BOARD OF SUPERVISORS
RESPONSE TO THE

2000 – 2001
GRAND JURY
FINAL REPORT

2000/01 EL DORADO COUNTY GRAND JURY REPORT

The following responses appear in the same order as presented in the Grand Jury Report. We have addressed all issues that are under the jurisdiction of the Board of Supervisors.

CITIZENS' COMPLAINTS

Case No.	Subject	Disposition	Comments	Date
00/01-C-001 *(Deferred)*	District Attorney	Criminal Justice	No Action Finding: *Remedies Available Outside Grand Jury System*	8/02/00
00/01-C-002 *(Deferred)*	Placerville Police	Criminal Justice	No Action Finding: *Resolved By Settlement*	8/02/00
00/01-C-003 *(Deferred)*	El Dorado Irrigation District	Special Districts	No Action Finding: *No Violation Occurred*	8/02/00
00/01-C-004 *(Deferred)*	El Dorado Irrigation District	Special Districts	No Action Finding: *No Violation Occurred*	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: In *Litigation*	8/02/00
00/01-C-007	El Dorado County Superior Court	Audit & Finance	No Action Finding: *Remedial Action Taken.*	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: *Remedy Available Outside Grand Jury System*	8/16/00
00/01-C-010	Department of Social Services	Health/Social Services	No Action Finding: *Civil Remedy Available Outside Grand Jury System*	8/30/00
00/01-C-011	Tahoe City Public Utility District	South Lake Tahoe	Deferred to Placer County Grand Jury: *District of Jurisdiction*	9/06/00
00/01-C-012	El Dorado County Planning Commission	Planning & Environment	No Action Finding: *Remedies Available Outside the Grand Jury System*	9/27/00
00/01-C-013	El Dorado Irrigation District	Special Districts	No Action Finding: *No Violation Occurred*	9/27/00
00/01-C-014	El Dorado Irrigation District Board	Special Districts	No Action Finding: *No Violation Occurred*	10/04/00

EL DORADO COUNTY GRAND JURY

CITIZENS COMPLAINTS

Case No.	Subject	Disposition	Comments	Date
00/01-C-015	Placerville Police Department	Criminal Justice	No Action Finding: *Court Settlement*	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: *Matter In Litigation*	11/08/00
00/01-C-019	El Dorado County Sheriff & District Attorney	Criminal Justice	No Action Finding: *Insufficient Evidence*	12/13/00
00/01-C-020	El Dorado Irrigation District Board	Special Districts	No Action Finding: *Remedies Available Outside Grand Jury*	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: *No Violation Occurred*	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: *No Violation Occurred*	01/03/01
00/01-C-025	El Dorado County Sheriff	Criminal Justice	No Action Finding: *No Violation Occurred*	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: *No Violation Occurred*	01/03/01
00/01-C-028	El Dorado County Sheriff	Criminal Justice	No Action Finding: *No Violation Occurred*	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	*Deferred to2001/2002 Grand Jury*	01/03/01

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

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.

Response to F1: The respondent agrees with the finding.

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".

Response to F2: The respondent disagrees wholly with the finding. Section 1006 of the El Dorado County Salary & Benefits Resolution for Unrepresented Employees does not contain the quote cited in the finding. What it does say is: "Departments *may* request information in order to aid in the determination of whether the sick leave use is legitimate. A department head *may* require a physician's statement or acceptable substitute from an employee who applies for sick leave (emphasis added)."

F3. Payroll records indicate that the then Undersheriff was paid for two hundred (200) hours of sick leave form January 28, 2000 to May 5, 2000.

Response to F3: The respondent agrees with the finding.

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.

Response to F4: The respondent agrees with the finding.

F5. The then Undersheriff was not sick during this period.

Response to F5: The respondent disagrees wholly with the finding. The Sheriff has no personal knowledge of the then Undersheriff's health during the period in question. The Sheriff will investigate the Grand Jury's finding pursuant to Section 1006 of the El Dorado County Salary & Benefits Resolution for Unrepresented Employees and if it is determined that the then Undersheriff was not ill, a demand for repayment of funds will be pursued.

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.

Response to F6: The respondent agrees with finding.

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

Response to F7: The respondent agrees with the finding.

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.

Response to Recommendation R1: The recommendation has not yet been implemented, but well be implemented in the future. The Salary and Benefit Resolution will be revised to provide that requests for extended use of sick leave will require a statement from the employee's physician. Specific language amending the Salary and Benefit Resolution will be proposed to the Board by January 2002.

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

Response to R2: The recommendation has been implemented. The Sheriff already enforces sick leave regulations uniformly. In this specific instance, the then Undersheriff sent a memo to the Sheriff dated August 3, 1999 announcing his retirement effective April 28, 2000 and requesting authorization to use accumulated vacation from January 31, 2000 through April 28, 2000. That request was approved. Subsequently, and unknown to the Sheriff, the then Undersheriff called the Sheriff's payroll section each pay period beginning on or about January 27, 2000 and issued verbal instructions as to how his time should be coded. On five separate occasions he verbally directed that he be shown as using 40 hours sick leave and 40 hours vacation. Upon learning from the Grand Jury report of this behavior, the Sheriff initiated action pursuant to Section 1006 of the El Dorado County Salary & Benefits Resolution for Unrepresented Employees to determine if that sick leave usage was illegitimate. If found to be, then a demand for repayment will be made.

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."

Response to F1: <u>The respondent agrees with the finding</u>. In addition, Section 1408(2) further states:

> "Notwithstanding (1) above, in an exceptional circumstance when a vacancy does not exist but an employee has been assigned to perform duties which exceed the scope of that employee's classification, and when determined and justified by the Chief Administrative Officer, in his sole discretion, an Unrepresented Management or Confidential employee will be entitled to pay for a higher classification in accordance with the other provisions of this Section 1408."

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…"

Response to F2: <u>The respondent agrees with the finding</u>.

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)

Response to F3: <u>The respondent agrees with the finding</u>.

F4. Resolution Section 1408(5) states: "Higher pay assignments shall not exceed six (6) months except through reauthorization."

Response to F4: <u>The respondent agrees with the finding</u>.

F5. During the effective period of the Resolution, the Sheriff placed seven (7) management employees in acting and/or overfill positions.

Response to F5: <u>The respondent disagrees partially with the finding</u>. Six management employees and one supervisory employee were designated acting during the time period under review.

F6. Several of those employees remained in acting or overfill positions for periods of time exceeding six months.

Response to F6: ***<u>The respondent agrees with the finding</u>***.

F7. The Department submitted no reauthorizations to Human Resources Department for the employees working in these positions.

Response to F7: The <u>respondent agrees with the finding</u>.

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.

Response to F8: ***<u>The respondent agrees with the finding</u>***.

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.)

Response to F9: Respondent disagrees partially with the finding. Respondent disagrees partially with the finding in "a" and "e". Respondent agrees that the payroll/personnel form alone is inadequate to assure compliance with the County's acting and/or overfill policies and procedures. Regarding the finding listed in "a", *m*ost department heads sign the payroll/personnel forms for their department. In some larger departments, the Department Head may delegate this task to a subordinate.

Respondent also disagrees partially with the statement in "e" that when an employee is no longer performing work at the higher class or that the authorization for a particular position no longer exists ". an employee . . . could continue to be paid at a higher compensation rate indefinitely. . ." Checks and balances exist in the system to preclude an employee indefinitely receiving compensation at a higher level when another employee formally fills the position.

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.

Response to F10: The respondent disagrees partially with the finding. Section 501 is correctly quoted as a stand alone statement. Respondent cannot comment on Grand Jury's belief.

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.

Response to F11: The respondent agrees with the finding.

F12. In May 2000, the regular Undersheriff retired. This action left the Department with one Undersheriff performing in an acting capacity.

Response to F12: The respondent agrees with the finding.

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.

Response to F13: The respondent agrees with the finding other than reference to "overpay" vs. "acting pay" under Section 1408 (2) of the Salary and Benefits Resolution.

F14. On October 1, 2000, the Sheriff appointed a second employee to the permanently authorized position of Undersheriff.

Response to F14: The respondent agrees with the finding.

F15. Upon the appointment of the regular Undersheriff in October 2000, the legal authorization for the acting Undersheriff's position ceased to exist.

Response to F15: The respondent disagrees wholly with the finding. Section 1408(2) of the Salary & Benefits Resolution for Unrepresented Employees provides that "in exceptional circumstance when a vacancy does not exist but an employee has been assigned to perform duties which exceed the scope of that employee's classification, and when determined and justified by the Chief Administrative Officer, in his sole discretion, an Unrepresented Management or Confidential employee will be entitled to pay for a higher classification in accordance with the other provisions of this Section 1408."

Section 1408(5) provides "Higher pay assignments shall not exceed six months except through reauthorization." Though desirable, 1408(5) does not require written reauthorization, nor does it specify who provides reauthorization. The CAO was aware of and verbally approved the continued acting status of an Undersheriff after six months.

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.

Response to F16: The respondent disagrees partially with the finding. Retirement benefits are provided by contract; a person's entitlement varies according to PER's formulas. Changes in pay do affect individuals' retirement entitlements.

The employee assigned the position of acting Undersheriff continued to be compensated at the rate of Undersheriff until February 23, 2001, not March 2001. The initiation of an investigation by the Grand Jury had nothing to do with the termination of that pay. The employee assigned the position of acting Undersheriff was to retire at the end of December 2000, ending the acting appointment. The employee changed his plans in order to take advantage of the enhancement to the County's retirement plan (3% at 55). The Sheriff should have terminated the acting appointment at the end of December, but agrees that he failed to do so. Staff brought that matter to his attention on February 14, 2001 and he immediately ordered acting pay to be terminated at the earliest possible date, which was February 23, 2001.

Whether the additional compensation will increase the employee's retirement benefits is pure speculation. Those benefits are based on the highest year's compensation and until the employee actually retires, there is no way to know whether the ten-pay period acting time will be included in that calculation or not.

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)]

Response to F17: The respondent disagrees partially with the finding. Two persons were acting in the capacity of Undersheriff, one through formal appointment and one through verbal approval by the CAO in the continued acting status pursuant to 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).

Response to F18: The respondent agrees with the finding that there appears to be a conflict in the language. However, as specific language generally supercedes general language under the rules of statutory construction, practice has provided that Section 503(c) supercedes in cases of an overfill and Section 1408(2) supercedes Section 501 in cases of designation in an acting capacity.

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.

Response to F19: <u>The respondent disagrees partially with the finding</u>. Respondent agrees there was no written authorization. However, the CAO advised the Director of Human Resources of the continued retention of the acting Undersheriff in such capacity. Respondent agrees there was no action by the Board, but none was required.

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

Response to F20: <u>The respondent agrees with the finding</u> based on the stated assumption that the employee no longer performs the work at that higher level.

Section 1408(5) provides "Higher pay assignments shall not exceed six months except through reauthorization. Though desirable, 1408(5) does not require written reauthorization, nor does it specify who provides reauthorization." The CAO was aware of and verbally approved the continued acting status of an Undersheriff after six months.

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.

Response to F21: <u>The respondent agrees with the finding</u>.

Recommendations

R1. *All* County Department Heads, including but not limited to the Sheriff, should follow the policies and procedures for the assignment of personnel as required by County Ordinances, Resolutions and Memorandums of Agreements.

Response to Recommendation R1: The recommendation has been implemented. Department heads know that they are subject to policies and procedures of the County. To clarify any past or potential future misunderstandings, the Director of Human Resources will within two (2) months notify all departments of the policies and procedures for allocation amendments, acting assignments, and overfills.

R2. The Board of Supervisors should revise the County's policies and procedures to require that all requests for, and/or authorizations of, the assignment of personnel to acting or overfill positions be made in writing over the signature of the appropriate official.

Response to Recommendation R2: The recommendation has not yet been implemented, but will be implemented in the future. The above-referenced notice to department heads (per R1) will include information included in this recommendation.

R3. The County personnel and payroll systems should be upgraded to include a default mechanism to flag situations such as those noted in F21 (a) and F21 (c) above.

Response to Recommendation R3: The recommendation has not been implemented, but will be implemented in the future. Human Resources will work with the Auditor to develop a system check to address this issue by January 30, 2002.

R4. The provision of "exceptional circumstance" authorized in Resolution Section 1408 (2) is unnecessary and should be eliminated because of existing Board of Supervisors authority to address exceptional circumstances.

Response to Recommendation R4: The recommendation will not be implemented because it is not warranted. The provision cited in Section 1408(2) has been utilized occasionally in past to address circumstances which are temporary and unique. The Board has delegated this authority to the CAO in order that he may exercise organizational flexibility in temporary and unusual circumstances.

Responses Required for Findings

F1 through F21	El Dorado County Board of Supervisors Director of the Department of Human Resources
F5 through F7, F11 through F17 & F19	El Dorado County Sheriff

Responses Required for Recommendations

R1 through R4	El Dorado County Board of Supervisors Director of the Department of Human Resources
R1	El Dorado County Sheriff

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.

Response to F4: <u>The respondent agrees with the finding</u>.

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 <u>Uniform Crime Charging Standards</u> 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. <u>Uniform Crime Charging Standards</u> 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 that (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 therefore 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 except 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.

Response to F1: The respondent disagrees partially with the finding. The trustee was transported to the Sheriff's home for the purpose of loading a table into a truck so that the table could be transported to the Sheriff's office where it was to be used as a conference table.

F2. The County was potentially exposed to liability due to this action.

Response to F2: The respondent disagrees partially with finding. Should injuries or illness occur during incarceration, trustees are covered by the County's jail medical program currently under contract to California Forensics Medical Group (CFMG). This activity therefore did not increase the County's exposure to medical liability. There is an exposure to the County's general liability whenever inmates are injured.

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.)

Response to F3: The respondent agrees with the finding.

Recommendations

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

Response to Recommendation R1: The recommendation has been implemented. The Sheriff has always followed the County Ordinances with regard to the performance of inmate labor. The use of a trustee to move furniture being loaned to the Sheriff's Office is a permissible use under the County Ordinance.

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 the1999 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.

Response to F1: ***The respondent disagrees partially with the finding*****.** Respondent agrees that in FY95-96, the larger (4) departments added recruitment and examination duties to their responsibilities. Respondent disagrees partially with the statement that this action was made at the request of the Director of Human Resources and disagrees that the decentralization was for all personnel actions. As a result of budget and staffing reductions mandated by the CAO in order to balance the budget, Human Resources staffing was reduced with the impact of the reduction identified in the proposed budget as follows:

"Reducing the Personnel Technician and Senior Office Assistant will result in reduced services to County departments and the public. Other than management level positions, the larger departments will need to add recruitment and examination duties to staff workloads. All departments will become responsible for orienting new employees".

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."

Response to F2: The respondent agrees with the finding.

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.

Response to F3: The respondent disagrees partially with the finding. Respondent agrees that one candidate did not meet the "time-in-grade" qualification at the time of the eligibility list being established. A longstanding past practice of the department (dating back at least 15 years) allowed candidates to compete if they would achieve the "time-in-grade" requirement during the life of the list; a candidate would only be promoted when she/he met the "time in grade" requirement. Due to retirements and staffing changes in the Sheriff's Department, a May 1997 letter changing the practice was never formally codified or implemented. This matter was submitted for arbitration pursuant to the negotiated Memorandum of Understanding and has since been resolved.

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.

Response to F4: The respondent agrees with the finding within the context of the response to F3.

F5. The minimum qualifications of applicants for promotion are not verified by the Sheriff's Department.

Response to F5: The respondent agrees with the finding. The Sheriff's Office relies upon the information provided by the applicant on the application form.

F6. The minimum qualifications of applicants for any position within the County are not verified by HRD.

Response to F6: The respondent disagrees partially with the finding. Human Resources staff reviews each and every application (approximately 3,500 per year) for each recruitment to determine if each applicant identifies education/experience which meets the minimum qualifications. Final verification of education/experience listed on the application is considered part of the final reference check conducted by employing departments after a conditional job offer is made.

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.

Response to F7: The respondent disagrees wholly with the finding. There are, at most, only 4 personnel files on any given employee within the Sheriff's Office. Each employee has a payroll file, a personnel file and a background file. Some employees may have an internal affairs investigation file as well. Where the Grand Jury defines the referenced files as "personnel files", some of these files are not traditionally defined as "personnel files" (e.g. background files and internal investigation files). Whether the filing system the Sheriff's Office uses complicates or simplifies the investigation and verification of personnel issues is a matter of judgement. The Sheriff's Office believes the filing system simplifies those activities.

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.

Response to F8: The respondent disagrees partially with the finding. The candidate who did not meet the minimum qualifications at the time of the final filing date was not certified for final selection interview nor promoted until after he met the "time-in-grade" requirement.

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.

Response to F9: The respondent disagrees partially with the finding. The applicability of a past practice that predated and postdated standard personnel policies and procedures complicated the facts surrounding this matter which went to

arbitration. The employee met the minimum qualifications at the time of promotion. If the employee had not met the minimum qualifications at the time of promotion, the respondent would agree with the finding. The effect of the past practice on morale varies depending on who is adversely affected. There is no suggestion of favoritism since the process was based on past practice.

Recommendations

R1. The Sheriff's Department should adhere to existing policies and procedures for promotional testing.

Response to Recommendation R1: The recommendation has been implemented. Human Resources has resumed the responsibilities of recruitment and testing for the Sheriff Department.

R2. The Sheriff's Department should institute a process for verification of minimum qualifications for all applicants for promotional exams.

Response to Recommendation R2: The recommendation requires further analysis. Human Resources will review applications to identify education and experience requirements as listed on the application. Determination of responsibility for verification will be analyzed, as detailed in response to R3, with a determination made by January 30, 2002.

R3. HRD should institute a process for verification of minimum qualifications for all positions of employment in El Dorado County.

Response to Recommendation R3: The recommendation requires further analysis. Verification of the accuracy of information regarding an applicant's prior education and experience can be achieved in a number of ways: 1) Human Resources staff can contact former employers and educational institutions; 2) applicants can be required to submit transcripts and/or letters of reference to verify information; or 3) departments can verify education and experience information as part of a background check on each candidate to whom the department makes a job offer.

Human Resources will contact all other counties to elicit information on their practices and will analyze the feasibility of each option. A determination will be made by January 30, 2002.

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.

Response to Recommendation R4: The recommendation will not be implemented because it is not warranted. The Sheriff's Office believes the number of personnel files being maintained is both manageable and required to comply with various statutes. Additionally, those files are already maintained according to prevailing industry standards and no change is warranted.

R5. HRD should be responsible and accountable for the administration and/or oversight of all personnel actions within El Dorado County.

Response to Recommendation R5: The recommendation has been implemented. Human Resources has general oversight of personnel actions, Department Heads or their designees have all powers and perform all the duties vested in them by Charter, Ordinance, and by general law, including a broad range of decision making related to appointment, evaluation, transfer, promotion, discipline, and dismissal subject to law, rules and policy.

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 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.

Response to F1: The respondent disagrees partially with finding. Correctional officers, deputies and civilian employees do wear different uniforms. The Sheriff's Office believes that difference eliminates confusion between sworn and unsworn personnel. Correctional officers are in the process of transitioning to a new uniform and during the transition period, a mix of old and new uniforms is being worn. That mix may appear unprofessional to some, but uniforms are expensive and as employees buy their uniforms they must be provided a reasonable amount of time to acquire new ones.

F2. The laundry and shower areas were clean.

Response to F2: The respondent agrees with the finding.

F3**.** The medical room was clean, organized, and well stocked. Licensed medical staff was on duty twenty-four hours a day.

Response to F3: The respondent agrees with the finding.

F4**.** Inmate personal property was properly handled.

Response to F4: The respondent agrees with the finding.

F5**.** There was a lack of cleanliness, especially in the receiving dock area.

Response to F5: The respondent partially disagrees partially with the finding. The finding is fairly general, so it is difficult to respond other than to the issue of the dock area. The steam cleaner used to hose down the area was broken at the time the Grand Jury visited and lack of correctional staff due to vacant positions made it difficult at that time to have the area cleaned daily by trustees. Corrective action has been taken.

F6. Bagged lunches and loose fruit were temporarily stored on the floor prior to being distributed to the inmates.

Response to F6: The respondent agrees with the finding.

F7. There was inadequate control of kitchen knives, which were stored in an unsecured drawer to which all kitchen inmate workers had ready access**.**

***Response to F7: The respondent agrees with the finding*.** A locking storage box has been purchased and installed in the cook's office. Knives are inventoried periodically throughout the day.

Recommendations

R1. A clothing standard should be adopted for a consistent and professional appearance of all employees.

Response to Recommendation R1: The recommendation has been implemented. Correctional officers, deputies and civilian employees do wear different uniforms. The Sheriff's Office believes that difference eliminates confusion between sworn and unsworn personnel. Correctional officers are in the process of transitioning to a new uniform and during the transition period, a mix of old and new uniforms is being worn. That mix may appear unprofessional to some, but uniforms are expensive and as employees buy their uniforms they must be provided a reasonable amount of time to acquire new ones.

R2. Increased attention should be paid to the cleanliness of the jail.

Response to Recommendation R2: The recommendation has been implemented. There is always room for improvement where jail cleanliness is concerned. The Sheriff has communicated jail cleanliness as a priority to staff.

R3. Carts or tables should be provided for food storage prior to distribution.

Response to Recommendation R3: The recommendation will not be implemented because it is unreasonable. Lunches are now stored in ice chests prior to distribution. Carts or tables would take up too much space in a confined area, potentially creating a safety hazard.

R4. Better control of knives should be implemented. An inventory procedure should be maintained.

Response to Recommendation R4: The recommendation has been implemented. A locking storage box has been purchased and installed in the cook's office. Knives are inventoried periodically throughout the day.

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.

Response to F1: The respondent agrees with the finding.

F2. The Jail was generally clean and neat.

Response to F2: The respondent agrees with the finding.

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.

Response to F3: The respondent agrees with the finding.

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.

Response to F4: The respondent agrees with the finding.

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.

Response to F5: The respondent agrees with the finding.

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.

Response to F6: The respondent agrees with the finding.

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.

Response to F7: The respondent agrees with the finding.

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.

Response to F8: The respondent agrees with the finding.

Recommendations

R1. The source and nature of the "musty odor" should be identified, to eliminate any potential public health hazard.

Response to Recommendation R1: The recommendation has been implemented. General Services has checked out the entryway and finds no evidence of water intrusion or other associated problems (stained ceiling tiles, mold growth, etc.) which could cause musty smells. During winter conditions General Services will revisit the area to inspect for mold, mildew other moist conditions.

R2. Storage for weapons, ammunition, and riot equipment should be upgraded to provide a higher level of security.

Response to Recommendation R2: The recommendation has been implemented. Weapons have been moved into a room with a lock on it.

R3. An inspection should be performed by a qualified Structural Engineer to ascertain that the structural integrity of the Jail has not been compromised.

Response to Recommendation R3: The recommendation requires further analysis. General Services will investigate the building by October 31, 2001 and if it determines that a structural engineer is required will contract for a structural analysis.

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.

The Sheriff is appreciative of the Grand Jury's commendation for Lt. Les Lovell's management of the South Lake Tahoe Jail.

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.

Response to F1: ***The respondent agrees with the finding***.

F2. The food and education services were good.

Response to F2: ***The respondent agrees with the finding.***

F3. The health facility's room had no running water, toilet, or blankets.

Response to F3: ***The respondent agrees with the finding.***

F4. No private room was available for individual counseling.

Response to F4: ***The respondent disagrees partially with the finding.*** Although there are no rooms specifically designed and dedicated for this purpose, there are two holding rooms that, if not being utilized for other reasons, are available for confidential counseling and interviews that also provide security. In addition, there is a small counseling office which can be used that offers privacy but limited security.

F5. There were stained ceiling tiles.

Response to F5: ***The respondent agrees with the finding.***

F6. The showers showed small amounts of mold and missing grout.

Response to F6: The respondent agrees with the finding.

F7. The clock in the multi-purpose room was broken.

Response to F7: The respondent disagrees partially with the finding. The clock actually remains functional; however, balls striking the clock during recreational activities have broken the plastic covering over the face and hands of the clock. A work order has been submitted to General Services to replace the clock and cover the clock with a security cage.

F8 . Equipment stored over the laundry room door was not secured.

Response to F8: The respondent agrees with the finding.

F9. One of the outdoor recreation areas was shut down for repair.

Response to F9: The respondent agrees with the finding.

F10. The ceiling and floor of the food freezer were not clean.

Response to F10: The respondent agrees with the finding.

F11. Both control room doors were open because the area was too warm.

Response to F11: The respondent disagrees partially with the finding. The control room may have been too warm; however, both doors are kept open 98% of the time to allow staff easier access in and out of the area for emergency response to minors in custody.

F12. Males and females used common facilities at different schedules.

Response to F12: The respondent disagrees partially with the finding. If the finding refers to the detainees, they all have toilets in their sleeping rooms. Showers and toilets in the common areas are utilized separately by different sexes. The programs otherwise are operated on a co-educational basis as much as possible.

F13. Work orders have been issued for Findings 4, 5, and 8.

Response to F13: The respondent disagrees partially with the finding. A work order has been submitted for #5, but not #4 and #8.

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

Response to F14: ***The respondent agrees with the finding***.

Recommendations

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

Response to R1, Finding 3: ***The recommendation will not be implemented because it is unreasonable.*** The medical exam room is seriously lacking in square footage. Placing additional fixtures or storing additional items in an already undersized room is unreasonable. The laundry room is directly across the hall, where blankets are available to the medical staff. Toilets and hot and cold running water are also available in the B wing bathroom and shower area located about 5-6 feet outside the clinic door and another restroom and sink is available in the B wing intake shower area directly next to the medical room.

Response to R1, Finding 4: ***The recommendation will not be implemented because it is unreasonable.*** The existing facility lacks square footage requirements to meet Title 24 minimum standards in several areas. We have received exemptions for these deficiencies from the Board of Corrections due to the fact that the facility was built prior to the standards being established. There is no title 24 standard requiring that private rooms for counseling be provided in detention facilities.

Response to R1, Finding 5: ***The recommendation has not been implemented but will be implemented in the future.*** Although several stained tiles have been replaced, this is an on-going process and an additional work order was submitted 7/15/01.

Response to R1, Finding 6: ***The recommendation has not yet been implemented, but will be implemented in the future.*** The mold was cleaned on 7/14/01 and a work order to repair the missing grout was submitted on 7/15/01.

Response to R1, Finding 7: ***The recommendation has not yet been implemented, but will be implemented in the future.*** A work order to replace the clock and install a protective cover was submitted to General Services on 7/11/01.

Response to R1, Finding 8: ***The recommendation will not be implemented because it is not warranted.*** The equipment is a computer and screen that operates video conferencing and video arraignment equipment, located in a room which is off-limits to wards. General Services constructed a large, stable shelf for it to sit on above the door, approximately 7-1/2 ft high. It does not pose any risk or safety hazard.

Response to R1, Finding 9: ***The recommendation has been implemented.*** A new layer of asphalt has been installed on the surface of the B wing courtyard. The repairs are complete and the courtyard has been operational for several months.

Response to R1, Finding 10: ***The recommendation has been implemented***. Dust and lint that had been accumulating by the fans in the refrigerator have been cleaned.

Response to R1, Finding 11: The recommendation has been implemented. A new thermostat was installed. The doors in the control room need to remain open most of the time to provide staff easier access to the area in emergency situations.

Response to R1, Finding 12: ***The recommendation will not be implemented because it is not warranted.*** All facilities, with the exception of toilets and showers, are utilized by both male and female wards in co-educational groups, and receive direct supervision at all times. In addition, all the programs and recreational activities are conducted in mixed groups and offered to all detainees, unless they are restricted for medical, disciplinary or security reasons.

Response to R1, Finding 14: The recommendation has not yet been implemented but will be implemented in the future. Although the facility is 30 years old and lacks many of the requirements of the current Title 24 Standards, the Board of Corrections has exempted us from meeting those standards that did not become effective until after the facility was built. In addition, the facility is operating currently, under a "Suitability Plan", that requires that we report monthly to the Board of Corrections on our continued ability to meet minimum Title 15 Standards, even though we are crowded and have insufficient square footage in some areas. This addresses the "Totality of Conditions" that we have so far been able to maintain acceptable compliance with. Previous analysis of the existing Juvenile Hall concluded that the infrastructure and the site it is located on, make it unable to accommodate additional expansion. At the present time, the county is in the design phase of constructing a new 40-bed Juvenile Hall in South Lake Tahoe with a combination of grant funds awarded in May 2001 and matching funds committed by the Board of Supervisors. This facility will considerably reduce the burden on the Placerville Juvenile Hall.

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 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.

Response to Recommendation R1: ***The recommendation will not be implemented because it is not warranted.*** Although County Counsel is willing and able to implement this recommendation, it does not appear warranted on the present facts. The Grand Jury's survey indicates that training resources are available and a significant level of training has occurred, and no district has requested that the County provide this service. Responses to questions #3 indicating that some officials have not had formal training on the Brown Act do not necessarily indicate the unavailability of such training. County Counsel training does make Brown Act training and ongoing advice available to all agency boards for which it provides legal counsel, and has occasionally provided informal instruction to entities of limited means. However, as a matter of County policy, County Counsel does not provide legal counsel to local public entities other than the County, the County Water Agency, the El Dorado County Fair, the County Service Areas, the Air Pollution Control District, and the Local Agency Formation Commission.

Many of the other public entities in the County are capable of, and should be, obtaining instruction from their own counsel regarding Brown Act requirements and compliance. Also, numerous other resources are available for guidance, including educational seminars sponsored by non-profit and for-profit providers, and oral and written guidance from the California Attorney General's office. The California School Board Association provides training at various seminars and its annual conference and in addition, and has published an informative pamphlet devoted entirely to the Brown Act. If additional information shows that these alternatives are insufficient, and a genuine need exists, the County can make County Counsel seminars available to agencies that want to arrange for those services.

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

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.

F8. The above constitutes a repeat violation of the same type found by the 1999/2000 Grand Jury.

F9. One of the light fixtures in Building E, that could not previously be opened, has been repaired. The second one has been slated to be repaired when its light tube burns out.

F10. During an emergency drill students and faculty are required to go into the nearest room available. At a drill observed by Grand Jury members, one group from the kitchen went into a storage area that had no PA system and only one exit/entrance.

F11. The school has 2 1/2 assistant principal positions to investigate charges of harassment as part of their duties. There are four counselors on staff. To provide additional counseling, the County provides the services of the New Morning Agency.

F12. There are four campus monitors and a full-time County Probation Officer on campus.

F13. Although the school does not have a "hot line", it does have voice mail so students can anonymously report incidents or information to the administration.

Recommendations

R1. The Board of Trustees should continue to monitor the program of maintenance that has been implemented.

R2. The Board of Trustees should promulgate a regulation regarding storage of materials blocking electrical panels and exits and enforce that regulation.

R3. The Board of Trustees should reevaluate the procedure during emergency drills so that students and staff are not in a room that has no PA system for communication or that has only one exit.

R4. The Board of Trustees should ensure that students, parents, and staff is aware of the voice mail system and its telephone number, for anonymous reports to the administration.

Responses Required for Findings

F6 through F8 & F10	Board of Trustees, El Dorado Union High School District El Dorado County Superintendent of Schools

Responses Required for Recommendations

R1 through R4	Board of Trustees, El Dorado Union High School El Dorado County Superintendent of Schools

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 that 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.

Response to Recommendation R1: The recommendation has been implemented. The Principal and her supervisor have been invited to participate in the design development meetings for a new Juvenile Hall in South Lake Tahoe. They attended the first meeting; however, both were unable to attend the second one. Pertinent information and the minutes from the meeting have been forwarded to both of them with an invitation to the next meeting. They will be included in all subsequent meetings that they are able and willing to attend.

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 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.

Response to F1: ***The respondent agrees with the finding***.

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."

Response to F2: ***The respondent agrees with the finding***.

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.

Response to F3: The respondent agrees with the finding. The response is qualified by the following two clarifications. First the County did not avoid, but was exempt from, putting the project out to competitive bid. Second, while some of the advantages of design/build/finance were not necessarily unrealistic at the time, some proved to be unrealistic as a result of subsequent circumstances.

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."

Response to F4: ***The respondent agrees with the finding***. The correct reference however, is to Section B.7 of the RFQ.

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.

Response to F5: ***The respondent agrees with the finding***.

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."

Response to F6: ***The respondent agrees with the finding***.

F7. Ten companies submitted timely responses to the RFQ.

Response to F7: ***The respondent agrees with the finding***.

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.

Response to F8: ***The respondent agrees with the finding***.

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)

Response to F9: ***The respondent agrees with the finding.***

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.

Response to F10: ***<u>The respondent agrees with the finding</u>***.

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."

Response to F11: ***<u>The respondent agrees with the finding</u>***.

F12. The BOS approved the selection of All Star.

Response to F12<u>: The respondent agrees with the finding</u>.

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."

Response to F13: ***<u>The respondent agrees with the finding</u>***.

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.

Response to F14: ***<u>The respondent agrees with the finding</u>***. The response is subject to one qualification and one clarification. The qualification is that, although no documents in County files indicate that All Star provided any information on any spread in interest rates, the respondents have no knowledge of the contents of oral communications from All Star to the CAO. The clarification is that the term "reveal" implies that All Star possessed information regarding interest rate spread, but the respondent has no knowledge whether or not this implication is correct. Because County Policy A-11 and Penal Code section 933.05 require that we either agree, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F15: ***The respondent agrees with the finding***. The scope of the proposed Project changed subsequent to these meetings.

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.

Response to F16: ***The respondent agrees with the finding***.

F17. A proposed master lease was submitted to the County Counsel for review and recommendation.

Response to F17: ***The respondent agrees with the finding***.

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.

Response to F18: ***The respondent agrees with the finding***. Negotiations continued through the schematic design phase. It is unclear what is intended by the reference to a "development phase".

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)

Response to F19: ***The respondent agrees with the finding***.

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.

Response to F20: ***The respondent agrees with the finding***.

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.

Response to F21: ***The respondent agrees with the finding***.

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.

Response to F22: ***The respondent agrees with the finding***.

F23. That request was scheduled as item 42 on the BOS Consent Calendar.

Response to F23: ***The respondent agrees with the finding***.

F24. The BOS approved the request.

Response to F24: <u>The respondent agrees with the finding</u>.

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.

Response to F25: <u>The respondent agrees with the finding</u>.

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.

Response to F26: <u>The respondent agrees with the finding</u>.

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.

Response to F27: <u>The respondent agrees with the finding</u>.

F28. This proposed letter of amendment was not routed to the County Counsel's Office for review and recommendation.

Response to F28: <u>The respondent agrees with the finding</u>.

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.

Response to F29: <u>The respondent agrees with the finding</u>.

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.

Response to F30: <u>The respondent agrees with the finding</u>.

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.

Response to F31: <u>The respondent disagrees partially with the finding</u>. Respondent agrees that the amendment should have been routed to County Counsel but (1) there is no assurance that County Counsel would have found the inconsistency, because normally County Counsel does not see the agenda transmittal and staff report at the time that it reviews the contract; (2) fees are a negotiated item, not a legality, and thus, it is not a certainty that County Counsel would focus on the fees in the review of the contract; and (3) there is no evidence that the Board of Supervisors would not have approved the agreement in its present form, although the fact that the CAO stated that it was a "not to exceed" suggests that he would not have recommended a flat fee.

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)

Response to F32: <u>The respondent agrees with the finding</u>.

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)

Response to F33: <u>The respondent agrees with the finding</u>.

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.

Response to F34: <u>The respondent agrees with the finding</u>. The memo states that All Star reviewed "some of the possibilities for lease rates based upon market conditions today" suggesting that these quoted rates may or may not have been the ultimate rates, and makes additional assumptions should the County decide to invest.

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.

Response to F35: <u>The respondent agrees with the finding</u>.

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."

Response to F36: <u>The respondent agrees with the finding</u>.

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."

Response to F37: <u>The respondent agrees with the finding</u>.

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."

Response to F38: The respondent agrees with the finding.

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.

Response to F39: The respondent agrees with the finding.

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."

Response to F40: The respondent agrees with the finding.

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.

Response to F41: <u>The respondent disagrees partially with the finding</u>. Respondent agrees that a capital project involving commitment of large sums of money was a catalyst for Measure A, but we cannot state that it was the reason for Measure A. Measure A might have been prompted by public disapproval of the particular project proposed at that time.

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.

Response to F42: <u>The respondent disagrees partially with the finding</u>. Respondent agrees that it pursued design/build/finance, after an initial study of financing methods available for capital projects which included design/build/financing as well as other types of financing for capital projects. The chosen method was seen as superior for numerous reasons; it was not chosen merely because it would be legally exempt from voter 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.

Response to F43: <u>The respondent agrees with the finding</u>.

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.

Response to F44: <u>The respondent disagrees partially with the finding</u>. County Counsel reviewed the proposed changes to contract language that pertained to a proposed agreement that would supercede the prior agreements.

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."

Response to F45: <u>The respondent agrees with the finding</u>.

F46. A courtesy copy of this letter was routed to the CAO.

Response to F46: <u>The respondent agrees with the finding</u>. The copy provided to the CAO was not merely a "courtesy copy", but was in fact confirmation of the issues outlined by County Counsel and County Counsel's recommendations.

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."

Response to F47: <u>The respondent agrees with the finding</u>.

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.

Response to F48: <u>The respondent agrees with the finding</u>. The response is subject to two qualifications. First, the respondent has no knowledge of what evidence the Grand Jury found. Second, the respondent has found no documentary evidence that the information was provided, but has no knowledge of oral communications between All Star and Hanford. Because County Policy A-11 and Penal Code section 933.05 require that we either agree, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F49: <u>The respondent agrees with the finding</u>.

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.

Response to F50: ***The respondent agrees with the finding***. The grant included deadlines for construction to commence, and for construction to be complete.

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.

Response to F51: ***The respondent disagrees partially with the finding***. The grant award was turned back to the state, but no grant money was ever received from the state. Changes in the project causing delays in the CEQA process and lease issues contributed to this result. There were additional issues, however, some related to Board of Corrections requirements, that also contributed to the respondent's inability to meet the construction deadlines in the grant.

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 was submitted by All Star to the County.

Response to F52: ***The respondent agrees with the finding***.

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.

Response to F53: ***The respondent agrees with the finding***.

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.

Response to F54: <u>The respondent agrees with the finding</u>. The response is subject to one qualification. Although the Agenda transmittal was inaccurate, the term "misleading" seems to imply that the inaccuracy was intentional. The respondent has no knowledge of any such intent underlying the CAO's recommendation.

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."

Response to F55: <u>The respondent agrees with the finding</u>. The CAO modified his recommendation after discussion with the Auditor/Controller and County Counsel.

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.

Response to F56: ***The respondent agrees with the finding***. County Counsel provided information in addition to the Auditor/Controller.

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.

Response to F57: ***The respondent agrees with the finding***.

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.

Response to F58: ***The respondent agrees with the finding***.

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.

Response to F59: ***The respondent agrees with the finding***.

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 preformed 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."

Response to F60: ***The respondent agrees with the finding***.

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."

Response to F61: ***The respondent agrees with the finding***.

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 preformed 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 preformed on the Juvenile Hall Facility.

Response to F62: ***The respondent agrees with the finding***.

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 preformed for the Juvenile Hall Facility. This was subsequently confirmed by a letter from All Star dated November 17, 2000.

Response to F63: ***The respondent agrees with the finding***.

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 preformed 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.

Response to F64: <u>The respondent agrees with the finding</u>. The response is subject to the following clarification. County Counsel and the Auditor-Controller requested and received invoices and billing records directly from the sub-contractors, and those invoices and documents were the basis for the payment. "Proper invoices" were not received from 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.

Response to F65: <u>The respondent agrees with the finding</u>.

<u>Recommendations</u>

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.

Response to Recommendation R1: <u>The recommendation has been implemented</u>. Existing policy requires this procedure, even though it was not followed in this matter. The Board hereby reaffirms its policy.

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.

Response to Recommendation R2: <u>The recommendation will not be implemented because it is unreasonable.</u> Information was regrettably provided by the CAO to the Board in error. However, since the contract is available to the Board and the public, all parties already have access to this information and this recommendation would essentially involve repeating terms that are already in the contract. To add administrative procedures and mandatory information in agenda items, when in the normal course of county business caps, fixed rates, fixed-fee obligation, actual cost obligation with or without a specific cap, etc. are not issues, introduces unnecessary additional work, possible confusion and data detail that could in fact encourage more error and future misunderstandings. Since the CAO is already tasked to ensure that contract information for all departments is in agreement with the information to the Board there is no need to add as a mandate to all CAO contract items, this wording. The board hereby reaffirms that the CAO

provide the necessary review of agenda items so that supporting documentation (contracts, agreements, policies, etc.) agrees with summary information to the Board.

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.

Response to Recommendation R3: <u>The recommendation requires further analysis</u>. The level of detailed documentation which would be provided to the Board of supervisors routinely needs to be better defined. This includes ascertaining the frequency and nature of claims for payment which are brought to the Board. In some circumstances it might be more effective if the supporting documentation was made available to the Auditor/Controller and any other appropriate staff for analysis and recommendation, rather then putting the analytical burden on the BOS. It might be preferable to require that the CAO's recommendations for payments to the BOS have some communication from the Auditor/Controller stating that payment will be appropriate, based upon review of the supporting documentation, or to establish BOS policy that all such authorizations for payment are contingent upon Auditor/Controller review of the supporting documentation. The CAO, Auditor/Controller, and County Counsel will jointly analyze this matter and bring a recommended policy to the BOS within six months.

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.

Response to Recommendation R4<u>: The recommendation requires further analysis</u>. This analysis should be combined with the analysis and recommendation described in the response to R3, above.

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.

<u>Response to Recommendation R1: The recommendation has been implemented</u>. Existing policy requires this procedure, even though it was not followed in this matter. Furthermore the Board agenda transmittal form includes an area addressing the costs/payments to be made. The board hereby reaffirms its policy.

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

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;

Response to F1 (a): <u>The respondent agrees with the finding</u>.

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

Response to F1 (b): <u>The respondent agrees with the finding</u>.

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.

Response to F1 (c): <u>The respondent disagrees partially with the finding</u>. A copy of the recorded Notice of Unsecured Property Tax Lien is sent within 30 days to the property owner by the Recorder's Office upon recordation without regard to a billing cycle.

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.

Response to F2: <u>The respondent agrees with the findings</u>.

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.

Response to F3: <u>The respondent agrees with the findings</u>.

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.

Response to F4: <u>The respondent agrees with the findings</u>.

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 (There is no finding #5)

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 had 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.

Response to F1: <u>The respondent disagrees partially with the finding</u>. The usable area of Parcel A is larger than 1.5 to 2 acres. The appraisal report prepared for the County states that the slope at the rear occupies 1.5 acres, which would leave approximately 2.5 buildable acres. Also, the appraisal says that the transition area at the base of the hillside at the rear is potentially usable. Even if it is not, 1.60 acres would be usable, according to the appraisal report.

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.

Response to F2: <u>The respondent agrees with the finding</u>. This response has two qualifications: the respondents have no knowledge of the terms of the 1996 option for Parcel B, or of the sale price of parcel C. Because County Policy A-11 and Penal Code section 933.05 require that we either agree, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F3: <u>The respondent agrees with the finding</u>. We believe that the so-called "Parking Easement" was actually a lease agreement, rather than an easement. This response is qualified by the fact that the respondent has no direct knowledge of 1997 dealings among the named parties. Because County Policy A-11 and Penal Code section 933.05 require that we either agree, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

F4. Tim Logan died in an airplane crash shortly thereafter.

Response to F4: <u>The respondent agrees with the finding</u>.

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.

Response to F5: <u>The respondent agrees with the finding</u>.

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.

Response to F6: <u>The respondent agrees with the finding</u>. The response is qualified by: a) the observation that although the building was constructed for a specific purpose, it can be adapted to other purposes, and b) the assumption that the meaning of “market value” in this finding is consistent the definition employed in the appraisal report.

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.

Response to F7: <u>The respondent agrees with the finding</u>.

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.

Response to F8: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has no knowledge regarding 1997 transactions between these parties. Because County Policy A-11 and Penal Code section 933.05 require that we either agree, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F9: <u>The respondent agrees with the finding</u>.

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.

Response to F10: ***The respondent agrees with the finding***.

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.

Response to F11: ***The respondent agrees with the finding***.

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.

Response to F12: ***The respondent agrees with the finding***. The response is qualified by the fact that the respondent has no knowledge of marketing activities during 1998 and 1999. Because County Policy A-11 and Penal Code section 933.05 require that we either agree, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F13: ***The respondent agrees with the finding***.

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.

Response to F14: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has no knowledge of these activities by the Lyons. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F15: <u>The respondent disagrees partially with the finding</u>. We believe that the so-called “Parking Easement” was actually a lease agreement, rather than an easement. The respondent’s agreement with the remainder of the finding is qualified as follows. We agree that there is a legal question as to whether the “Parking Easement” survived the merger of the two parcels’ legal ownership. As to the remainder of this finding, we have no knowledge. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F16: <u>The respondent agrees with the finding</u>. The response is

qualified by the fact that the respondent has no knowledge of dealings between the Lyons and US Bank. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F17: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has no knowledge of the Coldwell-Banker listing agreement. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F18: <u>The respondent agrees with the finding.</u>

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.

Response to F19: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has no knowledge of Mr. Frank's Marketing Agreement. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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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.

Response to F20: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has no knowledge of communications between Frank and Hanford. (Albaugh and Hanford did have a conversation as described.) Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F21: <u>The respondent agrees with the finding</u>.

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.

Response to F22: <u>The respondent agrees with the finding</u>.

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.

Response to F23: ***<u>The respondent agrees with the finding</u>***.

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.

Response to F24: ***<u>The respondent agrees with the finding</u>***. The response is qualified by the fact that the respondent has incomplete knowledge of what evidence has or has not been disclosed to the Grand Jury. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F25: ***<u>The respondent agrees with the finding</u>***. We disagree, however, with the finding's implication that the report from closed session was inaccurate or improper. The authorization for staff to continue to look further into the matter is not an action that the Brown Act requires to be reported out of closed session.

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.

Response to F26: ***<u>The respondent agrees with the finding</u>***. The response is qualified by the fact that the respondent has incomplete knowledge of what witnesses did or did not recall in testimony before the Grand Jury. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with

the finding because we have no knowledge to the contrary. We further note that the practice of not tape recording or keeping minutes of closed sessions in no way violates the Brown Act or any other law.

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.

Response to F27: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has no knowledge of Frank's contacts with US Bank. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F28: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has incomplete knowledge of what authority Albaugh might have been delegated by the 2000 BOS or Hanford. It is also unclear that an express delegation of authority was required for this act. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F29: <u>The respondent agrees with the finding</u>. The response is

qualified by the fact that the respondent has incomplete knowledge of what authority Albaugh might have been delegated by the 2000 BOS or Hanford. It is also unclear that an express delegation of authority was required for this act. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F30: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has incomplete knowledge of what authority Albaugh might have been delegated by the 2000 BOS or Hanford. It is also unclear that an express delegation of authority was required for this act. Second, the respondent has no knowledge of these documents. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F31: <u>The respondent agrees with the finding</u>.

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.

Response to F32: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has no knowledge of dealings between the Lyons and US Bank. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F33: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has no knowledge of dealings between the Lyons and US Bank. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F34: <u>The respondent agrees with the finding</u>. The response is qualified as follows: Although the respondent agrees with the finding that the Lyons did obtain the Note and Trust Deed for Parcel C, the respondent has no knowledge of dealings between Lyons and US Bank. Because County Policy A-

11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F35: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has no knowledge of conversations between Frank and Mr. Hanford. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F36: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has no knowledge of conversations between Frank and Hanford. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

F37. On February 24, 2000, Albaugh transmitted a letter to Sinclair stating that the County intended to proceed with the acquisition of Parcel C.

Response to F37: <u>The respondent agrees with the finding</u>.

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.

Response to F38: The respondent agrees with the finding.

F39. February 22, 2000, was "Presidents Day," a public holiday. No meeting of the BOS occurred between February 15 and February 29, 2000.

Response to F39: <u>The respondent agrees with the finding</u>.

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.

Response to F40: <u>The respondent agrees with the finding</u>. The response is qualified by the fact that the respondent has incomplete knowledge of what evidence was or was not developed by the Grand Jury regarding the authority or direction under which Hanford acted. Also, it is unclear that the action required any authorization from the BOS or its members. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F41: ***<u>The respondent agrees with the finding</u>***. The response is qualified by the fact that the respondent has incomplete knowledge of what evidence was or was not developed by the Grand Jury regarding the authority or direction under which Hanford acted. Also, it is unclear that the action required any authorization from the BOS or its members. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F42: The respondent agrees with the finding. The response is qualified by the fact that the respondent has incomplete knowledge of what evidence was or was not developed by the Grand Jury regarding the authority or direction under which Hanford acted. Also, it is unclear that the action required any authorization from the BOS or its members. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F43: <u>The respondent disagrees partially with the finding</u>. We disagree with the fourth and fifth points. As to the fourth point, the County retained the ability under its agreements to proceed with the acquisition of Parcel B only. As to the fifth point, the County would still have had to deal with LFE on Parcel A if LFE exercised its purchase option within 15 days after the County made a direct offer to the Bordges group for Parcel A.

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.

Response to F44: <u>The respondent disagrees partially with the finding</u>. We agree that Bordges made such a statement at the public hearing to consider approving the purchase of the properties, but do not believe that he made such a statement on several occasions. The County did not consider it “unlikely” that LFE would fail to exercise its right of first refusal, despite the bankruptcy filing, given that failure to exercise the right would forfeit the opportunity to obtain any of the $70,000 additional price the County had already indicated its willingness to pay.

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.

Response to F45: ***<u>The respondent disagrees wholly with the finding</u>***. Consideration was given to this strategy. Pursuing it, however, would have invited litigation against the County. The County's position in litigation would have been weakened by the fact that, the County had previously failed to enforce strictly a condition of approval that required the grant of an easement for the parking, allowing it to be done by lease, instead. As indicated in finding F15, above, there is a legal question as to whether that parking authorization merged when the properties came under one ownership. Therefore, the County would have been vulnerable in court to an argument that it was now taking advantage of its prior failure to strictly enforce a condition of approval, as leverage to lower the sales price.

This strategy also would have positioned the County as a government agency and regulator exerting raw and possibly improper negotiating leverage against a private party who happened also to be a grieving widow. El Dorado County's citizens consistently condemn and oppose as improper government actions that are seen as coercive toward private property owners or hostile to the free exercise of private property rights. We agree with the sentiment that the use of such tactics 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.

Response to F46: ***<u>The respondent agrees with the finding</u>***.

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.

Response to F47: The respondent agrees with the finding. The response is qualified as follows: it is unclear when the information was communicated to the BOS, and it is unclear what the Grand Jury would deem to be communication "in a timely manner." Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F48: The respondent disagrees partially with the finding. Mr. Spencer's appraisal did determine the value of Parcel B separately, because, in his words, "the client desires a separate valuation pertaining to the 0.70 acre" Parcel B (appraisal at p. 46).

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.

Response to F49: The respondent agrees with the finding. As finding F51. notes, LFE did in fact move to dismiss its bankruptcy on March 21, 2000.

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.

Response to F50: ***The respondent agrees with the finding.***

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.

Response to F51: ***The respondent agrees with the finding***. The response is qualified as follows: the respondent has no knowledge of what LFE represented to the Bankruptcy Court. Because County Policy A-11 and Penal Code Section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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."

Response to F52: ***The respondent agrees with the finding***.

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.

Response to F53: ***The respondent agrees with the finding.***

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.

Response to F54: ***The respondent agrees with the finding***.

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.

Response to F55: ***The respondent agrees with the finding***. Hanford's action was pursuant to BOS direction.

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.

Response to F56: ***The respondent agrees with the finding***.

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.

Response to F57: ***The respondent agrees with the finding***.

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.

Response to F58: ***The respondent disagrees partially with the finding***. Notice of the special meeting was legally adequate. The Commission considered consistency with the General Plan as to all three of Parcels A, B, and C, not just Parcels, B and C. The Commission reported that it was not possible to make findings regarding General Plan consistency at that time.

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.

Response to F59: ***The respondent agrees with the finding***.

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.

Response to F60: <u>The respondent disagrees partially with the finding</u>. All Star Investments made an informal estimate, based upon limited information, that it would cost approximately $700,000 to retrofit the building for the Sheriff's needs. The basis of that estimate is unknown. The items it included are also unknown, although All Star was instructed to assume that the construction of an elevator, the removal of the floors, and the removal of built-in office furniture would all be necessary.

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.

Response to F61: <u>The respondent disagrees partially with the finding</u>. Under the California Environmental Quality Act (CEQA), environmental analysis would be required at such time as the BOS committed the County to use one or all parcels in a fashion not encompassed by the original CEQA exemption. No environmental analysis has yet been prepared because this condition has not yet been triggered.

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.

Response to F62: <u>The respondent agrees with the finding</u>.

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.

Response to F63: <u>The respondent agrees with the finding</u>. The payment of taxes was in conformance with the parties' Purchase and Sale agreements.

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.

Response to F64: <u>The respondent agrees with the finding</u>. The response is subject to one clarification and one qualification. The clarification is that the County was unaware of what discount, if any, Lyons had negotiated with US Bank. Further, outstanding encumbrances or discounts do not affect the market value of the property to a purchaser that takes title free of the encumbrances. The qualification is that we have no knowledge of what interest and penalties may have accrued on the loan on Parcel C, and therefore, no knowledge of whether the price paid by the County for Parcel C was adequate to pay principal, interest, and penalties at 100 cents on the dollar. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response toF65: <u>The respondent agrees with the finding</u>. The response is

subject to one clarification. No additional Planning Commission proceedings occurred, other than the Planning Commission's April 27, 2000 deliberations.

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.

Response to F66: ***The respondent agrees with the finding***.

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.

Response to F67: ***The respondent agrees with the finding***.

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.

Response to F68: ***The respondent agrees with the finding***. No announcement has been made because no decision has been reached.

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.

Response to F69: ***<u>The respondent agrees with the finding</u>***.

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.

Response to F70: ***<u>The respondent agrees with the finding</u>***.

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.

Response to F71: ***<u>The respondent disagrees partially with the finding</u>***. We disagree with the statement that the Department of General Services had no specific expertise in the subject.

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.

Response to F72: <u>The respondent agrees with the finding</u>.

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]."

Response to F73: <u>The respondent agrees with the finding</u>.

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.

Response to F74: <u>The respondent disagrees partially with the finding</u>. The Grand Jury holds the “tentative view” that it will cost the County more to retrofit the Logan Building than the $750,000-$1,000,000 loss the Grand Jury believes the County might realize if it sold the properties today. We disagree with the Grand Jury’s tentative view, however, and see no basis for it in the findings of fact. The DGS Director estimated retrofit costs at approximately half of the Grand Jury’s projected loss. Even All Star Investments’ estimate, cited in F60. (which one might expect to be a high estimate), does not exceed the Grand

Jury's figure.

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.

Response to F75: <u>The respondent agrees with the finding</u>.

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 justifie[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.

Response to F76: <u>The respondent disagrees wholly with the finding</u>. The 1999/2000 BOS was fully candid and forthright in its response to the prior Grand Jury. Spencer appraised the value of the Logan Building primarily using the "income approach." The value under that approach was significantly diminished because of the prolonged vacancies the building had experienced. That is the "discount" to which the BOS referred. The fact that the Grand Jury may disagree with the substance of the 1999/2000 BOS response does not render the response "less than candid and forthright."

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.

Response to F77: <u>The respondent disagrees partially with the finding</u>. The basis for the 1999/2000 BOS's statement that a comparable new facility would cost $600,000 more is unclear, and a majority of that BOS has left office. The BOS response, however, is clearly a "generic" one, not necessarily tied to the Spencer Appraisal Report, to the notion of replicating an "overbuilt" facility, or to the identity of a prospective tenant of such a new facility. The reference to environmental impacts clearly applied to the hypothetical construction of a new facility, not to ADA impact issues at the Logan Building. The fact that the Grand Jury may disagree with the substance of the 1999/2000 BOS response does not render the response "less than candid and forthright."

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 agendizing of the proposal to exercise the Purchase Option as a Consent Item on its own calendar rather than as an item agendized 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.

Response to F78: <u>The respondent disagrees wholly with the finding</u>. There had been full public hearing and debate on the purchase of Parcel A, not just the purchase of the option for that property, in May 2000. Any member of the public is entitled to comment on any consent calendar item, or to ask that they be pulled from consent and considered separately. The public receives the same notice of an agenda item, no matter whether it is place on the consent calendar or on the regular departmental business portion of the agenda. The exercise of the option was in fact agendized as a departmental matter, not a consent item, on the September 26, 2000 BOS agenda; it was moved to the consent calendar at the meeting, without any objection.

The Grand Jury has mischaracterized the purpose and effect of the County's lawsuit against the Grand Jury. The lawsuit was intended to preserve the integrity of the attorney-client relationship within County government, and the confidentiality of closed sessions duly authorized by the Brown Act. Each of these had been put into question by subpoenas issued by the Grand Jury. It was emphatically not intended to impede the Grand Jury's proper investigatory activities. Had the subject of the Grand Jury's subpoenas been anything else, its desire to probe into confidential attorney-client communications would have prompted the same lawsuit. Until now, the Grand Jury has quite fairly agreed that the lawsuit's purpose was to settle a fundamental legal issue, not to impair any specific investigation, and that in fact the County at no time failed to cooperate promptly with all demonstrably legitimate activities of the Grand Jury in conjunction with this investigation. The fact that the Grand Jury prevailed in the litigation does not mean that the County's lawsuit was brought in bad faith or without justification. Following the court's final decision, County personnel complied promptly and fully with the subpoenas.

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.

Response to F79: <u>The respondent agrees with the finding</u>. The respondent is aware of no evidence, direct or indirect, general or specific, that would suggest any conspiratorial conduct among Albaugh, Lyons, or anyone else, or even what the purpose of such a conspiracy would be. The Grand Jury's finding is ambiguous, not even suggesting the nature of the conspiracy. In addition, the phrase "Although Albaugh and the Lyons both lived in Auburn," appears to be a *non sequitur* in that it implies, without basis, that the fact that both Albaugh and Lyons lived in Auburn alone should give rise to the suspicion of conspiratorial conduct.

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.

Response to F80: <u>The respondent disagrees partially with the findings with the finding.</u> The Director of DGS has provided a preliminary quantification of remodeling and/or retrofitting costs. The adequacy of restroom facilities will depend upon how the building is occupied and used.

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.

Response to F81: <u>The respondent disagrees partially with the finding</u>. Construction has begun on a realignment and signalization of the Pleasant Valley Road - Highway 49 intersection that will dramatically improve traffic conditions in the area. Those improvements were planned and funded before the Logan Building was acquired. These improvements seem likely to offset any adverse traffic impacts of the County's use of the Logan Building.

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.

Response to F82: <u>The respondent disagrees partially with the finding</u>. We have no knowledge of the basis for the Grand Jury's opinion that reconfiguring the building will cost $1 million or more, and the Grand Jury's estimate greatly exceeds the two cited opinions, with no explanation. Furniture expenses could well be part of any relocation of staff to new quarters, and they should therefore not be assigned as an expense specific to retrofitting the Logan Building.

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.

Response to F83: <u>The respondent partially disagrees with the finding</u>. A consultant may not necessarily be required.

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.

Response to F84: <u>The respondent agrees with the finding</u>. The lawsuit was filed only after a legitimate exchange of views among the affected parties failed to resolve the dispute. The parties cooperated in good faith in placing the matter before the Court. The County initiated the lawsuit after representatives of the Grand Jury had indicated that the Grand Jury was prepared to sue the County to resolve the issues. The County determined that it was more forthright to seek judicial resolution immediately, rather than waiting to be sued by the Grand Jury for enforcement of the subpoenas. For additional detail, see also response to finding F78.

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."

Response to F85: <u>The respondent agrees with the finding</u>.

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."

Response to F86: <u>The respondent agrees with the finding</u>.

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.

Response to F87: <u>The respondent agrees with the finding</u>. That is, the respondent agrees that the Grand Jury holds this view.

<u>Recommendations</u>

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.

Response to Recommendation R1: <u>The recommendation requires further analysis</u>. In principle, it appears sound. However, contingencies may arise in unique situations which would make strict enforcement of the policy difficult or counterproductive. The County will study the recommendation to determine whether the Grand Jury's list of contents is appropriate and complete, and the BOS will have a report presented to it for its consideration within six months.

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.

Response to Recommendation R2: ***The recommendation requires further analysis.*** Again, the principle appears sound, but may have unexpected implications. For example, could a member of the BOS who opposed a purchase block the transaction by refusing to view the property? Consideration of this procedure and a recommendation will be included in the report proposal described in the response to R1, above.

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.

Response to Recommendation R3: ***The recommendation will not be implemented because it is not warranted***. The County will continue to comply with the requirements of Government Code Section 65402(a).

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.

Response to Recommendation R4: ***The recommendation will not be implemented because it is unreasonable.*** The recommendation refers to the manner in which appraisals should be performed. The professional appraiser hired to provide an appraisal of fair market value is guided by written professional appraisal standards and is best situated to exercise professional judgment on the most appropriate methods of appraisal valuation. The County should not attempt to limit, sway, or overrule that independent professional judgment. We agree that the County should consider usability in deciding whether to purchase.

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.

Response to Recommendation R5: ***The recommendation has not yet been implemented but will be implemented in the future***. This procedure will be

included in the report proposal described in the response to R1, above.

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.

Response to Recommendation R6: <u>The recommendation requires further analysis</u>. Government is often urged to "act like a business," but in many areas, such as real property transactions, conduct that might be appropriate for a private business may not be appropriate for a government agency that possess regulatory and condemnation powers, and represents the broad public interest. The County will study this issue as part of the development of the BOS report proposal described in response to R1, above.

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.

Response to Recommendation R7: <u>The recommendation will not be implemented because it is not warranted</u>. The central purpose of closed sessions is to provide a confidential setting in which opinions and advice can be aired freely and fully. Confidentiality not only shields sensitive information from litigants and other adverse parties; it can also protect employees' privacy interests and foster a mood of uninhibited exchange. A confidential setting promotes the public interest because it encourages complete and honest deliberation and sharing of opinions and advice. The presence of a tape recorder instill the thought that what is said in closed sessions may not remain confidential, but be disclosed to the Grand Jury or others. This in turn will inhibit free discussion, and thereby stunt the deliberative process, to the detriment of good public policy and the public interest.

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.

Response to Recommendation R8: <u>The recommendation will not be implemented because it is unwarranted</u>. As a result of the ruling in the litigation between the County and the Grand Jury, it is now established, at least in El Dorado County, that the Grand Jury may be privy to otherwise confidential attorney-client and closed-session communications. To the extent that any privileges against disclosure to the Grand Jury still exist and may be invoked, consistent with the Superior Court's ruling, that ruling has balanced the competing interests involved and concluded that such privileges, if any, are warranted.

<u>Responses Required for Findings</u>

F1 through F85 El Dorado County Board of Supervisors

<u>Responses Required for Recommendations</u>

R1 through R8 El Dorado County Board of Supervisors

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.

Response to F1 (Codes): <u>The respondent agrees with the finding</u>. The Grand Jury's list of applicable laws is not exhaustive, however.

Meetings

F2. 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.

Response to F2 (Meetings): <u>The respondent agrees with the finding</u>.

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.

Response to F3 (Notice): <u>Respondent agrees with the finding</u>. In the sentence below paragraph b., it would be more accurate to say that the procedure "has never been triggered", rather than saying that it "has not been followed." Similarly, in the sentence below paragraph c., it would be more accurate to say that there has been no occasion to apply the referenced notice requirements to an emergency meeting.

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.

Response to F4 (Validity): <u>Respondent disagrees wholly with the finding</u>. The respondent believes that a court would construe the term "special meeting" to include an emergency meeting. An emergency meeting is a special meeting; the characterization of it as an emergency affects only the public notice requirements, not the validity of the actions taken at the meeting.

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.

Response to F5 (Contract Matters): The respondent agrees with the finding. Although the respondent disapproves of the practices described in the finding, they do sometimes occur. Many County staff scrupulously comply with the required procedures, and some deviations from proper practice are prompted by staff's good-faith efforts to meet deadlines or respond to unforeseen circumstances. Still, the respondent recognizes that the procedural missteps identified in the finding are significant problems that the County should address.

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.

Response to F6 (CAO Evaluation): The respondent agrees with the finding.

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.

Response to F7 (Consent Calendar): <u>The respondent disagrees partially with the finding</u>. The Grand Jury overstates the criterion for including an item on the Consent Calendar. The standard is that it is unlikely to be controversial, not that “no possible controversy can reasonably be envisioned.” The public is entitled to, and receives, the same opportunity to have notice, review, and comment upon Consent Calendar items, as upon Departmental Matters.

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*."

Response to F8 (Goldenrod Agenda Transmittal Sheet): <u>The respondent agrees with the finding</u>.

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.

Response to F9 (Blue Routing Sheet): <u>The respondent agrees with the finding</u>. It should be noted, however, that bypassing the "blue sheet" process does not necessarily mean that County Counsel, Risk Management and/or Human Resources review has not occurred.

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.

Response to F10 (Board Letter Transmittal Memo): <u>The respondent disagrees partially with the finding</u>. "Board Letters" are prepared by the recommending department, not the CAO's Office. The CAO's Office reviews all agenda items from departments in order to ascertain whether funds are available, whether all required reviewing parties have been consulted, if all parties impacted by the item have been notified and have had ample opportunity to be heard, what long term impacts might be included, document consistency, appropriateness of the request, completeness of the package, etc. Although the respondent is aware of some specific instances in which there have been inconsistencies between the Board Letters' factual discussions and their summary recommendations, these appear to be isolated occurrences. We are unaware of the facts upon which the Grand Jury concludes that this has occurred "not infrequently in the past."

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.

Response to F11 (CAO Advance Notice): <u>The respondent agrees with the finding.</u>

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.

Response to F12 (Final Agenda): <u>The respondent agrees with the finding</u>.

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.

Response to F13 (Emergency Matters/New Business): <u>The respondent disagrees partially with the finding</u>. Under government code section 54954.2(b)(2), new business may be authorized by a two-thirds vote of the entire BOS (which equates to 4 votes) or by unanimous vote of those present if less than two-thirds are present (meaning that if only three Supervisors are present, a unanimous vote of the three is sufficient if the criteria of that section are met). See finding F18, below.

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.

Response to F14 (Dept-Head Submissions): <u>The respondent disagrees partially with the finding</u>. As previously stated in response to finding F5., above, the respondent is aware of this practice and considers it to be a significant problem to be addressed. We do not agree, however, with any implication that items are necessarily approved without adequate review or analysis by the CAO and County Counsel. If those offices are afforded any opportunity for review and analysis, they perform their tasks to the best of their ability under the circumstances. Part of that review and analysis is a weighing of whether the asserted need to act truly warrants moving forward without more time for review. The CAO and County Counsel do not hesitate to recommend that items be deferred to subsequent BOS agendas when significant legal or other issues are identified. Still, this process is problematic because it can unnecessarily put the CAO and County Counsel in the stressful position of handling too many emergency items, and it affects their ability to process other items in a timely and efficient manner. In addition, this may result in items moving forward because of urgency when adequate review could have occurred if review was sought earlier.

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.

Response to F15 (Economic Impact): <u>The respondent disagrees wholly with the finding.</u> The Grand Jury has provided no information that would enable the respondent to identify or assess the specific incidents referred to in this finding. While the respondent has agreed with the findings when there was no information available, this finding raises serious implications of potential malfeasance by numerous individuals without providing any information about the specific incidents being referred to. Therefore, in this instance, without some information about the specific incidents upon which the finding is based, it is not possible or appropriate to agree with the finding.

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.

Response to F16 (Auditor/Controller Review): <u>The respondent disagrees wholly with the finding</u>. The finding raises serious implications of potential malfeasance by numerous individuals without providing any information about the specific incidents being referred to. Without some information about the specific incidents upon which the finding is based, it is not possible or appropriate to agree with the finding.

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.

Response to F17 (Late Submissions): The respondent agrees with the finding. The response is qualified by the understanding that by the word "abused" in the first paragraph, the Grand Jury means that the criteria limiting the use of the addenda process have not always been observed.

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.

Response to F18 (Immediate Needs): The respondent agrees with the finding. The response is qualified in two ways. First, we understand that by the word "abused," the Grand Jury means that the criteria limiting the use of this process have not always been observed by department heads seeking immediate action. Second, we understand that by the phrase "corrective action," the Grand Jury means that County Counsel has either: a) insisted that the required determinations be made and supported factually, or b) refused to allow the item to be added to the agenda. The addition of items to the agenda under this process is infrequent, and we are not aware of any instances in which items have been improperly added.

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.

Response to F19 (Agenda Adoption): <u>The respondent disagrees partially with the finding</u>. The specific time of 9:00 a.m. for the commencement of Open Sessions of the BOS has long been the County's customary procedure; it is not a recent change. Knowledgeable members of the public rarely, if ever, arrive at the chambers at 8:00 a.m. as the result of any misunderstanding.

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.

Response to F20 (Public Attendance): <u>The respondent disagrees partially with this finding</u>. Agenda items that are expected to draw substantial public interest are scheduled for specific "time certain" consideration whenever possible to minimize public inconvenience. Discussion of agenda items for which no member of the public has appeared are rarely "lengthy." Because, as the Grand Jury finds, the BOS agenda is frequently lengthy, and unexpected issues or public interest regularly arises, it is impossible to eliminate waiting and delays.

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.

Response to F21 (Planning Commission Procedures): <u>The respondent agrees with the finding</u>. Closed sessions at Planning Commission hearings are very rare; thus, Open Session almost always commences immediately at the beginning of the meeting.

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.

Response to F22 (EID Procedures): <u>The respondent agrees with the finding.</u> The respondent is unaware of EID's agenda procedures. Because County Policy A-11 and Penal Code section 933.05 require that we either agree with the finding, or partially or wholly disagree with each finding, we agree with the finding because we have no knowledge to the contrary.

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.

Response to F23 (Closed Session Minutes-Brown Act): <u>The respondent agrees with the finding.</u>

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.

Response to F24 (Closed Session Minutes – Ordinance Code): <u>The respondent disagrees partially with the finding</u>. The Conformed Agendas of the BOS constitute the "accurate written minutes of all proceedings of the board" required by the Ordinance Code. If action in Closed Sessions requires a public report, that report is made and duly recorded in the Conformed Agenda. This information constitutes accurate written minutes" of all proceedings, including Closed Sessions, as required by the Ordinance Code.

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.

Response to F25 (Closed Session Minutes) – Grand Jury: <u>The respondent disagrees partially with the finding</u>. The Superior Court ruled on the availability of privileges in Grand Jury inquiries, but did not address whether or how closed sessions should be memorialized. The extensive level of detail in this Grand Jury report demonstrates that the lack of a verbatim record of closed sessions will rarely be an obstacle to the Grand Jury's inquiries. In any administrative or judicial inquiry, the recollections of the participants may vary.

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.

Response to F26 (Closed Session Reports): <u>The respondent disagrees partially with the finding</u>. "No action reported" means just what it says, and does not imply that there was no action taken.

<u>Recommendations</u>

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.

Response to Recommendation R1: <u>The recommendation has not yet been implemented, but will be implemented in the future.</u> County Counsel will be directed to return with an ordinance conforming the Ordinance Code to the requirements of the Brown Act within six months. In the meantime, where inconsistency in legal requirements exists, the stricter requirement will be followed.

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.

Response to Recommendation R2: <u>The recommendation has not yet been implemented, but will be implemented in the future</u>, after the ordinance described in the response to recommendation R1 is adopted and effective. In the meantime, where inconsistency in legal requirements exists, the stricter requirement will be followed.

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.

Response to Rrecommendation R3: <u>The recommendation has not yet been implemented, but will be implemented in the future</u>, as part of the ordinance described in the response to Recommendation R1.

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.

Response to Recommendation R4: <u>The recommendation has been</u>

implemented. This has been and remains the policy of the CAO, Clerk of the BOS, and the BOS.

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.

Response to Recommendation R5: The recommendation will not be implemented because it is not warranted. As worded, the recommendation would restrict the authority of the BOS to add agenda items more narrowly than the Brown Act does. The Brown Act's requirements reflect a careful and appropriate balancing between the goals of public involvement and efficient operation of government, and should be the standard for BOS practice. The Brown Act provides a separate exception for emergency items.

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.

Response to Recommendation R6: The recommendation has been implemented as described. Because a formal action adopting the agenda is not legally required, the BOS Clerk is presently considering whether to eliminate this procedure entirely.

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.

Response to Recommendation R7: The recommendation will not be implemented because it is unreasonable. It may be inefficient to implement the recommendation. Time will be consumed polling the audience, and ancillary disputes may break out over the sequence in which items should be considered. One or a few people may find themselves sitting through lengthy hearings before their brief or routine item can be heard. As previously stated, agenda items that are expected to draw substantial public interest are scheduled for

"time certain" consideration whenever possible, and items that do no draw substantial public interest rarely require much time to complete. If implementation of this recommendation of some variation of it appears warranted, it will be implemented in conjunction with recommendation R1, above.

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.

Response to Recommendation R8: <u>The recommendation requires further analysis</u>. A subcommittee of the Board has been assigned to make a recommendation and report by December 11, 2001.

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.

Response to Recommendation R9: <u>The recommendation will not be implemented because it is not warranted and it is unreasonable</u>. We agree with the thrust, but many contracts exceeding $10,000 are routine, recurring, and/or uncomplicated and can be handled easily by use of standard County contract forms. The forms are drafted, and regularly updated, by County Counsel and Risk Management. It would be wasteful and would overwhelm the CAO's and County Counsel's staff to require them to participate in the "drafting and implementation" of all such contracts. Department heads can and should exercise their own sound judgment regarding which contracts above $10,000 legitimately require this level of participation by County Counsel and/or the CAO.

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.

Response to Recommendation R10: <u>The recommendation requires further analysis.</u> The BOS recognizes the valuable contributions made by the Auditor/Controller in ensuring that County contracts comply with the Purchasing Ordinance and other legal requirements, and that payment on contracts is made in accordance with the terms of the contracts and other proper auditing standards. Possible changes to the contract review process should be considered to determine how input from the Auditor/Controller can be solicited and used in the most beneficial manner. (We assume that the recommendation concerns actions relating to contracts, not any action that might have a financial impact.) However, a variety of considerations should be taken into account in deciding whether to modify the contract review procedure and, if so, the precise nature of those changes. The analysis should recognize that, by reason of the formal responsibilities of the Auditor/Controller, claims for payments on contracts are already processed through his office and are reviewed for compliance with applicable standards. The issue is the nature and benefit of formalized review by the Auditor/Controller at an earlier point in the process.

Some of the considerations which need to be studied are: (1) the definition of the types of actions which would be subject to such review; (2) the impact of any associated delay on the contract review process which is already criticized as being unusually slow, complex, and bureaucratic compared with other organizations; (3) review of procedures used by other counties and their experience with those procedures; (4) the point in the process at which the Auditor/Controller should be involved (*e.g.* formal routing of contracts to the Auditor/Controller early in the contract review process versus routing only at the point it is ready to go to the BOS); (5) the impact of any change on the workload and resources of the Auditor/Controller's office; (6) the appropriate relationship between the Auditor/Controller's responsibility to ensure that proper auditing and contract standards are met, and the responsibilities of the CAO and other department heads to advise on budgetary and policy matters; (7) the compatibility of the Auditor/Controller's independent audit function which serves as a check and balance on the system and his potential involvement in the routine processing of matters which may be the subject of that audit function; and (8) the relative advantages and disadvantages of formal involvement by the Auditor/Controller at an earlier stage of the process considering factors such as the need for such involvement in light of changes and reorganizations being undertaken by the Department of General Services largely in response to issues raised by the Auditor/Controller, the existing review authority of the

Auditor/Controller, and the potential negative impacts on the existing process. The CAO will be directed to work with the Auditor/Controller, Director of General Services and County Counsel to consider this issue and make a recommendation to the BOS by January 31, 2002.

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.

Response to Recommendation R11: <u>The recommendation requires further analysis</u>. We generally agree that a “blue sheet” should not be waived or omitted in any context that requires one, but the real issue is providing for appropriate County Counsel review. The exception proposed in the recommendation is questionable, because it appears to conflict with the County Ordinance Code provision requiring County Counsel review. Rather than waiving the requirement of County Counsel review, a more appropriate exception would be one that allows an item to be approved on limited County Counsel review, based on express findings of necessity. County Counsel will be directed to consider this issue and make a recommendation to the BOS by January 31, 2001.

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.

Response to Recommendation R12: <u>The recommendation has been implemented</u>. Existing policy already requires the recommendation to be supported by, not contradicted by, reasons for the recommendation in the Board Letter. There should be no need to call attention to contradictions between the two sections, because they should be consistent, not contradictory. It is unclear whether the recommendation is also meant to encompass the discussion of alternatives to the proposed action.

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.

Response to Recommendation R13: The recommendation will not be implemented because it is not warranted. The action of the Interim CAO and BOS policy guidance such as was provided by Item 57 of the March 13, 2001 agenda, referred to above, is sufficient to discourage questionable use of the Addendum process. The recommendation will add undue administrative burdens with little or no offsetting benefit.

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.

Response to Recommendation R14: The recommendation has not yet been implemented, but will be implemented in the future. The BOS and Planning Commission Clerks will be instructed to add such a reference to the agendas and addenda. In addition, the County is already working to make electronic versions of all agenda documentation available on-line.

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."

Response to Recommendation R15: The recommendation requires further analysis. We find the Grand Jury's recommended language to be no clearer, and perhaps more confusing to the public, than the current formula. A phrase such as "No reportable action taken" might be superior. County Counsel will be directed to consider this issue and make a recommendation to the BOS within six months.

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.

Response to F9: ***The respondent agrees with the finding***.

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.

Response to F13: <u>The respondent disagrees partially with the finding</u>. Pursuant to negotiated agreements governing many represented employees, the Director of Human Resources advised Department Heads that the annual performance evaluation "check-the-box" system was no longer to be utilized and was to be replaced by a "real-time" system or a periodic memo format system. Departments which chose to retain a traditional evaluation system were requested to notify Human Resources in order to integrate their preferred system within the MOU provisions. This change in system was part of a negotiated package of other provisions related to probationary periods and other time in service provisions.

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.

Response to F14: <u>The respondent disagrees partially with the finding</u>. Respondent agrees that in most departments the "real-time" performance evaluation system has not been successfully implemented. However, within the County, most departments have a large variety of informal to formal evaluation systems and methods in place. Excluding Department Heads and management employees and some Sheriff Department employees, neither the Charter, MOUs, nor Personnel Management Resolution require annual written evaluations.

F15. At least one senior department employee within DSS has not received a performance evaluation for a period of five (5) years.

Response to F15: ***<u>The respondent agrees with the finding</u>***.

F16. The practice described above is inconsistent with the County Charter.

Response to F16: ***<u>The respondent disagrees wholly with the finding</u>***. The County Charter requires evaluation of employees. It does not mandate any particular system. Nor does it mandate an annual written system.

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.

Response to F17: ***<u>The respondent disagrees partially with the finding</u>***. The revised "real time" performance evaluation system attempted to remedy a broken, inconsistent, "check-the-box" evaluation system. An April 8, 2001 Los Angeles Times article posits that "some experts" ". . . believe performance reviews are a remnant of an earlier era and may not be appropriate for today's workplace . . .." However, respondent agrees that sound management practices necessitate objective review and feedback to employees of their performance.

<u>Recommendations</u>

R1. The County should require, at a minimum, that annual written employee performance evaluations be administered, in a meaningful manner, to all county employees.

Response to Recommendation R1: ***<u>The recommendation has not been implemented, but will be implemented in the future</u>.*** Human Resources staff will be required to meet with respective employee organizations and seek Board authority to negotiate any changes. Meetings have begun with a goal of implementing the change within six months.

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.

Response to Recommendation R2: ***<u>The recommendation has not been implemented, but will be implemented in the future</u>.*** Human Resources staff will

be required to meet with respective employee organizations and seek Board authority to negotiate any changes. Meetings have begun with a goal of implementing the change within six months.

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.

Response to Recommendation R3: <u>The recommendation will not be implemented because it is not warranted</u>. Government Code 3500 et seq. and case law define the methods, processes and legal parameters for negotiating changes to the MOUs and subjects within the scope of bargaining. A resolution of the Board cannot supercede a negotiated provision of the labor contract. The Charter has not been violated which would warrant invalidation of a provision of the labor contract.

<u>Responses Required for Findings</u>

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

<u>Responses Required for Recommendations</u>

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

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.

Response to F1: ***The respondent agrees with the finding***.

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.

Response to F2: ***The respondent disagrees wholly with the finding.*** The Accounting Unit has always checked the following information on every invoice or request for payment received before preparing a claim voucher: vendor name, dates of service, type of service/product provided, line item charges and total invoice charges. In addition, the Accounting Unit ensures that the appropriate authorized signers have signed the request for payment. In accordance with Generally Accepted Accounting Principles, the Accounting authorizer randomly samples claims and performs a complete audit on these random samples. The complete audit includes a review of the invoice(s) and payment request form and a review of the completed claim voucher form. In addition, the Accounting authorizer checks every claim voucher to ensure that the following are included: vendor name, vendor number and vendor address (if needed), proper payment description, amounts, proper transaction codes, index codes and sub-object account numbers and justifications for rush requests and pick-up requests.

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%.

Response to F3: ***The respondent disagrees partially with the finding.*** There has been significant improvement in the number of claim vouchers rejected since January 1, 2001. However, the 11% rejection rate for February does not seem correct. According to a Department report, 443 claim vouchers were processed during February 2001. According to a memorandum from the Auditor dated March 28, 2001, "for the month of February, 2001our office rejected 11 claims." Eleven rejected claims represents a 2.5 percent rejection rate not 11 percent.

F4. Claim vouchers signed or reviewed by Department Program Managers often contain errors and omissions.

Recommendation ***Response to F4:*** ***The respondent disagrees wholly with the finding.*** Line staff submit payment requests to supervisors for approval. Some payment requests also require Program Manager approval. The payment requests are then processed to the Accounting Unit that prepares the claim voucher that goes to the Auditor's Office for processing and payment. Program Managers do not review or sign claim vouchers. When several new policies and procedures were implemented, some payment requests reviewed or signed by Program Managers contained errors or omissions. This was corrected as part of the successful overall claim rejection rate reduction results the Department has accomplished.

F5. Guidelines for payment of invoices have been implemented, although they are not consistently followed by all Program Managers.

Response to F5: The respondent disagrees wholly with the finding. As indicated above, this was only a significant problem after the initial implementation of new policies and procedures during January of 2001. This has been corrected.

R1. Each claim voucher should be checked for accuracy and completeness before it is forwarded to the Auditor-Controller for payment.

Response to Recommendation R1: *The recommendation has been implemented.* The Department has been submitting monthly claim rejection reports to the Grand Jury since March of 2001. The monthly rejection rates have been: March 4.7% (18 of 384); April 1.7% (8 of 464); May 3.3% (14 of 418); and June 1.7% (9 of 544). The Department attempted to estimate the average countywide rejection rate to establish a standard for comparison. According to information from the Auditor's Office, the rough average claim rejection rate is around 5%. Using these figures, the Department has been sustaining an acceptable rejection rate for several months.

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.

Response to Recommendation R2: The recommendation has been implemented. The recommendation has been implemented. The policy and procedure was revised to state that the original of all invoices should be attached to all claim vouchers before payment is issued. Staff was trained on this procedural change.

R3. Department Program Managers and their staff should comply with existing procedures to eliminate claim voucher inaccuracies.

Response to Recommendation R3: ***The recommendation has been implemented***. The Accounting Unit prepares a monthly report on any errors found on claim vouchers. These reports are given to the Program Managers. This has allowed the Program Managers to identify training needs and to assure that the supervisors provide the necessary training.

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.

Response to Recommendation R4: ***<u>This recommendation has not been implemented, but will be implemented in the future.</u>*** By law the only responses available to the Board include "the recommendation has been implemented, has not yet been implemented but will be, requires further analysis, or will not be implemented". Although none of these responses fit the recommendations since the Board can not speak for the Grand Jury, it is the most appropriate given that the Board assumes that the Grand Jury will follow-up as recommended.

<u>Responses Required for Findings</u>

F1 through F5 El Dorado County Board of Supervisors

<u>Responses Required for Recommendations</u>

R1 through R4 El Dorado County Board of Supervisors

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.

Response to Recommendation R1: Recommendation has been implemented. It is County policy that County Counsel and Risk Management review all contracts. In addition when contracts are related to computers, the Information Services Department also reviews. There is a tendency for some departments to under-utilize and/or bypass the expertise of Information Services which has, in the past, led to additional and unnecessary expenses to the County.

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.

Response to Recommendation R2: Recommendation has been implemented. It is Board policy that all contracts include a review by County Counsel and Risk Management. In addition contracts related to computer services require Information Services review. These reviews include an assessment of technical skills and expertise.

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.

Response to Recommendation R3: Recommendation has been

implemented. The Information Services' Department works with county departments and prepares a "system development" plan to assure successful implementation of new systems. This plan includes: proper evaluation of the product and competing products as well as checking product references; an installation process that encompasses testing scenarios, verification procedures, parallel system testing, and check points to go forward or back. These steps ensure a successful implementation and only when the system "passes" these criteria is it implemented.

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.

Response to Recommendation R4: Recommendation has not yet been implemented, but will be implemented in the future. Information Services will assess the adequacy of training along with any other appropriate contract review. In addition, Information Services will continue to position itself to support those departments needing technical help in evaluating and tracking contract compliance of IT issues including training and implementation compliance. This will be done by October 31, 2001.

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.

Response to Recommendation R5: Recommendation has been implemented. This is the current Board policy. The Courts were in the process of becoming independent from the County. During this time, the County requested that all computer contracts undergo the standard review procedure by Information Services, County Counsel and Risk Management. Sometimes the County recommendations were not followed. Now that the Courts are separated from the County this is no longer an issue.

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 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.

Response to F1: ***The respondent agrees with the finding***. Fire agency personnel are typically first on-scene who direct and assist with mitigation of spills as appropriate and possible.

F2. County personnel have pagers and are available to respond to hazardous waste emergencies on a twenty-four (24) hour per day basis.

Response to F2: ***The respondent agrees with the finding***.

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.

Response to F3: ***The respondent agrees with the finding***. Local dispatching and coordination is paramount and primary.

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.

Response to F4: ***The respondent agrees with the finding***.

F5. Reimbursement from the Federal Emergency Management Agency is available for County responses.

Response to F5: ***The respondent agrees with the finding***. Not only is FEMA funding potentially available, but also funds administered by the California and Federal Environmental Protection Agencies.

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.

Response to F6: ***The respondent disagrees partially with the finding***. California state law (AB939) 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 have the option of requesting an extension up to 2006 to achieve the 50% reduction.

F7. El Dorado County received the extension.

Response to F7: ***The respondent disagrees partially with the finding***. El Dorado County has not received, but is qualified and eligible to apply for the extension. The State is in the process of developing the application process for this extension. Since the County is eligible for the extension and it will apply as soon as the application process is known.

F8. The County, thus far, has reduced solid waste by approximately 40%.

Response to F8: ***The respondent agrees with the finding***.

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.

Response to F9: ***The respondent agrees with the finding***.

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.

Response to F10: ***The respondent agrees with the finding***. In addition to the above referenced political jurisdictions, the City of South Lake Tahoe also administers its own franchise agreement with South Tahoe Refuse Co., Inc.

F11. The European Union has adopted a law forbidding landfills by 2005.

Response to F11: ***The respondent agrees with the finding***. The European Union has adopted a position that al members countries (13) shall ban the burial (landfilling) of all unprocessed solid waste.

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.

Response to F12: ***The respondent agrees with the finding.***

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.

Response to F13: ***The respondent agrees with the finding***. The El Dorado County Environmental Management Department is a member of the Regional Council of Rural Counties Environmental Services Joint Powers Authority (ESJPA) which currently has 24 member California counties. An ESJPA member, Mariposa County and their partner, Yosemite National Park, spent the last five years (RFQ/RFP) searching worldwide for a new solid waste facility provider and are now in final negotiations with the Herhof Corporation of Solms, Germany. Herhof has over 34 solid waste facilities throughout Germany and several more in other European countries. The Environmental Health Director accompanied the Mariposa County delegation to Germany in Late February 2001 to observe the technology.

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.

Response to F14: ***The respondent agrees with the finding***. The Director is generically encouraging the above referenced local companies to identify improved techniques and new technology from whatever vendor to allow the County to comply with AB939 and to provide alternatives (other than open burning) for forest slash and yard waste.

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.

Response to F15: ***The respondent agrees with the finding***. Timing may be optimistic (see Responses Required for Recommendations).

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.

Response to Recommendation 1: **The recommendation has not yet been Implemented, but will be implemented in the future.** On April 3, 2001, the El Dorado County Board of Supervisors authorized the Environmental Management Department to: 1) release a Request for Qualifications (RFQ) to over 100 potential worldwide solid waste facility vendors to design, build and permit within the County a new mixed solid waste facility (or facilities); and 2) request priority proposals from both South Tahoe Refuse Co., Inc. and Waste Management, Inc. to upgrade their

existing facilities so as to increase local solid waste reduction efforts. On June 29, 2001, the Department received a total of 7 responses including: South Tahoe Refuse Co., Inc., BLT Enterprises, Conporec/S&W, Inc., Norcal Waste Systems, Inc., CWR Industries, Inc. and Herhof.

Staff is preparing an analysis of the RFQ responses. On or around September 18, 2001, the Department will be requesting authority from the Board of Supervisors to initiate the Request for Proposal (RFP). Without obligating or compromising our existing solid waste system, the RFP phase will allow the County to identify critical procurement issues including costs, timing, alternatives, technology options, limitations and permit issues. Responses to the RFP's will tentatively be due on or around January 1, 2002. Subject to the approval of the Board of Supervisors, contract negotiations and permitting of the new facility(ies) construction and/or facility (ies) modification could be immediately initiated.

R2. The Director should continue to research methods of disposition of the baled remainder and residue of solid waste.

Response to Recommendation 2: ***The recommendation has been implemented***, and is on-going per Recommendation R1, above.

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

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.

Response to F1: ***The respondent agrees with the finding***.

F2. Crowding of desks and file cabinets in Building 300 results in very poor working conditions including improper lighting and ergonomic problems.

Response to F2: ***The respondent agrees with finding***.

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.

Response to F3: ***Respondent disagrees partially with finding***. The inside storage areas do have adequate ventilation and proper refrigeration facilities. Cal OSHA has inspected the evidence storage area and has not issued any citations for inadequate ventilation or improper refrigeration facilities. The Sheriff's Office is making use of the old jail for evidence storage and while it is certainly not the best facility for that purpose, and a new facility is very desirable, the existing space is safe for employees.

F4. General housekeeping in the evidence storage area was lacking.

Response to F4: ***The respondent disagrees with finding***. The Evidence Technicians are fastidious about keeping storage areas clean and picked up. There is a hallway enroute to the evidence storage area where items awaiting pickup by the County's salvage company are stacked that appears untidy to visitors. If this is the area the Grand Jury is referring to there is no alternative storage area available either at 300 Fair Lane or at General Services.

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.

Response to F5: ***The respondent disagrees partially with the finding***. While the three air conditioning units are old they are in good repair and provide adequate ventilation.

F6. Some evidence is stored in an uncovered outdoor area. This can lead to the evidence being degraded.

Response to F6: ***The respondent agrees with the finding***.

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.

Response to F7: ***The respondent disagrees partially with finding***. Several ceiling tiles are missing, not most. There is no frayed and temporary electrical wiring. Ventilation is not inadequate. Within the next 60 days General Services will evaluate the problem of missing tiles and replace as required.

F8. The Officer's dressing and shower area is too small for the number of personnel using it.

Response to F8: ***The respondent agrees with the finding***.

F9. Housekeeping in the dressing and shower area was inadequate.

Response to F9: ***The respondent agrees with the finding***.

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.

Response to F10: ***The respondent disagrees partially with the finding***. The Department of General Services requested the Fire Marshall to conduct an inspection of all County buildings in March 2000. Notice of violations was given to the Department of General Services. The Department of General Services provided the Fire Marshall with a written account of corrective action taken. The Fire Marshall found that written account satisfactory and elected to not perform a re inspection to verify corrective actions had been taken.

Recommendations

R1. The Board of Supervisors (BOS) should provide adequate facilities to house personnel of the Sheriff's Department.

Response to Recommendation R1: ***The recommendation has been implemented.*** Some staff have been relocated to the Grand Victory Mine building to alleviate overcrowding and the current facility in Placerville is being refurbished to better utilize the space and allow for the installation of new modular workstations. In addition the Board of Supervisors has directed that a facilities needs assessment be completed during FY 2001/2002. The Sheriff Department space needs will be addressed along with all other County Departments.

R2. The Department of General Services should upgrade the ventilation and refrigeration systems of Building 300 to meet current health and safety standards.

Response to Recommendation R2: ***The recommendation has not be implemented but will be implemented within the next six months***. The HVAC systems servicing the old control room and some cell areas are being replaced by a single unit. The HVAC systems servicing the front, east-end of the building and the Records Section will be replaced as part of the refurbishment of the building.

R3. The Sheriff's Department should see to it that good housekeeping practices are observed at all times.

Response to Recommendation R3: ***Recommendation has been implemented***. The Department of General Services provides janitorial services Monday through Friday. There are no janitorial services provided on weekends or holidays, even though the Sheriff's building is used seven days a week. Daily janitorial service has

been requested, but General Services is unable to provide it because of staffing constraints. Sheriff's staff is, and will continue to be, encouraged to take personal responsibility for keeping the facility picked up, particularly on days when there is no janitorial service.

R4. The Department of General Services should upgrade two remaining air conditioning / air handling systems to current standards or replace them.

Response to Recommendation R4: <u>The recommendation has not yet been implemented, but will be implemented in the future.</u> The remodel project that includes the HVAC is currently out to bid and construction is anticipated to begin prior to the end of the year.

R5. The Sheriff's Department should identify and obtain new storage areas to protect the integrity of stored evidence.

Response to Recommendation R5: <u>Recommendation will not be implemented because it is unreasonable</u>. The Sheriff requires approximately 14,000 square feet of evidence storage space. Because the County has no plans for a new Sheriff facility in the near future, the current storage facility at 300 Fair Lane must be maintained.

R6. The Department of General Services should upgrade the exercise room in Building 300 to meet current health and safety standards.

Response to Recommendation R6: <u>The recommendation will not be implemented because it is not warranted.</u> This area was not part of any General Services project. There are no health and safety standards for exercise rooms. In addition to utilizing the exercise room Sheriff Department staff can exercise out of doors.

R7. The dressing room and shower area in Building 300 should be expanded to meet current needs.

Response to Recommendation R7: <u>The recommendation has not been implemented but will be implemented in the future</u>. General Services is coordinating a remodel project. This remodel includes new shower stalls along with an expanded locker room area.

R8. It is recommended that the 2001/2002 Grand Jury re-inspect Bldg. 300.

<u>Responses Required for Findings</u>

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.

Response to F1: Respondent agrees with finding.

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

- #1 The sloping roof in the kennel area is so low that it causes employees to work in a stooped position;
- #2 The kennel gates contact the ceiling, restricting the gate openings to approximately 45 degrees;
- #3 Fluorescent lights are suspended from low ceilings creating a potential for head injuries;
- #4 There was a broken window in the kennel area;
- #5 The roof over the euthanasia room is badly deteriorated;
- #6 Water, sink, and floor drains are not provided in the euthanasia room;
- #7 Asphalt in the animal exercise area is badly deteriorated and breaking up;

- #8 Barbed wire is broken and hanging on the fence around the exercise area;
- #9 There are no provisions to control runoff from the slope behind the building. This causes occasional flooding of some interior areas of the building;
- #10 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;
- #11 There is no access for the public to enter the facility, other than walking up the driveway;
- #12 There are no provisions for handicapped entry;
- #13 The facility is not enclosed by a security fence.

Response to F2: <u>The respondent agrees with the finding</u>.

<u>Recommendations</u>

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.

Response to Recommendation R1: The El Dorado County FY 99/00 Grand Jury response was as follows: "One of the unsafe conditions was an outside handrail that was deteriorating. It has been replaced. Electrical plates have been installed. The roof has been repaired; however, the cause of the damage is the inadequate slope of the roofline, which doesn't allow snow and melting water to exit. The roof needs to be re-engineered and replaced otherwise the condition will reoccur.

The floor drain-resurfacing project has been approved as an ACO project for FY –00-01. Once completed, the drains will allow water to exit. A work Order has been issued for the repair of the deck that holds the outside freezers.

The Department (Health) will submit a detailed request to General Services to review current facility needs to be included in fiscal year 2001/2002 capital projects. Intermediate solutions for public access to the facility during the winter include more frequent spreading of cinders on the drive and building handrails. The facility is very old and has had several modifications and structural additions to the main building. Most of the recommendations cannot be implemented at a reasonable cost due to structural limitations, i.e., the entire roof would need to be removed and raised to ensure an ergonomically and safe working environment. Making the necessary

recommended repairs will most likely exceed the cost of replacing the existing facility."

Response to Recommendation R1: <u>The recommendation will not be implemented because it is unreasonable</u>. Since the County can not implement the entire recommendation, the County is limited to the above response. However, each of the items referring to the F2 above is addressed below.

1. Renovating the kennel area's sloping roof. Renovating the roof will not be done because it is cost prohibitive. However, the Health Department in coordination with General Services will continue to consider other options (new building, leased building, etc.) as funding and availability of space in the South Lake Tahoe area occur.

2. Kennel Gates: Because this issue is related to the kennel area and the condition of the roof, the situation needs to be evaluated and will be addressed within the next 6 months.

3. Fluorescent lights: These ceiling lights, not hanging lights, are also related to the sloping roof situation. General Services will move the lighting fixtures to a safer location.

4. The broken window: General Services has repaired one window; however, two additional have recently been reported and will be repaired by the September 28th.

5. Euthanasia roof: General Services has discovered dry rot and insect damage and is in the process of contracting for this work. The repair will be completed by April 30, 2002.

6. Water, sink, and floor drains: The floor drain resurfacing has not been completed because of a backlog of capital improvement projects (CIP) with higher priorities. The FY00/01 scheduled project therefore became a carryforward project in FY01/02 that will be completed by June 30, 2002.

7. Animal exercise-area: The animal exercise area will be evaluated within the next 6 months and if warranted included in the FY 2002/03 capital improvement budget.

8. Barbed wire: This has been an ongoing problem because the wire can not withstand the weight of the snow in the winter and is constantly breaking. General Service will immediately remove the broken barbed wire and will investigate alternatives for security fencing.

9. Runoff control behind the building: Runoff behind the building causes occasional flooding in interior offices. The drainage behind the building had been managed by a swale at the bottom of the hill. Over the years, erosion has filled in the swale. General Services has initiated an evaluation and believes several permitting agencies will be involved in the restructuring of the drainage system. Depending on the permitting process, General Services will budget in the 2002/03 CIP budget. In the meantime GS will perform minor cleaning of the swale area to reduce the possibility of future flooding.

10. Steep asphalt driveway: As stated in last year's Grand Jury response cinders and salt will continue to be spread on the drive during winter conditions. Handrails were not built as anticipated because of other workloads and priority projects. General Services will install handrails by November 30, 2001.

11. Lack of public access. Absent a new building site public access can not be reasonably accomplished. Although space is limited the parking area accommodates 3 to 4 vehicles at a time. Most of the time this is sufficient. When it is not, parking spaces are available at the bottom of the drive.

12. Handicapped entry problems: Currently cars can pull up to the back non-public that can accommodate a wheelchair. Inside, persons using wheelchairs can access the cat rooms, but not the dog rooms. However, the Health Department in coordination with General Services will continue to consider other options (new building, leased building, etc.) as funding and availability of space in the South Lake Tahoe area occur. With a new building and/or location, handicap access can be provided.

13. Security fence. The Board recognizes that a fence is needed to keep animals from escaping during loading and unloading periods. A security fence may not be possible because it will possibly affect TRPA land coverage requirements. General Services will report back to the Board as to the possibility and timeframes if it is within 6 months.

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.

Response to F1: ***The respondent agrees with the finding***.

F2. When the outfall pipe becomes clogged, water backs up in the stairwell resulting in basement flooding.

Response to F2: ***The respondent agrees with the finding***.

F3. Cleaning up the facility after flooding episodes is time consuming and costly.

Response to F3: ***The respondent agrees with the finding***.

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.

Response to Recommendation R1: ***The recommendation will not be implemented because it is unreasonable.*** As an alternative to the redesign of the drain system (estimated to cost $125,000) that currently runs under the building, General services will monitor the status of the pipe out fall and unplug as necessary. This is a temporary solution and General Services will reconsider the redesign project for a longer-term solution as part of a future capital improvement project (CIP).

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.

Response to Finding F1: The respondent agrees with the finding.

F2. Although the 2001/2002 Road Maintenance Budget has increased from last year, the new amount is still inadequate to prevent further road deterioration.

Response to Finding F2: The respondent agrees with the finding.

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.

Response to Finding F3: The respondent agrees with the finding.

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.

Response to Recommendation 1: <u>The recommendation has been implemented.</u>

Infrastructure maintenance is an increasingly critical issue throughout California and the United States. The overall condition of public roads has deteriorated due to insufficient funding in a majority of California's local jurisdictions.

Funding for road purposes in El Dorado County has improved in the last year. In FY 2000/2001 the County began receiving three new sources of road funding that resulted in $1.5 million overlay programs in fiscal years 1999/2000 and 2000/2001, and an increased chip seal program, amongst other new efforts. While this amount of new funding will not finance the complete restoration of the County's roads, it is already making a significant, positive impact.

The Board of Supervisors, with the assistance of its Department of Transportation staff, is in the process of preparing a policy framework for allocating the new Measure H vehicle in-lieu fees amongst several under-funded transportation needs, including regional road maintenance, local road maintenance, bridge maintenance, bridge rehabilitation and replacement, and operational and safety projects. In 2001 a series of 12 meetings were held throughout the County to solicit input from the public on this matter. Measure H resulted in an increase $1.5 million to the Road budget.

In addition, the Governors Traffic Congestion Relieve program, although geared to high-density metropolitan areas, provided some maintenance relief to rural areas. El Dorado County will receive approximately $600,000 that will be used for road maintenance.

The process of developing this policy framework will provide the Board of Supervisors with an opportunity to discuss the relationship of existing revenues to needs, and it will ensure that these new funds are spent in the areas where the need is determined to be the greatest. At that time, the Board may choose to pursue options for additional transportation funding.

Key to any discussion of additional funds for transportation will be the relative need of many other under-funded priorities including facilities, parks, etc. Recent discussions regarding possible uses for any monies obtained from the tobacco settlements are illustrative of the many unmet needs that the County must weigh in its budget decisions.

Given the competition for limited discretionary funds within the County's budget, the most likely sources of new funds would be obtained through the creation of a new

revenue source. The most common of these in California is an increase in the local sales tax for transportation purposes. The County of El Dorado has twice pursued possible increases in the sales tax, the most recent in the mid-1990s. That effort was terminated for a number of reasons, including the difficulty of achieving a 2/3 affirmative vote required under Proposition 218.

R2. The County should act in a timely manner to procure adequate facilities for the DOT engineering staff at South Lake Tahoe.

Response to Recommendation 2: <u>The recommendation has been implemented.</u>

Though not yet completed, the Departments of Transportation and General Services have been working on an on-going basis to identify additional office space for the Tahoe engineering unit of the Department of Transportation. The primary issue is the overall lack of suitable commercial office space in the South Lake Tahoe area. The few potential candidate properties that have been available were investigated. Currently, the Department of Transportation is pursuing a suitable site. The Department of Transportation is also considering alternatives to traditional office space, such as portable space, and office space in Nevada or the western slope of the County. Should this problem continue the Department of Transportation will be making appropriate recommendations to the Board of Supervisors to ensure that the South Lake Tahoe engineering unit can deliver priority projects, particularly those identified in the Environmental Improvement Program for the Tahoe basin.

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.

Response to F1: The respondent agrees with the finding.

F2. APA recommends that laminated beams not be used in exterior construction.

Response to F2: The respondent agrees with the finding.

F3. Repair procedures are available for laminated beams that have delaminated. If done properly, these repairs can protect beams from further delamination and deterioration.

Response to F3: The respondent agrees with the finding.

Recommendations

R1. The Department of General Services should repair, or cause to have repaired, the laminated beams that are currently deteriorated.

Response to Recommendation R1: The recommendation has not yet been implemented, but will be implemented in the future. Current funding to repair beams to be accomplished by the end of November 2001.

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.

Response to Recommendation R2: ***The recommendation has not yet been implemented, but will be implemented in the future.*** Current funding to repair beams to be accomplished by the end of November 2001.

R3. Laminated beams should not be used on the exterior of structures in future County construction projects.

Response to Recommendation R3: ***The recommendation has not yet been implemented, but will be implemented in the future.*** As new County facilities are designed and constructed, the Department of General Services will insure that no laminated beams are used on the exterior of structures.

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

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 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.

Response to F1: The respondent agrees with the finding.

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.)

Response to F2: The respondent agrees with the finding.

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.)

Response to F3: The respondent agrees with the finding.

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.

Response to F4: The respondent agrees with the finding. All acquisitions of property to date have been on a willing-seller basis.

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.

Response to F5: The respondent disagrees partially with the finding. At times during its history, the Agency has aggressively exercised these enumerated powers; however, Board policy and direction regarding the Agency’s activities and overall role has shifted and been inconsistent.

The Agency has been effective with some water supply augmentation efforts

and would like to draw the Grand Jury's attention to its current efforts to acquire additional water supplies to meet projected needs. First is the water right application for 17,000 acre-feet of water that resulted in the State Water Resources Control Board (SWRCB) Decision 1635, which is currently under reconsideration. A draft decision on reconsideration has recently been issued, the SWRCB has held a workshop on the draft decision, and a final decision is expected by the end of this year, possibly in August. This water supply project was researched and initiated by the Water Agency and joined in by the El Dorado Irrigation District, the beneficiary of the granting of the rights.

The second effort is the 1990 Congressional directive (P.L. 101-514) to the Bureau of Reclamation to enter into a contract with the Agency for up 15,000 acre-feet of water from the Central Valley Project at Folsom Reservoir. This legislation was the direct result of Agency action. Currently the Agency, with the technical and financial participation of the El Dorado Irrigation District and the Georgetown Divide Public Utility District, is preparing the necessary environmental impact document to disclose the impacts of this action in conformance with both the California Environmental Quality Act and the federal National Environmental Policy Act. The completion of these studies will closely follow the adoption of the County General Plan, projected for early 2003.

Countywide, these two additional water sources are the only major supplies being pursued at present by any agency. In 1996, these additional water supplies were projected to meet the future water needs of the west slope of the County through approximately the year 2025. The adoption of a new general plan will require a new study to determine the adequacy of this additional water supply. However, even after the addition of these new water supplies, projects to improve drought protection and water delivery reliability will continue as an unmet need to be further addressed.

In an effort to secure additional water for future needs though the exercise of the powers identified in this finding, the Agency joined with the El Dorado Irrigation District on October 5, 1982, to form the South Fork of the American River Project Authority (Authority) as a joint powers authority. The Authority proposed and partially funded studies leading to the proposal for the construction of the South Fork of the American River Project (SOFAR). The Authority received voter approval to issue bonds to construct the project. However, due to continued environmental community opposition and high interest rates in the bond market, the bonds were not saleable and the effort to construct the project collapsed in 1986. It was following this ill-fated effort that the Agency was staffed with full time personnel and the action to augment water supplies that resulted in the two projects discussed above was initiated.

F6. The Agency presently has the following statutory powers, among others:

a. “To 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. “To control the flood and storm waters of the agency" and "to conserve such waters for beneficial and useful purposes" (Section 96-13.);

c. “To 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. “To 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. “To 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. “To 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.).

Response to F6: The respondent agrees with the finding. The response is subject to one important clarification. The Agency's primary funding source is an ad valorem property tax levied on all real property within the Agency. (Section 96-47.) The proceeds of that tax may be used for all lawful expenditures of the Agency, "except the cost of constructing any works." (*Ibid*.) The term "works" is defined very broadly to include dams and dam sites, reservoirs and reservoir sites, and all conduits and other facilities useful in the control, conservation, diversion and transmission of water, power generation and transmission facilities, and all land, property, franchises, easements, rights of way and privileges necessary or useful to operate or maintain any of the foregoing." (Section 96-3, subd. (e).) Most of the powers enumerated by the Grand Jury, therefore, involve the construction of works. As a result, before it could exercise those powers, the Agency would first have to define an environmentally acceptable and financially feasible project that will generate adequate revenue to retire the debt incurred in its development.

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.

Response to F7: The respondent disagrees wholly with the finding. The Agency has neither "failed" to exercise the enumerated powers, nor has it typically "deferred" to water purveyors for primary activity in those areas. See responses to Findings F5 and F6 above, for further explanation.

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.

Response to F8: The respondent disagrees wholly with the finding. The respondent disagrees wholly with the finding. The statute authorizes, but does not require, the Agency Board to designate zones of benefit within the Agency. If a zone is designated, special taxes may be levied and/or bonds issued to finance the construction of works within such zones. This statute was added to the Agency's Act in 1971 and has never been utilized. There has been *no* delegation of the authority granted by the statute, to EID or any other entity. EID has no inter-district water allocation role. Public Law 101-514 directs the United

States Bureau of Reclamation to contract with *the Agency* for additional water supplies from Folsom Lake. As the prime contractor, the Agency retains the authority to determine how to allocate those new supplies between EID and Georgetown Divide Public Utility District.

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.

Response to F9: The respondent agrees with the finding.

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.

Response to F10: The respondent disagrees partially with the finding. All named entities operate water and/or power projects, which the Agency does not. All, except the Northern California Power Authority and the M-S-R Power Authority, have legal authority to sell water to retail customers, which the Agency does not. Differences such as these affect the operations of these agencies much more significantly than the makeup of their Boards of Directors. Also, the M-S-R Power Authority is a newly formed entity that, in the respondent's opinion, has not yet developed any reputation, favorable or unfavorable.

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 BOS has adopted a resolution supporting this proposed legislation.

Response to F11: The respondent agrees with the finding. The response is subject to the following clarifications. In addition to this Board, the Agency Board, the Boards of all county water purveyors, the County Chamber of Commerce, and the Taxpayers Association have all adopted letters or resolutions of support. SB 428 has passed out of the legislature, been signed by the Governor, and will come into effect January 1, 2002.

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.

Response to F12: The respondent agrees with the finding. Note that SB428, as approved, does not provide for direct representation by a public member on the Agency 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.

Response to F13: The respondent agrees with the finding.

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.

Response to F14: The respondent agrees with the finding. The response is subject to two clarifications. First, the appellate case cited does not prohibit the certification of an EIR in connection with new water supplies, even absent an adopted general plan, if the supplies are necessary for development that is already finally approved but as yet unbuilt. The primary example of such development is the development allowed by the Writ of Mandate issued in the County's General Plan litigation. Second, the Agency agrees that the County should adopt a new and valid General Plan as soon as it can, but we recognize that water to which County entities have or may seek rights can be lost at any time for a variety of reasons that are not related to the General Plan. Although these rights or potential rights may be lost to other water users, they are more likely to be dedicated to environmental purposes.

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.

Response to F15: The respondent agrees with the finding.

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.

Response to F16: The respondent disagrees partially with the finding. As explained in the response to finding F8, there has been no *delegation* of Agency authority to other entities. The Agency's frequent failure to *exercise* its authority, however, has sometimes by default left individual water purveyors to fend for themselves in the acquisition, development, and defense of water and power resources within the County.

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.

Response to Recommendation R1: The recommendation has been implemented. Implementation was by the enactment of SB 428, which will become effective on January 1, 2002. However, SB 428 does not provide for a public member on the reconstituted Agency Board of Directors. That portion of the recommendation will not be implemented because it is not warranted. The public is represented by the reconstituted Board of Directors indirectly, because every member of the Board of Directors will be an elected official. Also, citizen involvement and input can be increased, if the new Board desires, by the appointment of a citizens' advisory commission.

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.

Response to Recommendation R2: The recommendation will not be implemented because it is unwarranted. More precisely, the respondent will

not be implementing this recommendation as proposed. It is the intention of the respondent to increase information exchange with these and similar agencies through participation in the regular meetings of organizations such as the Association of California Water Agencies and programs of the Water Education Foundation.

The Agency will not be in a position to operate like these other agencies unless it develops a revenue-generating water and power supply project. Such a project would be developed based on the need and require the services of engineering and other consultants. The operating agencies referred to have all reached their current position through project development and customer service. Under the restrictions of the Agency's enabling legislation, any similar Agency project would necessarily result in a wholesale contract to a purveyor rather than direct customer service. Under such an arrangement, the Agency would not need the type or size of some of the organizations referred to in this recommendation.

The pending long-term countywide water plan referred to in finding F13 will estimate the potential future water needs for the county and will identify projects to meet those needs. Before they can be pursued, projects identified in the countywide plan must be subjected to further individual study to determine their environmental impacts, their ability to meet water supply needs and their financial feasibility. The Agency anticipates participating in those studies.

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.

Response to Recommendation R3: The recommendation requires further analysis. The Agency's annual revenue is largely a product of assessed property value, and therefore not within the Agency's control. In the long run, the Agency may be able to identify and implement projects that are net revenue producers, which would increase its budget. *In the short run, the Agency in its annual budget process will review funding allocations to prevent excessive or unwarranted transfers of revenue to various County functions.* For fiscal year 2001-2002, this short-run analysis will occur prior to the final adoption of the Agency's budget in September 2001.

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.

Response to Recommendation R4: <u>The recommendation requires further analysis.</u> This decision is probably best made by the newly constituted Agency Board, now that SB 428 has been signed into law. The Agency's General Manager supports the recommendation and expects to bring this issue to the new Agency Board in January 2002 for consideration. The General Manager is including sufficient funding to implement this recommendation in the contingency fund of the proposed Fiscal Year 2001-2002 budget.

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.

Response to Recommendation R5: <u>The recommendation has not been implemented but will be implemented in the future</u>. Preliminary studies on this theme have been performed sporadically for several decades. The pending long-term countywide water plan referred to in finding F13 will include studies of this issue. A contractor has been identified to prepare that plan and a proposed contract to begin the work should be before the Agency Board for its consideration within the next six to eight weeks.

R6. The Agency should also undertake studies directed toward the development of hydro-electric 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.

Response to Recommendation R6: <u>The recommendation requires further analysis</u>. Preliminary studies on this theme have been performed sporadically for several decades. The pending long-term countywide water plan referred to in finding F13 will include studies of this issue. The adopted plan will provide a foundation for determining whether subsequent implementation of the recommendation is warranted. The plan is scheduled to be ready for adoption by Fall 2002.

R7. In summary, the Grand Jury recommends that the Agency expand its activities to more fully exercise its statutory role.

Response to Recommendation R7: <u>The recommendation has not been implemented but will be implemented in the future</u>. The restructuring of the Agency Board, the hiring of an Assistant General Manager, the preparation of a long-range countywide water plan, and reform of the Agency's budget process, including the adoption of five-year budget plans, are key to the implementation

of this recommendation. At this time, all are expected to occur before the end of year 2002.

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, supervisorial 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