

**Grand Jury Report
RESPONSE FORM**

RE: Report Titled: *Ricochet Bullets - No Problem!*

Report Dated: February 19, 2011

Response Form Submitted By:

Nash Gonzalez, Director
Mendocino Planning and Building Department
501 Low Gap Road
Ukiah, CA 95482

Response MUST be submitted, per Penal Code §933.05, no later than: June 8, 2011

I have reviewed the report and submit my responses to the FINDINGS portion of the report as follows:

I (we) agree with the Findings numbered:

I (we) disagree wholly or partially with the Findings numbered below, and have attached, as required, a statement specifying any portion of the Finding that are disputed with an explanation of the reasons therefore.

I have reviewed the report and submit my responses to the RECOMMENDATIONS portion of the report as follows:

The following Recommendation(s) have been implemented and attached, as required, is a summary describing the implemented actions:

The following Recommendation(s) have not yet been implemented, but will be implemented in the future, attached, as required is a time frame for implementation:

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- The following Recommendation(s) require further analysis, and attached as required is an explanation and the scope and parameters of the planned analysis, and a time frame for the matter to be prepared, discussed and approved by the officer and/or director of the agency or department being investigated or reviewed: (This time frame shall not exceed six (6) months from the date of publication of the Grand Jury Report)
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- The following Recommendations will NOT be implemented because they are not warranted and/or are not deemed reasonable, attached, as required is an explanation therefore:
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I have completed the above responses, and have attached, as required the following number of pages to this response form:

Number of Pages attached: 3

I understand that responses to Grand Jury Reports are public records. They will be posted on the Grand Jury website: www.co.mendocino.ca.us/grandjury. The clerk of the responding agency is required to maintain a copy of the response.

I understand that I must submit this signed response form and any attachments as follows:

First Step: E-mail (word documents or scanned pdf file format) to:

- The Grand Jury Foreperson at: grandjury@co.mendocino.ca.us
- The Presiding Judge c/o Sally Nevarez: sally.nevarez@mendocino.courts.ca.gov
- The County's Executive Office: angeloc@co.mendocino.ca.us

Second Step: Mail all originals to:

Mendocino County Grand Jury
P.O. Box 939
Ukiah, CA 95482

Printed Name: Nash Gonzalez

Title: Planning and Building Services Director

Signed: 

Date: April 29, 2011



MEMORANDUM

DATE: APRIL 29, 2010
TO: KATHERINE WYLIE, GRAND JURY
FROM: NASH GONZALEZ, PLANNING AND BUILDING SERVICES DIRECTOR
RE: REPORT TITLED "RICOCHET BULLETS-NO PROBLEM (FINDINGS # 2, 4, 14, 15, 17, 18 AND RECOMMENDATIONS # 1, 6, AND 8)

Pursuant to Penal Code Section §933.05, the Mendocino County Civil Grand Jury has requested a response to the Findings and Recommendations contained in the report titled "Ricochet Bullets-No Problem." This response is being transmitted before the due date of June 8, 2011 as requested.

Based on the Grand Jury's Report, the Department of Planning and Building Services was requested to respond to Findings 2, 4, 14, 15, 17 and 18. The Department was also requested to respond to Recommendations 1, 6 and 8. The Department of Planning and Building Services respectfully submits the following responses:

Findings: Required Response: Mendocino County Department of Planning and Building Services

1. This response is relative to Finding Number 2 contained on page 2 of 5, which states "The Sheriff's Office, functioning as an agent of the County, is operating under the Agreement with the UGC, which expired on July 7, 2005."

The Mendocino County Department of Planning and Building Services disagrees with this finding.

Planning and Building Services is unable to respond to this finding as it appears that the County Planning and Building Services Department cannot answer or respond on behalf of the Sheriff. This question appears to be directed toward the Sheriff.

Findings: Required Response: Mendocino County Department of Planning and Building Services

2. This response is relative to Finding Number 4 contained on page 2 of 5, which states "The County and the City each disclaim responsibility as to who has planning/zoning jurisdiction over the property leased from the City and located outside the City limits."

The Mendocino County Department of Planning and Building Services disagrees with this finding.

Pursuant to Government Code Sections § 53090 and 53091, the County Planning and Building Services Department has no jurisdiction over the facility as it is on City of Ukiah owned property.

Government Code § 53090, subdivision (a) defines a "local agency" as an agency of the state for the local performance of governmental or proprietary functions within limited boundaries." It then excludes from that definition, however, "the state, a city, a county," and two special districts not involved here. Section 53091 then states that "Each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated." By reading these two sections together, one finds that the State, cities, counties, and the two special districts mentioned in § 53090 are exempt from local zoning and building regulations.

Staff believes that the applicable sections of the Government Code that provides a mutual exemption from each others building and zoning regulations. With that said, the City of Ukiah does not exercise its building and zoning authority on lands owned by the County located within City limits and as such the County does not exercise its building and zoning authority on lands owned by the City of Ukiah located outside of the City limits.

Findings: Required Response: Mendocino County Department of Planning and Building Services

3. This response is relative to Findings Numbers 14 and 15 contained on page 2 of 5, which state "The UGC has one 1200-gallon septic system that serves one mobile home and the clubhouse. There are two port-a-potties on the property;" and "There are two restrooms and a kitchen at the clubhouse."

The Mendocino County Department of Planning and Building Services disagrees with this finding.

Planning and Building Services believes that it would be appropriate for the Mendocino County Division of Environmental Health to address these findings as it is the Division of Environmental Health who permits and inspects septic systems and sanitation facilities.

Findings: Required Response: Mendocino County Department of Planning and Building Services

4. This response is relative to Findings Numbers 17 and 18 contained on page 2 of 5, which states "In 1993, the UGC requested the County to issue a Use Permit for an archery range," and "In March 1994, the County issued Use Permit 27-93 to the Ukiah Archers for a range on the UGC property. The permit was withdrawn on October 17, 1994 at Ukiah Archer's request."

The Mendocino County Department of Planning and Building Services partially disagrees with this finding.

On April 21, 1994, the Mendocino County Planning Commission approved Use Permit #U27-93 for the City of Ukiah/Ukiah Archers. The Use Permit was withdrawn at the request of the Ukiah

Archer's citing financial difficulties as the reason for not being able to meet their conditions of approval. Planning and Building Services will contend that this permit may have been processed in error, since the original application indicates that it was filed by someone other than the City of Ukiah in November 1993, and it was not until January 1994 that the City of Ukiah was shown to be the owner. However, upon the correction, staff should have treated this application/proposed use as exempt under Government Code Sections § 53090 and § 53091. Since the application was withdrawn, and the permit was not exercised, there is in essence no permit or conflict with Government Code Sections § 53090 and § 53091. The corrective approach would have been for the City of Ukiah to have processed any permits for the facility.

Recommendations: Required Response: The Mendocino County Department of Planning and Building Services

This response is relative to the following Recommendations found on page 3 of 5:

1. The City and County resolve the disagreement over planning/zoning jurisdiction, (Finding 4);
6. The City or County Planning Commissions ensure all buildings modified or built after 1982 be inspected for compliance, (Findings 2, 14-16, 26); and
8. The County Planning and Building Department perform all required inspections of septic systems.

The recommendation will not be implemented because it is not warranted or is not reasonable.

Relative to Recommendations 1 and 6, as noted above, the jurisdiction or zoning, planning and building regulations fall upon the City of Ukiah pursuant to *Government Code Sections § 53090 and § 53091*. The Ukiah Gun Club is located on property owned by the City of Ukiah. Cities and counties are mutually exempt from each other's zoning regulations relative to property that one such entity may own within the territory of the other. The California State Attorney General has written an opinion (40Ops.CalAtty.Gen243 (1962) that analyzed California Government Code Sections 53090 – 53095 and concluded that the legislative intent was to grant the reciprocal immunity to cities and counties and therefore, County owned property situated in a city, whether used for governmental or proprietary purposes, was is exempt from city ordinances.

It is the City of Ukiah's responsibility to perform any inspections to structures for compliance with the California Building Code and applicable zoning regulations. The County cannot be responsible for the City's failure to oversee its own facilities within its own jurisdiction.

Relative to Recommendation 8, it should be noted that it is not the responsibility of the Department of Planning and Building Services to perform all required inspections of septic systems. Pursuant to Chapter 16.04 of the Mendocino County Code, the enforcing agency is the Mendocino County Health Department, or presently the Division of Environmental Health, which is charged with issuing permits, enforcing and inspection for wells and septic systems in Mendocino County.