

San Joaquin County Grand Jury



County Board of Supervisor's Agendas: Consent or Discussion? 2012-2013 Case No. 1012

Summary

Open and transparent public entities are a requirement for an effective democratic society. The ability of the public to observe and participate in the government process and the function of its institutions is essential if it is to have a clear understanding of how the public is represented and served. After attending public meetings of the San Joaquin County Board of Supervisors (Board), the 2012-2013 San Joaquin County Grand Jury (Grand Jury) was concerned about the placement of items on the agenda, the information being provided to the public on the County's website and the public's opportunities to comment during the public session of the Board meeting.

The Grand Jury initiated an investigation into the Board's agenda-setting process, as well as how open and participative discussion is facilitated. The results of the investigation led to recommendations that are intended to promote greater participation and discussion through placement of more items on the discussion (rather than consent) agenda, routine updating of the county's website for access to information and enhancing the public comment process itself.

Glossary

Board Resolution	A formal expression of opinion or intention of the San Joaquin County Board of Supervisors.
Board Resolution R-12-120	The Board resolution passed on April 24, 2012, that updated how the Board of Supervisors conducts its meetings.

Brown Act	The Ralph M. Brown Act (Government Code Sections 54950 <i>et seq.</i>) regulating the conduct of public meetings and related public information.
Chair	Chairperson of the San Joaquin County Board of Supervisors; annually selected from among its members.
Consent Agenda	A portion of an agenda that includes a number of routine administrative items that are dispensed with by a single vote of the Board.
County Counsel	The attorney for the County.
Hyperlink	A direct electronic link within a website to a specific piece of information.
Public Comment Form	A form available before Board meetings for the public to request to speak before the Board on any matter on the agenda or under the Board's jurisdiction.

Background

The San Joaquin County Board of Supervisors (Board) is required to adhere to numerous State laws regarding the placement of items on Board agendas and the conduct of its public meetings. These include the Government Code, Business and Professions Code and the Code of Regulations. The Board may also establish its own policies and rules related to its agenda and meetings through adoption of ordinances and resolutions. The Board has such a resolution (Resolution R-12-120) that establishes the procedures pertaining to the conduct of its meetings. This resolution was last revised on April 6, 2012.

State law requires agendas provide a description of the proposed actions to be considered by a board to include sufficient detail for the public to understand the subject and intent of the proposed action. The agenda must be posted in freely accessible public locations at least 72 hours before the board meeting starts. These requirements are part of the State's Brown Act. Meetings must also follow rules proscribed in the Government Code about the public's ability to comment on issues before the Board.

The Board holds weekly meetings to conduct the County's business. Currently the meetings are scheduled on Tuesday mornings, starting at 9:00 am. An agenda is prepared in advance listing items to be reviewed, discussed and/or acted upon by the Board. There are five general sections on the agenda:

Closed Session – held in private and not open to the public; may only include limited items that are permitted by law; actions taken in closed session are reported for the public during the open session of the meeting.

Consent Items – routine administrative matters that are dispensed with by a single vote of the Board; items can become a discussion item at the discretion of Chair.

Discussion Items – items that are discussed by the Board at open session; some are presentations with questions/comments by the Board; others are discussed and voted on by the Board.

Public Comments – members of the public have the opportunity to comment on any item on the agenda and any other matter under the jurisdiction of the Board.

Public Hearings – certain items require a formal hearing where the public is encouraged to comment on the matter; examples from 2012 Board agendas include:

Resolution Establishing Coordination and Consultation Policies Between the County of San Joaquin and the City of Ripon.

Consider the Abandonment of a Portion of Correia Road and a Portion of Empire Tract Road along the White Slough and Honker Cut Levees.

Approve an Agreement for the San Joaquin County Canlis Building and Downtown Parking Structure Lighting Upgrade and Retrofit Project.

Appeal by Bear Creek Solar, LLC of the Planning Commission's Denial of Site Approval Application.

County department heads submit items for each agenda and suggest the agenda section for each item. A committee then meets to review and determine which items are included in each of the five general sections of the agenda. This committee is comprised of the Board Chair, the County Administrative Officer, the County Counsel and the Clerk of the Board.

Issues

The Grand Jury attended numerous meetings of the County Board as well as various city council meetings. It was observed at the Board meetings that there appeared to be relatively fewer agenda items being discussed than at meetings of city councils. When the Grand Jury attempted to review the agendas of the Board, it found the identification, number and location of hyperlinks on the County website made it difficult to access documents related to the agenda items. It was also determined that the Board did not provide sufficient information on the website or at the public meetings about the process for members of the public to speak at Board meetings.

The Grand Jury identified several concerns that were related to the Board operating in a transparent manner. These concerns are the focus of this report and include:

- Should more matters be discussed in public meetings of the Board?
- Is the information on the website easily accessible regarding Board agendas and their supporting documents? Are Board agenda items sufficiently described so that the public knows what topics are being addressed?
- Does the information on the Board's agendas and website effectively inform the public regarding how it can participate in Board meetings? Is the process fully described regarding how the public can make comments at a public meeting?

Method of Investigation

The Grand Jury observed meetings of the Board. County Counsel provided information regarding laws associated with Board of Supervisor meetings.

Materials Reviewed

- Applicable California Government Code
- Applicable California Code of Regulations
- Applicable California Business and Professions Code
- Applicable Codes and Ordinances of San Joaquin County
- 2009-2010 San Joaquin Grand Jury Report

- San Joaquin County Board of Supervisors Resolution R-12-120
- San Joaquin County Board of Supervisors Public Comment Form
- San Joaquin County Board of Supervisors website
- Various Board of Supervisors meeting agendas
- Agendas for all cities within San Joaquin County
- Agendas for counties bordering San Joaquin County

Interviews Conducted

- Board of Supervisors Member
- Personnel from the County administration
- Personnel from the County Information Technology Department
- Personnel from the Office of the Clerk of the Board

Discussion, Findings and Recommendations

1.0 Consent Agenda

The Board is allowed some discretion in determining what items are placed in each agenda category. The Government Code and Board of Supervisors Resolution R-12-120 set legal and policy requirements and provide authority or guidelines as to how a Board meeting is conducted. However, the Grand Jury found no authority that determines which items should be consent items and which items should be discussed.

At the discretion of the Chair, any consent item may be removed from the consent portion of the agenda and then be discussed. Anyone from the public can request this change. However, there is no mention on the agenda or on the County website of any process for someone to make this request.

A review was conducted of all 2012 Board agendas. The number of items for consent, discussion and public hearing were counted. When an agenda included Appointments to Boards and Commissions, all appointments were counted as one consent item. Since the focus of this review was on items heard by the public, closed session items were not included. The results of this review are shown in Appendix A.

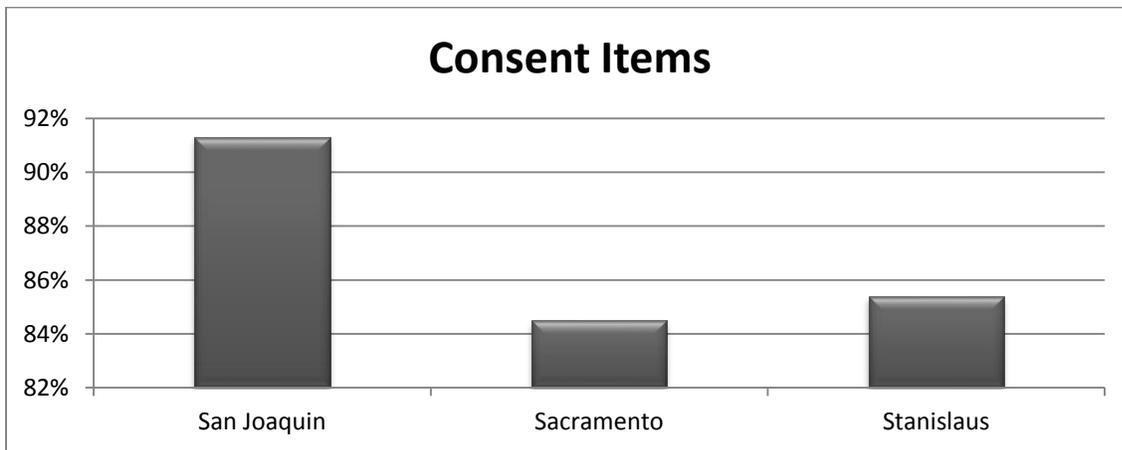
The Board meeting agendas included consent items under the following topics:

- Consent – Health and Human Services
- Consent – Public Works
- Consent – Flood Control
- Consent – Law and Justice
- Consent – General Government
- Consent – In-Home Supportive Services Public Authority
- Consent – Mountain House Community Services District

When reviewing the 2012 Board meeting agendas, the following key issues came to light:

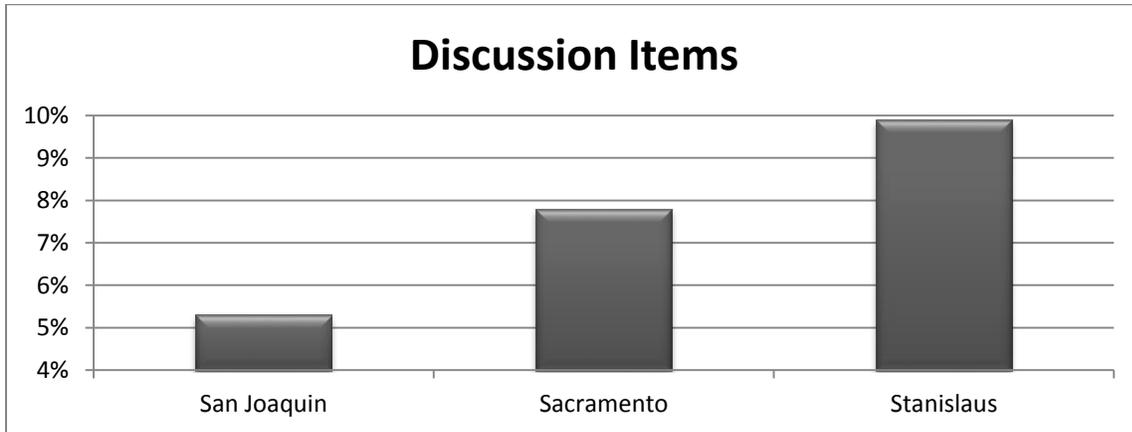
- Only 35 of 664 agenda items were presentations or discussions.
- 11 of the 31 Board meetings (more than one third) had no discussion items at all.
- On average, there was only one discussion item per meeting.
- Over 90% of all agenda items that came before the Board were consent items.

In order to determine if the high number of consent items is unique to San Joaquin County, a similar analysis was completed for two adjacent counties, Sacramento and Stanislaus. Full results of these analyses are provided in Appendix B for Sacramento County and Appendix C for Stanislaus County. Graph 1 below compares the percentages of consent items for all three counties on their 2012 agendas.



Graph 1

A comparison of the percentages of discussion items on the 2012 agendas for the same counties is provided on Graph 2.



Graph 2

The Grand Jury recognizes that these numbers can be attributed to the nature of business before each Board.

The large percentage of consent items for San Joaquin County suggests that one of three conditions exists:

- Some consent items belong on the agenda for discussion, or
- There is very little that the Board needs to discuss and almost all of its actions are routine administrative matters, or
- There are issues that could be discussed by the Board that are not being addressed at the Board meetings.

Having such a large number of items under the consent agenda can lead to a perception that the intent of the Board is to limit open discussion. However, it should be noted that the Board is in full compliance with existing State laws and its own policies.

Finding

F1.1 The large percentage of consent items on the agendas of the public Board meetings does not encourage openness in the conduct of its deliberations.

Recommendation

R1.1 The Board of Supervisors biannually review its policy, procedures, and practices relative to the structure of the agenda, giving special attention to the placement of a greater number of discussion items on the agenda.

2.0 Agendas and the County Website

Staff reports providing background information about each agenda item are available on the website, but the hyperlinks to that material were not always readily evident. The County's Information Technology Department and the Clerk of the Board have made modifications on the County website so that there is a direct link between an item listed on the agenda and its supporting staff report. This makes it easier for the public to access supporting documents for each agenda item.

Government Code Section 54954.2(a)(1) requires that the Board "...shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session." These descriptions should be clear as to the Board's intended action so that the public knows what issues are coming before the Board. While some descriptions were not very informative when this investigation began, the County is now using more complete and understandable language for descriptions.

Findings

F2.1 Improved hyperlinks to staff reports for agenda items were in progress when the Grand Jury began its investigation and are now functioning.

F2.2 Providing more complete descriptions of agenda items was in progress when the Grand Jury began its investigation and is now in use.

F2.3 There is no regular or formal review of the agenda website by County staff or the Board. Any review is informal and sporadic.

Recommendation

R2.1 No later than September 30, 2013 the County develop a schedule for regular review of the website for its ongoing improvement to ensure the accessibility of timely information to the public.

3.0 Public Comment Process

At the beginning of each Board meeting, any member of the public may address the Board on any matter on the agenda or within the jurisdiction of the County. Each Board agenda includes the statement "Persons wishing to address the Board may complete the Public Comment Form which is located in the tray on the back wall of Chambers or which may be obtained from the Board of Supervisors' Office, Suite 627. Please no personal attacks." The Public Comment Forms are used to identify who is requesting to speak and the agenda item(s). It is also used to identify the speaker in the meeting minutes.

Early in each Board meeting, the Chair makes an announcement about when and how public comment will be allowed and the procedures that must be followed. This includes how items may be removed from the consent calendar for public discussion. The Chair also announces that the Board Policy is to allow three minutes per person for public comment about an agenda item at the meeting before any Board discussion. If requested, an individual's time for comments may be extended at the discretion of the Chair.

The Stanislaus County Board of Supervisors has a much more extensive explanation of public comment on each agenda:

“PUBLIC COMMENT PERIOD: Matters under the jurisdiction of the Board, and not on the posted agenda, may be addressed by the general public at the beginning of the regular agenda and any off-agenda matters before the Board for consideration. However, California law prohibits the Board from taking action on any matter which is not on the posted agenda unless it is determined to be an emergency by the Board of Supervisors. Any member of the public wishing to address the Board during the “Public Comment” period shall be permitted to be heard once for up to 5 minutes. Please complete a Public Comment Form and give it to the Clerk of the Board.

“The agenda is divided into two sections:

“CONSENT CALENDAR: These matters include routine financial and administrative actions and are identified with an asterisk (*). All items on the consent calendar will be voted on as a single action at the beginning of the meeting under the section titled “Consent Calendar” without discussion. If you wish to discuss an item on the Consent Calendar, please notify the Clerk of the Board prior to the beginning of the meeting or you may speak about the item during Public Comment Period.

“REGULAR CALENDAR: These items will be individually discussed and include all items not on the consent calendar, all public hearings and correspondence.

“ANY MEMBER OF THE AUDIENCE DESIRING TO ADDRESS THE BOARD ON A MATTER ON THE AGENDA: Please raise your hand or step to the podium at the time the item is announced by the Board Chairperson. In order that interested parties have an opportunity to speak, any person addressing the Board will be limited to a maximum of 5 minutes unless the Chairperson of the Board grants a longer period of time.

“BOARD AGENDAS AND MINUTES: Board agendas, Minutes, and copies of items to be considered by the Board of Supervisors are typically posted on the Internet on Friday afternoons preceding a Tuesday meeting at the following website: www.stancounty.com/bos/agenda-minutes.shtm.

“Materials related to an item on this Agenda submitted to the Board after distribution of the agenda packet are available for public inspection in the Clerk's office at 1010 10th Street, Suite 6700, Modesto, CA during normal business hours. Such documents are also available online, subject to staff's ability to post the documents before the meeting, at the following website www.stancounty.com/bos/agenda-minutes.shtm.”

The Grand Jury finds that Stanislaus County provides much more information to the public on how they can participate in the Board meetings.

Findings

F3.1 Neither the San Joaquin County Board agenda website nor the posted Board agendas contain information on the public comment process with the exception that a Public Comment Form must be completed to address the Board.

F3.2 Neither the County website or the agendas contain information related to removing items from the Consent agenda for discussion.

Recommendation

R3.1 No later than September 30, 2013 the County update the Board meeting agendas to include complete information about the public comment process, including how to request that an item be pulled from the consent agenda for public discussion.

Conclusion

The 2012-2013 Grand Jury initiated an investigation into how the Board of Supervisors conducts its meetings. Three issues identified: the number of consent items on the agenda, the incomplete descriptions of some agenda items and the public comment process. The Grand Jury found the County staff and the Board willing to making improvements. During the investigation, it was found that appropriate changes were already in process involving the website. As the investigation came to a close, some changes had been completed. Other improvements as recommended in this report require further attention.

It is the responsibility of the Board to ensure that it foster public interest and involvement in its deliberations and decision-making processes affecting all members of the community it serves. The Board could better fulfill these responsibilities regarding enhanced public access and improved transparency by regularly reviewing policies and practices on the structure of Board meeting agendas, increasing the number of public discussion items, providing more information on the County website, making the website more user friendly and clarifying the process for public comments. It is with this intent that the Grand Jury makes these recommendations.

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses, except upon an order of the court for narrowly defined purposes. (Penal Code Sections 924.2 and 929).

Response Requirements

California Penal Code sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of San Joaquin County Superior Court within 90 days.

Mail a hard copy of the response to:

Hon. David P. Warner, Presiding Judge
San Joaquin County Superior Court
P.O. Box 201022
Stockton, CA 95201

Also, please email the response to Trisa Martinez, Staff Secretary to the Grand Jury, at

grandjury@sjcourts.org

Appendix A

San Joaquin County Board of Supervisors 2012 Meeting Statistics

Date	Consent Items	Discussion/Presentation Items	Public Hearing Items
Jan 9	NA (Reorganizational Meeting)		
Jan 10	32	0	2
Jan 17	0	0	1
Jan 24	13	0	0
Jan 31	12	0	0
Feb 14	22	3	0
Feb 28	29	0	1
Mar 13	14	2	4
Mar 27	11	2	0
Apr 3	17	1	0
Apr 10	14	2	0
Apr 24	22	3	0
May 1	14	1	1
May 8	18	1	1
May 22	20	0	1
Jun 5	31	1	0
Jun 12	6	1	1
Jun 19	19	3	1
Jun 26	15	0	2
Jun 27	NA (Budget Hearing)		
Jun 28	NA (Budget Hearing)		
Jul 10	19	0	0
Jul 17	16	1	0
Jul 24	12	4	1
Aug 7	28	0	0
Aug 28	13	1	1
Sep 11	36	3	0
Sep 25	24	1	1
Oct 2	18	0	0
Oct 16	16	0	2
Nov 6	32	1	1
Nov 20	17	1	0
Dec 4	40	3	0
Dec 11	26	0	2
Dec 17	NA (Closed Session Only)		
Total	606	35	23
Percent	91.3%	5.3%	3.5%
Average	19.5	1.1	0.7

Appendix B

Sacramento County Board of Supervisors 2012 Meeting Statistics

Date	Consent Items	Discussion/ Presentation Items	Public Hearing Items
Jan 10	38	3	5
Jan 24	27	7	1
Feb 7	34	6	4
Feb 28	52	2	4
Mar 13	30	6	5
Mar 27	34	2	7
Apr 10	40	3	4
Apr 17	37	5	3
May 8	65	7	2
May 22	75	3	4
Jun 12	56	3	5
Jun 19	64	5	4
Jul 17	33	2	2
Jul 24	22	2	8
Aug 7	27	1	5
Aug 21	50	1	3
Sep 11	38	3	1
Sep 25	57	5	5
Oct 16	32	4	3
Oct 23	15	2	1
Nov 6	2	3	
Dec 4	50	4	5
Dec 11	49	7	3
Total	927	86	84
Percent	84.5%	7.8%	7.7%
Average	40.3	3.7	3.7

Appendix C

Stanislaus County Board of Supervisors 2012 Meeting Statistics

Date	Consent Items	Discussion/Presentation Items	Public Hearing Items
Jan 10	13	4	0
Jan 24	15	1	0
Jan 31	10	0	0
Feb 7	8	0	0
Feb 14	12	1	0
Feb 28	15	3	0
Mar 6	8	2	1
Mar 20	14	3	0
Mar 27	8	0	0
Apr 3	20	3	0
Apr 17	21	0	2
Apr 24	17	0	2
May 1	10	2	0
May 8	12	0	0
May 15	8	2	1
May 22	24	3	2
Jun 5	20	0	1
Jun 19	19	1	0
Jun 26	18	3	2
Jul 10	11	1	0
Jul 17	16	1	1
Jul 24	20	3	2
Aug 7	14	1	0
Aug 21	12	2	3
Aug 28	13	2	2
Sep 11	14	0	2
Sep 18	11	0	1
Sep 25	16	3	1
Oct 2	11	1	0
Oct 16	11	0	0
Oct 30	18	4	0
Nov 6	9	3	0
Nov 13	8	4	0
Dec 4	15	2	0
Dec 11	12	1	0
Dec 18	16	2	0
Total	499	58	23
Percent	85.4%	9.9%	3.9%
Average	13.9	1.6	0.6