

EL DORADO COUNTY

GRAND JURY REPORT

2000-2001



LAKE TAHOE

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Foreward

Just what is the Grand Jury, who are its members, and what are their functions? William J. Shaw and Noah Weinstein in their article, Grand Jury Reports – A Safeguard of Democracy, describe a Grand Jury as “a short-lived, representative, non-political body of citizens functioning without hope of personal aggrandizement. It [the Grand Jury] comes from the citizens at large and soon disappears into anonymity without individual recognition or personal reward.” In El Dorado County this is a group of 19 citizens who have the ability, time and willingness to serve the citizens of the County for a period of one year.

The requirements for service are basic and designed to allow and encourage maximum participation by the County’s citizens. A juror must be 18 years old, a United States citizen, and a resident of El Dorado County for at least one-year on the date they are sworn to service. The candidate for juror must also possess natural faculties of ordinary intelligence, sound judgment, and fair character.

Service on the Grand Jury is an act of citizenship. Individuals selected for the Grand Jury should expect to work a minimum of three six-hour days per week throughout their year of service. Remuneration for service is paid at the rate of \$10.00 per day for those days actually worked. Mileage driven for grand jury business is currently reimbursed at the rate paid to all county employees.

The Grand Jury essentially serves as the agency of civilian oversight for our local government. The common public perception of the Grand Jury is a body taking testimony and handing down Criminal Indictments. In reality, the principal functions of the Grand Jury are civil in nature. Some duties, such as the inspections of public prisons, are required by law to be performed on a yearly basis. The majority of the Grand Jury’s inquiries, however, are the result of its own internal direction. Generally, the Grand Jury audits local government processes, expenditures, and the actions of its officials. Practically speaking, a grand jury primarily responds to complaints brought to it by citizens of the County, to issues of concern and public debate as publicized in the local media, and to other issues exposed during the investigation of complaints.

During the course of its inquiries, members of the Grand Jury not only will find conditions and practices within government that deserve recommendations for improvement, they also will encounter examples of excellent service performed by units or persons in local government. Grand Juries by their very design are intended to identify and recommend improvement of deficiencies within government; as such, reports of the Grand Jury tend to be viewed as negative in nature. It would be unfair, however, for the Report of the Grand Jury to focus on the negative without recognizing outstanding performance within government. In that light, this Report also contains commendations for those persons, encountered by members of the Grand Jury, who were noted to have performed exemplary service for the County.

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At the conclusion of its investigations the Grand Jury may issue an indictment, an accusation, and/or a report. The year-end Report of the Grand Jury is a compilation of investigative reports complete with recommendations for change that are intended to improve the operations of government and so better serve the citizens of this County. Grand Juries have no power to impose their recommendations on local government. Grand Juries cannot enforce their recommendations; they merely have the ability to "shine a light" on the facts uncovered by their inquiries, thus bringing matters to the public's attention. The Report then provides a vehicle for public debate. It is a matter for the public to decide whether the recommendations of the Grand Jury are appropriate, and whether actions taken by government officials in response to those recommendations are themselves appropriate. Ultimately, the citizens of the County carry out their role in this process, by expressing their judgment on the issues at the ballot box.



Kenn Womack
Foreman

To Obtain an Application

Any interested citizen who meets the required qualifications and is able to make the time commitment may request an application for appointment to the Grand Jury from the appointed court secretary. The secretary is located at:

495 Main Street
Placerville, California 95667
(530) 621-6451

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**EL DORADO COUNTY GRAND JURY
2000-2001**

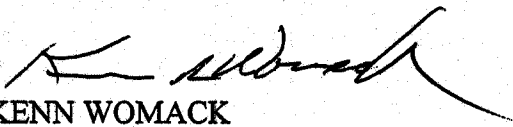
Resolution

WHEREAS, the EL DORADO COUNTY GRAND JURY has conducted investigations and has arrived at certain finding and recommendations; and

WHEREAS, the EL DORADO COUNTY GRAND JURY desires to make its final report thereon;

RESOLVED, by the EL DORADO COUNTY GRAND JURY that the attached report be, and hereby is, adopted as the final report and conclusions of the EL DORADO COUNTY GRAND JURY, 2000-2001.

PASSED AND ADOPTED at the meeting of the EL DORADO COUNTY GRAND JURY this twentieth day of June, Two Thousand and One.


KENN WOMACK
Foreman

EL DORADO COUNTY GRAND JURY

P.O. Box 472
Placerville, CA 95667

Judge Jerald Lasarow
Superior Court
1354 Johnson Blvd., Suite 1
South Lake Tahoe, CA 96150

15 June 2001

Dear Judge Lasarow:

The term of the 2000/2001 Grand Jury is nearing its end. The nineteen members who were in place at the end of Grand Jury orientation and training have completed their tour of duty intact. This is no small feat in and of itself, given the commitment of time and effort involved in grand jury duty. The service the individual jurors rendered to the residents of El Dorado County is commendable. The reward for that service is significant when measured in terms of the personal satisfaction gained for having helped preserve an open and democratic form of government.

The Grand Jury has had a busy and eventful year. In addition to a number of major investigations, we have undertaken a revision of the El Dorado County Grand Jury Handbook, a review and critique of the McGeorge School of Law proposal for grand jury reform, and successfully defended ourselves in litigation. The final report of the 2000/2001 Grand Jury is attached for your review and approval.

Finally, the Grand Jury would like to express our appreciation for your stewardship. Your availability for, and assistance with, guidance and counsel has been exemplary. Your willingness to support the Grand Jury's inquiry into issues, even when the findings of such inquiry might bruise the image of the Court's administration, is itself remarkable. As Foreman of the Grand Jury, I have had the opportunity to observe and interact with five of the Judges of the El Dorado County Courts. Having spent my entire career working in the Criminal Justice system, it is my opinion that the residents of this County are blessed to have Judges with the quality and dedication that all of you have demonstrated this year.

Sincerely,



KENN WOMACK
Foreman

The Superior Court

STATE OF CALIFORNIA
COUNTY OF EL DORADO
495 MAIN STREET
PLACERVILLE, CALIFORNIA 95667
(530) 621-6459

Dear Grand Jury Members:

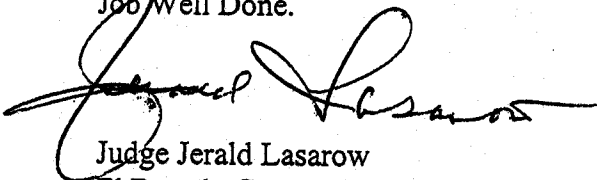
As Supervising Judge of the 2000/2001 Grand Jury and on behalf of the El Dorado County Superior Court, I want to thank you for a year's hard work and dedication to the Grand Jury. The primary function of the Grand Jury is the examination of all aspects of the county government and special districts and assuring efficient government in the best interests of the citizens of El Dorado County.

Upon reviewing your report, it is obvious that each of you has put in many long hours and days in fulfilling your oath and obligation to the 2000/2001 Grand Jury. It is only with citizens like yourselves that the Grand Jury can continue to be effective in its responsibilities to our citizens.

In your functions as Grand Jurors, it is not only important in examining county government and special districts to make suggestions or recommendations for better government, but it is also important to inform our citizens that some departments in our county government and special districts are well organized and efficient.

I want to personally thank Mr. Ken Womack, the Foreperson of the 2000/2001 Grand Jury. Ken has proved himself to be a great leader and organizer. The citizens of our county owe a great deal to Mr. Womack for his dedication and service to the Grand Jury, as well as to all the other members of the Grand Jury.

Job Well Done.



Judge Jerald Lasarow
El Dorado County Superior Court

EL DORADO COUNTY GRAND JURY

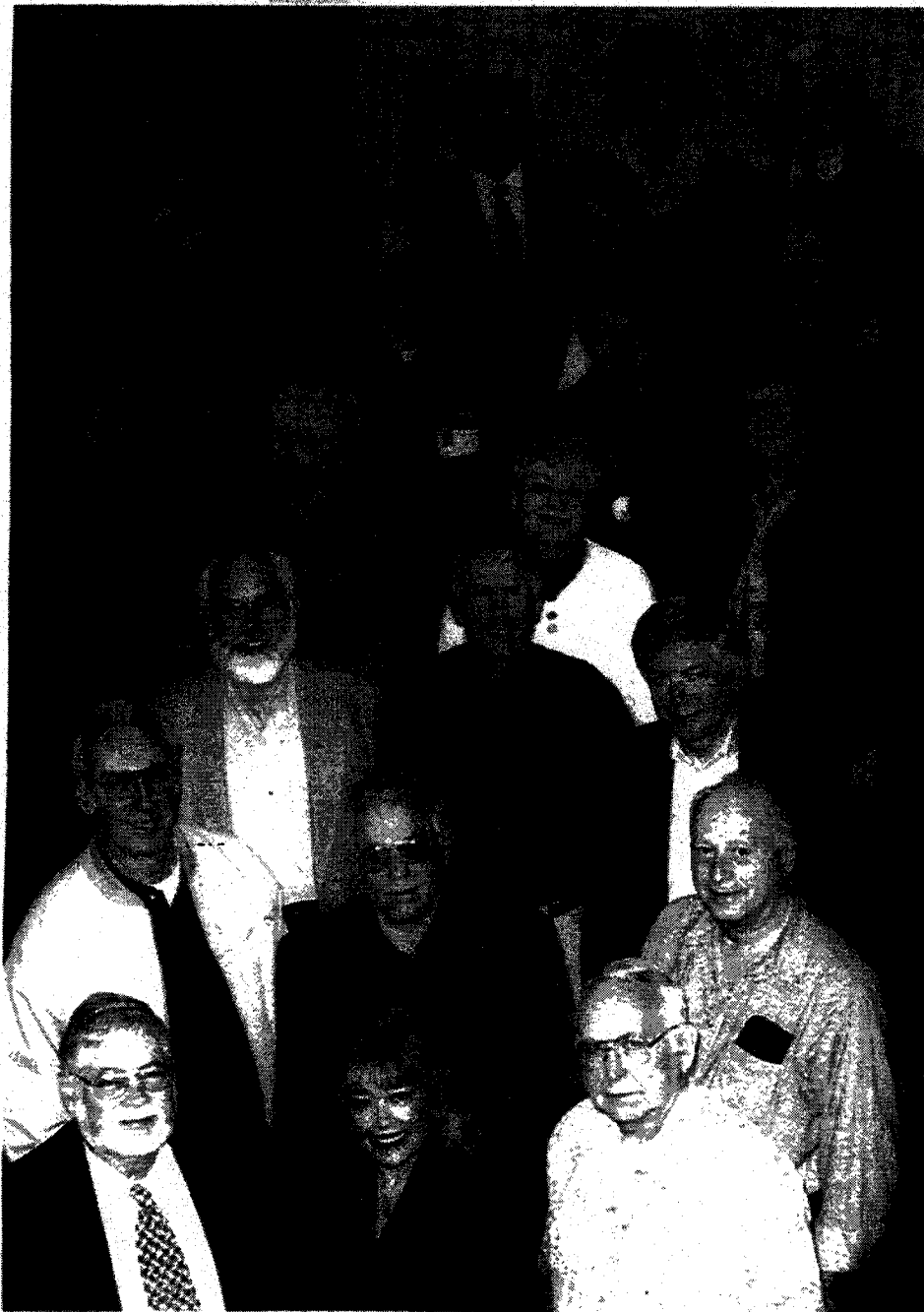
2000/2001

Honorable Jerald M. Lasarow, Supervising Judge

Kenn Womack, Foreman
Bruce Bogart, Foreman Pro Tempore
Tess Welsh, Recording Secretary
Richard Sohrweide, Sergeant-at-Arms

Deborah Burgess
Charles Caraway
Tim Howell
Judy Griswold
Arla Martin
Richard Nichols
Nancy Powers
Becky Peterson

John Plymeyer
William Rickard
Robert Russell
Linda Stroot
Ted Shults
Kenneth Weitzman
Norma Woodward



2000-2001 EL DORADO COUNTY GRAND JURY

Bottom row (left to right): Robert Russell, Becky Peterson, Ted Shults
Second row: Richard Sohrweide, Charles Caraway, William Rickard
Third row: Kenn Womack, jury foreman, Kenneth Weitzman, Bruce Bogart, foreman pro tem
Fourth row: Richard Nichols, Norma Woodward, Tess Welsh
Fifth row: Tim Howell, Judy Griswold, Arla Martin
Sixth row: Holly Warren, Grand Jury Secretary
Top row: John Plymyer, Linda Stroot, Nancy Powers

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Honorable Jerry Lasarow, presiding judge; Deborah Burgess

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CITIZENS COMPLAINTS

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**EL DORADO COUNTY GRAND JURY
2000/2001
CITIZENS' COMPLAINTS**

Case No.	Subject	Disposition	Comments	Date
00/01-C-001 <i>(Deferred)</i>	District Attorney	Criminal Justice	No Action Finding: <i>Remedies Available Outside Grand Jury System</i>	8/02/00
00/01-C-002 <i>(Deferred)</i>	Placerville Police	Criminal Justice	No Action Finding: <i>Resolved By Settlement</i>	8/02/00
00/01-C-003 <i>(Deferred)</i>	El Dorado Irrigation District	Special Districts	No Action Finding: <i>No Violation Occurred</i>	8/02/00
00/01-C-004 <i>(Deferred)</i>	El Dorado Irrigation District	Special Districts	No Action Finding: <i>No Violation Occurred</i>	8/02/00
00/01-C-005	South Lake Tahoe Police	South Lake Tahoe	See Report	8/02/00
00/01-C-006	El Dorado County Sheriff	Criminal Justice	No Action Finding: <i>In Litigation</i>	8/02/00
00/01-C-007	El Dorado County Superior Court	Audit & Finance	No Action Finding: <i>Remedial Action Taken.</i>	8/09/00
00/01-C-008	Black Oak Mine Unified School District	Education	See Report	8/16/00
00/01-C-009	Department of Transportation	Gov't & Admin.	No Action Finding: <i>Remedy Available Outside Grand Jury System</i>	8/16/00
00/01-C-010	Department of Social Services	Health/Social Services	No Action Finding: <i>Civil Remedy Available Outside Grand Jury System</i>	8/30/00
00/01-C-011	Tahoe City Public Utility District	South Lake Tahoe	Deferred to Placer County Grand Jury: <i>District of Jurisdiction</i>	9/06/00
00/01-C-012	El Dorado County Planning Commission	Planning & Environment	No Action Finding: <i>Remedies Available Outside the Grand Jury System</i>	9/27/00
00/01-C-013	El Dorado Irrigation District	Special Districts	No Action Finding: <i>No Violation Occurred</i>	9/27/00
00/01-C-014	El Dorado Irrigation District Board	Special Districts	No Action Finding: <i>No Violation Occurred</i>	10/04/00

**EL DORADO COUNTY GRAND JURY
2000/2001
CITIZENS COMPLAINTS**

Case No.	Subject	Disposition	Comments	Date
00/01-C-015	Placerville Police Department	Criminal Justice	No Action Finding: <i>Court Settlement</i>	10/04/00
00/01-C-016	El Dorado County Recorder & Treasurer/Tax Collector	Criminal Justice	See Report	11/01/00
00/01-C-017	Rescue Volunteer Fire District Board	Special Districts	See Report	11/08/00
00/01-C-018	El Dorado County Planning Department	Planning & Environment	No Action Finding: <i>Matter In Litigation</i>	11/08/00
00/01-C-019	El Dorado County Sheriff & District Attorney	Criminal Justice	No Action Finding: <i>Insufficient Evidence</i>	12/13/00
00/01-C-020	El Dorado Irrigation District Board	Special Districts	No Action Finding: <i>Remedies Available Outside Grand Jury</i>	12/13/00
00/01-C-021	El Dorado County Sheriff	Criminal Justice	See Report	01/03/01
00/01-C-022	(LAFCO) Local Agency Formation Commission	Special Districts	No Action Finding: <i>No Violation Occurred</i>	01/03/01
00/01-C-023	El Dorado County Sheriff	Public Buildings	See Report	01/03/01
00/01-C-024	El Dorado County Sheriff	Criminal Justice	No Action Finding: <i>No Violation Occurred</i>	01/03/01
00/01-C-025	El Dorado County Sheriff	Criminal Justice	No Action Finding: <i>No Violation Occurred</i>	01/03/01
00/01-C-026	El Dorado County Sheriff/D.A.'s Office	Criminal Justice	See Report	01/03/01
00/01-C-027	El Dorado County Sheriff	Public Buildings	No Action Finding: <i>No Violation Occurred</i>	01/03/01
00/01-C-028	El Dorado County Sheriff	Criminal Justice	No Action Finding: <i>No Violation Occurred</i>	01/03/01
00/01-C-029	El Dorado County Sheriff	Criminal Justice	See Report	01/03/01
00/01-C-030	El Dorado County Sheriff	Criminal Justice	See Report	01/03/01
00/01-C-031	El Dorado County Sheriff	Criminal Justice	<i>Deferred to 2001/2002 Grand Jury</i>	01/03/01

**EL DORADO COUNTY GRAND JURY
2000/2001
CITIZENS COMPLAINTS**

Case No.	Subject	Disposition	Comments	Date
00/01-C-032	El Dorado County, Dept of Social Services	Social Services	See Report	01/17/01
00/01-C-033	El Dorado County, Dept of Social Services	Social Services	No Action Finding: <i>Allegations Resolved</i>	02/07/01
00/01-C-034	California Department of Forestry, Growlersberg	Audit and Finance	No Action Finding: <i>Allegations Resolved</i>	02/07/01
00/01-C-035	El Dorado County, Dept of Social Services	Social Services	No Action Finding: <i>No Violation Occurred</i>	02/14/01
00/01-C-036	El Dorado County Deputy Sheriffs Assoc.	Gov't & Admin.	No Action Finding: <i>No Violation Occurred</i>	02/14/01
00/01-C-037	Cameron Park Estates Community Service District Bd of Trustees	Special Districts	<i>Deferred to 2001/2002 Grand Jury</i>	03/07/01
00/01-C-038	Pioneer Fire Protection District Bd of Directors	Special Districts	See Report	03/14/01
00/01-C-039	El Dorado County District Attorney		<i>Deferred to 2001/2002 Grand Jury</i>	03/21/01
00/01-C-040	El Dorado County, General Services Dept.		<i>Deferred to 2001/2002 Grand Jury</i>	03/28/01
00/01-C-041	El Dorado Union High School District		<i>Deferred to 2001/2002 Grand Jury</i>	04/04/01
00/01-C-042	El Dorado County Registrar of Voters		<i>Deferred to 2001/2002 Grand Jury</i>	04/04/01
00/01-C-043	Placerville Police Department		<i>Deferred to 2001/2002 Grand Jury</i>	04/25/01
00/01-C-044	El Dorado Hills Community Service District		<i>Deferred to 2001/2002 Grand Jury</i>	05/02/01
00/01-C-045	El Dorado Union High School District		<i>Deferred to 2001/2002 Grand Jury</i>	05/16/01

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**CRIMINAL
JUSTICE**

Criminal Justice Committee

Abuse of Sick Leave by Sheriff's Department

Citizen Complaint #00/01-C-021 A

Reason for the Report

A citizen complaint asserted that the Sheriff approved the misuse of sick leave for an employee. The complaint alleged that the Sheriff allowed the then Undersheriff to utilize sick leave for the purpose of taking an extended paid leave prior to his retirement.

Scope of Investigation

The Criminal Justice Committee:

- Interviewed the then Undersheriff;
- Interviewed the Sheriff;
- Interviewed the Sheriff's Director of Administration and Finance;
- Interviewed the El Dorado County Director of the Department Human Resources;
- Reviewed County sick leave policies; and
- Reviewed payroll documents.

Findings

- F1. The then Undersheriff did not attend work from January 28, 2000, until his retirement on May 5, 2000.
- F2. Section 1006 of the El Dorado County Salary & Benefits Resolution for Unrepresented Employees states, "sick leave taken in excess of eighty hours may be supported by a Doctor's excuse".
- F3. Payroll records indicate that the then Undersheriff was paid for two hundred (200) hours of sick leave from January 28, 2000 to May 5, 2000.
- F4. The action described in Finding 3 resulted in the "use" of accumulated sick leave for which the then Undersheriff would not have been entitled to receive payment at the time of his retirement.
- F5. The then Undersheriff was not sick during this period.
- F6. The affected employee was entitled to receive payment for 504 hours of sick leave upon retirement under Section 1009 (A) The El Dorado County Salary & Benefits Resolution for Unrepresented Employees.

F7. The affected employee received payment for 504 hours of sick leave upon his retirement.

Recommendations

R1. Sick leave regulations should be rewritten with adequate specificity to give notice to employees of their rights and to give notice to the department of the specific regulations which are its responsibility to enforce.

R2. The Sheriff should enforce the sick leave regulations uniformly.

Responses Required for Findings

F1 through F7 El Dorado County Board of Supervisors
 El Dorado County Sheriff

Responses Required for Recommendations

R1 and R2 El Dorado County Board of Supervisors

Criminal Justice Committee

Acting and Overfill Positions

Citizen Complaint #00/01-C-021 B

Reason for the Report

Citizen complaints were received regarding temporary assignment and compensation of management personnel in the El Dorado County ("County") Sheriff's Department. Accordingly, the Criminal Justice Committee conducted a review of personnel procedures and practices regarding "Acting and Overfill" positions applicable to all County Departments.

Scope of the Investigation

The 2000/2001 Criminal Justice Committee interviewed:

- The El Dorado County Sheriff ("Sheriff");
- The El Dorado County Undersheriff ("Undersheriff");
- The Director of Administrative Services of the Sheriff's Department ("Department");
- The Director of the County Department of Human Resources ("HRD");
- The County Chief Administrative Officer ("CAO").

The Committee also reviewed:

- The Salary & Benefits Resolution for Unrepresented Employees ("Resolution");
- County Ordinance 227-84;
- Various payroll documents;
- Various Department personnel files;
- The Department's organizational charts; and
- Various County Employee Duty Statements.

Findings

- F1. Acting pay assignments (acting positions) are defined by the Resolution, Section 1408 as follows: "When a full-time or part-time Management or Confidential employee is assigned to work in a higher classification for which the compensation is greater than that to which the employee is regularly assigned..." and "the employee is assigned to...an authorized position [which] has become vacant due to the ...absence of the position's incumbent."

- F2. An overfill position is a position that:
- a. is to be vacated through retirement or other separation ;
 - b. is occupied by a person on disability leave ; or
 - c. is occupied by a person on an extended leave of absence.

Resolution Section 503 (c) states in part: "In such cases the position may be filled by another employee as an overfill...for the period of time prior to the date of separation, ...or for the period of the leave of absence..."

- F3. For an employee to be assigned to an acting pay position, Resolution Section 1408 (1) states in part: "A copy of the department head's *written* approval of this assignment must be submitted to the Director of Human Resources *at the start* of the assignment." (Emphasis added)
- F4. Resolution Section 1408(5) states: "Higher pay assignments shall not exceed six (6) months except through reauthorization."
- F5. During the effective period of the Resolution, the Sheriff placed seven (7) management employees in acting and/or overfill positions.
- F6. Several of those employees remained in acting or overfill positions for periods of time exceeding six months.
- F7. The Department submitted no reauthorizations to Human Resources Department for the employees working in these positions.
- F8. County custom and practice, with the knowledge and concurrence of Human Resources Department, is to accept the transmittal of a Personnel Payroll Form ("PPF") as notice of authorization by a department head of the assignment of an employee to an acting position. A PPF is a form that notifies HRD of a change of employee status. For payroll purposes that change is noted on the form by entry of an alphanumeric code.
- F9. The use of Personnel Payroll Forms is inadequate to assure compliance with the County's acting and/or overfill policies and procedures for the following reasons:
- a. Personnel Payroll Forms are completed and forwarded by a staff employee within the Department and fail to establish a record that the department head either knows of, or has authorized, the reassignment.
 - b. Personnel Payroll Forms are not necessarily submitted to Human Resources Department prior to the employee's commencement of work in the higher class position; instead, they must only be submitted to HRD in time to authorize compensation for the pay period worked in the higher classification.

- c. The reassigned status created by the Personnel Payroll Forms is permanent and open-ended, allowing a department head, at the end of the six-month period, to ignore the County's requirement for reauthorization of the affected employee's compensation for working in the higher class.
 - d. Use of Personnel Payroll Forms is inappropriate for reauthorization of acting positions, as PPFs are designed to document a *change in employee status*, while the required reauthorization would in fact *retain the existing status* of the effected employee.
 - e. Use of Personnel Payroll Forms fails to provide the County protection against a department's inadvertent or intentional failure to notify Human Resources Department either that the employee is no longer performing work at the higher class or that the authorization for the particular position no longer exists. In effect, an employee, once elevated in pay, could continue to be paid at a higher compensation rate indefinitely, whether or not (i) the employee either continued to work in the higher classification or (ii) the assignment to which the employee had been temporarily elevated had subsequently been filled by another employee. (See F15.)
- F10. Resolution Section 501. **Authorized Personnel** states in part: "Except as otherwise provided by law, the Board of Supervisors shall, by resolution, specify the number and classification of all positions authorized for each department of the County. ...All additions, deletions or modifications to the Authorized Personnel Allocation Resolution shall be made by amending Resolution. No person shall receive any compensation for services as a County employee whose employment is not authorized by the Authorized Personnel Allocation Resolution,..." The Grand Jury believes "all positions" means *all* positions.
- F11. In February 2000, the Sheriff assigned an employee to the position of Undersheriff in an acting capacity because of the extended leave status of the then regular Undersheriff.
- F12. In May 2000, the regular Undersheriff retired. This action left the Department with one Undersheriff performing in an acting capacity.
- F13. In August 2000 the then acting Undersheriff had been in an overpay position for six (6) months. No reauthorization was written and forwarded to Human Resources Department by the Department.
- F14. On October 1, 2000, the Sheriff appointed a second employee to the permanently authorized position of Undersheriff.
- F15. Upon the appointment of the regular Undersheriff in October 2000, the legal authorization for the acting Undersheriff's position ceased to exist.

- F16. The employee assigned the position of acting Undersheriff continued to be compensated at the rate of Undersheriff until March 2001, subsequent to the initiation of this investigation. One of the effects of this compensation was to increase retirement benefits for the employee.
- F17. The retention of an acting Undersheriff after the appointment of a regular Undersheriff constitutes the employment of two (2) persons in the capacity of Undersheriff.
- The addition of a second Undersheriff's position to the Department would have required the Board of Supervisors to amend the Authorized Personnel Allocation Resolution. (Section 501)
 - The authorization of a second Undersheriff as an overfill would have required the approval of the Chief Administrative Officer and the Director of Human Resources Department. [Section 503(c)]
 - The authorization of a second Undersheriff as an "exceptional circumstance" would have required the approval of the Chief Administrative Officer. [Section 1408 (2)]
- F18. There is a conflict between the provisions of the Resolution as stated in Section 501 and the language of Sections 503(c) and 1408 (2).
- F19. Even if there were no such conflict, there was no authorization by the Chief Administrative Officer, or by the Director of Human Resources Department, for the continued employment and/or compensation of two Undersheriffs. There was no action by the Board of Supervisors to create a second position of Undersheriff.
- F20. There is no legal basis for the continued compensation of employees for work, in a higher classification, which those employees no longer perform. That situation would cause the County to expend funds for work it did not receive, and thus would constitute a misuse of public funds
- F21. There is no mechanism in the County's Personnel and Payroll system to automatically detect and alert County staff to several conditions:
- a. employees remaining in acting positions for periods in excess of six (6) months without reauthorization;
 - b. employees being paid for working in a higher classification after having ceased to work in that capacity; and
 - c. a greater number of employees being compensated for working in a classification than a department has authorization to employ.

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Criminal Justice Committee

Allegation of Cover-up of Criminal Conduct

Citizen Complaint #00/01-C-0026

Reason for the Report

In January 2001, the Grand Jury received a complaint alleging the cover-up of criminal conduct perpetrated by an immediate family member of a ranking officer of the El Dorado County Sheriff's Department. The cover-up alleged to have been committed by the Sheriff's Department and/or the Office of the District Attorney ("DA").

Scope of the Investigation

Members of the Criminal Justice Committee of the 2000/2001 Grand Jury:

- Interviewed the President of the victimized organization;
- Reviewed Sheriff's Department Records;
- Reviewed the DA's case file;
- Reviewed the Court Docket file;
- Interviewed the District Attorney, Gary Lacy;
- Interviewed the Chief Assistant District Attorney, Sean O'Brien;
- Interviewed Judges and other employees of the El Dorado County Consolidated Court ("Court");
- Interviewed the Attorney who represented the victimized organization;
- Requested an independent review and opinion of legal issues in this case;
- Reviewed the appropriate sections of the California District Attorneys Association's (CDAA) published guidelines regarding Uniform Crime Charging Standards;
- Requested and reviewed statistical data from the DA; and
- Interviewed the El Dorado County Sheriff.

Findings

- F1. The DA received the case on July 26, 2000.
- F2. The Attorney representing the victimized organization brought the case directly to the DA.
- F3. The case was assigned for investigation to a member of the DA's Investigator's staff.
- F4. There is no evidence of this case having been reported to the El Dorado County Sheriff's Department.

- F5. The standard policy and practice of the current DA is to vigorously prosecute violations of law in El Dorado County.
- F6. The practice of vigorous prosecution of criminal misconduct generally is in the best interests of the citizens of El Dorado County.
- F7. In September 2000, the DA, via telephone, discussed the case with a Supervising Attorney within the Office of the State's Attorney General ("AG"). This procedure resulted in no written record of the content of that discussion at or about the time of occurrence.
- F8. Subsequently, on March 30, 2001, at the request of the DA, the above Supervising Attorney wrote a letter to the DA memorializing the above discussion. The letter reads in part: "...that we believed the relationship between the potential defendant and your office was sufficiently attenuated that we would not be required to assume the responsibility of prosecuting the case. I also explained that the law does not require the Attorney General to step into cases based on 'the appearance of impropriety' but that we would take over the prosecution if you did not feel that your office could treat the defendant fairly."
- F9. Because of an existing personal relationship between the DA and the aforementioned ranking member of the Sheriff's Department, the Chief Assistant District Attorney, was assigned the case for prosecution. The DA did not attend, nor did he personally participate in, any hearing before a judicial officer during proceedings involving this case.
- F10. The DA's Office generally uses the guidelines contained within the CDAA publication Uniform Crime Charging Standards as a guide for charging criminal cases, with the exception of narcotics cases. The DA upon election to Office promulgated his own particular guidelines concerning the handling of cases involving narcotics and controlled substances. With the exception noted, the DA has no additional written guidelines for the charging of criminal cases.
- F11. It is the position of the DA's Office that, all other things being equal, acts of embezzlement, are more grievous than other acts of theft.
- F12. Uniform Crime Charging Standards section III-6 (b) "Severity of the crime" reads in part: "A misdemeanor prosecution should not normally be considered if: ... (5) The accused has committed a crime against the property of another of a value in excess of \$2,000. If the value of the property is less than (sic)\$1,000, a misdemeanor prosecution is preferable unless clearly barred by other provisions of these Standards, ...If the value of the property falls between \$1,000 and \$2,000, factors other than the amount of the loss or threatened loss should be determinative;"

- F13. Uniform Crime Charging Standards III-7 Commentary states in part, "The dollar limitations set forth in Standard D.1.(b) (5), supra, apply only when the accused's prior record and modus operandi are such that a misdemeanor sentence is otherwise warranted. It is not suggested that the current \$400 dividing line between grand and petty theft be charged. For example, if an accused stole \$400 worth of merchandise and he had a prior felony conviction that was four years old, the case should be filed as a felony. If he stole \$2,000 worth of merchandise, but had no prior criminal record, the case should still be filed as a felony. If an accused stole \$1,500 worth of merchandise and he had no prior criminal record, the prosecutor, in determining whether a misdemeanor sentence is warranted, should consider factors like the manner of theft, the likelihood that the accused has been involved in similar thefts, the cooperation of the accused"
- F14. In September 2000, the DA's Office filed a complaint in the Superior Court of California, County of El Dorado, charging the defendant with Grand Theft, the taking of money "of a value exceeding Four Hundred Dollars (\$400), in violation of Section 487(a) of the California Penal Code," as a misdemeanor.
- F15. A law which is statutorily defined as a felony, but which may become a misdemeanor under specific conditions, is known as a "wobbler". Grand Theft is a wobbler and may become a misdemeanor under several circumstances including, but not limited to the following:
- Where the crime is charged on its face as a misdemeanor;
 - Where a court orders the crime, originally charged as a felony, reduced to a misdemeanor; and
 - Where the sentence imposed as a result of conviction is that of a misdemeanor.
- F16. The factual basis for this case is seven (7) checks, written by the defendant on the victim's bank account for the defendant's own purposes over a time period of twenty five (25) months, in a total amount exceeding \$2300.00.
- F17. It is the practice of DA's Offices statewide to charge cases of embezzlement as Grand Theft.
- F18. There were fewer than six (6) cases of embezzlement in El Dorado County in calendar year 2000.
- F19. The DA's Office charged sixty-one (61) cases of California Penal Code Section 487 (a), Grand Theft, within the calendar year 2000.
- F20. Six of the sixty-one grand theft cases were charged as misdemeanors. Three had property value losses of \$500 or less, one a loss of \$1166, and the fifth a loss of \$1351. The sixth case, with a loss in excess of \$2300, is the subject of this report.

- F21. Two somewhat similar cases of grand theft charged by the DA's Office have the following details:
- The defendant wrote checks on the victim's account in the amount of \$3500.
 - The case was charged as a felony and the DA's Office accepted a felony plea;
 - The defendant embezzled \$2062 from the victim (employer), charged as a felony and the DA's Office accepted a felony plea.
- F22. At the time of the filing of the complaint, the DA's Office sent a *10 day letter* to the defendant directing the defendant to submit to "a standard law enforcement identification booking" procedure.
- F23. A *10-day letter* is issued for the purpose of notifying a defendant to surrender, at the defendant's convenience, for booking prior to a specified date. It is used in those cases, which meet the following criteria:
- The defendant has not previously been arrested and booked for an act which is the basis for the complaint charged;
 - A warrant has not already been issued for the defendant for charges resulting from the complaint;
 - Where the DA believes the defendant will voluntarily comply with the directed booking.
- F24. The use of a *10 day letter* does not provide the Court, or any Law Enforcement Agency within El Dorado County, with a notice that will trigger a default warning in the event the defendant does not comply with the written direction for booking.
- F25. At a pre-arraignment conference on some date prior to the defendant's scheduled arraignment, the defendant's attorney made a request of the court for a postponement of the required booking.
- F26. The Chief Assistant District Attorney was present at this conference.
- F27. There is conflicting evidence regarding the position of the DA's representative on the issue of postponement of booking.
- F28. There is no reported record of this conference and therefor the position of the DA's representative on this request is not documented.
- F29. At the original date set for the defendant's arraignment, the court record reflects:
- A representative of the DA's Office was not present;
 - The defendant's attorney and the victim's attorney were in attendance;
 - A representation by the defendant's attorney was made to the Court, "We're very close to a civil compromise in this."; and

- The Court granted the defendant's attorney's request for a continuance of an arraignment hearing to facilitate the arrangement of a civil compromise agreement or be assigned to a trial court.
- F30. In October 2000, the case was heard by a visiting judge, and at that time it was settled by civil compromise pursuant to California Penal Code Sections 1377 and 1378.
- F31. California Penal Code Section 1377 provides: "When the person injured by an act constituting a misdemeanor has a remedy by a civil action, the offense may be compromised, as provided in Section 1378, *except* when it is committed as follows:
- a. By or upon an officer of justice, while in the execution of the duties of his or her office.
 - b. Riotously.
 - c. With an intent to commit a felony.
 - d. In violation of any court order as described in Section 273.6 or 273.65.
 - e. By or upon any family or household member, or upon any person when the violation involves any person described in Section 6211 of the Family Code or subdivision (b) of section 13700 of this code.
 - f. Upon an elder, in violation of Section 368 of this code or Section 15656 of the Welfare and Institutions Code.
 - g. Upon a child, as described in Section 647.6 or 11165.6." (Emphasis added)
- F32. California Penal Code Section 1378 provides: "If the person injured appears before the court in which the action is pending at any time before trial, and acknowledges that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs incurred, order all proceedings to be stayed upon the prosecution, and the defendant to be discharged therefrom; but in such case the reasons for the order must be set forth therein, and entered on the minutes. The order is a bar to another prosecution for the same offense."
- F33. California Penal Code Section 1379 states: "No public offense can be compromised, nor can any proceeding or prosecution for the punishment thereof upon a compromise be stayed, except as provided in this Chapter."
- F34. The Chief Assistant District Attorney was present at the hearing at which this case was civilly compromised.
- F35. There was no court reporter present at the hearing at which the case was settled and the civil compromise approved. Accordingly, there is no transcript of the DA's position regarding this case disposition.
- F36. The DA's standard policy on civil compromise, where civil compromises are legally permissible, is one of the following:
- No position on the proposal; or
 - Opposition to the proposal.

- F37. In practice the Court generally will not approve a civil compromise in the face of an objection by the DA.
- F38. The practical effect of the DA taking no position in opposition to a civil compromise is, in the opinion of the Grand Jury, a *de facto* approval of the proposed civil compromise.
- F39. Dispositions of criminal cases by civil compromise are unusual events in El Dorado County.
- F40. Two of the sixty-one aforementioned cases, were disposed by civil compromise. This case was one. The second, with a loss value of approximately \$500, was charged as a felony, later reduced to a misdemeanor, and subsequently civilly compromised on April 10, 2001.
- F41. During the course of the disposition hearing the defendant's booking status was not brought to the attention of the visiting magistrate.
- F42. The defendant in the case, which is the subject of this complaint, never submitted to the required booking as directed in the *10-day letter*.
- F43. The case having been disposed by civil compromise, the criminal justice system no longer has authority to compel the defendant to submit to a "standard law enforcement identification booking."
- F44. The Grand Jury found no evidence that El Dorado County Sheriff Hal Barker attempted to cover-up the defendant's criminal misconduct, nor did he at any time attempt to influence, or interfere with the investigation of this case.
- F45. The procedures followed by the District Attorney's Office during the investigation, filing, proceedings, and disposition of this case were not legally impermissible.

Recommendations

- R1. In cases of potential political controversy, where there may be even the appearance of a conflict of interest, the DA should take whatever steps are necessary to ensure there is a full written record of his actions and positions at each step throughout the handling of such cases.
- R2. The practice of issuing *10-day letters* should be amended or replaced with a process that ensures defendants can not avoid booking and thereby 'slip through the cracks'.

Responses Required for Findings

F4 and F44

El Dorado County Sheriff

Findings excepting the above

El Dorado County District Attorney

Responses Required for Recommendations

R1 and R2

El Dorado County District Attorney

Criminal Justice Committee

Undocumented Movement of an Inmate

Citizen Complaint #00/01-C-029

Reason for Report

A citizen complaint asserted that the El Dorado County Sheriff removed an inmate from a work site to perform work at the Sheriff's home.

Scope of Investigation

The Criminal Justice Committee:

- Interviewed the inmate involved;
- Interviewed the Sheriff; and
- Reviewed the pertinent policies and procedures of the Sheriff's Department.

Findings

- F1. The inmate was transported by the Sheriff to the Sheriff's home for the purpose of moving personal property.
- F2. The County was potentially exposed to liability due to this action.
- F3. El Dorado County Ordinance Code Section 1.20.010 states in part: "...it is provided that prisoners confined in the county jail under judgment of convictions of misdemeanors, and prisoners confined in the county jail under a final judgment may be required to work, under the direction of a responsible person appointed by the sheriff, upon the *public* grounds, roads, streets, alleys, highways, *public* buildings or in such other *public* places and on such other *public* works in the county as are deemed advisable, for the benefit of the county." (Emphasis added.)

Recommendations

- R1. The Sheriff should follow County Ordinances with regard to the performance of inmate labor.

Responses Required for Findings

F1 through F3 El Dorado County Board of Supervisors
 El Dorado County Sheriff

Responses Required for Recommendations

R1

El Dorado County Board of Supervisors
El Dorado County Sheriff

Criminal Justice Committee

Candidate Not Qualified to Sit for Lieutenant's Exam

Citizen Complaint #00/01-C-030

Reason for Report

A citizen complaint asserted that not all applicants met the qualifications for the El Dorado County Sheriff's Lieutenant's exam of 03/20/00. During the process of this inquiry, additional issues regarding county wide personnel procedures were exposed. This investigation has been expanded to address these issues.

Scope of Investigation

The Criminal Justice Committee:

- Interviewed the El Dorado County Sheriff;
- Interviewed the Undersheriff;
- Interviewed the Acting Undersheriff;
- Interviewed the Sheriff's Director of Administration and Finance;
- Interviewed three candidates for the Lieutenant's position;
- Interviewed the Director of the Human Resources Department (HRD);
- Reviewed personnel files of all candidates;
- Reviewed posted announcements of the 1999 and the 2000 Lieutenant's examinations; and
- Reviewed policy and procedures regarding promotional exams.

Findings

- F1. In 1995, the Board of Supervisors approved a request from the Director of Human Resources Department to divest its responsibility for personnel actions to be taken by four major departments within the County to those department heads. One of those departments was the Sheriff's Department.
- F2. The Director of HRD in a letter dated May 8, 1997, advised the Sheriff's Department to discontinue the past practice of allowing candidates who did not meet the minimum qualifications at the time of the final filing date for application for a position, to take promotional exams. The new policy effective May 8, 1997: "...mandates that applicants for Sheriff's Sergeant and Sheriff's Lieutenant meet the minimum qualifications by the final filing date in order to be eligible to participate in the examination process."
- F3. In direct violation of HRD's Policies and Procedures, one candidate taking the Lieutenant's Exam on March 3, 2000 did not meet the "time- in- grade" qualification.

- F4. The situation described in F3 was known to, and approved by, the Sheriff's Department and by an employee of the HRD. Nevertheless, the Director of HRD is responsible for the actions of her employees.
- F5. The minimum qualifications of applicants for promotion are not verified by the Sheriff's Department.
- F6. The minimum qualifications of applicants for any position within the County are not verified by HRD.
- F7. There are at least nine separate personnel files on any given employee within the Sheriff's Department. This situation significantly complicates the investigation and verification of personnel issues within the Sheriff's Department.
- F8. The candidate who did not meet the minimum qualifications for the Lieutenant's Examination at the time of the final filing date for that examination was promoted.
- F9. The promotion of personnel not meeting the minimum qualifications is a violation of policies and procedures, suggests favoritism, and has a negative impact on department morale.

Recommendations

- R1. The Sheriff's Department should adhere to existing policies and procedures for promotional testing.
- R2. The Sheriff's Department should institute a process for verification of minimum qualifications for all applicants for promotional exams.
- R3. HRD should institute a process for verification of minimum qualifications for all positions of employment in El Dorado County.
- R4. The number of personnel files maintained by the Sheriff's Department should be reduced to a manageable number, and those files should be maintained according to prevailing industry standards.
- R5. HRD should be responsible and accountable for the administration and/or oversight of all personnel actions within El Dorado County.

Responses Required for Findings

F1 through F9 El Dorado County Board of Supervisors
 El Dorado County Sheriff

Responses Required for Recommendations

R1 through R5

El Dorado County Board of Supervisors
El Dorado County Sheriff

R3 & R5

El Dorado County Director of Human Resources

**CRIMINAL
JUSTICE
(JAIL REPORTS)**

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Criminal Justice Committee

El Dorado County Jail, Placerville

Reason for Report

California Penal Code authorizes and directs Grand Juries to inspect and report annually on operations of all public prisons located within the boundaries of each county.

Scope of Inspection

The Placerville Jail was visited by members of the Grand Jury unannounced on November 29, 2000.

- Members of the Grand Jury were briefed on operations and were then escorted by correctional staff on a tour of the entire facility.
- Staffing levels were explained to the members.
- Recommendations of the 1999/2000 Grand Jury were discussed and implementations of those recommendations were explained to the members.

Findings

- F1. There was a lack of standardization of uniform and identifying insignia worn by correctional officers, deputies, and civilian employees. This creates confusion between sworn and unsworn personnel and does not provide a professional image.
- F2. The laundry and shower areas were clean.
- F3. The medical room was clean, organized, and well stocked. Licensed medical staff was on duty twenty-four hours a day.
- F4. Inmate personal property was properly handled.
- F5. There was a lack of cleanliness, especially in the receiving dock area.
- F6. Bagged lunches and loose fruit were temporarily stored on the floor prior to being distributed to the inmates.
- F7. There was inadequate control of kitchen knives, which were stored in an unsecured drawer to which all kitchen inmate workers had ready access.

Recommendations

- R1. A clothing standard should be adopted for a consistent and professional appearance of all employees.
- R2. Increased attention should be paid to the cleanliness of the jail.
- R3. Carts or tables should be provided for food storage prior to distribution.
- R4. Better control of knives should be implemented. An inventory procedure should be maintained.

Responses Required for Findings

F1 through F7 El Dorado County Board of Supervisors
 El Dorado County Sheriff

Responses Required for Recommendations

R1 through R4 El Dorado County Board of Supervisors
 El Dorado County Sheriff

Criminal Justice Committee

El Dorado County Jail, South Lake Tahoe

Reason for the Report

California Penal Code authorizes and directs Grand Juries to inspect and report annually on operations of all public prisons located within the boundaries of each county.

Scope of the Investigation

Members of the Grand Jury made an unannounced inspection of the South Lake Tahoe Jail facility on September 20, 2000.

- Members of the Jury were briefed on jail operations including emergency contingency plans;
- Staffing levels were discussed and explained;
- The Jail Commander conducted a facilities tour;
- Recommendations of previous Grand Juries were discussed;
- Implementation of those recommendations were explained to and viewed by the inspecting members.

A follow-up inspection for specific winter conditions was made on February 8, 2000.

Findings

- F1. A musty odor was detected upon entry into the public access area.
- F2. The Jail was generally clean and neat.
- F3. The Jail's security storage locker for weapons, ammunition, and riot equipment is a sheet metal gymnasium type locker, with padlock. This situation is inadequate for proper security.
- F4. Numerous large cracks were observed extending vertically through both exterior and interior walls of the building. The cracks generally run through the building blocks, defeating the interlocking design integral to laid block construction.
- F5. Prior Grand Jury Reports noted the following conditions:
 - Inadequate or broken surveillance equipment; and
 - Inmate medical facilities which were too small and inadequate to provide a proper level of service.

- F6. The inmate receiving area has been upgraded to provide adequate surveillance equipment. There is padding on equipment and structural areas, to reduce the potential of injury to inmates and staff in the event detainees become combative.
- F7. Additional cameras have been installed, and problems associated with the previously existing equipment have been repaired. These upgrades have increased the control and safety for both the inmates and staff.
- F8. The medical facilities within the Jail have been expanded to provide a better level of service to the inmates. A full-time duty nurse is provided under the medical service contract.

Recommendations

- R1. The source and nature of the “musty odor” should be identified, to eliminate any potential public health hazard.
- R2. Storage for weapons, ammunition, and riot equipment should be upgraded to provide a higher level of security.
- R3. An inspection should be performed by a qualified Structural Engineer to ascertain that the structural integrity of the Jail has not been compromised.

Commendation

The Grand Jury commends Jail Commander Lt. Les Lovell for the repair, as recommended by previous Grand Juries, improvement to South Lake Tahoe Jail, and the excellent management of this facility.

Responses Required for Findings

F1 through F8 El Dorado County Board of Supervisors
 El Dorado County Sheriff

Responses Required for Recommendations

R1 through R3 El Dorado County Board of Supervisors
 El Dorado County Sheriff

Criminal Justice Committee

El Dorado County Juvenile Hall

Reason for Report

California Penal Code authorizes and directs Grand Juries to inspect and report annually on operations of all public prisons located within the boundaries of each county.

Scope of Inspection

Members of the Grand Jury inspected the County Juvenile Hall on August 30, 2000:

- The Deputy Chief Probation Officer in charge of the juvenile facility conducted the tour;
- Some juveniles were interviewed.

Findings

- F1. The facility was generally clean and well run.
- F2. The food and education services were good.
- F3. The health facility's room had no running water, toilet, or blankets.
- F4. No private room was available for individual counseling.
- F5. There were stained ceiling tiles.
- F6. The showers showed small amounts of mold and missing grout.
- F7. The clock in the multi-purpose room was broken.
- F8. Equipment stored over the laundry room door was not secured.
- F9. One of the outdoor recreation areas was shut down for repair.
- F10. The ceiling and floor of the food freezer were not clean.
- F11. Both control room doors were open because the area was too warm.
- F12. Males and females used common facilities at different schedules.
- F13. Work orders have been issued for Findings 4, 5, and 8.

F14. This Grand Jury, in common with several previous Grand Juries, finds that the current facility is inadequate for its intended use.

Recommendations

R1. Deficiencies noted in findings F3 through F12 and F14 should be corrected.

Responses Required for Findings

F1 through F14 El Dorado County Board of Supervisors

Responses Required for Recommendations

R1 El Dorado County Board of Supervisors

Criminal Justice Committee

Growlersberg Conservation Camp, Georgetown

Reason for Report

California Penal Code authorizes and directs grand juries to inspect and report annually on operations of all public prisons located within the boundaries of each county.

Scope of Inspection

The Growlersberg Conservation Camp at Georgetown was inspected by members of the Grand Jury on December 6, 2000.

- Grand Jury members were briefed on operations and escorted by state personnel on a tour of the entire facility;
- Staffing levels were discussed and explained to the members;
- Recommendations of the 1999/2000 Grand Jury were discussed and implementations of those recommendations were explained to the members.

Findings

- F1. The Growlersberg Conservation Camp is a facility that is operated jointly by the California State Department of Forestry and the California State Department of Corrections.
- F2. The facility was designed and constructed in 1966/67 as an 80-man facility. The population has increased to 132.
- F3. Some areas contained bunks beds because of over crowding.
- F4. The kitchen and food preparation area has been outfitted with a larger range than was originally installed. At this time the range hood is a hazard and does not meet Code. Plans to construct a new office building and kitchen within two years will resolve some problems.
- F5. The dining area was also designed for 80 persons so inmates must be fed in two shifts.
- F6. Housing areas were clean and orderly
- F7. The kitchen food preparation area was clean and orderly. The quantity and quality of food served was satisfactory

- F8. There are provisions for Inmate recreation. A small but adequate library is utilized by inmates on a regulated basis, with a limited number allowed to use it at any given time.
- F9. Management by the correctional staff seemed to be efficient and professional
- F10. There was virtually no ADA compliance.

Recommendations

- R1. Immediate steps should be taken to upgrade the food preparation area to meet all current safety standards relating to ranges and range hood exhaust systems. This recommendation was also made by the 1999-2000 Grand Jury.
- R2. There should be steps taken to comply with ADA.

Responses Required for Findings

F1 through F10 California State Department of Forestry
California State Department of Corrections

Responses Required for Recommendations

R1 California State Department of Forestry
California State Department of Corrections

EDUCATION

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Education Committee

Ralph M. Brown Act Survey

Reason for the Report

In the course of other investigations, the Grand Jury found numerous violations of the Brown Act. Therefore, it decided to do a survey to determine if these violations were because of a lack of understanding of the Act. The purpose of the Ralph M. Brown Act is to create a presumption in favor of public access. The Act generally requires deliberation, discussion and information gathering to be open and subject to public scrutiny. The Act provides specific exceptions to the public meeting requirement where government has a demonstrated need for confidentiality.

Scope of the Investigation

The Education Committee of the 2000/2001 Grand Jury:

- Devised a questionnaire and accompanying letter and sent them to school districts, fire districts, public utility districts, community service districts and cities throughout the county; and
- Tabulated and analyzed the results of the survey.

Findings

- F1. The Grand Jury received responses from 34 of the 55 districts surveyed.
- F2. In some cases, only a portion of the elected officials responded.
- F3. Although the Grand Jury requested responses from individual elected officials, some districts submitted one response for the entire group of elected officials. It is not known how these responses were determined or if only one member responded.
- F4. The inconsistency of the responses may have been confusion on the part of the elected officials. However, the accompanying letter states "...The Grand Jury feels that completion of a brief survey requiring only a few check marks, would be much more convenient and less time consuming than requiring the personal appearance of *each* of such a large group of *individuals*." (Emphasis added)
- F5. In tabulating the results of the survey, the Grand Jury assumed that the responses from the districts with a single response indicated the feelings of all five of the elected officials of that entity.

- F6. The Grand Jury received 73 responses, but using the method described in Finding 5, we tabulated 90 responses.
- F7. Results of Question 1, "How confident do you feel about your understanding of the Ralph M. Brown Act?"
- Quite confident - 27
 - Fairly confident - 54
 - Not very confident - 9
 - Not confident at all -1
- F8. Results of Question 2, "What sort of training have you had on the provisions of the Brown Act?" There are multiple answers to this question as members reported several kinds of training.
- Formal seminar - 60
 - Reading publications - 45
 - Informal discussion - 40
 - No training at all -3
- F9. Results of Question 3, "When did you last have any formal training on the provisions of the Brown Act?"
- A year ago or less - 28
 - 2 to 3 years ago - 25
 - Over 3 years ago - 8
 - Never had training - 26
- F10. The California School Board Association puts on two formal seminars per year, which include updates or revisions regarding the Brown Act. It is not known how many school districts within the County require their board members to attend these training sessions.

Commendation

The Grand Jury commends the six entities in which five board members responded. These were: Mother Lode Union School District, Black Oak Mine Unified School District, Garden Valley Fire Protection District, El Dorado Hills Community Service District and Pioneer Fire Protection District.

Recommendations

- R1. The Board of Supervisors should provide, via the County Counsel, two seminars per year on the Brown Act; one in the Tahoe area and one on the Western Slope. It should notify all elected officials of the time and place of these seminars.

R2. All Boards subject to the Brown Act should provide training and insure they conduct business in compliance with the Brown Act.

Responses Required for Findings

No responses required

Responses Required for Recommendations

R1 El Dorado County Board of Supervisors

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Education Committee

Black Oak Mine Unified School District

Citizen Complaint #00/01-C-008

Reason for the Report

This investigation responded to a citizen complaint of a violation of the Ralph M. Brown Act by the Board of Trustees (Board) of the Black Oak Mine Unified School District (BOMUSD).

The intent of the Brown Act is that the actions of public commissions, boards and councils, and other agencies in California be taken openly and that their deliberations be conducted openly.

The philosophy of the Brown Act is that the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.

Scope of the Investigation

The Education Committee of the 2000-2001 Grand Jury:

- Reviewed Government Code sections relating to the Brown Act;
- Reviewed pertinent provisions of the Education Code;
- Reviewed the Board Policy Handbook of the BOMUSD;
- Interviewed all five members of the 1999 Board;
- Interviewed the 1999 Superintendent of the BOMUSD;
- Reviewed the appropriate personnel file;
- Reviewed Minutes and Agendas of the 1999 Board Meetings; and
- Reviewed relevant correspondence from attorneys.

Findings

- F1. The majority of the BOMUSD Board intended to reassign an administrator to the classroom in the hope that that person would resign.
- F2. There is a question as to whether the action to reassign the administrator took place at the Board's March 11, 1999 meeting or at its May 26, 1999 meeting.
- F3. The Board did not preserve audio tapes of either meeting, as its practice was to maintain tapes of open sessions for only one month. Further, the Board's practice was to not tape closed sessions as is permitted in Government Code Section 54957.2 (a).

- F4. The Grand Jury finds the action was taken on May 26, 1999 for the following reasons:
- a. A letter dated August 16, 1999 from counsel for the Board to the counsel for the Administrator refers to action taken on May 26, 1999.
 - b. The Board's minutes show that all members of the Board were present at the May 26, 1999 meeting, but not at the March 11, 1999 meeting.
 - c. The original, unsigned, minutes of the May 26, 1999 meeting do not reflect any reassignment action. In the August 12, 1999 meeting, the Board moved, seconded, and unanimously carried that the minutes of the May 26, 1999 board meeting be amended to reflect the action of reassigning the administrator.
- F5. Section 35163 of the Education Code provides: "Every official action taken by the governing board of every school district shall be affirmed by a formal vote of the members of the board, and the governing board of every school district shall keep minutes of its meetings, and shall maintain a journal of its proceedings in which shall be recorded every official act taken."
- F6. No formal vote was taken at the May 26, 1999 closed session meeting for the action reassigning the administrator to the classroom.
- F7. Section 54957.7(b) of the Government Code provides: "After any closed session, the legislative body shall reconvene into open session prior to adjournment and shall make any disclosures required by Sec. 54957.1 of action taken in the closed section."
- F8. Government Code Section 54957.1 provides: "The legislative body of any local agency shall publicly report action in closed session and the vote or abstention of every member present thereon."
- F9. The minutes of the May 26, 1999 board meeting violate the above sections for the following reasons:
- There was no mention of a closed session in accordance with the Agenda;
 - There was no mention of action taken or votes of the members in the Closed Session;
 - There was no reporting out of the action;
 - The Minutes are not signed.
- F10. Subsequent to notice of this violation of the Brown Act in a letter from the administrator's attorney on July 9, 1999, the Board on August 12, 1999 amended the minutes of the May 26, 1999 meeting to reflect that "the Board directed the Superintendent to notify complainant of the action taken on May 26, 1999." No

mention of the vote of all members present, as required by Government Code Section 54957.1, was made in this amendment.

- F11. This amendment of the May 26, 1999 board meeting minutes constitutes an admission that the Board violated the Brown Act on that date.
- F12. As a matter of custom and practice, the Board's Agendas contain generic notices of closed session discussions regarding evaluation of administrators regardless of the specific purposes of the Closed Sessions. This custom and practice effectively controverts the intent of the Brown Act that the public be notified of the actual intentions of the Board.
- F13. BOMUSD Board Policy BB 9323.2(a) states:
- “An 'action' by the Board means:
- a. A collective decision by a majority of the Board members;
 - b. A collective commitment by a majority of the members to make a positive or negative decision; or
 - c. A vote by the majority of the members when sitting at the Board. (Gov. Code Sec. 54952.6)”

This policy is inconsistent with Education Code Section 35163, which states: “Every official action taken by the governing board of every school district shall be affirmed by a formal vote of the members of the board,

- F14. The Minutes of the Board Meetings of May 26 and August 12, 1999 do not contain sufficient detail to adequately reflect the discussions and/or actions. Similar deficiencies are noted in minutes of other meetings of the Board.
- F15. The Grand Jury investigation of actions taken by the Board of the BOMUSD was unnecessarily delayed by the current Superintendent and the President of the 2000 Board.

Recommendations

- R1. The Board should follow the legal procedure set forth in the Education Code by taking action only by a formal vote of its members, and should modify its Board Policy to conform to the legal requirements of Education Code Section 35163.
- R2. The Board should follow the law by reporting out its closed session actions and the vote taken on those actions, as required by Government Code Section 54957.1.

- R3. Board Meeting Agendas should reflect only the intended subjects of discussion or specific intended action to be taken in Closed Session. The use of generic categories should be discontinued.
- R4. The Board should add an Index and/or Table of Contents to its Policy Handbook to make it more user friendly.
- R5. Although it is not required to do so by law, the Board should retain the tapes of all meetings, including both Open and Closed Sessions, for four years, to preserve the best evidence for potential litigation purposes.
- R6. The Board should hold a workshop regarding the Brown Act and include as a participant the Secretary to the Superintendent who prepares the Agendas and Minutes of Board Meetings.

Responses Required for Findings

F1 through F15 Black Oak Mine Unified School District Board of Trustees

Responses Required for Recommendations

R1 through R6 Black Oak Mine Unified School District Board of Trustees

Education Committee

El Dorado Union High School District

Oak Ridge High School

Reason for the Report

This Grand Jury decided to follow up on responses to Grand Jury reports made within the last five years to confirm that the responses to prior recommendations have been implemented. In addition, the Grand Jury inquired into other matters of current interest.

Scope of the Investigation

Grand Jury members visited Oak Ridge High School in El Dorado Hills and interviewed an Assistant Principal and the Maintenance Supervisor.

Findings

- F1. Many of the buildings at this school are twenty years old and built with concrete block construction. Because of this type of construction, when water permeates the concrete block and then evaporates, it creates an alkali residue inside the building.
- F2. Because of the age of the building, the district allocates additional funds for maintenance.
- F3. The new maintenance supervisor has created a maintenance schedule and has implemented a program to seal the concrete block to prevent further water damage.
- F4. All damage seen by the 1999/2000 Grand Jury has been repaired. New carpet has been installed in building PA-1.
- F5. Warning signs are posted to prevent blocking access to electrical panels.
- F6. Finding 6 of the 1999/2000 Grand Jury states, "Recurring problems with blockage of electrical panels and exits in the Performing Arts Center have led to several violations by the Fire Marshall. Due to failure to correct these conditions, the Principal was cited, fined, and placed on probation for a period of one year." The response from the school district states: "The issue has already been addressed by the Principal. The teacher is cooperative and no longer blocks the areas mentioned. Staff knows to maintain clear access to hallways, exits and panels."
- F7. Access to electrical panels was blocked in the Performing Arts Center and in an area adjacent to one of the Science Labs.

Education Committee

Golden Ridge School at Juvenile Hall

Reason for the Report

As part of the Grand Jury's required inspection of detention facilities within the County, the Education Committee examined the educational program and facilities of Juvenile Hall.

Scope of the Investigation

The Education Committee of the 2000-2001 Grand Jury:

- Visited Golden Ridge School and interviewed the principal ;
- Reviewed the 2000-2001 Budget for the El Dorado County Office of Education and interviewed the County Superintendent of Schools and her staff; and
- Interviewed several students chosen at random during a separate visit.

Findings

- F1. Diversity in age, academic proficiency, and length of incarceration, require each student to work on an individualized curriculum.
- F2. The space of the facility is inadequate for the following reasons:
- The 2000/2001 Budget of El Dorado County Office of Education allocates funds based on "...an average daily attendance of approximately 53 students."
 - According to a letter from the County Superintendent of Schools, the facility can handle 40 students. If attendance goes over 40 students, "the administrator has implemented a contingency plan of bringing in another teacher and moving some students and desks into the common area of the building for instruction."
 - The principal/counselor's office is a walk-through office situated between a classroom/computer lab and a classroom/library/work area. This does not enable the principal/counselor to engage in impromptu and/or individual counseling in a private manner.
 - There is no workroom or breakroom for educational staff.
- F3. According to the budget document, "Primary emphasis is improving self-esteem, responsibility skills, and developing ability to work cooperatively with others within a structured setting." The students interviewed reported the school was meeting these goals.
- F4. In the opinion of the students we interviewed, they are not receiving adequate individual instruction in advanced math.

- F5. The school has acquired computers which are being utilized with a wide variety of educational software. At the time of our visit, they were not yet connected to the Internet. The administration wanted to be sure the filtering system is adequate.
- F6. Students reported that counseling on drug and alcohol abuse was much more effective by guest presenters, rather than films.
- F7. The students reported that their stay at Juvenile Hall was a positive experience and that their attitude and plans for the future were very optimistic.

Recommendations

- R1. The Principal and County Superintendent of Schools should be consulted when the County reviews plans for a new Juvenile Hall, especially regarding space requirements.
- R2. The County Superintendent of Schools and the Principal should advertise and aggressively solicit the general public and the business community for pro bono assistance in providing advanced math instruction to those students in need.

Commendation

The Grand Jury commends the staff of Golden Ridge School on their success in their primary emphasis of providing a positive attitude in their students for their future life.

Responses Required for Findings

- F2, F4, F5, F6 El Dorado County Board of Education
 El Dorado County Superintendent of Schools

Responses Required for Recommendations

- R1 El Dorado County Board of Supervisors
- R2 El Dorado County Superintendent of Schools

**GOVERNMENT &
ADMINISTRATION**

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Government & Administration Committee

Justice Center / All Star Investments

Investigation #00/01-I-007

Reason for the Report

The Grand Jury received comments from several sources that El Dorado County's ("County") contracting procedures were less than optimum. Among the contracts publicly debated, and about which concern had been expressed, were those entered into with All Star Investments, LLC ("All Star") for the design and development of a Justice Center ("Justice Center" or "Project") to be constructed on County owned property adjacent to the existing County Jail.

Scope of the Investigation

The Committee's investigation included review of:

- Agendas, Agenda Packets, and Conformed Agendas (minutes) of the El Dorado County Board of Supervisors ("BOS") pertaining to the Project, from May 1998 through July 2000;
- Various newspaper articles pertaining to the development of the proposed Justice Center;
- Documents associated with a proposed Request for Qualifications ("RFQ") "for design/build/financing services in support of the proposed...project";
- The selection process that ultimately resulted in an award of contracts to All Star;
- Internal memoranda between various Departments within County government;
- Documents prepared by All Star addressed to various County Department Heads and Officials;
- Contracts, Letters of Agreement, drafts of proposed contracts, counterproposals and letters discussing issues relating to contractual commitments by the County and All Star;
- A memorandum from the Taxpayers Association of El Dorado County to the BOS "REGARDING: Proposed Method of Financing and its Approval for the Placerville Justice Center Project";
- A legal opinion of the County Counsel regarding an analysis of Measure A (November 6, 1990 Election) and the Project's compliance with Measure A; and
- Letters, billings, invoices and other financial documents associated with demands for payments, or actual payments, including those of the County, All Star and various subcontractors involved with design and development of the Project.

The committee's investigation also included testimony from:

- The County Auditor/Controller;
- The County Counsel;
- A Deputy County Counsel;
- The District Attorney (DA) and members of his staff;
- The former interim Director of the County's Department of General Services ("DGS");
- The former County Administrative Officer ("CAO"); and
- Three members of the 1999/2000 Board of Supervisors.

Findings

- F1. In May 1998 the Director of DGS requested and was granted authority to release an RFQ for the "design/build/financing services" of the Project.
- F2. In the original proposal to the BOS, the DGS Director represented "The estimated cost of this...is roughly \$6.0 million, payable via annual 'lease payments' of approximately \$600,000 per year over a period of 25 years."
- F3. Advantages of the proposed design/build/finance system articulated to the BOS were stated to be "guaranteed lease payments (no cost overruns), timely completion of construction, no bid, construction or supplier delays, guaranteed completion date." While some of these proffered advantages were unrealistic, this process did provide an opportunity for the County to avoid putting the Project out for public bid.
- F4. On July 2, 1998, DGS released a "NOTICE REQUESTING LETTERS/STATEMENTS OF QUALIFICATIONS" ("RFQ"). Included at Exhibit B page 2, Section B.2, of the RFQ was the following statement: "Any costs incurred by respondents in the preparation of any information or material submitted in response to this RFQ shall be borne solely by the respondents."
- F5. On July 15, 1998, a pre-submittal conference was held for interested parties. An "attendees list" identified thirty-six (36) companies. On July 23, 1998, seven (7) additional companies were added to the list.
- F6. At that conference the County publicized its intention to parcel off a portion of the 25-acre Criminal Justice Site to be leased to the successful bidder. The proposed facilities were to be built on this site and then leased back to the County on a "lease/purchase agreement" for a specified period of time. It was proposed that, at the end of the term of the Agreement, "title to the land and facilities will revert back to the County."
- F7. Ten companies submitted timely responses to the RFQ.

- F8. Six of the responding companies were selected as finalists to make presentations to a County Selection Board. Those presentations were scheduled for November 4 and 5, 1998.
- F9. DGS directed the finalists to address a series of questions dealing with specific issues. Each of the finalists was provided a blank sample of the score sheet that would be used by the evaluators. Included within the material provided to the finalists, at Page 3 under the heading Financial Consideration, was Question 1: *“What funding mechanisms are available to the County, aside from Certificates of Participation, Municipal Bonds Securities, etc.?”* (Emphasis added)
- F10. On December 3, 1998 the Director of GSA recommended that the BOS select All Star for the design, construction and financing of an approximate 50,000 square foot courthouse, and a separate Sheriff’s facility to be constructed next to the County Jail.
- F11. Among the factors delineated to the BOS as having influenced that judgement, the DGS Director stated: “All Star Investments, LLC was the only respondent to recommend and propose using private investor capital for the financing element of the project. ... [T]he other proposals involved financing the project through the sale of tax exempt certificates of participation or similar debt instruments.... These proposals gave rise to the concern this approach may be perceived to be counter to the spirit of the 1990 County initiative related to revenue bond financing.”
- F12. The BOS approved the selection of All Star.
- F13. By written communication dated January 6 1999, All Star proposed the following actions for financing the Project:
- a. “The property to be developed must be legally subdivided from the adjoining property.”
 - b. “This property will be deeded to All Star, subject to a lease with the County (the ‘lease’).”
 - c. “All Star will obtain a construction loan and a take out loan on the Property to finance this development.”
- F14. All Star did not reveal the spread in any interest rates that would be charged to the County as part of the costs of this form of financing.
- F15. On January 27 and 28, 1999, the first of a series of meetings was held to identify the proposed occupants of the Justice Center, their needs, and a design concept that would serve those needs. The scope of the proposed Project changed several times during its design phase.

- F16. On February 11, 1999, in a letter written to the Director of DGS, All Star:
- a. Identified several additional phases of the Project including a juvenile hall;
 - b. Proposed a Letter of Agreement in which the County would "agree to pay the costs associated with the development of these documents (master plan, programming and partial Schematic design Plans)...in the event that the County does not proceed with the project...by December 1, 1999.";
 - c. Represented in the proposed form of the agreement, that: "Our reimbursable expenditures associated with Courts Phase I *will not exceed* \$_____ and those associated with the Sheriff's facility *will not exceed* \$_____." (Emphasis added); and
 - d. Presented a draft form of a proposed lease agreement between the County and All Star for consideration.
- F17. A proposed master lease was submitted to the County Counsel for review and recommendation.
- F18. The County Counsel's Office and legal representatives for All Star continued negotiations over the form of a proposed master lease throughout the term of the Project design and development phase of the Agreement between All Star and the County. Those negotiations failed to result in any Master Lease Agreement between the County and All Star being signed.
- F19. On February 18, 1999, All Star wrote a letter to the Director of DGS identifying certain financial considerations absent from its previous letter. The letter stated in part: "... [I]n the event that the County does not proceed with the project and authorize us to continue with the design and construction by December 1, 1999[, our] reimbursable expenditures associated with Courts Phase I *will not exceed* \$180,000 and those associated with the Sheriff's facility *will not exceed* \$195,000." (Emphasis added)
- F20. On February 25, 1999, All Star sent a proposed Letter of Agreement, with conditions as stated above, to the CAO, requesting his signature as approval of the letter of agreement.
- F21. On May 28, 1999, All Star wrote to the CAO advocating the following:
- a. That the County complete the legal subdivision of the Phase I property and convey title to the property to All Star;
 - b. That the County authorize a Letter of Agreement in the form of previously written letters, including the provision that "Our reimbursable expenditures

associated with Courts Phase I *will not exceed* \$600,000 and those associated with the Sheriff's facility *will not exceed* \$500,000." (Emphasis added); and

- c. January 2000 was set forth as being the deadline date for a finalized lease agreement.
- F22. On June 23, 1999, the CAO prepared an Agenda Transmittal requesting that the BOS authorize him to sign a Letter of Agreement with All Star for the necessary planning, programming, and schematic design required to proceed with the environmental review for the proposed Justice Center Complex. The BOS was advised that the estimated cost to the County, in the event the County chose not to proceed, was approximately \$1,000,000, and that these costs would be wrapped into the lease rate if the County did proceed with the Project.
- F23. That request was scheduled as item 42 on the BOS Consent Calendar.
- F24. The BOS approved the request.
- F25. A Letter of Agreement, dated July 9, 1999, was prepared by All Star for approval by the CAO, and included the signature of John Thomas, President of All Star. The County approved the Letter of Agreement by the signature of Michael B. Hanford, Chief Administrative Officer.
- F26. Terms of that Agreement stipulated reimbursement by the County to All Star upon a failure to finalize a lease agreement by April 2000. Further, the Agreement provided that "reimbursable expenditures associated with Courts Phase I *will not exceed* \$600,000 and those associated with the Sheriff's facility *will not exceed* \$500,000." (Emphasis added) These provisions constituted "caps" rather than fixed fees.
- F27. On September 9, 1999, All Star prepared a letter for the purpose of amending the Letter of Agreement dated July 9, 1999. The purpose of the amendment ("Amendment #1") was the addition of a Juvenile Hall Facility to Phase I of the Project. Amendment #1 stated in part: "If for any reason the County and All Star cannot conclude lease terms and rates, All Star *shall be entitled to a fee of* \$300,000 for services provided." (Emphasis added) This language constituted a "fixed fee" for services provided.
- F28. This proposed letter of amendment was not routed to the County Counsel's Office for review and recommendation.
- F29. On October 8, 1999, the CAO prepared an Agenda Transmittal requesting BOS "authorization to sign the amendment to the previously approved letter dated 7-09-99, adding a new juvenile hall...." In his attached memorandum, the CAO advised the BOS that the amendment would be an "authorization of *fee up to* \$300,000 to be paid them for their work if we do not move forward with the project." (Emphasis added) This language would have constituted a "cap" rather than a "fixed fee". In fact,

however, the actual letter of amendment by its terms constituted a "fixed fee" agreement.

- F30. The proposed amendment was scheduled as item 47 on the BOS's Consent Calendar for October 26, 1999, and was approved by the BOS.
- F31. Failure to route the proposed amendment to County Counsel, for review and recommendation, combined with insufficient attention to detail on the part of the CAO, contributed to the authorization and signing of a contractual agreement with terms other than that represented by the CAO to the BOS. This would subsequently prove to have significant financial consequences for the County.
- F32. In a letter dated November 19, 1999, All Star requested authorization for another amendment ("Amendment #2") to the July 9, 1999, Letter of Agreement, for the production of construction documents. Amendment #2 would have imposed costs to the County in addition to those already the subject of the existing Agreement. Amendment #2 states in part: "If for any reason the County and All Star cannot conclude lease terms and rates, All Star shall be entitled *to a fee of \$625,000* for the Courts and Sheriff's facility and \$325,00 (sic) for the Juvenile Hall Facility for services provided." (Emphasis added)
- F33. In a letter dated November 29, 1999, All Star submitted another letter requesting the authorization of Amendment #2. This letter was essentially the same as the letter of November 19 save for monetary changes in the last sentence which reads in part: "... All Star shall be entitled *to a fee of \$725,000* for the Courts and Sheriff's facility and \$425,00 (sic) for the Juvenile Hall Facility for services provided." (Emphasis added)
- F34. In a memo on All Star letterhead, dated December 12, 1999, the Project cost was estimated to be to be \$36,000,000. Yearly lease payments were represented as ranging from \$2,980,000 figured at a rate of 6%, to \$3,775,000 figured at a rate of 7.5%. These figures were proposed in the context of a 30-year, fixed rate, fully amortized agreement.
- F35. Yearly payments on \$36,000,000 at 6% calculate to be \$2,615,360, and for 7.5% calculate to be \$3,048,164.
- F36. At a meeting of the BOS on December 14 1999, the Board approved in concept a lease-leaseback agreement and an underlying ground lease with All Star, "subject to the opinion of County Counsel as to its collision with (ballot) Measure A."
- F37. In a letter dated December 13, 1999, from the Taxpayers Association of El Dorado County, the Association President requested the BOS give due consideration to Measure A. The letter states in part: "This proposed lease, lease-back arrangement appears to circumvent the requirements of Measure A."

- F38. In a letter from the CAO to the BOS dated January 3, 2000, the CAO articulated a number of factors relevant to the Project including the following:
- a. "There is a strong possibility that the State Task Force on Trial Court Facilities will recommend that the State or the California Administrative Office of the Courts (AOC) assume responsibility for statewide court facilities. If other county departments were housed in the court building, the County could be required to pay facility rental charges to the State at some time in the future."
 - b. Government Code Section 68073 states, "The County is responsible for providing necessary and suitable facilities for judicial and court support positions created prior to July 1, 1996."
 - c. "Building and financing the construction of courthouse facility space for expanded staffing and functions (those created after July 1996) might not be a county responsibility in the future, however, if undertaken by the county at this time, would most likely create a higher level of ongoing financial responsibility by County government".
 - d. Quoting from an attached document entitled "Transfer of Trial Court Facilities" (sic) the CAO stated: "The 'preliminary General Principles' propose that...[n]ew construction would be the responsibility of the State. The State would provide future financing for renovation/reconstruction projects via the State budget process. New construction financing would be the responsibility of the State...."
 - e. "Building a new court facility which would accommodate an increased number of judicial officers and staff (i.e. positions over and above those in existence prior to July 1, 1996),...would unnecessarily create a lasting financial burden for the El Dorado County budget."
 - f. "It appears that it would be preferable to let the State take responsibility for future expansion of the Courts and not burden the County with financial expenses that are the responsibility of the State."
- F39. The County nevertheless proceeded to pursue the development of this Project, including the potential construction, in two phases, of an eight-courtroom court building.
- F40. In a memo dated January 14, 2000, County Counsel submitted a detailed analysis of Measure A and its impact on the Project. The memo concludes by stating in part "Measure A requires one thing. In the future, if the Board of Supervisors chooses to enter into an agreement to sell revenue bonds to acquire, construct, purchase or lease County building or other capital facilities, they must put their plan before the voters

for final approval.” (Emphasis in original). The County Counsel also “conclude[d] that the Justice Center project, as currently proposed to be financed, does not require voter approval under Measure A.”

- F41. While the proposed lease, leaseback agreement would not have required voter approval under the specific language of Measure A, entering into the proposed master agreement with All Star would have committed a significant amount of County Funds, estimated \$3,000,000 or more, annually for thirty (30) years. In fact, the long term commitment of large sums of the County’s funds for capital improvements was the event that previously triggered the ballot initiative commonly referred to as Measure A. The Project, measured in terms of cost, was at least as significant as the expenditures that had resulted in the passage of Measure A.
- F42. The County actively sought a financing scheme that would legally allow the completion of the Project without the necessity of taking the proposal before the voters for their approval.
- F43. On January 18, 2000, The CAO submitted to the BOS, for approval, a request for authorization to sign Amendment #2. That request was scheduled as an item on the BOS’s, January 25, 2000, Consent Calendar. On January 25, however, the CAO requested that the item be continued to February 1, 2000. Ultimately, the CAO withdrew his request for approval of Amendment #2.
- F44. In a memo dated January 25, 2000, All Star detailed a number of proposed changes to contract language for agreements between All Star and the County. Those proposals were reviewed by County Counsel’s Office.
- F45. In a response addressed to All Star’s Attorney, County Counsel stated in part: “Your client requested modification of the ‘not to exceed’ language to ‘the amount of’, which has not been incorporated. Obviously, if the County were to terminate the project prior to the completion of the final plans, the full costs of the work would not have been incurred by your client, nor would the County have received all the work bargained for.”
- F46. A courtesy copy of this letter was routed to the CAO.
- F47. In a memorandum from the County Treasurer/Tax Collector dated February 8, 2000, to the District III Supervisor, several recommendations were made regarding the Project. The last of these reads: “All Star Investments, LLC, should fully disclose to all interested parties all income from all sources on this deal, including any spread on the interest rate.”
- F48. The Grand Jury found no evidence that this request was ever made of All Star. No such information was ever provided to the County by All Star.

- F49. In an attachment to a letter dated May 23, 2000, All Star represented the Costs for Phase I of the Project to be \$38,100,000.
- F50. The County received a grant from the State Bureau of Corrections (BOC) in the amount of \$1.4 million, the funds to be applied to the construction or renovation of a juvenile hall facility. The grant included a deadline for the use of funds.
- F51. Repeated changes in the Project caused delays in the required CEQA process, which, combined with other lease issues, led to negotiations for the Juvenile Hall portion of the Project not being completed in a sufficiently timely manner to allow the expenditure of the grant funding prior to the grant deadline. The funds were returned to the State without prejudice.
- F52. All Star made a demand to the CAO for payment, in a letter dated June 7, 2000, which reads in part: "We request that the County honor the commitments made in the July 9, 1999 Letter of Agreement, as amended September 9, 1999, and provide All Star Investments with immediate payment of the aggregate total of \$1,400,000 now due and owing for the environmental and design documentation furnished to the County." No supporting invoices or other documentation justifying the amount of such payment were submitted by All Star to the County.
- F53. On June 14, 2000, notwithstanding the absence of supporting invoices or other documentation justifying the amount of All Star's claim, the CAO prepared an Agenda Transmittal and letter attachment recommending to the BOS that the All Star billing be approved for payment, and paid, in the amount of \$1,400,000. These funds were to be paid from the Department 15 Capitol Facilities Construction Account. The CAO represented to the BOS that it had previously approved "a Letter of Agreement and amendments thereto *calling for the payment of \$1.4 million* to All Star Investments" in the event the lease was not finalized by April 2000. (Emphasis added). That was incorrect. The BOS had actually authorized the payment of up to \$1.4 million, not a flat fee of \$1.4 million. The matter was scheduled as Agenda Item #86 on the BOS Calendar for June 27, 2000. The Agenda item itself, as opposed to the documents submitted to the members of the BOS in support of the Agenda item did not publicly specify the amount of payment to be made.
- F54. The CAO's recommendation to the BOS was misleading, in that it did not advise the BOS of the following facts:
- a. That the \$600,000 figure for the Phase I Court Facility was a cap, rather than a fixed fee;
 - b. That the \$500,000 figure for the Sheriff's Facility was a cap, rather than a fixed fee;

- c. That the \$300,000 for the Juvenile Hall had been approved on the basis of the CAO's representation of it as a cap, rather than a fixed fee, contrary to the language of the agreement (Amendment #1) itself;
 - d. That no supporting backup for All Star's claim for its own services, or allocation of that claim between three separate portions of the Project, had been received; and
 - e. That no supporting backup for All Star's claim for subcontractors' services, or allocation of those claims between the three separate portions of the project, had been received.
- F55. After input from the Auditor/Controller, at the June 27 meeting of the BOS, the CAO modified his recommendation to authorize payment to All Star "after proper invoices are received and reviewed by the CAO, County-Counsel and Auditor-Controller."
- F56. Except for the input of the Auditor/Controller, it appears the sum of \$1.4 million would have been paid to All Star without any determination having been made by the CAO or the BOS:
- a. That \$600,000 had actually been expended by All Star for the Phase I Court facility;
 - b. That \$500,000 had actually been expended by All Star for the Sheriff's facility;
 - c. That the amounts of All Star's subcontractors claims, and allocation of those claims between the three separate phases of the project, were justified; or
 - d. That the amount of All Star's claim for its own services was justified.
- F57. All Star submitted an invoice dated 7/10/00. It is a single item invoice for "Professional Services rendered for the schematic design for the El Dorado Juvenile Hall Facility". The amount billed was \$300,000. Because of the language of Amendment #1, which constituted a fixed fee agreement, the Auditor paid the claim in full on September 6, 2000.
- F58. Examination of billings and invoices associated with the work of All Star and its subcontractors shows that the reimbursable expenses associated with the Juvenile Hall Facility would have been less than \$140,000. Thus the fixed fee provision of Amendment #1 ultimately cost the County in excess of \$160,000. Mixing of a "fixed fee" agreement with other "cap" agreements in the same project created a foundation for additional issues regarding the amounts due and payable by the County.

F59. All Star submitted to the County a one-page Invoice, dated July 17, 2000, seeking payment in the amount of \$1,123,222.20 for the following costs:

- a. \$450,000 for Development and Management Services rendered for the El Dorado County Courthouse and Sheriff Facility. The claim for those costs was supported by a one-page memo, dated July 3, 2000, asserting that an Ellen Warner spent 1,800 hours on the project, at a rate of \$250 per hour, and that the hourly rate was "inclusive of all management, accounting and overhead."
- b. \$503,840.00 for Nacht & Lewis Architects.
- c. \$63,668.85 for Carlton Construction Co.
- d. \$4,066.50 for The Hoyt Co.
- e. \$5,000.00 for Walker Parking Consultant.
- f. \$45,997.03 for Legal Services.
- g. \$45,000.00 for Financing Services.
- h. \$5,669.82 for Miscellaneous Expenses.

No subcontractor invoices or other billing documents were submitted in support of the claim.

F60. In a letter dated August 3, 2000, All Star responded to a concern which the County had raised regarding the possibility All Star was double billing for work performed on the Juvenile Hall Facility. The letter reads in part: "We have reviewed the billing and back up submitted to you previously, and confirm that the Juvenile Facilities costs are not included in the Sheriff and Courthouse Project."

F61. Ellen Warner, the person identified in the claim referenced in F59 (a.) above, was represented to the County by All Star through numerous communications on All Star letterhead, to be "VICE PRESIDENT, All Star Investments, LLC". Further, according to the CAO in a letter to All Star dated October 25, 2000, "John Thomas has readily acknowledged that his company [All Star] did not incur a reimbursable cost to Ellen Warner in the amount of \$250.00 per hour."

F62. Invoices obtained from Nacht and Lewis, the company identified in the claim referenced in F59 (b.) above, for billings to All Star for work performed on the Project, show total billings of \$523,077.08. Of that sum, however, \$120,849.60 is clearly marked and billed exclusively to work performed on the Juvenile Hall Facility.

- F63. Examination of billings from Carlton Engineering, the company identified in the claim referenced in F59 (c.) above, discloses that the amount actually billed by Carlton Engineering was \$62,961.87, of which \$6,453.30 was directly attributable to work performed for the Juvenile Hall Facility. This was subsequently confirmed by a letter from All Star dated November 17, 2000.
- F64. As a result of the review of "proper invoices" by the Auditor/Controller and County Counsel, the Auditor/Controller determined that All Star was legitimately entitled to the amount of \$376,358.64 for services performed on the Project in addition to the \$300,000 fixed fee paid for the Juvenile Hall Facility. The total paid by the County to All Star for its services was \$676,358.64, not the \$1.4 million originally claimed by All Star.
- F65. Diligence on the part of the Offices of the Auditor/Controller and County Counsel resulted in savings to the County in excess of \$700,000.

Recommendations

- R1. The BOS should require that all contract proposals originating from the CAO be routed to the County Counsel in a timely manner for review and recommendation prior to submission to the BOS for approval.
- R2. All written recommendations by the CAO to the BOS for authorization to enter into contractual agreements on behalf of the County whereby the County would assume contractual monetary obligations should specifically set forth the manner in which those monetary obligations are to be calculated, e.g., fixed-fee obligation, actual cost obligation with or without a specific cap, or other manner of calculation of the amount of the obligation.
- R3. All written recommendations by the CAO to the BOS for payments by the County pursuant to the County's contractual obligations should be accompanied by supporting documentation justifying the specific amount of the payment recommended.
- R4. All written recommendations to the BOS for payment by the County, either (a) as a single payment of \$10,000 or more, or (b) as one of a series of payments totaling the amount of \$25,000 or more, pursuant to the County's contractual obligations, should be submitted to the Auditor/Controller for consultation prior to submission of those recommendations to the BOS.
- R5. All BOS Agenda items pertaining to payments to be made by the County pursuant to its contractual obligations should specify the amount of the payment to be made.

Commendations

The Grand Jury commends Auditor/Controller Joe Harn and Deputy County Counsel Trish Beck for their efforts in assuring that the County did not pay more on its contractual obligations to All Star than it was required to pay.

Responses Required for Findings

F1 through F65 El Dorado County Board of Supervisors

Responses Required for Recommendations

R1 through R5 El Dorado County Board of Supervisors

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Government & Administration Committee

Unsecured Property Tax Delinquencies

Citizen Complaint #00/01-C-016

Reason for the Report

This report results from the investigation of a complaint by a property owner concerning the manner in which notice of unsecured property tax delinquencies is given by the Treasurer/Tax Collector. The complainant asserted the following:

- He had not been billed for supplemental property taxes at the time those taxes were assessed.
- He had not received reminder notices or notices of delinquency until nearly ten years after the assessments.
- When he became aware of the recorded amount of delinquency, he attempted to pay the amount certified.
- He subsequently received a bill for penalties and interest in addition to the recorded principal amount.

Scope of Investigation

The Government & Administration Committee's investigation included:

- Interviews with the Treasurer/Tax Collector and with the staff employee in her office who has expertise in property tax collection policies and procedures;
- Interview with an employee of the County Recorder's Office who has expertise in the policies and procedures pursuant to which documents can be recorded in the Official Records of El Dorado County;
- Review and examination of all correspondence between the complainant and the Treasurer/Tax Collector's Office;
- Review and examination of the Treasurer/Tax Collector's written tax collection policies and procedures for both secured and unsecured property; and
- Review and examination of state law pertaining to the filing of liens upon property based upon the existence of unpaid and unsecured property tax obligations.

Findings

- F1. The policies and procedures of the El Dorado County Treasurer/Tax Collector with regard to the imposition of supplemental unsecured property taxes are as follows:

- a. A billing for such taxes, based upon purchases of property during the tax year, is generated and mailed to the property owner;
- b. Reminder notices are sent to the property owner approximately three months after the due-date if payment for the billed amount has not been received; and
- c. A Notice of Unsecured Property Tax Lien is filed with the County Recorder. A copy thereof is sent to the property owner, during the next billing cycle, if payment for the billed amount has not been received.

F2. Unsecured Property Tax Liens expire ten years after they have been recorded. Such liens may be renewed, however, for an additional ten-year period. If such a renewal process is pursued, Certificates of Delinquency are recorded and are sent to the property owner concurrently with the renewals of such liens.

F3. At the time the complaint under investigation was submitted to the Grand Jury, it was the policy of the Treasurer/Tax Collector to set forth in the Certificates of Delinquency only the amounts of the original assessments. Under that policy, delinquent property owners were not given notice of penalties, interest or other costs or accruals which may have become due and owing on those original assessments.

F4. Under that policy, when a delinquent property owner attempted to pay the amount set forth in the Certificate of Delinquency, that payment would be rejected and a subsequent billing, setting forth both the principal amount of the original assessment and subsequently incurred penalties, interest and other costs or accruals, would be sent to that property owner.

Recommendations

R1. In view of the appropriate immediate corrective action taken by the Treasurer/Tax Collector when the foregoing facts were brought to her attention, no additional recommendations are required.

Commendation

The Grand Jury commends the Treasurer/Tax Collector for her immediate action in addressing the described procedural problem expeditiously and in a manner responsive to the interests of the citizens of El Dorado County.

Responses Required for Findings:

F1 through F5 El Dorado County Board of Supervisors

Responses Required for Recommendations:

R1 No Response Required

Government and Administration Committee

Acquisition and Use of The Logan Building and Related Property

Reason for the Report

The 1999/2000 Grand Jury suggested that the 2000/2001 Grand Jury should undertake a more complete review of matters relating to the County's acquisition of the Logan Building, formally known as the Grand Victory Mine Center. That suggestion was based upon a complaint that had been submitted to the 1999/2000 Grand Jury indicating that conspiratorial conduct might have occurred in connection with that acquisition.

Scope of Investigation

The Committee's investigation included testimony from:

- The former El Dorado County ("County") Chief Administrative Officer ("CAO");
- The County Counsel, and examination and review of records produced by him;
- The County Auditor, and examination and review of records produced by him;
- The County Sheriff;
- The former Interim Director of the Department of General Services ("DGS");
- The Director of DGS who succeeded that Interim Director;
- The DGS employee having responsibility for Real Property Purchases and Acquisitions, and examination and review of DGS records produced by her;
- The trustee of Logan Family Enterprises, L.P. ("LFE"), the former owner of the Logan Building and related parcels (formally known as the "Grand Victory Mine Center");
- The real estate broker for the owner of the Logan Building and related parcels and option;
- The purchaser of a promissory note secured by a trust deed on Parcel C of the Logan Building property, and examination and review of records produced by him;
- A representative of a local taxpayers' association;
- Three (3) members of the 1999/2000 Board of Supervisors ("BOS");
- A real estate licensee not involved in the County's acquisition of the Logan Building property; and
- A member of the media.

The Committee's investigation also included review of:

- A videotape recording of a presentation to the BOS by the then owner of, and grantor to the Logans of, an Option to purchase Parcel A immediately adjacent to the Logan Building;
- Various newspaper articles pertaining to the acquisition, and subsequent use, of the Logan Building, and to the related development and occupancy by the Sheriff's Office of a proposed Justice Center;
- Four separate Escrow Files of Inter-County Title Company pertaining to the three separate parcels of real property and the Option relating to the Logan Building;
- Records of the United States Bankruptcy Court, Eastern District of California, pertaining to the Chapter 11 Petition filed by LFE;
- An independent appraisal of the Logan Building property, performed pursuant to contract with the County;
- An appraisal of the Logan Building property by the County Assessor;
- The minutes (Conformed Agenda) of the Planning Commission pertaining to a hearing on April 27, 2000, on the subject of the acquisition of the Logan Building;
- Numerous sets of Agendas, Agenda Packets, and Conformed Agendas (Minutes) of both the 1999/2000 and 2001/2002 BOS meetings pertaining to the acquisition, subsequent use, and possible disposition of the Logan Building; and
- Various videotape recordings of BOS meetings pertaining to the acquisition and subsequent use of the Logan Building.

The Committee's investigation also included an inspection of the physical facilities of the Logan Building and related parcels.

Findings

F1. The Logan Building and related parcels comprise the following three separate parcels of real property:

- Assessor's Parcel No. 097-020-46, also known as Parcel A, consisting of approximately 3.9 acres, of which only 1.5 to 2 acres is usable for construction purposes because of a very substantial slope at the southerly end of the parcel;
- Assessor's Parcel No. 097-020-47, also known as Parcel B, consisting of approximately .7 acres; and
- Assessor's Parcel No. 097-020-48, also known as Parcel C, consisting of approximately 1 acre, with a gradual slope from east to west. The Logan Building itself is situated on Parcel C.

These three parcels are located on the south side of Pleasant Valley Road in Diamond Springs, easterly of its intersection with Highway 49 from Placerville. A diagram showing the location of the three parcels is attached to this report as Exhibit 1, and a diagram showing the siting of the Logan Building on Parcels B and C is attached to this report as Exhibit 2.

- F2. In January 1996, Parcels A, B and C, all of which at that time consisted of bare land with only nominal construction on Parcel A, were owned by a group headed by Gerald L. Bordges ("Bordges"), a licensee of the California Department of Real Estate. In that month, the Bordges group granted to Timothy J. ("Tim") Logan and Joanne Logan (collectively, "the Logans") five-year Options to Purchase Parcel A (for \$230,000) and Parcel B (for \$120,000). In December 1996, the Bordges group sold Parcel C to the Logans for approximately \$125,000. Shortly thereafter, the Tim Logan Construction Company commenced construction of the Logan Building on Parcel C.
- F3. By May 1997, title to Parcel C had passed from the Logans, individually, into the name of LFE, a family limited partnership. At that time the Bordges group executed and granted to LFE an easement over Parcel B, for the benefit of Parcel C, for access and parking purposes ("Parking Easement"). Concurrently therewith, the Logans and LFE entered into Business Loan and Commercial Security Agreements with United States National Bank of Oregon ("US Bank"), whereby the Logans borrowed \$1.5 million on a ten-year loan. That loan was secured by a trust deed from LFE covering Parcel C. The trust deed did not cover either Parcel A or Parcel B, neither of which was then owned by either the Logans or LFE. The trust deed was recorded in the Official Records of El Dorado County on June 10, 1997.
- F4. Tim Logan died in an airplane crash shortly thereafter.
- F5. Construction of the exterior, and of portions of the interior, of the Logan Building was substantially completed in 1997. The Building consists of approximately 18,000 square feet.
- The middle floor of the Building, which extends for its full length, occupies approximately 10,860 square feet.
 - A lower floor, located at the west end of the building, occupies approximately 3,755 square feet. It is accessible only from the parking lot and from an exterior stairway from the middle floor, and has no interior access connecting it with the rest of the Building.
 - An upper floor, located at the east end of the Building, occupies approximately 3,635 square feet. That floor is accessible only by two stairways, one interior and one exterior.
- F6. The Logan Building had been intended to serve as a single-purpose facility, as the headquarters for the Tim Logan Construction Company, and to be occupied by that company for Tim Logan's personal and company purposes. It was constructed as a special-use building, and not for the purpose of being sold, leased or otherwise marketed to others. Consequently, the type of construction was of higher quality than construction of commercial buildings in the Diamond Springs / Placerville area generally. The Logan Building was "overbuilt" for the Diamond Springs / Placerville area, and, accordingly, the cost of construction exceeded the market value of the improvement.

- F7. The County's Building Department issued a Certificate of Occupancy for the Building because, as occupied solely by the Tim Logan Construction Company, stairways as the only access to the upper floor would not have been in violation of the access requirements of the Americans With Disabilities Act ("ADA"). If and when the upper floor becomes occupied by County offices, however, ADA considerations will come into effect, and elevator access to that floor may be required.
- F8. In approximately August 1997, LFE, as successor in interest to the Logans, exercised the Purchase Option on Parcel B, and purchased Parcel B from the Bordges group for approximately \$120,000. The Purchase Option on Parcel A remained in effect.
- F9. Some parking spaces for the Building were designed and located on Parcel C. The number of those parking spaces, however, was inadequate for the size of the Building and did not comply with the requirements of El Dorado County's building and zoning laws. In order to comply with those requirements, significant additional parking spaces were designed for and are located on Parcel B.
- F10. In August 1997, shortly after Tim Logan's death, the El Dorado County Superior Court inquired into the possibility of purchasing the Logan Building for court-related activities. Michael B. Hanford ("Hanford"), the County's CAO at that time, accompanied court officers in inspecting the Building. Representatives of LFE offered to sell the Building to the Court for \$2,500,000. The Court ultimately decided not to acquire the Building. The Building remained unsold for approximately 2-1/2 years thereafter.
- F11. A dispute arose between the Bordges group and LFE concerning the correct interpretation of the Purchase Option on Parcel A. Litigation was initiated in 1998, which resulted in a settlement agreement. That settlement agreement provided that the Purchase Option would remain in existence, but that if the Bordges group received an independent offer to purchase Parcel A, the Bordges group could give written notice of that offer to LFE, and LFE would have fifteen (15) days within which to exercise its Option. If the Option were not exercised by LFE within that period, the Bordges group could proceed to sell Parcel A to the other proposed purchaser. If that third-party sale were not consummated within ninety (90) days, however, the LFE Option would then be restored to effect for the remainder of its five-year life.
- F12. LFE listed the Logan Building for sale with Coldwell-Banker Real Estate for a substantial period of time, approximately two years, in 1998 and 1999. No purchase offers were obtained by Coldwell-Banker for LFE as a result of that listing.
- F13. On October 14, 1999, Chicago Title Company, as successor trustee on behalf of US Bank, caused a Notice of Default and Election to Sell to be recorded in connection with the US Bank loan. The recording of that Notice constituted the initiation of foreclosure proceedings as to Parcel C only.

- F14. In November 1999, Panfila Lyon, who resided with her husband Gary in Auburn, California, and who was employed by a real estate brokerage firm in Placer County, became aware of the Default Notice. Gary Lyon ("Lyon") thereupon inquired into the financial status of the Logan Building and traveled to Diamond Springs to inspect it. In the course of exercising his due diligence in connection with a potential property acquisition, Lyon then made contact with personnel from US Bank in Portland, Oregon.
- F15. As part of his due diligence, Lyon became aware of the facts that US Bank's trust deed pertained only to Parcel C, and that the value of Parcel C was in question because of the inadequate number of parking spaces on Parcel C. Lyon also became aware of the Parking Easement granted to LFE by the Bordges group, and came to believe that if he acquired Parcel C, he would also become the beneficiary of the Parking Easement. A serious legal question exists, however, as to whether the Parking Easement survived the acquisition of title to Parcel B by LFE, or whether the Parking Easement was extinguished because of the two parcels having come into a single ownership. The Grand Jury makes no finding as to the correctness or incorrectness of Lyon's beliefs, or as to the existence or non-existence of a legal merger of the Parking Easement into title to Parcel B.
- F16. Based on his inquiries and beliefs, on December 27, 1999, Gary and Panfila Lyon (collectively, "the Lyons") made an offer to US Bank to purchase the \$1,500,000 Promissory Note and its Trust Deed security ("Loan Documents") on Parcel C for \$1,000,000. On January 5, 2000, US Bank made a counteroffer to sell the Loan Documents to the Lyons for \$1,200,000, with close of escrow to be on or prior to March 15, 2000, and the Lyons to pay all fees and commissions related to the sale. Ultimately, the Lyons and US Bank agreed upon a purchase price of \$1,100,000.
- F17. By January 2000, the Coldwell-Banker listing of the Logan Building had expired. On January 13, 2000, LFE entered into a new listing agreement with a commercial real estate broker, William H. Frank ("Frank"), listing Parcels B and C for an asking price of \$1,700,000. Frank's office was located in El Sobrante, California, in the Bay Area, and Frank had no local El Dorado County office.
- F18. On January 21, 2000, Chicago Title Company caused a Notice of Trustee's Sale, as to Parcel C, to be issued. That Notice recited that the amount due and owing on the Promissory Note would be \$1,581,157.81 as of February 22, 2000, the proposed date of sale. On January 27, 2000, and twice thereafter at weekly intervals, the Notice of Trustee's Sale, as to Parcel C, was published as required by law. The sale date was subsequently continued from February 22 to February 25, 2000.
- F19. On February 3, 2000, Frank entered into a Marketing Agreement with ERA Realty Center in Cameron Park, for the purpose of marketing Parcels B and C at the previously authorized asking price, \$1,700,000.
- F20. On or about February 7, 2000, Pat Booth ("Booth"), the Real Property Purchases and Acquisitions Officer of the County's DGS, learned that the Logan Building was on the

market, and advised Gene Albaugh ("Albaugh"), the then Interim Director of DGS, of that fact and of the further fact that the Court had inquired into purchasing the Building in 1997. Albaugh, a resident of Auburn, California, was serving as Interim Director of DGS at that time on a contract basis. The following day, Frank had a communication with Hanford pertaining to the Building.

F21. On or about February 10, 2000, based on information obtained from Frank, a "Fact Sheet" was prepared for the County which included the following information:

- Parcels B and C were being offered for a combined price of \$1,700,000;
- The amount due on the property (not distinguishing between Parcel B and Parcel C) was \$1,500,000 at 9.260% variable, due in full on May 15, 2007; and
- The outstanding \$230,000 Option on Parcel A would expire on January 18, 2001.

F22. On February 15, 2000, Frank faxed a letter to Hanford, in which he represented that the County would benefit by purchasing the Logan Building "based on replacement value and purchase price." Frank proposed a purchase structure of three separate contracts, one each for Parcels B and C and a third for the Option on Parcel A.

F23. Also on February 15, 2000, Frank transmitted to Albaugh

- A copy of Frank's letter to Hanford,;
- Three (3) six-page proposed contracts (Deposit Receipts), one as to each parcel; and
- A standard Buyer's Advisory.

The transmittal recited, among other matters,

- that time was of the essence in order to stop the pending foreclosure sale;
- that "[n]ot having this property owned by US Bank will make it easier for the County to acquired [sic] these properties;" and
- that no price had yet been established for the Option and that such a price would be based on a market study to follow.

F24. No evidence has been disclosed to the Grand Jury indicating that any "market study" was ever made with regard to the Option or to Parcel A.

F25. Also on February 15, 2000, the BOS held a Closed Session pertaining to the possible purchase of the Logan Building and related property. The BOS's Agenda for that Closed Session states that its purpose was to give direction to the County's negotiator in connection with that possible purchase. The BOS's public "Report Out" from that Closed Session states "No Action Reported." In fact, the BOS authorized the Interim Director of DGS, and the CAO, to continue to look further into the matter.

F26. In accordance with customary practice of the BOS, no minutes were kept, or tape recording made, of that February 15 Closed Session. No witness was able to recall with specificity the particulars of the discussions which occurred at that Closed Session, and

the recollections that the witnesses did have were conflicting. It was the recollection of several of the participants in that Closed Session, however, that the BOS did not authorize either Albaugh, the Interim Director of DGS, or Hanford, the CAO, at that February 15 Closed Session, to open any escrows or to execute any documents in aid of any proposed purchase.

- F27. At some time between February 15 and February 18, 2000, Frank contacted personnel of US Bank to propose an offer to purchase the LFE Promissory Note and Trust Deed on Parcel C from the Bank, at a discount, and was told that the Note and Trust Deed had already been sold to someone else.
- F28. Nevertheless, on February 18, 2000, Escrow File No. PV-206564, relating to Parcel A, was opened at Inter-County Title Company. Included therein was a Deposit Receipt dated February 15, 2000, showing a price of \$70,000 for purchase of the \$230,000 Purchase Option on Parcel A which was owned by LFE. \$200 was to be deposited into escrow by the County. This Deposit Receipt was signed by Albaugh, but not by Hanford. Albaugh was not authorized either by the BOS or by the CAO to sign this Deposit Receipt.
- F29. Also on February 18, 2000, Escrow File No. PV-206563, relating to Parcel B, was opened at Inter-County Title Company. Included therein was a Deposit Receipt dated February 15, 2000, showing a price of \$250,000 for purchase of Parcel B from LFE. \$400 was to be deposited into escrow by the County. The Deposit Receipt recited that Frank was acting as agent for both the seller and the buyer. There is no evidence, however, that Frank was ever authorized by the BOS to act as agent for the County. This Deposit Receipt was signed by Albaugh, but not by Hanford. Albaugh was not authorized either by the BOS or by the CAO to sign this Deposit Receipt.
- F30. Also on February 18, 2000, Escrow File No. PV-206562, relating to Parcel C, was opened at Inter-County Title Company. Included therein was a Deposit Receipt dated February 16, 2000, showing a price of \$1,450,000 for purchase of Parcel C from LFE. \$400 was to be deposited into escrow by the County. The Deposit Receipt recited that Frank was acting as agent for both the seller and the buyer. There is no evidence, however, that Frank was ever authorized by the BOS to act as agent for the County. This Deposit Receipt was signed by Albaugh, but not by Hanford. Albaugh was not authorized either by the BOS or by the CAO to sign this Deposit Receipt. The purchase price for Parcel C, shown in this Deposit Receipt, was less than the amount due and owing to US Bank on the Promissory Note and Trust Deed on Parcel C.
- F31. Also on February 18, 2000, an Addendum to Commercial Property Purchase Agreement was prepared for the signature of Albaugh. That Addendum contained the following provisions:
- Purchase price for the Option on Parcel A was to be \$70,000, with a deposit of \$200;
 - Purchase price for Parcel B was to be \$250,000, with a deposit of \$400;
 - Purchase price for Parcel C was to be \$1,450,000, with a deposit of \$400;

- There was to be an "appraisal contingency" showing "property values to be at least equal to purchase prices";
 - The appraisal of Parcel A must show a value of at least \$300,000, i.e., \$70,000 plus \$230,000; and
 - Approval by the BOS was to be obtained within 45 days.
- F32. On or about February 18, 2000, US Bank prepared, and on February 18 executed and transmitted to the Lyons, a document entitled "Purchase and Sale Agreement," whereby US Bank agreed to sell the Loan Documents to the Lyons for \$1,100,000, on or before February 23, 2000. US Bank represented in that document that the balance due and owing to it, as of February 17, 2000, was \$1,450,553.60 principal plus \$126,493.74 unpaid interest, or a total of \$1,577,047.34. It was on the basis of this agreement that the Parcel C foreclosure sale date was continued from February 22 to February 25, 2000.
- F33. Paragraph 9.1 of the Purchase and Sale Agreement contained language wherein the Lyons acknowledged
- having received, reviewed and examined the Loan Documents,
 - familiarity with the property;
 - that the foreclosure proceedings related to realty only and did not include personal property; and
 - approval of "compliance of the Property and its use with applicable Laws (including ... zoning Laws)," suitability for intended use, feasibility of use, etc.
- F34. Also on or about February 18, 2000, US Bank prepared, and on February 18 executed and transmitted to the Lyons, an Assignment of Beneficiary Interest Under Trust Deed, in favor of the Lyons, assigning to them the beneficial interests in the Promissory Note and Trust Deed on Parcel C. That Assignment was not recorded in the Official Records of El Dorado County, however, until February 29, 2000, after a bankruptcy filing by LFE had occurred.
- F35. On February 24, 2000, Frank advised Hanford by telephone that US Bank had sold the Promissory Note and Trust Deed on Parcel C to the Lyons, and that Lyon's attorney was one Robert Sinclair ("Sinclair"). At that time Hanford stated to Frank that it was not likely that the County would complete the transaction.
- F36. In a subsequent communication on that same date, Frank told Hanford that Sinclair had stated that Lyon intended to occupy and use the Logan Building himself, and that Lyon would not discount the amount due and owing on the Promissory Note in any amount. Frank estimated that it would cost approximately \$2,160,000 to acquire Parcels A, B and C. At that time, Hanford told Frank to consider the matter further. Frank suggested to Hanford a structure of \$1,650,000 for Parcel C, \$200,000 for Parcel B, and \$70,000 for the Option on Parcel A (plus \$230,000 to exercise the Option), with \$43,500 in back taxes to be "forgiven." There does not appear to have been any negotiation by the County with regard to the \$70,000 Option price.

- F37. On February 24, 2000, Albaugh transmitted a letter to Sinclair stating that the County intended to proceed with the acquisition of Parcel C.
- F38. On February 25, 2000, LFE filed a petition in the United States Bankruptcy Court, Eastern District of California, seeking relief under Chapter 11 of the Bankruptcy Code. The filing of that petition automatically halted any action on the foreclosure sale of Parcel C which had been scheduled for that day ("automatic stay"), and the foreclosure sale did not take place.
- F39. February 22, 2000, was "Presidents Day," a public holiday. No meeting of the BOS occurred between February 15 and February 29, 2000.
- F40. Nevertheless, on February 25, 2000, an Amended Deposit Receipt, signed by Hanford and by Joanne Logan, was submitted to escrow File No. PV-206564. This Amended Deposit Receipt provided for the purchase of the Option on Parcel A for the sum of \$70,000, with a \$200 deposit. The purchase was to be:

- Subject to BOS approval within 45 days;
- Contingent upon completion of the sales of Parcels B and C to the County, and
- Contingent upon the value of Parcel A appraising at an amount of at least \$300,000.

The County was given 45 days to conduct its due diligence;

Because no meeting of the BOS, in either closed or open session, occurred between February 15 and February 25, 2000, and because no tape recording or other record of the February 15 and February 25, 2000, and because no tape recording or other record of the February 15 Closed Session was made, the Grand Jury was unable to develop any direct and specific evidence as to whether the execution and submission of this Amendment Deposit Receipt and its submission into escrow:

- Was known to and authorized by the full BOS itself, acting during the course of formal BOS meeting procedures;
- Was authorized or directed by one or more individual members of the BOS acting outside of formal BOS meeting procedures; or
- Was undertaken by Hanford on his own and without any knowledge or authorization of or by any member of the BOS.

- F41. Also on February 25, 2000, an Amended Deposit Receipt, signed by Hanford and by Joanne Logan, was submitted to Escrow File No. PV-206563. This Amended Deposit Receipt provided for the purchase of Parcel B for the sum of \$200,000, with a \$400 deposit. The purchase was to be:

- Subject to BOS approval within 45 days, and
- Contingent upon completion of the sale of Parcel C to the County.

The County was given 45 days to conduct its due diligence. Frank was shown on this Deposit Receipt to be agent for both the buyer and the seller.

Because no meeting of the BOS, in either closed or open session, occurred between February 15 and February 25, 2000, and because no tape recording or other record of the February 15 Closed Session was made, the Grand Jury was unable to develop any direct and specific evidence as to whether the change in the proposed purchase price for Parcel B reflected in the Amended Deposit Receipt, or even the execution of an Amended Deposit Receipt containing any specific terms, and its subsequent submission into escrow:

- Was known to and authorized by the full BOS itself, acting during the course of formal BOS meeting procedures;
- Was authorized or directed by one or more individual members of the BOS acting outside of formal BOS meeting procedures; or
- Was undertaken by Hanford on his own and without any knowledge or authorization of or by any member of the BOS.

F42. Also on February 25, 2000, an Amended Deposit Receipt, signed by Hanford and by Joanne Logan, was submitted to Escrow File No. PV-206562. This Amended Deposit Receipt provided for the purchase of Parcel C for the sum of \$1,650,000, with a \$400 deposit. The purchase was to be:

- Subject to BOS approval within 45 days;
- Contingent upon completion of the sales of Parcels A and B to the County; and
- Subject to Lyon agreeing to the sale and ending the pending foreclosure proceeding.

The County was given 45 days to conduct its due diligence. Frank was shown on this Deposit Receipt to be agent for both the buyer and the seller.

Because no meeting of the BOS, in either closed or open session, occurred between February 15 and February 25, 2000, and because no tape recording or other record of the February 15th Closed Session was made, the Grand Jury was unable to develop any direct and specific evidence as to whether the change in the proposed purchase price for Parcel C reflected in the Amended Deposit Receipt, or even the execution of an Amended Deposit Receipt containing any specific terms, and its subsequent submission into escrow:

- Was known to and authorized by the full BOS itself, acting during the course of formal BOS meeting procedures;
- Was authorized or directed by one or more individual members of the BOS acting outside of formal BOS meeting procedures; or
- Was undertaken by Hanford on his own and without any knowledge or authorization of or by any member of the BOS.

F43. The effect of these Amended Deposit Receipts was, among other things:

- To increase the price to be paid for Parcel C by \$200,000, to an amount which was believed to be sufficient to pay the full balance due on the Promissory Note and Trust Deed;
- To decrease the price to be paid for Parcel B by \$50,000;
- To increase the total price to be paid for Parcels B and C from \$1,700,000 to \$1,850,000;
- To abandon any leverage which the County might have had to attempt to obtain Parcel C at a discounted price from the Lyons, more nearly commensurate with the price paid by the Lyons to US Bank for the Promissory note and Trust Deed on Parcel C, based on the legally questionable status of parking with regard to Parcel C; and
- To pay \$70,000 for the Purchase Option on Parcel A, unnecessarily. If the County had negotiated and made an offer to the Bordges group to purchase Parcel A itself directly from that group, and if LFE had not exercised the Purchase Option within fifteen (15) days thereafter, the County would not have had to purchase that Option.

F44. On several occasions between mid-February and early May, 2000, Bordges publicly stated that he and his group would be willing to convey Parcel A to the County at the Option Price, or just slightly above that price, without the County having to pay \$70,000 to LFE to purchase the Option. Had the County proceeded to attempt to enter into an agreement with the Bordges group to that effect, the only apparent impediment to such an agreement would have been LFE's potential exercise of its 15-day right of first refusal by paying \$230,000 to the Bordges group. It is unlikely, given the fact that LFE had recently filed a Chapter 11 bankruptcy petition, that LFE could or would have exercised that right of first refusal. Even if LFE had done so and purchased Parcel A, however, the County could still have continued to negotiate with LFE for the purchase of Parcel A. For reasons that are unclear to the Grand Jury, however, no such attempt was either considered or pursued by the County.

F45. No consideration was given by the County to the possibility of purchasing Parcel B from LFE, of allowing the Logan Building and Parcel C either to go into foreclosure or otherwise to be acquired by the Lyons, and then of exercising negotiating business leverage to acquire the Logan Building and Parcel C from the Lyons at a price reasonably commensurate with, or slightly above, the price for which the Lyons had contracted with US Bank to acquire it, i.e., \$1,100,000. Such negotiating leverage would have existed because prospective use of the entire building on Parcel C could not occur, under the County's Building Code requirements, because of the inadequacy of parking on Parcel C for the entire building. Only the use of Parcel B would have permitted complete use of the Building for commercial business purposes, and the County would have been in control of Parcel B. It is the view of at least one member of the 1999/2000 BOS, however, that any such use of negotiating business leverage by the County would have been inappropriate and unseemly.

F46. On March 2, 2000, Frank faxed a memo to Booth, stating:

- That he had not reached agreement yet with the Lyons;
- That Lyon was "not cooperating;"
- That a new foreclosure sale was scheduled for March 24th; and
- That problems with appraisals might result if the appraisers valued the Logan Building on an income basis rather than on the basis of replacement value and comparable sales.

F47. On March 3, 2000, employees on the staff of John Winner ("Winner"), the County Assessor, submitted a memorandum to Winner which contained the following information:

- That using a "replacement value" approach, involving costs of \$47.90 per square foot for the lower floor and \$91.16 per square foot for the main and upper floors, the value of the Logan Building and land (Parcels B and C) was \$1,841,000;
- That using a "comparable sale" approach, land value for all parcels was \$3.50 per square foot, resulting in a total value of Parcel A of \$457,000; and
- That using an "income" approach, at a value of \$1.10 per leased square foot, the value of the Logan Building was \$1,325,000.

The Grand Jury has found no evidence that any of this information was communicated to the BOS in a timely manner.

F48. The County contractually hired one David L. Spencer ("Spencer"), an independent real estate appraiser, to perform an appraisal of the LFE properties. Pursuant to that contract, Spencer was requested to appraise the values of Parcel A separately, and of Parcels B and C as a combined unit, but was not requested to appraise the values of Parcels B and C separately. Spencer did appraise the LFE properties with valuation dates of March 9, 2000. The County expended \$6,900 for this appraisal.

F49. On March 15, 2000, the Lyons filed a motion in the Bankruptcy Court seeking relief from the automatic stay in the LFE Chapter 11 proceeding, requesting authorization to proceed with foreclosure on Parcel C. Hearing on that motion was scheduled for April 10, 2000. By reason of the automatic stay, no foreclosure sale could have been held prior to relief having been granted from that automatic stay, i.e. prior to April 10, 2000, unless the entire Chapter 11 proceeding was first dismissed.

F50. On March 17, 2000, LFE and the Lyons entered into a Foreclosure Extension Agreement, whereby LFE agreed to pay a total of \$15,000 to the Lyons for foreclosure sale extensions, first to March 24th, then to April 15th, and then a final extension to May 15, 2000. That \$15,000 ultimately became a charge passed through to the County in the Parcel C escrow.

F51. On March 21, 2000, LFE moved to dismiss its Chapter 11 proceeding. That motion was scheduled for hearing on April 5, 2000. LFE represented to the Bankruptcy Court, in support of that motion, that it had entered into a settlement with the Lyons to permit a sale of the LFE property to the County, and that that agreement involved payment of an

additional \$10,000 to the Lyons above the amounts due on the Promissory Note, with an additional foreclosure extension to May 15, 2000, for an additional \$5,000.

- F52. On March 22, 2000, Spencer transmitted a letter to the DGS, summarizing his conclusions, which were to be set forth in detail in a written report to follow on March 31, 2000. The letter included the following summary information:
- Parcel A, consisting of 3.96 acres, containing an old residence and two outbuildings to be demolished, had a value of \$235,000 as vacant, and \$256,000 with the outbuildings in an "as is" condition;
 - Parcels B and C, collectively, totaling 1.7 acres, had a "stabilized value" of \$1,675,000, but costs to complete interior improvements to the Building for leasing purposes reduced its "as is" value to \$1,530,000. The reduction was based in part on the Building's lack of current occupancy, which the County desired; and
 - The letter made specific reference to the "intermingled parking problem."
- F53 On that same date, in a telephone conversation with Booth, Spencer stated that, on a "replacement cost" basis, Parcels B and C, collectively, would have a value of approximately \$2,400,000.
- F54 On March 23, 2000, the County Auditor, Joe Harn ("Harn"), authored a memorandum stating that the total sum to be paid to Inter-County Title Company, for the three escrows, was \$1,972,912.
- F55 On March 28, 2000, Hanford signed Supplemental Escrow Instructions which included the following provisions:
- The County's due diligence contingency period was extended to May 2, 2000; and
 - The County obligated itself to deposit an additional \$5,000 for the costs of extending the Parcel C foreclosure sale date to May 15, 2000, plus an additional \$7,700 as interest accrued during the extended period, or a total additional deposit of \$12,700.
- F56. On March 31, 2000, Spencer's completed Appraisal Report was transmitted to the County. That Report made reference to various "assumptions and limiting conditions," including specific reference to the fact that the appraisal had been conducted without any determination of conformity to the ADA. Spencer expressly noted that any structural barriers restricting access by disabled individuals might adversely affect the property's value, marketability or utility. He then set forth the following information in the Appraisal Report:
- Parcel A, in "as is" condition, had a value of \$255,000;
 - Parcel A had an assessed value of \$157,782;
 - Parcels B and C, together, had a "stabilized" value of \$1,675,000;
 - Parcels B and C, together, had an "as is" value of \$1,530,000;
 - Replacement cost for Parcels B and C, together, would be \$2,460,000;
 - Parcel B had an assessed value of \$122,223;

- Parcel C had an assessed value of \$1,395,435;
 - Parcels B and C, together, had assessed values totaling \$1,517,658;
 - Parcels B and C, together, had a value, based on an "income approach," of \$1,635,000, and Spencer favored the income approach in his final estimate of value "since it is the most probable valuation technique relied upon by typical market participants;"
 - Parcels B and C, together, had a value, based on a "comparable sales" approach, of \$1,620,000;
 - Spencer did not believe that "replacement cost," which he calculated at \$2,460,000 for Parcels B and C, would constitute an appropriate method of valuation, because, in his opinion, no-one would replace the Building as built in that location;
 - Parcel B, alone, had a land value of \$110,000; and
 - Parcels B and C, taken together, had a land value of \$205,000.
- F57. Section 65402(a) of the California Government Code requires that, if a general plan or part thereof has been adopted, no real property may be acquired by dedication or otherwise for public purposes until the location, purpose and extent of such acquisition has been submitted to and reported upon by the appropriate planning agency as to conformity with the adopted general plan or part thereof.
- F58. On April 27, 2000, a special meeting of the El Dorado County Planning Commission was held for the purpose of making a report finding the existence of consistency or conformity with the General Plan in connection with the County's proposed acquisition of Parcels B and C. There is some question, which the Grand Jury does not resolve, as to whether legally adequate notice of that special meeting was given. In any event, however, the Commission voted unanimously to find that, given the status and nature of the acquisition, it was not possible to make a conformity report at that time. The Commission directed that that "finding" be transmitted to the BOS.
- F59. As of May 2, 2000, the County had made no formal or final determination as to what uses would be made of the Logan Building and adjacent parcels. The Sheriff had expressed some tentative interest in the Logan Building, but only if a structure enclosing a minimum of an additional 27,000 square feet were to be constructed on Parcel A, creating a total Sheriff's Facility of approximately 43,000 square feet. As of September 2000, when the BOS authorized the acquisition of Parcel A, no formal or final determination had been made by the County as to the specific uses for which the Logan Building and related parcels would be made. As of March 1, 2001, only the lower floor of the Logan Building, comprising approximately 3,755 square feet, had been reserved for occupancy, by the Sheriff's Department, and no formal or final determination had been made by the County as to the specific uses for which any other portion of the Logan Building and related parcels would be made.
- F60. As of May 2, 2000, neither the BOS nor any other County agency or employee had made any determination as to what completion and/or remodeling costs would be required in order to render the Logan Building suitable for occupancy by whatever County agency or agencies were ultimately to occupy it. The subject had not been

discussed by the BOS. In the context of its preparation of documentation for proposed facilities for the Sheriff's Department at the proposed Justice Center development, however, All Star Investments estimated that it would cost approximately \$750,000 to retrofit the Logan Building for the Sheriff's Department.

- F61. On May 2, 2000, the County Counsel represented to the BOS that the Planning Commission's finding of inability to make a conformity report, made on April 27, 2000, constituted a "report" sufficient to constitute compliance with the requirements of Section 65402(a) of the Government Code. The County Counsel also represented to the BOS that no environmental impact study was required for the purchase of Parcels B and C, or for the purchase of the Purchase Option on Parcel A, or for the exercise of that Purchase Option, but that an environmental impact study would be required at such time as the BOS decided to authorize construction on Parcel A. No such report has, as yet, been made. The BOS then approved the purchase of Parcels B and C, and of the Purchase Option on Parcel A, on a 4-1 vote, Supervisor Nutting dissenting.
- F62. Total expenditures by the County, for the purchase of Parcels B and C and the Option on Parcel A, amounted to approximately \$1,920,000 for both purchase prices and costs of sale. That sum did not include the expenditure of in excess of \$235,000 for ultimate exercise of the Option on Parcel A. Frank agreed to a reduction in his real estate commission, so that the purchase price for Parcel B was ultimately recorded as \$141,500 rather than the \$200,000 set forth in the Amended Deposit Receipt.
- F63. A portion of the 1999/2000 property taxes, and outstanding defaulted taxes, due and owing on Parcels B and C were paid out of the escrows, from funds deposited into escrow by the County as part of the purchase prices, in the following amounts:
- 1999/2000 property taxes on Parcel C: \$12,542.50
 - 1999/2000 property taxes on Parcel B: 1,421.66
 - Prior defaulted property taxes on Parcel C: 25,057.00
 - Prior defaulted property taxes on Parcel B: 2,160.67

This did not constitute a mere transfer of funds within the County. To the contrary, approximately 75% of those funds were paid to the State of California.

- F64. The County did not obtain any of the benefit of the approximately \$500,000 discount on the Parcel C loan documents that the Lyons had negotiated with US Bank. The Lyons retained the entire benefit of that discount. The price paid by the County to LFE for Parcel C was in an amount adequate to pay off the loan on Parcel C, including interest and penalties, from escrow, at 100-cents on the dollar.
- F65. On September 13, 2000, Hanford recommended to the BOS that the Purchase Option on Parcel A be exercised, with a finding that the County's future use and development of that site be expressly conditioned upon California Environmental Quality Act ("CEQA") review. No proceedings were conducted before the Planning Commission in connection with this recommendation. On September 26, 2000, however, on its Consent Calendar,

the BOS approved Hanford's recommendation and authorized the purchase of Parcel A, on a 4-1 vote, Supervisor Nutting dissenting.

- F66. An escrow, No. PV-207337, was opened at Inter-County Title Company in connection with the purchase of Parcel A by exercising the Purchase Option which had been acquired through escrow No. PV-206564. As of February 15, 2001, when escrow No. PV-207337 closed, the County had expended a sum in excess of \$235,000 to purchase Parcel A, not counting the \$70,000-plus which the County had paid for the Option to purchase that parcel.
- F67. As of February 15, 2001, the County had expended solely for the acquisition of the Logan Building and related parcels, out-of-pocket, approximately \$2,155,000. That sum is essentially identical to the sum which Frank, on February 24, 2000, had told Hanford would be required to acquire those parcels. That sum does not include the approximately \$130,000 which the County has expended, out-of-pocket, on non-county-employee labor and materials for changes to the lower floor of the Building for occupancy by the Sheriff's Office, nor does it include the amount, unquantified as of the date of this report, of non-out-of-pocket costs of county employee time incurred in the making of those changes.
- F68. The 1999/2000 Grand Jury found that, "[a]s of June 1, 2000, the [BOS] has failed to inform the public of its specific intended use of the Logan property." The BOS agreed with that finding, but stated that "[o]nce this decision [regarding which County departments would ultimately occupy the Logan facility] is reached, it will be announced publicly by the Board." As of March 1, 2001, however, ten months later, and with the exception of the Sheriff's Department's occupancy of the lower floor, no such announcement had been made.
- F69. As of March 1, 2001, George Martin ("Martin"), the Director of DGS, was, for the first time, in the process of seeking bids for an independent study to be conducted by a consultant in order to determine occupancy feasibility and what those costs were likely to be. As of that date, out-of-pocket costs approximating \$130,000 had already been expended in connection with the occupancy by the Sheriff's Department of the lower floor of the Building. That expenditure, however, is approximately \$100,000 less than what would have been expended had the Sheriff's request for purchase of two modular facilities to be located in the parking area of the existing Sheriff's facility, and related remodeling of that existing facility, been approved and implemented.
- F70. As of March 9, 2001, the County had expended, in both acquisition costs and remodeling costs for the lower floor of the Logan Building, approximately \$2,300,000, not counting the time costs of County employees involved in that remodeling. Moreover, no remodeling or retrofitting costs or expenditures had yet been incurred in connection with the middle and upper floors of the Logan Building, and no costs or expenditures had been incurred in connection with the design and construction of any proposed facility to be located on Parcel A.

- F71. On March 13, 2001, on request of newly elected Supervisors Baumann and Borelli, the BOS undertook discussion of the subject of whether the County should continue to expend funds in connection with the Logan Building, or whether the County should sell it and cease further expenditure of funds thereon. The BOS directed Martin, the Director of DGS, to investigate:
- The space needs of the County generally;
 - The most likely appropriate potential departments or agencies to be assigned to use the Logan Building; and
 - The probable costs of retrofitting the Logan Building to make it usable for those departments or agencies; and
 - To report the results of that investigation back to the BOS on April 24, 2001.

That direction effectively obligated DGS, which had no specific expertise in the subject, to perform the same functions for which it had previously solicited bids from consultants, in a highly compacted time frame.

- F72. On April 24, 2001, the Director of DGS presented a report to the BOS in response to the BOS's direction of March 13, 2001. In that report, the DGS Director made the following representations to the BOS:

- Minimum retrofit costs would total \$349,000;
- Complete retrofit costs would total (depending upon whether the existing tile on the middle floor was or was not removed prior to the installation of carpeting) \$389,000 to \$397,000;
- Purchase of furniture, not including desk top office supplies, for approximately forty-five (45) employees occupying the Building would cost an additional \$157,500;
- Actual cost of the Logan Building and related parcels was \$2,157,637;
- The Building and related parcels had appraised values of \$1,565,000 for the Building (Parcel C), \$110,000 for the parking area (Parcel B) and \$255,000 for the "lot" (Parcel A), or a total of \$1,930,000.
- The County's acquisition cost was \$227,637 over that total appraised value of \$1,930,000;
- Fair market value of the Logan Building and related parcels, for resale purposes, is between \$1,000,000 and \$1,450,000;
- Continued occupancy of the lower floor of the Building by the Sheriff's Department, avoiding the purchase of two modular units for that purpose, would effect an annual savings of \$30,000;
- Potential rental to private businesses of the five suites on the upper floor of the Building would generate annual rental income of \$53,742; and
- The ability to rent out the middle floor of the Building is marginal at best.

- F73. In his report the DGS Director then identified various County departments which, in his view, might be the most likely candidates to occupy the middle floor of the Building, and recommended

- That the Building not be sold at this time;
- That the Sheriff's Department continue to occupy the lower floor;
- That the upper floor be rented out to private businesses;
- That there be a "thorough analysis" of the appropriateness of occupancy of the Building by the departments which he had identified; and
- That rental demand for the middle floor of the Building be "probe[d]."

F74. Inherent in the report of the DGS Director is the proposition that, if the Logan Building were to be sold, the County would probably sustain a loss of approximately \$750,000 to \$1,000,000. Whether that amount would or would not exceed the amount of additional funds necessary to retrofit the Building for purposes of efficient use by the County is, in the view of the Grand Jury as of the time of rendering this Report, a question requiring further study and investigation by qualified design and engineering professionals. Absent such study and investigation, however, it is the tentative view of the Grand Jury that the amount of those retrofitting costs would exceed the amount of the loss that the County would sustain upon a sale of the Logan Building and related parcels.

F75. The BOS, as a group, did not tour or otherwise view the Logan Building prior to authorizing its purchase. Some, but not all, of the members of the BOS did view it on an individual basis. At least one of the members of the BOS, however, never saw the Logan Building before voting to authorize its purchase.

F76. The 1999/2000 Grand Jury found that "the County appear[ed] to have paid significantly more than either the property's appraised value or the price noted in the real estate marketing documents." In its response thereto, the 1999/2000 BOS stated that that appraisal was "predicated upon the facility being utilized as an income generating property," and that "changing the use from income producing to non-commercial government use no longer justify[d] this significant discount." That response ignored the fact that the only "discount" discussed in the Spencer Appraisal Report was a discount from \$1,675,000 "stabilized" value, based on the income method of valuation, to \$1,530,000 "as is" value. That response also ignored the fact that the "comparable sales" valuation of the Logan Building, as discussed in the Spencer Appraisal Report, was \$1,620,000. For these reasons, this Grand Jury concludes that the 1999/2000 BOS was less than candid and forthright in its response to the 1999/2000 Grand Jury Report on the Logan Building.

F77. The 1999/2000 Grand Jury found that "[a]ny required internal modifications [of the Building] will require expenditure of additional funds." In response thereto, the BOS stated that "[m]odifications and renovations of this complex will be required to meet the specific functional requirements of its, yet to be determined, new tenant. However, the current total cost remains \$600,000 less than the estimated cost to have built a new comparable facility (1.7 acres with the same square footage); and that assumes a suitable site would be available and that no major environmental impacts were identified or would require mitigation." That response evaded the following issues:

- That the "replacement cost" figure did not appropriately value the Logan Building,

because the building was overbuilt for the area and no other purchaser would have paid replacement-cost for the Building;

- That the County had no legitimate need to acquire an "overbuilt" building;
- That the interior of the Building was not configured in a manner which would reasonably accommodate the County's needs, without the existence of substantial wasted space;
- That because the County did not then know (and, with the exception of the lower floor of the Building, as of June 20, 2001 still does not know) the identity of the "yet to be determined new tenant," it therefore had no legitimate basis for speculating that the costs of modifications and renovations required to meet the specific functional requirements of that tenant would be less than \$600,000; and
- That, by referring only to "major environmental impacts [which] would require mitigation," the County ignored the potential ADA impacts arising from the issue of access to the upper floor.

For these reasons, this Grand Jury concludes that the 1999/2000 BOS was less than candid and forthright in its response to the 1999/2000 Grand Jury Report on the Logan Building.

F78. The 1999/2000 Grand Jury recommended that the BOS "be more forthcoming with the citizen taxpayers regarding all aspects of its acquisition of the Logan property." In response thereto, the 1999/2000 BOS stated that "[t]he recommendation has not yet been implemented, but will be implemented in the future." That commitment by the 1999/2000 BOS was subsequently ignored by it, in the following respects:

- By its action in exercising the Purchase Option on Parcel A in accordance with approval by the Planning Commission, which that Commission had approved as a Consent Calendar agenda item without the type of hearing and discussion which the public had been told would occur;
- By its action in authorizing that acquisition based on the agendaing of the proposal to exercise the Purchase Option as a Consent Item on its own calendar rather than as an item agendaed for discussion; and
- By its action in authorizing suit to be brought against the Grand Jury to prevent the Grand Jury from inquiring into Closed Session matters, into communications between BOS members with County Counsel, and into communications between county employees and County Counsel, pertaining to matters involved in the acquisition and development of the Logan Building and related parcels.

In this regard, this Grand Jury concludes that the 1999/2000 BOS was less than candid and forthright in its response to the 1999/2000 Grand Jury Report on the Logan Building, and/or in its implementation of that response.

F79. Although the 1999/2000 Grand Jury investigation of the Logan Building acquisition was initiated on the basis of a complaint alleging the existence of conspiratorial conduct, the 2000/2001 Grand Jury was unable to develop any direct evidence of a specific conspiracy. Although Albaugh and the Lyons both lived in Auburn, the Grand Jury was

unable to develop any direct or specific evidence that they had any contact or communications with, or even knew, each other. The Grand Jury was also unable to develop any direct evidence of other conspiratorial conduct on the part of any other persons involved in the acquisition of the Logan Building and related parcels.

F80. The existing interior of the middle floor of the Logan Building is configured (and partially constructed) in such a way that, if and when it is assigned for use by county agencies, the following situations will result and potential impacts, by way of example only, will occur:

- The nature and quantity of restroom facilities within the Building, while appropriate for a single-owner business, are inadequate for a County building serving public needs, and substantial additional plumbing improvements and expansion will be required;
- The floor-tile covering most of the middle floor of the Building, while obviously luxurious and expensive, is unsuited to traffic by the public. It either will have to be (i) removed and replaced or (ii) covered by some kind of carpeting. If that is not done, it will constitute a potentially dangerous condition as to which the County will be exposed to potential liability for slip-and-fall incidents;
- Either (i) there will be a significant amount of wasted and unusable space on the middle floor, or (ii) a considerable amount of the expensive built-in cabinet and drafting-table fixtures on that floor will have to be removed, reconfigured and replaced.

Significant, but as yet unquantified, remodeling and/or retrofitting costs will be necessary to mitigate these, and other, problems.

F81. The Logan Building is located in an area of Diamond Springs which is already subject to significant traffic congestion, and the adaptation of the Building to County uses will exacerbate that problem. Because the acquisition by the County of the Logan Building and related parcels was "categorically exempt" under CEQA, however, no environmental study of those traffic, or any other, environmental issues was undertaken prior to its acquisition.

F82. There are significantly differing views as to the amount of the total additional costs and expenditures estimated to be required in order to make the Logan Building fit and usable for county purposes. At the low end of the estimates is that of the Director of DGS that those costs involve a minimum of \$349,000, and for a complete retrofit will require \$389,000 to \$397,000, plus an additional \$157,000 for employee furniture. In the middle is an estimate of All Star Investments, made during the course of its work on the Justice Center project, that approximately \$750,000 would be required for use of the Logan Building by the Sheriff's Office. It is the view of the Grand Jury, however, that if a proper and appropriate job of remodeling is done in order to reconfigure the Building for maximum efficiency of use by the County, the costs and expenditures therefor will exceed, and probably will substantially exceed, seven figures, i.e., \$1,000,000 or more.

- F83. The Grand Jury expresses no view, as of the time of the preparation of this report, as to whether the County (i) should incur the costs and expenditures necessary to completely retrofit the Building in light of its previously expended funds, or (ii) should "cut its losses" and attempt to dispose of the Building at the best available price, recognizing that it will not be able to recover the full the amount that it has previously expended. The Grand Jury is of the view, however, that that determination should not be made by the BOS until a study and report from a consultant with expertise in the subject, setting forth specific proposed uses and costs, has been completed and presented to the BOS.
- F84. In November 2000, the County Counsel and the CAO asserted claims of confidentiality and privilege as to some of the Grand Jury's inquiries of them pertaining to this investigation, and they accordingly testified only as to non-confidential matters. The 1999/2000 BOS then authorized the filing of a lawsuit against the Grand Jury to preclude inquiry into such matters. On April 3, 2001, Superior Court Judge Suzanne Kingsbury signed and filed a Judgment which rejected the County's assertions. The 2001/2002 BOS then authorized disclosure of all matters pertaining to this (and one other) investigation, and the Grand Jury obtained further testimony from the CAO concerning matters previously withheld.
- F85. Section 703 of the County Charter provides as follows: "Every county officer and employee shall cooperate in providing the Grand Jury with any requested information or documents, except where disclosure is prohibited by law."
- F86. In the County's lawsuit against the Grand Jury, in arguing that Section 703 of the County Charter did not constitute a waiver of attorney-client privilege or closed session confidentiality, the County Counsel made the following assertions concerning that provision:
- In the ballot arguments made at the time the Charter was adopted by the voters, the "County Counsel's impartial analysis advised, 'The proposed charter makes relatively few substantive changes to provisions already contained in general law,'" and that "[w]aiver of the lawyer-client privilege and closed-session confidentiality as to the Grand Jury were not among them."
 - "[T]here is no reason in law or logic why section 703 should not simply be declarative of existing law."
 - "Section 703 is operative as a policy expression of full support for the Grand Jury's work, without altering existing law."
- F87. Superior Court Judge Kingsbury, in her April 3 Judgment, did not rule on the question of the legal effect of Section 703 of the County Charter. She did not rule that Section 703 constituted a waiver of privilege or confidentiality by the County as to the Grand Jury, but she also did not rule that it did not constitute such a waiver. It is the view of the Grand Jury, contrary to that of the County Counsel that Section 703 was intended to, and does, constitute such a waiver, and that that waiver is additional to and separate from the determinations of state law which Judge Kingsbury made in the Judgment.

Recommendations

- R1. No resolution or other action by the BOS authorizing the acquisition by the County, by either purchase or lease, of the beneficial use of real property, or of any building or other facility, should be adopted or taken unless and until county staff have presented to the BOS a full and complete written report showing all of the following:
- The specific uses, including but not limited to designations of assigned department or agency occupancy, to be made of the property, building or facility;
 - The appraised value of the property, building or facility to be acquired, and the specific manner in which that appraised value has been calculated;
 - The total costs to be incurred in the acquisition of the property, building or facility;
 - The total costs to be incurred in implementing any changes or modifications to the existing configuration or other status of the property, building or facility, necessary and/or appropriate to make it reasonably usable for the purposes for which it is to be acquired; and
 - The relative costs and benefits to the County involved in deciding whether the best interests of the County would be served by acquiring the use of property, building or facility, by purchase or by lease.
- R2. No resolution or other action by the BOS authorizing the purchase by the County of real property, or of any building or other facility involving an expenditure of county funds totaling \$100,000 or more, should be adopted or taken unless and until each member of the BOS, either individually or together with the BOS as a group, has personally viewed the property, building or facility.
- R3. The BOS should refuse to authorize the acquisition of real property, buildings or other facilities unless and until the Planning Commission had made specific findings of consistency and/or conformity of the proposed use of the property, buildings or other facilities with the County's General Plan or applicable part thereof. Whether or not such action is or is not legally permissible, the BOS should not authorize any such acquisition when the Planning Commission had reported to the BOS that it is unable, on the information presented to it, to make any such finding or findings.
- R4. "Replacement cost" should not be used as a basis for an appraisal of the value of any real property, building or facility to be purchased by the County, if that "replacement cost" measures the cost of property, or of a building or facility, which is not fit and suitable for the County's needs in its existing condition.
- R5. Where the County is engaged in complicated real estate negotiations, it should retain independent licensed real estate brokers who have training and experience in the purchase and sale of local commercial real estate to act solely on its behalf. The County should not permit its interest in real estate negotiations to be represented jointly with the interests of any other party to those negotiations.

- R6. The County should conduct itself, in connection with all transactions involving the acquisition of real property, buildings or other facilities, in a businesslike and commercially reasonable manner, and for the protection of the taxpayers should take advantage of and avail itself of all legally available and permissible rights, including, where commercially reasonable, the exercise of negotiating leverage.
- R7. In light of the fallibility of human memory and for purposes of memorializing the specific nature and content of its closed session discussions and decisions, and particularly those decisions and directives which are not required by the Brown Act to be publicly "reported out," the BOS should provide for the tape recording of its closed session proceedings, and should maintain those tapes for periods of not less than two years from the dates of those sessions.
- R8. To obtain an accurate exposition of the views of the residents of the County, the BOS should adopt a resolution that a proposed amendment to Section 703 of the County Charter be presented to the voters for their consideration and approval. That proposed amendment should provide that the Charter's requirement of "cooperation" with the Grand Jury by "every county officer and employee" contains no exceptions, that no otherwise available claim of confidentiality or privilege may be raised as a defense against or objection to the issuance and enforcement by the Grand Jury of subpoenas for witnesses and documents in the exercise of the Grand Jury's "watchdog" functions, and that any such claim is specifically waived.

Responses Required for Findings

F1 through F85

El Dorado County Board of Supervisors

Responses Required for Recommendations

R1 through R8

El Dorado County Board of Supervisors

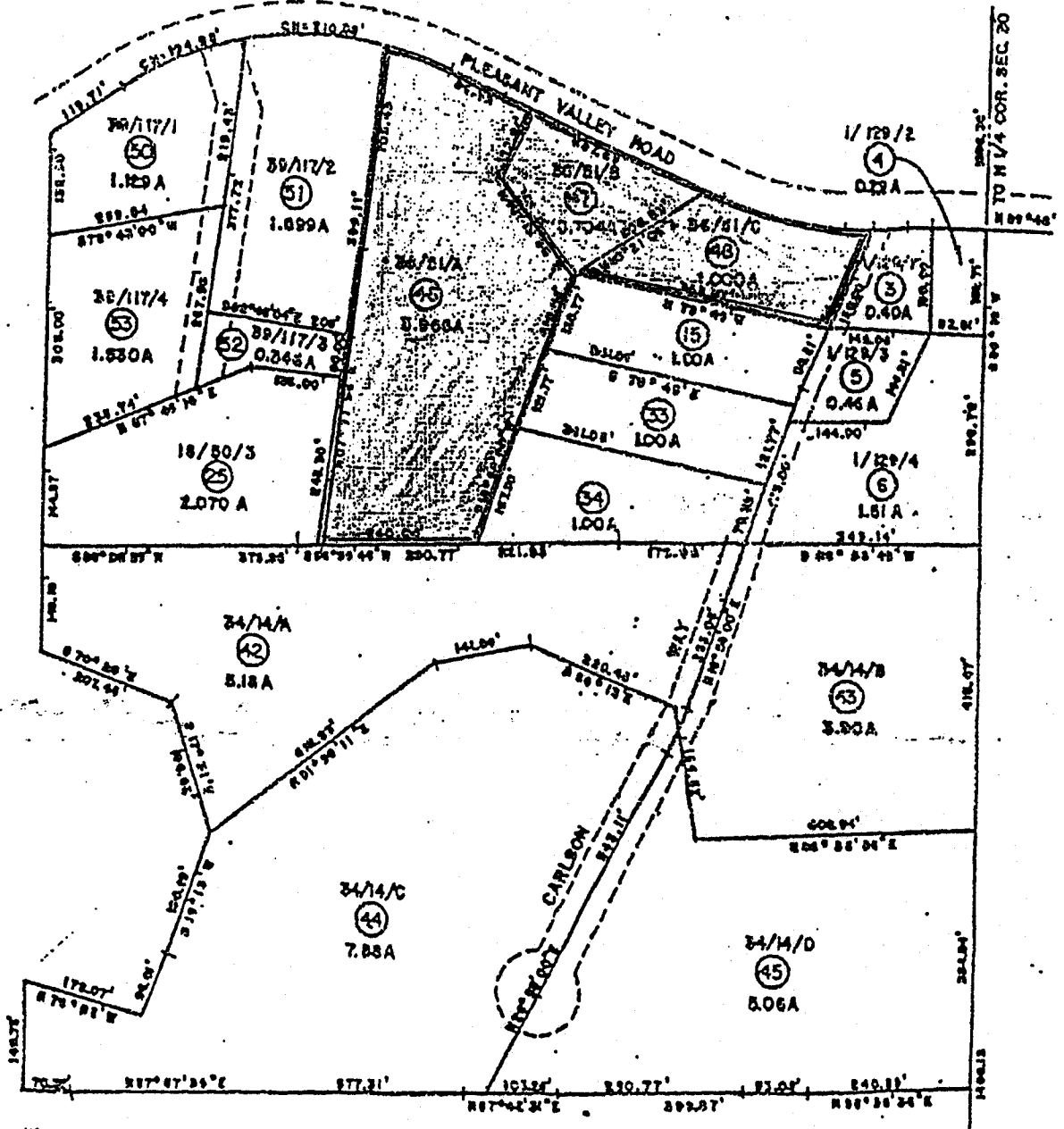
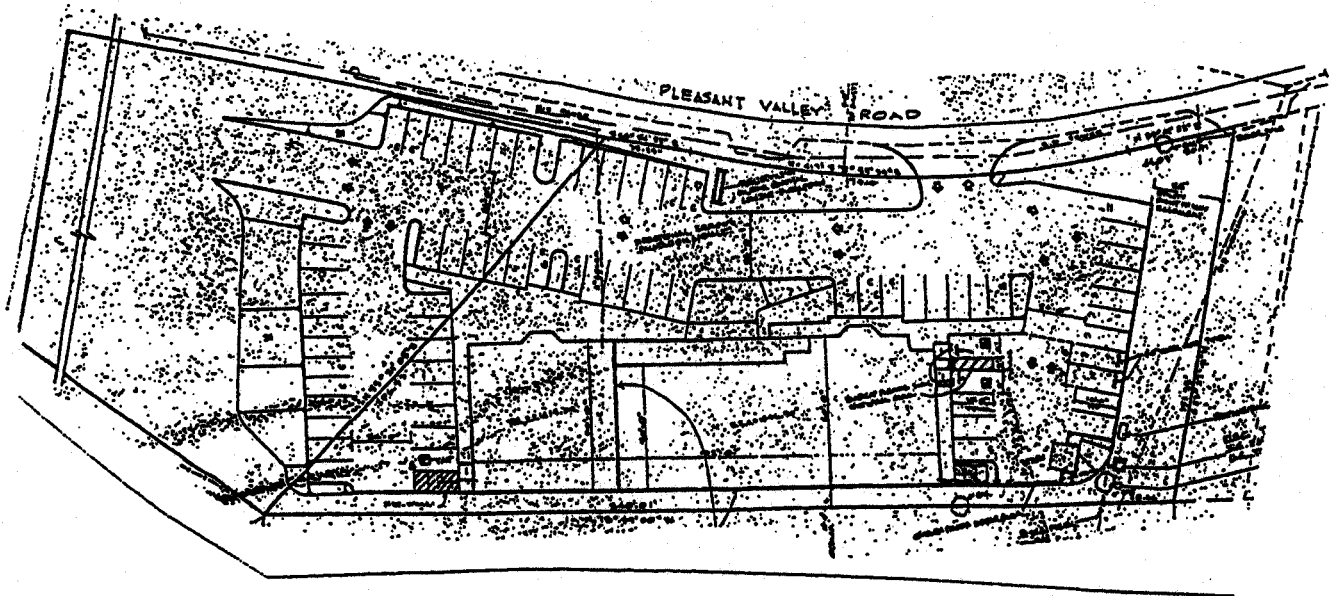


EXHIBIT 1

Site Plan



Note the .70 acre site on the far left. Approximately 21 to 24 additional parking spaces are enabled by inclusion of this portion of the property.

EXHIBIT 2

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GOVERNMENT AND ADMINISTRATION COMMITTEE

Procedures for Board of Supervisors' Meetings

Reason for the Report

During the course of its investigations on other subjects, the Government and Administration Committee of the 2000/2001 Grand Jury heard several comments concerning the manner in which last minute, unpublished and unnoticed changes to the agendas of public legislative and administrative bodies within the County were accomplished. These changes frequently resulted in action by those bodies which (i) occurred without the opportunity for significant community input, and (ii) occurred without the opportunity for adequate review of potential legal and economic impacts upon the County. Based on those comments, this Committee undertook an investigation into the written procedures and actual practices involved in connection with the agendizing of matters brought before the Board of Supervisors ("BOS" or "Board").

Scope of Investigation

The Committee's investigation included:

- Consideration of the significance of the comments referenced above;
- Review of those portions of the County Ordinance Code pertaining to BOS legislative hearings;
- Review of BOS Policy Statements pertaining to BOS legislative hearings;
- Review of the Brown Act (California Government Code §54950 et seq.);
- Review of agendas of the BOS, the County Planning Commission, and the El Dorado Irrigation District ("EID");
- Attendance at meetings of the BOS, the Planning Commission, and EID;
- Interviews with two employees of the BOS's Clerk's Office;
- Interview with the Chief Administrative Officer;
- Interview with the County Counsel; and
- Interview with the County Auditor/Controller.

Findings

F1. Codes

The foundations of the written procedures by which the BOS must conduct its legislative and administrative business are set forth in the Ralph M. Brown Act (California Government Code §54950 et seq.) and in Chapters 2.03 and 2.06 of the County's Ordinance Code.

F2. Meetings

As required by Section 54953(a) of the Brown Act and pursuant to Section 2.03.100 of the County's Ordinance Code, "[a]ll meetings of the board of supervisors shall be open and public, and all persons shall be permitted to attend any meeting of the board, except as otherwise specifically provided" in the Brown Act and the Ordinance Code.

The exceptions set forth in Chapter 2.03 of the Ordinance Code are as follows:

- a. Pursuant to Section 2.03.110, the BOS "may hold closed sessions during regular or special meetings to consider matters as allowed by applicable state law."
- b. Pursuant to Section 2.03.130, "[a]ny of the rules in [Chapter 2.03 of the Ordinance Code] not established by state law may be suspended by a four-fifths vote" of the BOS, except that any such "suspension shall not apply to the matter pending" at the time the suspension is adopted.

F3. Notice

Notice of BOS meetings involves the following procedures and practices:

- a. Pursuant to Section 2.03.020, the BOS conducts regular meetings each Tuesday commencing at 8:00 a.m.
- b. Pursuant to Section 2.03.021, the Clerk of the BOS ("Clerk") is required to "give mailed notice of every regular meeting and any special meeting which is called at least one week prior to the date set for the meeting to any person who has filed a written request for that notice" and who has paid the required fee for such mailing of notice.

In practice, however, that procedure has not been followed because no person has requested mere notice of meetings. A legal distinction exists between the communication of "notice" of meetings and the communication of "agendas" for meetings. Agendas are posted and mailed on Thursdays, or occasionally on Fridays, prior to the Tuesday meetings, rather than one week prior to such meetings. Agenda items are not required to be submitted to the Clerk until 5:00 p.m. on the Tuesday, one week prior to such meetings.

The resulting Agenda is not completed and printed until at least the following Thursday prior to the subsequent Tuesday meeting. This is consistent with Sections 54954.1 and 54954.2(a) of the Brown Act, which provide for the posting and mailing of Agendas "[a]t least 72 hours before a regular meeting" of a legislative body.

- c. Pursuant to Section 2.03.040, "[a]n emergency or special meeting [of the BOS] may be called at any time by the chairman of the board, or by a majority of the members of the board, by delivering personally or by or mail with [sic] notice to

each member and to each local newspaper of general circulation, radio or television station requesting notice in writing, ... at least 24 hours before the time of the meeting as specified in the notice." The notice must "specify the time and place of the special meeting and the business to be transacted," and "[n]o other business shall be considered at the meetings by the board." Members of the BOS may waive these notice requirements as to themselves.

Historically, these requirements have been applied only to special meetings. Section 54956 of the Brown Act requires the 24-hour notice for special meetings only, and Section 54956.5 of the Brown Act requires no notice for emergency meetings resulting from emergency situations. The term "emergency situation" is defined in the Brown Act to mean either a crippling disaster, a work stoppage or other activities which severely impair public health, safety or both, as determined by a majority of the legislative body. Emergency meetings are permitted under the Brown Act only for "matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities." No such meetings have been called in El Dorado County within the last few years.

As to special meetings, Section 54956 of the Brown Act permits the notice to be delivered by any available means, not just by personal or mail delivery, although the County Ordinance Code does not so provide.

- d. Pursuant to Section 2.03.021 of the Ordinance Code, the Clerk is required to "give mailed notice" of "any special meeting which is called at least one week prior to the date set for the meeting," if the meeting has been called at least one week prior to that date. The mailed notice must be given to each "person who has filed a written request" therefor, and who has paid the required fee for such mailing of notice. Typically, however, special meetings are not called on a week's notice.
- e. Pursuant to Section 2.03.021-B, -C and -D, as to special meetings called less than one week prior to the date set for the meeting, "the clerk of the board of supervisors may give the notice as he/she deems practical." This provision does not comply with the requirements of Section 54956 of the Brown Act, which requires that "written notice" of special meetings be delivered to "each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing," and that that notice "be received at least 24 hours before the time of the meeting as specified in the notice."
- f. Pursuant to Section 2.03.030, the BOS, including less than a quorum thereof, may adjourn any meeting to a specified time and place. If no members of the BOS are present at any such meeting, the Clerk may do so. If the Clerk does so, the Clerk must cause a written notice thereof to be given in the same manner as provided for special meetings. Notice of any adjournment must be posted within 24 hours after the adjournment. Any resulting meeting after adjournment is a

regular meeting for all purposes.

F4. Validity

Pursuant to Section 2.06.120, "[n]o action or decision of the board shall be valid or binding unless a majority of all the members are present and concur therein, and the action or decision is made at a regular or special meeting." This appears to mean that no action or decision by the BOS taken or made at an emergency meeting is valid. Persons providing services and/or materials to the County on an emergency basis, however, should not be either required or permitted to do so under circumstances where the County's authorization therefor is neither valid nor binding.

F5. Contract Matters

Pursuant to Section 2.06.030, BOS "Agenda items and requests for appearance shall be in writing, and shall specifically set forth both the matter to be discussed and the action requested of the board, along with copies of the request and documentary information or supporting material." Pursuant to Section 2.06.040, "[a]ll contracts, proposed ordinances and resolutions not prepared by the county counsel's office shall be referred to that office for approval as to form." Pursuant to Section 2.06.070, "[a]ny matter coming before the board may ... be referred to the officer, department or agency concerned therewith." Further, the Chief Administrative Officer ("CAO") "may refer matters concerning particular county offices, agencies or departments for their comments or action prior to placement of the matter on the board's agenda."

In practice, frequently the County Counsel's Office either (i) is bypassed with regard to contract matters, such matters not being referred to the County Counsel's Office, either for approval as to form or otherwise, or (ii) is consulted so late in the process as to make adequate review impossible and to necessitate immediate and mere cursory review. This failure has resulted, on occasion, in the County entering into contracts without adequate protection of the County's interests, both monetarily and otherwise.

Further, resolutions do not require the approval of the County Counsel's Office as to form, and frequently are not even prepared by that Office.

F6. CAO Evaluation

Ordinance No. 3966, adopted by the BOS on September 20, 1988, requires that the CAO "evaluate department and other requests" made to the BOS, and "make recommendations on each agenda item" except for items from individual board members or the Planning Commission.

F7. Consent Calendar

The determinations as to whether any particular BOS Agenda item is to be placed on the BOS's Agenda, and whether any such placement is to be on the Consent Calendar or the

Department Calendar, are made by the CAO. Any member of the BOS may pull or transfer an item from one of those categories to the other, but no member of the public may require that that be done. A request by a member of the public for such a transfer may be made to the BOS, but the decision of whether to transfer or not transfer the item in response to such a request is entirely discretionary with the BOS. Members of the public may comment on items on the Consent Calendar before action is taken on that calendar, during Open Forum, but such comments will not necessitate a transfer of the item from the Consent Calendar or a responsive discussion of the item by the BOS.

In theory, Consent Calendar items are supposed to include only items as to which no possible controversy can reasonably be envisioned, e.g., payment of ongoing bills, resolutions for certificates of appreciation, etc. In the past, however, the Consent Calendar has included items involving some controversy. In the opinion of the Grand Jury, this has had the appearance of an attempt to evade public scrutiny of the items.

In practice, the Clerk of the BOS makes corrections to proposed BOS Agenda items for the purpose of correcting obvious and clerical errors.

F8. Goldenrod Agenda Transmittal Sheet

A "*goldenrod*" Agenda Transmittal Sheet is required to accompany each Agenda item contained in the packet of materials submitted to the BOS. This "*goldenrod*" documents that the item has been reviewed and approved by the Department Head responsible for the item's submission, and documents the position of the CAO with regard to the item. It is available for review by the public at the public counter in the Office of the Clerk of the BOS, but it is not included in the postings on the BOS's website for public review. No item will be heard by the BOS without a completed "*goldenrod*."

F9. Blue Routing Sheet

With regard to matters involving Agenda items pertaining only to County contracts or proposed contracts, a "*blue sheet*" routing sheet, in addition to the "*goldenrod*," is required to accompany the proposed item. That "*blue sheet*" is included for the purpose of documenting that the item(s) has/have been reviewed by the County Counsel, the Director of Human Resources, and the Department of Risk Management Services. Although no such Agenda item is supposed to be heard without an accompanying "*blue sheet*," the BOS, the CAO and the County Counsel may bypass that requirement and permit the BOS to hear the matter. The extent to which, if at all, this "bypass" procedure is contrary to Section 2.06.040 of the Ordinance Code is unclear.

F10. Board Letter Transmittal Memorandum

A transmittal memorandum, called a "*Board Letter*," is required to accompany each Agenda item contained in the packet of materials submitted to the BOS. This transmittal memorandum, generally consisting of not more than two pages, contains a descriptive summary of the item. It is prepared by the CAO's Office. It is available for

review by the public at the public counter in the Office of the Clerk of the BOS, but it is not included in the postings on the BOS's website for public review.

Board Letter transmittal memoranda contain recommendations for action. Not infrequently in the past, the memoranda have contained recommendations which are either inconsistent with, or do not account for, contrary factual discussions in the body of the memorandum. That fact has had the effect of rendering the *Board Letter* transmittal memoranda misleading, in some instances, to those BOS members who have relied entirely upon the recommendation paragraph.

F11. CAO Advance Notice

Pursuant to BOS Policy H-2, Procedure #1, Regular Agenda items, except for those submitted by individual Board members or by the Planning Commission, proposed to be placed on the BOS's calendar must, normally and in the absence of extenuating circumstances, be submitted to the CAO on the Thursday which is twelve (12) calendar days in advance of the calendar hearing date. The "*goldenrod*" and the *Board Letter* for such items must normally be completed or approved by the CAO and delivered to the Clerk of the BOS by 5:00 p.m. on Tuesday, one week prior to the calendar hearing date. Although some items are submitted prior to that Tuesday deadline, many are not. The Clerk of the BOS then has only one day to verify that there has been compliance with all procedural requirements, including completeness and the adequacy of the description of the items, and to prepare the Agenda and accompanying packet for delivery to the print shop on Thursday morning to meet deadlines for posting and mailing. That time period is often inadequate for those tasks.

F12. Final Agenda

The Clerk of the BOS types up the Agenda for the BOS's Tuesday calendar on the Wednesday preceding that calendar. The Clerk of the BOS mails out copies of that Agenda, and posts the Agenda both on the BOS's website and elsewhere, generally on Thursday, but not later than 5:00 p.m. on the Friday preceding that calendar. That mailing and posting constitutes the final Agenda, including any Addenda, for the following Tuesday calendar.

F13. Emergency Matters / New Business

If any matter proposed to be considered by the BOS at its Tuesday calendar arises between the preceding Friday afternoon and the Tuesday hearing, that matter must be treated either as an "emergency" matter in accordance with Section 54954.2(b)(1) of the Brown Act, or as "new business" in accordance with Section 54954.2(b)(2) of the Brown Act. "New business" may be authorized by the BOS only on a concurrence of four-fifths (4/5) of the members of the BOS. There is no existing practical way in which the public can be notified of any such proposal and/or approval until the commencement of the BOS's calendar on Tuesday morning.

F14. Department-Head Submissions

It has been common practice for County Department Heads to submit requests for proposed Agenda Items to the CAO, and to the County Counsel, with a claimed need for immediate action but with inadequate time for the CAO, the County Counsel and/or the Clerk of the BOS to adequately review and analyze those requests. This has particularly been true in connection with matters involving proposed Contracts. It has also frequently been the case that those requests either (i) do not require immediate action at all, or (ii) require immediate action only because the Department Heads have unnecessarily waited until the last minute to present their requests. Nevertheless, those requests have frequently been placed on the first available BOS Agendas, without adequate or sufficient review or analysis by the CAO and/or the County Counsel to assist the BOS in its decision-making process, rather than being deferred to subsequent BOS Agendas so that informed analysis and review can occur.

F15. Economic Impacts

On more than one occasion during calendar year 2000, matters having substantial economic impacts upon the County's financial status (i) were agendized and presented to the BOS by the CAO, (ii) were adopted and/or approved by the BOS, and (iii) some members of the BOS thereafter stated publicly that they were unaware of those economic impacts at the time they adopted and/or approved the item.

The Grand Jury was unable to determine whether those situations were the result of:

- failure of BOS members themselves to adequately review the information presented to them concerning the economic impacts of those agenda items before voting on them;
- failure of the CAO and/or the Department Heads to adequately investigate those economic impacts before recommending their adoption and/or approval by the BOS;
- innocent failure of the CAO and/or the Department Heads to adequately advise the members of the BOS concerning those economic impacts;
- conflicts of interest on the part of the person(s) submitting those matters to the BOS;
- or
- Some combination of the foregoing.

F16. Auditor/Controller Review

On more than one other occasion during calendar year 2000, matters having substantial economic impacts upon the County's financial status were agendized on the BOS' calendar with recommendations by the CAO and/or Department Heads for adoption and approval, were reviewed by the County Auditor/Controller before the BOS hearing date, and were disapproved by the BOS after the Auditor/Controller had brought those potential substantial economic impacts to the attention of the BOS and/or the public.

F17. Late Submissions

Additional items have frequently been presented to the BOS by Addenda after the Agendas have been prepared, but 72 hours prior to the hearings, without compliance with the other above-referenced time requirements. Those Addenda items have usually been, but are not required to be, the result of newly acquired information as to which expeditious action by the BOS is deemed desirable, necessary or appropriate. The use of the Addenda process, resulting from late submissions to the Clerk, has been abused with some frequency by Department Heads.

The Interim CAO, in March 2001, with the approval of the BOS, has disseminated to the Department Heads a memorandum which provides that no late-submissions will be presented to the BOS by the CAO unless they have been timely submitted to the CAO, or unless a specific showing of urgency has been made. The Grand Jury approves of this action by the Interim CAO. The Grand Jury also notes, however, that these time restrictions do not apply to the members of the BOS themselves, which can potentially result in the public being unaware of late-submitted matters originating from one or more members of the BOS.

F18. Immediate Needs

Section 54954.2(b)(2) of the Brown Act permits legislative bodies to take action on non-agendized items by a two-thirds (2/3) vote of the members present, or, if less than two-thirds (2/3) of the members are present, a unanimous vote of those members present, upon a determination (i) that there is a need to take immediate action, and (ii) that the need for action came to the attention of the local agency representative subsequent to the Agenda being posted. The use of this "immediate action need" process has been abused, on occasion, by Department Heads' failure to observe the second portion of the Brown Act's requirements for such action, necessitating corrective action by the County Counsel. The Interim CAO's memorandum referenced in the preceding Finding should alleviate this problem.

F19. Agenda Adoption

It is the customary procedure of the BOS to commence its Tuesday hearings at 8:00 A.M. by adopting the Agenda for that day. It is then the customary procedure of the BOS to go into Closed Session. This custom and practice results in many knowledgeable members of the public who wish to attend and participate in BOS hearings having to arrive at the hearing chambers at 8:00 a.m. to learn of any Agenda item calendaring changes, and then spend unproductive time awaiting the return of the BOS from Closed Session.

The BOS has recently mitigated this problem in part, by setting a specific time for commencement of its Open Session after completion of its Closed Session. That mitigating action has not wholly solved the problem, because the BOS still adopts the Agenda at 8:00 a.m., as opposed to doing so at the commencement of Open Session.

F20. Public Attendance

Similarly, it is frequently the situation that substantial numbers of members of the public appear at BOS meetings because of their interest in one particular agenda item, but are required to wait through lengthy discussions of other prior agenda items for which no member of the public has appeared to express comments or interest. On occasion, the BOS calendars have been so lengthy that the agenda item of interest has had to be continued to a subsequent BOS meeting.

F21. Planning Commission Procedures

The calendaring and hearing procedures of the Planning Commission are substantially similar to the calendaring and hearing procedures of the BOS, except that the Planning Commission has not established a time-certain procedure for the commencement of its Open Session.

F22. EID Procedures

The Board of Directors of the El Dorado Irrigation District ("EID"), by contrast, customarily opens its hearings at 8:00 a.m. by adopting only the Closed Session portion of its Agenda and by then going immediately into Closed Session, and by scheduling its Open Session Agenda for a subsequent time certain, generally 9:00 a.m., at which time it adopts (or modifies) the remaining portions of its proposed Agenda. This procedure permits interested members of the public wishing to participate in EID's Open Session proceedings to plan the timing of their arrivals at the EID hearing room, without unnecessarily wasting time while the EID Board is in Closed Session.

F23. Closed Session Minutes – Brown Act

Section 54957.2(a) of the California Government Code provides: "The legislative body of a local agency may, by ordinance or resolution, designate a clerk or other officer or employee of the local agency who shall then attend each closed session of the legislative body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting. ... The minute book shall be available only to members of the legislative body or, if a violation of this chapter [the Brown Act] is alleged to have occurred at a closed session, to a court of general jurisdiction wherein the local agency lies. Such minute book may, but need not, consist of a recording of the closed session."

The BOS has not provided for implementation of this provision of the Brown Act by authorizing the maintenance of a minute book or a tape recording of its Closed Sessions.

F24. Closed Session Minutes – Ordinance Code

Section 2.03.090 of the Ordinance Code provides that the Clerk of the BOS "shall keep accurate written minutes of all proceedings of the board," and does not provide any

exception for Closed Sessions. By custom and practice established by the BOS, however, the Clerk does not attend Closed Sessions of the BOS, and does not "keep accurate written minutes" of Closed Session proceedings. The Conformed Agendas of the BOS reflect only the facts that Closed Sessions were held, the purpose of those sessions, and, in some instances, reports that are required by the Brown Act. The language of Section 2.03.090 of the Ordinance Code, however, imposes more stringent requirements than those imposed by the Brown Act.

F25. Closed Session Minutes – Grand Jury

In El Dorado County and El Dorado County Board of Supervisors vs. El Dorado County Grand Jury, the Superior Court has ruled that the Grand Jury is legally entitled to inquire into matters occurring in Closed Session. It is difficult and on occasion may be impossible, however, for the Grand Jury to inquire into matters of detail which occurred months or even years previously, as to which no substantially verbatim record has been kept or maintained and where the memories of the participants do not enable them to recall such matters of detail.

F26. Closed Session Reports

It has been the custom and practice of the BOS, when reporting out from Closed Session, to state "No Action Reported" in all instances in which no action was taken in Closed Session which is required to be reported under Section 54957.1 of the Brown Act. That is misleading to the public, in that it implies that no action of any type was taken in Closed Session, whereas an action may have been taken which is of a type which is not required to be reported out.

Recommendations

- R1. Those portions of the County's Ordinance Code which set forth the procedures involved in setting and giving notices of BOS meetings, and of Agenda Items, should be reviewed, modified and revised so as to provide at least as much notice of such meetings and Agenda items as is required by the provisions and requirements of the Brown Act.
- R2. After such modification, the actual customs and practices involved in setting and giving notice of BOS meetings and Agenda Items should be revised to comply and be consistent with the provisions and requirements of the Ordinance Code as revised.
- R3. Section 2.03.120 of the Ordinance Code should be revised to provide that actions taken by the BOS at emergency meetings are nevertheless valid and binding.
- R4. The CAO, the Clerk of the BOS, and the BOS, should adopt and adhere to a policy, which prohibits the placement on the Consent Calendar of any agenda items, which could reasonably be anticipated to be controversial to any significant number of members of the public.

- R5. The members of the BOS should adopt an ongoing policy that they will refrain from placing items on the Agenda without at least 72 hours' notice to the public, except under circumstances of emergency or urgency.
- R6. The BOS and the Planning Commission should revise their procedures for adopting their meeting Agendas to provide for the adoption of Closed Session agendas and proceedings only, prior to those closed sessions. The BOS and the Planning Commission should also revise their procedures to provide for the subsequent adoption of Open Session Agendas at a time certain, after the completion of their Closed Session proceedings. These procedures should be substantially similar to those presently followed by EID.
- R7. The BOS, and the Planning Commission, at the commencement of their Open Session agendas, should ascertain which matters are the subject of interest to the majority of members of the public in attendance at the meeting, and should adjust their Agendas to hear those matters first in sequence following their Open Forums and Consent Calendars. Additionally, the CAO and/or the Clerks of the BOS and the Planning Commission should calendar and schedule those matters which can be reasonably anticipated to generate substantial attendance by members of the public for a time certain, and should adhere to that scheduling.
- R8. The BOS, and the Planning Commission, should provide for the attendance of their Clerks at, and the tape recording of, their Closed Sessions, pursuant to Section 54957.2(a) of the Government Code and Section 2.03.090 of the Ordinance Code, and for the retention of such tape recordings for a period of not less than two years.
- R9. Except for recurring purchase orders and other purchase acquisitions in which the sole documentation is a seller's invoice, Department Heads should be required to consult with the CAO and the County Counsel at the inception of negotiations concerning any Contract involving a potential cost or liability to the County exceeding the sum of \$10,000, for participation in the drafting and implementation of any such Contract. No such matter should be permitted to be placed on any BOS Agenda unless and until there has been compliance with this requirement.
- R10. No single proposed action by the County involving potential impacts upon the County's economic condition in excess of \$10,000, and no multiple contracts (including but not limited to purchase orders) with any single contractor exceeding the cumulative amount of \$25,000 in any fiscal year, should be permitted to be placed on any BOS Agenda unless and until there has been prior consultation by the requesting Department Heads and/or the CAO with the County Auditor/Controller concerning that proposed action. The Auditor/Controller should have at least one week's time to analyze and review that proposed Agenda item, and more time if the Auditor/Controller deems it necessary in the best interests of the County, unless the CAO makes, and submits to the BOS along with his proposed recommendation, an express written finding and determination, and the BOS, separately at the time of hearing thereon, makes an express finding and determination, that for specified factual reasons of emergency or urgency, the interests

of the County will be irreparably harmed if the time necessary for such analysis and review is required.

- R11. The CAO should refuse to initiate or permit, and the BOS should refuse to accept, any Agenda item for which a "blue sheet" is required, unless the County Counsel has had adequate time to analyze and review that proposed Agenda item. This requirement may be waived if the CAO makes and submits to the BOS along with the proposed recommendation, an express written finding and determination, and the BOS, separately at the time of hearing thereon, makes a similar express finding and determination, that, for specified factual reasons of emergency or urgency, the interests of the County will be irreparably harmed if the time necessary for such analysis and review by the County Counsel is required.
- R12. No recommendation set forth in the CAO's *Board Letter* transmittals to the BOS should be made which does not call the attention of the BOS to information set forth in the text of that *Board Letter* which may reasonably be viewed as supporting a contrary recommendation.
- R13. Augmenting the action of the Interim CAO, no Addendum should be permitted to be added to the BOS's Agenda after the Clerk has prepared the Agenda, unless the CAO makes, and submits to the BOS along with a proposed recommendation, an express written finding and determination, and the BOS, separately at the time of hearing thereon, makes an express finding and determination, that, for specified factual reasons of urgency, the interests of the County will be irreparably harmed unless the Addendum is added to the Agenda.
- R14. The Agendas, and any Addenda thereto, both as mailed and as posted on the BOS's website, should contain express reference to the fact that supporting documents for the Agenda items exist and are available for public review and inspection in the office of the Clerk of the BOS.
- R15. The BOS should change the language of its form of "report out" from Closed Session, when it has taken no action of a type required under Section 54957.1 of the Brown Act to be reported out, to read "No Action Required by Law to be Reported."

Responses Required for Findings

F1 through F26	El Dorado County Board of Supervisors
F16	El Dorado County Auditor/Controller

Responses Required for Recommendations

R1 through R15	El Dorado County Board of Supervisors
R10	El Dorado County Auditor/Controller

GOVERNMENT & ADMINISTRATION COMMITTEE

EMPLOYEE EVALUATIONS

Reason for the Report

During the course of several other investigations the Grand Jury was made aware of the fact that the performance of county employees was not being evaluated on a yearly basis. The Grand Jury elected to inquire into the apparent conflict between the County Charter and current management practices.

Scope of the Investigation

The Committee interviewed:

- The El Dorado County ("County") Auditor/Controller;
- The Director of the County Department of General Services;
- The Director of the County Department of Social Services ("DSS");
- The Program Manager, Staff Services, County Department of Social Services; and
- The Director of the County Department of Human Resources ("HRD")

The Committee also reviewed:

- Section 501 of the County Charter;
- The County's Personnel Policy No.3, Management Evaluation Program, adopted February 2, 1988 and revised December 1, 1989;
- The County's Memorandum of Understanding ("MOU") with the General, Professional, and Supervisory Bargaining Units of Public Employees Local Union No. 1 ("Local #1"), for the period from July 1, 1999 through June 30, 2003;
- The County's MOU with the Trades & Crafts Bargaining Unit of Operating Engineers Local Union No.3 ("Local #3, Trades & Crafts"), for the period from November 21, 2000 through September 30, 2003; and
- The County's MOU with the Probation Bargaining Unit of Operating Engineers Local Union No. 3 ("Local #3, Probation"), for the period from July 1, 1999 through June 30, 2004.

Findings

F1. Section 501 of the County Charter provides, in part:

"The county **shall** appoint, **evaluate**, transfer, promote, compensate, discipline, and dismiss employees on the basis of job related qualifications, performance, merit, and equal employment opportunity." (Emphasis added.)

F2. Section 210(a)(2) of the County Charter provides that the Board of Supervisors (“Board”) shall:

“Appoint or remove the Chief Administrative Officer. At least once each year, the Board shall review and evaluate the Chief Administrative Officer’s performance. The Board shall (1) review, and (2) accept, reject or modify all **performance evaluations** performed by the Chief Administrative Officer pursuant to section 304(h) of this charter.” (Emphasis added.)

F3. Section 304(h) of the County Charter provides, in part, that the Chief Administrative Officer of the County “shall have the duty and power to:

“...On at least an annual basis, review and **appraise the performance** of all appointed department heads, except County Counsel, and submit the appraisal to the Board of Supervisors.” (Emphasis added.)

F4. The County’s Personnel Policy No. 3, entitled “Management Evaluation Program,” applies to unrepresented county employees. It includes the following provisions:

- Preamble – “The Board of Supervisors, in establishing this policy, intends to provide a fair and equitable incentive-oriented system of **evaluating the performance** of appointed department heads as well as line and staff management positions.”
- “This policy...is subject to revision by the Board of Supervisors in its discretion without prior notice in any manner provided by law.”
- Goals and Objectives – “The Board of Supervisors’ intention in adopting this policy is to accomplish the following: ... (b) establish a system for department heads to **evaluate the performance** of staff and line management who are covered by the County Civil Service system; ... (d) to improve **evaluation** of County management’s performance by the use of relevant criteria;”
- Policy – “Each appointed department head shall be **evaluated yearly** during the first quarter of the calendar year.”
- “Each staff or line manager’s performance shall be **evaluated yearly** when the incumbent is eligible for step advancement. Thereafter each incumbent manager shall be **evaluated every 12 months**.”
- “The department head of each department shall be responsible for **evaluating** each of the management employees in his/her department.”
- Administration of the Performance Evaluation Program – “The Chief Administrative Officer shall administer the Performance Evaluation Program by directing the following functions: (a) Instructing new department heads in the requirements of the Performance Evaluation System; (b) Monitoring the submission by department heads of their **evaluations** of staff and line managers on a timely basis; ... (e) Insuring that management performance **evaluations** are filed in department heads and management staff’s personnel files.”
- “After development of a draft performance evaluation, the department head or his/her designee shall meet with the incumbent [staff & line manager] to discuss

the evaluation of the manager's performance during the evaluation period. Based on this meeting, a **final performance evaluation** will be prepared and provided to the manager. A copy of the **evaluation** will also be sent to the Chief Administrative Officer for his/her signature acknowledging receipt and a copy filed in the employee's personnel file."

- **Performance Ratings** – "Each person **evaluated** on the Management Performance Form shall receive one of the following ratings based on their **overall performance**:"
- "Movement between steps in the salary range is based on performance. No management employee shall be eligible for a step advancement unless the **overall rating of their performance** is 'Meets Performance Standards (Satisfactory)' or higher." (Emphasis added.)

F5. Labor contracts between public entities and public employee organizations are commonly referred to as Memorandums of Understanding (MOU).

F6. The County's MOU with Local #1, at Chapter 11, Section 2, entitled "Documentation of Performance Evaluation," contains the following language:

"Effective September 1, 1999 and for the trial period of two years, **employee performance evaluations are eliminated** except as provided in this section and in Section 1 above [pertaining to probationary employees]. Section 907 of the Personnel Administration Resolution and Section 205.2 of the Compensation Administration Resolution insofar as they are related to employee performance evaluations, are suspended for this period. Supervisors are **encouraged** to provide regular and comprehensive feedback to employees on their performance and to maintain a record of feedback given to employees." (Emphasis added.)

F7. The County's MOU with Local #3, Trades & Crafts, at Chapter 11, Section 2, entitled "Documentation of Performance Evaluation," contains the following language:

"Effective September 1, 1999 and for the trial period of two years, **employee performance evaluations are eliminated** except as provided in this section and in Section 1 above [pertaining to probationary employees]. Section 907 of the Personnel Administration Resolution and Section 205.2 of the Compensation Administration Resolution insofar as they are related to employee performance evaluations, are suspended for this period.

Supervisors are **encouraged** to provide regular and comprehensive feedback to employees on their performance and to maintain a record of feedback given to employees." (Emphasis added.)

The only difference between this MOU and the County's MOU with Local #1 on this subject is that the last sentence of the quoted paragraph in the Local #1 MOU has been set forth in a separate paragraph in this MOU.

F8. The County's MOU with Local #3, Probation, at Chapter 11, Section 2, entitled "Documentation of Performance Evaluation," contains language which is identical to that which is contained in its MOU with Local #3, Trades & Crafts, quoted immediately above.

F9. It was the intention of the Director of HRD in negotiating the foregoing MOUs to substitute a "real-time" evaluation process in place of the previously existing annual employee performance evaluations.

F10. In an effort to implement the intention of the Director of HRD, the County's MOU with Local #1 also contains the following Language:

"Good performance is to be acknowledged by use of letters of commendation and/or recognition which are submitted to Human Resources for inclusion in employees personnel files. Letters of commendation and/or recognition from outside the department are to be forwarded to Human Resources with a copy to the department for inclusion in the employee's personnel file. Failure to provide letters of commendation and/or recognition is not grievable or appealable.

Performance or issues which need improvement are to be documented by memorandum, e.g., letters of warning or counseling, reprimands and notices of disciplinary action."

F11. In an effort to implement the intention of the Director of HRD, the County's MOU with Local #3, Trades & Crafts, also contains the following language:

"Good performance is to be acknowledged by use of letters of commendation and/or recognition which are submitted to Human Resources for inclusion in employees personnel files. Letters of commendation and/or recognition from outside the department are to be forwarded to Human Resources with a copy to the department for inclusion in the employee's personnel file. Failure to provide letters of commendation and/or recognition is not grievable or appealable.

Performance or issues which need improvement are to be documented by memorandum, e.g., letters of warning or counseling, reprimands, etc."

The only difference between this MOU and the County's MOU with Local #1 on this subject is the non-inclusion in this MOU of the words "and notices of disciplinary action," and their replacement with "etc."

F12. The County's MOU with Local #3, Probation, contains language on this subject which is identical to that which is contained in its MOU with Local #3, Trades & Crafts, quoted immediately above.

- F13. During the course of meetings with County Department Heads, the Director of HRD informed them that they should no longer administer yearly written performance evaluation reports for the employees under their supervision.
- F14. The practical effect of the foregoing is that, as a matter of practice, employee performance evaluations (of any kind) generally have not been and are not being conducted. The mere **encouragement** of “regular and comprehensive feedback” does not constitute compliance with a system that **requires** annual written performance evaluations.
- F15. At least one senior department employee within DSS has not received a performance evaluation for a period of five (5) years.
- F16. The practice described above is inconsistent with the County Charter.
- F17. The practice described above is also inconsistent with sound personnel management procedures, in that it results in a lack of objective foundations for:
- Imposition of discipline, ranging from reprimands to termination;
 - Making compensation and salary determinations;
 - Consideration of employee promotions;
 - Consideration of inter-department transfers; and
 - Feedback to county employees regarding the quality of their performance.

Recommendations

- R1. The County should require, at a minimum, that annual written employee performance evaluations be administered, in a meaningful manner, to all county employees.
- R2. HRD should take immediate steps to accomplish a restructuring of the employee evaluation provisions of all County MOUs to comply with the requirements of the County Charter and of sound management practice.
- R3. If the employee organizations dealing with the County decline to agree to such restructuring, the Board should adopt a Resolution declaring the provisions of all existing MOUs containing language stating that “employee performance evaluations are eliminated,” or words to that effect, to be in violation of the County Charter and therefore null and void.

Responses Required for Findings

F9 and F13 through 17 El Dorado County Board of Supervisors
Director of the Department of Human Resources

F13 and F15 Director of the Department of Social Services

Responses Required for Recommendations

R1 through R3 El Dorado County Board of Supervisors
Director of the Department of Human Resources

**HEALTH &
SOCIAL SERVICES**

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Health & Social Services Committee

Department of Social Services – Fiscal Control

Citizen Complaint #00/01-C-032

Reason for the Report

This investigation was in response to a citizen complaint of lack of fiscal control by the El Dorado County Department of Social Services (Department).

Scope of the Investigation

The Social Services Committee of the 2000/2001 Grand Jury:

- Reviewed the Social Services Committee Report findings and recommendations of the 1999/2000 Grand Jury;
- Requested, received and reviewed Department's policies and procedures used in fiscal control;
- Received and analyzed memoranda between the Auditor-Controller and the Department dated May 1, 2000 through March 31, 2001;
- Reviewed claim vouchers rejected by the Department for February and March 2001 after internal audit;
- Reviewed logs of Department's claim vouchers rejected by the Auditor's office for January, February and March 2001;
- Interviewed the Auditor-Controller of El Dorado County;
- Interviewed the Director of the Department;
- Interviewed the Department Staff Services Program Manager; and
- Interviewed the Staff Services Supervisor/Accountant.

Findings

F1. Claim vouchers were returned from the Auditor-Controller's office to the Department during FY's 1999/2000 and 2000/2001 because of:

- Duplicate payments;
- Overpayments;
- Incorrect and/or missing documentation; and
- Invalid/Insufficient Authorization.

- F2. Prior to January 31, 2001, claim vouchers processed through the Department's Accounting Unit were not adequately checked for errors or omissions. Only a spot check process was used.
- F3. There has been significant improvement in the number of claim vouchers rejected by the Auditor's office since January 1, 2001. For February 2001, the number was approximately 11%.
- F4. Claim vouchers signed or reviewed by Department Program Managers often contain errors and omissions.
- F5. Guidelines for payment of invoices have been implemented, although they are not consistently followed by all Program Managers.

Recommendations

- R1. Each claim voucher should be checked for accuracy and completeness before it is forwarded to the Auditor-Controller for payment.
- R2. The original of all invoices, as required by the Auditor's Office, should be attached to all claim vouchers before payment is issued. The original documentation should remain in the Auditor's Office for fiscal control.
- R3. Department Program Managers and their staff should comply with existing procedures to eliminate claim voucher inaccuracies.
- R4. The 2000/2001 Grand Jury recommends that the Department be reviewed in 2001/2002 by the Grand Jury with a follow up of its fiscal performance.

Responses Required for Findings

F1 through F5 El Dorado County Board of Supervisors

Responses Required for Recommendations

R1 through R4 El Dorado County Board of Supervisors

INFORMATION SERVICES

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Information Services Committee
Implementation of New Computer System
For The El Dorado County Superior Court

Reason for the Report

During the investigation of an unrelated complaint by a resident of El Dorado County ("County"), information was developed that indicated the County was losing large amounts of revenue and incurring significantly increased costs due to problems with a new computer system installed for the El Dorado County Consolidated Superior and Municipal Courts ("Court") by ISD Corporation ("ISD"). While the Grand Jury recognizes that it has no authority to investigate the Court per se, because the Court is not a County agency, the problems associated with the installation and function of the ISD computer system were inextricably intertwined with the financial and personnel interests of the County. Accordingly, this investigation was conducted for the purpose and with the intention of assisting in the protection of the County's interests and to publish any "lessons learned" that might be applied to future computer system installations undertaken by the County.

The courts of the State of California, including the Court, have been undergoing reorganization during the time period covered by this investigation. Several changes occurring during the course of that reorganization have had a direct effect on the relationship between the Court and the County, including the fiscal impact of the Court's operations on the County's budget. The Court has changed from a County entity to a State entity. Personnel working for the Court were employees of the County until January 1, 2001. Budget shortfalls and/or expenses incurred by the Court in excess of its revenues were the responsibility of the County and were paid from County general funds.

The Grand Jury recognizes its charge as delineated in California Penal Code Section 925: "The Grand Jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county...." The Grand Jury is also aware of an Opinion of the Attorney General of the State of California, No. 92-1204, which states that a County Grand Jury does not have the authority to investigate and report on the fiscal and administrative operations of the Executive Officer of a superior court.

Scope of the Investigation

The Information Services Committee of the 2000/2001 Grand Jury:

- Reviewed County procedures relative to the purchase of computer hardware and software;
- Reviewed the Contract between the Court and ISD;

- Reviewed the Request for Proposal ("RFP"), ISD's Response thereto, and other relevant documents associated with the installation, development and troubleshooting of ISD computer systems; and

Interviewed witnesses, including:

- The Director of the County's Information Services Department;
- County employees whose employment required them to use the ISD system;
- Other customers of various ISD systems;
- The Court's Executive Officer;
- Representatives of the California Department of Motor Vehicles ("DMV"); and
- The President of ISD.

Findings

- F1. As a result of impending Y2K problems associated with a previous case management computer system, which the Court was using in 1998, the Court decided to replace that existing system rather than to bring it into Y2K compliance.
- F2. The selection process used to identify and select a vendor for a new system appears to have been reasonable, and the selection of ISD was not illogical given the choices available.
- F3. Of all the systems available for lease/purchase from ISD, the particular system sold to the Court was an undeveloped system for an NT platform that had not been proven fully functional anywhere.
- F4. The Court made no provision for the use of a backup system while the new system was being implemented, in spite of the fact that the new system was unproven and had not been implemented by any other court.
- F5. The proposed ISD Contract was not submitted by the Court to any County or other expert in the appropriate technical fields for review and recommendations, either during the negotiation of, or prior to the actual signing of, the contract. This situation proved to be advantageous for ISD.
- F6. The ISD Contract was signed in September 1998, with a projected rollout date of June 1999, indicating that the system would be installed and fully functional before the advent of Y2K, January 1, 2000.
- F7. The ISD Contract was prepared by ISD. Many of the commitments set forth by ISD in its response to the RFP are not reflected in the Contract. For example:
- There is no definition of the Integrated Case Management System (ICMS) modules referred to in the contract;

- There is no indication in the contract that the Graphical User Interface (GUI) version of the ICMS is not ready for release, nor is there any provision to substitute a working version of ICMS in the event that the GUI version is not ready in a timeframe that meets the Court's requirements;
 - There is no mention of ISD's responsibility to provide a fully described data base definition to enable the Court to use third party report generation software;
 - There is no time limit defined for the resolution of problem calls.
- F8. The ISD Contract lacked adequate product specifications to protect the Court's and the County's interests. This proved advantageous for ISD.
- F9. There were no product delivery deadline dates in the ISD Contract to protect the Court's and the County's interests. This also proved advantageous for ISD.
- F10. ISD agreed, in the contract, to establish a real time DMV link as part of the new case management system. ISD has failed to provide that, or any other, operational link.
- F11. Effective November 2000, ISD effectively ceased work on the establishment of the DMV link. Although the establishment of such a link had been an integral part of the obligations of ISD to the Court under the original Contract, for which ISD had already been paid, ISD advised the Court that ISD would only work on a new pay-per-hour fee basis. This action by ISD was inconsistent with the terms of its Contract reviewed by the Grand Jury.
- F12. At the start of the implementation process under the ISD Contract, the Court's program management personnel, who were County employees at the time, lacked adequate technical experience or expertise to adequately monitor such implementation. Knowledge of both technical and functional requirements of computer systems on the part of a purchaser/lessee is required in order to assure adequate monitoring of vendor/lessor performance, of both product and services, with regard to such systems.
- F13. The training provided by ISD was not sufficient to provide County employees with the necessary skills required to properly operate the system.
- F14. As of June 20, 2001, the ISD Case Management System is still not fully functional.
- F15. Problems with the ISD system resulted in backups of as much as five months of accounting during 2000. These backlogs resulted in late payments of funds to the State of California. The consequence of these late payments was the assessment of fines and/or penalties against the County by the State.
- F16. In addition to these fines and/or penalties, the problems and failures of the ISD system resulted in:
- A permanent loss of some revenues to the County;

- Delays in obtaining other revenues;
- Added personnel costs;
- Ultimately the loss of some employees out of frustration with the system; and
- Other unquantifiable losses.

Recommendations

- R1. Future contracts should undergo complete legal, technical, and functional review by qualified consultants or County representatives prior to the completion of negotiations and the signing of such contracts.
- R2. Any program management team for future computer or other technical installations should include persons having the necessary technical skills and expertise to insure that the acquisition and installation of new computer or other technical systems actually meets the County's needs and requirements.
- R3. The implementation of new computer or other technical systems intended to perform vital functions should include provision for a backup system or systems until the new implementation proves to be fully functional.
- R4. The County should insure, by contract, that there shall be adequate training of employees to enable them to use the full potential of newly acquired and installed systems. The County should also monitor contract compliance to insure that these training requirements are met.
- R5. Program Managers for systems implementation should be fully aware of contract penalty clauses and should make aggressive use of them to insure that the interests of the County are protected in the event of vendor/lessor nonperformance.

Responses Required for Findings

The Grand Jury recognizes that neither the Court nor the principals of ISD Corporation are under any obligation to respond to this Report. The Grand Jury also recognizes that the County was not a party to the Contract, and that therefore the County should not be required to respond to the Findings contained in this Report.

Responses Required for Recommendations

The Grand Jury does believe, however, that the Recommendations contained in this Report are important to the future operations of the County, and that the County's Board of Supervisors should insure that procedures are in place, and are followed, to implement the Recommendations of this Report in connection with any future purchases and/or installations of new computer or software systems made by the County.

R1 through R5:

El Dorado County Board of Supervisors

**PLANNING &
ENVIRONMENT**

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PLANNING AND ENVIRONMENT COMMITTEE

Environmental Management Department

Reason for the Report

The Planning and Environment Committee ("Committee") of the 2000/2001 El Dorado County Grand Jury, in light of various news reports concerning toxic spills elsewhere, elected to inquire into how the County handles spills of hazardous materials, and into the progress being made by the County to conform to the requirements of the California Integrated Waste Management Act.

Scope of Investigation

The Committee:

- Interviewed the Director of the County's Environmental Management Department ("Director") on two occasions; and
- Reviewed various documents provided to it by the Director.

Findings

- F1. The County's Environmental Management Department ("Environmental Management" handles approximately 30 to 50 hazardous materials incidents a year, most of which involve fuel spills from motor vehicle accidents. Small spills are dealt with by County personnel, after contact from the California Department of Transportation ("CalTrans") where the accidents have occurred on Highway 50.
- F2. County personnel have pagers and are available to respond to hazardous waste emergencies on a twenty-four (24) hour per day basis.
- F3. In the event of a large spill, the California Office of Emergency Services ("OES") is contacted and apprised of the nature of the spill. OES then contacts the appropriate agencies to dispatch personnel to assist in the response.
- F4. Environmental Management also acts in coordination with the County Sheriff, pursuant to a Memorandum of Understanding, in connection with the identification and cleanup of hazardous materials from approximately ten (10) to thirty (30) drug labs in the County.
- F5. Reimbursement from the Federal Emergency Management Agency is available for County responses.

- F6. California state law requires counties to have reduced solid waste by 50% by 2000, or face fines of up to \$10,000 per day. Counties that were, in the State's view, making appropriate progress toward achieving this goal were given an extension to 2003 to achieve the 50% reduction.
- F7. El Dorado County received the extension.
- F8. The County, thus far, has reduced solid waste by approximately 40%.
- F9. Solid waste disposal services in El Dorado County are provided primarily by two companies, and secondarily by various other sources. Specifically:
- Waste Management, Inc. ("WMI"), a publicly held corporation whose stock is listed on the New York Stock Exchange, and its subsidiary El Dorado Disposal, serves the City of Placerville and the western portion of the County along the Highway 50 corridor from Pollock Pines to El Dorado Hills.
 - South Tahoe Refuse Company, a privately held company, and its two divisions, Sierra Disposal Services and American River Disposal Service, serve the unincorporated portion of the South Lake Tahoe Basin (including Meyers, Christmas Valley and Hope Valley), the High Mountain Country (including Pacific House, Crystal Basin, Kyburz, Strawberry and Echo Summit), and the northern portion of the County (including Coloma, Pilot Hill, Cool, Georgetown, Garden Valley, Greenwood and Auburn Lake Trails).
 - There are two small service areas within the County. The unincorporated area of the West Lake Tahoe Basin (including Meeks Bay and Tahoma) is served by Tahoe-Truckee Sierra Disposal, Inc. The south portion of the County (including Somerset, Grizzly Flats and Mt. Aukum) is served by Amador Disposal, Inc.
 - A very sparsely populated area in the southeast portion of the County is unassigned for service.
- F10. The City of Placerville and the El Dorado Hills Community Services District administer their own franchise agreements with their service providers. The remainder of the waste disposal service agreements within the County are administered by the County itself.
- F11. The European Union has adopted a law forbidding landfills by 2005.
- F12. The Director of Environmental Management researched what has been done by companies in Europe to provide technology to compensate for the elimination of landfills.
- F13. The Director ascertained that Herof, a German company, has provided equipment for many European cities. By use of the technology provided by such equipment, the moisture content of total waste is removed, reducing the total waste volume by approximately 30%. The equipment also separates ferrous and non-ferrous metals,

and separates different colors of glass by the use of an optical scanner. The remainder of the waste is baled and burned in co-generation plants to produce electricity.

- F14. The Director is encouraging both WMI and South Tahoe Refuse Company to obtain and use within the County the technology presently being used in Europe.
- F15. The Director is of the belief that South Tahoe Refuse Company could have that technology online within a year, because the Company already has land and a building to house the required equipment. The Director is also of the belief that the use of such technology by WMI could become operational within two years.

Recommendations

- R1. The Director should continue to urge the companies serving the County to acquire appropriate technology for the disposition of solid waste, so that the County conforms to state law and avoids potential penalties.
- R2. The Director should continue to research methods of disposition of the baled remainder and residue of solid waste.

Responses Required for Findings

F1 through F15 El Dorado County Board of Supervisors

Responses Required for Recommendations

R1 and R2 El Dorado County Board of Supervisors

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**PUBLIC
BUILDINGS**

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Public Buildings and Properties Committee

Working Conditions in Building 300

Citizen Complaint #00/01-C-023

Reason for Report

The Grand Jury investigated a citizen's complaint that the working conditions in the Sheriff's Department, Building 300 were unsafe and unhealthy.

Scope of Investigation

The Public Buildings and Properties Committee of the Grand Jury:

- Visited and inspected Building 300;
- Interviewed the Undersheriff;
- Interviewed the Sheriff's Department Manager of Administration and Finance; and
- Interviewed the Sheriff's Department personnel.

Findings

- F1. Building 300 does not have adequate space for the number of personnel assigned to the building.
- F2. Crowding of desks and file cabinets in Building 300 results in very poor working conditions including improper lighting and ergonomic problems.
- F3. Evidence storage areas are located in the old jail area of Building 300. Evidence stored in these areas includes both hazardous and biological materials. The inside storage areas do not have adequate ventilation or proper refrigeration facilities.
- F4. General housekeeping in the evidence storage area was lacking.
- F5. Of the three air-conditioning or air handling units in use at Building 300, only one was in good working condition. The other two are very old. Repair parts are hard to procure, and in some cases must be manufactured. This leads to long delays in making repairs.
- F6. Some evidence is stored in an uncovered outdoor area. This can lead to the evidence being degraded.
- F7. A portion of the old jail area of Building 300 is being used as an exercise room for Sheriff's Department personnel. This area has numerous problems, which include:

- Most of the ceiling tiles are missing. The remaining ceiling tiles are loose and falling out.
 - There is frayed and temporary electrical wiring.
 - Ventilation is inadequate.
 - Floor tiles are missing and/or deteriorated.
- F8. The Officer's dressing and shower area is too small for the number of personnel using it.
- F9. Housekeeping in the dressing and shower area was inadequate.
- F10. Numerous violations were noted on a fire safety inspection performed by the Fire Marshal during March 2000. As of April 2001, no re-inspection had been performed to verify corrective actions.

Recommendations

- R1. The Board of Supervisors (BOS) should provide adequate facilities to house personnel of the Sheriff's Department.
- R2. The Department of General Services should upgrade the ventilation and refrigeration systems of Building 300 to meet current health and safety standards.
- R3. The Sheriff's Department should see to it that good housekeeping practices are observed at all times.
- R4. The Department of General Services should upgrade two remaining air conditioning / air handling systems to current standards or replace them.
- R5. The Sheriff's Department should identify and obtain new storage areas to protect the integrity of stored evidence.
- R6. The Department of General Services should upgrade the exercise room in Building 300 to meet current health and safety standards.
- R7. The dressing room and shower area in Building 300 should be expanded to meet current needs.
- R8. It is recommended that the 2001/2002 Grand Jury re-inspect Bldg. 300.

Responses Required for Findings

F1 through F10 El Dorado County Sheriff & Board of Supervisors

Responses Required for Recommendations

R1 through R7 El Dorado County Sheriff & Board of Supervisors

Public Buildings and Properties

Animal Control Facilities

South Lake Tahoe

Reason for Report

The Grand Jury selected, as one of its general investigations, a follow up on the 1999/2000 Grand Jury Report on the Animal Control Facilities in South Lake Tahoe.

Scope of Investigation

The Public Buildings and Properties Committee of the Grand Jury:

- Reviewed the 1999/2000 Grand Jury report on the Animal Control Facility and response to findings and recommendations;
- Visited the South Lake Tahoe Animal Control Facility on 2/27/02;
- Interviewed Animal Control personnel;
- Inspected the facility's buildings and grounds; and
- Reviewed the status of actions taken on the 1999/2000 Grand Jury Findings and Recommendations.

Findings

F1. The office area, kennels and cat rooms were clean, neat, and well maintained.

F2. The following findings from last years Grand Jury still exist:

- The sloping roof in the kennel area is so low that it causes employees to work in a stooped position;
- The kennel gates contact the ceiling, restricting the gate openings to approximately 45 degrees;
- Fluorescent lights are suspended from low ceilings creating a potential for head injuries;
- There was a broken window in the kennel area;
- The roof over the euthanasia room is badly deteriorated;
- Water, sink, and floor drains are not provided in the euthanasia room;
- Asphalt in the animal exercise area is badly deteriorated and breaking up;
- Barbed wire is broken and hanging on the fence around the exercise area;
- There are no provisions to control runoff from the slope behind the building. This causes occasional flooding of some interior areas of the building;
- The asphalt driveway and parking area used by department vehicles are steep and hazardous to use during snow and ice conditions. Employees have sustained

injuries from falls in these areas, and vehicles have slid down the slope while parked;

- There is no access for the public to enter the facility, other than walking up the driveway;
- There are no provisions for handicapped entry;
- The facility is not enclosed by a security fence.

Recommendations

- R1. The response to the 1999/2000 Grand Jury Report indicated that funding to correct the findings identified would be included in the County budget for 2001/2002. The Grand Jury recommends that the Board of Supervisors insure that this funding is included in the 2001/2002 budget.

Responses Required for Findings

- F2 El Dorado County Board of Supervisors

Responses Required for Recommendations

- R1 El Dorado County Board of Supervisors

Public Buildings and Properties Committee

Basement Flooding at District Attorney's Office

Reason for Report

The Public Building and Properties Committee, in the course of other investigations, became aware that the basement of the District Attorney's office was subject to flooding.

Scope of Investigation

Members of the Committee:

- Interviewed persons working in the District Attorney's office;
- Interviewed personnel of the General Services Department; and
- Visited the facility.

Findings

- F1. An outfall pipe from the building stairwell that drains into the creek behind the building becomes clogged with debris during high water levels in the creek.
- F2. When the outfall pipe becomes clogged, water backs up in the stairwell resulting in basement flooding.
- F3. Cleaning up the facility after flooding episodes is time consuming and costly.

Recommendations

- R1. The General Services Department should redesign and revise the drain system to prevent water backup in the stairwell and flooding in the basement of the facility.

Responses Required for Findings

F1 through F3 El Dorado County Board of Supervisors

Responses Required for Recommendations

R1 El Dorado County Board of Supervisors

Public Buildings and Properties Committee

Department of Transportation

Maintenance

Reason for Report

The Grand Jury selected the Department of Transportation (DOT) Maintenance Section as one of its general investigations for 2000/2001.

Scope of Investigation

The Public Buildings and Properties Committee of the Grand Jury:

- Visited the Placerville and South Lake Tahoe maintenance and engineering facilities;
- Interviewed the Maintenance Section personnel;
- Inspected the buildings, grounds, and maintenance equipment;
- Reviewed the County's Road Maintenance Budget;
- Reviewed road maintenance budget.

Findings

- F1. No evidence of improper or wasteful expenditure of road maintenance funds was found.
- F2. Although the 2001/2002 Road Maintenance Budget has increased from last year, the new amount is still inadequate to prevent further road deterioration.
- F3. The DOT engineering staff at South Lake Tahoe lacks adequate space to efficiently perform all of the duties required at this site. This is due largely to the added workload generated by work on the Lake Tahoe Clarification Project.

Recommendations

- R1. The County should develop additional sources of funding for road maintenance to prevent further deterioration of the county road system and allow work to start on repairing past deterioration.
- R2. The County should act in a timely manner to procure adequate facilities for the DOT engineering staff at South Lake Tahoe.

Responses Required for Findings

F1 through F3 El Dorado County Board of Supervisors

Responses Required for Recommendations

R1 through R2 El Dorado County Board of Supervisors

Public Buildings and Properties Committee

Use of Laminated Beams in Exterior Construction

Reason for Report

The Grand Jury investigated the use of laminated beams in the exterior construction of some county buildings. This investigation was initiated because of the obvious deterioration and delamination of some of those beams.

Scope of Investigation

The Public Buildings and Properties Committee of the Grand Jury:

- Examined the condition of laminated beams used in exterior construction on several county buildings; and
- Contacted the American Plywood Association (APA) for recommendations as to the use of laminated beams and repair procedures.

Findings

- F1. Laminated beams used in the exterior construction of some county buildings are delaminated and deteriorating.
- F2. APA recommends that laminated beams not be used in exterior construction.
- F3. Repair procedures are available for laminated beams that have delaminated. If done properly, these repairs can protect beams from further delamination and deterioration.

Recommendations

- R1. The Department of General Services should repair, or cause to have repaired, the laminated beams that are currently deteriorated.
- R2. The Department of General Services should take appropriate action to protect those laminated beams used in exterior construction that have not yet started to delaminate.
- R3. Laminated beams should not be used on the exterior of structures in future County construction projects.

Responses Required for Findings

F1 through F3 El Dorado County Board of Supervisors

Responses Required for Recommendations

R1 through R3 El Dorado County Board of Supervisors

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**SOUTH
LAKE TAHOE**

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South Lake Tahoe Committee

Policy and Procedures for Counter Reports

Citizen Complaint # 00/01-C-005

Reason for Report

This investigation is in response to a citizen complaint about the inadequacy of counter service at the South Lake Tahoe Police Department (SLTPD).

Scope of Investigation

The South Lake Tahoe Committee:

- Interviewed the complainant;
- Interviewed the South Lake Tahoe Chief of Police;
- Reviewed the SLTPD Manual. This is commonly referred to as the Policy and Procedures Manual;
- Reviewed SLTPD policies and procedures relating to the taking of counter reports; and
- Reviewed a written response provided to the Committee by the Police Chief.

Findings

- F1. Counter reports are complaint reports taken by a law enforcement agency at its facility.
- F2. A citizen requested that a child endangerment report be taken, during regular business hours, at the counter of the SLTPD.
- F3. The individual behind the counter stated that no officer was available to take the report and requested that the citizen go home and wait for an officer on patrol to come by and take the report.
- F4. Due to possible neighbor conflicts, the citizen did not want a police patrol car parked in front of their home.
- F5. The citizen asked to speak to the Watch Commander but was advised that no supervisor was available.
- F6. The SLTPD has limited hours of counter service available for the public to file police reports or conduct other business. The hours are 8:00 a.m. to noon and 1:00 p.m. to 4:00 p.m. Monday through Friday. The front doors of the police station are locked at

all other times. An intercom is available for the public to contact police staff at other times if needed.

F7. Section 4.1.2, "Desk Complaint", of the SLTPD manual states:

"Every 'call for service' received by the Department will be recorded on a numbered Complaint Dispatch Card (36 SLTPD) and shall represent, at a minimum, the Department response to that 'call for service'. The person receiving the call shall record on the complaint card the caller's name, address, date and time, type of incident, and other available, relevant information."

- Dispatch shall assure the call is appropriately numbered and assigned for action.
- Upon recording the disposition of the call on the complaint card, the dispatcher shall enter the appropriate computer data.
- The "Desk Complaint" section of the SLTPD Manual does not address procedures for filing a report or complaint from the public at the Police Station.

Recommendations

- R1. The SLTPD Manual should include a counter report policy/procedure.
- R2. The SLTPD should provide qualified personnel, during regular business hours, who are able to assist the public with police reports.
- R3. A sign should be placed, in a readily viewable area at the Police Department, to inform the public that if counter reports cannot be taken immediately, the individual can call for an appointment to have the report taken at a later time.

Responses Required for Findings

F1 through F7 South Lake Tahoe City Council

Responses Required for Recommendations

R1 through R3 South Lake Tahoe City Council

South Lake Tahoe Committee

Disabled Parking Citations Issuance by Private Security Personnel

Investigation #00/01-I-002

Reason for the Report

The 2000/2001 Grand Jury received a citizen's complaint about the legality of citations issued by a private security agency. The citations in question were issued on a City of South Lake Tahoe ("City") Police Department citation form for violations of the California Vehicle Code ("CVC") Section 22507.8 occurring within the jurisdictional boundaries of the City.

Scope of the Investigation

The South Lake Tahoe Committee interviewed:

- The City Attorney;
- The City Attorney's Legal Coordinator;
- The City Manager; and
- The City Chief of Police.

The Committee also reviewed the following:

- Portions of the CVC;
- City Code-Section 2-24;
- The contract between the City and High Sierra Patrol, Inc. ("HSP") dated "12 May 2000";
- Memorandums written on the letterhead of the City outlining the position of the Office of the City Attorney on this issue; and
- An independent legal review of this issue.

Findings

- F1. Employees of HSP issued citations for violations of CVC Section 22507.8 on private property.
- F2. The citations were written on City Police Department parking violation forms.
- F3. CVC statutory requirements for marking and sign posting of Disabled Parking spaces were not uniformly maintained on private property within the City.

- F4. Some citations were issued for violations of CVC Section 22507.8 where the statutory requirements for charging such violations did not exist.
- F5. Training designated for the employees of HSP did not cover the statutory requirements for the marking and posting of designated disabled or handicapped parking spaces.
- F6. A person receiving one of these citations would reasonably believe that the citation had been issued by a police officer, for the following reasons:
- The bottom of the citation form reads: "South Lake Tahoe Police Department";
 - The name of the person issuing the citation is preceded by the word "officer"; and
 - The inclusion of an ID number after the name of the issuing "officer" is commonly understood to be a badge number.
- F7. The City provided the Grand Jury with *all* of the Laws, Ordinances, City Codes, and Contracts that the City believed to constitute the legal foundation for its authorization to HSP to issue citations generally, and Notices of Violations of CVC Section 22507.8 in particular.
- F8. The Grand Jury requested statistical data regarding the citations issued for CVC Section 22507.8 and the training records of HSP required to be maintained by HSP and provided to the City upon request, as a condition of the terms of the Contract between the City and HSP. The material provided in response to the Grand Jury's request was incomplete.
- F9. The City's position is based upon its interpretation of City Code Section 2-24. Section 2-24, sets forth the powers and duties of the City Manager and states in part:... "he shall have the following powers and duties: A. ...To enforce all laws and ordinances *of the city*..." (Emphasis added) It is the position of the City that the specific language contained in Section 2-24 allows the City Manager to delegate the power and duty to issue handicapped parking citations to private security patrol officers. Presently, High Sierra Patrol issues citations pursuant to this section.
- F10. CVC Section 22507.8 is a state law, not a law or ordinance of the city.
- F11. CVC Section 21 states in part: "...no local authority shall *enact or enforce* any ordinance on the matters covered by this code *unless expressly authorized* herein." (Emphasis added)
- F12. City Code Section 2-24 grants the City Manager the power to "enforce all laws and ordinances of the city." It does not, however, give the City Manager peace officer status, nor does it empower the City Manager to enforce violations of state law, such as violations of the Vehicle Code in general, or Section 22507.8 in particular.

- F13. Section 40200.5(a) of the CVC *expressly authorizes* the City to contract with a private entity to *process* notices of parking violations. The CVC does not *expressly authorize* any local authority to contract with a private entity to *enforce* parking or any other violations of the code. In light of CVC Sections 21 and 40200.5(a), the Grand Jury believes that had the California Legislature intended to authorize local authorities to contract with private companies for the *enforcement* of parking and/or other violations of the Vehicle Code, it would have written statutory language, similar to CVC Section 40200.5(a), expressly authorizing local authorities to do so.
- F14. It is the position of the City that on June 7, 1994, the City Council authorized private security patrol officers who complete a basic training course through the Police Department to issue parking citations for violations of the California Vehicle Code Section 22507.8. This position is erroneous. The Minutes for the meeting in question reflect the Item (authority for Private Security Patrol Officers to issue Handicap Parking Citations) was "received and filed." An action to "receive and file," in common parlance, is neither an approval nor a disapproval. The Minutes do not indicate that any affirmative action was taken by the City Council to authorize private security patrols to issue disabled parking citations.
- F15. The City entered into an Agreement with HSP in a contract entitled City of South Lake Tahoe Agreement for Services Park Patrol Services. (sic)
- F16. Pertinent provisions of the Agreement include the following:
- Section 1. HSP "shall perform the services described in Exhibit A;"
 - Section 5. "At any time during the term of this agreement, City may request that HIGH SIERRA PATROL perform Extra Work. ... HIGH SIERRA PATROL shall not perform ... Extra Work without written authorization from CITY;" (sic)
 - Section 17. "This agreement constitutes the complete and exclusive statement of Agreement between CITY and HIGH SIERRRA PATROL;" (sic)
 - Section 18. "This agreement may be modified or amended only by a written document...;"
 - Exhibit A directs HSP to patrol seven (7) designated areas owned or controlled by the City within its jurisdiction. HSP duties include "informing the users ... of all City Ordinances [and] Issue citation(s) as the situations warrant it." (sic)
- F17. There is nothing in the May 2000 contract that either authorizes or obligates HSP to issue notices of violation for illegal parking generally, or illegal parking in disabled parking spaces in particular.
- F18. Notwithstanding the fact that the CVC does not expressly authorize the City to contract with a private entity for the enforcement of Section 22507.8, the contract between the City and HSP is insufficient on its face to authorize HSP to issue citations for violations of the CVC on private property within the City's jurisdiction.

- The Grand Jury believes that the procedures used by the City to authorize HSP enforcement of CVC Section 22507.8 are legally unauthorized for three separate reasons:
 - a. City Code 2-14 does not empower the City Manager to enforce State laws;
 - b. The CVC does not expressly authorize the City to contract with a private entity to enforce 22507.8; and
 - c. The contract between the City and HSP does not authorize HSP to issue notices of violation for section 22507.8 of the CVC.

Recommendations

- R1. The City of South Lake Tahoe should immediately cease using HSP to enforce violations the California Vehicle Code including Section 22507.8.
- R2. The City should continue to use police officers to enforce State laws and, if it deems necessary, *employ its own* personnel for the specific purpose of Parking Control Enforcement as expressly provided by the California Vehicle Code.

Responses Required for Findings

F1 through F18 City Council of the City of South Lake Tahoe

Responses Required for Recommendations

R1 and R2 City Council of the City of South Lake Tahoe

**SPECIAL
DISTRICTS**

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Special Districts Committee
Planning & Environment Committee

El Dorado County Water Agency

Reason for the Report

Members of the Special Districts Committee and the Planning & Environment Committee of the 2000/2001 Grand Jury separately and independently became concerned about the water and power supplies available to residents of El Dorado County. They decided, in light of that shared concern, to join together in investigating whether potential growth or increases in per capita usage within the County were likely to outstrip the water and power supplies necessary to service those needs, and if so, what if anything could be done about it.

Scope of Investigation

These Committees interviewed:

- The current General Manager of the El Dorado County Water Agency ("Agency");
- The present and past General Managers of the El Dorado Irrigation District ("EID");
- All of the members of the 1999/2000 Board of Supervisors;
- A member of El Dorado Citizens for Water; and
- A private attorney with extensive experience in representing water and power clients.

Additionally, these Committees reviewed:

- The El Dorado County Water Agency Act;
- The Placer County Water Agency Act; and
- Senate Bill 428, 2001 Legislative Term, California State Senate.

Findings

- F1. The El Dorado County Water Agency was created and operates pursuant to Chapter 2139 of the 1959 Statutes of California, as amended, known as the El Dorado County Water Agency Act ("Act"). The Agency's governing authority appears at Chapter 96 of the Appendix to the California Water Code. All further section references in these findings are to provisions contained in the Appendices to the Water Code.

- F2. The Agency was created because the California Legislature found, in 1959, that "water problems in the county require county-wide water conservation, flood control and development of water resources," and that the then existing "county water districts, municipalities, and water conservation districts" were "unable alone to economically develop an adequate water supply and control the floods of the county." The Legislature further found that it was "necessary to have a political entity coextensive with the geographical limits of the entire county," that conditions within the County were "peculiar to it," and that the Act was "necessary for the conservation, development, control and use of said water for the public good and for the protection of life and property" within the County. (Section 96-103.)
- F3. The territorial jurisdiction of the Agency consists of "all the territory lying within the exterior boundaries of the County of El Dorado." (Section 96-2.)
- F4. The Agency has the authority to acquire real and personal property, both by exercise of the power of eminent domain and by grant, purchase, gift, devise and lease. (Sections 96-8 and 96-9.) The Agency has exercised this power only sparingly, and in those instances in which it has exercised the power, it has subsequently transferred ownership of the property thus acquired to water purveyors within the County rather than retaining it.
- F5. The Agency has the power, except as otherwise expressly limited by the Act, "to do any and every lawful act necessary in order that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants" within the Agency's territory, "including, but not limited to, irrigation, domestic, fire protection, municipal, commercial, industrial, recreational, and all other beneficial uses and purposes." (Section 96-11.) The Agency has not exercised this power aggressively.
- F6. The Agency presently has the following statutory powers, among others:
- a. "[T]o construct, operate and maintain works to develop hydroelectric energy as a means of assisting in financing the construction, operation and maintenance of its projects for the control, conservation, diversion and transmission of water," and "to enter into contracts for the sale of such energy ... at wholesale rates to any public agency or private entity engaged in the sale or use of electric energy." (Section 96-12.) "Incidental to the construction and operation of the works of the agency, the agency shall have the power to contract for the sale of the right to use falling water for power purposes with any public or private entity." (Section 96-22.);
 - b. "[T]o control the flood and storm waters of the agency" and "to conserve such waters for beneficial and useful purposes" (Section 96-13.);
 - c. "[T]o store water in surface or underground reservoirs;" "to conserve and reclaim water;" "to appropriate and acquire water and water rights, and import water into

the Agency;" to engage in any "action or proceeding involving or affecting the ownership or use of waters and water rights" in which the Agency has an interest; "to prevent interference with or diminution of, or to declare, rights in the natural flow of any stream or surface or subterranean supply of waters;" "to prevent unlawful exportation of water;" and "to prevent contamination [and] pollution" of waters (Section 96-14.);

- d. "[T]o construct, purchase, lease, or otherwise acquire works and ... water and water rights, useful or necessary to make use of water for any purposes authorized" by the Act (Section 96-15), including but not limited to "pipes, pipelines, flumes, [and] tunnels and other conduits, including facilities for the transmission of electric energy to the works of the agency" (Section 96-18.);
 - e. "[T]o operate, repair, improve, maintain, renew, replace and extend all works and property of the agency" (Section 96-16.);
 - f. To "enter into contracts with any member unit" of the Agency as defined in the Act (Section 96-24.);
 - g. "[T]o cooperate and contract with the United States ... for the purposes of construction of works, ... or for the acquisition, purchase, extension, operation and maintenance of such works, whether for irrigation, drainage, or flood control, ... or for a water supply for any purposes" (Section 96-30.); and
 - h. To hold legal title to property (Section 96-42.).
- F7. The Agency has failed, either totally or at least substantially, to exercise the powers set forth in subsections "a" through "e" of the preceding Finding. It has, instead, deferred to water purveyors within the County for primary activity in those areas.
- F8. The Agency has the duty, among others, "to equitably apportion the benefits of the agency to the lands within the [various] zones" located within the Agency. (Section 96-46(a)). The Agency has delegated the majority portion of that authority to EID. EID, however, may in the future have significant potential disputes with the Georgetown-Divide Public Utilities District concerning the diversion and allocation of water from the South Fork of the American River at Folsom Lake. Those potential disputes may ultimately result in a conflict of interest on the part of EID, between its inter-district water allocation role and its role as a water supplier to its own customers.
- F9. At the present time, the Board of Supervisors of the County ("BOS") is, ex officio, the Board of Directors of the Agency ("Board"). Each member of the BOS serves as a member of the Board without additional compensation, except for expense reimbursement. (Section 96-33.) This Board composition is counter-productive to the long-term interests of water and power development within the County, because the normal planning focus of BOS members is relatively short-term and is diluted by

competing planning interests unrelated to the development of water and power, whereas the appropriate and required planning focus of Agency Board members must necessarily be long-term in nature, i.e., 20 to 40 years or more in the future.

- F10. By contrast, and by way of example, the composition of the Board of Directors of the Placer County Water Agency, which is authorized in Section 81-7 et seq. of the Appendix to the California Water Code, is significantly more flexible, in that the original directors, members of the Board of Supervisors *ex officio*, have been replaced by directors who are elected from the five supervisorial districts within Placer County. (See Section 81-7.1.) The Placer County Water Agency has the reputation of being an efficiently organized, managed and operating entity. Other water and/or power suppliers which have similar reputations for efficiency include the Turlock Irrigation District, the Modesto Irrigation District, the Nevada Irrigation District, the Northern California Power Agency, the M-S-R Power Authority, and the Sacramento Municipal Utility District.
- F11. Senator Rico Oller has introduced proposed legislation, SB 428, which would amend Section 96-33. In its form as of April 11, 2001, SB 428 would revise the composition of the Board of Directors of the Agency by providing for a five-member Board, three of whom would be members of the Board of Supervisors, with specific consideration being given to the Supervisor representing a district that includes the largest area in the county not served by a water district. The other two Agency directors would be appointed by the water districts within the County, with one director being from either the South Lake Tahoe Public Utility District or the Tahoe City Public Utility District, and the other being from either EID, the Grizzly Flats Community Services District or the Georgetown Divide Public Utility District. EID, however, would have a representative filling this position on at least an every other term basis. The BGS has adopted a resolution supporting this proposed legislation.
- F12. The Grand Jury agrees in concept, and without taking a specific position on the details of Senator Oller's proposed legislation, with the principles that water purveyors, and unaffiliated members of the public to the extent reasonably possible, within the County should be represented on the Agency's Board of Directors.
- F13. The Agency does not presently have a current county-wide water plan. A draft plan was prepared in 1993, but that plan was never completed. Projections of demand have significantly changed since 1993. At the Agency's request, the BOS has authorized a request for proposals for the preparation of an updated county water plan, showing options for actions to meet projected demand through 2020, and projections of those estimates to 2050, but also requiring identification and consideration of environmental concerns along with economic and technical issues. The Grand Jury supports the preparation, and ultimate adoption, of such a Plan. Such a Plan need not necessarily envision any particular degree or extent of population growth within the County, if increases in water and/or power usage can reasonably be anticipated to occur for reasons other than growth.

- F14. The Court of Appeal, Third Appellate District, State of California, in County of Amador v. El Dorado County Water Agency, 76 Cal.App.4th 931, has held that the adoption of environmental documents pertaining to specific water development plans are impermissible unless and until a countywide general plan has been adopted. Accordingly, the absence of a formally adopted countywide general plan inhibits action on any county water plan, which may be appropriate for the benefit of the residents of the County. In the interim, water resources to which El Dorado County has, or may have, potential development rights may be lost to potential water users downstream from the County, or in the San Joaquin Valley, in Southern California, and elsewhere. For that reason, among others, it is necessary that a countywide general plan be adopted and put into place at the earliest possible opportunity.
- F15. The County's present water difficulties have resulted from a history of the BOS, sitting as the Agency's Board of Directors, having played politics with the issue, sacrificing water development needs to other, more immediate and politically beneficial, purposes. Plans for water development and power generation have been created and then, for various reasons, have failed to be implemented. As a result, significant opportunities for such development and generation have been lost and, with changing conditions, cannot now be reclaimed. Action is necessary at this time to ensure that similar opportunities, which may presently exist, are not lost by reason of inertia, conflict or other causes of delay.
- F16. In summary, the Grand Jury has concluded that the El Dorado County Water Agency, which has existing statutory authority to play a major role in the acquisition and development of water and power resources within the County, has not been exercising that authority to its maximum efficiency, but instead has been delegating that authority to individual water purveyors whose interests may (or may not) conflict.

Recommendations

- R1. The composition of the Board of Directors of the El Dorado County Water Agency should be changed, to include one or more representative(s) of water purveyors, and one or more representative(s) of the public who have more than minimal knowledge of water and power issues within the County. The BOS should support legislation to provide for such a change.
- R2. Members of the Board of the Agency should communicate with staff members and/or Board members of the Placer County Water Agency, the Turlock Irrigation District, the Modesto Irrigation District, the Nevada Irrigation District, the Northern California Power Agency, the M-S-R Power Authority, the Sacramento Municipal Utility District, and other efficiently operating water and power developers and suppliers. These communications should be undertaken for the purpose of learning how water and power supplies can be developed and operated in coordinated ways that are efficient and equitable but that also appropriately respect reasonable environmental considerations.

- R3. The budget of the Agency should be increased in order to enable the Agency to undertake a significantly greater exercise of its statutorily authorized powers.
- R4. The Agency should hire an Assistant General Manager at the earliest possible opportunity. In doing so, the Agency should look for a person with existing experience with water and power issues and who also can reasonably be expected to remain active with the Agency for a significant number of years in the future, with a possible goal of promoting that person to General Manager when the current General Manager retires.
- R5. The Agency should undertake studies directed toward the development of water storage facilities, to be filled during the winter and spring months when excess water is "spilled" into Folsom Lake without being beneficially used either in El Dorado County or elsewhere, for subsequent use during summer and fall months when usage demands for water are high.
- R6. The Agency should also undertake studies directed toward the development of hydroelectric power from water storage facilities. Those studies should include, but not be limited to, communication with the staff and/or Board of EID concerning the use and operation of Project 184.
- R7. In summary, the Grand Jury recommends that the Agency expand its activities to more fully exercise its statutory role.

Responses Required for Findings

- F1 through F16: El Dorado County Water Agency Board of Directors
 El Dorado County Board of Supervisors
 El Dorado Irrigation District Board of Directors
 Georgetown-Divide Public Utility District Board of Directors
 Grizzly Flat Public Utility District Board of Directors
 South Lake Tahoe Public Utility District Board of Directors
 Tahoe City Public Utility District Board of Directors

Responses Required for Recommendations

- R1 through R7: El Dorado County Water Agency Board of Directors
 El Dorado County Board of Supervisors
 El Dorado Irrigation District Board of Directors
 Georgetown-Divide Public Utility District Board of Directors
 Grizzly Flat Public Utility District Board of Directors
 South Lake Tahoe Public Utility District Board of Directors
 Tahoe City Public Utility District Board of Directors

Special Districts Committee

EL Dorado Irrigation District

Reason for the Report

In light of many news articles and citizens' complaints, the Special Districts Committee of the 2000/2001 Grand Jury elected to undertake a limited investigation and review of the operations of the El Dorado Irrigation District (District).

Scope of Investigation

Because a full and complete investigation would have been so massive as to be beyond the capability of the Grand Jury with the time and resources available to it, the Grand Jury's investigation did not look at all aspects and operations of the District.

Members of the Special Districts Committee did, however:

- Review an independent Management Audit commissioned by the District and undertaken and completed by Barrington-Wellesley Group, Inc.;
- Attend meetings of the Board of Directors ("Board") of the District; and
- Review various newspaper articles pertaining to District meetings and activities.

Members of the Committee also heard testimony from:

- Two former General Managers of the District;
- The District's Interim, now current, General Manager;
- Employees of the District; and
- Other individuals interested and knowledgeable with regard to (i) issues involving water and power within and affecting El Dorado County, and (ii) the operation of the District.

Findings

- F1. The District serves the majority of the populated areas of the Western Slope of the County. It provides many different inter-related services, including supplying municipal and industrial water, irrigation water, wastewater treatment, and reclamation, as well as hydroelectric operations.
- F2. Management of the District is under the control of a Board of Directors and a General Manager.

- F3. Board members' negative public comments, quoted in the press, and their unprofessional conduct during public meetings, are negatively affecting the overall morale of the District's employees and are undermining the public's confidence in the activities of the District.
- F4. There is a lack of accountability at appropriate management levels.
- F5. There is no established plan for replacement/repair/maintenance of the District's water delivery systems.
- F6. The Board engages in micro-management of the activities of the District, and does not restrict itself to its proper and appropriate function, the setting of District policy.
- F7. The Management Audit found the same problems as the Special Districts Committee — only in much greater detail.

Recommendations

- R1. The District should provide for the involvement of its managerial, supervisory and staff level employees in its decision-making process relating to the running of its operations. The Board should refrain from micro-managing the District, and should restrict itself to the setting of District policy and oversight of the performance of District managerial employees.
- R2. The Board members should conduct themselves in a more professional manner.
- R3. The Board should budget and implement a planned maintenance and replacement schedule for the District's infrastructure.
- R4. The Board should implement and enforce objective performance standards and an employee evaluation and accountability procedure.
- R5. The District should explore the possibility of entering into a joint venture with the El Dorado County Water Agency for the operation of the Project 184 power facilities which the District is acquiring from Pacific Gas & Electric Company.
- R6. The 2001/2002 Grand Jury should revisit the activities and operations of the District.

Responses Required for Findings

F3 through F6 Board of Directors, El Dorado Irrigation District

Responses Required for Recommendations

R1 through R5 Board of Directors, El Dorado Irrigation District

Special Districts Committee
Rescue Fire Protection District Inquiry

Citizen's Complaint #C-00/01-017

Reason for the Report

The Grand Jury received an anonymous citizen complaint alleging various types of misconduct on the part of a high-ranking official ("Official") of the Rescue Fire Protection District ("District"). Although the complaint was anonymous, the allegations were of sufficient severity that the Grand Jury decided to report the allegations to the Board of Directors ("Board") of the District for its investigation and any appropriate action, and to inquire into the manner in which the District conducted its investigation and action.

Scope of the Investigation

The Special Districts Committee of the Grand Jury:

- Reported the allegations against the Official to the Chairman of the Board ("Chairman") in writing;
- Met with the Chairman and discussed the allegations;
- Attended a Closed Session of the Board, at which the allegations against the Official were discussed;
- Requested, received and reviewed a comprehensive report from the Chairman detailing the nature and scope of the investigation conducted by the Board with regard to the allegations; and
- Received and reviewed a report setting forth the Board's findings and actions taken as a result of its investigation.

Findings

- F1. An anonymous complaint, alleging three separate types of misconduct on the part of a high-ranking Official of the District, was received by the Grand Jury. That complaint was referred by the Grand Jury to the District's Board for investigation and, if appropriate, action.
- F2. The Board conducted an investigation of the allegations, and submitted a detailed report of that investigation to the Grand Jury.

- F3. The nature and conduct of that investigation was appropriate to the allegations, and the Board's report to the Grand Jury was well-reasoned and comprehensive.
- F4. The allegations against the Official appear to have been made in the context of :
- A history of an adversarial labor-management relationship between the District and its employees, and between the Official and other employees of the District; and
 - A prior disciplinary action initiated by the Official against another, subordinate, employee of the District.
- F5. There is evidence that some District employees were threatened and/or coerced by other District employees to support the allegations.
- F6. Although the complaint was made anonymously, and in confidence, to the Grand Jury, the Grand Jury's reference of the matter to the Board, and the Board's subsequent investigation, were "leaked" by unknown persons.
- F7. On the basis of an investigation that the Grand Jury finds to have been both comprehensive and appropriately conducted, the Board concluded that the Official was not culpable with regard to two of the allegations, but was culpable with regard to the third. The substance and contents of that third allegation, however, were significantly less important than the substance and contents of the first two allegations.
- F8. The Board appropriately counseled the Official as to the matter involved in the third allegation. The Official agreed to modify his conduct as to that matter, and he has done so. The Board concluded that no other administrative or disciplinary action was required. The Grand Jury finds that conclusion to have been appropriate.
- F9. As a result of the complaint and the Board's subsequent investigation:
- The Board has facilitated discussion groups and meetings with the District's employees to increase dialogue and understanding; and
 - The Official has initiated steps to increase the number of staff meetings to solicit employee input and feedback.

Recommendations

- R1. The District, the Board and the Official should continue to take actions, similar to those set forth in Finding F9, to improve communications, employee relations, professional conduct and mutual respect among the District's employees.

Responses Required for Findings

F1 through F9 Rescue Fire Protection District Board of Director

Responses Required for Recommendations

R1 Rescue Fire Protection District Board of Directors

APPENDIX A
(INSTRUCTIONS TO
RESPONDENTS)

Appendix A

Instructions to Respondents

As specified by the California Penal Code, the Final Report of this Grand Jury contains a series of reports on individual investigations and reviews conducted during the Grand Jury's term of office.

Each report of an individual investigation or review contains Findings and Recommendations made by this Grand Jury and names Respondent(s).

Section 933 (b) and (c) of the Penal Code specifies that each Respondent named in this Final Report must respond to the Presiding Judge of the Superior Court for each Finding and each Recommendation pertaining to matters under the Respondent's control.

Presiding Judge Suzanne M. Kingsbury of the El Dorado County Superior Court has directed this Grand Jury to inform each Respondent to forward a written response as specified in Sections 933 and 933.05 of the Penal Code to:

Hon. Jerald M. Lasarow
Supervising Grand Jury Judge
El Dorado County Superior Court
1354 Johnson Blvd.
South Lake Tahoe, Ca 96150

The written response of each named Respondent will be reprinted in a publication to the citizens of El Dorado County. Each Respondent must organize the written response as follows:

The [*Respondent's Official Title*] responds to the Final Report of the 2000-2001 El Dorado County Grand Jury as follows:

/List Title of Individual Report/

Finding # [*Retype Text of Finding as written in Final Report*]

Response: [*Review California Penal Code Section 933.05 (a) (1) and (2). Respondent must specify with one of three options - a) Respondent agrees with finding, b) Respondent disagrees wholly with finding, or c) Respondent disagrees partially with finding. If Respondent uses options b or c then the Respondent shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*]

Recommendation # [Retype Text of Recommendation as written in Final Report]

Response: *[Review California Penal Code Section 933.05 (b) (1) - (4). Respondent must specify with one of four options - a) recommendation has been implemented, b) recommendation has not been implemented but will be implementing noting a timeframe, c) recommendation requires further analysis or study noting a timeframe not to exceed 6 months from date Final Report was issued, d) recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefor.]*

Respondent must use the above formats for each separate finding and recommendation, which the Grand Jury's Final Report identifies to the Respondent.

The California Penal Code provides specific legal requirements on each Respondent named in the Grand Jury's Final Report. Applicable Penal Code Sections for responding are reprinted below for reference.

CALIFORNIA PENAL CODE SECTION 933 (b) and (c)

933 (b) No later than 90 days after the Grand Jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the Grand Jury has responsibility pursuant to Section 914.1 shall comment within sixty days to the Presiding Judge of the Superior Court, with an information copy sent to the Board of Supervisors, on the findings and recommendations pertaining to matters under the control of the county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the Presiding Judge of the Superior Court who impaneled the Grand Jury. A copy of all responses to the Grand Jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable Grand Jury Final Report by, and in the control of the currently impaneled Grand Jury, where it shall be maintained for a minimum of five years.

(c) As used in this section, "agency" includes a department.

CALIFORNIA PENAL CODE SECTION 933.05 (a), (b), (c)

933.05(a) For purposes of subdivision (b) of Section 933, as to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1)** The respondent agrees with the finding.
- (2)** The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each Grand Jury recommendation, the responding person or entity shall report on the following actions:

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

(c) However, if a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or Department Head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or Department Head shall address all aspects of the findings or recommendations affecting his or her agency or department.

APPENDIX B
(COMMENDATION TO
ELECTIONS
DEPARTMENT)

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El Dorado County Grand Jury
P.O. Box 472
Placerville, CA 95667

20 November 2000

Editor
Mountain Democrat
1360 Broadway
Placerville, CA 95667

Dear Sir,

While the nation is watching the national election process with some concern, it is appropriate for the citizens of El Dorado County to have the opportunity to appreciate the performance of our own local Elections Department.

Various members of this year's Grand Jury spent time working with the El Dorado County Elections Department. These efforts include an extensive test of the electronic ballot machinery, staffing precinct positions, and observation of the entire Election Day operation. All of us who participated were both enlightened and encouraged by our participation. The efficiency, dedication, and professionalism of the Elections Department's operations were impressive.

Director Michelle MacIntyre and her staff, both paid and volunteer, were commendable in their performance.

Sincerely,

Kenn Womack, Foreman
El Dorado County Grand Jury