



THE CITY OF SAN DIEGO

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SAN DIEGO  
COUNTY GRAND JURY

August 10, 2005

Honorable John S. Einhorn  
Presiding Judge, San Diego County Superior Court  
220 West Broadway, Department SD-P  
San Diego, CA 92101

Dear Judge Einhorn:

Subject: Response to San Diego County Grand Jury 2004-2005 Report

In compliance with California Penal Code §933.05, the City of San Diego has extensively reviewed the May 18, 2005 report from the San Diego County Grand Jury entitled "City of San Diego Development Services Department – What Can Be Done?" Consistent with the requirements and instructions of California Penal Code §933.05, responses are enclosed for all findings and recommendations.

The City values the efforts of the Grand Jury in researching areas for continuous improvement in our operations. We acknowledge that, while the report does not find any illegal activity on the actions of the City or Development Services Department, the report brings forth pertinent findings and useful recommendations. We do, however, disagree with some of the findings, and recommendations of the report. Those differences are noted in the City's responses.

Please contact me if you have any questions or require additional information.

Sincerely,



P. Lamont Ewell  
City Manager

cc: William L. Westlake, Foreman, 2004-2005 San Diego County Grand Jury



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PLE/EO/cw

Enclosure

cc: Honorable Mayor and City Council  
Ellen Oppenheim, Deputy City Manager  
Gary Halbert, Director, Development Services Department  
Marcela Escobar-Eck, Chief Deputy Director, Development Services Department  
Kelly Broughton, Deputy Director, Development Services  
Gail Goldberg, Director, Planning Department  
Betsy McCullough, Deputy Planning Director

## **FINDINGS OF THE SAN DIEGO COUNTY GRAND JURY**

In accordance with Government Code §933.05, the City of San Diego is required to address the findings of the Grand Jury report as follows:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding
  - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Each of the four findings of the report (identified below as A through D), are therefore reprinted below followed by the required response.

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### ***A. Non-appealable SCR decisions are a source of community distrust of DSD staff***

The City agrees with this finding. The Grand Jury notes in the report that planning groups throughout the City distrust DSD staff decisions and City Council land use decisions. The Substantial Conformance Review (SCR) process stands out as a driver for this distrust. These reviews are typically a staff level decision that results in minor revisions to a project previously approved through the public hearing process. As such, there is the possibility of changes being approved that are not supported by the community planning group and there is no appeal process for them to raise their concerns in a public hearing. The Grand Jury recommends that all Substantial Conformance Reviews be raised to a Process 2 level decision (staff decision appealable to the Planning Commission).

Over the past year, DSD has begun to embrace the community as a customer. In the past, the community was seen by the department as a stakeholder which limited opportunities for partnering. Last year, DSD formed an ad hoc task force with both community and development industry representation to review the Substantial Conformance Review process. The recommendations of the task force are moving forward to City Council for approval. The recommendations include requiring a Process 2 level decision on a wider range of Substantial Conformance Reviews and the publication of written guidelines for revisions that can be considered through the Substantial Conformance Review process. The Grand Jury's recommendation to make all Substantial Conformance Review decisions appealable will be presented as an alternative for Council consideration.

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**B. *Better staff training in CEQA law can help the City avoid expensive CEQA lawsuits.***

The City agrees with this finding. As such, formal CEQA training is provided annually to City staff from all Departments who have a direct role in the CEQA process. For the past two years, on-site training has been provided by consultants at Jones and Stokes, authors of *The CEQA Deskbook* and recognized subject matter experts. Weekly informal training in the form of lessons learned communication and feedback is provided from the City Attorney office through senior staff and shared among the Environmental Analysis Section (EAS) staff who have the responsibility of preparing the City's CEQA documents. Informational training is also provided to non EAS staff through staff meetings and similar forums.

**C. *Zoning decisions which are inconsistent with community plans are a source of community distrust of DSD staff.***

The City agrees with this finding. The City has sought to implement zoning consistent with adopted land use plans for the past 15 years. During that time, when a community plan is updated, zoning has been applied at the time of the update that best implements the land use designations in the plan. Prior to 2000, however, there were not zones that could implement all land use designations. With the availability of the Land Development Code since 2000, zones that better implement community plans have been available for application.

While this finding focuses on "zoning decisions," community distrust may originate more so from recommendations of the adopted plans that the community believes are not adequately implemented through discretionary actions. For example, community planning groups may believe that community plan recommendations such as community character consistency are not adequately observed in discretionary permit approvals. It is the duty of city staff to make these issues known to the decision maker so that such issues can be considered as one factor in the decision making process. Where staff is the decision maker, such as for Process 2 actions, it is the duty of staff to consider the recommendations of the community plan as part of the project review. This is accomplished through inclusion of the Planning Department as part of the staff-level review.

**D. *Current DSD and the Planning Department programs will not result in zoning consistency with the General Plan***

The City disagrees with this finding. As noted by the Grand Jury report, two primary efforts are underway to assure zoning consistency with adopted land use plans: update of the General Plan, and update of zoning maps. However, it was not apparent that the Grand Jury report considered the following facts with respect to these two update projects. The following discussion is therefore provided.

With respect to the General Plan update project, the City is updating its General Plan for the first time in more than 20 years. Community Plans are part of the City's General Plan. Included in the update is a series of policies that are intended to direct the implementation of zoning consistent with community plans. The General Plan, Land Use Element, Section G specifically addresses the need for consistency in policy number SF-G.1 as reprinted below:<sup>1</sup>

SF-G.1. Ensure that the regulations of the Land Development Code address the following:

- a. Implementation of the policy recommendations of the General Plan.
- b. Implementation of the land use designations of the community plans.
- c. Implementation of other goals and policies of the community plans.
- d. Implementation of community-specific policies and recommendations through tailored zoning and development regulations.

Secondly, with respect to the zoning map update project, the City recognizes that zoning consistency has been difficult to determine due to the unavailability of up-to-date accurate zoning maps. Therefore, the Development Services Department is currently updating its zoning maps as the second effort to ensure consistency. Accurate zoning maps will provide the tool to compare adopted land use plan designations with zoning to provide a high level of assurance that zoning is being applied to implement adopted community plans, or to otherwise allow rezoning to be initiated to better align land use plans and the implementing zoning regulations.

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<sup>1</sup> <http://www.sandiego.gov/planning/pdf/generalplan/discussiondraft/gpsflue.pdf>

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It is important to recognize, as noted in the Grand Jury report, as a Charter City, the City of San Diego is not required by law to have plans and zones that are exactly consistent. While not required, it has been the clear intent of Council and Planning Commission to achieve such consistency. The level of consistency, however, should parallel, but not exceed, that which is required by non-charter cities.

As stated in the draft General Plan update:<sup>2</sup>

Despite the fact that state law exempts charter cities from the consistency requirement, it is the City of San Diego's practice to apply zoning that is consistent with community plan land use designations to ensure their implementation. Zoning is one of the primary plan implementation measures. As the California General Plan Guidelines 2003 state, "The success of a general plan, and in particular the land use element, rests in part upon the effectiveness of a consistent zoning ordinance in translating the long-term objectives and policies contained in the plan into everyday decisions."

It is the City of San Diego's policy that the Municipal Code contain adequate regulations, in the Land Development Code chapters, to ensure that the policies and recommendations of adopted land use plans (the community, specific, and precise plans, as well as the General Plan) are clearly applied to new development. The adopted land use plans provide guidance and set the framework for the implementing regulations found in the Land Development Code.

Zoning will be reviewed and changed as appropriate, especially at the time of community plan update or amendment, to assure that revised land use designations or newly-applicable policies and recommendations can be implemented through zoning and development regulations.

Therefore, DSD and Planning Department management disagree with the finding and believe the dual efforts to update the General Plan and to update the zoning maps will result in zoning consistency with the General Plan.

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<sup>2</sup> <http://www.sandiego.gov/planning/pdf/generalplan/discussiondraft/gpsflue.pdf>

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## RECOMMENDATIONS OF THE SAN DIEGO COUNTY GRAND JURY

In accordance with Government Code §933.05, the City of San Diego is required to address the recommendations of the Grand Jury report as follows:

- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

Each of the four recommendations of the report are therefore reprinted below followed by the required response.

### The Grand Jury recommends the San Diego City Council:

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**05-15: *Amend the Municipal Code to make all Substantial Conformance Review decisions subject to appeal.***

This Recommendation requires further analysis. Since June 2004, the Substantial Conformance Review (SCR) procedure of the Municipal Code (126.0122) has been undergoing re-evaluation by the Code Monitoring Team update process. The current proposal would elevate to a Process 2 review those actions where the development permit specifies a Process Two review, or where the applicant proposes to modify a permit condition. Staff review guidelines would be published to help achieve consistency in determinations. A Notice of Decision would be published for SCR determinations which would clearly articulate the basis for the determination. Implementation of this Code change would be accompanied by training of staff, community planning groups, and industry groups. The Grand Jury recommendation to make all Substantial Conformance Review decisions appealable will be presented as an alternative for Council consideration.

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**The Grand Jury recommends the San Diego City Council:**

**05-16:            *Direct the City Manager and City Attorney to provide adequate CEQA training for all staff who handle discretionary projects.***

This recommendation has been implemented. Formal CEQA training is provided annually to City staff from all Departments who have a direct role in the CEQA process, including, but not limited to, staff who have a direct role in preparing CEQA documents. For the past two years, on-site training has been provided by consultants at Jones and Stokes, authors of *The CEQA Deskbook* and recognized subject matter experts. Informal on-going training is provided weekly to incorporate Lessons Learned from on-going projects. For example, the Assistant Deputy Director overseeing the Environmental Analysis Section (EAS) meets weekly with the City Attorney to discuss project determinations under CEQA. EAS Senior staff meets weekly to discuss project determinations under CEQA. Virtually all monthly EAS staff meetings are used to discuss project determinations under CEQA. These feedback mechanisms ensure that lessons learned are communicated to the all EAS staff.

The Development Services Department is organized such that staff in the Environmental Analysis Section (EAS), the Assistant Deputy Director overseeing EAS, the Deputy Director overseeing the Land Development Review Division, and the Department Director are the only staff that are allowed to make California Environmental Quality Act (CEQA) determinations on behalf of the City of San Diego. The above-referenced management positions have attended seminars regarding CEQA implementation. Some classified (non-managerial) staff in other Departments and in other functional areas of DSD (e.g. Project Management, Permits, Landscaping, and Engineering (Subdivision Mapping, Drainage and Grades) have received introductory-level CEQA training. DSD will continue to expand CEQA training efforts to include multiple opportunities for all discretionary reviewers to attend.

The City of San Diego notes that legal action has been undertaken against 20 (0.0026%) of the City's 7,651 CEQA determinations from the period of 1995 to the present. Of those 20 cases, 8 decisions are still on appeal. Of the 12 cases that have been resolved, 3 cases were settled and only one was settled after the court granted a writ on CEQA grounds. The City has prevailed in the other 9. These data show that current CEQA training appears to be successful given the very low percentage of legal challenges filed against our CEQA documents.



**The Grand Jury recommends the San Diego City Council:**

**05-17:           *Adopt an ordinance to require that zoning be consistent with the General Plan.***

The recommendation requires further analysis. Staff believes that the concept of requiring zoning to be consistent with the General Plan is best addressed in the General Plan. Section G of the Land Use Element of the General Plan addresses consistency. Based on the central role of the General Plan [including the community plans] in all discretionary projects, staff believes this directive is in the best place to assure its implementation. Despite staff not supporting the need for an ordinance to require consistency, the City Council may direct an ordinance be adopted concurrent with the adoption of the General Plan, currently anticipated by the Spring of 2006.

**The Grand Jury recommends the San Diego City Council:**

**05-18:           *Direct the Development Services Department and the Planning Department to work together to create an Official Zoning Map which is consistent with the General Plan.***

The recommendation has not yet completed implementation. The effort to create an official zoning map for the city is nearing completion. Adoption of the zoning map, anticipated by late summer of 2005, will provide the necessary tools to help city planners consistently apply zoning across the city. The existence of this map in and of itself does not assure consistency with the general plan. While, in general, zoning applied to properties is consistent with the community plans [as part of the general plan], the assurance of consistency will occur as community plans are updated or at least reviewed for application of the zone that best implements the plan. No timeframe for updates of community plans can be given at this time since a severe reduction of staff in the Planning Department has halted a regular schedule of updates.