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USNRC

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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OFFICE OF THE SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

BEFORE THE COMMISSION

In the Matter of:	)	
	)	
Pacific Gas and Electric Co.	)	Docket No. 72-26-ISFSI
	)	
(Diablo Canyon Power Plant,	)	
Units 1 and 2)	)	

ANSWER OF PACIFIC GAS AND ELECTRIC COMPANY TO THE PETITION FOR  
LEAVE TO INTERVENE AND REQUEST FOR HEARING OF SAN LUIS OBISPO  
COUNTY SUPERVISOR PEG PINARD AND AVILA VALLEY ADVISORY COUNCIL

I. INTRODUCTION

In accordance with 10 C.F.R. § 2.714(c), Pacific Gas and Electric Company ("PG&E"), applicant in the above-captioned matter, hereby files its answer to the request for hearing and petition for leave to intervene ("Petition") filed on May 22, 2002, by San Luis Obispo County Supervisor Peg Pinard and the Avila Valley Advisory Council ("AVAC") (collectively, "Petitioners"). As discussed below, the Petitioners have not satisfied the Commission's requirements for standing to intervene in this matter. Therefore, the Petition should be denied.

II. BACKGROUND

A. The Approval at Issue

On December 21, 2001, PG&E submitted to the U.S. Nuclear Regulatory Commission ("NRC") an application for a site-specific license under 10 C.F.R. Part 72 to possess spent fuel, and other radioactive materials associated with spent fuel, in an independent

spent fuel storage installation (“ISFSI”). If granted, the license will authorize PG&E to store spent fuel and associated materials generated at the Diablo Canyon Power Plant (“DCPP”) in a dry cask storage system at the DCPP site in San Luis Obispo County. A notice of opportunity for hearing was published in the *Federal Register* on April 22, 2002.<sup>1</sup> In response to this notice, the Petitioners timely filed their Petition on May 22, 2002.

B. The NRC’s Standing Requirements

To intervene as of right in a Commission licensing proceeding, a petitioner must demonstrate standing. The Commission’s regulations at 10 C.F.R. § 2.714(a)(2) provide that a petition to intervene, among other things, “shall set forth with particularity the interest of the petitioner in the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors set forth in [§ 2.714 (d)(1)].” Pursuant to 10 C.F.R. § 2.714(d)(1), in ruling on a petition for leave to intervene the Commission or the Atomic Safety and Licensing Board (“Board”) is to consider:

- (i) The nature of the petitioner’s right to be made a party to the proceeding;
- (ii) The nature and extent of the petitioner’s property, financial, or other interest in the proceeding;
- (iii) The possible effect of any order that may be entered in the proceeding on the petitioner’s interest.

The Commission has further determined that to satisfy the standing requirements of 10 C.F.R. § 2.714, a petitioner must demonstrate that (1) it has suffered a distinct and palpable harm that constitutes injury-in-fact within the zone of interests arguably protected by the governing statute; (2) the injury can fairly be traced to the challenged action; and (3) the injury is likely to be

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<sup>1</sup> See Pacific Gas and Electric Co.; Notice of Docketing, Notice of Proposed Action, and Notice of Opportunity for a Hearing for a Materials License for the Diablo Canyon

redressed by a favorable decision. *See, e.g., Private Fuel Storage, L.L.C. (ISFSI)*, CLI-99-10, 49 NRC 318, 323 (1999). Finally, a petition for leave to intervene must set forth “the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.” 10 C.F.R. § 2.714(a)(2).

### III. DISCUSSION

The Petition does not demonstrate that either of the Petitioners has standing to intervene as of right in this proceeding. The Petitioners appear to base their standing on their participation in San Luis Obispo County government and on some unspecified quasi-governmental status of the AVAC. However, as discussed below, neither Ms. Pinard nor the AVAC has the authority to represent the interests of San Luis Obispo County (the “County”) in this proceeding in any official capacity. If Ms. Pinard or any members of the AVAC seek to intervene as individuals, in their capacity as private citizens, this is not stated and the basis for standing in that capacity is not articulated. As currently submitted, the Petition should be denied.

#### A. Standing of Supervisor Pinard

Ms. Pinard currently serves as a Supervisor for San Luis Obispo County.<sup>2</sup> The Petition appears to argue that Ms. Pinard has standing as a governmental entity based upon her position as a County Supervisor. *See, e.g., Pet.* at 3 (“Local governments have unique interests that have long been recognized by the NRC in granting standing to participate in proceedings affecting nuclear power plants;” the Petitioner’s interests are as fundamental as needing to assure

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Independent Spent Fuel Storage Installation, 67 Fed. Reg. 19,600 (Apr. 22, 2002).

<sup>2</sup> California law provides for five supervisors to be elected by district. Ms. Pinard serves as one of five. The Board of Supervisors acts as the legislative body of San Luis Obispo County for the planning and provision of services related to public needs and the requirements of state and federal law. The Board of Supervisors establishes overall county priorities and sets policy. *See* <http://www.co.slo.ca.us>.

that County residents and people who work near the proposed ISFSI will not be injured as a result of an avoidable accident”). However, Ms. Pinard — as one Supervisor — has no authority to petition to intervene in a representative capacity on behalf of the County government or the County citizens. Indeed, the Board of Supervisors *in its entirety* decided on May 21, 2002, that the County *would not* intervene in this proceeding. As a member of a collegial board, Ms. Pinard would be required to show a specific delegation of authority to act on behalf of the Board of Supervisors. *Cf. Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), LBP-98-12, 47 NRC 343, 356; *aff’d*, CLI-98-21, 48 NRC 185 (1998) (for an advisory board to represent the interest of a regional council of governments, the board “would require a clear and convincing showing that the delegation was legal and within the power of the delegating authority to delegate”). Ms. Pinard cannot make such a showing, given the specific decision of the Board of Supervisors. To the extent the Petition claims standing in an official capacity, it would appear that Ms. Pinard is acting beyond her authority.<sup>3</sup>

For this reason, Ms. Pinard similarly cannot participate under the “interested government agency” provisions of 10 C.F.R. § 2.715(c).<sup>4</sup> The Petition, in an unnumbered

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<sup>3</sup> Setting aside her position on the Board of Supervisors, Ms. Pinard is an elected official. It is well established that a legislator lacks standing to intervene on behalf of the interests of her constituents who live near a nuclear facility. *Babcock & Wilcox* (Apollo, Penn. Fuel Fabrication Facility), LBP-92-35, 36 NRC 355, 358 n.9 (1992) (rejecting standing of a borough councilwoman acting on behalf of her constituents); *Combustion Eng’g Inc.* (Hematite Fuel Fabrication Facility), LBP-89-23, 30 NRC 140, 145 (1989).

<sup>4</sup> 10 C.F.R. § 2.715(c) states:

The presiding officer will afford representatives of an interested State, county, municipality, Federally-recognized Indian Tribe, and/or agencies thereof, a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issue. Such participants may also file proposed findings and exceptions pursuant to §§ 2.754 and 2.762 and

footnote on pages 7-8, requests that the Petitioners be allowed to participate in any hearing held in the proceeding as provided for in 10 C.F.R. § 2.715(c). Petitioners also “reserve the right” to request to participate on other “matters of concern” under that section. To the extent that Ms. Pinard purports to represent a government agency — the County — she simply does not have that authority and cannot be granted the status conferred under Section 2.715(c).

Because Ms. Pinard has no official capacity to represent the County government, Ms. Pinard may participate in this proceeding only in a private, personal capacity. To do so, she would need to establish her own personal standing based upon an injury in fact, within the zone of interests protected by the NRC, and redressable in this proceeding. Ms. Pinard has not endeavored to make this showing in the Petition. Consequently, the Petition as it relates to Ms. Pinard must be dismissed.

B. Standing of Avila Valley Advisory Council

The AVAC, represented in the Petition by its Chairman, Seamus M. Slattery, also seeks to intervene. Again, the basis for AVAC’s standing is not clearly stated in the Petition, but it appears that AVAC (like Ms. Pinard) is attempting to show standing by virtue of its status as a quasi-governmental organization and as somehow representing the County government and the County citizens. Again, the Petition obliquely suggests that AVAC is eligible to participate in this proceeding as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c). As discussed below, however, AVAC has no standing as of right in this matter to represent the County because it has no authority to do so. Likewise, this advisory council does not have the

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petitions for review by the Commission pursuant to § 2.786. The presiding officer may require such representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desires to participate.

status or the authority needed to participate under Section 2.715(c). No other basis for AVAC's standing has been presented and, therefore, the Petition should be dismissed.

The Petition states that AVAC is "an advisory council to San Luis Obispo County Supervisors, made up of local residents to represent their interests." (Pet. at 1.) Indeed, AVAC is a Community Advisory Council established to advise Supervisor Pinard by providing input from a community that Ms. Pinard represents (Avila Valley).<sup>5</sup> The Petition does not establish that AVAC has any independent authority to sue on behalf of San Luis Obispo County or to otherwise represent the County or its government. In seeking to intervene in this proceeding, AVAC is simply acting beyond its mandate. In addition, it is also acting contrary to the decision of the County Board of Supervisors not to intervene, discussed above.

Furthermore, it is not clear that AVAC has the authority to represent anyone with respect to the public health and safety or protection of the environment. Although not stated in the Petition, AVAC's primary purpose appears to be related to regional land use planning.<sup>6</sup> The Petition does not attempt to explain how AVAC's interests in regional land use planning would be adversely affected by the construction of an ISFSI at DCP. *Yankee Rowe*, LBP-98-12, 47 NRC at 354. As such, AVAC has not demonstrated standing under 10 C.F.R. § 2.714.

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<sup>5</sup> San Luis Obispo County Community Advisory Council Handbook, at 2 (Apr. 2001) ("Advisory Council Handbook") (appended hereto as Attachment 1). Each Community Advisory Council operates by virtue of grant funds from the Board of Supervisors. *Id.* The types of projects reviewed by Community Advisory Councils include proposals for land use permits, subdivisions of property, variances, and lot line adjustments. *See generally* "Community Advisory Councils & Participation in the Planning Process (appended hereto as Attachment 2). The Community Advisory Council makes recommendations to the appropriate decision-making authority at the county level. The relevant authority is not legally required to follow the Community Advisory Council's recommendation. *Id.* at 3-12.

<sup>6</sup> *See* Advisory Council Handbook, at 7.

As with Ms. Pinard, the Petition implies that AVAC has standing under 10 C.F.R. § 2.715(c). (See Pet. at 7-8 (unnumbered footnote).) However, for all the reasons discussed above, AVAC lacks the authority to seek such status. Moreover, Commission precedent is clear that advisory boards such as AVAC, which lack executive or legislative responsibilities, are not entitled to participation under 10 C.F.R. § 2.715(c). In denying a county's Regional Planning Board participation under that section, a licensing board stated:

As originally worded, 10 C.F.R. § 2.715(c) only allowed participation by the representative of a state, but the provision has been amended to include counties and municipalities and "agencies thereof." [Citation omitted.] While states, counties, and municipalities are commonly recognized forms of representative government, the Commission, when it added the wording "agencies thereof," did not expound on their limitations. However, it would be unprecedented to suggest that any and all governmental or quasi-governmental entities could invoke the provision for participation in a proceeding. This Licensing Board is confident that, even without such guidance, *that the Commission did not intend to allow participation by agencies that neither had standing on their own nor had legal authorization from a recognized government with sufficient interest in the proceeding . . . . Given jurisprudential standing requirements, it is appropriate to require a representational government, or an agency thereof, to have a foundational element of directly representing the citizens of the area affected. Such representation is not validated by delegation to an advisory body, like the [Regional Planning Board].*

*Yankee Rowe*, LBP-98-12, 47 NRC at 355-56 (emphasis added). This holding was affirmed by the Commission. See *Yankee Rowe*, CLI-98-21, 48 NRC at 202-03 ("We conclude that advisory bodies, by their very nature, are so far removed from having the representative authority to speak and act for the public that they do not qualify as governmental entities for purposes of section 2.715(c)"). As discussed above, AVAC is a purely advisory entity, which derives its authority from the San Luis Obispo County Board of Supervisors and reports to Ms. Pinard. AVAC has no independent legislative or executive authority and, accordingly, should not be allowed to

participate in this proceeding as an interested governmental entity pursuant to 10 C.F.R. § 2.715(c).

Given that AVAC has no authority to intervene in the official capacity suggested in the Petition, AVAC must demonstrate some other basis for standing. However, if AVAC seeks standing based on some other organizational or representational capacity, it has not articulated that basis for standing in the Petition.<sup>7</sup> Likewise, if Mr. Slattery seeks standing in his individual, private capacity, he has not articulated that basis for standing or explained how his personal interests would be affected by the proposed license. For these reasons, AVAC has not established either organizational or representational standing in this proceeding. The Petition as it relates to AVAC must be dismissed.

C. Petitioners' Stated Aspects

10 C.F.R. § 2.714(a) (2) requires that a petitioner set forth the “specific aspect or aspects of the subject matter of the processing” as to which it wishes to intervene. The requirement is satisfied by identifying “general potential effects of the licensing action or areas of concern” within the scope of the proceeding. *Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), LBP-90-6, 31 NRC 85, 89 (1990). The Petitioners state their intent to submit contentions on several aspects of the application. (*See* Pet. at 7-12.)

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<sup>7</sup> To establish standing, an organization must allege: (1) that the action will cause an “injury in fact” to either (a) the organization’s interests or (b) the interests of its members; and (2) that the injury is within the “zone of interests” protected by the Atomic Energy of 1954, as amended, and/or the National Environmental Policy Act. *See Houston Lighting & Power Co.* (South Texas Project, Units 1 & 2), ALAB-549, 9 NRC 644, 646 (1979). To invoke representational standing based on representing its members’ interests, the organization must (1) identify at least one of its members by name and address; (2) demonstrate how that member may be affected by the licensing action; and (3) show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member. *Yankee Rowe*, LBP-98-12, 47 NRC at 354; *citing Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI-96-1, 43 NRC 1, 6 (1996).

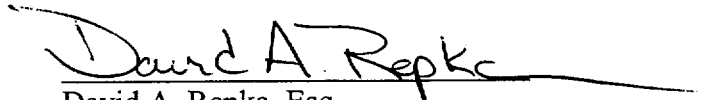


PG&E concludes that the Petitioners lack standing and therefore that the matter of the relevance of the stated aspects is moot. Nonetheless, PG&E does not concede that any of the stated aspects are appropriate for litigation in this proceeding. PG&E will address the admissibility of any specific proposed contentions if, for some reason, Petitioners are allowed to submit such contentions.

#### IV. CONCLUSION

For the reasons set forth above, Petitioners have failed to demonstrate standing as of right in this proceeding. In addition, Petitioners have failed to demonstrate that they are eligible to participate in this proceeding pursuant to 10 C.F.R. § 2.715(c). Accordingly, the Petition should be dismissed.

Respectfully submitted,



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Dated in Washington, District of Columbia  
This 3rd day of June 2002

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of: )  
)  
Pacific Gas and Electric Co. ) Docket No. 72-26-ISFSI  
)  
(Diablo Canyon Power Plant, )  
Units 1 and 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of "ANSWER OF PACIFIC GAS AND ELECTRIC COMPANY TO THE PETITIONS FOR LEAVE TO INTERVENE AND REQUESTS FOR HEARING OF SAN LUIS OBISPO COUNTY SUPERVISOR PEG PINARD AND AVILA VALLEY ADVISORY COUNCIL" in the above captioned proceeding have been served as shown below by deposit in the United States mail, first class, this 3rd day of June 2002. Additional service has also been made this same day by electronic mail as shown below.

Richard A. Meserve, Chairman  
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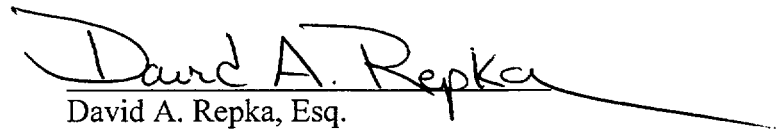
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**ATTACHMENT 1**

**SAN LUIS OBISPO COUNTY  
COMMUNITY ADVISORY  
COUNCIL HANDBOOK**



**APRIL 2001**

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## **Purpose of this Handbook**

**This handbook has been prepared to assist Community Advisory Councils in the important work they do. It identifies what an advisory council is and its role in the planning process. It also offers suggestions on procedures and conduct of the advisory council.**

**In addition to this handbook, the Department of Planning and Building, in coordination with members of advisory councils, has also prepared an Advisory Council Training Program. The Training Program will help present and future Advisory Council members understand and effectively participate in the planning process.**

*Message from  
Supervisor K.H. "Katcho" Achadjian*

*On behalf of the Board of Supervisors,  
I would like to thank all of our  
community advisory council volunteers  
for their tremendous efforts at giving  
a voice to their communities' concerns.  
San Luis Obispo County is fortunate  
to have such a strong grass roots program.*

*Keep up the Good Work !!*



## **Welcome to the Community Advisory Council**

Welcome to the San Luis Obispo County Community Advisory Council Handbook.

San Luis Obispo County is a unique and highly desirable community in which to live. We believe this did not occur by accident, but resulted from the efforts of many devoted, caring and involved residents in our communities that have participated in the planning process.

This Handbook has been created for San Luis Obispo County Community Advisory Council members. Both existing and new members can use this handbook as a guide to providing important feedback and recommendations on issues to the County Planning and Building Department, Planning Commission, and Board of Supervisors.

It is our hope that this Handbook will help you understand the roles and explain the responsibilities of Planning Department Staff and Community Advisory Council members, so that together we can find solutions to issues and explore new opportunities for the future of your community.

## **What is A Community Advisory Council?**

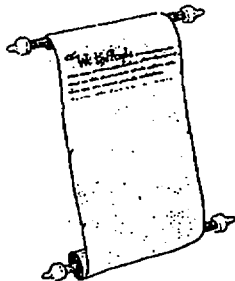
One of the ways that Community Advisory Councils (CACs) are recognized is as an important way for members of the community to contribute to the planning process. The importance of this involvement is acknowledged in the State Planning Law, which states:

*"The Legislature recognizes that the state planning process, particularly with regard to the preparation of statewide goals and policies, should incorporate the recommendations and views of an advisory council that is responsive to, and of some assistance to, the planning concerns that occur on a local and regional basis."*

Community Advisory Councils are authorized to represent their communities by the San Luis Obispo County Board of Supervisors. Each Community Advisory Council receives grant funds from the Board of Supervisors to help pay for administrative costs.

### Board of Supervisor's Resolution

The Board of Supervisors adopted a policy in 1996 that formally established criteria for "Board-Recognized Community Advisory Councils" (Resolution No. 96-485 Resolution Establishing Criteria for Board-Recognized Community Advisory Councils, December 10, 1996).



The resolution states that the Board of Supervisors:

- ▶ values the input of community advisory councils
  
- ▶ wants to make sure that advising bodies addressing the Board of Supervisors on current and future planning matters in the unincorporated areas actually represent the communities for which they speak
  
- ▶ wishes to establish a consistent set of guidelines to assist in the formation of future community advisory councils

The resolution also states that in order for a Community Advisory Council to be recognized by the Board of Supervisors, it must meet five criteria:

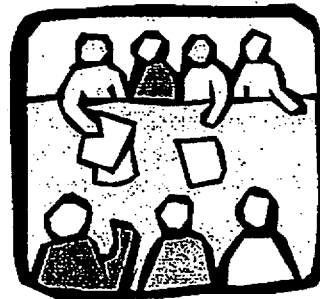
1. A community advisory council must be based in and represent a defined community within an established Urban or Village Reserve Line, which can include representatives from outlying or surrounding unincorporated areas associated with the community.
2. Community advisory council membership should reflect a broad cross-section of the community.
3. Advisory council meetings should occur regularly and be publicly noticed in a timely manner, and be open to all members of the public.
4. Advisory council bylaws should be established and maintained which direct the organization and protocol of the council. These should include a statement of purpose, the rules of order, frequency of meetings and method of appointment of subcommittees, and appointment or election of members.
5. Recommendations made by the Community Advisory Council and forwarded to the Board of Supervisors or Planning Commission should be arrived at by a majority vote of a quorum of the membership, with as much public input as is feasible.

## The Role and Activities of the Councils

There are currently eleven community advisory councils in San Luis Obispo County. These councils represent the following communities and the geographical areas surrounding them:

- ▶ Avila Valley
- ▶ Cayucos
- ▶ Edna Area
- ▶ Los Osos
- ▶ Nipomo
- ▶ North Coast Area
- ▶ Oceano
- ▶ San Miguel
- ▶ Santa Margarita Area
- ▶ Shandon
- ▶ Templeton

Each Community Advisory Council is unique in its make up, its interests and its way of conducting business. For example, the Santa Margarita and Cayucos Councils' representatives are elected to represent various district precincts of the community. In other communities, council members are elected to represent particular groups or organizations.



Some councils wish to see any and all projects that are proposed in their area of interest, and others just wish to review and comment on larger developments. Due to the differences in each of the eleven councils, the Department has found that it is very important to become familiar with the operation of each council.

## **The Mission of the Community Advisory Council**

Many Community Advisory Councils define their purpose by creating a Mission Statement. A Mission Statement makes the role and the purpose of the Community Advisory Council clear to the members and the general public who attend their meetings. It also gives direction to new members who are appointed or elected to the role.

*The Avila Valley Advisory Council's (AVAC) Mission is to represent the interests of residents and enterprises, to monitor and guide development and to promote the general welfare of the community. To these ends, AVAC works to assure that essential public services keep pace with change and to promote the conservation of the natural beauty and resources in our woodlands, along the creek sides and around the bay.*



An example of a Community Advisory Council mission statement is provided above. The Mission Statement is included on the agenda for each meeting of the Avila Valley Advisory Council to keep this fresh in everyone's mind. Other councils don't specifically have a mission statement, but their purpose is defined in their bylaws.

## **Planning Responsibilities of the Community Advisory Council**



Community Advisory Councils are responsible for advising the Board of Supervisors and other county, state and federal hearing bodies on current and future planning matters. This may include reviewing general plans and ordinances, County

projects, and proposed development in their community. The Community Advisory Council members make recommendations to the hearing bodies regarding proposed plans and development based on the will and desires of the community, within the context of local, state, and federal law.

### **The Duties of the Council**

Each council assigns itself different duties relevant to the particular community. These duties should be specified in the council's bylaws. For example, the Nipomo Community Advisory Council's (NCAC) bylaws outline the duties of officers including the chairperson, the vice chairperson, the recording secretary, the correspondence secretary, and the treasurer. The secretary's job is especially important for the Community Advisory Council that responds in writing to requests for project review.



In addition to duties specified in the bylaws, Nipomo Community Advisory Council developed a list of goals that will change over time. Today, these include amending the general plan, developing an affordable housing policy, working with the Board to make their decisions stick, forming sub-committees for specific areas of interest, formalizing minutes of their meeting, obtaining a regular quorum at their meetings by establishing an attendance policy.

This type of list detailing goals and objectives can be helpful when trying to prioritize the many duties of the council. This list needs to be periodically revised to reflect current issues and concerns of the community.

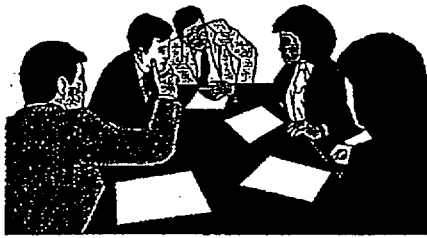
**Hardships Associated with Being A  
Community Advisory Council Member**

- ▶ Long Hours
- ▶ Criticism
- ▶ Phone Calls
- ▶ Personal Expenses
- ▶ Potential Liability
- ▶ Politics
- ▶ Frustration
- ▶ No Compensation



## **Composition of the Community Advisory Council**

Some councils are large and have a 20-person board and 10 subcommittees. Others are smaller and only have a few subcommittees, or none at all.

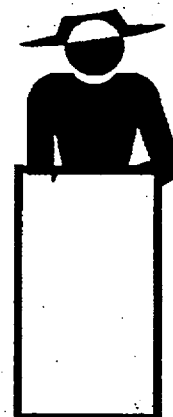


For example, Avila Valley Advisory Council (AVAC) has a primary member and an alternate from each of six geographic subareas of the Valley. AVAC has committees based on the various geographic areas that comprise their individual communities including Avila Beach, See Canyon and Avila Valley.

- ▶ The Santa Margarita Area Advisory Council is divided into twelve geographical areas including Creston, Garden Farms, Pozo, and Santa Margarita.
- ▶ The Oceano/Halcyon Advisory Committee, Edna Area Advisory Group, Cayucos Citizen's Advisory Council, and Templeton Area Advisory Group have subcommittees based on specific issues such as affordable housing, public safety, vineyards, and drainage.
- ▶ The Shandon Advisory Committee and the Los Osos Community Advisory Council have ad hoc subcommittees.

When an Area or Design Plan is being developed for a community, the advisory council will often form an Area Plan Review subcommittee.

All of the councils have a chairperson, a treasurer, and a secretary (or someone assigned to take notes and minutes during the meetings). Some members are appointed to these position, some are elected, and some simply volunteer.



- ▶ The Shandon Advisory Committee and the Avila Valley Advisory Council hold community elections for member seats.
- ▶ The Templeton Area Advisory Group holds public elections every two years.
- ▶ The Santa Margarita Area Advisory Council and Cayucos Citizens' Advisory Council hold elections every two years for each geographical precinct within their community.
- ▶ The Nipomo Community Advisory Council holds a community election for 13 Board of Directors seats, then the newly elected Board of Directors appoints 12 people to represent organizations within the Nipomo community.
- ▶ The Oceano/Halcyon Advisory Council appoints all members.
- ▶ The Los Osos Community Advisory Council conducts an application process and interviews local citizens who wish to participate. Recommendations are then sent to the Board of Supervisors for final appointment.

This variety of structures show there is no single way to organize a Community Advisory Council and select its members. Each CAC uses a local, "homegrown" approach for getting the community involved.

## **The Council's Relationship with Staff and Elected Officials**

Each Community Advisory Council is assigned a Planning Staff Liaison. The role of the liaison is to be a contact person between the community and the Planning and Building Department. The responsibilities of the staff liaison include:



- ▶ attending all main Community Advisory Council meetings
- ▶ being a resource for general questions on planning and land use issues
- ▶ being a resource for specific questions pertaining to San Luis Obispo County plans and ordinances
- ▶ providing early information about new and ongoing discretionary projects
- ▶ providing updates on the status of discretionary projects

The Board of Supervisors authorized the Community Advisory Councils with the expectation that the CAC members fully represent a cross section of their community. This representation needs to reflect the opinions and wishes of the community as a whole. The Board members always wish to know the Community Advisory Council's recommendation when considering a decision on plans or projects affecting their area.

## **Community Advisory Council Procedure and Conduct**

Most rules for how a Community Advisory Council operates are illustrated in each council's bylaws. This section provides information regarding both required and recommended guidelines for CACs.

### **Agendas**

The agenda should be organized, easy to follow, have a consistent format, and include the following information:



1. The date of the meeting
2. Time and where the council meets
3. The council's mailing address/contact number or email address
4. Order of business

In addition, you may want to include the following:

- ▶ The council's mission statement (if the council has one)
- ▶ The current officers and/or members of the council and titles
- ▶ The minutes of the previous meeting
- ▶ Specified public comment period

## **Public Notice of Meetings**

The Community Advisory Council is the link between the community and the decision-makers and should have a broad representation of the community. Thus, it is important that the council conducts its business as openly as possible and notify the public of its meetings. The easy way to do this is to publicize the meeting agenda.



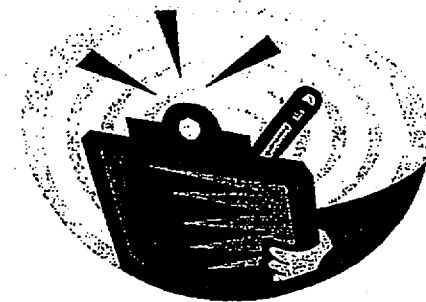
The council's agenda should be posted and printed in a visible and accessible location, such as on an advisory council's website, the local newspaper, the community post office, or an information kiosk. The council should also mail each month's agenda to those who request it.

If a specific project is put on the agenda for discussion, the council should send a copy of the agenda to the applicant. This way the person(s) proposing to develop in a community have a chance to discuss their project with council members and all interested community participants. A copy of the agenda should also be sent to the staff liaison so they will be prepared to answer questions or provide information at the meeting.

## **Adequate Meeting Space**

The council is responsible for providing an accessible meeting space for the members of the community (and other interested parties). The meeting space should have adequate seating and space for all who attend. It is important that all interested parties can identify council members and the chairperson, and that all council members and speakers can be heard.

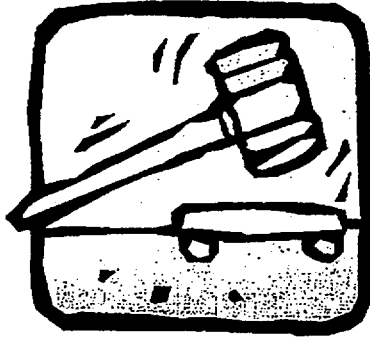
## **Keeping Minutes**



The council should designate one person and a backup for that person to take minutes at each meeting. This is a very important and difficult task. Some councils tape their meetings either in addition to or in lieu of written minutes.

The minutes of past meetings should be available for all who desire to see them. For example, the North Coast Advisory Council keeps copies of its meetings in the Cambria library. Each council has a specified method for keeping and distributing minutes in accordance with their bylaws.

## **Role and Responsibilities of the Chairperson**



The chairperson is the leader of the council. The chairperson's responsibilities are explained in each council's bylaws. The chairperson is responsible for making sure that meetings proceed in a fashion conducive to fair and open discussion and rational decision-making. The chair must be familiar with the council's procedures and with the agenda items to be discussed at each meeting. The chairperson sets the tone of the meeting, keeps the discussion on track, encourages fairness, moderates and contributes to discussions, and helps direct public comment to the issues at hand.

## **Qualities of a Good Chairperson**

The chairperson focuses on having effective community advisory council meetings. S/he can achieve this by following these recommended guidelines:

- ▶ Focus on the subject under consideration instead of personalities
- ▶ Keep a clear view of the big picture so the meeting is not bogged down in minor details
- ▶ Meet with County representatives



- ▶ Follow the established rules for conducting meetings
  - ▶ Assist the flow of ideas and help the members of the council stay on track
  - ▶ Stay informed - read reports, review plans, ordinances, and standards
- 
- ▶ Provide an open and comfortable environment and allow an objective flow of ideas with council members, the public, applicants, and County staff
  - ▶ Have a sense of pace - when to close testimony, conduct deliberations, and make decisions

Running an effective meeting can be aided by avoiding:

1. Not controlling the meeting
2. Treating others unfairly
3. Council board not bringing matters to a final decision
4. Wasting of people's time



## **Practical Tips for the Community Advisory Council**

### **Public meeting tips:**

- ▶ Advise the public to direct questions through the chairperson
- ▶ Do use appropriate procedures and clarify those procedures before discussion/input
- ▶ Do set time limits where appropriate
- ▶ Do define issues and avoid diversions
- ▶ Do deal with facts, don't deal with rhetoric - go beyond generalities
- ▶ Do be sure that there is sufficient factual basis and information for reaching a decision
- ▶ Do make decisions that are consistent with established practice, principles, and precedence



## Parliamentary Procedure

### Procedures and Making Motions

The following motions are grouped in the table below according to the purpose to be accomplished.

Purpose	Motion
To introduce business	Move to main motion
To approve action	Move to accept, adopt, or ratify
To modify or change	Move to amend or refer to a sub-committee
To defer action	Move to postpone to a definite time, refer to a sub-committee, or lay on table
To limit discussion	Move to time debate
To stop discussion	Move the previous question
To determine correctness of an announced voice vote	Move for division of the council
To suppress a question	Object to consideration, move to postpone indefinitely, or lay on table
To object to decision of the chair	Move an appeal from the decision
To make a request	Call for point of information, rise to parliamentary inquiry, or raise questions of privileges
To consider a second time	Move to take from the table, reconsider, or rescind
To repeal action	Move to rescind

Some examples of how to make motions are:

1. "Mrs. Chairwoman, I move that we have determined that this project is compatible with the community."

"I second the motion..."

2. "Mr. Chairman, I move to reconsider the council's decision to limit public discussion time to ten minutes."

[no second]

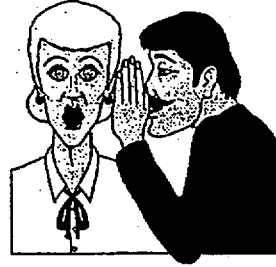
"No second, therefore the motion is denied."

### **Quorum**

In order to make motions and vote on them, a quorum must be present. This means that over one half of the duly elected or appointed council members are present at the meeting.

## **Avoiding A Conflict of Interest**

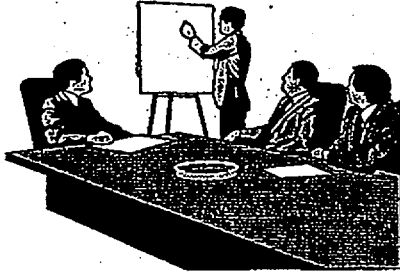
A conflict of interest exists if financial interests or other opportunities for tangible personal benefit may exert a substantial and improper influence upon a council member's judgement in exercising decision making.



Council members can avoid a conflict of interest by:

- ▶ abstaining from discussing and voting on proposed projects if the member is directly involved with the project
- ▶ not talking privately about matters that concern the CAC and the community
- ▶ not accepting gifts or favors from people whose projects are in the review process and will be voted on by the council
- ▶ clearly stating at public meetings and hearings whether you represent your council or yourself

## Open Meetings



"The Brown Act" (Government Code Sections 54950 et. seq) states that meetings of public bodies must be "open and public and all persons shall be permitted to attend any meeting, except as otherwise in the Act (e.g. personnel, litigation, etc.) and "actions may not be secret, and action taken in violation of open meeting laws may be voided."

While the "Brown Act" does not apply to most Community Advisory Councils in their present form, it contains important rules that CACs will want to consider in organizing and running their meetings. The "Brown Act" describes a meeting as: "[any] congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains." (54952.2)

Councils who are not covered by this act can still use it as a helpful guideline for holding official meetings.

This act applies to:

- ▶ Local agencies - County Planning Department
- ▶ Legislative bodies - Board of Supervisors
- ▶ Standing councils of a covered board such as the Planning Commission
- ▶ Non-profit corporations formed by a public agency or which includes a member of a covered board and receives public money from that covered board



This act does not apply to:

- ▶ Ad hoc meetings
- ▶ Advisory councils consisting of less than a quorum of the covered board
- ▶ Courts and court agencies
- ▶ State government

The primary meeting rules under "The Brown Act" are to:

- ▶ Post and send notice and an agenda for any regular meeting
- ▶ Limit action to those items listed on the agenda
- ▶ Hold meetings in the jurisdiction of the agency
- ▶ Not require a "sign in" for anyone
- ▶ Allow recording and broadcast of meetings
- ▶ Allow the public to address the board
- ▶ Conduct only public votes, with no secret ballots
- ▶ Treat documents as public "without delay"

If an illegal closed meeting has been held, the following actions may occur:

- ▶ Each member of the legislative body in attendance may be found guilty of a criminal misdemeanor
- ▶ An interested party may file a civil suit against the legislative body
- ▶ A court may:
  - force the agency to make and preserve tapes of closed sessions
  - declare actions taken null and void
  - award costs and attorneys fees

## **Due Process**



The Fifth Amendment of the United States grants that: "No person shall be.... deprived of life, liberty, or property, without due process of law."

Due process means that before a decision is made, all information must be considered and everyone has an opportunity to participate in accordance with the rules of the council.

Additionally, California state law Section 11445.10(b) states that: "The informal hearing procedure is intended to satisfy due process and public policy requirements in a manner that is simpler and more expeditious than hearing procedures otherwise required by statute, for use in appropriate circumstances."



## **SAN LUIS OBISPO COUNTY TRIVIA**

### **Did you know that...**

- ★ The population of San Luis Obispo County is 234,148+
- ★ The square mileage of San Luis Obispo County is 3,300
- ★ San Luis Obispo County has 114 miles of coastline
- ★ Our county is bordered by:
  - ▶ Monterey County to the north
  - ▶ Santa Barbara County to the south
  - ▶ Kern County to the east
  - ▶ Pacific Ocean to the west
- ★ San Luis Obispo County has six mountain ranges:
  - ▶ Caliente
  - ▶ Irish Hills
  - ▶ La Panza
  - ▶ San Luis
  - ▶ Santa Lucia Range
  - ▶ Temblor
- ★ Agriculture accounts for approximately 80% of the privately owned land in the county

★ Urban Reserve Lines are established for the following cities and unincorporated communities in San Luis Obispo County:

- ▶ Arroyo Grande
- ▶ Atascadero
- ▶ Avila Beach
- ▶ Cambria
- ▶ Cayucos
- ▶ Grover Beach
- ▶ Morro Bay
- ▶ Nipomo
- ▶ Oceano
- ▶ Paso Robles
- ▶ Pismo Beach
- ▶ San Luis Obispo
- ▶ San Miguel
- ▶ Santa Margarita
- ▶ Shandon
- ▶ South Bay
- ▶ Templeton

★ San Luis Obispo County has:

- ▶ 19 golf courses
- ▶ 17 community/regional parks
- ▶ 5 lakes, 3 with recreation activities (i.e. fishing, boating, swimming, wind surfing)
- ▶ 27 County trails
- ▶ 2 Missions
- ▶ 15 libraries

★ Cal Poly has 16,470 students and 1,100 faculty members



We hope that this Community Advisory Council Handbook will assist your council in its duties and meetings. We hope that it will help new members understand how council meetings are conducted and what actions they can take to ensure effective and purposeful meetings, provide leadership and ensure community participation.

San Luis Obispo County  
Department of Planning and Building  
April 2001

**Mission Statement**

Our mission is to "make a difference" in the quality of life in San Luis Obispo County.

Planning and Building Department  
County Government Center  
1050 Monterey Street  
San Luis Obispo, CA 93408-2800

phone: (805) 781 - 5600  
email: [first name initial and last name@co.slo.ca.us]  
example: pbeck@co.slo.ca.us

**ATTACHMENT 2**

## Community Advisory Councils & Participation in the Planning Process



Community Advisory Councils play a unique role in the land use planning process. They serve as the eyes and ears of the community. They help highlight issues that are emerging in the community. They provide an opportunity for members of the local community to have their voice heard. This is a serious responsibility because it requires an open ear to hear from all segments of the community. All perspectives must be considered when the community makes recommendations about the future of the community.

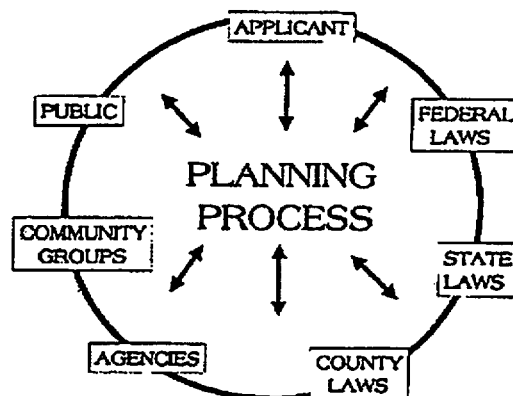
But saying all this, the Community Advisory Councils are as the name implies, **advisory**. They do not make the final decisions on plans or projects. This can often be very frustrating to the citizens who take their time to sit on a Community Advisory Council and who may feel that the decision made on a general plan or specific project did not carry out the recommendation from the community.

### How are decisions really made?

Decisions about planning for the future are made by several different bodies including the :

- ✓ Board of Supervisors
- ✓ Subdivision Review Board
- ✓ Planning Commission
- ✓ Minor Use Permit Hearing Officer

When a Board, Commission, or Hearing Officer make a decision they hear from a variety of agencies on a wide variety of subjects and they hear the recommendation of the Community Advisory Council. The chart illustrates the complexity of this task. To be successful, all the parts have to be working together to accomplish the task of planning, and it is a never-ending circle.



# WHAT IS CONSIDERED IN THE DECISION ON A PROJECT?

Planning Department Staff Report

Environmental Determination

Comments from Legal Counsel

Comments from Applicant

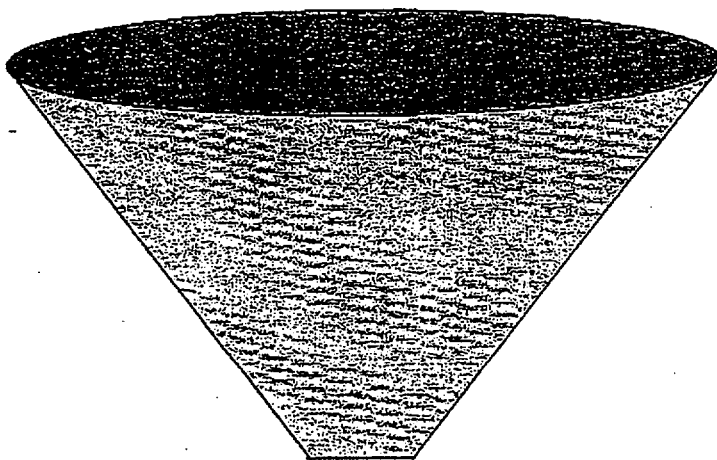
**Comments from Community  
Advisory Council**

Comments from Organizations

Comments from regional/county agencies/cities

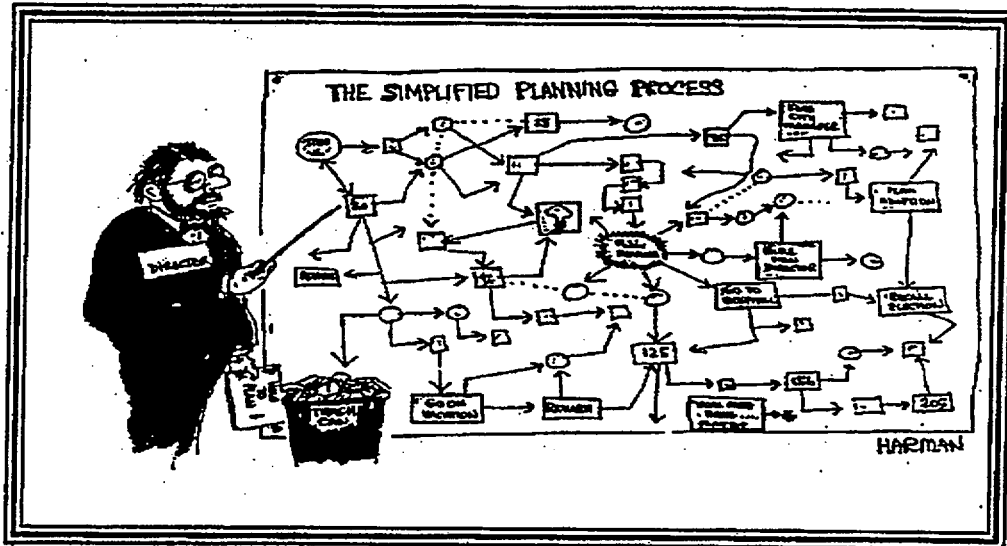
Comments from state/federal agencies

Comments from Service Providers



Actions  
taken by  
Decision-Makers to Approve,  
Approve with Conditions or Deny a Plan or Project

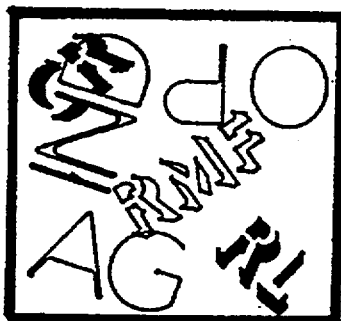
Sometimes this process can seem pretty confusing or overwhelming but perhaps a simple flow chart would help to explain the process.



If this has not made everything clear, let's consider other ways of explaining how to participate in the planning process.

### Referrals from County Planning and Building Department

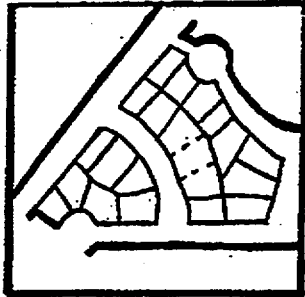
Comments from the Community Advisory Council's are one of the most important documents that the Planning and Building staff review. Comments are requested from Community Advisory Councils through the referral process. Community Advisory Councils are kept informed about plans and projects that are under review through two types of referrals:



**General Plans/Specific Plans, plan amendments and Ordinances.**

For community-wide general plans, specific plans and ordinances, the Board of Supervisors require a 60 day review period before the public hearing at the Planning Commission and again between the time of the Planning Commission hearing and the





## **Subdivision and Development Projects**

For a proposed development (such as a subdivision or shopping center project), the department refers the project to a community advisory council, most often during the earliest stage of review of the application. However, the timeline for review will vary based upon the type of project and environmental review.

### **Purpose of the Referral**

The purpose of referrals is to get feedback from other agencies, departments, service providers and advisory councils about a particular plan or project. For general plan projects and ordinance items, the referral will provide a copy of the general plan, general plan amendment application or ordinance section that is under review. For specific development projects, the referral packets are made up and mailed out by the planning, generally mailed out within the first 10-14 days after the project is received along with any supporting materials.

For the agencies and service providers (such as water companies), we request that they provide us information within 14 days. They can inform the planning department that additional information is needed in order to complete review of the project or make comments that the planner will incorporate into the staff report.

We know that Community Advisory Councils need more time for their review. In order to provide as much time as possible for community review, we send a special referral form to Community Advisory Councils. The assigned planner may identify specific issues or questions that the Community Advisory Council might want to focus upon. In addition we ask the Community Advisory Councils to identify the following:

- Do you wish to receive notice of the hearing for the project?
- Do you wish to receive a copy of the staff report when the project goes to public hearing?
- Do you wish to receive a copy of the final action taken on the project?

This is meant to provide additional information to the Community Advisory Council for those projects that it wishes to comment on.

You should also indicate on the referral form that you have no comments on the project, that comments are attached in a separate memo or letter, or that comments will be submitted at a later date. **It is important that this form is returned to the department** as the decision-makers want to know that the project has been reviewed in the community and what the comments were as they looked at a project. It is important that you return this, even if the comment is just to say "no comment".

Referral for subdivisions and development projects will include copies of the following:

- ▶ Referral cover sheet
- ▶ Application materials
- ▶ Site Plan (8 ½ "x 11") that shows the project layout
- ▶ Architectural elevations and floor plans (reductions) or subdivision map
- ▶ Land use category map
- ▶ Other items that may be appropriate.

A sample of a typical project referral is attached at the end of this report.



#### **How to Review a Plan or Project**

What happens when the Community Advisory Council receives a referral? Each Community Advisory Council needs to evaluate the significance of the issues and design a system that works best to get community input. On major issues such as development of a community plan, specific plan and sometimes ordinances, the

Community Advisory Council, in conjunction with the Planning Department may want to hold one or more community workshops. In addition to these meetings, the Community Advisory Council may want to take a formal position that would be sent to the decision-makers as a recommendation.

There are several ways that a Community Advisory Council may consider specific development proposals. Community Advisory Councils are encouraged to establish procedures for the review of projects. The following are the common examples.

1. **Minor Projects** - Some projects may be so small that they do not require review by the entire Community Advisory Council. This project referral form should be returned to the department by the Chair or by a sub-committee indicating that there is "No Comment" on the project.

2. Subcommittees - Some Community Advisory Councils have formed a land use subcommittee to review all projects and develop recommendations on what should be considered by the entire Council. These subcommittees may determine that some projects raise no issues and require no comment.. The subcommittee may recommend that other projects be reviewed by the full Council.
3. Community Advisory Council Review - Some communities will place all projects on the agenda and take action on each project. In each case, the action of the Community Advisory Council should be reflected on the referral form or in a letter or memo that describe the action of the Council.

To ensure that everyone in the community is aware of when a plan or project is being considered, the Community Advisory Council agenda should list the plans or projects that will be discussed. It is also important to let the applicant for a project know that their application is being reviewed. They will want an opportunity to tell the community about their project and to listen to the comments of the community. In addition, you will want to hear from any person from the community who wants to comment on the project before the Council makes a decision on the project. By providing an opportunity for comment, the applicant and department staff can consider possible changes to the project.

Your comments can be presented to the decision-makers in various forms, such as:

- ▶ **General Comments and Concerns** - These types of comments are aimed at identifying things that the community likes or dislikes about the project or plan, things they would like to see changed, conditions that they want to see required for the project if it is approved. Since the project may go through some changes based on the environmental review of the project and staff review, the comments from the Community Advisory Council can be a great help to the department staff and the applicant in looking for things that could be changed in the project to make it acceptable to the concerns of the community.
- ▶ **Specific formal recommendation** to approve or deny a project and the conditions you would like to see on the project to address your concerns from above. You may want to take this type of action later in the process when any changes recommended earlier in the process have been made to the project. **It is particularly important that the decision-makers understand what the basis was for the Council to come to this recommendation so you may want to include what the vote was on the project and what the Council used as reasons for coming to a particular conclusion.**

To assist the Community Advisory Councils, the department provides a referral recommendation form that will help the advisory council pull together their comments. These are sent to the decision-makers who review the projects that come before you.

In addition, some Community Advisory Councils provide a way for each member of the audience to share any comments they may have about a project. For example, the Nipomo Community Advisory Council and the Edna Area Group provide a stack of these forms and ask the community members to send in any comments that they wish to make on these forms. This is good way for everyone from the community, not just Community Advisory Council members, to participate in the process. Your Council may want to include a similar process in your meetings.

### **What is Considered in the Decision on a Project?**

When reviewing a proposed project, a number of key factors must be considered including:

- ✓ Consistency with the General Plan and/or Specific Plan for the area
- ✓ Requirements of county ordinances
- ✓ State and federal status, case law and the constitution
- ✓ Subdivision Map Act and local rules for dividing property
- ✓ Available resources to serve the project
- ✓ Environmental Impacts of the project
- ✓ Surrounding development within the area
- ✓ Public Comments that have been received from all sources, **including the comments received from the community Advisory Council.**

These are all factors that the Community Advisory Council should consider when reviewing a project as well. When providing comments, you may want to tie your comments to these factors that must be considered so that the decision-makers clearly understand how you have addressed these issues. This is why the training program is being developed so that the Council will have more information on the issues that decision-makers use in making decisions.

## Types of Council Decisions

The Community Advisory Council will see a wide variety of projects that you may wish to comment upon. These include:

### > General Plans/Specific Plans

These are the long-range plans that will guide the development of the community and surrounding rural areas. They will set the goals and "vision" of the community input in the development of the plans. These are the plans that will be used to review projects that will be submitted to the county.

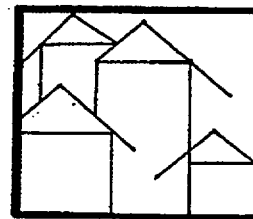


### > General Plan Amendments

These are requests to change the long-range plan for the community and may be proposed by the county, the community, or individual property owners. When the Community Advisory Council reviews these types of projects, it must make sure that the change will help to achieve the goals and "visions" that are found in the long-range plan and that they will avoid making piecemeal changes for one particular property that will change the direction of the plan for the entire community.

### > Proposals for Land Use Permits

These are several type of applications that can be submitted to the department for permits to use a particular property. These are called land use permits and the types that may referred to the Community Advisory Council may include Site Plans, Minor Use Permits, and Development Plans. (For more information on each types of permit see section 2 - The County's Planning Program).



In reviewing these projects, the Community Advisory Council will want to look at whether the project is helping to achieve the goals and "vision" as set out in the general plan. The council will want to identify if they feel the project will be an asset to the community and whether it will fit in the character of the community. There are different areas that have been set aside for different types of development by the general plan and this will determine what types of uses and standards may apply to a property. The council can also comment if you believe there will be impacts that will result if the projects is approved. These may include service impacts, such as water, schools, or traffic, or impacts to the environment, such as air impacts, loss of vegetation or animals, etc.

➤ **Subdivisions of Property**

These are applications that propose to increase the number of parcels or lots that exist on a property. This can range from a relatively simple two-way division of the property to a very large multi-lot project or planned development. Each will have different impacts depending upon the location of the project.



Similar to the Use Permits, the Community Advisory Council will want to look at whether the subdivision is helping to achieve the goals and "vision" as set out in the general plan. The council may want to identify if they feel the project will be an asset to the community and whether it will fit in to the surrounding community character. It is important that you recognize that there are different areas that have been set aside for different size parcels and that projects will come in all shapes and sizes. The council can also identify if they believe there will be impacts that will result if the projects is approved. These may include service impacts, such as water, schools, or traffic, or impacts to the environment, such as air impacts, loss of vegetation or animals, etc.

➤ **Variance**

A variance is a request to grant an exemption from strict compliance with the regulations on the property. A variance may only be granted in specific cases where regulations would deprive property of the uses enjoyed by similarly zoned lands. A variance may not be granted to permit a use that would not otherwise be allowed in that zone, such as an industrial building in a residential single family zone. When the council is considering a variance, it should understand the specific requirement that the applicant is asking to be exempted from. For example, in the Coastal Zone, if an applicant is building on existing lots where the slopes are more than 30%, they will be required to apply for a variance. If there are no locations on the property where the slopes are less than 30%, there may be no choice but to grant a variance if development is to be permitted. If the variance is denied and no development is allowed on the property, this may considered a "taking" under state and federal law, which could require financial compensation to the landowner. However, if the property contains an area that has slopes that are less than 30% that could accommodate reasonable development, there may be no basis for granting the variance.

➤ **Lot Line Adjustments**

These are projects that are often mistaken as divisions of property. A lot line adjustment proposes to take existing lots of record and to rearrange them into a new pattern. This can range from simple "fence-line" adjustment between neighbors where perhaps a fence or portion or a building has been incorrectly located over the property line. Other times, this can result in a complete new pattern of lots that will cluster or

locate parcels into new areas of the site. There is no increase in the total number of lots on the property. When reviewing these projects, the council may want to look at how the project will fit with the "vision" of the plan. However, these projects are not subject to the same standards as subdivisions of property and the decision-makers have greater restrictions on what types of conditions and improvements can be required with the project.

### **How much time do you have to review a project?**

There are timelines that are established by state law for completion of the review of projects. This is often called the "Permit Streamlining Act". These rules change from time to time but set standards that the planning department must meet in reviewing projects. These do not pertain to the development of general plans, specific plans, or general plan amendments.



The "Permit Streamlining Act" (Govt. Code Sections 65920-65963.1) applies only to discretionary projects which are adjudicative/quasi-judicial in nature such as subdivision approvals, use permits, and variances. Under this law, the clock starts ticking when the county finds that a development application has submitted all the information needed to process the application and the application is found to be "complete" for purposes of processing.

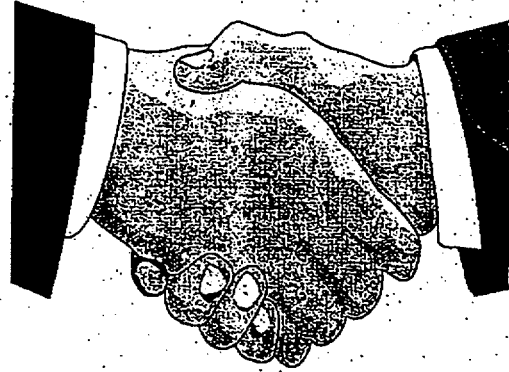
The county has 30 days to determine whether the application is complete, and if not, to give the applicant a detailed explanation of what else is needed. When the additional information is provided, the department has an additional 30-days to review the materials and determine if all of it has been submitted and if not, the project will remain on Information Hold. **If your advisory group is reviewing a project and identifies information that is needed during this 30-day period, you will want to contact the project planner so that the staff may consider requesting this for the project.**

Once the application is deemed complete, a whole new set of deadlines is triggered. The county must act on a project within six months if the application requires a negative declaration under CEQA, and within one year if the application requires an Environmental Impact Report. If the county misses the deadlines, the applicant can require the county to hold a public hearing on the project and take action on the application, or the development may be deemed approved under the Permit Streamlining Act.

It is important that the Community Advisory Council understand that their comments and review must be provided in a timely fashion so that the department can meet the requirements of state laws.

## The Role of the Community Liaison

A Community Liaison has been assigned by the department to each of the Community Advisory Councils. This staff person is a resource available to help the Council understand planning matters. However, the community liaison has limits on the amount of time available. This will vary from depending upon other assignments that the liaison must complete within the department and the plans and projects being reviewed by the Council. They will attend most community advisory meetings, and land use subcommittees meetings when invited.



The liaison is responsible for keeping the community informed about projects that may be happening in the community. In some instances, it may be someone who is assigned to particular projects, while in others the liaison may be from other divisions of the department but they will have information on projects that have been referred to the Council. They may not know all the answers on all projects and will need to "get back" to the Community Advisory Council with information that is requested, or with information on the status of various projects. They can keep you up to date on the actions that decision-makers take on projects of interest. They can also serve as a conduit to get information to other county department, when the council is interested in things they are responsible for.

In addition to the Community Liaison, there are staff persons who are assigned to individual projects or plans who can help to provide information to the Community Advisory Council.

You can reach the department staff and liaison through their e-mail access at

Name (first initial plus last name) [@co.slo.ca.us](mailto:Name@co.slo.ca.us)

Here is an example for George Washington:

[Gwashington@co.slo.ca.us](mailto:Gwashington@co.slo.ca.us)



## How are Comments from the Community Advisory Council used?



We receive comments from the Community Advisory Councils in many ways. This includes comments from the CAC meeting that the Community Liaison brings back to the staff person. This helps the staff know what occurs at your meeting. In addition, we may get telephone calls from the Chair or land use subcommittee representative concerning projects. Finally, we receive formal referral forms or letters that provide a record of the action of the Council.

Each of the recommendations of the Community Advisory Council is given serious consideration by the department staff. We review the comments to see if there are changes that could be made to the project that would make the project better in the eyes of the community as represented by the Council. When the Community Advisory Council recommends that a project be denied, this is reviewed with the supervisor and possibly management of the department as this indicates the community does not believe this project is appropriate for the community. This is taken very seriously and weighed in the preparation of the staff recommendation of the report.

Denial of a project. In some instances, a Community Advisory Council may wish to see a project denied. When making such a recommendation it is even more important to identify why you are recommending this action and what "Findings" you want the county decision-maker to consider when making a decision on the project. However, in some instances the general plan policies and ordinance requirements may support further consideration of the project. If that is the case, the staff will try to address each of the reasons or concerns that may have led the Council to come to its recommendation. That is why it is so important that the comments from the Council include the basis for its recommendation.

The staff report for the project will indicate the recommendation from the Community Advisory Council. In addition, a copy of the **referral response** will be attached in the staff report provided to the decision-makers wherever it is provided. If this is a project where the community had major concerns, the council may want to have the Chair or a designated representative attend the hearing to represent and discuss the council position. They should be available to answer any questions that may arise about their recommendation and will also hear all the other comments that the decision-makers receive on the plan or project. This would help them to understand how the decision-makers may have come to their conclusions and how it related to the recommendations of the Council.

The decision-makers give very serious consideration to the comments from the community. They must weigh this against the all the rest of the information that is provided during the hearing in coming to a final decision on the plan or project. Where possible, they will try to support the comments received from the Community Advisory Council but they are not legally required to follow the CAC's recommendation.

## Findings - The Basis for the Decisions

The decisions of the Board of Supervisors, Planning Commission, Subdivision Review Board, and Hearing Officer must be based on a rational decision-making process. They must each adopt written "findings" explaining the factual reasons for the decision and the conditions placed on the project (if it is approved). A finding is a formal and written determination or conclusion based on the evidence presented and prepared by a hearing body in support of its decision.

The courts have established that findings are:

"Legally relevant subconclusions which expose the agency's mode of analysis of facts, regulations, and bridge policies, and bridge the analytical gap between raw data and ultimate decisions."

In other words, findings are the legal footprints that decision-makers leave to explain how they progressed from the facts through policies to the decision. There must be evidence in the record to support the findings. A requirement to produce findings of fact is often found in due process rules of state legislation and in California it applies to most discretionary permits. If a decision is challenged in court, the findings will be used to trace the reasoning of the decision-maker and to determine whether its action was legally justified.

**Simple Findings** - are used for non-controversial projects and for projects that are meeting all the requirements, and not asking for variances, exceptions or waiver of special standards.

**Complex Findings** - are used for controversial projects, projects that are likely to be appealed or to be under legal challenge where the basis for the particulars of the decisions will be necessary for the appeal body or the courts to understand how they came to the conclusions, where there are special circumstances and findings are required by the plans/ordinances, and where there are major environmental issues.

## What can be required in a project?

When reviewing a project, the department and decision-makers must consider the specifics of the projects when deciding what types of requirements for improvements (or exactions) can be made on the project. There are two tests that must be met when imposing certain types of requirements on a project.



**Nexus** - is the term applied to the requirement that the county must establish that there is a clear relationship between the dedication or fee that is required as a condition of the approval and the purpose or impact that it is serving. If the courts find that there is no such nexus, the decision to include the condition could be considered a "taking" of the property. For example, if there is a problem that is identified with traffic impacts but the county instead required that a neighborhood park be required as a condition of the project, there may not be a clear "nexus" between the condition and the impact.

**Rough Proportionality** - is the term applied to the requirements that the county establish that there is a roughly proportional basis for the amount for the exactions set for the property and the extent of the impacts that the project will bring. Again, if the courts find that there is no such "rough proportionality", the decision could be considered a "taking" of the property. For example, if a road is already impacted in the present condition and the new project will add only a small increase, the county could not require the new project to build the entire new road, but only that portion that is based upon its impacts.

During the review of the project, the planning staff will consider both of these tests when recommending conditions that are placed on the project. This should be considered when the Community Advisory Council is making its decisions as well.

**Other legal considerations** - In addition to these two specific legal issues that must be addressed in the review of projects, there are sometimes other legal considerations that will arise and must be considered by staff and the decision-makers. Often these are identified during the public hearing on the projects in response to comments from the project applicant or other interested parties. This can influence the course of the decision that is made on a project as staff must ensure that legal concerns are addressed and do not call into question the decision of the hearing body.

## **What happens when the decision makers come to a different conclusion than the Community Advisory Council?**

After considering all of the information provided during the public hearing, the decision maker will take an action. Sometimes, this will not be a decision that agrees with the recommendation of the Community Advisory Council. It is important that the Council remember that their role is to act as an advisor to the decision-maker and that they understand they are not given the final action on the plan or project.

One of the ways to understand why the decision makers have come to a different decision is to ask for feedback from the decision makers directly. You may want to invite the decision maker to your meeting to hear why they made the decision. Also, the findings and minutes of the meetings will provide information for the Council to better understand the conclusions the decision-makers come to on a plan or project.

There is also a formal appeal process on permits. This will mean that the matter will be heard by the Board of Supervisors which considers all the information that the original hearing body did and any additional information that is provided to the Board based on the issues of the appeal. An appeal can be filed by an applicant or an interested individual or group. In some instances, the appeal must be accompanied by an appeal fee as established by the Board of Supervisors. The Board can act to approve or deny the appeal and may include additional conditions on the project to address the concerns raised in the appeal.

In most instances, the decision of the Board of Supervisors will be final. However, for some projects located in the coastal zone, an appeal may also be filed to the California Coastal Commission.

## **What if the project changes after approval?**

Communication between the Community Advisory Council members, the community liaison, and the staff planner assigned to the project is very important. If the project is revised after initial referrals have been mailed out, a re-referral may be appropriate when the community has identified concerns regarding the project or when project would be so different from the original projects that staff may want the Council to take another look.

Revisions can be proposed at many stages in the review and development of the project. It can occur in the early stages of review in response to comments from the community, staff, neighbors, or other agencies. It can also change in response to environmental review and needed mitigation for possible impacts,

Revisions can also occur during public hearings on projects. Revisions may result from conditions that are placed on the projects to change the design, lessen impacts that

were identified in the review of the projects or to make the project "fit" into the community in response to comments from the Community Advisory Council. Finally, the decision-makers can require changes during the public hearing in order to be able to support approval of the projects. If these changes occur, the community liaison or assigned staff planner can help the community stay informed when the community has identified concerns regarding the project, or the revised project would be so different from the original projects that the Council may want or need to review it again.

Revisions can also be proposed following the approval of the projects. These are often "fine-tunings" that occur when the final conditions are being included in the projects and final engineering is completed. Many of these are reviewed and found to be in conformance with the original project that was approved. However, in some instances, these revisions will be so substantial or the things that are proposed to be changed were clearly of such concern to the community or neighbors that the department will require the project "go back" through the public hearing process through a reconsideration of the project. Often this will focus on the changes, rather than the entire project, as the original approval is still valid and can proceed.

### **When will the project begin or be completed?**

A frequently asked question is "when is the project going to be built?" or "when will the project be completed?" This will depend upon the timing of the developer of the project unless specific conditions have been established that set out when the development must occur. The approval of a Land Use Permit is generally good for an initial two year period in most instances. Up to three one-year time extensions may be granted if additional time is needed to complete the project and nothing has changed that would affect the project and prevent it from going forward, such as a moratorium based on limited resources. For subdivisions of property, there is an initial approval period of two years, followed by up to five one-year time extensions unless the project has a different established phasing schedule and records in phases.

In general, these extensions of time are not referred to the Community Advisory Council for comment; however, many of them are found on the consent agenda of the decision-making body.

Once building permits have been issued for the project and construction has moved beyond the foundation, the timelines are generally as established under the Uniform Building Code, unless a schedule was set under the conditions of approval.