EL DORADO COUNTY GRAND JURY 2014-2015

EL DORADO HILLS CSD AND CC&R ENFORCEMENT

Case GJ-14-03

The El Dorado Hills Community Services District (CSD) receives a \$10 annual tax from each parcel in the district for Covenants, Conditions, and Restrictions (CC&R) enforcement. However, many parcels in the district are organized into discrete Home Owner Associations (HOAs) that enforce their own CC&R without assistance from the CSD. Some of those HOA homeowners complained they do not receive any specific service in return for that tax.

BACKGROUND

The El Dorado Hills Community Services District (CSD) has an elected board of directors to oversee CSD management and operations providing parks, recreation and limited Covenants, Conditions, and Restrictions (CC&R) enforcement.

CC&Rs are contractual limitations on a property owner's rights such as architectural design and ongoing maintenance. Those restrictions are placed on the property deed, recorded with the county, and made a condition of purchase by subsequent owners.

The CSD Board of Directors adopted a resolution on July 21, 1983, placing a voter initiative, "Covenants, Conditions and Restrictions Enforcement - Measure B," on the Nov. 8, 1983, General District Election ballot. Measure B authorized the CSD "...to adopt and levy a special tax, of up to \$10 per year, on each parcel of land within the District, to be used for any costs or expenses incurred by the District in carrying out said purposes ..." Measure B was passed by the voters. Both the CSD resolution and the original 1983 Measure B ballot description stated that the \$10 fee was for the specific purpose of enforcing CC&R compliance.

METHODOLOGY

- CSD management and a current board member were interviewed.
- Representatives of seven HOAs were interviewed.
- The Official Ballot from Nov. 8, 1983, general election was reviewed.
- A letter from the CSD Board President was reviewed.
- A list of current HOA addresses and contact information was reviewed.
- A list of HOAs that enforce their own CC&Rs and those serviced by the CSD was reviewed.

DISCUSSION

In a letter to the Grand Jury, CSD management stated that the \$10 levy "is a "Special Tax"..." and that "[T]here need not be a direct benefit tied to the property owner or taxpayer." but that it "...can be used to pay for public services and/or facilities that provide general benefits." They acknowledged that "[A] special parcel tax is a charge for *specific purposes* against a landowner..." [Emphasis added.] At the same time, they seemed to ignore the 1983 Board resolution and ballot measure which authorized the levy as a special tax for the *specific purpose* of enforcing CC&R for each tract within the district boundaries. The taxes collected for this *specific purpose* of CC&R enforcement have been and continue to be used for other purposes.

There are 27 HOAs within the El Dorado Hills CSD. Of those, 19 enforce their own CC&Rs. Documentation supplied by the CSD shows that the remaining eight rely on the CSD for CC&R enforcement.

Representatives of seven of the HOAs who enforce their own CC&Rs were selected for interview. None of those interviewed was aware of the tax. They enforce their own CC&Rs without receiving any compensation from the CSD for doing so. All stated they could use those funds for their own CC&R enforcement. There is no agreement or memorandum of understanding between the CSD and HOAs for CC&R enforcement; likewise, there is none for the CSD to compensate these HOAs from the tax funds it receives for services it does not provide.

The CSD encompasses more than 15,500 parcels. The 19 HOAs that enforce their own CC&R constitute almost 8,200 parcels — slightly more than half of the total. Each of those 8,200 parcels pays \$10 annually, yielding about \$82,000 in revenue to the CSD. Although it may be argued that the CSD does provide a variety of benefits to the region as a whole using those funds, the money is not being used for the purposes authorized by the voters when they adopted Measure B.

FINDINGS

- 1. A special per parcel tax was adopted in 1983 for the specific purpose of enforcing CC&R.
- 2. The special tax is no longer being used exclusively for CC&R enforcement.
- 3. The CSD receives tax funds from almost 8,200 parcels for CC&R enforcement they do not provide.
- 4. The parcels in HOAs that enforce CC&Rs are paying twice for CC&R enforcement.
- 5. Most CSD taxpayers are unaware of the special tax and its original purpose.

RECOMMENDATIONS

The CSD should:

- 1. Evaluate the appropriateness, inequities and continued need for the special tax.
- 2. Enter into a Memorandum of Understanding with HOAs enforcing CC&Rs to reimburse the cost of enforcement.
- 3. Establish a new voter referendum to modify or repeal the tax.

ATTACHMENTS

- Official Ballot from the Nov. 8, 1983, general election.
- Letter from CSD Board President.
- Map of the El Dorado Hills CSD.
- List, provided by the CSD, of the parcels in individual HOAs that do and do not enforce their own CC&Rs.

RESPONSE

Responses to both findings and recommendations in this Report are required by law in accordance with California Penal Code §933 and §933.05. Address responses to:

The Honorable Suzanne N. Kingsbury Presiding Judge of the El Dorado County Superior Court 1354 Johnson Blvd. South Lake Tahoe, CA 96150

This Report has been provided to the El Dorado Hills Community Services District.

The Presiding Judge of the El Dorado County Superior Court requests that responses be sent electronically as a *Word* or *PDF* file to facilitate economical and timely distribution. Please email responses to the El Dorado County Grand Jury at: courtadmin@eldoradocourt.org

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OFFICIAL BALLOT

GENERAL DISTRICT ELECTION

EL DORADO COUNTY

NOVEMBER 8, 1983

I HAVE VOTED-HAVE YOU?

SIDE 2

This ballot stub shall be form off by precinct board manner and handed to me were

XX	SCHOOL	
	LOS RIOS COMMUNITY COLLEGE DISTRICT	
	Governing Board Member Trustae Area No. 3 Vote for	One
	DAYID K. MARTY Certified Financial Planner	-
	CHERIE L. RAFFETY incumbent	1
	_	+
	EL DORADO UNION HIGH SCHOOL DISTRICT	
	Vots for Governing Board Member more than	
	JOY ANDREWS Housewife-Interested Parent	+
	TOM ADAMS Involved Parent	+
▓	DOLORES A. GARCIA Incumbent	+
▩	NINA ANN HOWARD County Employee	+
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▓	BUCKEYE UNION SCHOOL DISTRICT	
	Governing Board Member Worte for more than	no
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		MEASURES SUBMITTED TO VOTE OF VOTERS	
		DISTRICT	_
1	▩	EL DORADO HILLS COMMUNITY SERVICES DISTRICT	
	▓	ACQUISITION AND DISTRIBUTION OF ELECTRICITY SERVICE- MEASURE A	_
	▓	Shall the El Dorado Hills Community Services District adopt the following addi- tional purpose and be authorized to ever- cise the following powers: to acquire.	
		construct, own, operate, control or use, within or without or partly within and partly without the district, works for	S
	₩	supplying its inhabitants with electricity. NO + and to purchase and distribute such service	
	※	from any other district, person or company (all as provided in Chapter 1149 of the Statutes of 1982, AB 3652 - Norman Waters)?	
	▓	COVENANTS, CONDITIONS, AND RESTRICTIONS ENFORCEMENT-MEASURE 8	4
		Shall the El Dorado Hills Community Services District be authorized to enforce the covenants, conditions, and restrictions adopted for each tract within the boundaries of the District, and to assume the duties of the architectural control committee for each tract within the boundaries of the district to the extent authorized by the covenants, conditions, and restrictions applicable to the tract), for the purpose of maintaining uniform standards of development within the District, as adopted in the covenants, conditions, and restrictions tall as provided in Chapter 1149 of the Statutes of 1982, AB 3652-Norman Watersit; and shall the Board of Directors of the District be authorized to adopt and levy a special tax, of up to \$10 per year, on each parcel of land within the District, to be used for any costs or expenses incurred by the District in carrying out said purposes?	**************************************

VOTE BOTH SIDES

C9102

September 16, 2014

Mr. Jim Kern 2014/15 Grand Jury Foreperson State of California Grand Jury of El Dorado County P.O. Box 472 Placerville, CA 95667



Dear Mr. Kern:

We are in receipt of the Grand Jury's letter, dated September 4, 2014, inquiring about the El Dorado Hills Community Services District's (EDHCSD's) annual ten-dollar per parcel special tax for covenants, conditions and restrictions (CC&Rs) enforcement activities and appreciate the opportunity to provide you with the history and justification for the EDHCSD's collection of the ten-dollar per parcel tax.

To gain a better understanding of our authority, it is important to first clarify that the ten-dollar per parcel is a "Special Tax" and not an "Assessment" as described in the Grand Jury's letter. This is an important clarification because assessments and special taxes are two distinctly different types of funding mechanisms.

A Special Tax is considered a type of tax—not a fee, charge or special assessment. There need not be a direct benefit tied to the property owner or taxpayer. A special parcel tax is a charge for specific purposes against a landowner, which can be used to pay for public services and/or facilities that provide general benefits. A 2/3rds majority of the qualified voters in the service area must approve special taxes.

A Benefit Assessment, like a Lighting and Landscape District, is based on the concept of assessing only those properties that benefit from improvements either directly or indirectly through increased property values. In order to levy a special assessment we need to generate a detailed professional engineer's report outlining the proposed area, proposed project costs, annual cost to each property, and the benefit formula used to determine each property's share of the cost. In order to approve an assessment district, only a majority of affected property owners must approve through an assessment balloting procedure. Once approved, assessments are placed on property tax bills each year.

The ten-dollar per parcel is a special tax that was approved by the voters in 1983 through the passage of Measure B (see enclosure). Attached to this measure was a special tax of up to \$10 per year per parcel, to be used for any expenses incurred by the CSD in carrying out that enforcement. Measure B passed pursuant to the statutory authority granted to the EDHCSD in former Government Code section 61601.10 (and continues to be authorized pursuant to Government Code section 61105). Additionally, the EDHCSD adopted resolution No. 83-7 (see enclosure) in support of the special tax.

Currently, the EDHCSD oversees and enforces the CC&Rs and architectural oversight control of approximately two-thirds of the parcels within our boundaries. The special taxes received from each parcel go directly to funding for those purposes.

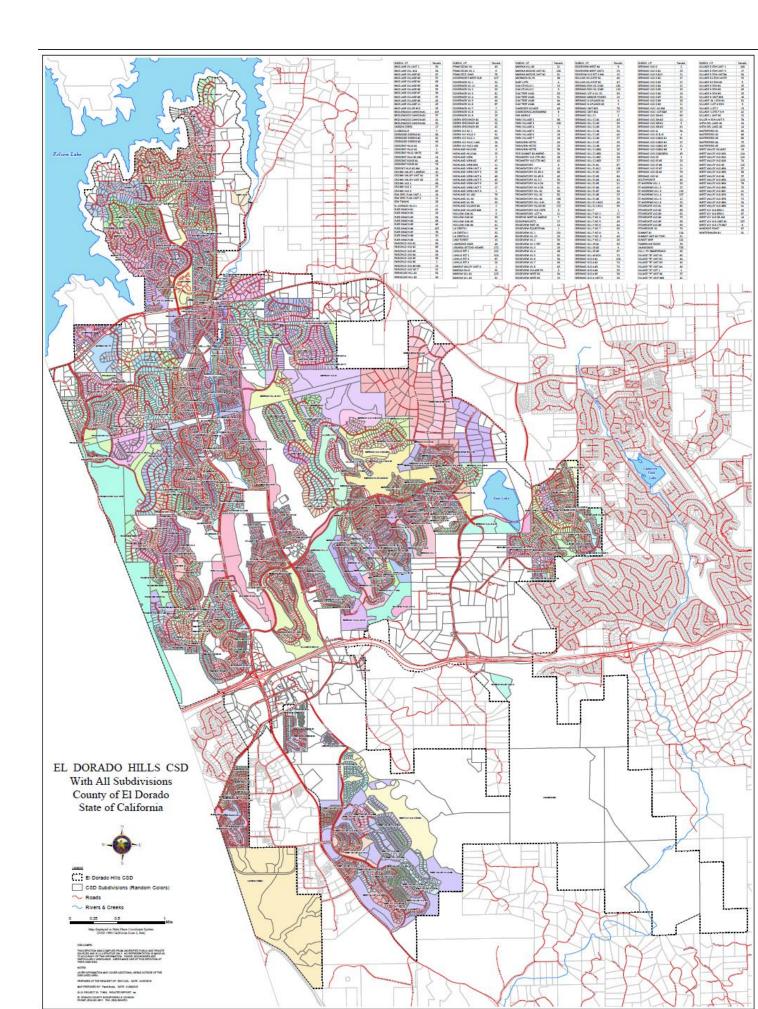
If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

Brent Dennis, General Manager

Enclosures

Cc: Noelle Mattock, EDHCSD Board President



EDH Communities with HOA's CC&R & DRC Information

CC&R Enforcement	
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		CC&R Er	CC&R Enforcement	DRC	DRC Review
Village	# of Lots	CC&R by HOA	CC&R by EDHCSD	DRC by HOA	DRC by EDHCSD
Blackstone	1445	×	-	×	
Bridlewood Canyon	345	×		×	
Francisco Oaks	9/	×		×	
Four Seasons-Euer Ranch	517	×		×	
Green Springs Ranch	96	×		×	
Highland Hills Units 1 & 2	78		×	×	
Highland Hills Unit 3	4	Need Info	Need Info	Need Info	Need Info
Highland View Units 1,2,3a, 3-7	264	×		×	
Lakehills Estates	337		×	×	
Lakeridge Oaks	48	×		×	
Lessara	172	×		×	
Marina Hills	32	×		×	
Mormon Island	38		×	×	
Oak Creek Hills Unit 2	0		×		×
Park Village Unit 2	96		×	×	
Promontory	898	×		×	
Rolling Hills	93	×		×	
Serrano	3387	×		×	
Southpointe	45	×		×	
Sterlingshire (Highland Vill Unit 3)	83	×		×	
Summit	175	×		×	
Timberline Ridge	33		×	×	
Versante	100	×		×	
Villadoro	74	×		×	
Waterford @ Lake Forest	397	×		×	
Windsor Pointe	29	×		×	-
Vista Del Lago	38	Need Info	Need Info	Need Info	Need Info

8917 Total