertaining to keeping livestock, see § 7-23. For procedure for granting permits for keeping livestock, see §§ 7-24 to 7-30. For provisions pertaining to emergency organization and functions, see Ch. 17A. As to finance, see Ch. 12. For provisions pertaining to the fire chief, see §§ 13-1 to 13-4. As to creation of the bureau of fire prevention, see § 13-10. For provisions pertaining to the health department, see § 18-5. For designation of county health officer as city health officer, see § 18-6. For provisions pertaining to the city traffic engineer, see § 20-14. For provisions that parks be under jurisdiction of recreation and park department, see § 28-1. For creation of office of director of recreation and parks, see § 28-2. For creation of parkway paving committee, see § 30-34.

Article I. In General.

Sec. 2-1. Council rules.*

The following rules are adopted and approved and shall constitute the rules of the council governing the conduct and performance of the duties of the council:

Rule 1. Meetings.

(a) All meetings of the council shall be open and public, and all persons shall be permitted to attend any meeting of the council except as allowed by state law.

(b) All regular meetings of the council shall be held at the council chambers at the city hall or at such other places as the council may from time to time direct. The council shall hold regular meetings on Tuesdays of each month at the hour of 4:00 p.m., or at said hour as established by notice.

(c) The council may adjourn any regular, adjourned or special meeting to a time and place specified in the order of adjournment. Whenever a time or a place of meeting is not specified in an order of adjournment, the meeting shall be held in the council chambers in the city hall at 4:00 p.m. on the day specified in the order of adjournment. All matters may be considered and passed upon at such adjourned meetings as could have been considered and passed upon at the meetings from which such adjournments were taken, and shall be deemed to be a continuation of the meeting from which the adjournment was taken.

(d) The mayor, or in his or her absence the mayor pro tempore, shall take the chair at the hour appointed for the meeting of the council and shall immediately call the council to order. In the absence of both the mayor and the mayor pro tempore, the city clerk or his or her designee, shall call the council to order, whereupon a chairperson shall be elected from among the members of the council.

Rule 2. Presiding officer.

(a) The mayor, or other presiding officer, shall preserve order and decorum; may object

to points of order in preference to other members;

(b) The mayor, or other presiding officer, shall have general direction of the council chamber. He or she shall have a right to name any member to perform the duties of the chair. Such substitutions shall not extend beyond an adjournment. The mayor, or other presiding officer, shall have the power to assign seats to the members of the council.

(c) The mayor may appoint a councilmember to serve as an appointee on any committee.

Rule 3. Order of business; adjournment.

(a) No item shall be placed on the council agenda until all information necessary for council consideration thereof is filed with the city manager before Friday noon next preceding such council meeting.

(b) The order of business of the council at all regular meetings shall be as follows:

Call to order by the mayor.

Pledge of allegiance.

Roll call of council members present.

Proclamations; commendations received; special presentations.

Public comment on matters not on the agenda for that meeting.

Public disclosure of items decided in closed session.

Consent items, including approval of minutes of previous meeting. Any member of the council or the public may pull a consent item and request that it be discussed or acted upon with a separate vote. The minutes of any council meeting may be approved without reading. The official council minutes of a meeting shall consist of the minutes approved by the council, and any corrections or changes will be included in the minutes to show those changes.

Public hearings/consideration matters.

Council reports.

Closed session items.

Adjournment. In the event it is the wish of the council to adjourn to a certain hour or until another day, the presiding officer should specify

"that when this council adjourns, that it adjourn to at"

(c) The council may from time to time, by resolution, adopt such other rules as are not inconsistent with the charter or the rules contained herein; provided, however, that no such rules shall unreasonably limit citizen's participation at council meetings.

(d) A motion to adjourn shall always be in order and shall be decided without debate.

Rule 4. Voting.

(a) If the ordinance is intended to be adopted on the night of its introduction, it may be offered by a councilmember in substantially the following language: "I move the adoption of this ordinance (describing it by title) with the unanimous consent of all members of the council." If such ordinance is seconded, and upon roll call, all members of the council vote in favor of its adoption, no further action is necessary. In the event any one or more councilmembers fails to vote in the affirmative, the ordinance falls of adoption, and may not be adopted within five days thereafter.

(b) Ordinances which are not to be adopted at the same meeting may be introduced by a councilmember. No motion is required to be made for its introduction, and it is not necessary to be read in open meeting. Each councilmember should read the same before the adoption. At the following meeting which is not less than five days later than the date of meeting in which the ordinance was introduced, any councilmember may move its adoption and upon its being seconded, it may be adopted on the affirmative vote of at least a majority of the members of the council.

(c) A roll call vote shall be taken for all matters voted on by the council and so indicated on the record of the proceedings. The roll call shall be conducted by calling the names of the councilmembers in alphabetical order, except that the name of the presiding officer shall be called last.

Sec. 2-1.

(d) No member of the council shall be allowed to explain his or her vote or discuss the question while the roll is being called.

(e) Any member, at his or her request, shall have the right to have the reasons for his or her dissent from, or protest against, any action of the council entered on the minutes; and any member may file with the city clerk a written explanation of his or her vote and ask that such explanation be included in the minutes.

(f) No member shall be allowed to change his or her vote after all the votes have been tallied, except after a motion has passed to reconsider a previous vote, as provided herein.

(g) A motion to reconsider must be passed at the same meeting in which the original vote was taken. The motion to reconsider can be made only by a councilmember who votes with the prevailing side on the original vote but can be seconded by any councilmember. If the motion to reconsider the original vote passes by a majority, the council shall direct the staff to place the item on a future agenda.

Rule 5. Rules of procedure. Robert's Rules of Order shall be followed as interpreted by the presiding officer.

Rule 6. Hearings and debates. Every person, other than a member of the council or a staff member making a presentation on behalf of the city, desiring to address the council on any subject shall stand, and when recognized and given permission to proceed by the mayor, shall first state his or her name and address to be included in the minutes of the meeting. The mayor may limit comments from each member of the public. The city clerk shall monitor a timing device and shall announce when the speaker's time is completed.

Rule 7. Manager and city attorney. The city manager and the city attorney shall attend all regular sessions of the council, and may at any time be permitted to interpose suggestions on any matter under consideration, and shall be recognized by the presiding officer for such purpose.

Rule 8. Political activities. No member of the city council shall use city funds, services, supplies or equipment for the purpose of urging the passage or defeat of any federal, state, county or local measure including, but not limited to, the candidacy of any person for election to a federal, state, county or local office. Nothing herein shall preclude the use of city funds, services, supplies or equipment for the purpose of urging the passage or defeat of any federal, state, county or local measure when authorized by a majority vote of the city council. (Ord. No. 999 (NCS), § 1; Ord. No. 1825 (NCS), §§ 1, 2; Ord. No. 1916 (NCS), § 1; Ord. No. 2293 (NCS), § 1.)

* For Charter provisions as to the council, see Char. §§ 5 to 10

Sec. 2-2. Official bonds.*

The following officers shall execute bonds in the sums following:

The city clerk shall execute a bond in the sum of five thousand dollars.

The city treasurer shall execute a bond in the sum of one hundred thousand dollars. (Ord. No. 1 (NCS), § 1; Ord. No. 148 (NCS), § 1.)

* For state law as to bonds, see Gov. C., §§ 26518, 26519. For charter provision pertaining to bonds, see Char. § 68.

Sec. 2-3. Bond premiums to be paid by city.

The premium of such bonds enumerated in

the preceding section shall be paid by the city. (Ord. No. 1 (NCS), § 3.)

Sec. 2-3.5. Council compensation.

Members of the council shall receive as compensation for their services a monthly salary of six hundred dollars each and the mayor shall receive a monthly salary of eight hundred dollars.

Compensation for the council and for the mayor may be increased beyond the amount provided for in this section by an ordinance or by an amendment to this section, provided the total amount of compensation, and the percent of any increase, shall not exceed the compensation and increase as provided for in Government Code Section 36516. (Ord. No. 1938 (NCS), § 1; Ord. No. 1988 (NCS), § 1; Ord. No. 2134 (NCS), § 1.)

Article II. City Manager.*

* For charter provisions as to officers and boards, see Char., § 39.

Sec. 2-4. Interference with administrative matters by council prohibited.*

Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager; provided, however, that in the event of the disability or absence of the city manager, the mayor shall have the authority to issue orders or designate such authority. (Ord. No. 590 (NCS), § 1.)

* For state law as to city manager form of government, see Gov. C., §§ 24250 to 24250.

Sec. 2-5. Restrictions on appointment.

No person elected or appointed to membership on the city council shall, subsequent to such election or appointment, be eligible for

appointment as city manager until one year has elapsed following the expiration of the term for which he was elected or appointed. (Ord. No. 590 (NCS), § 1.)

Sec. 2-6. Powers and duties.*

The powers and duties of the city manager are as follows:

(a) To see that the provisions of the Charter and all laws and ordinances of the city are enforced;

(b) To exercise supervision and control over all departments of the city;

(c) To exercise supervision and control over the Salinas Public Library, subject to the provisions of the Charter;

(d) To approve with the advice of the city attorney the bonds of contractors and bidders when such bonds are required;

(e) To advise the council on the financial needs of the city;

(f) To attend all meetings of the council, except when excused from attendance by the mayor or council and except when his removal is under discussion;

(g) To report to the council at its meetings on matters pertaining to the welfare of the city;

(h) To employ, discipline or remove all heads of departments, with the exception of the city attorney, and to transfer employees from one department to another; provided, that the city manager shall file with the council at its next regular meeting a statement of the grounds of the removal and give to the person removed from office an opportunity to be heard in his own defense at a public hearing;

(i) To recommend ordinances;

(j) To purchase, without advertising and without contract in writing, supplies and labor not exceeding five hundred dollars;

(k) Deleted by Ord. No. 1688 (NCS), § 2;

(l) Deleted by Ord. No. 1688 (NCS), § 2;

(m) To approve in part or in whole all demands on the city treasurer;

(n) Deleted by Ord. No. 1688 (NCS), § 2;

RESOLUTION NO. 15096 (N.C.S.)

SALINAS CITY PROCEDURES FOR
MEETINGS OF LEGISLATIVE BODIES

WHEREAS, the City Council adopted Resolution No. 12359 (N.C.S.) on February 18, 1986, appointing the City Clerk to keep a minute book of all closed sessions of the City Council; and

WHEREAS, the Salinas City Council adopted Resolution No. 14655 (N.C.S.) on November 17, 1992, "Amending Salinas City Procedures regarding Closed Meetings under the Ralph M. Brown Act,"; and

WHEREAS, amendments to the 1993 Ralph M. Brown Act went into effect on April 1, 1994, which amendments include the procedures stated in Resolution No. 14655; and

WHEREAS, the City Council desires to update the procedures for meetings of its legislative bodies.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SALINAS that Resolution No. 12359 and Resolution No. 14655 are hereby rescinded and the following procedures are established:

1. GENERAL

Meetings of all Legislative Bodies of the City of Salinas are subject to the Brown Act and any amendments thereto (Government Code Sections 54950 et seq) and shall be conducted in accordance with the procedures as stated in this Resolution.

2. AGENDA REQUIREMENTS

- A. **Advance posting requirement** - Agendas shall be posted 72 hours in advance of regular meetings and 24 hours in advance of special meetings.
- B. **Responsible staff member** - Agendas of meetings of the full City Council shall be prepared and posted by the City Clerk's Office. Agendas of commissions, committees, boards, or other bodies of the City, including standing committees of the City Council, shall be prepared and posted by the City staff liaison to the legislative body. Agendas of boards, commissions, committees, or other multimember bodies that govern a private corporation or entity, subject to the Brown Act, shall be prepared and posted by the executive directors of the legislative bodies, and a copy of the agenda shall be provided to the City Clerk.
- C. **Agenda location** - Agendas of City Council, commissions, committees, boards, or other bodies of local agencies shall be posted in the City Rotunda and City Clerk's Office bulletin

boards, Agendas of boards, commissions, committees, or other multimembers bodies that govern a private corporation or entity subject to the Brown Act shall be posted at the location established by such Legislative Body.

- D. **Scheduling of agenda items** - City Council agenda items shall be scheduled by the City Manager, individual Councilmembers, or action of the City Council. Scheduling of agenda items for other legislative bodies shall be as established by such legislative body.

- E. **Opportunity for public to address Legislative Body**

Every Legislative Body shall provide an opportunity for members of the public to directly address the Legislative Body on any item of interest to the public, before or during consideration of any item that is within its subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Government Code Section 54954.2.

The Mayor may limit the total amount of time allocated for public testimony on particular issues within its subject matter jurisdiction, and the time allocated for each individual speaker, and may direct the City Clerk to act as timekeeper.

Other Legislative Bodies may adopt reasonable regulations limiting the total amount of time allocated for public testimony on particular issues within its subject matter jurisdiction, and the time allocated for each individual speaker.

- 3. **MEETING ACCESSIBILITY**

- A. No Legislative Body shall conduct any meeting in any facility that prohibits the admittance of any person, or persons, on the basis of race, religious creed, color, national origin, ancestry, or sex, or which is inaccessible to disabled persons, or where members of the public may not be present without making a payment or purchase.
- B. Meeting locations shall be accessible to disabled persons, in accordance with Federal, State, and local law. City agenda notices shall state that disabled persons may contact the City Clerk if they require reasonable accommodations in order to attend and/or participate in meetings.

- 4. **CONDITIONS TO ATTENDANCE**

A member of the public shall not be required, as a condition to attendance at a meeting of a Legislative Body, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance. If an attendance list, register, questionnaire, or other similar document is posted or circulated, it shall stated clearly that the signing, registering, or completion of the document is voluntary, and

that all persons may attend the meeting regardless of whether they complete the document.

5. AGENDA MATERIALS

- A. Notwithstanding any other provisions of law, agendas of public meetings and any other writing, when distributed to all, or a majority of all of the members of a Legislative Body, any person in connection with a matter subject to discussion or consideration at a public meeting of the Legislative Body, are public records under the California Public Records Act and shall be made available pursuant to Sections 6250 of Division 7 of Title 1 of the Public Records Act without delay.
- B. Writings which are public records and which are distributed during a public meeting shall be made available for public inspection at the meeting if prepared by the City, private entity, or a member of the Legislative Body, or after the meeting if prepared by some other person.

6. MEETING RECORD

A. Meeting Minutes

Open City Council Meetings - The City Clerk, or his/her designee, shall prepare and keep minutes of each open meeting of the full Council.

City Council Closed Meetings - The City Clerk, or other officer or employee, shall prepare and keep minutes of the action taken in each closed meeting of the City Council. Such minutes shall be kept confidential, and shall be available only to members of the City Council or, if a violation is alleged to have occurred at a closed session, to a court of general jurisdiction, upon court order.

Other Legislative Bodies - Other Legislative Bodies, including standing committees of the City Council, shall determine whether minutes of meetings shall be prepared. Meeting minutes of such bodies shall be maintained by the staff liaison.

B. Recordings

Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the Legislative Body shall be subject to inspection pursuant to the California Public Records Act, but, notwithstanding Section 34090, shall be erased or destroyed 120 days after the tape or recording. Any inspection of a video or tape recording shall be provided without charge on a tape recorder made available by the City Clerk. Copies of videos or tape recordings may be purchased at a reasonable cost as established by the City.

4. CLOSED SESSIONS - CHARGES OR COMPLAINTS AGAINST AN EMPLOYEE

- A. Disclosure of Action - Prior to holding any closed session, the head of the Legislative Body shall disclose in an open meeting,

the item or items to be discussed. After any closed session, the Legislative Body shall reconvene into open session prior to adjournment and shall make any disclosures required by Government Code Section 54957.1. The City Council shall reconvene into open session in the City Council Rotunda to make the disclosures required by Government Code Section 54957.1.

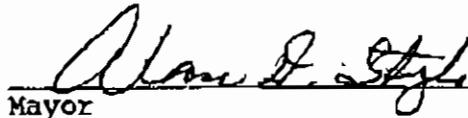
- B. **Charges or Complaints Against An Employee** - As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. The City's Personnel Officer shall provide the appropriate notice on behalf of the City's Legislative Bodies.

PASSED AND ADOPTED this 5th day of April, 1994, by the following vote:

AYES: Councilmembers Fernando Armenta, Anna Caballero, Jim Collins, Gloria De La Rosa, Steve Ish, Roberto Ocampo and Mayor Alan Styles

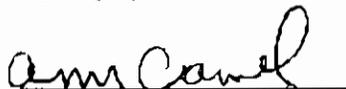
NOES: None

ABSENT: None



Mayor

ATTEST:



City Clerk



RECEIVED

MAR 27 2006

MONTEREY COUNTY
GRAND JURY

March 16, 2006

The Honorable Stephen A. Sullivan
Presiding Judge
Superior Court, County of Monterey
PO Box 414
Salinas, Ca. 93902

Dear Judge Sullivan,

The City Council of Sand City reviewed the "Open Government" section of the 2005 Grand Jury Final Report. As directed, the City Council considered and approved the following response to the "Open Government" Section at their March 21, 2006 meeting:

- The City of Carmel-by-the-Sea was kind enough to share their response with our City. After reviewing the Carmel response, the Sand City Council agreed to endorse that response and to accept those comments as part of Sand City's response – in particular to the 7 Findings and the 5 Recommendations specified in this section of the Grand Jury Report.
- In addition to endorsing the Carmel response, the Sand City Council has reviewed a recent pamphlet prepared by the Institute for Local Government (ILG) entitled "Getting the Most Out of Public Hearings: Ideas to Improve Public Involvement". This pamphlet outlines a number of specific ways that Public Agencies can improve public participation in local governmental affairs. Sand City recommends this 12 page report as an excellent resource/reference document on "Citizen Involvement" that could be useful to any public agency. (A copy is enclosed for your information).

City Hall
1 Sylvan Park,
Sand City, CA
93955

Administration
(831) 394-3054

Planning
(831) 394-6700

FAX
(831) 394-2472

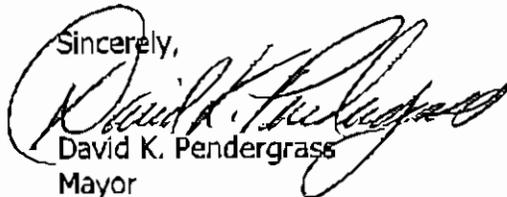
Police
(831) 394-1451

FAX
(831) 394-1038

Incorporated
May 31, 1960

Thank you for considering Sand City's response. If the Grand Jury has further questions or comments, please contact the Sand City Hall.

Sincerely,



David K. Pendergrass
Mayor

Enc: ILG Pamphlet



Getting The Most Out Of Public Hearings: Ideas To Improve Public Involvement

- How can local officials ensure the fullest participation and opportunity for expression at public hearings?
- How can other public forums supplement the public hearing process?
- How can local officials effectively inform participants and the broader community about the issues at hand?
- How can public hearings provide more useful feedback that takes into account hard choices and trade-offs?
- How can local officials encourage clear, civil, and reasoned presentations and informed exchanges of views at the hearing?

How can decision-makers ensure and demonstrate that public ideas and recommendations are taken seriously?

This pamphlet explores these questions and offers practical ideas to maximize the effectiveness of public hearings. It is not a sequential "how-to" list of steps for planning and holding public hearings. It is an inventory of ideas for improving public involvement, each of which may be useful for some public hearings and inappropriate for others.

On that point, it's important to distinguish among the different types of public hearings. Hearings for legislative decisions – such as general plan adoptions – are quite flexible. Thus, most if not all of the suggestions here can be incorporated into appropriate legislative hearings to maximize public participation. *See the Law and Public Hearings sidebar on page 6.*

Quasi-judicial hearings, however, when the agency is applying general policies to specific

facts or a permit application, can be more constrained. As the name suggests, in quasi-judicial hearings, the public agency decision-makers are assuming a more judge-like role. Also, rules relating to fair process and fact-finding apply. Local agency staff should consult with their agency's attorney to determine the extent to which the ideas contained in this inventory may be incorporated into such procedures.

Additionally, some ideas in this inventory will have more relevance to the role of elected or appointed officials in public hearings, while others will apply more directly to the work of staff. In some cases, presiding and participating officials, as well as staff, may find that they need additional skills to put selected changes into practice.

*Note: This pamphlet is available at the Institute for Local Government
website: www.ca-ilg.org/publichearings.*

distributed 3/6/06

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in order to enhance the quality of life for all Californians.*

ACKNOWLEDGEMENTS

Getting More Out of Public Hearings was authored by Temy Amsler with JoAnne Speers of the Institute for Local Government (www.ca-ilg.org). Sources for this publication include: William H. Baker, Lon Addams, and Brian Davis, *Critical Factors for Enhancing Municipal Public Hearings*, *Public Administration Review* 65(4) (2005); the Municipal Research and Services Center of Washington (MRSC) (www.mrsc.org); the North Carolina Department of Environment and Natural Resources; the Center for Collaborative Policy (www.csus.edu/cep); and John Riggins, *The Riggins Rules*, *Planning Commissioners Journal*, Issue 13 (Winter 1994). The author acknowledges the numerous influential works of John Gastil, Archeon Fung, and David Booher and Judy Innis, and also recognizes the contributions of Greg Bourne of the Center for Collaborative Policy and Phillip Boyle of Leading and Governing Associates. The Institute is especially grateful for the comments of the following reviewers: Tom Bailard, Bill Barnes, Brian Libow, Bev Perry, Kenneth Rozell, Janet Ruggiero, JoAnne Speers, Bill Higgins and Charles Williams.

PUBLIC HEARINGS: AN IMPORTANT STEP IN PUBLIC DECISION MAKING

A public hearing is a common vehicle through which public agencies receive public input on a proposed action. Public hearings typically provide the public an opportunity to offer their thoughts on a policy matter or a specific proposal that is before the agency for decision. The role of governing body members is to hear and consider those views when making a decision.

A typical hearing will involve:

- A report to a council, commission or board given by a staff member
- Questions of the staff from the decision-making body
- The opening of the public hearing
- A statement by the project/policy proponent or applicant
- Statements in support and opposition
- Rebuttals and closing statements
- An immediate or later decision by the decision-making body.

For more nuts and bolts information about public hearings, please see the *Planning Commissioner's Handbook*, available at www.ca-ilg.org/planners and jointly published by the League of California Cities and the Institute for Local Government.

QUALITIES OF MORE EFFECTIVE PUBLIC HEARINGS

How can local agencies take best advantage of the opportunities for the public engagement that such hearings represent? Public officials and the community will benefit if public hearings are:

- INCLUSIVE**
- INFORMED**
- INFLUENTIAL**

It is helpful to address each of these areas when planning for public hearings. Of course one size is unlikely to fit

Some ideas here are appropriate for most or all public hearings, while others are tools with more limited application.

1. FOR INCLUSIVE PUBLIC HEARINGS

Public hearings are often attended by the "vocal few" alone. Many voices in the community are not heard from at these hearings – even when they have interests at stake. Striving for more inclusive participation at public hearings will lead to better decisions and more support for the decisions or policies that are ultimately adopted. It will also add to the democratic skills and practices of residents.

The following ideas can help to achieve attendance goals and ensure the fullest expression by hearing participants:

A. Maximizing Attendance

- Prepare Informative Materials.** Prepare and distribute informational materials ahead of time, in translation as appropriate, that explain the purposes and objectives of the hearing, the subjects to be covered, details of time and location, and guidelines for participation.
- Provide Early Notice.** Ensure that notices are provided to public interest groups, businesses, neighborhood groups and other stakeholders who are likely to be concerned about the hearing topic.
- Use Local and Ethnic Media.** Publicize hearings through multiple media outlets, including those media reaching ethnic, younger and any typically less involved populations and communities. Have notices appear in the languages used by the residents in your communities.
- Offer Online Notices.** Include notice on the agency website and other places easily available to online users.
- Be Disabilities Conscious.** Be prepared for the needs of those with disabilities.
- Choose Responsive Times and Places.** Schedule meetings at times and places that are convenient for all those who you wish and expect will attend. Also, consider multiple meetings at different sites, perhaps co-sponsored by community groups, as a way to increase attendance.

"Legally required methods of public participation in government decision making... often pit citizens against each other, as they feel compelled to speak of the issues in polarizing terms to get their points across. This pattern makes it even more difficult for decision makers to sort through what they hear, much less to make a choice using public input."¹

B. Encouraging Fuller Expression

- Use Community Intermediaries.** For communities with a particular interest in the hearing topic but with little experience in such participation, provide instruction through respected intermediaries on how to prepare and participate in the public hearing process.
- Consider a New Room Set-up.** If consistent with any security concerns, consider changing the physical setting of the meeting room to reduce feelings of distance between public officials and participants, thereby underscoring your welcoming of public comments.
- Have Documents Available Early.** Provide access to audio-visual materials and/or staff reports that are to be part of agency presentations.
- Make Translation Services Available.** Provide translation services as needed.
- Create a Participant-Friendly Site.** Provide food, paper, pencils, and name tags to underscore the agency's respect for participants and interest in their views. A table at the hearing room can also provide meeting guidelines, background information and other relevant materials.
- Ensure All Voices Are Heard.** Toward the end of a hearing, ask if others are present who have not yet spoken but would like to do so.

2. FOR INFORMED PUBLIC HEARINGS

While honest disagreements will always occur, many residents who attend public hearings may be poorly informed about the proposed policy or action. Additionally, the nature of the communication at these hearings can shed more heat than light. Public hearings will be more effective and useful when participants are better informed on the issues at hand, and when reasoned and knowledgeable presentations and exchanges take place at the hearing. As with more inclusive and influential public hearings, more informed hearings will lead to better decisions and more support for those decisions or policies that are ultimately adopted.

A. Informing Participants

- Use Multiple Placements.** Use local papers and other media, as well as government online resources, to provide information on the topic in advance of the hearing. A recent study suggests that more successful hearings were accompanied by a greater number of educational methods.²
- Have Documents On-site.** When possible, have on hand relevant explanatory materials developed by respected and impartial sources.
- Use Visual Aids.** As practical, make use of visual aids such as PowerPoint, graphs, maps, models, etc., as well as presentations, to aid understanding.
- Prepare Presentations.** Ensure that the staff person giving the initial presentation is well prepared to launch the meeting,³ with complex background information organized and presented clearly.
- Provide an Information Sharing Stage.** In appropriate instances, consider opening the hearing with people seated five or six to a table, with each table discussing information about one particular theme or aspect of the hearing topic. Ground rules would be required. This approach encourages joint information sharing at the table – often among people with different points of view – as well as relationship building. This would be followed by “typical” public testimony, with perhaps better-informed participants and more readily “heard” presentations. *(Note that advanced information about the process, and effective facilitation, will be required.)*

Consider Preliminary Meetings. Prior to a formal public hearing, there are many forms of dialogue and deliberation that may be used to inform the public about the hearing issues. Agencies should approach public participation from a strategic standpoint rather than considering any one method.⁴ For information on other approaches, please see the ILG website at www.ca-ilg.org/cgi.

Check the Checklist. Also see The Public Hearing Checklist at www.ca-ilg.org/publicparticipation.

B. Improving Communications at the Hearing

Guide Participation. Initial staff presentation(s) should clearly describe the agenda, frame the issue(s) and clarify the process and procedures for the meeting, including how citizen input will be managed and captured.⁵ Have materials at the hearing that suggest how participants should structure their comments, guiding them to express not only positions but reasons and perhaps the values behind their reasons.

Balance Time Limits With Respect. To ensure good communication, the presiding official must manage the speaking time of hearing participants. However, through prepared materials, introductory remarks and actions, demonstrate that public officials wish to listen and learn as well as enforce time limits. Showing fairness and respect will enhance communication at all levels and advance hearing goals.

Consider a Facilitator. Consider the use of a facilitator, who is not a member of the public body convening the hearing, to help design group process and manage the meeting. This is especially important if an interactive hearing component is designed to encourage dialogue among attendees, or between officials and the public. (As with some other ideas presented here, this would more likely be appropriate at quasi-legislative public hearings where some flexibility of format is possible.)

Local agencies have a number of options when it comes to engaging the public in the decision-making process. Exploring those options and their respective strengths and weaknesses is a major focus of the Institute for Local Government's Collaborative Governance Initiative (www.ca-ilg.org/cgi).



Add a Q & A Session. Consider holding question and answer sessions before or after the session (perhaps online in some cases) to answer questions raised by the public that are not addressed at the hearing.

Affirm What You've Heard. Thank participants after they finish their remarks, and perhaps summarize what has been heard from each speaker (this can be done verbally or on chart paper or a large screen). Officials can also ask clarifying or follow-up questions.

Try a Themed Conversation. While it is typical and wise to have common time limits for speakers, consider asking participants to stick with one theme or thread of the discussion at a time to enhance information sharing and reduce duplication of points made.

Uncover the Values. Encourage participants to identify and express the values that drive their feelings and opinions on an issue. There are few problems facing agencies that don't entail choices in values. Listen for those values in public testimony; ask about them; and help name them. This inclusion of "values talk" can help clarify speakers' intents and interests and improve communication and understanding in hearings."⁶ (Please see sidebars on Values and Public Hearings on pages 8 and 10.)

THE LAW AND PUBLIC HEARINGS

Two key values to consider during public hearings are fairness and respect.

Legislative versus Adjudicatory Decisions

The law sets certain minimum standards for fairness, according to whether the decision to be made at the hearing is legislative or adjudicatory. Legislative decisions generally involve fundamental policy questions of jurisdiction-wide concern; legislative decisions also can involve changes in existing law to govern future situations.

Adjudicatory decisions tend to apply existing legal criteria to specific situations;¹² they also tend to determine specific rights based upon specific facts determined from evidence evaluated at the hearing.

Findings and Judicial Review

Adjudicatory decisions are subjected to more exacting judicial review and should be accompanied by carefully drawn findings in support of the decision made.¹² To withstand such review, the agency's findings must bridge the analytic gap between the raw evidence and ultimate decision or order, to show courts the analytic route decision-makers traveled from the evidence to their decision.¹³ Note though that the law sometimes requires findings for legislative matters.¹⁴

Decision-maker Conduct, Information and/or Bias

*Disqualify yourself if you have any direct or indirect financial interest in the outcome of the hearing and assess ethical considerations when other issues may impact your actual or perceived fairness. (Please see "**Key Ethics Law Principles for Public Servants**" available through the Institute for Local Government at www.ca-ilg.org/trust.)*

When evaluating adjudicatory decisions, courts will also examine whether decision-makers were fair and unbiased.¹⁵ This includes whether decision-makers have taken sides in advance of the hearing.¹⁵

Courts also will look at such issues as how the hearing was conducted. For example, did the individual or company whose rights were the subject of the hearing have an opportunity to respond to adverse information?¹⁷ This is why many agency attorneys advise decision-makers to disclose any information that they may have received outside of the hearing. Another issue is whether decision-makers were attentive at the hearing.¹⁸

Notice

Another aspect of a fair hearing is notice. The law frequently specifies the public notice required for certain kinds of hearings. For example, most local agencies are subject to a general meeting notice requirement that agendas be posted at least three days (72 hours) before a meeting in a location that is freely accessible to the public.¹⁹

Notice for legislative actions typically involves publication of the notice in a newspaper (typically 10 days before the hearing). Adjudicatory decisions typically involve mailed notice to specified individuals or, under certain circumstances, a newspaper ad.²⁰

*In addition, members of the public can make a written request to receive mailed copies of agendas and supporting materials. The agency may charge a fee to recover the cost of providing this service.²¹ Of course, some agencies also make it a practice to post such materials on their websites. State law imposes a variety of notice requirements for certain kinds of hearings, as do general open government laws. For more information on open government requirements, please see **The ABCs of Open Government Laws** available from the Institute for Local Government at www.ca-ilg.org/trust.*



- **Provide Multiple Opportunities for Involvement.** For very contentious issues, it may be helpful to design a broader and more interactive public process that precedes the public hearing. Hearings that occur late in the decision-making process can create the impression that local officials do not want meaningful public input. Possible approaches for public engagement include community dialogues, consensus building sessions, charrettes and other collaborative planning processes, visioning workshops, and more. The best specific approach depends on the issue in contention, desired goal(s) of the process, community context, and available resources. For more information on options, please see the ILG website at www.ca-ilg.org/cgi.

GET THE SKILLS YOU NEED

Local officials and staff who plan, preside or participate in public hearings and that apply the ideas in this pamphlet may find it useful to acquire additional skills. You can find local training or other sources of information among groups and individuals who do facilitation, mediation or public involvement work. You may also search the League of California Cities bookstore (www.cacities.org/citybooks) or contact the Collaborative Governance Initiative at the Institute for Local Government.

3. FOR INFLUENTIAL PUBLIC HEARINGS

Public decisions often involve hard choices and trade-offs on issues and values that community members care deeply about. Public hearings that confront these choices and trade-offs will better inform final decision-making.

Public trust is eroded if hearings appear to be just "going through the motions." Particularly in quasi-judicial decision-making, sound decision-making and due process involve making reasoned decisions after having considered all the evidence and argument presented.⁸ An ideal result of any public hearing is that participants believe decision-makers have respectfully heard and carefully considered their perspectives, whatever the final decision.

This approach will lead to better decisions and more support for the decisions or policies that are ultimately adopted.

A. Confronting Hard Choices

- **Be Clear from the Beginning.** The presiding official should clearly explain the purpose of the hearing, and emphasize the key questions, choices and/or values that underlie the proposed action or policy.
- **Guide Public Input.** Guidance for participant testimony should encourage remarks that are specific in nature, tied closely to the topic, and address hard choices and trade-offs.
- **Ask Questions; Clarify.** Ensure that officials have the time to ask follow up and clarifying questions. This can be an effective way to encourage speakers to clarify comments, go beyond vague or general statements, surface reasons and values, and/or more clearly comment on real trade-offs. (This can be tricky and if handled poorly can sound like a challenge rather than a request for more information.)
- **Use the Facilitator Role.** A facilitator can also be used to listen to each speaker and ask follow-up questions that "drill down" to more specifics or the consideration of hard choices.

- ❑ **Demonstrate Value of Comments.** Use flip charts or other recording mechanisms to summarize points as they are made.
- ❑ **Use Values to Clarify Trade-offs.** In addition to improving communication generally (see page 5) a discussion of the respective and (at times) competing values associated with different public actions or policy directions can help clarify and validate the real trade-offs that may be at issue. (Please see sidebar on Values and Public Hearings.)
- ❑ **Consider a Two-Part Meeting.** Consider breaking the hearing up into two parts. In the first, take comments as usual. Then, following a break (perhaps with food and social interaction), present a visual and oral summary of points made so far (perhaps organized around implied or explicit values) and ask for clarifying or rebuttal points in specified areas. (Of course the hearing process will typically require that all comments be taken – consult your local agency attorney to look at how a two-part hearing might be done.)



The best public hearings are inclusive, informed, and influential.

VALUES AND PUBLIC HEARINGS

Public hearings can highlight divisions within the community about how the community's interests will be best served. For example, many conventional decision-making forums push the discussion of public issues to positional points of good/bad and yes/no. How can public officials counteract the contentious and divisive nature of the public hearing process and encourage participants to engage in a more-constructive analysis and discussion?

One way is to encourage participants to focus on the core values at stake in a decision. Examples of core values include fairness, community, economic prosperity, compassion, responsibility, and environmental stewardship. Most public policy dilemmas involve tensions between at least two values. People are more likely to find a "good" solution if they understand decisions are less about "good" and "bad" and more about how to do a good thing without jeopardizing another good thing.⁷

Whatever values come into play and no matter what they are called, recognizing them will help people understand their differences. It will also help them talk more clearly and constructively about what they want. Greater clarity, understanding, and respect regarding agreements and differences usually result.

B. Developing Public Trust in the Decision-Making Process

- **Explain Use of Public Input.** The presiding official's introductory remarks should describe how local officials will use the information and ideas offered at the hearing.
 - **Ensure Public Officials' Clarity.** Each public official present should have a common understanding of the purpose of the public hearing, the timing of decision-making, and how the decision will be communicated.
 - **Make the Record Available.** As appropriate, provide a word for word or summary record of the hearing and make it available to all participants. In some cases an audio or video recording of the hearing may be made available online. This can greatly expand the number of people informed about the issue, enhance government transparency, and help legitimize decisions.
 - **Offer Further Information.** If within capacity, ask participants if they want to receive follow-up information on the hearing topic, either by mail or e-mail, as it becomes available, including opportunities for further input.
- **Demonstrate Appreciation.** Send letters of appreciation to all participants with information on any official decisions made subsequent to testimony, stating the importance of their hearing participation.
 - **Explain Decisions Clearly.** Strive for decisions that are clear, consistent with applicable legal standards, and broadly disseminated. Where appropriate, help explain a decision in light of the value or values tension that the decision represents as a way to further illuminate the reasons for its adoption.
 - **Hold a Follow-Up Meeting.** Consider open follow-up meetings to discuss hearing findings and conclusions. Post-hearing feedback can help build critical citizen trust and foster ongoing public participation.⁵
 - **Have a Communications Strategy.** Prepare and use a good communication strategy to transmit the process and results of the hearing to the community as a whole. This can include, city-authored and independently written newspaper articles, direct mail, e-communication, etc.



Photo Credit: Joe Goldman/AmancaSpeaks

Laws requiring public hearings are often minimum standards that leave room for reworking hearing processes and considering additional methods of input.

EMOTIONS AND CONFLICTS IN PUBLIC HEARINGS

People who attend public hearings can be passionate, nervous, angry, frustrated, scared, confused, or uncertain about the issues, the hearing itself, or the possible outcomes. Emotions can run high. Conflicts among participants or between participants and officials may result. So what to do?

- 1. Be Real.** Peoples' feelings are real and conflicts do happen. To pretend or act otherwise will often make people feel angrier and less "heard."
- 2. Guide Communications.** Clear hearing rules, as well as "good practice" guidelines for how attendees can effectively make their views or concerns known can help reduce stress and promote good communication and civility
- 3. Be Attentive.** While not taking sides, the presiding and other officials can acknowledge the verbal and emotional expression of speakers. One aspect of this is good body language that shows respect, diligence and attentiveness. A public official's clarifying question can also reduce a participant's fear that no one is really hearing the concerns being expressed.
- 4. Ensure Clarity.** As described elsewhere, recording in some way what hearing attendees are saying, as well as clarifying early how input will be used and how final decisions will be made, will contribute to less stress, confusion and anger. Transparency by public officials almost always helps.
- 5. Acknowledge What You Hear.** If done with skill, it is also possible to feed back (in brief summary) what you have heard a speaker say ("so you're saying you believe this would kill all the fish in the stream, is that right?") or acknowledge strong feeling ("this is something that you've cared a lot about for a long time isn't it?"). This can be done while staying in an appropriate role and without being seen as taking sides.

Practice helps of course, and equal treatment for all is important. Time is always a factor that may limit such interactions at a specific hearing

6. Identify Values And Interests.

Look for and ask about values and interests that underly speakers' expressed positions. People can more often understand each other's values and interests before they accept different positions. Here's an example:

- "I think children are vitally important to our community (value);
- "I want the health of our children protected" (interest);
- "I want a legislated limit on the amount of mercury in our water supply" (position).

There are usually more ways to satisfy interests than to bridge conflicting positions. This kind of conversation can reduce or more clearly focus conflicts and differences.

7. Dealing With Conflict.

Interpersonal conflicts that result from the issue in controversy cannot be addressed directly in the hearing. However, these are dynamics that linger, affect the quality of individual and community life, and may reignite in the future. Local officials may wish to encourage that unresolved interpersonal conflicts be addressed through a local mediation program or similar resource, especially when they are tied to an agency's decision.

Conflicts between the public and officials at public hearings are a more complex matter. However, clear process, good listening, and acknowledging the input received will help reduce the likelihood of bad feelings and ongoing conflict. Where appropriate, more and earlier public dialogue (before the public hearing) will also help. Decisions that reference interests (see above) and values (see "Values and Public Hearings", p. 8) will also tend to enhance understanding and reduce unnecessary conflict.

FINAL THOUGHTS

Laws requiring public hearings are usually (but certainly not always) minimum standards that leave room for reworking hearing processes and considering additional methods of input. We hope the ideas presented here will help make your public hearings more effective forums for public involvement in decision-making.

For important public issues, consider more flexible and deliberative public processes – held well in advance of public hearings – that will contribute to decisions with a greater level of community input and support.

For additional ideas on public involvement strategies, please visit the Collaborative Governance Initiative pages of the Institute for Local Government website at www.ca-ilg.org/cgi or call us at 916.658.8263.

The *Collaborative Governance Initiative*, a program of the Institute for Local Government, supports informed and effective civic engagement in public decision-making and helps local officials in California successfully navigate among the array of community engagement options that bring the public's voice to the table on important issues.

We offer:

- *Publications and guides on the effective uses of civic engagement, diversity in public involvement strategies, citizen and police academies, public hearings, and more*
- *Telephone and on-site assistance to local officials wishing to consult on civic engagement opportunities and challenges*
- *Fee-based services including formal assessment and recommendations relating to overall civic engagement capacity, as well as consultation with local officials and others on the initial preparation and design of specific public engagement projects*
- *Strategies to encourage fuller and more inclusive participation by traditionally less-involved populations*
- *Educational workshops at League and other local agency association meetings*

Endnotes

¹ Judith Innes and David Bouliar, *Reframing Public Participation: Strategies for the 21st Century*, *Planning Theory & Practice*, Vol. 5(4): 419-436 (2004).

² William H. Baker, Len Addams & Brian Davis, *Critical Factors for Enhancing Municipal Public Hearings*, *Public Administration Review* 65(4): 493 (2005)

³ *Id.*, at 495.

⁴ Lawrence C. Walters, James Aydelotte & Jessica Miller, *Putting More Public in Policy Analysis*, *Public Administration Review* 60(4): 349-59 (2000)

⁵ Baker, Addams & Davis, *supra* at 495.

⁶ Betsy Bean, *Public Problems, Private Values: A New Framework for Helping Boards Solve Controversial, Divisive Problems*, Small Cities Publishing, Georgia Municipal Association (2005) (available at www.gmanet.com).

⁷ *Id.*

⁸ See *Lady Street Hospitality Service, Inc. v. City of Los Angeles*, 125 Cal. App. 4th 526 (2d Dist. 2004) (republished 2005 Daily Journal D.A.R. 84)

⁹ Baker, Addams & Davis, *supra* at 498.

¹⁰ See *Briggs v. City of Rolling Hills Estates*, 40 Cal. App. 4th 637, 649 (2d Dist. 1995).

¹¹ *ABS Institute v. City of Lancaster*, 24 Cal. App. 4th 285, 295 (2d Dist. 1994).

¹² *California Aviation Council v. City of Ceres*, 9 Cal. App. 4th 1384, 1393 (5th Dist. 1992).

¹³ *Topanga Assn. for a Scenic Community v. County of Los Angeles*, 11 Cal. 3d 506, 515 (1974).

¹⁴ *ABS Institute v. City of Lancaster*, 24 Cal. App. 4th 285 (2d Dist. 1994).

¹⁵ *Breakroom Billiards v. City of Torrance*, 81 Cal. App. 4th 1205, 1234-41 (2d Dist. 2000).

¹⁶ *Nasha L.L.C. v. City of Los Angeles*, 125 Cal. App. 4th 470 (2d Dist. 2004).

¹⁷ *Desert Surf Club v. Board of Supervisors*, 141 Cal. App. 2d 446, 455 (1956).

¹⁸ *Lady Street Hospitality Service, Inc. v. City of Los Angeles*, 125 Cal. App. 4th 526 (2d Dist. 2004) (republished 2005 Daily Journal D.A.R. 84).

¹⁹ Cal. Gov't Code § 54954.7(a).

²⁰ *Hayssen v. Board of Zoning Adjustments*, 171 Cal. App. 3d 400 (1985).

²¹ Cal. Gov't Code § 54954 (1).

Walters, Aydelotte & Miller, *supra* at 491.



INSTITUTE FOR LOCAL GOVERNMENT

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February 27, 2006

 Grand Jury
 County of Monterey
 P.O. Box 414
 Salinas, CA 93902

RECEIVED

MAR 16 2006

 MONTEREY COUNTY
 GRAND JURY

Dear Grand Jury Members:

The City of Seaside is in receipt of the 2005 Grand Jury Report. In a section of that report, entitled "Open Government," the Grand Jury reviewed the procedures for "open and participative" procedures for all city governments within Monterey County. The Report concluded that the published procedures for each city "appear to be adequate but may be circumvented or arbitrarily executed in certain instances resulting in lack of open debate, delayed or inadequate follow-up and no resolution."

The following is submitted by the City of Seaside in response to the above-referenced section of the 2005 Grand Jury Report.

RALPH M. BROWN ACT / OPEN MEETING ACT

City councils, commissions and boards, as well as the elected and appointed bodies of County of Monterey, all special districts within the County, and the State of California are required to follow the Ralph M. Brown Act, also known as the Open Meeting Act. The California State Legislature adopted the Brown Act in the early 1950s, and it remains the hallmark of open government today.

The Legislative intent, as set forth in California Government Code Section 54950, reads as follows:

"In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created."

In applying the regulations of the Brown Act, the Act defines a "local agency" as a county, city, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

The Act further defines a "legislative body" as:

"the governing body of a local agency or any other local body created by state or federal statute; a commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body; a board, commission, committee, or other multimember body that governs a private corporation or entity either created by the elected legislative body or that receives funds from a local agency and whose governing body membership includes a member of the legislative body appointed to that body by the legislative body of the local agency; the lessee of any hospital... where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority."

California Government Code Sections 54950-54962 proceeds to set forth guidelines for all meetings of local agency legislative bodies, which includes the notice and posting of agendas. Section 54954.2 reads in pertinent part as follows:

"(a) At least 72 hours before a regular meeting, the Legislative body...shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.

No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights... In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda."

All meetings of cities, including the County of Monterey, as well as all other special districts located within the County, apply the Ralph M. Brown Act to insure that the public has an opportunity to participate and to observe the public business being conducted.

With respect to a city council, a city council person is elected by the public; however, that individual only has one vote on matters coming before the city. The chief executive officer of the city is known as the City Manager. City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager for response at a later time as the item most often is of a personal nature to the individual as opposed to concern to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2 as set forth above.

California Government Code Sections 54954.3(a) and (b) read in pertinent part as follows:

“(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda....”

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.”

As a general rule each public agency has a three-minute rule which can be extended at the request of a member of the city council and approval by the city council.

City Council meetings are open to the public, *and* their tapes or film are retained for a minimum period of 30 days consistent with California Government Code Section 54953(b) which reads in pertinent part as follows:

“(b) Any tape or film record of an open and public meeting made for whatever purpose by or at the direction of the local agency shall be subject to inspection pursuant to the California Public Records Act..., but...may be erased or destroyed 30 days after the taping or recording...”

Subsection (a) of the same code section insures that any person attending the meeting has the right to record the proceedings. Subsection (a) reads in pertinent part as follows:

“(a) Any person attending an open and public meeting of a legislative body of a local agency shall have the right to record the proceedings with an audio or video tape recorder or a still or motion picture camera...”

The legislative bodies of each city or local agency are required to pay strict attention to the Ralph M. Brown Act. Individual concerns expressed at a city council meeting by members of the public are typically responded to by staff in a timely fashion as appropriate to the particulars of

the item. There is no guarantee, however, that the solution can or will necessarily meet with the individual's approval. Nonetheless, as noted by the Grand Jury, there are written procedures for both individuals and members of a city council or local agency to address items of concern on a city council or public agency agenda.

Mayors have only one vote on matters coming before the City Council, however, it is the duty and responsibility of the Mayor, generally in concert with the city attorney, city manager and the city clerk, to set the city or agency's agenda. In that regard, items requested for placement on an agenda by council members or members of the public should be considered when setting the agenda, but need not be immediately placed on an agenda and could be deferred.

The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

GRAND JURY FINDINGS

The Grand Jury has noted 7 Findings with respect to this study. The City is required to respond to the Findings to indicate agreement or disagreement.

Finding 1: Interviews disclosed that a pattern of obstacles exist that make it difficult to schedule, discuss, document for the record, and gain appropriate resolution of topics or issues presented by the public.

Response: The City cannot speak to the content of interviews since it did not participate in the interviews; however, the City does not agree with this finding. Any member of the public may request an item be placed on a future agenda. City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager for response at a later time. The item may or may not be of personal interest to the individual as opposed to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 2: All cities have a three-minute speaking limit at council meetings for individuals to bring issues to the attention of city councils on items not on the agenda. In certain cases, this allotted time might not be adequate for the topic by the public.

Response: The City agrees that there is a Public Comment period at Council meetings which is typically a 3-minute speaking period. This limit may be extended with a vote of the Council. In general, the time limit is sufficient to note the item and referral for follow-up/action, if any. As noted above, the opportunity always exists for a member of the public or council to request that an item be placed on a future agenda. Also as previously noted from California Government Code Section 54954.2, "... No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights... In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda..."

Finding 3: It is unclear what happens to a public comment topic if follow-up is necessary.

Response: The City cannot speak to the judgment of the statement; however, as previously noted, there is a procedure for items noted during Public Comments. California Government Code Section 54954.2 states, in part, "... a member of a legislative body, or the body itself, subject to the rules of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda..." As noted elsewhere in this letter, any member of the public may request an item be placed on a future agenda. City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager for response at a later time. The item may or may not be of personal interest to the individual as opposed to the general public. The city council or any member of the city council may also request the item be placed on a future agenda consistent with California Government Code Section 54954.2. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 4: It is also unclear what happens to a public comment topic if follow-up is necessary.

Response: The City cannot speak to the judgment of the statement; however, as noted throughout this letter, City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager for response at a later time. Any member of the public, or the city council or any member of the city council may request the item be placed on a future agenda consistent with California Government Code Section 54954.2. The item may or may not be of personal interest to the individual as opposed to the general public. It is possible that a matter may be resolved prior to placement of an item on an agenda; thus the item would not be placed on an agenda. The possibility also exists that the matter may be deferred to a later date to allow time to gather information or produce data, etc., or it may also be that a matter of importance to an individual is not of the same magnitude of importance to the general public and the business of the city on behalf of the public, and the matter may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Finding 5: *Cities do not record three-minute public comment topics in the recording secretary's minutes. Other than a videotaped record (if taping occurs), there generally is no written public record of the topic or any commitment to follow-up by city managers.*

Response: The City of Seaside generally agrees with the finding with respect to recording in the secretary's minutes in this city. Please note that although an item may be of importance to an individual, it may or may not be of importance to the public within the context of the purpose of government doing the public's business in public. At all times, however, an individual retains the right to address an item in public during the public comment period of all meetings. City council members, as a general rule, refer matters presented by the public during their respective agency's public or oral comment period to the City Manager or for response at a later time. Any member of the public, or the city council or any member of the city council may request the item be placed on a future agenda consistent with California Government Code Section 54954.2.

Finding 6: *All cities have a published procedure and a form for the public to place items on city council agendas. It is understood that, in the interests of time and efficiency, city councils cannot immediately schedule every topic for discussion. The setting of agendas is critical in determining what and when issues are discussed.*

Response: The City agrees with this Finding.

Finding 7: *Over-control of this process by mayors is not in the public interest.*

Response 7: The City generally agrees with this Finding; however, it is important to note that the purpose of public meetings is to do business of the city and the public, in public. As referenced throughout this letter, not all items raised may require or necessitate the same level of importance and urgency when put in the context of individual interest and general public interest. Mayors have only one vote on matters coming before the City Council, however, it is the duty and

responsibility of the Mayor, generally in concert with the city attorney, city manager or and the city clerk, to set the city or agency's agenda. In that regard, items requested for placement on an agenda by council members or members of the public should be considered when setting the agenda, but need not be immediately placed on an agenda and could be deferred. The purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

GRAND JURY RECOMMENDATIONS

The Grand Jury has made 5 Recommendations with respect to its study. The City is required to respond to the Recommendations to indicate whether the Recommendation has been implemented, has not been implemented, requires further analysis, or will not be implemented.

***Recommendation 1:** The public should be allowed to register topics and have them included on council agendas for discussion in the Public Comment period. The presentation of these topics should still be limited to reasonable times limits set by the cities.*

Response: The Recommendation is generally implemented. The public at all times retains the right to address any item of interest/concern during the Public Comment period of meetings of a legislative body. To the extent that the public wishes to address their item(s) during the Public Comment period, the topic(s) is/are included in the session of the legislative body. Separate advance listing of an item of interest on the agenda during Public Comment is not considered feasible and warranted. As previously noted in this letter, the purpose of doing the public's business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. The opportunity to express that interest/concern is provided during a public comment period. Also as previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Advance listing would be required prior to posting a meeting agenda, as required by law. Such advance listing could be considered to have a chilling affect on persons wishing to comment, and could become infeasible, overly cumbersome and time consuming for both the public and staff. California Government Code provides opportunity for any member of the public to present an item under Public Comment. Discussion of the item presented may or may not be needed or appropriate. The law is clear that items not listed on an agenda cannot be discussed or added without specific findings and procedure. Items may be received, referred for additional information or follow-up from staff, or can at any time be requested to be placed on a future agenda by the public or a council member.

Recommendation 2: Discussion topics should be recorded in council minutes so as to provide a written and time-stamped record of such discussion.

Response: The Recommendation is generally already implemented. Minutes of meetings by public agencies and districts are maintained. Minutes typically take the form of “action minutes” as compared to detailed discussion minutes. Action minutes assure recording of any action taken on an item that is noted on an agenda. Beginning May 2006, the topic presented during Public Comments will be noted in meeting minutes.

Recommendation 3: Within a reasonable time period, the topic should be assigned, if follow-up or resolution is required, to a city council person as a contact point to represent the citizen’s interest and work with city staff to attain an appropriate resolution.

Response: The Recommendation is generally already implemented. Please refer to information provided earlier in this response letter regarding the ability and roles of council and staff members as well as action typically taken in referral of matters noted by the public. Council members set policy. A council member is one member of a legislative body and has no authority except as authorized by the body as a whole. The City Manager is the person charged with implementation of policy and the administration of the city. Follow-up to items raised by the public or council is done by staff on behalf of the Council as a whole.

The purpose of doing the public’s business in public is to assure that decisions being made by an elected or appointed body are visible to the public. It is possible that any person may feel that his/her concern is important and should be addressed in a public meeting. That same person or any other person may be dissatisfied or disappointed in an action or feel his/her concerns have not been resolved on the matter of interest to that individual. This should not mean that the topic must be repeatedly brought to the council on an agenda nor repeatedly addressed in subsequent meetings. The opportunity to express that interest/concern is provided during a public comment period. As previously noted, the item may be referred to staff for follow-up, it may be specifically placed on an agenda, or it may be deferred. At all times, the individual retains the right to continue to address the item during the public comment period of all meetings.

Recommendation 4: A written public record of unresolved items, the status of the discussion topic, and responsible city council person should be provided.

Response: The Recommendation will not be implemented because it is not warranted. Please refer to information previously provided in this response letter regarding council members and staff members and actions typically taken in referral of matters noted by the public. Please also refer to Response to Recommendation 3 above.

Recommendation 5: The procedures and forms to be used by the public to place items on city agendas should be made available at council meetings.

Response 5: This Recommendation is generally implemented. Please refer to information noted in this letter regarding the process used with respect to items noted by the public. We are confused as to the purpose of the Recommendation given the Grand Jury’s Finding # 6 which

states: "All cities have a published procedure and a form for the public to place items on city council agendas..." Assuming that the recommendation seeks to assure that the form is actually in the room for a council meeting, the City will begin placing the form also noting procedure in the room at council meetings for members of the public.

On behalf of the City Council and community of the City of Seaside, thank you for the time taken by the 2005 Grand Jury members to review and comment on procedures used by jurisdictions in Monterey County, including the City of Seaside, with respect to open government.

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph Rubio". The signature is fluid and cursive, written over a light blue horizontal line.

Ralph Rubio
Mayor

cc: The Honorable Stephen A. Sillman
2005 Presiding Judge of the Superior Court
County of Monterey
240 Church Street, North Wing, Room 318
Salinas, CA 93901

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BOARD OF TRUSTEES

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**NORTHERN SALINAS VALLEY
MOSQUITO ABATEMENT DISTRICT**

342 Airport Boulevard

Salinas, California 93905-3301

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February 15, 2006

Honorable Stephen A. Sillman
Presiding Judge of the Superior Court
240 Church Street
Salinas, California 93902

RE: 2005 Civil Grand Jury Report

The Board of Trustees of the Northern Salinas Valley Mosquito Abatement District truly appreciates the interest shown in our agency by the 2005 Monterey County Civil Grand Jury. A disinterested third party should scrutinize all public agencies on a regular basis. This mechanism provides the public with better insight into how their tax dollars are being spent and also may provide agencies the opportunity to institute program adjustments to better meet their responsibilities.

FINDINGS

1. The Northern Salinas Valley Mosquito Abatement District (NSVMAD), an independent special district, covers the following 13 areas in the county: Salinas, Carmel area, Carmel-by-the-Sea, Chualar, Marina, Monterey, Pacific Grove, Pebble Beach, Seaside, Spreckels, Aromas, Castroville and Moss Landing at a cost of \$2.00 per parcel assessment. All other areas are under the jurisdiction of the Monterey County Environmental Health Department. PARTIALJY DISAGREE:

The Northern Salinas Valley Mosquito Abatement District covers 458 square miles of northern Monterey County. This includes the communities of Aromas, Castroville, Del Rey Oaks, Marina, Monterey, Moss landing, Pajaro, Royal Oaks, Sand City, Salinas, Seaside, Spreckels, and unincorporated areas in the county from Fremont Peak west to Monterey Bay and from Spence

Honorable Stephen A. Sillman
Presiding Judge of the Superior Court
February 15, 2006
Page 2

Road north to the Pajaro River. The communities of Carmel-by-the-Sea, the Carmel area, Chualar, Pacific Grove, and Pebble Beach are not within District boundaries. However, District staff does respond to service requests from residents outside District boundaries when time allows and resources are available.

2. *AGREE*

3. *AGREE*

4. *AGREE*

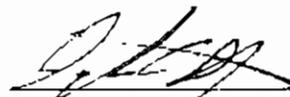
5. *AGREE*

6. *AGREE*

7. *AGREE*

8. *AGREE*

Kindest Regards,



Douglas Stafford, Chairman
Board of Trustees
Northern Salinas Valley Mosquito Abatement District



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

5 HARRIS COURT, BLDG. G
POST OFFICE BOX 85
MONTEREY, CA 93942-0085 • (831) 658-5600
FAX (831) 644-9560 • <http://www.mpwmd.dst.ca.us>

RECEIVED

MAR 16 2006

**MONTEREY COUNTY
GRAND JURY**

March 7, 2006

The Honorable Stephen A. Sillman
2005 Presiding Judge of the Superior Court
County of Monterey
240 Church Street
Salinas, California 93901

Dear Judge Sillman:

We respectfully present this response to the 2005 Grand Jury Report as it relates to Ordinance No. 98 – Bathroom Fixture Ordinance. The Monterey Peninsula Water Management District (District or MPWMD) respectfully disagrees with Finding 1 and offers the following comments and responses to Finding 1 and Recommendations 1 and 2.

Grand Jury Finding 1: Current MPWMD permit requirements restrict individual property owners in the use of their property, particularly for remodels and additions. When property owners wish to add water fixtures such as toilets and showers to their homes, they are restricted by Ordinance #98. Prior to the Ordinance, property owners were not permitted to add water fixtures without meeting onerous and complex requirements including deed restrictions.

MPWMD permit requirements do not restrict individual property owners' use of their property. Each jurisdiction manages a portion of the available water supply. This "allocation" of the available supply is available at the discretion of the jurisdiction. The jurisdiction, as the "gatekeeper" of the allocation, determines which projects receive water. The MPWMD deducts water from the jurisdiction's allocation at the time a water permit is issued.

Finding 1 states that prior to the adoption of Ordinance No. 98, property owners could not add water fixtures without meeting complex requirements. This statement is inaccurate. Ordinance No. 98 (amended by Ordinance No. 114, adopted May 14, 2004) provides a mechanism to allow the addition of water fixtures for a second bathroom in a single-family residence on a single-family residential site without debiting a jurisdiction's water allocation. The ordinance has no impact on applications for water fixtures when the jurisdiction has authorized water from its allocation. Prior to adoption of Ordinance No. 98, all water permit applications required either water from a jurisdiction's allocation or available on-site water credits to offset the new use. Prior to Ordinance No. 98, deed restrictions

were not routinely used. Deed restrictions are widely used today to provide notice of water permit requirements and to provide notice of the District's ability to access water records for the property.

Grand Jury Recommendation 1: Property owners should have the choice of reducing landscaping to accommodate additional water fixtures as long as they stay within their historical water usage. The only restrictions that should apply are building codes, zoning ordinances and other planning requirements related to rentals, not water fixture controls.

Grand Jury Recommendation 2: The MPWMD should establish a water allocation system for properties that are remodeled or added to based on historical water usage. This information is available from public records.

Recommendation 1 and 2 are impractical. To implement this recommendation, the citizens of the District would be subject to permanent water rationing. This would be problematic for a number of reasons, the least of which is the fact that historic water use is not a public record. It would be an enormous undertaking to monitor and enforce permanent rationing, and there would be numerous instances of properties having no relevant historic water use.

Grand Jury Recommendation 3: Penalties should be established to enforce a water allocation system to assure adherence to historical water usage for these properties.

Recommendation 3 would create an unfair system where fees could potentially impact only those people who added water fixtures or moved into a home that had at one time added water fixtures. The economic impact of these penalties would be greater in the median income levels and would have less impact in the higher income residents. Therefore, fees alone may not result in the maintenance of historic water use levels.

The District appreciates that the Grand Jury recognized the positive changes made by the District to assist with adding a second bathroom to a one-bathroom home. However, the findings and recommendations related to Ordinance No. 98 appear to be policy matters that the Grand Jury may not have the authority to address.

Thank you for the opportunity to respond.

Sincerely,



Michelle Knight

Chair, MPWMD Board of Directors

cc: County Administrative Officer
MPWMD Board of Directors

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Monterey County Office of Education

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Monterey County
Superintendent of Schools

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March 1, 2006

The Honorable Stephen A. Sillman,
2005 Presiding Judge of the Superior Court
County of Monterey
240 Church Street, North Wing, Room 318
Salinas, CA 93901

SUBJECT: Response to the 2005 Monterey County Grand Jury Report

Dear Judge Sillman and Members of the Grand Jury:

As required by Penal Code Section 933(b), the following is the response by the Monterey County Superintendent of Schools to the 2005 Monterey County Grand Jury Report. It addresses the named Findings and Recommendations that were made as part of the Sections titled "Monterey County Office of Education" (beginning on page 23 of the printed version); "Monterey County Head Start Program" (beginning on page 26 of the printed version); and "The Monterey County Office of Migrant Education, Region XVI" (beginning on page 28 of the printed version).

To preface my response, I would like to extend my sincere appreciation to the Members of the 2005 Grand Jury, and to Your Honor, for the dedication and commitment required by this diligent undertaking.

I value the opportunity to speak with the Grand Jury's Education Committee, and to answer questions and provide information.

Public education is a vast system, probably the single greatest undertaking of our society and certainly the public enterprise encountered by the greatest number of our citizens. The demands upon our schools are great. The constraints are also great. The forces driving the decision-making and legislation impacting education are often outside of the purview or control of education.

Should the Grand Jury or the Presiding Judge have other questions or points in need of clarification, I remain available to provide information and assistance.

Sincerely,

William D. Barr, Ed.D.
Monterey County
Superintendent of Schools

Monterey County Superintendent of Schools
Response To the Findings and Recommendations Under the Education Report
of the
Monterey County Grand Jury Report for 2005

RESPONSE TO FINDINGS

Section: MONTEREY COUNTY OFFICE OF EDUCATION

FINDINGS #1 (page 25). Section: MONTEREY COUNTY OFFICE OF EDUCATION

“MCOE is a large operation providing many needed and required State and Federal programs for the residents of Monterey County. If these required programs were to be provided by individual schools or school districts they would be considerably more expensive and not as efficient or cost effective. Although costly, the programs appear to efficiently run by qualified personnel.”

Response to Finding #1:

The Monterey County Superintendent of Schools **AGREES** with this Finding.

RESPONSE TO RECOMMENDATIONS

Section: MONTEREY COUNTY OFFICE OF EDUCATION

RECOMMENDATIONS.

Recommendations were not made for the Section: MONTEREY COUNTY OFFICE OF EDUCATION.

- Document continues on next page -

FINDINGS & RESPONSE TO FINDINGS

Section: MONTEREY COUNTY HEAD START PROGRAM

Finding #1 (page 26). Section: MONTEREY COUNTY HEAD START PROGRAM

“The Grand Jury found the Head Start Program in Monterey County to be very successful based on the number of participants that finish school versus similar students that do not participate in the program. The Grand Jury found that funding for the Head Start Program is considerably less expensive and more cost effective for society as compared to the more expensive funding for correctional facilities. Unfortunately, there is a long waiting list of children for services at Head Start. The service measured up to expectations. These included family support, health attention, food emergencies, instruction, and class control. The staffing ratio of four staff to twenty students worked efficiently.”

Response to Finding #1:

The Monterey County Superintendent of Schools AGREES with this Finding.

Finding #2 (page 27). Section: MONTEREY COUNTY HEAD START PROGRAM

“According to Kirp’s article, all of the intervention programs like Head Start and Migrant Education Program (MEP) significantly increase the rate of students staying in school, finishing high school, and then seeking a college degree. Collectively the data point to the success of these programs.”

Response to Finding #2:

The Monterey County Superintendent of Schools AGREES with this Finding as being factual as presented.

Document continues on next page –

RESPONSE TO RECOMMENDATIONS

Section: MONTEREY COUNTY HEAD START PROGRAM

RECOMMENDATION #1 (page 27).

Section: MONTEREY COUNTY HEAD START PROGRAM

“MCOE should expand the program by seeking added Federal funds and working with school districts to arrange for more space for the program.”

Response to Recommendation #1:

The Monterey County Superintendent of Schools AGREES with this Recommendation. There are existing limitations on available funding for staff, facilities and resource materials. The Monterey County Superintendent of Schools and staff work diligently to pursue funding sources and opportunities.

RECOMMENDATION #2 (page 27).

Section: MONTEREY COUNTY HEAD START PROGRAM

“The Head Start Program should be available to all students who want it.”

Response to Recommendation #2:

The Monterey County Superintendent of Schools AGREES with this Recommendation.

FINDINGS AND RESPONSE TO FINDINGS

**SECTION: "MONTEREY COUNTY OFFICE OF MIGRANT
EDUCATION, REGION XVI"**

Finding #1 (p. 29):

"A migrant worker is one who travels from one area to another in search of work. The MEP teaches its students, "how to play the game called school". The MEP would be a good program for all children. The better you play the game the better you do in school. The Grand Jury found that students, all students, would benefit from this program. The program seemed to justify itself by the higher graduation rate of students in the program compared to those who are not (80% versus 50%)."

Response to Finding #1:

The Monterey County Superintendent of Schools AGREES with this Finding.

Finding #2 (p. 29):

"The effect that the MEP has on students was evidenced at the College Residential Summer Program reception attended by the Grand Jury. The program provides full scholarships for students to attend several different summer college programs at some schools as far away as upstate New York and take several different college courses at the university level. Through this program students and parents gain the confidence that their student can attend and compete at the university level. The migrant students who previously were concerned about graduating high school now have the confidence and the education skills required to be successful as college students. During the recognition ceremony the students told about their experiences across the county and how much they enjoyed and learned from them. The students no longer talk about the possibility of graduating from high school but the reality of being successful at college."

Response to Finding #2:

The Monterey County Superintendent of Schools AGREES with this Finding.

- Document continues on next page -

*Response by the Monterey County Superintendent of Schools
To the Findings and Recommendations
of the Monterey County Grand Jury Report for 2005*

Finding #3 (p. 29):

"It is considerably less expensive to pay for education than to fund prisons. About \$7,000 a year per student is spent on education versus \$31,000 a year per prisoner in California."

Response to Finding #3:

The Monterey County Superintendent of Schools AGREES with this Finding.

Finding #4 (p. 29):

"Because of the high cost of living in Monterey County, attracting and retaining qualified educators is difficult, in effect making the county a "training ground" for teachers to learn and subsequently take their skills to a more economically feasible place to live."

Response to Finding #4:

The Monterey County Superintendent of Schools AGREES with this Finding.

Finding #5 (p. 29):

"Bilingual Education appears to be ubiquitous in Monterey County. From the Head Start Program to the Migrant Education Program to the classroom, all of the students observed by the Grand Jury spoke both their native language, usually Spanish, and English. Many students appeared to be proficient if not fluent in both languages. Students routinely translate for parents."

Response to Finding #5:

The Monterey County Superintendent of Schools AGREES with this Finding as being a factual observation by the Members of the Grand Jury.

- Document continues on next page -

Finding #6 (p. 29):

“All of the intervention programs like MEP significantly increase the rate of students staying in school, finishing high school, and then seeking a college degree. Collectively the data point to the success of these programs.”

Response to Finding #6:

The Monterey County Superintendent of Schools AGREES with this Finding.

**RECOMMENDATIONS AND RESPONSE TO RECOMMENDATIONS
SECTION: “MONTEREY COUNTY OFFICE OF MIGRANT
EDUCATION, REGION XVI”**

RECOMMENDATION #1 (page 27).

Section: MONTEREY COUNTY HEAD START PROGRAM

““The MEP should be available to all students who want it.”

Response to Recommendation #1:

The Monterey County Superintendent of Schools AGREES with this Recommendation.

Migrant education supports two kinds of programs designed to strengthen the school, community, and family experiences of children and their families. Migrant Education Regional XVI has developed some programs locally in collaboration with school districts. Other programs are administered statewide and are designed to meet specific needs of students, such as those related to the identification and recruitment of migrant families, parent involvement, and student leadership.

Regardless of program, migrant education funds must be supplemental to other state and federal categorical funding.

- Conclusion of Document -

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MAR 30 2006



**Monterey County
Office of Education**
901 Blanco Circle
Post Office Box 80851
Salinas, CA 93912-0851

MONTEREY COUNTY
GRAND JURY

**Monterey County
Superintendent of Schools**

Dr. William D. Barr

**Monterey County
Board of Education**

Harvey Kuffner, President
Richard Tuttle, Vice President
Barbara Cornett
Judy Pennycook
Ruth Andresen
Richard Morgantini
Warner L. Davis

March 1, 2006

The Honorable Stephen A. Sillman,
2005 Presiding Judge of the Superior Court
County of Monterey
240 Church Street, North Wing, Room 318
Salinas, CA 93901

SUBJECT: Response to the 2005 Monterey County Grand Jury Report

Dear Judge Sillman and Members of the Grand Jury:

As required by Penal Code Section 933(b), the following is the response by the Monterey County Board of Education and the Monterey County Superintendent of Schools to Findings 27-29 and Recommendation Number Two, that were made as part of the Section titled "California State Assembly Bill 490" (as noted on page 40 of the printed version) of the 2005 Monterey County Grand Jury Report.

This document was reviewed by the Monterey County Board of Education in a public session on March 1, 2006 where action was taken to adopt it as the formal response to the Grand Jury 2005 Report.

Should the Grand Jury or the Presiding Judge have other questions or points in need of clarification, I remain available to provide information and assistance.

Sincerely,

Harvey Kuffner, President
Monterey County
Board of Education

William D. Barr, Ed.D.
Monterey County
Superintendent of Schools and Secretary
to the Monterey County Board of Education

**Monterey County Board of Education
and the Monterey County Superintendent of Schools**

**Response To the Findings of the
Monterey County Grand Jury Report for 2005
Section titled "California State Assembly Bill 490"**

FINDINGS AND RESPONSE TO FINDINGS SECTION

Finding #27 (page 39):

California State Assembly Bill 490 [Statutes of 2003, Chapter 862], effective January 1, 2004, mandates that all children in foster care in group homes or foster family homes are entitled to the same access to education as other children. Placement agencies must exert every effort to keep children in their own school while they are residing in foster care or being transferred to different foster care residences. Changing schools is disruptive and could be devastating to a child. Research shows that academic records do not always follow the child. Every school district must designate a liaison to assist the foster child when a transfer becomes imperative. School records must be moved within two business days. The child's educational rights must be upheld.

Response to Finding #27:

The Monterey County Board of Education and the Monterey County Superintendent of Schools **AGREE WITH THIS FINDING** and acknowledge this Finding as being factual under law.

Finding #28 (page 39):

Preschool age children in foster care placement should be mandated to attend preschool.

Response to Finding #28:

The Monterey County Board of Education and the Monterey County Superintendent of Schools **DISAGREE WITH THIS FINDING.**

Under current law, neither the Monterey County Board of Education nor the Monterey County Superintendent of Schools has authority or resources to mandate preschool attendance. However, Proposition 82, a June 2006 ballot measure, may institute legislation to achieve that aim.

If passed by the voters, Proposition 82 "Preschool for All Act " will offer preschool programs for all California 4-year-olds whose parents choose to enroll them.

*Response by the Monterey County Board of Education
and the Monterey County Superintendent of Schools
To the Findings and Recommendations
of the Monterey County Grand Jury Report for 2005
Section titled "California State Assembly Bill 490"*

The Monterey County Board of Education and the Monterey County Superintendent of Schools believe that providing access to preschool for every California child is a critical step toward helping raise achievement levels for all children.

For additional information, the Grand Jury's attention is invited to the following sources outside of the Monterey County Office of Education:

- Proposition 82 "Preschool for All" ballot initiative official website www.preschoolcalifornia.org
- Karoly, L., & Bigelow, J. (2005). *The Economics of Investing in Universal Preschool Education in California*. Santa Monica, CA: RAND Corporation. Available at <http://www.rand.org/publications/MG/MG349/index.html>
- Lopez, Elias S., and de Cos, Patricia L., "Preschool and Childcare Enrollment in California," California Research Bureau, January 2004. Available at www.librarv.ca.gov/erb/04/03/04-003.pdf (PDF; 38 pp.)

Finding #29 (page 39):

There are gaps in the education of Monterey County children in foster home situations. Many children's records never follow them, and a great deal of time is spent facilitating enrollment.

Response to Finding #29:

The Monterey County Board of Education and the Monterey County Superintendent of Schools **DISAGREE PARTIALLY WITH THIS FINDING.**

The Monterey County Board of Education and the Monterey County Superintendent of Schools acknowledge Finding #29. The Grand Jury's attention is invited to the **RECOMMENDATIONS AND RESPONSE TO RECOMMENDATIONS SECTION** that follows.

RECOMMENDATIONS AND RESPONSE TO RECOMMENDATIONS SECTION

Recommendation #2 (p. 39):

Educational institutions and group homes should receive training on implementing AB 490. The Monterey County Superintendent of Schools should hold a conference on the implementation of AB 490 with participants to include group home administrators, Department of Social Services social workers, Probation Department, CASA, parents and guardians.

The Monterey County Board of Education and the Monterey County Superintendent of Schools AGREE WITH THIS RECOMMENDATION.

The Monterey County Office of Education (Office of the Monterey County Superintendent of Schools), through a State grant to the Monterey County Special Education Local Plan Area (SELPA), coordinates all educational services for children in foster care through its Foster Youth Services (FYS) program.

Training Issues

In the spring of 2004, each local educational agency (LEA) appointed a Foster Care Liaison as required by AB 490. Each LEA Foster Care Liaison is responsible for coordinating AB 490 activities and services within their LEA. Subsequently,

FYS began providing ongoing training and technical support for all LEA Foster Care Liaison staff. FYS continues to collaborate with LEA Foster Care Liaison staff to ensure the ongoing provision of AB 490 training services to LEA registrars, counselors, administrators, and other appropriate LEA staff.

In fall 2004, FYS also initiated a Provider Network for group home administrators to begin providing continuing education and training to their staff. Participants received 12 hours of training on the implementation of AB 490, rights of foster youth in placement, and protocols for use by institutions attempting to collaborate in their efforts to effectively serve foster youth.

In that year, FYS also developed a Cluster Group case model now used in every Monterey County LEA. All stakeholders involved in working with a particular foster child, including the group home provider, meet with the individual LEA Foster Care Liaison and the person holding educational rights. These meetings focus on ensuring the effective implementation of AB 490 educational rights for the child. This case model has been highly effective in ensuring that all appropriate parties are aware of AB 490 and how to apply its requirements.

*Response by the Monterey County Board of Education
and the Monterey County Superintendent of Schools
To the Findings and Recommendations
of the Monterey County Grand Jury Report for 2005
Section titled "California State Assembly Bill 490"*

Beginning in the fall of 2006, quarterly training on AB 490 will be provided through regularly scheduled Monterey County Office of Education (SELPA) staff development workshops and trainings. This training will be offered to all LEA Foster Youth Liaisons, group home administrators and staff, County staff in the Departments of Probation and Social Services, CASA individuals, and those individuals holding educational rights for foster children. The opportunity to participate in these training sessions will also be open to all interested community members at no cost.

Conference Implementation

FYS has also been responsible for attempting to develop and coordinate a multidisciplinary conference on AB 490 on behalf of the Monterey County Office of Education. In early 2004, San Luis Obispo County developed a community model for the implementation of AB 490 that appeared to provide an excellent template for guiding other counties in their AB 490 efforts. Their starting point was a multidisciplinary conference that allowed all community stakeholders to learn more about agency constraints and to generate collaborative efforts to effectively serve foster children under AB 490.

Under the direction of the Foster Youth Advisory Group, a committee composed of representatives from the County Department of Social Services, County Probation Department, and group home administrators met to develop a collaborative work plan leading to such a conference in the early spring of 2006. The Stuart Foundation had just initiated a technical resource grant with the County Department of Social Services (DSS) that was very compatible with the project. DSS agreed to provide some funding and training resources for a conference. FYS also made a presentation to the Monterey County Children's Council asking for their support in creating an AB 490 Multidisciplinary Conference. The intent of the FYS Advisory Group was to initiate the preliminary steps toward building an interagency structure to address both the needs of AB 490 students and the respective institutions serving them.

As the FYS committee met in collaboration with representatives from the Stuart Foundation, it became increasingly clear that each entity had different goals in mind for the outcome of the conference, as well as very different timelines. At the present time, it seems unlikely that the original intent of the Foster Youth Services Advisory Group will be realized through this process.

FYS has the staffing support to provide coordination, but lacks funding to support the project independently. What is needed is a method of funding the project and continuing collaboration to assure that all stakeholders remain committed to the process.

- CONCLUSION OF RESPONSE -



OFFICE OF THE SHERIFF
MONTEREY COUNTY, CALIFORNIA

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MAR 10 2006

MONTEREY COUNTY
GRAND JURY

February 16, 2006

Honorable Stephen A. Sillman
2004 Presiding Judge of the Superior Court
County of Monterey
240 Church Street
Salinas, CA 93901

Judge Sillman:

This response complies with Penal Code Section 933.05 (a) and (b) to report on the 2005 Monterey County Civil Grand Jury's two findings applicable to the Office of the Sheriff, Monterey County:

Findings 16: *The Sheriff's Department is understaffed due to budget constraints. The staff is short 17.5 full-time positions*

Response: The respondent agrees with this finding. The figure of 17.5 full-time positions was based on a rudimentary calculation of overtime costs divided by deputy cost. This is the minimum number that would help to rebuild prior years' budget reductions and provide adequate staffing levels at the jail. The additional positions would facilitate the Sheriff's Office staying with its allocated overtime budget. In December 2006, the Board of Supervisors approved and authorized the County Administrative Officer and Sheriff to jointly contract with an outside consultant to review the Sheriff's Office staffing and overtime issues and develop a comprehensive staffing plan and relief factor analysis. This study will provide an increased understanding of the issues unique to staffing the Sheriff's Office operations, provide a valuable analysis tool to the Sheriff, County Administrative Office and Board of Supervisors and produce validated staffing levels based on industry standards and best practices.

Findings 17: *Low salaries create difficulties in recruiting.*

Response: The respondent agrees with this finding. Monterey County Sheriff's Office compares salaries with ten (10) other agencies that are comparable in size. Those agencies include Fresno, San Benito, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Ventura, City of Monterey and City of Salinas. In doing this research, Monterey County Sheriff's Office had the

second lowest salary for peace officers with San Mateo being the highest of the ten. Deputy Sheriffs are not the highest paid law enforcement officers in Monterey County and must compete for the same candidates for hire into peace officer positions as the other eighteen (18) law enforcement agencies in Monterey County.

Of the three largest police agencies in Monterey County, the Sheriff's Office is ranked third in compensation. Salinas Police Department is number one in compensation with a salary range of \$47,085-\$61,012. Monterey Police Department's is second with a salary range of \$48,044-\$58,088. The Sheriff's Office salary range is \$44,040-\$57,076. Monterey County Deputy Sheriff's salary increases are calculated by using a deputy's top step base wage and comparing it to a benchmark wage established by averaging the top step Police Officer base wage in the Cities of Monterey, Salinas and Seaside Police Departments. The difference between the benchmark wage and the Deputy Sheriff's top step base wage, calculated as a percentage, is the percent base wage increase that deputies receive. The current wage increase calculation practices do not facilitate a Deputy Sheriff's compensation ever rising above the other largest law enforcement agencies in Monterey County.

Of the 29 sworn members who left the Sheriff's Office in 2005, 15 left to work for other agencies with higher salaries or moved out of California or Monterey County because of high housing. It's a competitive world and Monterey County cannot compete with agencies that offer higher salaries, signing bonuses, down payment on homes, discounted mortgages or the private sector that offers more money at the entry-level positions.

Findings 24: *The Probation Department is housed in a very old building with deferred maintenance and a substandard, overcrowded working environment.*

The Probation Department does not report to the Sheriff's Office. Response to this item is included in the Monterey County Board of Supervisor's response to the 2005 Grand Jury Report.

Findings 25: *This Department is also understaffed. The Department has difficulty retaining good people because staff leaves to work for other offices that offer higher compensation within and outside County government.*

The Probation Department does not report to the Sheriff's Office. Response to this item is included in the Monterey County Board of Supervisors' response to the 2005 Grand Jury Report.


Mike Kanalakis
Sheriff-Coroner

Attachments: MCSO Manual Section 900.03 B.6
MCSO Manual Section General Order #21

900.00

USE OF FORCE

Rev: 4/05 Approved: _____

900.01

PURPOSE: The purpose of this policy is to provide sworn personnel with guidelines on the use of *Lethal and Reduced Lethality force.*

900.02

DEFINITIONS:

- A. Lethal Force Any use of force that is likely to cause death or serious bodily harm.
- B. Reduced Lethality Force: Force that is intended to incapacitate a subject with a reduced possibility of causing great bodily harm or death.
- C. Reduced Lethality Munitions: Munitions, including bean bag rounds, rubber or plastic rounds, rubber pellet rounds, foam projectile rounds, and wooden baton rounds, which are designed to incapacitate hostile individuals without causing death or great bodily harm. Although designed to incapacitate without causing death or great bodily injury, there always exists that possibility even when the munitions are deployed properly.

900.03

POLICY:

- A. This Office recognizes and respects the value and special integrity of each human life. In vesting sworn personnel with the lawful authority to use force to protect the public welfare, a careful balancing of all human interests is required.
- B. Therefore, it is the policy of this Office that sworn personnel shall use only such force that appears reasonably necessary, consistent with California Penal Code section 835a, given the facts and circumstances perceived by the deputy at the time of the event, to effectively bring an incident under control, while protecting the lives of the officer or another.
 - 1. **835a of the California Penal Code:** "Any Peace Officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance."
 - 2. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident.
 - 3. While it is the ultimate objective of every law enforcement encounter to minimize injury to everyone involved, nothing in this policy requires a deputy to actually sustain physical injury before applying reasonable force.
 - 4. It is recognized that deputies are expected to make split-second decisions and that the amount of time available to evaluate and respond to changing circumstances may impact a deputy's decision.
 - 5. While various levels of force exist, each deputy is expected to respond with only the level of force that reasonably appears appropriate under the circumstances at

the time to successfully accomplish the legitimate law enforcement purpose in accordance with this policy.

6. Procedures for handling mentally disordered persons utilizing the Crisis Intervention Team: Reference General Order #21

C. Use of Deadly Force:

1. Deputies are authorized to fire their firearms in order to
 - a. Protect the deputy or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or,
 - b. Prevent the escape of a fleeing felon when the deputy has probable cause to believe the felon will pose a *significant threat* to human life should escape occur.
2. Before using a firearm, deputies shall identify themselves and state their intent to shoot, when feasible
3. A deputy may also discharge a firearm under the following circumstances:
 - a. During range practice or competitive sporting events;
 - b. To destroy an animal that represents a threat to public safety, or as a humanitarian measure where the animal is seriously injured.
 - c. To summon aid when all other available methods have failed.

D. Restrictions:

1. Except for maintenance or during training, sworn personnel shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to use the weapon in conformance with this policy.
2. Deputies shall adhere to the following restrictions in the use of their firearm:
 - a. Warning shots are prohibited.
 - b. Firearms shall not be discharged when it appears likely that an innocent person may be injured.
3. Firing at or from a moving vehicle shall be avoided. If absolutely necessary, sworn personnel shall make certain before firing that.
 - a. The discharge will be in compliance of the rest of this policy.
 - b. No innocent people are near, behind, or in the target vehicles.
 - c. The deputy's vehicle remains under control.



Monterey County Sheriff's Office

General Order No: 21

SUBJECT: PROCEDURES FOR HANDLING MENTALLY DISORDERED PERSONS, CHRONIC ALCOHOLISM IMPAIRMENT, PROCESSING ORDERS OF MENTAL EXAMINATION AND RELATED PAPERS, AND ESCAPED MENTAL PATIENTS. Rev: 1/06

- I. **PURPOSE:** To establish procedural guidelines for handling the mentally disordered.
- II. **MENTALLY DISORDERED:**
- A. Welfare and Institutions Code section 5150 provides for the detention, evaluation, and treatment of persons suffering from mental disorder. Such persons are those who, as a result of a mental disorder are:
1. Gravely disabled
 2. A danger to themselves
 3. A danger to others
- B. Section 5008 (H) defines gravely disabled person as one who as a result of mental disorder is unable to provide for his/her basic needs of food, clothing, and shelter:
1. The condition *MUST ARISE FROM A MENTAL CONDITION* as opposed to a mere personality defect.
 2. Alcoholism is not a basis for detention under 5150 WIC, unless the alcoholism has affected the mind and caused a mental disorder.
- C. *CIVIL COMMITMENT:* When a deputy becomes aware of an established or progressing mental condition in a subject and the condition does not allow him to take action per Section 5150 he shall refer the family member or other genuinely interested parties to the Monterey County Behavioral Health Division.
- D. *PEACE OFFICER EMERGENCY POWERS PER SECTION 5150 W&I:*
1. Peace Officers are one of the few persons in the community empowered to detain a person in order to be evaluated, further detained and treated by medical staff. The statutory limit for such initial detention is seventy-two (72) hours.
 - a. If after that period the treating physician(s) determine that further treatment is necessary, the doctor may petition the court for a 14-Day Certification and Conservatorship.
 - b. The deputy initiating the hold should carefully document, in his/her report, the actions and observations that lead him/her to the implementation of 5150 WIC, as that deputy could be called as a witness in the hearing process.

2. Proper procedures must be followed in order to assume that the patient's rights are not violated. By law the officer must:
 - a. Advise the patient of his or her title and police agency.
 - b. Notify the patient that he or she is NOT under arrest and that the officer is taking him or her to a hospital for treatment.
 - c. Allow that person to take personal items, such as clothing and medication with him or her.
3. The advisement above is contained in the "Application for 72-Hour Hold for Evaluation" form available at both Natividad Medical Center and The Community Hospital of the Monterey Peninsula (CHOMP). A supply of forms shall be kept on hand in all patrol stations
4. The advisement does not mean that proper safety tactics normally used in such situations should not be used. If the deputy feels that the advisement should wait until the situation is stabilized, this would be acceptable.
5. In completing the 72-hour hold form at the hospital, the deputy must include a statement of facts that indicate the person is mentally disordered. Statements from others or from a physician may be included in the form
6. The form shall be filled out in duplicate. The original is to stay with hospital staff. The second is to be filed with the deputy's incident report

E. CRISIS INTERVENTION TEAM (CIT) CALL-OUT PROTOCOL

1. Crisis Intervention Team (CIT) personnel are specially trained to deal with persons with a mental illness and persons who are in crisis. CIT personnel have been trained and certified to more effectively deal with the mentally ill so that they can be safely taken into custody and transported to a facility where mental health specialists can treat them.
 - a. CIT trained personnel may be members of the Sheriff's Office or other law enforcement agencies in the County. County Communications has the names and agencies of all CIT trained personnel
 - b. It has been agreed that all agencies with CIT trained personnel on duty will make such personnel available for call to anywhere in the County.
 - c. CIT trained personnel are to respond to defuse the situation, not take over the detail. Once the mentally ill person is taken care of, the responsibility of the CIT personnel ends, except for writing a Supplement or Outside Assist Report.
2. **PROCEDURE:**
 - a. If a deputy comes across a mentally ill person in the field and the deputy determines that person meets the criteria for 5150 W&I, the deputy SHALL attempt to take appropriate action.
 - b. If the deputy cannot get the person to peacefully submit to custody, the deputy shall seriously consider whether CIT personnel would be helpful in peacefully getting the person to a facility for diagnosis and treatment.

- c. If a CIT trained person would be of assistance, the deputy shall:
 - 1) Notify County Dispatch and request a CIT trained person responds to the scene.
 - 2) If there is no such person on-duty with the Sheriff's Office, County Dispatch shall be requested to locate an on-duty CIT person at another agency in the County.
 - 3) If there is no CIT trained person on duty in the County, the Enforcement Supervisor or Watch Commander, if available, shall consider whether the situation warrants attempting to contact an off-duty CIT trained person and having him/her respond
- 3. Deputies and supervisors should be aware that CIT trained personnel are a tool that should be used when appropriate
 - a. If the situation dealing with a mentally ill person develops into a situation requiring a SWAT callout, the Crisis/Hostage Negotiators are to also be called out as per section 406 of the Sheriff's Office Manual.
 - b. CIT trained personnel are to be considered as a resource that might be used to de-escalate the situation. The decision to use this resource would be made by the Incident Commander

III. TRANSPORTATION OF MENTAL PATIENTS:

- A. Normally, the deputy initiating the hold will transport the person to the hospital and will maintain custody until that person is moved into the proper ward for treatment. Hospital staff - shall release the deputy as soon as they have hospital security in place.
- B. In the event of a violent patient, it is advisable to call an ambulance to transport. Soft restraints (4 point) shall be used in such cases.
- C. Often, the particular ambulance company will have a policy regarding the transportation of mental patients. They may refuse to transport at which time alternative transportation must be arranged by the Watch Commander or shift supervisor.
- D. Deputies may escort the ambulance to the hospital and follow normal procedures once there as if he had transported the patient himself. In most cases, the deputy need only provide the 5150 paperwork to the ambulance personnel who will then transport the patient to the hospital. In this event, personnel may be required to follow up at the hospital or be available to answer questions. This shall only be in cases when the patient is not exhibiting violent behavior.

IV. SAFEGUARDING OF PERSONAL PROPERTY:

- A. Whenever a person is taken into custody for evaluation, the deputy taking charge of him or her shall take "reasonable precautions" to safeguard the property of that person.
- B. If a responsible relative, guardian, or conservator is present then all property may be released to them and noted in the incident report (If the responsible person is the same as the one filing a request for civil commitment, property may not be released to him/her. Emergency commitments are not subject to this exclusion.)

- C. If a relative or guardian is not present, a "report generally describing so preserved and safe guarded" per section 5211 WIC. The original inventory sheet will be filed with the County Clerk's Office and a copy for our office files. Property removed will be returned to the owner, upon release from the hospital.

V. WEAPONS IN THE PSYCHIATRIC WARD/EMERGENCY ROOM

Hospital staff requests that all firearms and batons be left in the patrol car when processing mental patients in the psychiatric ward. Staff prefers superior manpower, so the chance that a patient would gain a weapon and might become a further threat is lessened. Sheriff's personnel shall always use caution when dealing with mentally ill persons

VI. ALLIED AGENCIES:

Other agencies are required to transport their own mental patients. This office may be asked to provide assistance either enroute or at the hospital. This office may assist in such cases.

VII. PROCEDURES FOR HANDLING ESCAPED MENTAL PATIENTS:

- A. When a psychiatric patient escapes from the Natividad Medical center or Community Hospital of the Monterey Peninsula, the following procedures may be followed:
1. The hospital administrator, his assistant, the nursing director or the nursing supervisor will fill out Hospital Form #172, "Application for Apprehension of Escaped Psychiatric Patient" in duplicate.
 2. The responding police agency shall be given a copy of the form that serves as authority to immediately apprehend the person and return him/her to the hospital.
 3. The deputy apprehending the patient will file an incident report and attach Form #172 to it.
- B. If hospital personnel are not sure who the responsible police agency is, the Sheriff's Office will assume responsibility until proper jurisdiction can be determined.

APPROVED BY:

MIKE KANALAKIS, SHERIFF
CORONER, PUBLIC ADMINISTRATOR
GO 21 Rev. 1/06