

# **EXAMINING PLANNING COMMISSIONER CONDUCT**

## **SUMMARY**

The Grand Jury conducted an investigation of planning commissioner conduct in response to a complaint alleging incidents of misconduct by a planning commissioner. The investigation did not find any evidence of possible criminal conduct or willful or corrupt misconduct by any planning commissioner. It did find deficiencies in the training and education of planning commissioners relating to due process requirements for the quasi-judicial function of the Planning Commission and legitimate concerns about planning commissioner bias. The Grand Jury makes recommendations to improve the training and education of planning commissioners and to provide the legal assistance and advice of County Counsel on issues of bias.

## **INTRODUCTION**

Land use planning and regulation decisions are a significant function of county government. These decisions involve fundamental and competing values such as private property rights and environmental protection. As a result, the process can be highly contentious and generate significant public interest and input. The San Luis Obispo County Planning Commission is usually at the center of this process. At the last swearing-in ceremony for members of the San Luis Obispo County Board of Supervisors, comments were made about the importance of restoring public trust in county government. A vital component of that public trust is a public perception that individual planning commissioners are performing their many and difficult duties in a manner that complies with all applicable legal and ethical standards. This Grand Jury Report describes the process and the results of a Grand Jury investigation examining planning commissioner conduct.

## **ORIGIN/PURPOSE**

This investigation originated from a formal citizen complaint filed with the Grand Jury by an attorney on behalf of three citizens who had applications for conditional use permits pending before the Planning Commission. The complaint alleged acts of individual planning commissioner misconduct with respect to these pending applications. It requested that the Grand Jury investigate these allegations and take specific actions against the planning commissioner. The Grand Jury initiated an investigation of these allegations. The first purpose of the investigation was to determine, if possible, the truth of the alleged acts of misconduct. The second purpose was to confirm the laws, rules and standards of planning commissioner conduct. The final purpose was to evaluate the actual conduct of planning commissioners against the laws, rules and standards of planning commissioner conduct.

## **METHOD**

In conducting the investigation that resulted in this report, the Grand Jury did the following:

- Interviewed twelve (12) individuals with personal knowledge of and involvement in the processing of the conditional use permit applications that resulted in the allegations of planning commissioner misconduct, including the following:
  - Two of the complainants, one of their representatives and an applicant for a similar conditional use permit who was not a complainant
  - Three staff members of the San Luis Obispo County Department of Planning and Building ("the Planning Department")
  - Three current or former members of the San Luis Obispo County Planning Commission
  - A representative of the California Department of Fish & Game ("DF&G")
- Attended or watched video recordings of public hearings conducted by the Planning Commission.
- Obtained legal advice from County Counsel and conducted independent research on the laws, rules and standards applicable to planning commissioner conduct.

- Reviewed Planning Commission training and educational materials and reviewed the Planning Commission Rules of Procedure ("the Rules of Procedure").

## **NARRATIVE**

### **Complaints Concerning Planning Commissioner Conduct**

The complaint received by the Grand Jury made the following misconduct allegations against a planning commissioner:

1. Contacting a representative of DF&G to initiate a comment letter that recommended preparation of an Environmental Impact Report ("EIR") for a project pending before the Planning Commission and raised several adverse environmental impacts of the project.
2. Coercing and influencing the review of projects by planning staff to favor the personal agenda or bias of the planning commissioner.
3. Gaining access to information not available to the general public for use in supporting oppositional forces to projects.
4. Communicating with environmental groups to provide them with advice and information to assure opposition to projects.

The alleged contact by a planning commissioner with a representative of DF&G resulted in the delivery of a letter from DF&G at 5:00 P.M. on May 7, 2008 concerning a project application for a conditional use permit that was scheduled for a Planning Commission hearing and decision at 8:45 A.M. the next morning (File No. DRC2005-00193). This alleged misconduct was significant because planning staff was recommending approval of the applicant's project based on a Mitigated Negative Declaration after approximately 2 years of studies and reviews. The letter forced the applicant to request a continuance of his scheduled hearing and raised the significant likelihood that his project would be further delayed for an extended period because the letter might require him to complete an EIR for the project. The Grand Jury investigation of this alleged planning commissioner misconduct established the following facts:

- The contact was a call by the planning commissioner to a DF&G representative a few days before the public hearing on the applicant's project for the purpose of asking whether or

not DF&G was going to issue a comment letter on the project because no DF&G comment letter was included in the county planning staff report.

- The call from the planning commissioner was not prohibited by the Rules of Procedure.
- Not all planning commissioners believe it is appropriate for a planning commissioner to initiate this type of contact.
- The DF&G comment letter was received after the comment period for this project but comment deadlines are not enforced. The practice of the Planning Commission and county planning staff is to allow written comments to be received and entered into the hearing record at any time prior to making a decision on a project.
- The DF&G letter contained comments on issues that are within the jurisdiction of DF&G and were appropriate for consideration and response at a public hearing on the project.
- The DF&G letter would not have been written and delivered prior to the scheduled May 8, 2008 public hearing on the project if the planning commissioner had not made the call to a DF&G representative and asked if a comment letter was going to be issued.
- The DF&G representative mistakenly assumed that the scheduled May 8, 2008 public hearing on the project had been continued, did not verify with county planning staff that it had been continued and only learned the hearing had not been continued when called by the planning commissioner prior to the scheduled public hearing.
- DF&G representatives subsequently apologized for delivering the letter so late, characterized it as a "late hit" and acknowledged that it should not have been delivered so late.
- The four page comment letter from DF&G was drafted, reviewed and approved through several supervisory levels of DF&G, signed and delivered in three days. By comparison, county planning staff requested a comment letter on the biological reports for this project from DF&G for over three months and the requested letter was never sent for lack of time and/or insufficient staff.
- The planning commissioner who made the call to the DF&G representative disclosed the conversation with the DF&G representative at the beginning of the May 8, 2008 public

hearing, but no other information concerning the nature, substance or extent of the conversation was disclosed by the planning commissioner.

- At the August 28, 2008 continued public hearing for a different applicant whose recommended Mitigated Negative Declaration was changed to a recommended EIR following receipt of a similar letter from DF&G (File No. DRC2006-00039), other planning commissioners asked County Counsel if it was appropriate for a planning commissioner to initiate this type of contact with an involved agency. County Counsel did not give a direct answer to these questions but responded with statements about the requirement to make decisions based on the evidence in the record and the appropriateness of asking questions that are responded to through the process or on the record.

The Grand Jury investigation into the second and third allegations of planning commissioner misconduct did not establish any facts to support these allegations.

The fourth allegation of planning commissioner misconduct involved alleged contacts by the planning commissioner in meetings with the primary groups and/or individuals that were opposed to the projects. The Grand Jury investigation into this alleged planning commissioner misconduct established the following facts:

- These contacts by the planning commissioner were not prohibited by the Rules of Procedure.
- These contacts were disclosed by the planning commissioner at the beginning of the May 8, 2008 public hearing on the project by naming each of the groups or individuals with which these meetings were held. The disclosure also stated that the purpose of some of the meetings was to talk about inconsistencies and conflicting information in the Mitigated Negative Declaration.

During the course of its investigation, the Grand Jury identified one other contact by the planning commissioner in connection with the projects. This contact was a conversation the night before the May 8, 2008 public hearing with an expert who was the author of a peer review report of a technical study done by an applicant. The report was included in the county planning staff report in support of the recommended Mitigated Negative Declaration. The Grand Jury investigation into this contact established the following facts:

- This contact by the planning commissioner was not prohibited by the Rules of Procedure.
- The planning commissioner disclosed at the beginning of the May 8, 2008 public hearing that there was a conversation with this expert but made no additional disclosure concerning the nature or substance of the conversation.
- The expert sent an email to planning staff concerning the nature and extent of his conversation with the planning commissioner and suggesting that his report might be misinterpreted by the planning commissioner. He asked county planning staff to represent his work and words to the Planning Commission and the public.

### **The Two Roles of the Planning Commission**

An evaluation of individual planning commissioner conduct requires an understanding of the two distinct roles of the Planning Commission. Standards of planning commissioner conduct applicable to one role are not necessarily applicable to the other. In legal terms, the two roles of the Planning Commission are known as quasi-legislative and quasi-judicial. The quasi-legislative role involves making decisions or recommendations on matters of land use policy and regulation such as general plans or specific plans. In this role, the Planning Commission acts like a legislative body such as the Board of Supervisors. The only difference is that the Planning Commission generally makes policy recommendations to the Board of Supervisors, which in turn makes the final policy decisions.

The quasi-judicial role involves making discretionary decisions to approve or deny individual applications for land use permits such as a conditional use permits. In this role, the Planning Commission acts like a judicial body. It hears and weighs evidence for and against the requested land use permit, makes findings of fact based on the evidence it finds most persuasive and makes a decision to approve or deny the permit for the project described in the application. Its decision is final, but the applicant has a right of appeal to the Board of Supervisors.

### **Due Process Requirements for the Quasi-Judicial Role**

When the Planning Commission operates in a quasi-judicial role and makes discretionary decisions that affect individual property rights, the Planning Commission and individual planning commissioners must comply with due process requirements. These due process

requirements include a requirement that the applicant have a hearing that is conducted by a "reasonably impartial, noninvolved reviewer."<sup>1</sup> Judicial interpretations of this due process requirement state that the courts will not presume or imply the existence of bias but will require the proof of facts that establish "an unacceptable probability of actual bias on the part of those who have actual decision making power."<sup>2</sup>

### **Bias and Conflict of Interest**

Bias and conflict of interest are similar yet different concepts. A planning commissioner should not participate in a discretionary decision on a project when he or she has a conflict of interest in connection with the project. All San Luis Obispo County planning commissioners annually complete statements of economic interest required by the Fair Political Practices Commission which identify their potential financial conflicts of interest for all applicants appearing before the Planning Commission. Non-financial conflicts of interest are not subject to the same specific disclosure requirements but should also be recognized and disclosed by planning commissioners. The Statement of Ethical Principles for Planning published by the American Planning Association provides some guidance as to what constitutes a non-financial conflict of interest by stating as follows:

"To avoid conflict of interest and even the appearance of impropriety, the public planning official who may receive some private benefit from a public planning decision must not participate in that decision. The private benefit may be direct or indirect, creating a material personal gain, **or provide an advantage to relations, friends, groups, or associations that hold a significant share of the official's loyalty...**" (Emphasis added)

In an article on conflicts of interest in the July/August 1992 issue of the Planning Commissioner's Journal, the author applied this guidance to a planning commissioner who had previously been involved with an environmental group and was asking if he should excuse himself from voting on a project involving an issue of interest to the environmental group. The author concluded that if defeat of the project might be perceived as a benefit to the

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<sup>1</sup> *Nasha LLC v City of Los Angeles* (2004), 125 CA4th 470,483. California Land Use Practice, Section 19.25

<sup>2</sup> *Breakzone Billiards v City of Torrance* (2000) 81 CA4th 1205, 1209. See California Land Use Practice Section 19.25

environmental group that still holds a share of the commissioner's loyalty, the commissioner should abstain from voting.

A planning commissioner should also not participate in a discretionary decision on a project when he or she has an unacceptable probability of actual bias for or against the project. A planning commissioner has an actual bias if there is an unacceptable probability that he or she has already made up his or her mind about how he or she will vote on a project before hearing and weighing all of the evidence presented at the Planning Commission hearing(s) on the project. With respect to this aspect of bias, one additional incident of planning commissioner conduct should be noted. After the applicant requested a continuance of his May 8, 2008 public hearing due to the late delivery of the comment letter from DF&G, county planning staff and the Planning Commission discussed a continuance date. Planning staff indicated that the issues raised by the DF&G letter might be addressed in a revised Mitigated Negative Declaration instead of a recommendation that the applicant do an EIR. This meant there was at least a possibility the project would still be recommended for approval based on a Mitigated Negative Declaration at the continued public hearing. The planning commissioner who is the subject of the complaint received by the Grand Jury responded to this possibility at the public hearing by personally advising both staff and the applicant that they should not pursue the path of requesting and recommending approval of this project based on a Mitigated Negative Declaration.

The Grand Jury believes this statement suggested that the planning commissioner had already decided to vote against this project, prior to any public hearing or presentation of evidence by the applicant in support of the project, if county planning staff continued to recommend approval of the project based on a Mitigated Negative Declaration. It was suggested to the Grand Jury that this statement was justified as a matter of law because (i) the law requires that any project which may have a significant environmental impact is required to have an EIR and (ii) because this project may have significant environmental impacts, the law prohibits it from being approved through a Mitigated Negative Declaration. The Grand Jury does not believe this justification is valid because it conflicts with Section 21080(c)(2) of the California Environmental Quality Act ("CEQA") and the CEQA guidelines of San Luis Obispo County. The statute and the guidelines provide that a Mitigated Negative Declaration is a permissible option when the project may have

significant environmental impacts but those impacts can be reduced to insignificance through mitigation measures agreed to by the applicant.<sup>3</sup>

### ***Ex parte* Contacts by Planning Commissioners**

*Ex parte* contact is a legal term used to describe contacts by an individual planning commissioner with one interested party, witness or other individual to discuss an application outside the public hearing on the application and without the presence of other interested parties or witnesses. *Ex parte* contacts by planning commissioners are expected and even encouraged whenever they are functioning in a quasi-legislative or policy role because it is necessary and appropriate for them to hear from members of the public who will be affected by their policy decisions or recommendations. In this role, they are no different from the Board of Supervisors or other elected officials who seek input from their constituents before deciding on matters of public policy.

However, the same types of *ex parte* contacts by planning commissioners when they are functioning in a quasi-judicial role have the potential to violate due process requirements applicable to discretionary decisions. One due process requirement is that an applicant must have an opportunity to hear all of the evidence or testimony concerning his or her application and to respond to that evidence or testimony at the public hearing on his or her application. *Ex parte* contacts also have the potential to demonstrate actual bias or create a perception of bias on the part of the planning commissioner who has these *ex parte* contacts. The Planning Commission currently addresses the potential due process violations of *ex parte* contacts in the Rules of Procedure. The Rules of Procedure require planning commissioners to disclose all of their *ex parte* contacts on the record at the public hearing, including sufficient detail so as to provide **adequate** information to other commissioners and the public as to the **substance** of their *ex parte* contacts. (Emphasis added) This disclosure requirement has been in the Rules of Procedure since at least 1999. The 2005 revision of the Rules of Procedure eliminated additional

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<sup>3</sup> California Public Resources Code Section 21080(c)(2). County Of San Luis Obispo, Environmental Quality Act Guidelines (1995): Article III, Section 303.00(a), Article IV, Sections 402.00 and 407.00 and Article V, Section 507.00

language which stated that when making quasi-judicial decisions, "Commissioners should not participate in "ex parte contacts" with project proponents or opponents as such contacts can give the appearance of presumed bias on the part of the Commission that can adversely affect the actions and decisions of the Commission."

Time and resources did not permit the Grand Jury to review a large number of Planning Commission hearings other than those that were the subject of this complaint. Our limited review of these Planning Commission hearings indicates that planning commissioners regularly disclose their *ex parte* contacts but often fail to provide adequate information as to the substance of those contacts.

### **Planning Commissioner Training and Education**

The Grand Jury requested copies of all written training and educational materials prepared by the Planning Department and provided to planning commissioners which explain their duties and obligations when they function in a quasi-judicial role. The Grand Jury also asked planning commissioners to describe their initial and continuing training and education on these duties and obligations.

The Grand Jury received a large volume entitled "The Planning Commissioner's Handbook" which was dated March 23, 2000. It also received materials from a former planning commissioner that were distributed at a training session in April 2005. The Handbook contains substantial information on substantive planning and land use issues; and in spite of its date, Planning Department staff advised the Grand Jury that it is still relatively current as to these issues. It also contains a discussion of financial conflict of interest and the rules for disclosure of such conflicts of interest, but it does not discuss non-financial conflicts of interest.

Conspicuously absent from the Handbook were any training or educational materials explaining the difference between the quasi-legislative and quasi-judicial roles of the Planning Commission and the different conduct standards applicable to these roles.

The Handbook contains no training or educational materials on the elements of due process applicable to the quasi-judicial role of the Planning Commission, including the requirement of

reasonably impartial, noninvolved reviewers and the requirement that an applicant be able to hear and respond to all evidence or testimony concerning his application. The Handbook also contains no training or educational materials on the due process issues raised by the *ex parte* contacts of planning commissioners. The materials from the 2005 training session contained a series of articles from the Planning Commissioner's Journal discussing these requirements and issues, but neither the articles nor any further discussion or explanation of the issues they discuss have been incorporated in the Handbook.

All planning commissioners interviewed by the Grand Jury indicated that they had never seen or used the Handbook that was provided to us. In spite of its deficiencies, the Handbook is a significant training and educational resource for planning commissioners. The fact that planning commissioners were unaware of its existence is an obvious concern.

Planning commissioners also have the opportunity to attend various educational seminars put on by the statewide association of planning commissioners. These seminars may have included training on the due process issues discussed in this report, but the Grand Jury was unable to confirm this from its interviews with planning commissioners. Since January 1, 2006, state law enacted by AB1234 has required planning commissioners to provide a certificate that they have completed two hours of mandated ethics training every two years. Copies of these certificates are on file with the Planning Department for the three planning commissioners who are currently required to have them, although one is slightly more than two years old and another does not show a full two hours of training. The course content for this ethics training includes due process and bias issues related to the quasi-judicial role of government officials such as planning commissioners. While the ethics training identifies these issues, it does not claim to discuss them in detail and encourages participants to obtain further information and advice on these issues from their own agency and legal counsel. The Institute for Local Government has prepared several written resources on the due process requirements for quasi-judicial hearings that are available to local agencies and their legal counsel to assist them in this education and training process.

The importance of planning commissioner training on impartiality and bias was emphasized when the Grand Jury was advised by Planning Department senior management staff that two of the staff recommendations to improve planning commissioner training would be 1) improved time and meeting management and 2) improved training in how to conduct a fair and unbiased public hearing because the staff believes that we have biased commissioners. The issue of bias is one of the challenges facing the Planning Commission. In order to protect both the County and applicants, planning commissioner training needs to explain the due process requirement of no unacceptable probability of actual bias in as clear terms as possible in order to eliminate questions as to whether Planning Commission hearings and individual commissioners were fair and unbiased.

### **Other Issues**

The citizen complaint asked the Grand Jury to formally indict the planning commissioner for abuse of process, fraud, corruption, malice and civil conspiracy based on the alleged acts of misconduct. While all Grand Juries in California have the statutory power to issue criminal indictments, the San Luis Obispo County Grand Jury is one of many that do not exercise this power because the District Attorney does not use it as a Grand Jury for criminal indictments. If the Grand Jury feels it has found evidence of possible criminal conduct, it refers that evidence to the District Attorney who then decides whether there is any basis to pursue a criminal investigation or empanel a special grand jury to consider issuing a criminal indictment. The Grand Jury investigation of this citizen complaint did not find any evidence of possible criminal conduct by any planning commissioner.

California Penal Code Section 919(c) requires the Grand Jury to investigate charges of willful or corrupt misconduct in office by any public officials in the county. The citizen complaint alleged a variety of illegal or improper actions by a planning commissioner. The Grand Jury has determined that none of the facts established by the investigation of this citizen complaint constitute willful or corrupt misconduct in office by any planning commissioner.

## CONCLUSIONS

1. The Planning Department has not provided planning commissioners with any written training or educational materials concerning the due process requirements applicable to planning commissioners who are acting in a quasi-judicial role since April 2005. The Planning Commissioner's Handbook has not included any such materials since March 2000 and was not revised or updated to include such materials after April 2005. Since April 2005, at least three new planning commissioners have been appointed to the Planning commission. Public perception that planning commissioners are performing their quasi-judicial role in accordance with applicable due process requirements relating to fairness and an absence of actual bias or non-financial conflicts of interest would be improved if the public knew and understood that planning commissioners received education and training on these important issues from a Handbook or other materials which addressed them in detail.

2. *Ex parte* contacts create a particularly difficult problem for planning commissioners because the potential consequences of *ex parte* contacts are significantly different depending on the role of the Planning Commission. When the Planning Commission functions in its quasi-legislative or policy role, *ex parte* contacts are not a problem. But, when the Planning Commission functions in its quasi-judicial role, *ex parte* contacts could create significant due process issues relating to bias and the right of an applicant to hear and respond to all evidence being considered by the Planning Commission in connection with his or her project. These due process issues have the potential to cause Planning Commission actions to be reversed by a reviewing court. Public perception of planning commissioner conduct would also be improved if the Planning Commission Rules of Procedure and its educational and training materials addressed in detail the due process concerns raised by *ex parte* contacts in the quasi-judicial role and provided planning commissioners with as much specific guidance as possible on methods for dealing with such concerns in a way that minimizes their potential adverse consequences.

3. The planning commissioner whose conduct was the primary subject of this Grand Jury investigation came to the Planning Commission with substantial prior knowledge of and

significant involvement and experience in issues of land use planning and regulation, primarily from an environmental perspective. In the judgment of the Grand Jury, this knowledge, involvement and experience does not disqualify this individual from serving as a member of the Planning Commission. Such attributes are, in fact, desirable in any planning commissioner. These attributes would be expected to bring with them strongly held beliefs and positions on land use planning and regulation, but there is nothing illegal or improper about any planning commissioner bringing established beliefs or positions to bear on land use policy issues that are considered by the Planning Commission. Issues of land use policy are ultimately decided by the elected Board of Supervisors after an in depth review and recommendation by the Planning Commission. Supervisors are elected, at least in part, based on their established beliefs and positions concerning land use policy. It should come as no surprise that their appointees to the Planning Commission would generally have or reflect similar beliefs and positions. The difficulty created by appointing planning commissioners who have strong, established advocacy positions on land use planning and regulation from either an environmental or a development perspective is that these same planning commissioners must also function in a quasi-judicial role that requires them to be reasonably impartial, noninvolved reviewers when they hear and weigh evidence and make discretionary decisions on individual applications for land use permits. In the judgment of the Grand Jury, the stronger the established advocacy positions or beliefs of a planning commissioner from whatever perspective, the more difficult it is for the public to perceive that this same planning commissioner can make some discretionary land use decisions without an unacceptable probability of actual bias concerning the project.

The Grand Jury believes that detailed and regular education and training of planning commissioners on the due process requirements described in this report is the best way to impress on planning commissioners the need for them to make a conscientious, good faith assessment of whether they have an actual bias concerning a project which is being considered by the Planning Commission in its quasi-judicial role. If a planning commissioner can fully and carefully assess all the facts and circumstances of his or her positions and beliefs as they relate to a project and can honestly conclude that there is no unacceptable probability of actual bias on his or her part about the project, that is all the public can expect. In the final analysis, this assessment can only be made by the individual planning commissioner and a definitive decision

as to whether or not the facts support that assessment can only be made by the courts. The Grand Jury concluded that the background and conduct of the planning commissioner discussed in this report raised a legitimate concern as to whether or not that planning commissioner had already decided to deny one or more applications for Conditional Use Permits before the public hearings on the applications. The Grand Jury cannot ever know if that was actually the case.

## **FINDINGS<sup>4</sup>**

1. The facts established by the Grand Jury investigation of planning commissioner conduct did not constitute either evidence of possible criminal conduct or willful or corrupt misconduct in office by any planning commissioner.
  
2. One or more planning commissioners have never seen, received or used the Planning Commissioner's Handbook that was provided to the Grand Jury by the Planning Department.
  
3. The Planning Commissioner's Handbook does not explain the difference between the quasi-legislative and quasi-judicial roles of the Planning Commission and the possibility that the same planning commissioner conduct which is appropriate in one role may violate one or more due process requirements applicable to the other role.
  
4. The Planning Commissioner's Handbook does not describe or explain that due process for quasi-judicial hearings includes a requirement that planning commissioners be reasonably impartial, noninvolved reviewers.
  
5. The Planning Commissioner's Handbook does not describe or explain how *ex parte* contacts by planning commissioners may violate the due process requirements for quasi-judicial hearings.

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<sup>4</sup> In accordance with Section 933.05(d) of the Penal Code, the Grand Jury invited representatives of the two entities that are the subject of this report to come before the Grand Jury for the purpose of reading and discussing the findings and the narrative sections of this report relating to those entities in order to verify the factual accuracy of the findings and the narrative prior to their release.

6. The Planning Commissioner's Handbook does not describe or explain the concept of a non-economic conflict of interest or how such a conflict of interest may violate due process requirements for quasi-judicial hearings.
7. The 2005 revision to the Planning Commission Rules of Procedure deleted an explanation of how *ex parte* contacts by planning commissioners might violate due process requirements for quasi-judicial hearings and adversely affect the actions and decisions of the Planning Commission.
8. Planning commissioners do not always include sufficient detail in their disclosures to provide adequate information as to the substance of their *ex parte* contacts as required by the Planning Commission Rules of Procedure.
9. *Ex parte* contacts and a pre-hearing comment by one planning commissioner raised a legitimate concern that this planning commissioner had an unacceptable probability of actual bias by possibly deciding to deny one or more Conditional Use permit applications before the public hearings on the applications.

## **RECOMMENDATIONS**

1. The Planning Department, with the assistance of County Counsel, should revise and update the Planning Commissioner's Handbook to include explanations of the following:
  - a. The quasi-legislative and quasi-judicial roles of the Planning Commission and the reasons why planning commissioner conduct in one role is not necessarily acceptable in the other role.
  - b. The due process requirements and legal standards of conduct for quasi-judicial proceedings conducted by the Planning Commission, including but not limited to the right of an applicant to hear and respond to evidence being considered by the planning commissioners and the right to reasonably impartial, non-involved reviewers.

c. The reasons why *ex parte* contacts by planning commissioners have the potential to violate due process requirements.

d. Non-financial conflicts of interest such as loyalties to groups or organizations with positions on land use planning and regulation.

2. The Planning Department should assure that copies of the updated and revised Planning Commissioner's Handbook are provided to each planning commissioner.

3. The Planning Department, with the assistance of County Counsel, should provide annual training sessions for planning commissioners that provide more detailed education and training on the topics of due process and lack of bias that are identified in the ethics training program required by the enactment of AB 1234.

4. The Planning Commission, with the assistance of the Planning Department and County Counsel, should revise its Rules of Procedure concerning *ex parte* contacts to define or limit the *ex parte* contacts which can be initiated by planning commissioners and improve the adequacy of planning commissioners' disclosure of the substance of their permitted *ex parte* contacts when functioning in their quasi-judicial role.

5. County Counsel should educate planning commissioners on the importance of not making *ex parte* contacts or pre-hearing comments which might reasonably be perceived as suggesting that a planning commissioner has made a decision on a project before the planning commissioner has had an opportunity to hear and weigh all of the evidence on the project which will be presented at a public hearing.

6. County Counsel should provide assistance and advice to individual planning commissioners in resolving their questions or concerns as to whether or not they have a non-financial conflict of interest or an actual bias with respect to an application for a discretionary decision.

## REQUIRED RESPONSES

**The San Luis Obispo County Department of Planning and Building** is required to respond to Findings 1-9 and Recommendations 1-4. Responses are due to the Presiding Judge by **July 19, 2009**.

**The San Luis Obispo County Counsel** is required to respond to Recommendations 1, 3 and 4-6. Responses are due to the Presiding Judge by **July 19, 2009**.

**The San Luis Obispo County Board of Supervisors** is required to respond to Findings 1-9 and Recommendations 1-6. Responses are due to the Presiding Judge by **August 18, 2009**.

Please provide a copy of all responses to the Grand Jury as well. The mailing addresses for delivery are:

<b>Presiding Judge</b>	<b>Grand Jury</b>
Presiding Judge Martin Tangeman Superior Court of California 1035 Palm, Room 385 San Luis Obispo, CA 93408	San Luis Obispo County Grand Jury P.O. Box 4910 San Luis Obispo, CA 93403