



EL DORADO COUNTY GRAND JURY 2023-2024



FINAL REPORT

June 30, 2024



EL DORADO COUNTY
GRAND JURY
2023-2024

Final Report

CONTENTS

PREFACE

2023-2024 Grand Jury Members

Foreperson's Letter to Presiding Judge Honorable Lauren C. Bowers

Letter from Presiding Judge to Civil Grand Jury

Instructions for Responding to a Grand Jury Report

INDIVIDUAL REPORTS

<u>Case</u>	<u>Title</u>
24-01	Georgetown Airport: A Disaster Waiting to Happen
24-02	Growlersberg Conservation Camp Inspection
24-03	Placerville and South Lake Tahoe Jail Inspections
24-04	Transient Occupancy Tax: Transparency Matters
24-05	El Dorado Hills CSD: Controversy and Concerns Demand Change
24-06	Voter Initiative Petitions: The People Need to be Heard
24-07	County Office of Education: Are Schools Doing Enough to Address Sexual Harassment
24-08	Emergency Services Authority: Who Provides Oversight?
24-09	Election Integrity: Separating Fact from Fiction
24-10	Continuity Report



El Dorado County Civil Grand Jury

2023-2024

Jurors

Gary Kinghorn – Foreperson

Michelle Fallon – Pro Tem

Ernie Bean

Scott Chad

Sue Colby

Pam Craig

Sandra Gonzalez

Debera Jackson

Roger Karker

Tom McCreary

Michael McKim

Eric Mettler

CJ Neustadter

Laura O’Keeffe

Michael Orcutt

Michael Powell

Amber Siepmann

Dave Templeton



Civil Grand Jury

El Dorado County

P.O. Box 1003

Placerville, CA 95667



June 30, 2024

Honorable Lauren C. Bowers, Presiding Judge
California Superior Court, County of El Dorado

Judge Bowers,

The 2023-2024 Civil Grand Jury Final Report is the product of a dedicated panel of El Dorado County citizens. Each juror shares responsibility for the investigations, deliberations and ultimately, the Final Report. It is my privilege to present it to you.

The 2023-2024 Grand Jury was comprised of entirely new Grand Jurors this year, except for one holdover from prior years. With limited experience coming in and some initial turnover, the ultimate group turned out to be incredibly skilled and dedicated to the Grand Jury efforts. As a result, we had a productive year that resulted in the impactful reports you will find in this Final Report.

It was my pleasure mid-year to step up to the Foreperson position upon the departure of the prior Foreperson. We would not have been successful without the amazing level of camaraderie, collegiality, and dedication that all the jurors exhibited throughout the year. Although many of us were surprised by the level of effort that a full Grand Jury term could entail, it appears that every person found the experience tremendously educational and rewarding. Speaking on behalf of my colleagues on this jury, each one of us is a better person for having served the County this past year.

We wanted the tone of our reports to not only affect change, but to enhance the public's awareness of County operations. As representatives of the public and a watchdog organization, we can only be effective with follow-on public involvement and awareness. We hope the level of detail presented in these individual reports and the resulting style stimulated public interest in County issues to that end.

I would like to thank Assistant County Counsel Janeth D. SanPedro for her tireless support throughout the year as the Grand Jury's legal advisor. Also, a similar thanks for the support from Assistant District Attorney James A. Clinchard whose efforts were invaluable to some of our investigations and the quality of the resulting reports. We cannot say enough about the support we have received from the Office of the CAO throughout the year, particularly Assistant CAO Sue Hennike whose timely access to information and historical context seemingly knew no bounds. I would also like to thank the support from the Superior Court staff this year, including Court Executive Officer Shelby Wineinger and Operations Supervisor Amanda Sooth. We would be remiss in not thanking the excellent technical support from the County IT organization under Tonya DiGiorno. From what I have seen in other rural counties, the resources provided to the Civil Grand Jury in El Dorado County has allowed us to be, we believe, one of the most productive and impactful Grand Juries in the state.

Again, it has been my sincere pleasure to lead the Grand Jury this term and to serve with this dedicated and inspirational group of fellow jurors!

Sincerely,

Gary Kinghorn
Foreperson, 2023-2024 Civil Grand Jury



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO**

2850 Fairlane Court, Ste 120
Placerville, California 95667

June 6, 2024

To the Members of the 2023/2024 El Dorado County Grand Jury,

On behalf of the El Dorado County Superior Court, I would like to express my appreciation for all your hard work and dedication. The importance of the civil grand jury cannot be understated. The time and effort involved in grand jury service is significant, even in years during which additional challenges do not arise. Despite the long hours and the challenges, you have worked tirelessly to conduct thorough investigations and provide comprehensive reports and recommendations.

During the past year, as members of our civil grand jury, you have provided independent oversight of the operation of various local governmental agencies. You have reviewed processes and procedures, looking for ways in which government can operate more efficiently, effectively, and with more transparency. Additionally, you have the adult and juvenile detention facilities operating in El Dorado County, including the Growlersburg Conservation Camp.

You are each to be commended for your willingness to serve on our civil grand jury. Your efforts, and those of your predecessor grand jurors, have made El Dorado County a better place. Thank you for your service.

Very truly yours,

Lauren Bowers, Judge of the Superior Court

How to Respond to an El Dorado County Civil Grand Jury Report

Instructions for Respondents

California law (PC §933.05) requires that those responding to the Grand Jury Report must prepare responses for individual findings and recommendations within the Grand Jury Report rather than a generalized response to the entire report. Explanations for disagreements must be provided. (PC § 933.05 is included in its entirety at the end of this section.)

Please follow the format below when preparing your response.

Response Format:

1. Find the response grid that appears near the end of each Grand Jury report, look for the row with the name of the entity you represent, and then only respond to those Findings and/or Recommendations listed on that row.
2. Provide the title and page number from the Grand Jury report.
3. Provide the date of your response.
4. For Findings
 - a. Provide a copy of the original Finding.
 - b. Respond with one of the following:
 - i. **AGREE.**
 - ii. **PARTIALLY AGREE** (specify and explain disagreement).
 - iii. **PARTIALLY DISAGREE** (specify and explain disagreement).
 - iv. **DISAGREE** (specify and explain disagreement).
5. For Recommendations:
 - a. Provide a copy the original recommendation.
 - b. Respond with one of the following:
 - i. **Has been implemented.**
 - ii. **Has not yet been implemented but will be implemented in the future** (specify expected implementation date).
 - iii. **Requires further analysis** (specify the type of analysis required and the expected completion date, not to exceed six months).
 - iv. **Will not be implemented** (either because it is not warranted or is unreasonable; please include an explanation).
6. If responding to more than one report, respond to each in a separate document or on separate pages of one document.

If you have questions about the response format, please contact the Grand Jury by email: complaints@edcgrandjury.com.

Where to Respond:

1. Send a hard copy of your response to:
The Presiding Judge of the El Dorado County Civil Grand Jury
Superior Court of El Dorado County
(The Presiding Judge and their address at one of the El Dorado Courts changes each Grand Jury term. For specific details, please reach out to the Court Administrator.)
2. Send an electronic version of your response via email to the Grand Jury: complaints@edcgrandjury.com. Please send all responses as either Microsoft Word or Adobe PDF files.

Due Dates

Elected officials or administrators are required to respond within sixty days of the Grand Jury Report's publication; responses by the governing body of any public entity are required within ninety (90) days.

Penal Code § 933.05

1. *For purposes of subdivision (b) of § 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:*
 - a. *The respondent agrees with the finding.*
 - b. *The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*
2. *For purposes of subdivision (b) of § 933, as to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:*
 - a. *The recommendation has been implemented, with a summary regarding the implemented action;*
 - b. *The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation;*
 - c. *The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report; or*
 - d. *The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.*
3. *However, if a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county department headed by an elected officer, both the department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority.*

The response of the elected department head shall address all aspects of the findings or recommendations affecting his or her department.

- 4. A Grand Jury may request a subject person or entity to come before the Grand Jury for the purpose of reading and discussing the findings of the Grand Jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.*
- 5. During an investigation, the Grand Jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the Grand Jury, determines that such a meeting would be detrimental.*
- 6. A Grand Jury shall provide to the affected agency a copy of the portion of the Grand Jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.*



EL DORADO COUNTY GRAND JURY REPORT FEBRUARY 21, 2024, CASE #24-01

GEORGETOWN AIRPORT: A DISASTER WAITING TO HAPPEN

The County is operating Georgetown Airport out of compliance with federal and state regulations. The trees are widely known to be an aviation hazard, but until recently the County has been slow to react despite the documented risks and requirements from Caltrans and the FAA.

TABLE OF CONTENTS

Contents

Summary	3
Background	6
Methodology	12
Discussion	13
Findings	17
Recommendations	19
Request for Responses	21
Appendix and Related Information	22

SUMMARY

Summary



Figure 1 - Takeoffs from runway 17 to the south are an ominous task. Taken: 11/30/23.

El Dorado County (“County”) owns and operates public airports in Placerville and Georgetown. The County Airports Division of the Planning and Building Department is responsible for keeping these airports safe. Each year hundreds of small planes use Georgetown Airport.

Over the past several years, the trees surrounding Georgetown Airport have seen significant overgrowth in the immediate areas of the runways. They are now a hazard to navigation, a potentially catastrophic risk to pilots and a significant liability risk to the County.

On March 19, 2022, the California Department of Transportation (Caltrans) issued a letter (Appendix 1) to the County requiring the removal or trimming of the overgrown trees by the

SUMMARY

end of 2022. As of December 2023, the County has failed to remove these unsafe trees and recently Caltrans has closed the airport to night operations effective December 7, 2023.

The County has been aware of these unsafe airport conditions since at least 2013 when it received a service request to remove overgrown trees (Appendix 2), as well as frequent mentions at Airport Advisory Committee meetings for several years. The County **has been operating the airport out of compliance with applicable FAA regulations and the State Airport Permit issued by Caltrans, exposing the County to potential claims of gross negligence in the opinion of the Grand Jury.**



Figure 2 - Aerial view of Georgetown Airport circa 2002.

Up until December 2023, the County had no immediate plan to remedy the problem, citing budget issues, time required to get FAA or other funding, potential environmental impact study

SUMMARY

requirements, and more. The County is, however, no longer ignoring the concerns and is taking preliminary steps to address the situation. Late in the drafting of this report we learned there was an initial plan to remove nearly 3 acres of the highest priority trees from the main approach path, and a longer-term plan to clear a remaining 3-4 acres to come completely into compliance with Caltrans and FAA guidelines that may happen by the second half of 2024.

Up to now, the County has failed to protect the safety of its citizens by not promptly addressing the airport's hazardous conditions. The County still faces an unnecessary exposure to lawsuits if someone is killed or injured because of this situation. It may only be partially covered for large liability losses through its airport insurance policy, putting general fund assets at risk.

Unfortunately, both County airports operate at a significant loss from business operations, drawing annually from the general fund. Up until at least November 2023, more focus has been placed on improving cost recovery metrics than on safety issues since a \$50,000 economic development plan was funded in 2023 ahead of funding the removal or trimming of any of the known tree hazards.

The County needs to follow through immediately to implement a plan to remove all navigation hazards and obstacles at the airport through a supplemental budget request and determine safe operating conditions for current use (e.g., only daylight operations) until remediation efforts are completed according to FAA and/or Caltrans guidelines.

BACKGROUND

Background

SCOPE OF THE PROBLEM

During a preliminary investigation into the operations and finances of the two County-operated airports, one in Placerville and the other in Georgetown, the Grand Jury became aware of a serious safety issue at the Georgetown Airport. When we attended a quarterly public meeting of the Airport Advisory Committee, several pilots and committee members expressed grave concern that the tall pine trees surrounding the airport have now grown to a height that creates a serious hazard to navigation. See Appendix 3 for changes from 2002 to 2020.

Very experienced pilots are already reporting that they have clipped the trees on approach to the airport as well as during takeoffs. Recently, in December 2023, Caltrans shut down night operations at the airport due to these hazards. The liability exposure the County is currently facing is unacceptable.

While the issue has been discussed for the past 15 years or more, it is now much worse due to the heavy rains in the winter of 2022-2023 adding to the tree growth. As of January 2024, there appears to be a tentative plan to address nearly three acres of the highest priority hazards, with a proposal to address another three to four acres of additional hazards in the second half of the year.

The County has been researching the issue, potential solutions, and funding sources for more than a year, but showed a general lack of urgency for the situation until the Grand Jury began investigating the issue. The following public comments were made at the Airport Advisory Committee meeting in November 2023 and demonstrate the frustration and fear from pilots with the County's failure to address their safety concerns (note: these comments were generally in response to a proposal at the time that would take at least two years to cut the trees):

"I've been here for 25 years, and the trees have been talked about a lot, but now the trees are an endangerment to the pilots and to the houses near there. As a pilot in the

BACKGROUND

winter; you have to land into the wind, which means you make a lot of landings on the 35 runway. You cannot make a stabilized approach, which is the preferred way to make a good landing, into [runway] 35. It's impossible... You have to do maneuvers that you don't want to do on a 3000-foot runway. I'm going to make a video of this, because that's what we do, but...

You cannot see these trees when you are starting to slow the plane down to get down to what is called the "over the fence" speed. I think I might have hit one the other day and I have flown into Georgetown probably more than anyone else in the history of the airport. I have 4000+ hours of flight time around Georgetown and the trees are really tall. I think the rain this year did this. We can't wait two years, which was estimated at the last meeting.

*If there was a tree on a road that a school bus had to avoid this would be taken care of immediately, but for whatever reason, the way the government works, because it's an airplane, "we can wait two years". **But I'm telling you, we cannot wait two years to deal with these trees.**"*

- Pilot #1 at Airport Advisory Committee meeting

*"I really second what (Pilot #1) said [about the trees]. In fact, it was [Pilot #1] that I asked to take me up and train me on how to land on (runway) 35. I actually stopped flying my plane into Georgetown because I believe I clipped the trees on my last takeoff... and it is forking terrifying, and that can go on the record. And while I don't have 4000 hours like [Pilot #1] does, I've flown warbirds, multi-engine, and flown air races across three states, anyway, ... I've never experienced anything like Georgetown. **It has to be a priority** because I'm not bringing my plane back to Georgetown until it's fixed. **I can't risk my life for it...** Somebody needs to get out there in the middle of the night with a chainsaw and it's got to happen! And I heard that from a lot of people that were flying warbirds into Georgetown.*

BACKGROUND

*And it's not just [runway] 35 where you have to slip your aircraft down and **hope** you can stop in time before going off the cliff, but it's also on takeoff on [runway] 17 on a high-density day when you are butt puckering to get over those trees, literally. So, we have to do something, because **someone's going to die and then we're really going to regret not doing something.**"*

- Pilot #2 at Airport Advisory Committee meeting

One incident that was reported to the Grand Jury was that within the last year a plane taking off from Georgetown did not clear the trees. The pilot was unaware that he had clipped the top of one of the trees, until he landed at Cameron Park Airport with a two-foot portion of a tree top entangled in the undercarriage of his aircraft!

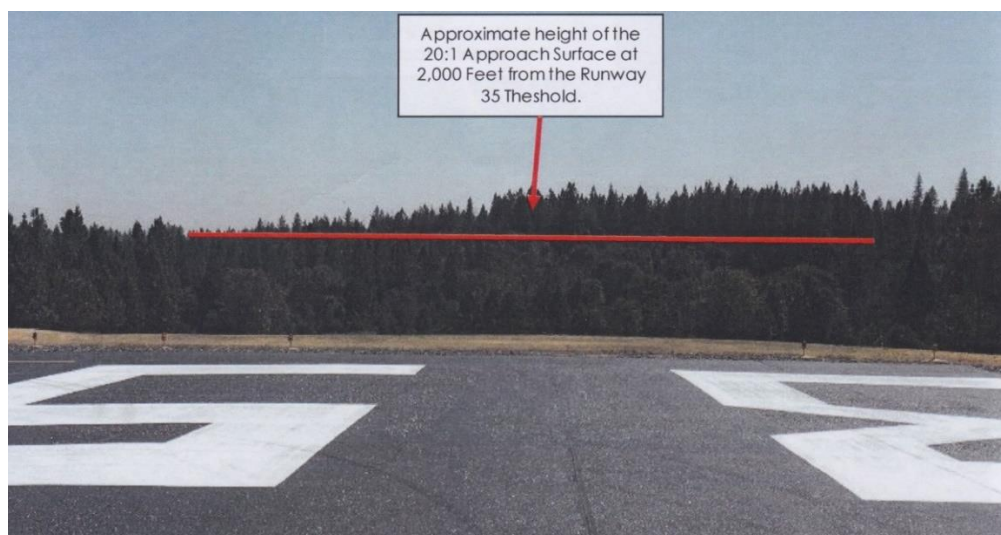


Figure 3 – An image from March 2022 taken by the State Department of Transportation showing the acceptable tree line in proximity to runway 35/17 at Georgetown Airport. Due to heavy rains in winter of 2023, the problem has increased measurably.

BACKGROUND

FAILURE TO ADDRESS TRANSPORTATION AGENCY CONCERNS

Appendix 1 of this report is a letter from the California State Department of Transportation (Caltrans) to the County, dated March 19, 2022, requiring an obstruction removal plan per FAA requirements by the end of 2022. It includes the following demand:

The County of El Dorado must submit a detailed obstruction reduction plan by July 30, 2022, to clear both Part 77, 20:1 Approach Surfaces by December 31, 2022. Failure to provide a plan and clear both 20:1 Approach Surfaces by December 31, 2022, may result in the suspension of night operations at the airport.

As of December 14, 2023, more than 12 months after the due date, no such obstruction reduction plan existed. Night operations were formally suspended by Caltrans on December 7, 2023, with the second letter shown in Appendix 1. The hazards are worse now with another year of growth.

Appendix 2 of this report, a County memo from 2013, shows that the County was aware that any trees or objects above the 7 to 1 slope are considered an obstruction to aircraft and must be removed or lighted. Continued non-compliance with FAA regulations for over a decade demonstrates an ongoing lackadaisical attitude to this issue. Appendices 2 and 5 also show that the trees to one side of the runway are an issue that needs to be continually addressed.

Appendix 5, an outdated engineering sketch from 2022, shows about 1,500 trees would need to be cut or reduced. An updated survey would likely need to be conducted before beginning tree removal.

COSTLY SOLUTIONS AMIDST AIRPORT LOSSES

Unfortunately, this is not a small or inexpensive problem. In fact, only preliminary cost estimates and planning have been considered. The most recent engineering report indicates that over 1500 trees across upwards of six to eight acres will need to be addressed. An early budget estimate was in the \$50,000 - \$100,000 range, according to airport staff. To understand the

BACKGROUND

County's dilemma, it is important to look at the overall costs and financial situation that the airports are currently operating under.

Combined, the two County-operated airports are money-losing operations already, at least partially due to safety concerns. The most recent County annual financial report for the year ending June 2022 indicates the County airports operated at a loss of \$537,000 for the year, compared with a loss of \$471,000 in fiscal year 2021. The airports are accounted for under business-type activities since they are primarily fee-based operations from revenue generated by airport use rather than taxes. But operating at a continuing annual loss, the airports draw significantly from the general fund. There is an understandable reluctance to invest a significant additional operating cost in a money-losing venture.



Figure 4 – Georgetown Airport usage has dropped dramatically in recent years due to safety concerns and other factors. The tie-downs shown above are completely empty (about 70% of the total available), and overall tie-down use during our site visit was less than 10%.

The current revenue recovery metric for airport operations (before addressing the tree issue) is about 25%, meaning that they are only able to recover about 25% of operational overhead in terms of revenue. Most other business (fee-based) activities in the County are operating much closer to 100%. While this is a significant cost to the County, the loss is offset by intangible

BACKGROUND

economic benefits from potential tourism, as well as emergency services support. There are revenue generating contracts in place with CalFire and both airports are essential to fighting wildfires.

In general, it is not uncommon for general aviation airports around the country to operate at a significant loss and rely on government subsidies and grants for continued operations. The County has contracted a consulting firm to explore various options for improving the economic viability for both airports. This economic development study was conducted at a cost of \$50,000, funded from Transient Occupancy Tax funds, and should be complete by mid-2024.

Figure 4 shows that aircraft storage at the airport is woefully underutilized. We compared tie-down and lease rates at other regional airports and found the costs at Georgetown were very much in line with area norms. Any decline in usage over the years is due to other factors, which include the safety concerns noted in this report.

Finally, during our site visit to Georgetown Airport, we were made aware of another hazard in addition to the trees (Appendix 4). Lighted poles have been erected to the west side of the runway to assist nighttime operations and mark the additional tree hazards to the west side of the runway. At night, pilots know to stay above and inside the lights towards the runway. Unfortunately, the pole furthest to the end of the runway no longer serves this purpose. The trees at that end of the runway have been removed, and the light is currently not operational. But having an unnecessary pole adds to pilot risk because a cross wind could blow a plane into the pole causing a likely fatal crash. A pilot communicated to the Grand Jury an account of a twin-engine aircraft that departed during daylight, drifted to the left during a northeast wind of approximately 15 miles per hour nearly hitting this pole.

METHODOLOGY

Methodology

SITE VISIT

We visited Georgetown Airport, touring the facility and surrounding area.

INTERVIEWS

- Members of County staff at all levels in the Building and Planning Department for Airports and Cemeteries
- On-site Airport Manager and staff
- Director of Building and Planning
- Pilots at the Airport Advisory Committee meetings and on site at Georgetown airport
- The Supervisor for district IV which includes Georgetown Airport
- Head of HR Risk Management in El Dorado County

DOCUMENTS REVIEWED

- Drone surveys provided to us by airport management from 2022
- Historical photographs of the airport from 2002 to 2022
- Caltrans and FAA correspondence related to safety hazards attached in the Appendix
- County auditor's financial report from fiscal year 2021 and 2022
- Minutes from Airport Advisory Committee meetings going back several years
- Engineering sketch of trees that needed to be removed as of 2022 attached as Appendix 5

DISCUSSION

Discussion

THE FUNDING CONUNDRUM

As Pilot #2 stated at the Airport Advisory Committee meeting, “*Somebody needs to go out in the middle of the night and trim these trees.*” To anybody outside the government, the urgency of the situation and the need to cut through red tape seems obvious. To knowledgeable pilots operating under ideal weather conditions, the airport is rapidly becoming unusable. To pilots without local knowledge operating under less-than-ideal weather or night conditions, it’s a potential death trap.

On December 7, 2023, Caltrans did force the closure of the airport at night, not long after the Grand Jury had started to investigate the extent of the problem. That is not, however, a long-term solution and there is still significant risk during the day.

Although airport staff had been working on addressing the issue for two years, without any tangible progress, much of the delay stemmed from planning to rely on FAA funding, and a series of environmental impact studies required at both the national and state levels. A supplemental budget request to the County in the 22/23 budget cycle for \$116,000 for tree removal was rejected by the CAO office, so the decision was made to seek the FAA grant. In fairness to the CAO office in rejecting the request, there was little discussion at the time and little sense of urgency from the Airports Division.

The Grand Jury was encouraged by the County response, however, in December 2023 after the nighttime airport closure notice and the start of the Grand Jury investigation. The formality of the closure notice and the looming Grand Jury report created a much greater sense of urgency. On December 14, 2023, one week after the closure notice, a short-term plan was communicated to the Grand Jury that would allow the airport to fully reopen within the coming weeks.

DISCUSSION

The plan included:

- The County's airport engineering consultant working with an environmental consultant had identified 3 acres of trees that if eliminated would free up the approach path to identified obstacles.
- The trees were quickly marked based on GPS location and the County will seek an exemption from CalFire timber operation planning requirements. CalFire is expected to review and approve the tree removal plan in January 2024.
- Airport staff is working with the Growlersburg Conservation Camp to perform the work in early 2024 and they appear to have availability over that timeframe. The hope is to complete the work in January or February about the time this final report is published.

The Grand Jury was told that airport staff will continue work with the County's engineering consultant on a Timber Harvest Plan and potential Environmental Assessment to gain access to federal funding for the remainder of necessary tree removal. This would be for trees not addressed in the initial three-acre plan above and would total an additional three to four acres. These latter trees do not pose the same imminent threat but still need to be removed to ensure compliance with FAA regulations. This phase of the plan would require more time and hopefully will be completed in the second half of 2024.

AIRPORT MANAGEMENT

As we have alluded to, it is both frustrating and puzzling for the pilots who make frequent use of the airport, as well as the Grand Jury, that nobody in the Building and Planning Department had the authority to address this issue earlier, although there appears to be complete agreement now on the urgency of the situation and the need to prioritize it.

The Grand Jury found this Georgetown Airport issue is an example of county government failure to recognize and address emergency situations with proper urgency or complete communication. The Grand Jury interviewed every person up the chain of command in airport

DISCUSSION

operations and found no one who could or would take responsibility for the lack of a risk mitigation plan prior to November 2023. The excuses were many, but mainly indicated the lack of understanding of the urgency of the problem, the amount of red tape involved in the process, the lack of available funds in the County budget, and the inability to secure FAA grants in a timely fashion.

The Grand Jury concluded there were several contributing factors to this problem:

- As mentioned earlier, airport management is combined with cemetery management in the Building and Planning Department. We understand that airport management has been moved around various county departments over the years, and aviation is a very different kind of business operation to manage than most county functions. Placing it in the Building and Planning Department seems like a particularly awkward fit for the skills and expertise required to oversee airport operational issues as a business. The Grand Jury believes this could limit the visibility of airport operational issues to the Board of Supervisors and to other County leaders.
- We are aware that at some point in the past the airports were managed by the Department of Transportation. In fact, the Airports Division has been moved around a few times in the last several years. The Grand Jury doesn't have the experience or the insight to recommend a move back to the Department of Transportation, but this could be worth revisiting as an option.
- The airport management team, based on its actions, seemed to be prioritizing economic development of the airport over operational safety, likely at least partially at the request of the Board of Supervisors. The clear message we heard in interviews and meetings is that the airports are operating at an unacceptable loss, and airport management is compelled to improve cost recovery metrics. This is an important initiative, but it's hard to argue that it should be the most important when a clear safety issue is widely known, putting *any* use of the airport at significant risk. For example, \$50,000 was allocated to create a plan for improving airport use (and revenue), without understanding any long-term investment

DISCUSSION

required to achieve those results. Could that \$50,000 have been better spent on ensuring the airport is safe much earlier?

LIABILITY AND RISK MANAGEMENT

Given that the tree hazards are a known risk, had been left unaddressed for several years, and that the airport was being closed for nighttime operations, the Grand Jury decided to investigate the role of risk management within the County. We found that although the risk management team is wholly within the HR department, they are generally interested in liability risk to the public, as well as employees, and can potentially be a resource to assess issues throughout the County. While we initially found this encouraging, the practical reality is that they are a small team with limited expertise in all areas of county operations, such as airports, and must rely on various departments, in this case the Building and Planning Department, to manage risk assessment and mitigation.

The HR Risk Management team is not proactive and primarily deals with liability claims after an accident or injury, seeking to manage damages from that point. They also manage insurance policies for all county operations and have a specific insurance policy in place for the County-managed airports. Liability insurance can typically cover the County for claims up to \$50 million. It is unlikely that any negligence on the part of County officials would reduce that coverage, fortunately. But it's also possible that a catastrophic injury due to gross negligence on the part of the County could exceed the \$50 million coverage.

We asked the airport management team if they knew of the risk management function within the County and if they had sought any counsel or insight from them as to how to manage this issue or help fund its resolution. They indicated that they did not know how to proceed or with who exactly, although it may have been considered at some point.

FINDINGS

Findings

Finding 1 - Georgetown Airport is unsafe to operate due to overgrowth of trees. Because the County has known about this hazard and continued normal operations into at least December 2023, it may be subject to a claim of gross negligence if an accident happens.

Finding 2 – Up until December 2023, the County had no immediate plan to address the issue until receiving a notice from Caltrans that the airport would be closed to night operations pending the tree hazards being removed.

Finding 3 - The County has been putting its citizens, visitors, and employees at unnecessary risk of injury or death despite being advised of the issue for at least ten years.

Finding 4 - The safety risks have been overshadowed by County efforts to improve the economic viability of the airports that are losing approximately a half million dollars a year, based on the County prioritizing a \$50,000 economic development study earlier than it funded a plan to reduce the tree hazards.

Finding 5 - The County did not act in the required timeframe to a letter dated March 19, 2022, from the California State Department of Transportation (Caltrans) for the County to submit an obstruction removal plan for the Georgetown Airport per FAA requirements, resulting in the airport being closed for night operations on December 7, 2023.

Finding 6 – A pole that originally marked the tree line to the west side of the runway is no longer functioning for that purpose but serves as another potential hazard to pilots. Any contact with a rigid hazard like this pole would almost certainly cause a fatal accident.

FINDINGS

Finding 7 - General aviation airports don't get a lot of political attention because they benefit so few constituents and are only politically relevant as a revenue generator and/or emergency preparedness resource. This contributes to the lack of attention and visibility airport issues have had throughout the County in recent years, contributing to the severity of this issue.

Finding 8 – The County's failure to mitigate this known hazard threatens the financial health of the County since they will face lawsuits if injury or death results from the unsafe airport. The \$50 million liability coverage from the airport insurance policy may be inadequate to cover losses from potential claims of gross negligence and may impact the general fund.

RECOMMENDATIONS

Recommendations

Recommendation 1 – The County needs to have a funded plan to address all tree hazards at the Georgetown Airport by the end of March 2024, completing removal of the tree and pole hazards by September 2024, to the satisfaction of Caltrans and meeting FAA regulations.

Recommendation 2 – The Board of Supervisors should immediately identify a champion (or team) to lead this effort, considering local pilot volunteers with aviation experience as well as County employees. The champion will provide monthly reports to the Board of Supervisors as to progress against the specific and funded action plan towards removing the hazards.

Recommendation 3 – Management of the two County-operated airports should be moved out of the Planning and Building Department by the end of 2024 to a department/agency that is better suited to managing a business of this nature and ensuring better visibility to issues at all levels of County government.

Recommendation 4 – Prioritization must be focused on airport safety over economic growth. Although \$50,000 was spent on the economic development plan, no funding for any of the suggested improvements coming out of that plan should be allocated until the airport hazards are completely addressed.

Recommendation 5 – Conduct annual safety inspections of both airports starting in 2025 and report the findings to the Board of Supervisors. Consider adding inspections of the airports to the required Grand Jury inspection of at least one detention facility annually by the 2024-2025 Grand Jury term.

RECOMMENDATIONS

Recommendation 6 – County leadership should continue using the Growlersburg Conservation Camp crew to clear the trees when and where applicable subject to their availability.

REQUEST FOR RESPONSES

Request for Responses

The following responses are required pursuant to Penal Code §933 and §933.05:

From the following governing body:

- El Dorado County Board of Supervisors
 - All Findings and Recommendations

For more information refer to *How to Respond to an El Dorado County Grand Jury Report* available on the El Dorado County Grand Jury webpage.

APPENDIX AND RELATED INFORMATION


Appendix and Related Information

Appendix 1

Department of Transportation Letter – March 19, 2022

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY Gavin Newsom, Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF AERONAUTICS – M.S. #40
1120 N STREET, SUITE 3300
P. O. BOX 942874
SACRAMENTO, CA 94274-0001
PHONE (916) 654-4959
FAX (916) 653-9531
TTY 711
www.dot.ca.gov


Making Conservation
a California Way of Life.

March 19, 2022

[REDACTED] Airport Manager
Georgetown Airport
2850 Fairlane Court
Placerville, CA 95667-4100

Dear [REDACTED],

The California Department of Transportation (Caltrans), Division of Aeronautics, conducted a Federal Aviation Administration (FAA) Airport Master Record (FAA Form 5010-1) update and State permit compliance inspection of the Georgetown Airport (FAA Site No. 01608.7*A) on March 1, 2022. We appreciate the cooperation provided by you and Jeremy Guntenberger during the inspection. The updated information will be entered into our State and FAA Airport Master records.

The airport was evaluated using the current Airport Layout Plan (ALP), Airport Permit, and previous inspection letters. Our inspection revealed the following items, which we bring to your attention in order of priority:

1. Trees 1,600 to 2,500 feet south of the Runway 35 threshold and closer-in penetrate the Code of Federal Regulations Part 77 20:1 Approach by up to 50 feet. Trees penetrating the 20:1 Approach Surface must be removed or trimmed, as shown in Photograph 1, as soon as possible.
2. An obstruction pole, trees, and brush approximately 225 to 450 feet north of the Runway 17 Displaced Threshold penetrate the FAR Part 77, 20:1 Approach Surface (please see enclosed Photograph 2). Trees and brush penetrating the 20:1 Approach Surface must be removed or trimmed, as shown in Photograph 2, as soon as possible. Once the trees and brush are cleared, the northernmost obstruction light pole closest to the Runway 17 Threshold may be removed.

The County of El Dorado must submit a detailed obstruction reduction plan by July 30, 2022, to clear both Part 77, 20:1 Approach Surfaces by December 31, 2022. Failure to provide a plan and clear both 20:1 Approach Surfaces by December 31, 2022, may result in the suspension of night operations at the airport.

3. Many trees penetrate the FAR Part 77, 7:1 Transitional Surface east of the runway centerline and north of the ramp area to the Runway 17 Displaced Threshold (please see enclosed Photograph 3). These trees should be removed or trimmed (below the height shown in enclosed Photograph 4) in the near future.

"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"

APPENDIX AND RELATED INFORMATION

March 19, 2022

4. Many trees have grown above a series of obstruction-lighted poles along the entire west side of the airport and now penetrate the CFR Part 77, 7:1 Transitional Surface (please see enclosed Photograph 4). All trees surrounding the lighted poles should be removed or trimmed at or below the height of the red obstruction lights.
5. The runway magnetic designation markings were changed in 2018 to 17/35 due to a change in declination. However, the Airport Permit, the ALP, and the Airport Master Record all state the current runway magnetic designation as 16/34. Please submit an FAA Form 7480-1 Notice for Construction, Alteration and Deactivation of Airports along with supporting survey data on the FAA's Obstruction Evaluation / Airport Airspace Analysis (OE/AAA) website or to the FAA Airports District Office. In addition, please complete, sign, and return the enclosed Caltrans Form DOA-0103 to correct the airport permit and submit the designation markings change to the FAA on the OE/AAA website (<https://oeaaa.faa.gov/oeaaa/external/portal.jsp>) to update the 5010-1 as soon as possible.

It is Caltrans' objective to ensure that airports and heliports meet all applicable FAA minimum design safety standards and Advisory Circular (AC) criteria, FAR, the PUC, section 21001 et seq., the CCR, Title 21, sections 3525-3560, and all required conditions depicted in your State Airport Permit issued by Caltrans. All referenced publications in this letter, including many FAA ACs, may be found on our website at www.dot.ca.gov/aeronautics.

We are pleased to support and assist you in enhancing safety and utility at your airport and look forward to continuing a cooperative relationship with El Dorado County. Please submit an obstruction reduction plan by July 30, 2022, and notify us of your intended or completed actions concerning the above items. If you have questions or require further assistance, please contact me at (916) 639-6297 or email christopher.brooks@dot.ca.gov.

Sincerely,

Original signed by

CHRISTOPHER BROOKS
Aviation Safety Officer

Enclosures

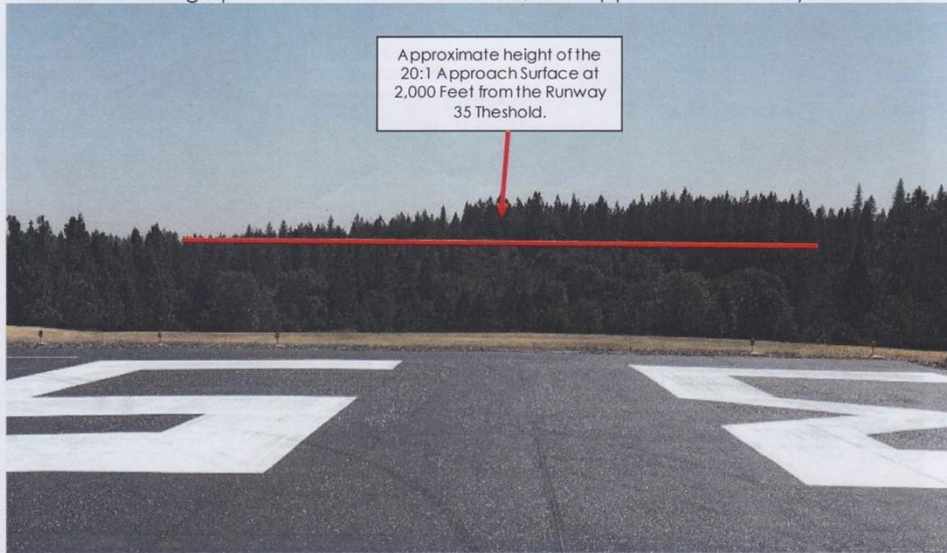
c: Ms. Laurie Suttmeier, ADO Manager, SFO ADO, laurie.suttmeier@faa.gov
Mr. Lemuel Del Castillo, Lead Engineer, SFO ADO, lemuel.del.castillo@faa.gov

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

APPENDIX AND RELATED INFORMATION

March 19, 2022

Photograph 1 - Trees in the FAR Part 77, 20:1 Approach to Runway 35



Photograph 2 - Trees penetrate the Runway 17 FAR Part 77 Approach and Transitional Surfaces.

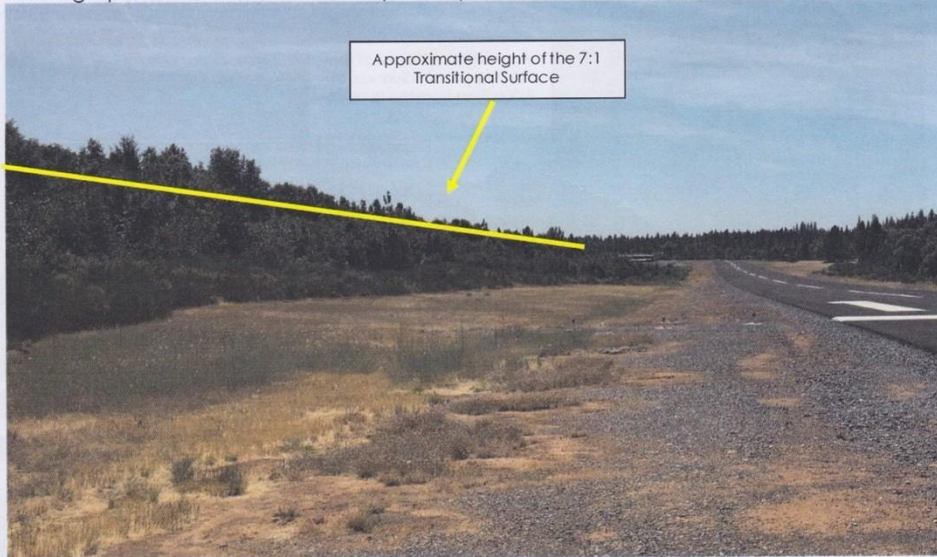


"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"

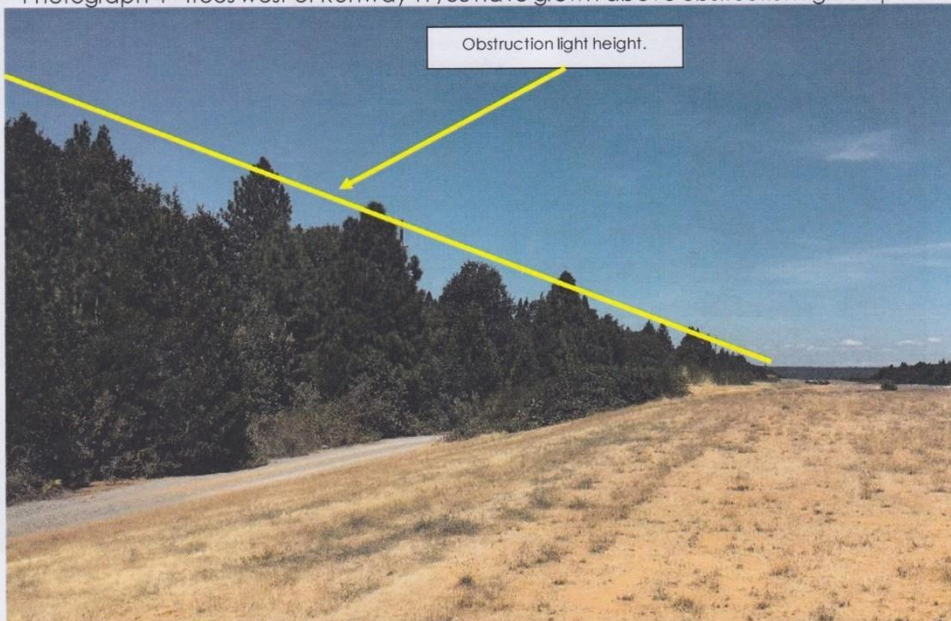
APPENDIX AND RELATED INFORMATION

March 19, 2022

Photograph 3 - Trees east of Runway 17/35 penetrate FAR Part 77, 7:1 Transitional Surface.



Photograph 4 - Trees west of Runway 17/35 have grown above obstruction lighted poles.



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APPENDIX AND RELATED INFORMATION

OMB CONTROL NUMBER: 2120-0036
EXPIRATION DATE: 4/30/2017

U.S. Department of Transportation
Federal Aviation Administration

NOTICE FOR CONSTRUCTION, ALTERATION AND DEACTIVATION OF AIRPORTS

A. Airport Owner <input checked="" type="checkbox"/> Check if this is also the Property Owner		B. Airport Manager (Complete if different than the Airport Owner)		
1. Name and Address <input type="checkbox"/> Check if this is the Airport's Physical Address COUNTY OF EL DORADO 3561 AIRPORT ROAD PLACERVILLE, CA 95667		1. Name and Address <input type="checkbox"/> Check if this is the Airport's Physical Address [REDACTED] 2850 FAIRLANE COURT PLACERVILLE, CA 95667		
2. Phone [REDACTED]	3. Email [REDACTED]	2. Phone [REDACTED]	3. Email [REDACTED]	
C. Purpose of Notification (Answer all questions that apply)				
1. Construct or Establish an: <input type="checkbox"/> Airport <input type="checkbox"/> Ultralight Flightpark <input type="checkbox"/> Balloonport <input checked="" type="checkbox"/> Heliport <input type="checkbox"/> Seaplane Base <input checked="" type="checkbox"/> Other				
2. Construct, Alter or Realign a: <input checked="" type="checkbox"/> Runway <input type="checkbox"/> Heliport(s) <input type="checkbox"/> Other <input type="checkbox"/> Taxiway (Public Use Airports only)				
3. Change Status From/To: <input type="checkbox"/> VFR to IFR <input type="checkbox"/> IFR to VFR <input type="checkbox"/> Private Use to Public Use <input type="checkbox"/> Public Use to Other				
4. Change Traffic Pattern: <input type="checkbox"/> Direction _____ <input type="checkbox"/> Altitude _____ Other (Describe Below) _____				
5. Deactivate: <input type="checkbox"/> Airport <input type="checkbox"/> RWY _____ <input type="checkbox"/> TWY _____				
6. Description: Change of runway declination from 16/34 to 17/35.				
D. Name, Location, Use and Type of Landing Area				
1. Name of Landing Area Georgetown Airport		2. Loc ID (for existing) E36		
3. Associated City and State Georgetown, CA		4. Distance from City 2 (nm)		
5. County (Physical Location) El Dorado		6. Direction from City NW		
7. Latitude 38° 55' 15.5000"		8. Longitude 120° 15' 53.4000"		
9. Elevation 2,623		10. Current Use: <input type="checkbox"/> Private <input checked="" type="checkbox"/> Public <input type="checkbox"/> Private Use of Public Lands		
11. Ownership: <input type="checkbox"/> Private <input checked="" type="checkbox"/> Public <input type="checkbox"/> Military (Branch)		12. Airport Type: <input checked="" type="checkbox"/> Airport <input type="checkbox"/> Ultralight Flightpark <input type="checkbox"/> Balloonport <input type="checkbox"/> Heliport <input type="checkbox"/> Seaplane Base <input type="checkbox"/> Other		
E. Landing Area Data (List any Proposed, New or Unregistered Runways, Heliports etc.)				
1. Airport, Seaplane Base or Ultralight Flightpark (use second page if needed)		2. Heliport, Balloonport or other Landing Area (use second page if needed)		
RWY ID	17 / 35		Heliport ID	
Lat. & Long.	Show on attachment(s)	Show on attachment(s)	Lat. & Long.	
Surface Type	ASPH		Surface Type	
Length (feet)	2,980		TLOF Dimensions	
Width (feet)	60		FATO Dimensions	
Lighting (if any)	MED		Lighting (if any)	
Right Traffic (Y/N)	N / N	/	Ingress/Egress (Degrees)	
Elevation (AMSL)	Show on attachment(s)	Show on attachment(s)	Elevation (AMSL)	
VFR or IFR	VFR / VFR	/	Elevated Height (AGL)	
F. Operational Data (Indicate if the number provided is Actual or Estimated)				
	1. Number of Based Aircraft		2. Average Number of Monthly Landings	
	Present or Estimated	Estimated in 5 Years	Present or Estimated	Estimated in 5 Years
Single Engine				
Multi Engine				
Jet				
Helicopter				
Glider				
Military				
Ultralight				
3. What is the Most Demanding Aircraft that operates or will operate at the Airport? (Provide approach speed, rotor diameter, etc. if known)				
4. Are IFR Procedures for the Airport Anticipated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No if Yes, Within _____ Years				
G. CERTIFICATION: I hereby certify that all of the above statements made by me are true and complete to the best of my knowledge.				
1. Name, title of person filing this notice (type or print)		2. Signature (in ink):		
3. Date		4. Phone	5. Email	

FAA Form 7460-1 (4/14) SUPERSEDES PREVIOUS EDITION

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"

APPENDIX AND RELATED INFORMATION

Follow-up letter dated December 7, 2023, requiring closure of the airport for night operations:

CALIFORNIA STATE TRANSPORTATION AGENCY

GAVIN NEWSOM, GOVERNOR

California Department of Transportation

AERONAUTICS PROGRAM
DIVISION OF TRANSPORTATION PLANNING
P.O. BOX 942873, MS-40 | SACRAMENTO, CA 94273-0001
(916) 654-4959
www.dot.ca.gov



December 7, 2023

[REDACTED]
Georgetown Airport
2850 Fairlane Court
Placerville, CA 95667-4100

Dear [REDACTED]

Our inspection letter dated March 19, 2022, provided notice of your responsibility to remove trees that are obstruction hazards and to comply with California Public Utilities Code (PUC), section 21659, Hazards to Navigable Airspace. We recognize your efforts toward future obstruction clearing, however, the risk to persons and property requires Caltrans Aeronautics Programs to initiate airport permit action.

Consequently, Caltrans is suspending night operations at the Georgetown Airport (E36) in accordance with the PUC, section 21668.2, Suspension of Operations.

This suspension shall remain in effect until Caltrans determines that the conditions detailed in items 1 and 2 of our March 19, 2022, inspection letter (attached) no longer exist.

Please ensure that the following actions are completed immediately:

- De-energized the runway edge lighting and the airport rotating beacon.
- A NOTAM is posted with the Flight Standards District Office stating that the airport is closed from sunset to sunrise and the airport lights are deactivated.
- Ensure that all aircraft operators at the airport are aware of the night closure.

Please notify Caltrans as soon as all actions to de-energize airport lighting and notifications are made. If you have questions or require further assistance, please contact me at (916) 639-6297 or email at christopher.brooks@dot.ca.gov.

Sincerely,

Christopher Brooks

CHRISTOPHER BROOKS
Aviation Safety Officer

Enclosures

c: San Francisco Airports District Office

Provide a safe and reliable transportation network that serves all people and respects the environment

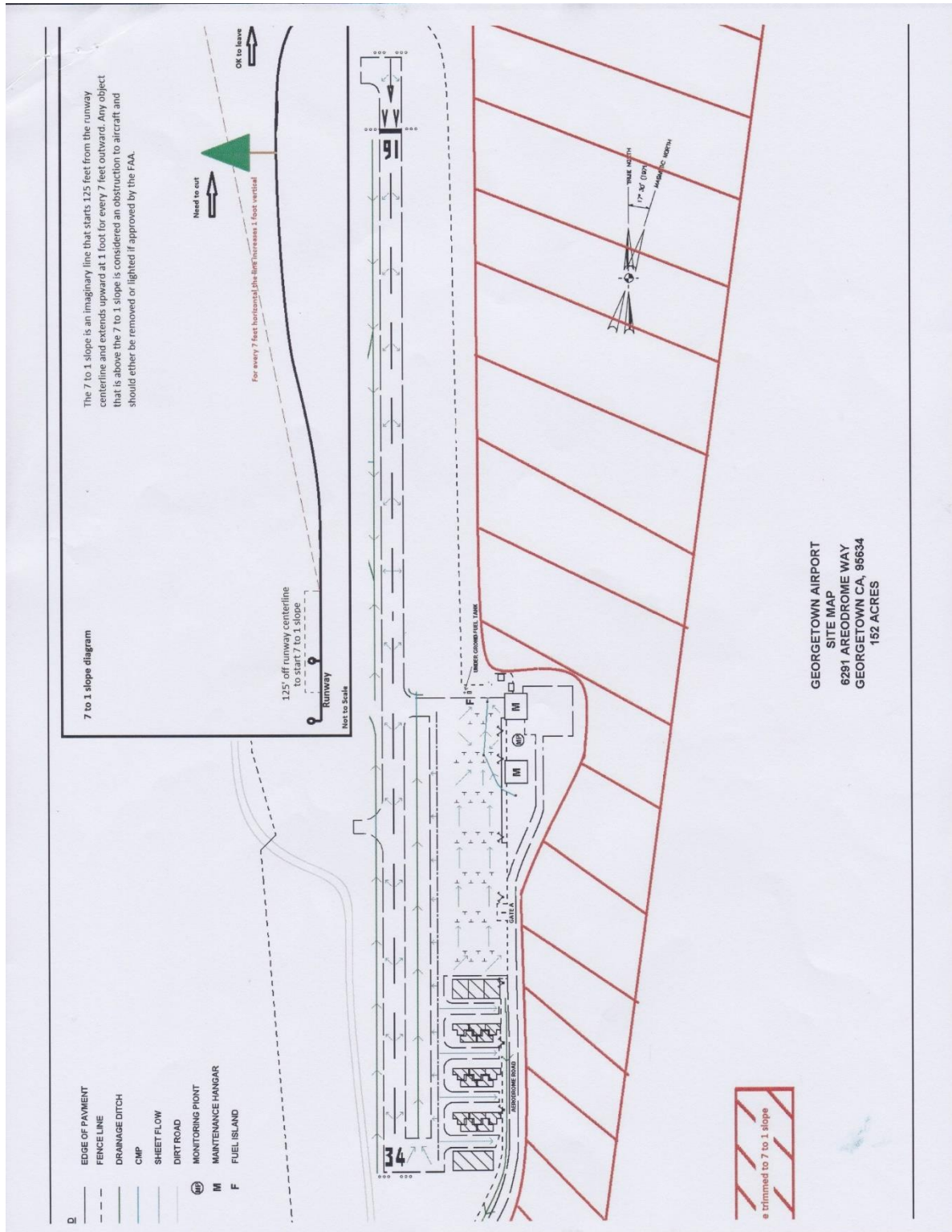
APPENDIX AND RELATED INFORMATION

Appendix 2

Community Development Agency Letter – December 19, 2013



APPENDIX AND RELATED INFORMATION



APPENDIX AND RELATED INFORMATION

Appendix 3

Historical images of the approach path to runway 35

Image 1 – From 2002 shows a relatively clear and open area before runway 34 (now 35), a safe place for an emergency landing.



APPENDIX AND RELATED INFORMATION

Image 2 – Same view from 2022 shows many tree hazards:



APPENDIX AND RELATED INFORMATION

Appendix 4

Pole Hazard



Photo taken January 31, 2024. It may not reflect the conditions at the time the email below was written.

From: [REDACTED]

Sent: Friday, March 26, 2021 8:54 AM

To: [REDACTED]

Subject: RE: E36 - HAZARD TO SAFE NAVIGATION

Greetings All,

This pole has been mentioned as a safety hazard by pilots for at least 10 years at every advisory meeting that I can recall.

This pole is unserviceable and is NOT currently lighted.

APPENDIX AND RELATED INFORMATION

Recently a twin-engine aircraft departed RWY 35 during daylight - drifted to the left during a north east wind of approx. 15 mph nearly colliding with this pole.

The trees that this pole is supposed to protect us from are no longer present.

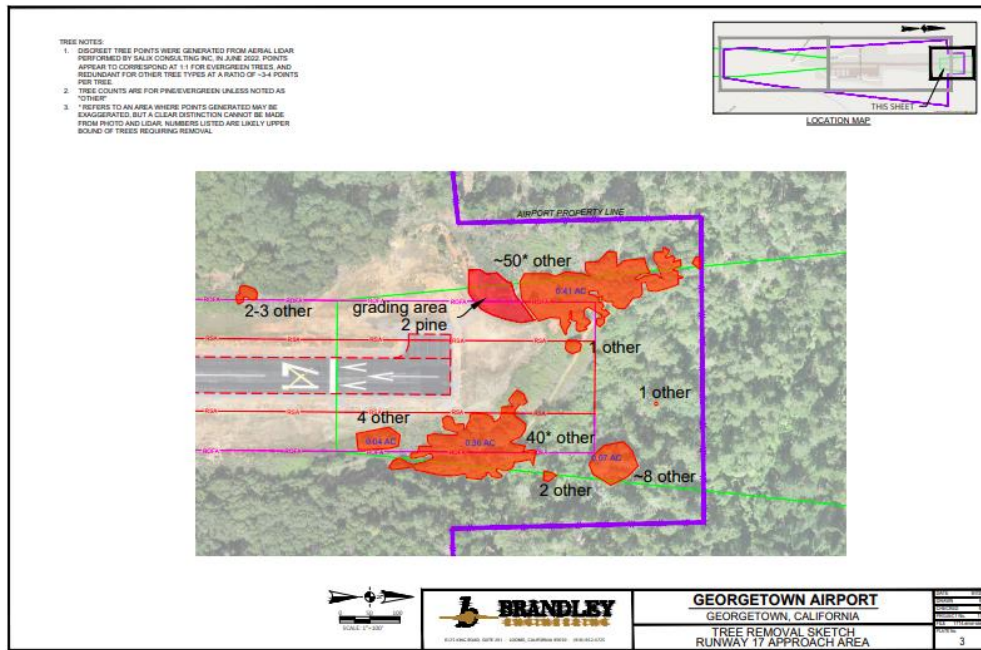
Our non-pilot airport manager insist this pole will not be removed due to CalTrans regulations.

Last year EDC risk management team visited our airport and expressed concern this pole was a hazard.

I hope it's apparent that hitting a bush would have a better outcome than a wing being ripped off.

Thank You

APPENDIX AND RELATED INFORMATION





2023-24 GRAND JURY REPORT
EL DORADO COUNTY
FEBRUARY 28, 2024, CASE #24-02

GROWLERSBURG CONSERVATION CAMP INSPECTION

This report focuses on the Growlersburg Conservation Camp #33 in Georgetown, California, operated by the California Department of Corrections and Rehabilitation (CDCR) and CAL FIRE.

TABLE OF CONTENTS

Contents

Summary	3
Background	4
Methodology	5
Discussion	6

SUMMARY

Summary

Each year, the Grand Jury in each county is mandated by California Penal Code (PC) Section 919(b) to “inquire into the condition and management of the public prisons within the county.” The term “public prisons” was clarified in a California Attorney General (AG) opinion (No. 18-103) dated March 10, 2022. The AG opined that the term “public prisons” in PC Section 919(b) includes “local detention facilities”, that confine prisoners for more than 24 hours. A county or city jail is a typical example of such a local detention facility. The AG concluded that each Grand Jury must inquire into the “local detention facilities” located within its county.

This report focuses on the Growlersburg Conservation Camp #33 in Georgetown, California, operated by the California Department of Corrections and Rehabilitation (CDCR) and the California Department of Forestry and Fire Protection (CAL FIRE).

Overall, the facility was a good example for a rehabilitation center, and the CDCR inmates seemed happy in their surroundings. We feel that Growlersburg is to be commended for what they offer for life and rehabilitation outside typical prisons for inmates. However, we identified a few areas for improvement:

There are no medical staff on site. The lack of access to the Marshall Medical Clinic (a few miles away) forces them to take ill or injured inmates to Jamestown (5-hour roundtrip), negatively impacting staff coverage.

Funding of the facility can be difficult. If the fire season is slow (no fires to fight), no funding is available for the CDCR. The CDCR and CAL FIRE should work with the state government to change the rules for rehabilitation funding.

BACKGROUND

Background

The Conservation Camp Program was established in 1915 by the California State Detentions Bureau, now known as the CDCR, to provide able-bodied inmates with the opportunity to work on meaningful projects throughout the State. During World War II, much of the work force that was used by the Division of Forestry, now known as CAL FIRE, was depleted because their services were required for the war effort.

The CDCR provided the needed workforce by having inmates occupy "temporary camps" to augment the regular firefighting forces. There were 41 "interim camps" during WWII, which were the foundation for the network of camps in operation today. In 1946, the Rainbow Conservation Camp in Fallbrook, CA was opened as the first permanent male conservation camp. Rainbow Conservation Camp made history again when it was converted to a female camp in 1983.

All incarcerated Growlersburg Conservation Camp firefighters receive a week of classroom instruction and a week of field exercise training. In addition, CAL FIRE staff provides 29 hours of classroom instruction, known as Forestry Firefighter Training. Female inmates are trained at the California Institution for Women in Corona, and youth offenders are trained at the Pine Grove Conservation Camp.

In September 2020, Governor Newsom signed Assembly Bill (AB) 2147, which provides an expedited expungement pathway (process of sealing arrest and conviction records) for formerly incarcerated individuals who have successfully participated as firefighters in the State's Conservation Camp Program. Under AB 2147, a person who served as an incarcerated fire-fighting crew member is eligible to apply for an expungement upon release from custody. If the expungement is approved, the individual can seek various careers, including those that require a state license. Successful participation in a fire fighting crew is determined by the CDCR for those who were incarcerated in State prisons.

METHODOLOGY

Methodology

Site Visit:

Inspection of Growlersburg Conservation Camp #33 was conducted on October 26, 2023.

Documents Reviewed:

- Prior El Dorado County Grand Jury Growlersburg Inspection Reports (2021, 2022)
- California Grand Jury Association Guidelines on Reporting on Jails and Prisons
- California Grand Jury Association Detention Facility Inspection Form
- Board of State and Community Corrections Jails Inspection Handbook for Grand Jurors
- CDCR Conservation (Fire) Camps Website.

Interviewed:

- CDCR staff
- CAL FIRE staff
- Inmates

DISCUSSION

Discussion

Growlersburg began operations in 1967 and is one of 35 such camps still in operation in California. The camp is located on 80 acres, approximately 1.5 miles north of Georgetown in El Dorado County, between the cities of Placerville and Auburn.

Growlersburg initially housed 80 inmates. The dormitory building was increased in capacity by nearly 40 percent in 1980, to house 132 inmates. The inmate population at the time of this inspection was 79 male adults (no juveniles or females). Current personnel consist of 11 CDCR staff and 14 CAL FIRE staff. During our inspection, our primary points of contact were the CDCR Lieutenant and the CAL FIRE Captain.

The inspection began outside of the main office building that houses the leadership for both the CDCR and CAL FIRE. The grounds were clean, and the buildings were in good condition. We saw no indication of lack of maintenance on the exterior or interior of the buildings. The facility has a family-friendly area just outside of the main office area for inmates' families to visit on the weekends and four holidays during the year.

The first stop after the initial inspection outside the office and the family visitation area was the Wood Shop. The shop was clean and in good condition. The only comment/concern by the CDCR Lieutenant was that they no longer had qualified individuals to truly utilize the Wood Shop effectively. The next stop was the Truck Shop where several CDCR staff were busy working on a CAL FIRE vehicle. From there we went to visit the small Engine Shop (chainsaws, weed whackers, etc.), and the Sawmill. All the areas were clean and in good condition.

The next stop was the kitchen. The kitchen (built in 1967) was clean with a handful of CDCR staff working at the time we inspected it. The next inspection area was the sleeping/resting areas, bathrooms, and the showers. All were in good condition with only the observation that the mattresses in the sleeping areas appeared to be old. From there we inspected the hobby

DISCUSSION

room, the chicken coop, and the vegetable garden. Again, all were in good condition, including the new chicken coop still under construction. As an interesting footnote, the existing chickens (118) produce approximately 150 eggs per day and save thousands of dollars annually in the food cost budget while providing excellent protein for the staff and inmates. The new chicken coop will double the number of chickens. Inmates also have access to an arts and craft area, library, and physical fitness area.

During our continued dialog with CDCR staff, we learned that the CDCR is responsible for the selection, supervision, and discipline of the inmates (referred to as firefighters going forward) at Growlersburg. Firefighters are directly supervised 24 hours a day while on work projects and assigned to emergencies. CAL FIRE maintains the camp, supervises the work of the firefighter crews and is responsible for the firefighters' custody while on daily projects and fire assignments. The CDCR staff often accompany firefighter crews on out-of-county assignments and on local assignments located near residential areas. Growlersburg has an 18-wheel mobile kitchen for use at fire sites which is operated by the firefighters and can provide up to 5,000 meals per day.

An inmate must volunteer for the fire camp program. Inmates who volunteer must have "minimum custody" status under the CDCR system, which is the lowest classification for inmates. This classification is based on the inmate's sustained good behavior in prison, conforming with the rules, and participating in rehabilitative programs. Some convictions automatically make an inmate ineligible for conservation camp assignment, even if the inmate has a minimum custody status. Those convictions include sexual offenses, arson, and any history of escape using force or violence.

There are no fences or guard towers surrounding the Growlersburg facility. Growlersburg's discipline system is based on the type of infraction committed by the inmate. For less serious infractions, time may be added to the inmate's sentences or privileges removed. Serious infractions may result in the removal of the inmate from the camp and returned to an institution. Mandatory inmate counts are done numerous times per day (at least every 2 hours

DISCUSSION

and an occasional surprise count). Although there have been few escapes from the facility over the past decade, they have had a couple in 2021-2023. All were recaptured and returned to the appropriate facility.

In addition to fighting fires, inmates can/do work as support staff for the camp. They also manage kitchen and laundry services, as well as perform most repairs and maintenance required for the wastewater treatment, buildings, vehicles, and tools. The facility has an on-site garden, which provides food for the inmates (again, reducing overall food costs to operate the facility).

Growlersburg provides labor for various community service projects such as:

- Construction of shaded fuel breaks for wildland fire safety
- Construction of hiking and biking trails
- General maintenance and grounds care for community parks, community service districts, schools, CAL FIRE, and local fire district facilities
- Landscaping, cleaning, and grooming of Marshall Gold Discovery State Historic Park Museum in Coloma
- Assisting the University of California, Berkeley's Blodgett Research Forest in implementing various vegetation management-based research projects

Camp firefighters receive an enhanced reduction in their sentences based on time served in the camp, and those assigned to any fire incident receive fire pay. The average time spent at the camp is 18 to 36 months.

The Conservation Camp Program is an important part of the rehabilitation of inmates, as they are performing a vital service and giving back to the community. Just as in every CDCR facility, every fire camp offers rehabilitative and education services. CDCR and CAL FIRE staff shared examples of inmates' successful transition to productive employment upon release. The CDCR leadership was concerned that they would not qualify for rehabilitation funding under current California law, which surprised the Grand Jury members performing the inspection.

DISCUSSION

Overall, the facility was a good example for a rehabilitation center and the CDCR inmates seemed happy in their surroundings. Growlersburg is to be commended for what they offer for life and rehabilitation outside typical prisons for inmates. However, the inspection team identified a few areas that may be worth following up by the CDCR and CAL FIRE to improve the overall environment of the Growlersburg facility.

- There are no medical staff at the CDCR facility in Growlersburg. The lack of access to the Marshall Medical Clinic (a few miles away) forces them to take injured inmates to Jamestown (5-hour roundtrip) causing a negative impact on CDCR staffing.
- Funding the Growlersburg facility can be difficult at times. If the fire season is slow (no fires to fight), no funding is available for the CDCR.
- Under current California rules, the CDCR does not qualify for rehabilitation funding. This facility is a good example of a rehabilitation facility, and the State government may want to look at providing rehabilitation funding for Growlersburg.
- The mattresses in the sleeping quarters appear to be worn out. The CDCR may want to look at the existing sleeping accommodations to determine if some of the mattresses should be replaced.

Responses to this report are not required or requested.



2023-24 GRAND JURY REPORT
EL DORADO COUNTY
APRIL 5, 2024 CASE #24-03

PLACERVILLE AND SOUTH LAKE TAHOE
JAIL INSPECTIONS

The 2023-2024 Civil Grand Jury conducted its annual inspections of the county jails located in South Lake Tahoe and Placerville.

TABLE OF CONTENTS

Contents

Summary	3
Background	4
Methodology	5
Discussion	6
South Lake Tahoe Jail	8
Placerville Jail	9

SUMMARY

Summary

The 2023-2024 Civil Grand Jury conducted its annual inspections of the county jails located in South Lake Tahoe and Placerville. The inspections included a physical inspection of the facilities as well as interviews with staff and inmates.

Both jails were well maintained. There are no issues with the physical facilities. Steps should be taken to improve medical care, recruitment, and retention of qualified staff.

Background

Each year, the Grand Jury in each California county is mandated by Penal Code (PC) Section 919(b) to “... inquire into the condition and management of the public prisons within the county.” The term “public prisons” was recently clarified in a California Attorney General (AG) Opinion (No. 18-103) dated March 10, 2022. The AG opined that the term “public prisons” in PC Section 919(b) includes “local detention facilities” that confine prisoners for more than 24 hours. A county or city jail is a typical example of such a local detention facility. The AG concluded that each Grand Jury must inquire into at least one local detention facility located within its county.

METHODOLOGY

Methodology

Site Visits:

- Inspection of the South Lake Tahoe Jail in South Lake Tahoe was conducted on November 2, 2023
- Inspection of the El Dorado County Jail in Placerville was conducted on November 16, 2023

Documents Reviewed:

- Prior El Dorado County Grand Jury Reports
- Board of State and Community Corrections (BSCC) 2020/2022 Biennial Inspection Report (Dated August 7, 2022)
- BSCC *Jails Inspection Handbook for Grand Jurors*
- California Grand Jury Association Detention Facility Inspection Form
- Fire Marshal Inspection Report dated November 23, 2022
- Environmental Health Evaluation dated October 19, 2022
- Nutritional Health Evaluation dated October 19, 2022
- Medical/Mental Health Evaluation dated December 15, 2022

Interviews:

- El Dorado County Sheriff's Department staff
- Inmates at both facilities

DISCUSSION

Discussion

Inspections at both jails included housing, holding cells, medical units, culinary facilities, indoor and outdoor gym recreation facilities, and control rooms. The main control room monitors the entire facility including adjacent grounds. Separate control rooms monitor the housing units. Also inspected were the booking/intake area, public access areas, isolation cells, and the sally port, which is a secure entrance where inmates are brought into the jail and processed.

County jails were originally built to serve as pretrial detention centers and to house criminals sentenced to no more than one year. Those subject to longer sentences were sent to state prison. County jails were not designed to house prisoners serving long-term sentences.

In 2011, the Public Safety Realignment Act [Assembly Bill (AB) 109], reduced California's overcrowded prison system by moving lower-level offenders to county jails. Consequently, counties became responsible for incarceration and all ancillary services related to long-term incarceration. Prior to AB 109, criminals were sent to state prison or county jail based on length of sentence.

Inmates are classified on various factors to determine the housing unit where they will be assigned. The housing units, referred to as pods, house inmates depending on their ability to associate with others. Some inmates are housed in isolation, based on their criminal charges, combativeness, gang affiliation, mental state, and other issues that could make them a danger to others. Inmates with mental health issues are not segregated unless a safety and/or behavioral issue arises.

Officers monitor all pods from control rooms 24 hours a day. Each control room contains monitors showing all activity in each pod. From the control room, officers can remotely lock/unlock individual cells and give inmates directions by intercom.

DISCUSSION

The El Dorado County Office of Education (EDCOE) offers a wide range of educational classes at both facilities, including court-ordered narcotics and alcohol abuse treatment and anger management. Inmates can complete General Educational Development (GED) requirements, giving them an alternative to a high school diploma.

Inmates have numerous activities in which they may participate. They all have access to computer tablets for education and entertainment purposes. Permission to use the tablets depends on an inmate's good behavior. Inmates may join religious services within the jail, or they can request a visit from a clergy member. Both facilities allow inmates to exercise in the yard for one hour, three times per week.

Both jails have culinary programs that have received many awards. To participate in the program, inmates must meet specific guidelines and complete a food safety course. Qualified candidates prepare daily meals under the supervision of a registered dietician and staff cook. Food storage and refrigerated areas at both jails were clean and well organized. Cleaning fluids and other chemicals were labeled properly and stored safely. Knives and other sharp instruments are counted and secured when not in use.

There is no contact visiting, meaning inmates are not allowed physical contact with their visitors. Inmates are allowed one-hour visits three times per week. Telephones are the only means of communication between inmates and visitors. Their conversations are conducted in a booth through a glass window and are monitored by staff.

An independent medical care provider contracts with the County to provide medical services to inmates at both jails. There is a Registered Nurse on duty during the day and a Licensed Vocational Nurse on duty at night. During our interviews, it was stated that this medical care provider is not always reliable.

The inspection team identified a few areas that the Sheriff's Office may want to follow up on:

DISCUSSION

- The Grand Jury was informed that the current medical care provider cannot always be relied upon. Medical personnel do not always show up when expected. Additionally, an inmate at South Lake Tahoe informed us that they are not receiving their prescribed medications since being transferred to that facility. Perhaps a new medical care provider is warranted.
- Staffing at both facilities is a huge issue, causing a lot of overtime. Staff recruitment and retention efforts could be stepped up to help alleviate this issue.

SOUTH LAKE TAHOE JAIL

The jail was originally built in 1973 and was modified in the 1980s. The jail was inspected on November 2, 2023. Inmates are classified into the following categories: general population, maximum security, administrative separation, and discipline separation. The maximum capacity of the facility is 158 inmates. On the date of inspection, it housed 107 inmates, 93 males and 14 females. The current inmates have been housed for 12 hours and up to 6 years. The last suicide was approximately 2 years ago. There have been no escapes.

Allocated staff positions are approximately 50% filled. As a result, existing staff work significant overtime to meet schedule demands. The staff said the primary reason for the staffing shortage is likely because jails in surrounding counties pay higher wages.

One male inmate and one female inmate were interviewed. Topics discussed included: inmate safety, treatment by staff, complaint procedures, legal and regulatory compliance, visitor policies, medical services, recreation, and leisure activities. The inmates felt safe and believed they were treated well by staff. The main complaint was that inmates wanted contact visitation.

Although the facility is showing signs of aging, it was clean, graffiti-free, and well maintained. Everything appeared to be in working order and well organized.

DISCUSSION

PLACERVILLE JAIL

The jail was built in 1988. The jail was inspected on November 16, 2023. Inmates are classified into the following categories: general population, maximum security, administrative separation, discipline separation, and special needs. The maximum capacity of the facility is 303 inmates. When inspected, it housed 188 inmates, 157 males and 31 females. There have been no successful suicides in 2023, however, there have been three attempts. There were no deaths or escapes in 2023.

The facility has 85 staff allocations, of which 64 are filled. This requires substantial overtime for the current staff. The facility currently has one cook, and on the day of inspection, he was on his 29th day of work without a day off. The main reason given for this understaffing is lower pay than in the surrounding counties.

One male inmate was interviewed. He worked in the kitchen and was happy working there. He did not have any major complaints but did want contact visitations.

The facility appeared clean, graffiti-free, and well maintained. Everything appeared to be in working order and organized.

A \$25 million grant, provided for under California Senate Bill 844, has allocated funds for the jail's expansion. The expansion includes a separate housing unit for female inmates, a new medical wing increasing bed capacity, construction of several ADA-compliant cells, technical and programming spaces, and a computer lab. There will not be an increase in the number of inmates the facility will be able to house. The site is adjacent to the current facility, and the land has been cleared. The construction project is pending various approvals.

Responses to this report are not required or requested.



2023-2024 GRAND JURY REPORT
EL DORADO COUNTY
MARCH 4, 2024 – CASE #24-04

TRANSIENT OCCUPANCY TAX:
TRANSPARENCY MATTERS

The County's use of Transient Occupancy Taxes has come under considerable scrutiny. While the funds are being used and distributed in accordance with the law, greater transparency could alleviate public frustration and lack of trust.

TABLE OF CONTENTS

Contents

Summary	3
Methodology	4
Discussion	5
Findings	9
Recommendations	10
Request for Responses	11
Appendix and Related Information	12

SUMMARY

Summary

The El Dorado County Civil Grand Jury (GJ) received a complaint about the Transient Occupancy Tax (TOT) program's allocation of funds by the Chief Administrative Officer (CAO) and the El Dorado County Board of Supervisors (BOS). The complaint stated that the BOS was not using the TOT funds for its intended purpose, in support of economic development and/or tourism within the county, but rather using the funds as a 'slush fund' for pet projects. Additionally, the complaint stated that there was no transparency for the allocation of TOT funds, nor a formal process for requesting TOT funds by the various chambers of commerce and/or groups to support local economic development and tourism.

On October 6, 2023, the Mountain Democrat ran an article ([link](#)) on the TOT fund allocations, again, questioning the discretionary spending of the TOT funds by the BOS. The article's focus was on how to allocate the "discretionary" funds from the Transient Occupancy Tax, approximately \$216,000. There was discussion on either distributing the funds to each chamber or focusing on requests received for TOT funds. After careful review of multiple documents and interviews, the Grand Jury determined that the BOS generally followed current guidelines for the use and allocation of TOT funds. There is still a public perception that TOT funds are not explicitly allocated for economic development and tourism. The Grand Jury has recommendations to provide transparency to the process that precedes the allocation of funds to alleviate public mistrust.

Methodology

- Interviews
 - Complainant
 - El Dorado County CAO
 - District 5 Supervisor
 - El Dorado County Treasurer/Tax Collector
- Reviewed relevant documents associated with TOT.
 - TOT related press articles
 - The 2004 TOT voter approved measure
 - Measure (S) from 2022 ([link](#))
 - Resolution Number 063-2022 ([link](#))
 - The County Budget Policy (B-16)
 - The 2022 Hotel/Motel Ballot Measure description ([link](#))
 - 2022-2023 and 2023-2024 CAO Recommended Budget Book

DISCUSSION

Discussion

During the Grand Jury’s TOT investigation, we spoke with several individuals, including the complainant, County Supervisors, the County Chief Administrative Officer (CAO) and the County Treasurer/Tax Collector.

We obtained multiple documents, including:

- The TOT voter-approved measure from 2004 imposing a 10% tax on short-term rentals (e.g., hotels, motels, Airbnb, etc.), to offset the impacts of tourism and promote economic development.
- The 2022 voter-approved Measure S imposing 4% additional tax to support road maintenance and snow removal in South Lake Tahoe.
- Resolution Number 063-2022: clarified that TOT funds “may be used for any general government purpose.”

The County Budget Policy B-16 revised on April 18, 2023, modified the original Budget Policy adopted May 15, 2015.

The TOT measure in 2004 (collecting 10% on short-term rentals throughout the county) was to promote economic development and offset the impacts of tourism, including to roads and other infrastructure. The definition of “economic development and tourism” was not sufficiently clear. This left the public confused and distrustful, and caused frustration among some of the chambers of commerce who felt they should have received an appropriate percentage of these funds.

Since 2022 El Dorado County defined TOT ([link](#)) in its description of a Hotel/Motel Ballot Measure as follows:

“Because the Measure was passed as a General Tax, the use of funds is not legally restricted and can be used for general governmental purposes at the discretion of the Board of Supervisors. That Board set a policy that TOT revenue ‘shall be directed toward the

DISCUSSION

impact of tourism and economic development, with consideration for support of tourism and promotion activities within the County and for continued support for grant fund allocations to support Veteran programs within the County’.”

Measure S passed in 2022, provided a 4% increase for the South Lake Tahoe (SLT) area to offset road maintenance and snow removal. An oversight committee was created to allocate SLT Measure S funds. It is important to note that while Measure S passed for the SLT area, it failed approval for the Western Slope.

Resolution 063-2022 in April 2022 further clarified that the funds could be used for any general government purpose anywhere in the county. Even though the TOT allocations are now completely discretionary, the County’s general plan has been compliant in recent years with the original intent of TOT funds.

TOT funds are distributed (except for Measure S funds) across the various chambers of commerce within the county, and other recipients at the discretion of the BOS. The term “... *shall be directed towards the impact of tourism and economic development...*” is vague enough to support that the allocations to the various chambers and groups can and are supporting local tourism and economic development.

The County Budget Policies and Resolutions noted above provide a framework for budgetary decision making regarding the use of County funds (including TOT funds), to ensure prudent County fiscal management, and to direct the CAO in the development and management of the County Budget.

Policy B-16 (April 2023, see Appendix) states that the TOT Tax revenue, excluding the voter approved (Measure S) Tahoe area-specific revenue, “*shall be directed toward the impact of tourism and economic development, with consideration for support of tourism and promotion activities within the County and for continued grants to fund support for Veteran programs within the County.*” The current focus of TOT fund allocations is to look at impact first for

DISCUSSION

tourism, and then growth/economic development. This helps to offset road maintenance and emergency calls related to tourism.

The El Dorado County Treasurer and Tax Collector's Office (TTC) is responsible for the collection of TOT funds. TTC staff work closely with Airbnb to collect TOT taxes. To support the collection of TOT revenue, they utilize a software application that 'scrapes' short-term rental websites to identify illegal rentals. Generally, short-term rental companies collect TOT taxes from the host/owner of the rental property and deliver them to the county tax collector. There is no mechanism currently in place to verify that taxes owed and collected by the TTC, whether from hotels and Airbnb, et al., are accurate.

Recipients of BOS TOT allocations report annually on their use of the funds. If the funds are not fully utilized, they generally roll-over to the next fiscal year. The allocation of TOT funds to support Veterans programs is determined by the BOS based on recommendations from the Veterans committee.

The TOT budget is discussed in April and finalized in June. July through October, the previous fiscal year's books are closed. The CAO is required to set aside a 6% TOT budget surplus for emergency purposes.

Prior to any allocation of TOT funds, monies are taken out to pay for the Economic Development Department staff, Treasurer and Tax Collector operations that manage TOT revenues, and contractual agreements with the various chambers. This funding is taken off the top prior to any other TOT allocations. The remaining TOT funds go into the county-wide general fund.

Excerpts from the County budget detail for the 2023-2024 fiscal year include \$1.345M for Professional and Specialized Services, \$250K for Special Department expenses, and \$447K as an Intra-Fund Transfer to the Treasurer and Tax collector for the collection of TOT fund management. Whether these expenditures support economic development and/or tourism may be interpreted differently by others.

DISCUSSION

The TOT annual expected revenue in 2023/2024 fiscal year is approximately \$9 million. This is a small percentage of the county's annual budget of \$1.1 billion. The various county chambers and/or groups work with the BOS to get TOT funding. There is no formal process or policy for the chambers or other public entities on how to obtain a portion of the TOT funds. There are no guidelines on equitable distribution of TOT funds across the chambers or other groups because the BOS has full discretion to determine allocations.

Sixty-five percent of the TOT revenue is generated in the Tahoe basin and there is a great deal of frustration among those local residents and groups that a much smaller percentage is allocated back to that area. TOT taxes are critical to support South Lake Tahoe's economic development and tourism. Like other general fund revenues, TOT funds do not have to be spent in proximity to the areas where they are collected, like property taxes. Greater transparency of TOT allocations and rules might ease the concerns of citizens engaged in this issue.

TOT continues to be a controversial issue, despite it being a small portion of the county budget. The frustration stems from ambiguity of terms and lack of transparency that the Grand Jury believes can be easily remedied. A brief recap of the law and policies surrounding TOT along with definitions of terms could greatly ease confusion and frustration.

TOT funding for fire, police, or other emergency services can only be used for one-time expenses that don't require future unbudgeted funding, such as staff to run the equipment (such as fire trucks and ambulances). TOT is a variable funding source which cannot be counted on to fund an on-going expense such as salaries. This has also caused some frustration in limiting fund use for valid projects. A notable exception was made for the Economic Development staff, however.

Veterans Affairs receives a consistent allocation of TOT funds annually. The justification of this allocation should be better clarified to alleviate concerns about that allocation. Furthermore, despite 65% of TOT revenue coming from the Tahoe basin, no allocation is made to the Tahoe Veterans' groups.

FINDINGS

Findings

F1 – The BOS is currently following the TOT Measure’s intent for the use of revenues/funds. Budget Resolution Number 063-2022 clarifies that TOT funds utilized by the BOS are the same as Sales and Property tax, meaning that the BOS has 100% discretionary authority to allocate TOT funds.

F2 – There is no formal or consistent process for the various chambers or groups to request TOT funds, or transparency on how decisions are made to allocate funds.

F3 – There is no compliance process to ensure the collection of all TOT revenues from short-term rental companies like Airbnb.

F4 – The definition of ‘tourism and economic development’ is vague to the public and the source of misperception.

RECOMMENDATIONS

Recommendations

R1 – The BOS should develop and implement a plan by January 1, 2025, to improve the transparency of the TOT funds request and allocation process, such as a TOT page on their website or a media campaign to alleviate public perception of misuse of funds.

R2 – To clarify that the funds are discretionary, Board Policy B-16 (see Appendix) should be updated in the latest CAO Budget Book, and everywhere else relevant, to properly set public expectations and reduce controversy.

R3 – The County Tax Collector should implement a compliance plan to ensure that all TOT taxes are identified and collected.

REQUEST FOR RESPONSES

Request for Responses

A Civil Grand Jury report details a single investigation. Each report lists FINDINGS and RECOMMENDATIONS. The responsible organization is notified and is required to respond to the report.

The California Penal Code § 933(c) specifies response times.

- **PUBLIC AGENCIES.** The governing body of any public agency (also referring to a department) must respond within 90 days from the release of the report to the public.
- **ELECTIVE OFFICERS OR AGENCY HEADS.** All elected officers or heads of agencies/departments are required to respond within 60 days of the release of the report to the public.
- **FAILURE TO RESPOND.** Failure to respond, as required to a Jury report, violates California Penal Code Section 933.05 and is subject to further action that may include additional investigation on the subject matter of the report by the Jury.

The following responses are required pursuant to Penal Code § 933 and § 933.05:

From the following governing body:

- Board of Supervisors
 - All Findings and Recommendations
- CAO
 - All Findings and Recommendations
- County Tax Collector
 - F3 and R3

For more information refer to How to Respond to an El Dorado County Grand Jury Report available on the El Dorado County Grand Jury webpage.

APPENDIX AND RELATED INFORMATION

Appendix and Related Information

COUNTY OF EL DORADO, CALIFORNIA BOARD OF SUPERVISORS POLICY

Subject:
BUDGET POLICIES
Policy#:
B-16
Date Adopted: 04/18/2023
Effective Date: 04/18/2023

NOTE – Excerpt from Policy B-16 related to TOT

Section II.

13. Discretionary Transient Occupancy Tax: Transient Occupancy Tax revenue, excluding voter approved Tahoe area-specific revenue, shall be directed toward the impact of tourism and economic development, with consideration for support of tourism and promotion activities within the County and for continued support for grant fund allocations to support Veteran programs within the County.

APPENDIX AND RELATED INFORMATION

Chief Administrative Office

TRANSIENT OCCUPANCY TAX DETAIL

Description	Recommended Budget
Revenues	\$ 14,000,000
Fund Balance	\$ 5,000,000
Transient Occupancy Taxes	\$ 9,000,000
Professional & Specialized Services	\$ 1,344,589
Broadband Grant Match	\$ 329,730
Broadband & Biomass	\$ 1,014,859
Special Department Expense	\$ 250,000
Wet Lab Economic Development Project	\$ 250,000
Contribution to a Non-Governmental Agency	\$ 10,000
Tahoe Fund Billboard Campaign	\$ 10,000
Contribution to a Non-County Governmental Agency	\$ 1,293,813
County Fire Tourism Response	\$ 121,081
Georgetown Fire	\$ 17,232
Lake Valley Fire	\$ 621,410
North Tahoe / Mecks Bay Fire	\$ 264,090
South Tahoe Transit	\$ 270,000
Operating Transfers Out to Non-General Fund Departments	\$ 6,264,310
Accumulative Capital Outlay - Chili Bar	\$ 250,000
Veterans House Council	\$ 15,000
Veterans' Building Repairs	\$ 25,000
Veterans Affairs Commission	\$ 175,000
Airport Study	\$ 50,000
Transportation Tahoe-Area Road Maintenance	\$ 870,000
Transportation Tahoma Sleeping Quarter Design	\$ 500,000
Transportation Pioneer Trail Repair & Maintenance	\$ 1,300,000
Transportation Countywide Road Maintenance	\$ 1,379,040
Transportation EDA Broadband Project	\$ 270,270
Transportation Bike Path Snow Removal	\$ 50,000
Transportation Snow Removal Equipment	\$ 1,380,000
Intrafund Transfer to General Fund Departments	\$ 4,337,288
Treasurer-Tax Collector Collection of TOT	\$ 446,500
Veterans Services Position	\$ 90,700
Planning & Building Sr. Development Technician	\$ 85,500
Community Planning	\$ 350,000
Economic Development Division	\$ 1,597,088
Code Enforcement VHR Officer	\$ 102,500
Sheriff Search & Rescue & Helicopter Operations	\$ 665,000
Parks - Diamond Springs Community Park	\$ 1,000,000
Designate Funding for Tahoma Replacement	\$ 500,000

2023-2024 TOT funding details



2023-24 GRAND JURY REPORT
EL DORADO COUNTY
APRIL 5, 2024 – CASE #24-05

EL DORADO HILLS CSD: CONTROVERSY AND CONCERNS DEMAND CHANGE

Controversy and public concerns at the El Dorado Hills Community Services District (CSD) highlight the need for fundamental changes.

TABLE OF CONTENTS

Contents

Summary_____	3
Highlights_____	3
Recommendations Summary _____	3
Background _____	4
GM Conflict of Interest_____	4
Carson Creek LLAD Ballot Initiative _____	5
LLAD Assessment Policies and Objections _____	6
CSD Financial Health and Master Plan _____	6
Park Impact Fees and Reporting Requirements _____	7
Developer Influence _____	8
Methodology _____	9
Interviews _____	9
Documents Reviewed _____	9
Discussion _____	11
GM Conflict of Interest_____	11
Carson Creek LLAD Ballot Initiative _____	14
LLAD Assessment Policies and Objections _____	15
CSD Financial Health and Master Plan _____	20
Park Impact Fees and Reporting Requirements _____	22
Developer Influence _____	25
Findings_____	29
Recommendations_____	32
Request for Responses _____	34
Appendix 1 – Assistant DA Letter to CSD_____	35
Appendix 2 – Tables of CSD Financials_____	37

Cover Caption: El Dorado Hills Community Services District Village Green Park from the air, taken August 11, 2022

SUMMARY

Summary

"The love of power and the love of money are twin evils that often conspire to corrupt the human soul." - George Washington

HIGHLIGHTS

What began as an investigation into the propriety of an outside consulting arrangement of the then General Manager (GM) of the El Dorado Hills Community Services District (CSD) with a CSD contractor, DTA, expanded into a broader investigation into how CSD determines park assessments, collects developer impact fees, and CSD's overall financial position. There is increasing public concern over how reasonable park assessment rates really are and multiple communities are pushing back to repeal their assessments, which, if successful, will impact CSD revenue in future years.

As a result of the financial investigation, the Grand Jury believes that CSD is overcharging the public for both assessments and impact fees. Not spending the revenue in a reasonable timeframe to benefit current owners appears to be in violation of retention requirements for at least the park impact fees (PIF). In short, CSD has ample financial assets to develop new parks and amenities but is not doing so. Instead, CSD has amassed roughly \$50 million in reserve funds with a "plan" to spend \$300 million in the future. The CSD Board provides inadequate oversight of management and staff contributing to public frustration.

RECOMMENDATIONS SUMMARY

The Grand Jury is proposing a broad range of recommendations that include greater oversight to CSD decisions that ensure transparency and public involvement. There is a need for ongoing Brown Act and ethics training for the Board of Directors and staff. CSD needs to improve transparency around the intended use of the large accumulations of cash reserves, particularly PIF, and be more responsive to public concerns about assessment amounts and how they are certified.

Background

In July and August 2023, the Grand Jury received multiple complaints against the El Dorado Hills Community Services District (EDHCSD or CSD) initiating an investigation that expanded to cover several additional concerns that surfaced through the second half of the year.

Particularly concerning is the public frustration that is expressed in open meetings, social media, and letters to the editor of local newspapers, including calls for the resignations of CSD Board members and their legal staff. We describe each related area of the investigation below:

GM CONFLICT OF INTEREST

In July 2023, the public became aware that the then-CSD General Manager (GM) had a direct consulting arrangement with DTA (formerly known as David Taussig and Associates), a significant CSD contractor responsible for the determination of park assessment fees to property owners. The relationship with DTA was corroborated through a citizen investigation that revealed the GM's LinkedIn profile listing his tenure at DTA. The consulting relationship represented a potential serious conflict of interest as well as potential statutory and ethics violations. When confronted, the GM denied the relationship. Shortly after, his LinkedIn profile was updated to remove DTA.

Despite the public concerns, the CSD Board of Directors did not adequately address the issue, even appearing to support the GM without inquiry or serious investigation until he voluntarily separated from CSD in mid-December 2023. This raised concerns about the Board's oversight of CSD operations and the GM, as well as whether CSD Board of Directors were deficient in their public obligations to disclose information, including possible Ralph M. Brown Act (Government Code Section 54950, et seq., "the Brown Act") "serial meeting" violations and how they were involved in what appears to be an attempt to conceal a very embarrassing situation. Although an internal investigation of the former GM was finally conducted by CSD,

BACKGROUND

none of the results of that investigation, the extent of his conflict of interest, or terms of his relationship with DTA have been made public, further raising public concerns.

Due to the potential for criminal violations, the Grand Jury collaborated with the El Dorado County District Attorney's office (DA) during this investigation.

CARSON CREEK LLAD BALLOT INITIATIVE

The Landscaping and Lighting Act of 1972 (Streets and Highways Code §22500, et seq.) allows a local agency, such as the CSD, to create assessment districts to provide funding for the maintenance and support of specific public or shared areas within its boundaries. CSD has created several Landscaping and Lighting Assessment Districts (LLADs) to provide funding sources for area parks, community facilities and landscape areas within each LLAD boundary. The assessment amount for each property owner/parcel is not based on the value of the parcel; it is based on the benefit the parcel receives from the improvements as calculated by an engineering firm and approved by the CSD Board after a period of public review.

A second Grand Jury complaint addressed ballot initiatives brought forward by the Carson Creek Landscaping and Lighting Assessment District (LLAD) #39 to repeal their CSD assessments which they believed were inappropriate. Through multiple ballot initiatives to date, CSD was accused of violating California Elections Code and not properly addressing or handling two valid initiatives. The initiative proponents have planned a third ballot measure for November 2024.

Due to the complexity of this issue and the role of the county Elections Department and the county General Counsel, the 2023-2024 Grand Jury is creating a separate report to address this topic (Case #24-06). We do, however, show this is a part of a consistent pattern by CSD of not responding to legitimate LLAD concerns and a broader investigation over LLAD assessments by DTA that are addressed later in this report.

BACKGROUND

LLAD ASSESSMENT POLICIES AND OBJECTIONS

The engineering firm that CSD used to calculate LLAD assessments from 2018-2023 was DTA, the same firm that retained the CSD GM as a business development consultant during 2022 and 2023. As noted above, the Carson Creek LLAD #39 has objected to the assessment methodology and assessed values for several years, seeking to repeal them and ensuring that all future assessments are subject to voter approval. As other LLAD's created by CSD investigated the validity of their assessments as well, public concern started to spread. Now other LLAD's are seeking to reduce and/or repeal their LLAD assessments, which will cause a material impact to CSD revenue and potentially park maintenance and viability.

The El Dorado County (County) Auditor/Controller (County Controller) applies the assessment values to property tax rolls on behalf of CSD. Based on the now-controversial accuracy of LLAD assessments, the County Controller looked to CSD to certify the assessment values to avoid any liability for any inaccuracies and taxpayer complaints. CSD failed to properly certify the assessments to the satisfaction of the County Controller, who then elected to not apply the assessments to the tax bills for 2021, 2022 and 2023. CSD is now suing the County for not collecting the assessments.

The Grand Jury is unable to weigh in on the CSD litigation with the County Controller, but we thoroughly investigated the controversy of CSD assessment methodology, as well as a lack of established policies and procedures in certifying LLAD assessments as discussed later in this report.

CSD FINANCIAL HEALTH AND MASTER PLAN

With the concern over CSD losing funding from the inability to collect LLAD assessments in recent years, as well as upcoming ballot measures seeking to permanently repeal multiple LLAD assessments going forward, the Grand Jury investigated the financial health of CSD, other sources of revenue, cash reserves and future spending plans. What we found can only be characterized as truly shocking: CSD is generating a net revenue of \$2-5 million annually with a surplus of roughly \$50 million in cash and other liquid investments according to the most

BACKGROUND

recent 2023 CSD Treasurer's Report. This annual net revenue gain is despite not collecting LLAD assessments the last couple of years, calling into question the need for those LLAD assessments altogether.

Cash reserves of this magnitude appear to violate all stated CSD policies for operational cash reserves ([link](#)). The only possible need for such a large balance would be a deficiency in funding the CSD Master Plan ([link](#)), a 2021 vision for future park enhancements, land acquisition and growth. The Grand Jury investigated the viability of the Master Plan, which calls for nearly \$300 million in existing park enhancements and new park development, an amount that would be generously characterized as wildly optimistic given the current tax base and revenue sources. Even board members stated that the CSD Master Plans needs to be revisited. The Grand Jury agrees and further questions the wisdom of carrying such large cash reserves, at the expense of homeowners, without a realistic plan in place.

PARK IMPACT FEES AND REPORTING REQUIREMENTS

CSD is not only having issues with its justification and collection of LLAD assessments, but there is also controversy over another important source of CSD revenue, developer impact fees. Impact fees are assessed to property developers to raise funds for necessary community improvements as the community grows. These fees are categorized and assigned to various governing bodies, such as traffic impact fees to the County, fire impact fees to fire districts, and park impact fees to park or community services districts. CSD collects Park Impact Fees (PIF).

The Mitigation Fee Act (MFA) is a California law that sets forth procedural and reporting requirements for imposing and justifying developer impact fees. Among other things, MFA imposes a reporting requirement to account for unspent impact fees held longer than five years. It also requires a local agency to determine a reasonable relationship between the fee's use and the type of development project on which the fee is imposed. CSD, El Dorado Hills Fire District, and the County are currently in litigation alleging failure to meet these MFA five-year reporting requirements and are subject to a significant refund to homeowners of previously

BACKGROUND

collected impact fees should the plaintiff in the litigation prevail. We analyzed recent CSD Annual PIF reports going back to 2016 and found that although five-year reports have been produced by the County, CSD nevertheless is holding back several million dollars in impact fees for at least five years, and maybe up to 15 years. We tried to find out why.

DEVELOPER INFLUENCE

As part of our CSD investigation, several concerned citizens brought forward complaints and questions about a few deals that CSD and the County have made with the largest property developer in El Dorado Hills, Parker Development Company (Parker). The Grand Jury investigated some of this history with Parker as much as time and resources allowed. We noted a trend in seemingly favorable financial arrangements with Parker. The public's concerns are justified, and there needs to be more transparency.

With so many areas of public concern at CSD, the Grand Jury tried to find a root cause for an overall lack of transparency, failure to follow established or required policies and procedures, and its apparent disdain for public inquiries and concerns. Our established facts, findings and recommendations follow.

METHODOLOGY

Methodology

INTERVIEWS

- Members of the CSD Board of Directors
- EDH CSD staff
- Multiple employees of DTA
- Several concerned citizens with detailed knowledge and affidavits of various issues
- County officials
- Members of the County Board of Supervisors

DOCUMENTS REVIEWED

- Multiple citizen complaints to the Grand Jury and the District Attorney's Office
- Public Records Act (PRA) request for all CSD emails regarding the former GM's outside employment
- Subpoena requests for all DTA emails regarding hiring of the former GM
- Subpoena request for all time sheets and paystubs from DTA for the former GM
- Invoices from DTA to CSD from 2018-2023
- Proposal from DTA to CSD for levy assessment work in response to an RFP, 1/22/18
- Multiple years of DTA annual engineering reports for various LLADs
- Ethics training certificates for all current CSD Board of Directors and the former GM
- Form 700 statements for current CSD Board of Directors and the former-GM from 2018-23
- CSD Board Meeting packets from 2022 and 2023
- Fair Political Practices Commission (FPPC) rules and advice regarding conflicts of interest
- The former GM's employment agreement with CSD
- PRA response for CSD emails regarding the former GM and DTA

METHODOLOGY

- CSD Policies and Procedures manuals from their website, Series 1000-8000
- The former GM's deposition from November 1, 2023, at Placer County Superior Court
- Annual CSD Treasurer's report from 2018-2023
- Annual CSD Comprehensive Annual Financial Reports (CAFR/CFAR) from 2018-2023
- Park Impact Fee Annual Reports from fiscal years 2016-2017 through 2022-2023
- CSD's September 14, 2023, memo on retained impact fees to the Board of Supervisors
- LLAD formation and maintenance agreements
- Prior year's Grand Jury reports on CSD
- County Counsel's "Impartial Analysis of EDH CSD LLAD #39 Measure H"
- Assistant District Attorney's Letter of February 7, 2024, to CSD Board re: Brown Act Training

DISCUSSION

Discussion

GM CONFLICT OF INTEREST

In July 2023, the public became aware that then-CSD GM was consulting at CSD's engineering assessment firm, DTA. The Grand Jury was shown a copy of the GM's LinkedIn professional profile listing his tenure at DTA since early 2022 through present (July 2023 at the time). A witness reported that the GM was asked if he was employed at DTA, to which he responded, "No". It was subsequently confirmed by reaching DTA offices in both Irvine and San Jose that indeed the GM was a consultant there.

Although the GM's work for DTA appears to be unrelated to the CSD contracts with DTA and he might have had little or no direct involvement with CSD business at DTA, the fact that DTA provides critical information to determine LLAD assessments and therefore CSD revenue, not to mention being paid considerable amounts for their contract services over the last five years, raised potential serious conflict of interest and ethical concerns. This could seriously undermine the integrity of the Board as well, depending on who on the CSD Board knew about this outside work, which under the GM's employment contract required board approval.

Designated public officials are required to disclose reportable economic interests on Form 700, Statement of Economic Interest. The individual must verify the Form 700's content under penalty of perjury, and failure to disclose or include all required economic interests is subject to civil and criminal penalties. California Government Code 1090 prohibits public officials or employees, while acting in their official capacities, from making contracts in which they are financially interested, and a violation carries both civil and criminal liability. After the Grand Jury reviewed requested payroll documents from DTA and the GM's Form 700 documents during the time period of his DTA consulting relationship, we confirmed that the GM was paid over the \$10,000 annual compensation threshold that would have required disclosure of income received from DTA on his Form 700's.

DISCUSSION

The District Attorney's office started to investigate the CSD GM matter in 2023 in response to public complaints and elected to coordinate an investigation with the Grand Jury.

The Grand Jury found that the GM was employed by DTA from early January 2022 as a marketing or business development consultant. Records show that he was primarily responsible for developing business in other Northern California counties for DTA's engineering and financial work for other special districts. Once the GM left CSD in mid-December 2023, the Grand Jury focused its investigation on the CSD Board's lack of due diligence, transparency, and what information should have been made public.

A majority of the CSD Board showed little desire to alleviate public concerns surrounding the GM or to investigate the matter further, despite some Board members pushing for complete transparency. An internal (CSD-funded) investigation was not initiated until several months after the first public concerns were raised in July 2023. The investigation was opened by the President of the CSD Board without detailed knowledge or vote by the other Board members.

When that CSD-funded investigator was contacted by a concerned citizen, the investigator seemed unaware of the allegations against the GM, nor provided any indication that he had reached out to DTA for any factual confirmation by that time. To date (March 2024), no information regarding this investigation, paid for with taxpayer funds, has been released, nor the terms or reason for the GM's separation from CSD (as far as the Grand Jury could verify, the GM resigned of his own accord on December 21, 2023, and moved out of state).

The Grand Jury learned that the current CSD Board had no knowledge of the GM's outside consulting work until it was revealed publicly in July 2023. Nevertheless, the CSD Board's apparent lack of action or transparency through the end of 2023 is troubling. Documents reviewed show that in 2020, The GM appeared to have received approval to do outside work through one-on-one-communications with all five CSD board members at the time. The Grand Jury learned that some board members were unaware that other board members had given approval or that the GM had received collective approval from the board as required. Having only given their individual approval, the board members felt no official decision had been made

DISCUSSION

or needed to be communicated publicly. The records tell a slightly different story in that the GM had communicated to one of the board members that all the other board members were in approval, and he was seeking final written confirmation before he proceeded with his outside work.

A series of separate communications involving a majority of the board members is an example of what may be considered a serial meeting in violation of the Brown Act open meeting requirements. The Brown Act requires that action taken by the CSD Board, in this case the approval for the GM to do outside work, to be done in open session at a public meeting, or if discussed and approval is given during closed session that materially changes the GM's contract, to publicly report the action taken and reflect it in the meeting minutes. Serial meetings in violation of the Brown Act expose government entities to liability, lead to a lack of public transparency, lower public confidence, and affect the ability to govern properly.

The Grand Jury inquired into mandatory Brown Act training by the CSD Board, as well as ethics training. We found that while Brown Act training is encouraged, there is no mandatory requirement for such training, and they do not keep records of this. Apparently not all Board members know their obligations to keep the public informed of certain key issues. On February 7, 2024, the El Dorado County District Attorney's Office (DA) sent a letter (see Appendix 1) to all current CSD Board members and the interim-GM advising them of the prohibited serial meetings. The DA requested the current Board and interim-GM obtain such training forthwith and to seek the DA's support to ensure that the training is sufficiently broad to ensure that the public has confidence in proper compliance by CSD going forward. The Grand Jury found it interesting that one Board member, even after receiving the letter from the DA, appeared to question whether the emails were a serial meeting. Clearly more training is needed.

Public concern remains that the former GM's consulting work with DTA potentially compromised the integrity of the LLAD assessments, or at the very least has the appearance of a conflict, which can cause further distrust. We document the controversies about those LLAD assessments in the following sections.

DISCUSSION

CARSON CREEK LLAD BALLOT INITIATIVE

Carson Creek LLAD #39 provides a maintenance funding source for Heritage Park in El Dorado Hills. There has been a very contentious relationship between CSD and LLAD #39 since the opening of the park. The Heritage residential development is an active adults 55+ community while the park is designed with amenities for a much younger consumer. Moreover, the Heritage residential community has its own tennis, bocce and pickleball courts and has no need for those specific Heritage Park amenities. (See photo below with CSD Heritage Park in background.)



Figure - Heritage Carson Creek active 55+ development amenities. The development, across the street from Heritage Park (upper left), has its own tennis, pickleball, bocce and grass field.

DISCUSSION

Community residents circulated an initiative petition in 2020 designed to repeal park assessment fees and contested the LLAD assessment methodology directly to DTA. The petition was signed by the requisite number of voters, but the CSD Board did not adopt the initiative or submit the initiative, without alteration, to the voters as mandated by Elections Code Section 9310. Rather than taking legal action against CSD, the initiative proponents created a second ballot initiative, Measure H, to permanently repeal park assessments in the following election cycle. CSD adopted a ballot question for the voters that misrepresented the ballot text of Measure H by making it applicable to only two prior years, contrary to the text of Measure H and the proponents' intent. After passage of Measure H, CSD again assessed the LLAD amounts according to the annual DTA engineer's report. For the second time, rather than pursuing legal action against CSD, the ballot proponents have elected to put a third initiative on the November 2024 ballot.

This report is not a complete investigation of the Measure H Carson Creek ballot initiative as it requires more analysis. This section provides an important backstory for the larger controversy about CSD's overall LLAD assessment methodology and procedures, as well as the impact they will have on other parks and neighborhood communities in the future.

LLAD ASSESSMENT POLICIES AND OBJECTIONS

In addition to Carson Creek, other LLAD's are beginning to seriously question their assessments. Homeowners in LLAD #22, Promontory Park, believe they are being overtaxed due to outdated assessment methodology, last updated in the early 2000's. Residents in the immediate vicinity of the park are paying 80% of the park maintenance fees despite the amenities being widely used by remote communities from Sacramento County and larger parts of El Dorado County. Promontory Park sports fields are used by multiple sports organizations and leagues, and the wet park is used by all of EDH and neighboring communities.

Blackstone Park is similar to Heritage Park, where residents have fewer children than average due to the excessive distance to public schools. Nevertheless, CSD is assigning nearly all the

DISCUSSION

park maintenance fees to a local community that does not use the park as frequently as the standard assessment assumptions indicate. Both Blackstone and Promontory Park LLADs are pursuing ballot initiatives with the same wording and approach that Carson Creek LLAD is now using for the November 2024 ballot.

DTA was the third-party contractor hired by CSD for calculating LLAD assessments on a parcel-by-parcel basis. This provided some justification for CSD to apply these controversial assessment calculations to property tax bills because DTA is a certified engineer. Article XIID, section 4(b) of the California Constitution, enacted as part of Proposition 218, requires new or increased benefit assessments to be supported by a detailed engineer's report prepared by a registered professional engineer. The Grand Jury uncovered a markedly different reality in terms of what research is performed and how assessments are determined.

Annual DTA assessment engineering reports defined a methodology for determining a Special Benefit to specific parcels and a General Benefit to a larger community. General Benefits are assigned to more remote park users outside the LLAD boundaries. Special Benefits come from more frequent use and direct park access, including proximity to improved open or green spaces, improved views, and other benefits. Based on the usage characteristics of the parks, a split of maintenance costs is assigned to Special and General benefit percentages. DTA also distinguishes assessments to landscaping versus park amenities, under the assumption that landscaping, such as road medians, is almost solely for the immediate vicinity of the park area. Only Special Benefits cost percentages are funded through assessments. General Benefits percentages are funded from other sources, like property taxes and user fees from the CSD general fund. LLAD assessments are used to assign a majority of park expenses to the parcels nearer to the parks. Caution is required to ensure those are the parcels really benefiting from the park amenities. Proposition 218 allows communities to challenge any assessments that are not commensurate with the special benefit conferred on a parcel.

Controversy stems from the methodology and assumptions used to determine Special and General Benefits percentages. DTA relied on assumptions that are provided by CSD, or the

DISCUSSION

previous assessment engineer, and parcel data from El Dorado County. The responsible DTA engineers authoring the report never visited El Dorado County or any of the CSD parks to determine their assessments.

In general, the formation documents for the LLAD provide a park category definition (e.g., neighborhood park, special purpose park). The park definition determines a service radius based on expected park use, which in turn determines a standard Special Benefit amount for the local area residents. This is usually independent of the park amenities, actual location, and local demographics, which really determine who uses the parks. Defining a park as a neighborhood park, for example, puts a higher percentage of the costs on a smaller service radius, although the park might have the only pickleball courts in that section of the county and supports players from a much wider area.

DTA did not factor this in, and in fact, showed limited knowledge of CSD local park amenities or neighborhood needs. DTA produces one annual consolidated report that applies the exact same assumptions and benefit allocations to twenty-two different LLADs in El Dorado Hills. There is no complicated calculation or engineering formula behind this, or actual reflection of unique characteristics and popularity of each park, leading to the assessment challenges by individual LLADs.

El Dorado County provides up to date parcel data, including the type of residence (single home, multi-unit, commercial). DTA takes that spreadsheet and applies these uniform assumptions across twenty-two LLADs to allocate maintenance costs to parcel owners and sends the assessment results back to CSD. This can be done with a standard spreadsheet model, and it's hard to imagine that this consolidated calculation work based on a standard methodology would take more than a few days for all twenty-two parks.

There are some different assumptions for Carson Creek LLAD, Lake Forest Park and Windsor Point Park that generate separate annual engineering reports. All but these three CSD parks are consolidated into one annual report. CSD paid DTA \$77,179 in 2021 and \$26,955 in 2022, with various amounts in between in other years going back to 2018. Although DTA does some other

DISCUSSION

work for CSD, including development impact fee calculations, the four annual engineering assessment reports covering all CSD LLADs comprised most of their effort justifying these expenses.

Once individual parcel assessments are determined, the CSD Board is responsible for approving the engineer's assessment report, after the public has also had a review and comment period. The CSD Board is required to adopt a resolution confirming the amount and apportionment of the assessment. The assessments are submitted to the County Controller to place on property tax bills. Starting in 2021, the County Controller raised concerns regarding the discrepancy between the assessment amounts approved in the CSD Board's adopted resolution and the assessment amount in the levy request delivered by DTA.

The County Controller declined to rely on DTA certification verifying the accuracy of the assessment amounts. Recall that DTA did not establish the methodology for assessments, much of it came from CSD or the prior CSD consultant years earlier. DTA is not in a position to certify the assessment amounts per their defined procedures. The County Controller notified CSD that he could not place any CSD LLAD assessments on the tax rolls for that year without a written certification from the CSD General Manager or the CSD Board Chair verifying the accuracy of the assessments. At the time, parcel owners within the Carson Creek LLAD had been questioning their LLAD assessments.

CSD has not properly certified the assessments to the County as requested by the County Controller for two years (2022 and 2023) and has sued the County Controller for the unassessed amounts. When the CSD Board voted to sue the County Controller, which is a case now pending in Placer County Superior Court, it was not reported in open session of the CSD board meeting. The Brown Act requires that Board decisions to initiate litigation in a closed session be reported out in an open session. (California Government Code Section 54957.) This further highlights the need for additional Brown Act training for the CSD Board.

As assessment values become contested across more LLAD's, CSD appears to want to distance itself from standing behind the accuracy of those values directly. In any legal action contesting

DISCUSSION

the validity of any assessment, Article XIID, section 4(f) of the California Constitution places the burden on the agency to demonstrate that the parcels in question receive a special benefit over and above the general benefits conferred on the public at large and that the assessment is proportioned to the special benefit received by those parcels. Rather than addressing the core problem, litigation with the County is going to be much more expensive, with taxpayer money.

The Grand Jury investigation into DTA work leads us to believe the assessment methodologies that are used throughout the state tends to result in maximizing special benefit allocations to residents local to the park and minimizing general benefit percentages which come out of a district's general funds. In CSD's case, the consolidated engineer's report does not confirm unique park characteristics or amenities that should be taken into consideration to determine key assessment assumptions. Rather than analyzing individual park use, assessment engineers can utilize nationwide data from the National Recreation and Park Association (NRPA) which publishes standards and metrics for park use by park category, further simplifying the process.

At some point, DTA changed its name from David Taussig and Associates to DTA Finance. We believe their benefit to clients is that they can lend support to special districts in maximizing their financial revenues derived from special benefit assessments. We believe the former GM understood this value well and was eventually recruited by DTA to market and offer their services to other special districts around Northern California.

The Grand Jury has no jurisdiction to investigate a private company like DTA. We would advise, however, other communities to do their due diligence and suggest that taxpayer advocate groups like the Howard Jarvis Taxpayer Foundation to further investigate how all assessment engineering firms derive tax revenue and the validity and source of their assumptions where public concerns warrant. CSD's contract with DTA expired at the end of 2023 and CSD has now retained another assessment engineering firm, who is hopefully tasked with revising assessment methodologies.

DISCUSSION

CSD FINANCIAL HEALTH AND MASTER PLAN

With CSD missing out on LLAD assessment revenue for a couple of years, the Grand Jury expanded the investigation into CSD financial health. In the following table, all columns come from the annual CSD Treasurer's report except the rightmost column which comes from the audited Consolidated Annual Financial Report (CAFR or CFAR), all on the CSD website:

Year	Revenue	Expenses	Net Gain	Financial Assets Reported	Fund Balances End of Year
2023	\$ 18,072,871	\$ 12,907,987	\$ 5,164,884	\$ 49,268,629	Not available
2022	\$ 16,236,156	\$ 12,552,349	\$ 3,683,807	\$ 48,407,787	\$ 48,065,952
2021	\$ 15,004,461	\$ 9,898,119	\$ 5,106,342	\$ 44,917,892	\$ 44,382,145
2020	\$ 16,918,130	\$ 13,132,333	\$ 3,785,797	\$ 40,260,967	\$ 39,275,803
2019	\$ 15,472,695	\$ 13,928,589	\$ 1,544,106	\$ 37,236,910	\$ 35,490,006
2018	\$ 14,719,777	\$ 12,267,455	\$ 2,452,322	\$ 34,526,246	\$ 33,736,965
2017	\$ 14,509,193	\$ 10,857,987	\$ 3,651,206	\$ 30,051,082	\$ 28,959,643
2016	\$ 13,216,847	\$ 9,088,583	\$ 4,128,264	\$ 26,248,146	\$ 25,308,437

Notes:

2023 financials from EDH CSD Treasury Report, Sept. 30, 2023; 2023 Financial Assets includes Q1 FY 2024

2016-2022 fund balances are from annual CAFR/CFAR report

Financial Assets Reported include only cash and investments, not receivables

As shown, going back eight years, CSD operates a considerable net income of roughly \$2 - \$5 million annually. Some years exceed an impressive 30% gross revenue margin. CSD has roughly doubled its year-end financial accounts (cash, financial instruments, and other liquid assets) in those eight years, up to or now exceeding \$50 million. There is a small discrepancy between the two right columns based on the timing of short-term receivables and liabilities.

This is noteworthy considering CSD has not collected LLAD assessments for the past two years. The public can rightly question why they are being overtaxed and overcharged to produce this amount of net gain. Government entities are not supposed to be run as profit centers. Consider the situation when a homeowner is paying property taxes and assessments for years that are saved away in an account from which they gain no benefit. If that homeowner sells their home, some benefit may accrue to some future homeowners if the reserves are

DISCUSSION

eventually spent. This process is inherently unfair to the owners who paid too much. There also appears to be little justification for this kind of reserve accumulation. The CSD Board could not justify this kind of asset accumulation. The public's concern and desire for more transparency is valid.

The CSD Operations Policy Manual (Series 3000) on its website includes a section on revenue policies and reserve policies. Revenue Policy 3271.50 indicates, "Fees and charges will be set at a level that supports the direct and indirect cost of the service provided." CSD is not in compliance with this policy, because total income is greatly exceeding direct and indirect costs. They are saving large amounts each year to fund undetermined future development.

Reserve policies 3272.10-60 provide justification and requirement for small reserves for economic uncertainty, capital replacement, compensated absences, etc., nothing that would justify tens of millions of dollars. Only policy 3272.70, Capital Deficiency Reserve, could provide some justification for large capital accumulation, stating that reserves should be held for: "... capital improvement deficiencies as defined in the District's Master Plan and nexus study." It appears that the Master Plan costs could provide some loose justification for cash accumulation to build future park amenities and new park development. A CSD Board member indicated that the large financial position would be allocated towards the Master Plan in time. A quick review of the Master Plan indicates that might be several decades from now.

The most recent Master Plan, authored in 2021, can be found on the CSD website. It's problematic in several ways. First, the improvement to existing parks, development of planned parks and newly proposed parks totals roughly \$320 million, a number that was also verbally mentioned by a Board member. No Board member could describe how the public agreed to these costs or when. A Board member mentioned that that number may need to be revisited as they were not familiar with the details of the Master Plan. But there is some good news! It may not be that expensive after all.

A deeper analysis of the cost calculations seems to identify an error of over \$100 million in the Master Plan document. The subtotals in one section are completely inconsistent with other

DISCUSSION

sections and appear to overstate costs dramatically. Even if all the proposed development was completed at only \$200 million, it still is not a credible vision for a government entity with roughly \$15 million in annual revenue without large bond measures.

In the Grand Jury's opinion, the Master Plan is not a credible document and, at best, seems to only serve as a justification for the large cash accumulation in the past several years and/or to maximize taxation and assessment revenue. Nobody that the Grand Jury spoke with knew how the Master Plan vision was created, who had to approve it, or how priorities against this long list of possible projects would ultimately be determined. It appears only CSD Board approval is required to spend existing general fund reserves against this plan.

PARK IMPACT FEES AND REPORTING REQUIREMENTS

One source of CSD revenue that deserves more scrutiny is Park Impact Fees (PIF). PIF are paid by developers to allow additional public services to be built to accommodate population growth, in this case, new parks. Development impact fees were legislated after the passage of Proposition 13 which constrained property tax revenue and reduced the abilities for communities to support new infrastructure for new development. Other impact fees address traffic congestion and emergency services.

The Grand Jury analyzed the CSD Annual PIF Reports going back to fiscal year ending 2017 to understand how these funds were accounted for and spent. The key financial data from those years are summarized in the following table (a more complete table is found as Table 1a. in the Appendix 2):

DISCUSSION

Year Ending	Beginning Balance	Ending Balance	Park Impact Expenditures	Funds held more than 5 years
2023	\$ 22,908,013	\$ 21,088,842	\$ 4,041,867	\$ 5,864,923
2022	\$ 21,762,895	\$ 22,908,013	\$ 2,487,847	\$ 6,494,324
2021	\$ 19,402,564	\$ 21,762,895	\$ 488,856	\$ 6,604,327
2020	\$ 15,928,232	\$ 19,402,564	\$ 315,293	
2019	\$ 13,290,682	\$ 15,928,232	\$ 91,896	
2018	\$ 10,059,242	\$ 13,290,682	\$ 181,026	
2017	\$ 8,157,159	\$ 10,059,242	\$ 475,761	

Again, we see that retained reserves have nearly tripled in the seven years studied. Fees collected from developers each year are in the \$2.5 – \$3+ million range, yet up until the last two years, actual expenditures to mitigate the impact of the new development were a small fraction of that. In two years (2020 – 2021), PIF expenditures were less than the interest earned on their fund balances (See Appendix 2 for explanation).

The biggest problem for CSD is the amount of funds that have been held for more than five years. To explain the issue, we refer to a presentation/report given at the League of California Cities Spring conference for attorneys in 2022 titled, *“The Mitigation Fee Act's Five-Year Findings Requirement: Beware Costly Pitfalls”*:

The Mitigation Fee Act (specifically Government Code section 66001, subdivision (d)) requires local agencies to adopt “five-year findings” accounting for development impact fee proceeds held unexpended for more than five years. It further provides that agencies must refund the money held if they fail to make the required findings. The statute is vaguely written, and recent court decisions have interpreted it in a draconian manner, suggesting that a local agency must automatically refund its development fee proceeds if the court determines the findings to be defective, without any chance for the agency to cure the defect. As a result, there appears to be an increase in lawsuits seeking such refunds. Every city that has development fee proceeds collected and unexpended for more than five years faces the risk of such litigation, including

DISCUSSION

arguments that it is too late for the city to cure any defects in its most-recent five-year findings and that it must automatically refund all of the retained funds. City attorneys and staff should scrutinize their most recently adopted five-year findings and, even more importantly, make sure to carefully review and “bullet-proof” the next five-year findings when those become due.

As we can see in the table above, CSD has at least three years running of retaining \$5-6+ million dollars of impact fees for more than five years. This table above looks back at what the fund balance was five years prior and the park impact expenditures in the ensuing five years. Because we only studied fiscal year 2017 forward, we can only definitively report on funds held for more than five years for the last three years. Another way of highlighting the issue is to say that from mid-2016 through mid-2021, CSD collected more than \$15 million in impact fees while spending just over \$1.5 million in that five-year period, or only about 10%.

Holding the impact fees this long requires a five-year finding report justifying fund retention and how they will ultimately be used. The Grand Jury found that the County filed a five-year impact report as required that included CSD information on 6/28/2016 ([Legistar file 16-0677](#)), 12/18/2018 ([Legistar file 18-1881](#)), and 12/5/2023 ([Legistar file 23-1940](#)). The most recent five-year report includes a table of CSD-Board approved 10-year Capital Project plan (shown in Appendix 2) and how the impact fees will be spent. Notably, two parks, Bass Lake Park and a Multigenerational Community Center/Sports Complex, require over \$105 million in remaining costs (in 2023 dollars, so it will likely be higher) and are targeted for FY 31 and FY 29 respectively.

From this report we see that some of the impact fees collected since 2016 will ultimately be held for as long as fifteen years, and virtually all of it will be held for at least ten years. Fees collected today will not benefit the community for another seven years. In addition, the available impact fees today and going forward will fall far short of planned development by over \$75 million and will require additional funding from the CSD general fund, bonds, grants, and donations (See Table 2 in Appendix 2). The availability of these additional funds is the

DISCUSSION

subject of some speculation. The Grand Jury does not believe that impact fees were ever intended to be held for ten, fifteen years or more with plans to allocate them as part of a speculative plan with uncertain funding.

PIF are required to be spent on new park development, not maintenance of existing parks, for example. Park expansion is required to offset the impact of development. A more detailed analysis may be required to ensure proper use of the funds in the prior years the Grand Jury studied. There are some noted expenditures on administration overhead and fees in some years that could be questioned. In addition, we found some accounting inconsistencies in the annual PIF reports in a couple years that showed some unaccounted transfers of between \$64,000 and \$199,000. These could be calculation errors or innocuous reporting errors, but they may justify a more thorough third-party audit. See Table 1a. in Appendix 2.

Finally, the Grand Jury found that CSD does not have a certified public accountant (CPA) on full-time staff. We believe with the complexity and amount of CSD accounts that a full-time CPA is required.

DEVELOPER RELATIONSHIP

Parker Development Company (Parker) is the largest developer in El Dorado Hills and an integral part of CSD growth and revenue going back decades. A thorough investigation of CSD finances and plans would require a more detailed understanding of the close relationship between Parker and the CSD Board, its leadership, and, even potentially, County leadership. While this is generally beyond the scope of this Grand Jury investigation, citizen complaints that were brought to the attention of the Grand Jury show a great deal of public concern about some rather favorable financial deals CSD has made with Parker recently.

In November 2023, the CSD Board approved the purchase from Parker of 55 acres in El Dorado Hills, often referred to as the “Old Executive Golf Course”, for \$10 million dollars. CSD has an option to purchase an additional 41.5-acre parcel pending financing for \$240,000 per acre. The public was generally in favor of preserving the property as open space or

DISCUSSION

developing it into recreational park amenities rather than new home development that would contribute to further congestion. Several people voiced concerns, however, that the land was not currently zoned for residential development and the price paid per acre did not reflect the price of current zoning for open space. In addition, there were no firm plans on how the property would be developed by CSD and at what cost, although a few public-private partnerships were proposed. The deal was finalized without retaining an accurate valuation or without a real estate consultant doing more in-depth research. To many people, it seemed like a very favorable deal for Parker, although time may tell otherwise.

The Grand Jury was also made aware that Parker appeared to have been relieved of an obligation to develop a turnkey park at the Bass Lake area (see image on following page). Instead, CSD desired to take immediate control of available Mello-Roos funds and property title, which it would have received eventually anyway, to develop a large, more integrated park according to CSD's vision. This release of Parker from its obligation without clearer concessions was classified as a "gift of public funds" in the citizen's complaint brought before the County BOS. The Grand Jury was informed that a gift of public funds would involve an illegal or unethical act on the part of a government official and there was no immediate indication of that.

A June 27, 2017, letter from Serrano Associates/Parker to the County BOS reaffirms their commitment to build the 12.5-acre park located in Serrano Village J7 (at Bass Lake) according to the plan and configuration jointly worked with CSD at the time. The Grand Jury then reviewed a December 3, 2019, letter from the CSD Board to the County BOS regarding the Bass Lake Park development summarizing, "... the District, Developer, and County have recently agreed that it is in the best interests of the community and all parties to dedicate the subject parcel and all funds in the CFD (for future post construction reimbursement) to CSD as soon as possible." In 2020, CSD entered into an agreement with Parker and County that allowed CSD to acquire title to the property and the rights to use up to \$3.5 million of CFD 1992-1 (Mello-Roos) funds, both of which they would have eventually acquired anyway, for

DISCUSSION

CSD to build the park ([Legistar file 20-0980](#)) as soon as practicable. Nearly four years later the public does not have a quality park, and over \$75 million remains to be spent on the development at Bass Lake according to the CSD Capital Budget Projections approved in July 2023 (see Appendix 2).



Figure – Bass Lake Village J Lot H Area: Nice spot for a park. Taken March 9, 2024.

Among other deals that seem to unduly benefit Parker, the Grand Jury was told that the original LLAD #17 established for all of Serrano neglected to include roughly half of Parker's originally owned property, saving Parker potentially millions of dollars over several years. The formation documents of the LLAD show that the lots south of Serrano Parkway are not included although they share in the improvements of the landscaped medians throughout

DISCUSSION

Serrano. An October 24, 2023, letter from the former CSD GM to the California Department of Real Estate (DRE) confirmed that an annexation of the additional villages south of Serrano was sought after in 2006, however, it states, "... importantly, it appears as though the intent by the parties seeking to add assets and parcels to the LLAD has historically lacked specific actions required to be taken for a legitimate annexation to occur." It certainly appears troubling that Parker was exempted from some of its legitimate shared landscaping expenses and obligations going all the way back to the late 1990's, and the annexation of benefiting properties never occurred.

Finally, we found in the 2023 PIF report from CSD that Parker (Serrano) only pays approximately 53% of the impact fees that other developers pay (see below). We did not uncover a justification for this favorable rate. It follows a troubling pattern of arrangements that seem to benefit Parker over the public for many years. It is concerning enough that the Grand Jury would encourage further investigation soon into these matters.

Table – Park Impact Fees for the five-year reporting period through June 2023

<i>Single Family Residential</i>	<i>\$13,496</i>
<i>Single Family Residential – Serrano</i>	<i>\$7,215</i>
<i>Age Restricted Residential</i>	<i>\$7,886</i>
<i>Age Restricted-Residential-Serrano</i>	<i>\$4,186</i>
<i>Multi-Family Residential</i>	<i>\$8,907</i>
<i>Multi-Family Residential Serrano</i>	<i>\$4,761</i>

FINDINGS

Findings

GM Conflict of Interest

F1 - The CSD Board of Directors for the last two plus years failed to provide adequate oversight of their General Manager to know that he had an outside consulting role at one of CSD's contractors. Such outside work posed serious questions about a potential conflict of interest.

F2 - CSD Board members subsequently failed to act in a timely way on the then-GM's potential conflict of interest.

F3 - CSD Board members appeared to have engaged in a serial meeting in violation of the Ralph M. Brown Act and CA Govt Code Section 53262 when they individually approved the GM's outside consulting work, leading to a notice from the District Attorney's Office requesting additional training.

F4 – Brown Act training has been optional for CSD Board members and staff, while AB 1234 Chapter 700 Ethics training is required.

F5 – Then-CSD GM failed to properly disclose income received from his consulting arrangement with DTA, a CSD contractor, on his Fair Political Practices Commission (FPPC) Form 700, which he signed under penalty of perjury.

F6 - Then-CSD GM performed business development work to find new clients for DTA which, as far as the Grand Jury can verify from reviewed documents, was unrelated to CSD's contracts with DTA.

Carson Creek LLAD #39 Ballot Initiative

F7 - CSD has been ignoring the will of the voting citizens of LLAD #39 by not acting on two previous initiatives to modify or remove assessments for the Carson Creek/Heritage Park.

FINDINGS

LLAD Assessment Policies and Objections

F8 – Neither the former GM nor the CSD Board of Directors properly certified the engineering assessment reports for 2022 and 2023 to the satisfaction of the County Controller during the same period that the GM was consulting for the CSD engineering assessment firm, DTA. As a result, the County has held up billing parcel owners for LLAD assessments, ending up in litigation which will be costly to taxpayers.

F9 – Two other LLADs are contesting their assessments, Promontory Park and Blackstone, using an identical ballot initiative as Carson Creek LLAD #39, which will have significant impact on CSD revenue going forward if they all pass as expected.

CSD Financial Health and Master Plan

F10 –CSD operates with 20-40% or more net revenue each year that accrues to increasingly larger treasury fund balances, now roughly \$50 million.

F11 - CSD Financial Assets are far more than their reserve policies allow as stated in their operational policy document.

F12 – The CSD Master Plan is a long-term park enhancement and development plan that envisions spending \$300 million according to a 2021 document, which seems unrealistic without significant additional funding sources.

F13 - There appear to be calculation errors in the Master Plan overestimating the amount to fully fund the proposed developments by more than \$100 million.

F14 - CSD, despite its sizable financial holdings and the complexity of its accounts and revenue sources, does not have a licensed CPA on staff.

Park Impact Fees and Reporting Requirements

F15 – CSD has been retaining Park Impact Fees (PIF) for more than five years and may ultimately hold several million dollars in funds for ten or fifteen years or more. This opens the CSD to potential litigation for not spending PIF funds in the short term.

FINDINGS

F16 – The plans to spend PIF through FY 29 and FY 31 on a Multigenerational Recreation Center and Bass Lake Park are contingent on significant additional funds of over \$75 million. These plans are not consistent with the intent of the Mitigation Fee Act and will require a contingency plan in case the additional required funds are not available for the new park development.

Developer Relationship

F17 – The public is concerned about several recent financial deals CSD has made with Parker Development, such as the CSD’s purchase of the Old Executive Golf property, the CSD acquiring the 12.5-acre Serrano Village J lot to develop a turnkey park at Bass Lake area rather than enforcing Parker’s obligation to do so, and a significantly reduced amount for Park Impact Fees (PIF) for Parker Development.

RECOMMENDATIONS

Recommendations

GM Conflict of Interest

R1 – Within 90 days of this report, as mandated by the District Attorney’s Office, all CSD Board members and management level employees should be required to complete Brown Act training and renew such training not less than every two years. In addition, all Board members and management level employees should be designated and required to complete AB 1234 Chapter 700 ([link](#)) Ethics training every two years.

R2 – CSD should keep records of all Brown Act and AB 1234 Ethics training completed by the Board of directors and designated staff members for a minimum period of 10 years.

R3 – Within 90 days, the County District Attorney’s office should continue to investigate Brown Act or CA Government Code Section 53262 violations by the CSD Board unless and until the CSD Board gets appropriate Brown Act and Ethics training.

R4 – By December 31, 2024, the County District Attorney’s office should complete the investigation of any potential ethics or conflicts of interest violations, including required FPPC Form 700 disclosures, raised by the former GM’s consulting arrangement with DTA.

Carson Creek LLAD #39 Ballot Initiative

R5 – Within 90 days, CSD should implement the intent of the Carson Creek LLAD #39 second ballot initiative to perpetually repeal LLAD assessments.

LLAD Assessment Policies and Objections

R6 – Within 90 days of this report, CSD should establish and document clearer guidelines for the CSD Board of Directors or GM certification of the assessment levy to the County Controller/Auditor and publish that procedure in the CSD Policies and Procedures documents.

R7 – Upon certification that the Promontory and Blackstone LLAD initiative petitions have been signed by the requisite number of voters, CSD must enact the Promontory and Blackstone LLAD initiatives without alteration, or submit the initiatives unmodified to the voters, as

RECOMMENDATIONS

required by California Elections Code Section 9310.

CSD Financial Health and Master Plan

R8 – Within 90 days, CSD should document the projected use for all Treasury fund assets, clarify which fund accounts are earmarked for what purposes and open the spending plan for public comment and approval.

R9 – By September 30, 2024, CSD should review, revise, and publicize its Master Plan from 2021 with realistic timelines for all new park development, as well as accurate and realistic cost estimates that can be funded and executed within a 10-year planning period.

R10 - Within 90 days, CSD should employ or retain a full-time licensed CPA professional to be Treasurer/CFO-equivalent.

Park Impact Fees and Reporting Requirements

R11 – Within 90 days, CSD should get public input on its latest 10-year development plan, including any updates to the Master Plan from 2021, and how they plan to use PIF funds over an extended period. This development needs to include a contingency plan for new park development in a reasonable time frame if additional funds do not become available that are required for the current Master Plan.

Developer Relationship

R12 – Within 90 days, CSD should document its plans for Bass Lake Park and justify why CSD took on the obligation to build a turnkey park in Village J7, and how development of Bass Lake Park will now proceed up through park completion proposed by CSD in FY 31.

REQUEST FOR RESPONSES

Request for Responses

A Civil Grand Jury report details a single investigation. Each report lists FINDINGS and RECOMMENDATIONS. The responsible organization is notified and is required to respond to the report.

The California Penal Code § 933(c) specifies response times.

- PUBLIC AGENCIES. The governing body of any public agency (also referring to a department) must respond within 90 days from the release of the report to the public.
- ELECTIVE OFFICERS OR AGENCY HEADS. All elected officers or heads of agencies/departments are required to respond within 60 days of the release of the report to the public.
- FAILURE TO RESPOND. Failure to respond, as required to a Jury report, violates California Penal Code Section 933.05 and is subject to further action that may include additional investigation on the subject matter of the report by the Jury.

The following responses are required pursuant to Penal Code § 933 and § 933.05:

From the following government bodies:

- El Dorado Hills Community Services District
 - All Findings and Recommendations
- El Dorado County District Attorney
 - Findings F1-F6, Recommendations R3-R4

For more information refer to [How to Respond to an El Dorado County Grand Jury Report](#) available on the El Dorado County Grand Jury webpage.

APPENDIX 1 – ASSISTANT DA LETTER TO CSD

Appendix 1 – Assistant DA Letter to CSD



OFFICE OF THE
DISTRICT ATTORNEY
EL DORADO COUNTY, CALIFORNIA

February 7, 2024

El Dorado Hills Community Service District Board
Noelle Mattock, President
Benjamin Paulsen, Vice President
Michael Martinelli, Director
Heidi Hannaman, Director
Stephen Ferry, Director

Mark Hornstra, Interim General Manager

1021 Harvard Way
El Dorado Hills, CA 95762

RE: Brown Act

Dear El Dorado Hills Community Service District Board of Directors and Interim General Manager,

As you may already know, our office has been looking into some past actions by the EDHCSD Board of Directors and prior General Manager Kevin Loewen. It has come to our attention through this various documents and statements that your agency has some discrepancies with following the guidelines of, and providing sufficient trainings related to, the Ralph M. Brown Act (Gov. Code, § 549501 et seq., hereinafter "the Brown Act").

The Brown Act governs meetings conducted by local legislative bodies, such as boards of supervisors, city councils, school boards, and your community service district. Under the Brown Act, the Legislature has established a presumption in favor of public access. As the courts have stated, the purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies. (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 555.)

The term "meeting" is defined in Government Code section 54952.2 and expressly discusses several types of meeting formats. First, the term "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss or deliberate upon any matter which is under the subject matter jurisdiction of the agency. (Gov. Code § 54952.2(a).) Under this definition, face to face gatherings of a legislative body in which issues under the subject matter jurisdiction of the body are discussed, decided or voted

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www.eldoradoda.com

APPENDIX 1 – ASSISTANT DA LETTER TO CSD

upon are meetings subject to the Brown Act. The Brown Act specifically prohibits any use of direct communication, personal intermediaries or technological devices that may be employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken. (Gov. Code § 54952.2(b).) Most often this type of meeting is conducted through a series of communications by individual members or less-than-a-quorum groups, ultimately involving a majority of the body's members. These meetings are called serial meetings.

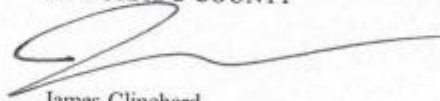
We are concerned not only about the serial meetings that appeared to have occurred back in late 2020 when it looks like the Board of Directors approved Kevin Loewen "providing consulting to other public agencies (and other businesses)," but are also concerned that the lack of training and understanding of the Brown Act may lead to ongoing current processes in 2024 that may fall short of the requirements of this important law.

In order to ensure proper training and compliance with the Brown Act, we are requesting the current Board of Directors and the Interim General Manager obtain such necessary training forthwith. To that end, we can work with your Interim GM to make certain that the training is not only presented in a timely manner, but also verify that its sufficient in its breadth and scope so that the public has confidence in proper compliance by the Board of Directors and Interim GM going forward.

If you have any questions or concerns regarding this matter, please don't hesitate to reach out.

Yours Very Truly,

DISTRICT ATTORNEY OFFICE
EL DORADO COUNTY



James Clinchard
Assistant District Attorney

APPENDIX 2 – TABLES OF CSD FINANCIALS

Appendix 2 – Tables of CSD Financials

Table 1a. – Expanded Park Impact Fee Analysis – FY 17 – FY 23

Year	Beginning Balance	Fees Collected	Interest Earned	Net Transfers	Amount Refunded	Ending Balance	Unaccounted Difference
2023	\$22,908,013	\$2,241,709	\$347,883	\$4,344,864	\$-	\$21,088,842	\$(63,899)
2022	\$21,762,895	\$2,679,228	\$92,562	\$1,626,673	\$-	\$22,908,013	\$1
2021	\$19,402,564	\$2,890,674	\$100,107	\$630,449	\$-	\$21,762,895	\$(1)
2020	\$15,928,232	\$3,327,519	\$329,269	\$381,843	\$-	\$19,402,564	\$199,387
2019	\$13,290,682	\$2,339,256	\$298,294	\$147,354	\$-	\$15,928,232	\$147,354
2018	\$10,059,242	\$3,177,097	\$141,743	\$32,531	\$54,869	\$13,290,682	\$-
2017	\$8,157,159	\$3,747,661	\$59,761	\$1,726,254	\$179,085	\$10,059,242	\$-

Table 1b. – Expanded Park Impact Fee Analysis – FY 17 – FY 23

Year	Beginning Balance	Park Impact Expenditures	Fees Held More than 5 Years
2023	\$22,908,013	\$4,041,867	\$ 5,864,923
2022	\$21,762,895	\$2,487,847	\$ 6,494,324
2021	\$19,402,564	\$ 488,856	\$ 6,604,327
2020	\$15,928,232	\$ 315,293	
2019	\$13,290,682	\$ 91,896	
2018	\$10,059,242	\$ 181,026	
2017	\$ 8,157,159	\$ 475,761	

APPENDIX 2 – TABLES OF CSD FINANCIALS

Table 2. – CSD 10-year Capital Project Budget, approved as of July 1, 2023

<i>Improvement/Equipment</i>	<i>Total Remaining Cost</i>	<i>Unexpended Impact Fees, Available to-date</i>	<i>Future Anticipated Impact Fees</i>	<i>Other Funds</i>
<i>EDHCSD Community Park (FY26)</i>	<i>\$3,440,532</i>	<i>\$2,419,042</i>	<i>\$0</i>	<i>\$1,002,448 (General Fund)</i>
<i>Bike Park (FY25)</i>	<i>\$1,947,839</i>	<i>\$1,808,537</i>	<i>\$0</i>	<i>\$139,302 (General Fund)</i>
<i>Utility Corridor Trail (FY24)</i>	<i>\$385,871</i>	<i>\$271,461</i>	<i>\$0</i>	<i>\$114,410 (General Fund)</i>
<i>Saratoga Estates Park & Recreation Trail (FY24)</i>	<i>\$716,216</i>	<i>\$716,216</i>	<i>\$0</i>	<i>\$0</i>
<i>Bass Lake Park (FY31)</i>	<i>\$75,174,868</i>	<i>\$6,418,194</i>	<i>\$10,200,000</i>	<i>\$58,556,674 (General Fund, Bonds, Grants, Donations)</i>
<i>Multigenerational Community Center/Sports Complex (FY29)</i>	<i>\$30,286,938</i>	<i>\$5,644,377</i>	<i>\$5,100,000</i>	<i>\$19,542,561 (General Fund, Bonds, Grants, Donations)</i>
<i>Bell Ranch Park (FY26)</i>	<i>\$3,449,915</i>	<i>\$3,449,915</i>	<i>\$0</i>	<i>\$0</i>
<i>Stephen Harris Park (FY24)</i>	<i>\$1,461,348</i>	<i>\$375,000</i>	<i>\$0</i>	<i>\$1,086,348 (General Fund)</i>
TOTAL	\$116,863,526	\$21,102,744*	\$15,300,000**	\$80,441,743

*total amount currently in the account as of June 30, 2023.

** estimated \$1,700,000 per year for 9 years



2023-24 GRAND JURY REPORT
EL DORADO COUNTY
MAY 13, 2024 – CASE #24-06

VOTER INITIATIVE PETITIONS: THE PEOPLE NEED TO BE HEARD

The El Dorado Hills Community Services District and the County have failed to act on two Proposition 218-based petition initiatives that would have repealed park assessments. A clearer process needs to be defined to avoid disenfranchising voters.

TABLE OF CONTENTS

Contents

Summary	3
Background	4
Landscape and Lighting Assessment Districts (LLAD)	4
Proposition 218, the “Right to Vote on Taxes Act”	5
Relevant California Elections Code SECTIONS	6
Methodology	7
Interviews	7
Documents Reviewed	7
Discussion	8
First LLAD #39 Petition Certified in May 2020 Blocked BY CSD	8
Second LLAD #39 Petition Certified in September 2020 Nullified by CSD	11
LLAD #22 Pursues the Same Ballot Initiative Process	17
Findings	19
Recommendations	21
Request for Responses	22
Appendix and Related Information	23
Appendix 1 – Registrar of Voters Certification, May 2020	23
Appendix 2 – EDH CSD Memo to Refrain from Taking Action (Redacted)	24
Appendix 3 – Registrar of Voters Certification, May 2020	25
Appendix 4 – 2022 Voter Information Guide	26
Appendix 5 – Memo to CSD Board Re: LLAD #22 Ballot Initiative	29

Cover Caption: Heritage Park, funded by Carson Creek LLAD #39, taken March 9, 2024

SUMMARY

Summary

The El Dorado County (County) Civil Grand Jury (Grand Jury) received complaints from voters that the El Dorado Hills Community Services District (CSD) Board had repeatedly failed to comply with the California Election Codes (Elections Code) by not acting on the intent of two ballot initiatives from one of the Landscape and Lighting Assessment Districts (LLAD).

The Grand Jury investigation revealed that these failures were real and had resulted in the nullification of initiative petitions that were signed by voters and certified by the County Elections Department. Although it is difficult for a Grand Jury report to remedy damages from these past actions, the investigation into this CSD process has provided an opportunity for the Grand Jury to identify shortcomings and propose improvements to the County voter initiative petition process.

The Grand Jury found that the only recourse available to ballot proponents when a governing body refuses to properly act on a certified initiative is through the courts. Through multiple instances that the Grand Jury followed, the ballot proponents elected not to pursue a court mandate, which can be a lengthy and costly process. Unfortunately, the Grand Jury could not identify or recommend a viable process through the County that ballot proponents could pursue more efficiently for recourse in these situations. Nobody we spoke with felt going through the court was an optimal process, and it seemingly has left voters disenfranchised and frustrated, but it's the only process that exists today. The lack of alternative paths for recourse may allow governing bodies to act with impunity if they elect to ignore the intent of the ballot initiative and the will of the voters.

Background

The Grand Jury became aware that residents of the Heritage Park active 55+ development community were contesting the park assessment fees they were being charged by the El Dorado Hills CSD as they appeared on their annual property tax bills. The Grand Jury received multiple election-related complaints during the year. A particular complaint focused on the adherence to the state Elections Code by CSD and the County regarding a ballot initiative by the Heritage Park LLAD #39 to remove the controversial assessments in future years. This issue overlapped other CSD-related investigations the Grand Jury had underway which have been discussed in a separate Grand Jury report, Case #24-05 El Dorado Hills CSD: Controversy and Concerns Demand Change.

After the Grand Jury began the investigation and started drafting this report, the scope expanded when a second LLAD (Promontory LLAD #22) certified another initiative through the Elections Department and was sent back to CSD for action. The ultimate resolution of that process has not been determined as of completion of this report. It appears that it will not be without controversy. Negotiations between CSD and the ballot proponents will be required to avoid resolution through the court.

The Grand Jury felt that adherence to the state Elections Code by CSD and the County was an important topic that could eventually affect other governing bodies in the County besides CSD. It also required investigation of the procedures of the Elections Department. As such, the Grand Jury decided to create this separate report from the broader CSD investigation mentioned above. To better understand this particular ballot initiative issue, an overview of LLADs, Proposition 218 procedures and relevant Elections Code is required.

LANDSCAPE AND LIGHTING ASSESSMENT DISTRICTS (LLAD)

The Landscape and Lighting Act of 1972 allows the creation of taxable areas, Landscape and Lighting Assessment Districts (LLAD), to provide funding for the maintenance and support of

BACKGROUND

specific public or shared areas within a community services district. The El Dorado Hills CSD is responsible for more than 25 active LLADs. CSD uses LLADs to provide funding sources for area parks, community facilities and landscape areas. The assessment values for each parcel within the LLAD are determined by an engineering assessment firm and approved by the CSD Board, after a period of public review, before being placed on the annual property tax bills by the County Controller (under normal procedures).

PROPOSITION 218, THE “RIGHT TO VOTE ON TAXES ACT”

In 1996 California voters passed Proposition 218 to counteract concerns about the formation of LLADs. This constitutional amendment protects taxpayers by limiting the methods by which local governments can create or increase taxes, fees, and charges without taxpayer consent. Proposition 218 requires voter approval prior to the imposition or increase of general taxes, assessments, and certain user fees, as well as defining a process for removing certain currently assessed fees.

The laws created by Proposition 218 relevant to the Grand Jury investigation are:

1. **Voter Approval on Taxes.** It requires all local governments, including charter cities, to get majority voter approval for new or increased general taxes.
2. **Initiative Power to Repeal.** It gives voters the power to reduce or repeal any existing local tax, assessment, or charge through the initiative process.

The frequency of Proposition 218-based voter initiative petitions in the County are likely to increase as more County voters identify it as an effective tool to control taxes, assessments, and charges unless various County governing entities closely adhere to public requests and concerns. It is projected that there will be at least three Proposition 218-based voter initiative petitions qualified for the County November 2024 ballot for three separate CSD LLADs with similar concerns.

BACKGROUND

RELEVANT CALIFORNIA ELECTIONS CODE SECTIONS

The following sections of the California Elections Code (EC) are relevant to the investigation into the Grand Jury complaint about the voter initiative petition process:

EC 9308	(e) If the petition is found sufficient, the district elections official shall certify the results of the examination to the governing board of the district at the next regular meeting of the board.
EC 9310	If the initiative petition does not request a special election, the district board shall do either of the following: (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented. (b) Submit the ordinance, without alteration, to the voters.
EC 9313	...whenever a district measure is submitted to the voters, the district elections official shall transmit a copy of the measure to the county counsel... The county counsel or district attorney shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure.
EC 9380	(b) (1) During the 10-calendar-day public examination period provided by this section, any voter of the jurisdiction in which the election is being held, or the elections official, himself or herself, may seek a writ of mandate or an injunction requiring any material to be amended or deleted. The writ of mandate or injunction request shall be filed no later than the end of the 10-calendar-day public examination period.

METHODOLOGY

Methodology

INTERVIEWS

- Multiple concerned citizens with detailed knowledge and documents
- County Employees
- El Dorado Hills CSD Board Members

DOCUMENTS REVIEWED

- Multiple citizen complaints to the Grand Jury
- County Registrar of Voters Certification of May 2020 LLAD #39 Petition
- County Registrar of Voters Certification of Sep 2020 LLAD #39 Petition
- June 2, 2020 memo to El Dorado Hills CSD Board
Subject: Initiative Petition Received from County Registrar's Office for Carson Creek
LLAD #39 - Special Assessment
- LLAD #39 formation and maintenance agreements
- Prior year's Grand Jury reports on El Dorado Hills CSD
- Prior year's Grand Jury reports on County Elections Department
- El Dorado County Voter Information Guide - November 8, 2022, containing:
 - Full Text of Measure H
 - Impartial Analysis of Measure H
 - Argument In Favor of Measure H

DISCUSSION

Discussion

FIRST LLAD #39 PETITION CERTIFIED IN MAY 2020 BLOCKED BY CSD

Residents of El Dorado Hills CSD LLAD #39 believe they are being unfairly assessed by the CSD for a much higher percentage of Heritage Park maintenance than their actual park usage would justify. From the photo below, CSD's Heritage Park (background upper left and cover photo) has nearly identical amenities to the Heritage community (tennis and pickleball courts, bocce ball, grass fields shown in the foreground). So, LLAD #39 residents don't use the park as expected.



The Heritage active 55+ development amenities with CSD's Heritage Park across the street, upper left. The development has little special benefit from Heritage Park with the same amenities, although they have been assessed for maintenance and improvements.

DISCUSSION

After attempting to work with CSD to address their concerns without success, some LLAD #39 residents created a voter initiative petition authorized by California Proposition 218 to give all LLAD #39 voters a voice in continuing or repealing the assessments as guaranteed by the California Constitution. As required by state Elections Code, the LLAD #39 proponents submitted their first voter initiative petition to the County Elections Department on April 1, 2020. The title and operative language in the petition were:

Petition Title	Repeal of CSD LLAD #39 Special Assessment and Require CSD to Submit Subsequent Special Assessment for LLAD #39 to Voter Approval
Petition Operative Text	<p>The People of CSD LLAD #39 do ordain the following:</p> <p>Repeal CSD LLAD #39 Special Assessment for FY 2019-2020 and instruct the El Dorado County Tax Assessor and Tax Collector to refund to the subject taxpayer monies thus far collected and to terminate any related collection efforts.</p> <p>Require CSD to submit subsequent Carson Creek Park LLAD Special Assessment for approval by 2/3 majority vote of property owners of record at the time of the proposal.</p> <p>IMPLEMENTATION</p> <ol style="list-style-type: none"> a. This measure applies to only property owners subject to Special Assessment LLAD #39. b. Effective date: Provisions of this measure shall take effect upon the certification of the election results and expire 10 years after that date. c. If any provision of this measure is for any reason held to be invalid, the remaining provisions shall remain in full force and effect.

DISCUSSION

As required by the Elections Code, County Counsel created the following circulating title and summary for the petition that was printed on all the petitions circulated among the voters for their signature.

Circulating Title	An Initiative Measure to Repeal the Carson Creek Park Landscape and Lighting Assessment District #39 Special Assessment and Require Voter Approval for Subsequent Special Assessments
Circulating Summary	This initiative measure seeks to repeal that assessment and instruct the El Dorado County Assessor and Tax Collector to refund any monies collected pursuant to that assessment. This initiative measure further seeks to require that, prior to levying future assessments within the Assessment District, the CSD obtain the approval of two-thirds of the property owners of record at the time of the proposed assessment. The provisions of this measure would remain in effect for ten years following certification of the election results.

After it was circulated, the ballot petition was delivered to the Elections Department for signature verification. On May 14, 2020, the petition was found to be sufficient, and the results were certified by the Registrar. [See Appendix 1]. As required by Elections Code, the initiative petition was next sent from the Elections Department to the CSD Board for their action.

The CA Elections Code 9310 requires that the CSD Board either adopt the ordinance without alteration or submit the ordinance to the voters as written. Instead, the CSD Board unilaterally disregarded the Elections Code at their June 11, 2020 Board meeting by taking their legal counsel's advice to:

DISCUSSION

Refrain from taking either action identified in Elections Code section 9310 in response to the certified petition received from the El Dorado County Registrar of voters relating to that initiative entitled, "An Initiative Measure to Repeal the Carson Creek Park Landscape and Lighting Assessment District #39 Special Assessment and Require Voter Approval for Subsequent Special Assessments," (hereinafter "Initiative") and direct legal counsel to notify the El Dorado County Registrar of Voters of such action. [Appendix 2].

The decision of the CSD Board to “refrain from action” is not a legal option allowed under California Elections Code 9310. CSD’s counsel justified this recommendation by claiming the initiative was “... facially invalid and unconstitutional.” However, there is no indication that this claim was ever justified or validated by other legal resources in the County or elsewhere. This claim is even more surprising because before the petitions were created the initiative petition language was reviewed and summarized by County Counsel and printed onto the petitions that were circulated among the voters for their signatures. Additionally, the U.S. Constitution was designed to impose limits on government, not to impose limits on the range of edicts that citizens can vote on and require of their local governing bodies.

The result of CSD’s inaction was that the voter initiative petition from the LLAD #39 residents was unilaterally nullified by the CSD and was never put to a vote. The Elections Department deferred to CSD’s decision to not apply the initiative to a vote. The voters that signed the initiative petition were thus disenfranchised.

SECOND LLAD #39 PETITION CERTIFIED IN SEPTEMBER 2020 NULLIFIED BY CSD

In response to the failure of the CSD to act on the May 2020 certified initiative, the registered voters of LLAD #39 circulated a second initiative petition with modified language.

The title and operative language in the petition were:

DISCUSSION

Petition Title	An Initiative Measure to Repeal of CSD LLAD #39 Special Assessment and Refund Levied Taxes
Petition Operative Text	Repeal CSD LLAD #39 Special Assessment and Refund levied taxes.

As required, County Counsel again created the following circulating title and summary for the second petition that was printed on all the petitions circulated among the voters for their signature:

Circulating Title	An Initiative Measure to Repeal the Carson Creek Park Landscape and Lighting Assessment District #39 Special Assessment and Require Voter Approval for Subsequent Special Assessments.
Circulating Summary	The Carson Creek Park Landscape and Lighting Assessment District #39 (the "Assessment District") was formed in 2015 by the El Dorado Hills Community Services District ("CSD") pursuant to the Landscape and Lighting Act of 1972 (Streets & Highways Code, § 22500 et seq.). The purpose of the Assessment District is to provide funding for the installation, maintenance, and operation of improvements for a park within the Assessment District's boundaries. Districts such as the Assessment District are authorized to levy assessments subject to compliance with the Landscape and Lighting Act of 1972 and California Constitution Article XIID {commonly referred to as Proposition 218). An assessment differs from a tax in that a tax may be imposed without reference to peculiar benefits to particular individuals or property or without regard to whether the person or property subject to the tax received any particular benefit from the tax. An assessment, however, can

DISCUSSION

be imposed only for a "special benefit" conferred on the real property assessed, and must be in proportion to, and not greater than, the special benefit conferred on the property assessed. On June 13, 2019, the CSD held a public hearing to consider adoption of a resolution establishing an assessment on property within the Assessment District. Upon the conclusion of the hearing, the CSD found that a majority protest did not exist and, thus, adopted a resolution approving the Engineer's Report for the Assessment District and levying an assessment on each lot or parcel in the Assessment District in the amount of \$380.91 per unit for Fiscal Year 2019/2020. **This initiative measure seeks to repeal that assessment and instruct the El Dorado County Assessor and Tax Collector to refund any monies collected pursuant to that assessment. This initiative measure further seeks to require that, prior to levying future assessments within the Assessment District, the CSD obtain the approval of two-thirds of the property owners of record at the time of the proposed assessment. The provisions of this measure would remain in effect for ten years following certification of the election results.**

After collecting the necessary number of registered voter signatures, this initiative petition was certified by the Registrar on September 9, 2020. [Appendix 3].

The Registrar then presented this second certified ballot initiative to the CSD Board at its October 8, 2020, meeting. The Registrar also provided clear instructions regarding their obligation under EC 9310.

The CSD Counsel initially recommended that the CSD Board deny the petition because they again claimed the petition was unconstitutional. However, after reviewing the requirements

DISCUSSION

outlined by the Registrar, the CSD Board voted to override CSD Counsel's recommendation and agreed: "... to certify the petition and advance to the next available general election, which is November 8, 2022." CSD seemingly found another way to circumvent the initiative proponent's intent.

Elections Code 9310 states that the initiative petition (now referred to as an ordinance) must be submitted to the voters "without alteration". Unfortunately, CSD elected to defy their obligation and made significant alterations that narrowed the scope of the repeal to only two years.

It should be noted that when LLAD #39 petitioners signed these petitions they relied on the initiative language from the petition sponsors and County Counsel that was printed on the circulated petition. When that language was changed without the petition signers' knowledge and agreement, the initiative petition process was undermined. Elections Code 9310 requires that the initiative language be unaltered as it moves through the voter initiative process to avoid these types of abuses.

For context, it should be pointed out that the ramifications of an LLAD repealing a funding source for park maintenance would be a serious issue for CSD. Potentially the viability of the park would be in question. Past instances of a repeal of assessments have led to water being turned off and the Landscape amenities turning to weeds.

Now in violation of Elections Code 9310, which requires that the petition be unaltered, CSD added over 50% additional language to limit the repeal of all future assessments and refund of monies to only Fiscal Years 2020 and 2021 (mid-2019 to mid-2021). This limitation was contrary to the clear intent to repeal future assessments and require a new vote of the LLAD #39 residents to approve any new or modified assessments going forward. The CSD Board submitted the significantly altered language to the Registrar for the November 2020 Ballot. [Appendix 4 Voter Guide - Full Text of Measure H].

The petitioners protested to the CSD Board and the Registrar that the altered measure text violated Election Code 9310, but their appeals were rejected. The petitioners submitted a

DISCUSSION

second appeal to the Registrar to act as allowed by Election Code 9380, but the Registrar declined to act.

Reviewing the County Counsel Impartial Analysis of Measure H does provide some verification of the complaint to the Grand Jury [Appendix 4 Voter Guide - Impartial Analysis]. In the Impartial Analysis, County Counsel states:

This Measure was placed on the ballot by the Board of Directors of the CSD pursuant to Resolution No. 2022-19, following certification of an initiative petition signed by the requisite number of voters.

This acknowledges that there was a certified initiative petition, but it is silent on why the language was changed.

Towards the end of his analysis, County Counsel further stated:

As presented to the voters by CSD Resolution No. 2022-19, this measure would repeal only those assessments levied in Fiscal Years 2019-2020 and 2020-2021 and order a refund of any monies collected pursuant to assessments levied in those two fiscal years. **It is unclear, however, whether the initiative petition that was circulated for signatures is so limited. It states that the measure would “Repeal CSD LLAD #39 Special Assessment and Refund levied taxes.” Accordingly, whether the measure repeals and refunds only the assessments levied in Fiscal Years 2019-2020 and 2020-2021 or whether it also repeals the Assessment District’s ability to levy assessments in the future cannot be determined at this time.**

County Counsel observed that the initiative petition which was circulated for signatures contained language that was quite different from what was printed on the ballot for Measure H.

DISCUSSION

It was clear that the original petition did not have any mention of any specific years. It was never made clear to the Grand Jury why it “could not be determined at this time”, since the petition never mentioned any specific years. County Counsel and the Elections Department work closely together on issues like this and eventually deferred to CSD and allowed the limited, modified version to be placed on the ballot.

The initiative proponents continued to raise the issue of the modified language to the Elections Department prior to the election. The response from the Elections Department was that they were obliged to use the version supplied by the governing entity (in this case CSD) and that the proper recourse for the proponents was to take the issue to court and get a *writ of mandamus* (court order to a lesser government official to perform some legally required act) to use the original initiative text.

Requiring that ballot proponents go to court to pursue legal remedy when the governing entity does not act appropriately is not a fair process. This introduces an unfair and unnecessary burden on the public when the Election Code statutes are clear about handling and modifying initiatives through the entire ballot initiative process. The fact that neither the Elections Department nor County Counsel could determine that CSD modified the intent of the original initiative, even though County Counsel alluded to exactly that in the analysis, is an indication that they may not have engaged in sufficient oversight of CSD's improper handling of the ballot initiative. The ballot proponents elected not to pursue a legal remedy through the courts in 2022 as they thought it was too onerous of a process or have time to move forward with a solution.

On November 6, 2022, the registered voters of CSD LLAD #39 affirmed the assessment repeal and refund with a 92% yes vote. But the altered language of CSD Resolution No. 2022-19 and Measure H [Appendix 4 Voter Guide - Measure H] only asked CSD to do something that required no further action - a refund for LLAD #39 assessments for fiscal years 2019-2020 and 2020-2021 that had already been made. Those years had already been refunded because the assessments were made prior to the park being opened for use, and lacking any special benefit

DISCUSSION

required for LLAD assessments. The question of whether the LLAD should be paying for a park they were electing not to use going forward was still never addressed.

Having failed to find relief from questionable CSD assessments through two ballot initiatives and having elected to not pursue remedy through the courts, the Heritage community has elected to create another (third) ballot initiative for the November 2024 election. They have received support from available counsel at the Howard Jarvis Taxpayers Association to avoid any further legal ambiguity. The Grand Jury understands that two other LLADs plan to contest their assessments targeting the election of November 2024 as well using the same vetted language this time as LLAD #39 (more on LLAD #22 below).

They say that the third time's a charm, but as shown in our recommendations, the third time should not have been necessary. The Grand Jury is recommending CSD to finally implement the original intent of the Heritage initiative (Measure H) prior to the election.

LLAD #22 PURSUES THE SAME BALLOT INITIATIVE PROCESS

In April, 2023, CSD received a second initiative measure to repeal and refund the Promontory Landscape And Lighting Assessment District #22 Special Assessment. It was reviewed and certified by County Counsel on October 19, 2023. This initiative was initially challenged by CSD Legal Counsel. Appendix 5 is the memorandum to the Board of Directors concerning the LLAD #22 Repeal Initiative. The CSD Legal Counsel recommended to take no action on the proposed ballot.

The CSD Counsel argues that an LLAD is not a discrete political unit for the purposes of repealing levied assessments under Proposition 218, and that the entire CSD district must be included in any such initiative. The claim was that the initiative proponents had not reached a representative number of signatures for the entire district.

At the CSD Board meeting on April 11, 2024, the Board elected to accept the certified initiative and place it on the ballot with the understanding that discussions would be held with the three

DISCUSSION

LLAD proponents (along with Blackstone's LLAD #30) to reach a mutually agreeable solution that would hopefully avoid the need for a ballot measure in November or remediation through the courts.

The Grand Jury is optimistic that CSD is open to expediting a mutually agreeable solution and appears to be more responsive to the concerns of multiple LLAD communities. Nevertheless, this is an unusual and untried process and the path to resolution is far from certain. Looming over the negotiations is the possible eventual need for taking the case to court for remediation or relief, a process that all parties appear to want to avoid and would be much more costly to the taxpayers.

Unfortunately, the Grand Jury could not identify or recommend a viable process through the County that ballot proponents could pursue more efficiently for recourse in these situations. We reached out to the Howard Jarvis Taxpayers Association (HJTA) for any experience they have seen across the state when taxpayers and ballot proponents have contested issues with governing bodies. They could provide no examples in their experience where such a situation arose and felt that remediation through the court was likely the only possible path for the ballot proponents.

Nobody else we spoke with felt going through the court was an optimal process, and it seemingly has left voters disenfranchised and frustrated in the past, but it's the only process that exists today. Perhaps more importantly, the lack of alternative paths for recourse may allow governing bodies to act with impunity if they elect to ignore the intent of a ballot initiative and the will of the voters.

FINDINGS

Findings

F1 - After it was certified by the Registrar on May 14, 2020, an initiative petition signed by the required number of voters in LLAD #39 was unilaterally not acted on by the El Dorado Hills CSD. This non-action ignored the objections of the petitioners and violated Elections Code 9310 that required CSD to adopt the ballot measure or submit it to the voters.

F2 - After it was certified by the Registrar on September 9, 2020, the text of a second initiative petition signed by LLAD #39 residents was altered, resulting in it being essentially nullified before it was placed on the 2020 ballot and submitted to the voters. This action ignored the objections of the petitioners and Elections Code 9310 which requires that the initiative petition be submitted to the voters without alteration.

F3 - In the Impartial Analysis of Measure H on the 2022 Ballot, County Counsel noted the alteration of the LLAD #39 voter petition; however, both the County Elections Department and County Counsel allowed the election process to proceed over the objections of the LLAD #39 petitioners and requirements of California Elections Code 9310.

F4 – El Dorado County has not published handbooks to provide voters with information to assist them in understanding the steps necessary to initiate, circulate, and file County initiative petitions.

F5 – Although CSD Legal Counsel advised CSD to not act on a ballot initiative to repeal assessments from LLAD #22, the CSD Board voted to pass the certified measure to the ballot in November 2023, while hoping to negotiate a mutually agreeable resolution that would avoid going to ballot or to court for relief.

FINDINGS

F6 – In situations where there are contested Proposition 218-related ballot initiatives, where the governing body disagrees with the legal foundations of the initiative and elects to not act on it, the only remediation path appears to be through the court system, which will cause delays and additional expense to the taxpayers.

RECOMMENDATIONS

Recommendations

R1 – By December 2024, the Elections Department should develop and publish online documentation for sponsors of initiative petitions that provides a summary of the County initiative petition procedure and the requirements for preparing and qualifying County initiative petitions.

R2 – By December 2024, the Elections Department should offer training to County Boards and Commissions that provides training on the requirements and their responsibilities in the County initiative petition process.

R3 – Within 90 days of the release of this report, CSD should implement the intent of the Carson Creek LLAD #39 second ballot initiative to perpetually repeal LLAD assessments. (Note that this recommendation also appeared in the Grand Jury report Case #24-05).

REQUEST FOR RESPONSES

Request for Responses

A Civil Grand Jury report details a single investigation. Each report lists FINDINGS and RECOMMENDATIONS. The responsible organization is notified and is required to respond to the report.

The California Penal Code § 933(c) specifies response times.

- PUBLIC AGENCIES. The governing body of any public agency (also referring to a department) must respond within 90 days from the release of the report to the public.
- ELECTIVE OFFICERS OR AGENCY HEADS. All elected officers or heads of agencies/departments are required to respond within 60 days of the release of the report to the public.
- FAILURE TO RESPOND. Failure to respond, as required to a Jury report, violates California Penal Code Section 933.05 and is subject to further action that may include additional investigation on the subject matter of the report by the Jury.

The following responses are required pursuant to Penal Code § 933 and § 933.05:

From the following government bodies:

- El Dorado County Board of Supervisors
 - All Findings and Recommendations R1-R2
- El Dorado County Elections Department
 - All Findings and Recommendations R1-R2
- El Dorado Hills Community Services District
 - Findings F1-F2 and Recommendation R3

For more information refer to *[How to Respond to an El Dorado County Grand Jury Report](#)* available on the El Dorado County Grand Jury webpage.

APPENDIX AND RELATED INFORMATION

Appendix and Related Information

APPENDIX 1 – REGISTRAR OF VOTERS CERTIFICATION, MAY 2020

COUNTY OF EL DORADO

REGISTRAR OF VOTERS
Bill O'Neill



28501 Airline Court
P.O. Box 678091
Placerville, CA 95667
www.el-dorado.net/elections/
Phone: 916-621-7820 Fax: 916-626-5514
Linda Webster - Assistant Registrar of Voters

I, Bill O'Neill, Registrar of Voters, for the County of El Dorado, State of California, do hereby certify that:

1. An initiative petition entitled AN INITIATIVE MEASURE TO REPEAL THE CARSON CREEK PARK LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT #39 SPECIAL ASSESSMENT AND REQUIRE VOTER APPROVAL FOR SUBSEQUENT SPECIAL ASSESSMENTS was hand delivered to the Office of the Registrar of Voters on March 17, 2020 for signature verification; and

2. The petition contained 57 sections and 301 unverified signatures; and

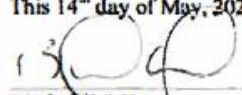
3. Pursuant to Elections Code section 9310, in order to be sufficient, for the next statewide election, the petition must have been signed by 77 qualified registered voters of the Carson Creek Park Landscaping and Lighting Assessment District #39, that number being equal to ten percent (10%) of the registered voters in the district; and

4. I have examined or caused to be examined, signatures on the petition pursuant to Elections Code 9308, by numbering each signature on the petition and completing a full check. Based on the full check prescribed by section 9308, it was determined that 283 of the 301 signatures were valid, with 1 duplicate signature, and

5. That pursuant to Elections Code 9308(e), the initiative petition was found to be sufficient and the results are hereby certified.

Witness my hand and official seal

This 14th day of May, 2020


BILL O'NEILL
Registrar of Voters



APPENDIX AND RELATED INFORMATION

APPENDIX 2 – EDH CSD MEMO TO REFRAIN FROM TAKING ACTION (REDACTED)



EL DORADO HILLS COMMUNITY SERVICES DISTRICT

To: Board of Directors

From:

Prepared By:

Meeting Date: June 11, 2020

Report Date: June 3, 2020

Subject: Initiative Petition Received from El Dorado County Registrar
Office for Carson Creek LLAD #39 - Special Assessment

Recommended Action:

Refrain from taking either action identified in Elections Code section 9310 in response to the certified petition received from the El Dorado County Registrar of voters relating to that initiative entitled, "An Initiative Measure to Repeal the Carson Creek Park Landscaping and Lighting Assessment District #39 Special Assessment and Require Voter Approval for Subsequent Special Assessments," (hereinafter "Initiative") and direct legal counsel to notify the El Dorado County Registrar of Voters of such action.

Background:

Proponents submitted their proposed Initiative to the County of El Dorado Elections Department on April 1, 2020. The Initiative "seeks to repeal" the assessment on property within Assessment District #39 adopted pursuant to EDHCSD Board Resolution passed on June 13, 2019 "and instruct the El Dorado County Assessor and Tax Collector to refund any monies collected pursuant to that assessment. The Initiative "further seeks to require that, prior to levying future assessments with the Assessment District, the EDHCSD obtain approval of two-thirds of the property owners of record at the time of the assessment." The Initiative's provisions, if passed, "would remain in effect for ten years following certification of the election results."

Discussion:

Initiative #39 is facially invalid and unconstitutional. In light of this facial invalidity and unconstitutionality, there is ample legal authority that the Board of Directors is not compelled to take either of the actions established by Elections Code section 9310.

- 27 -

APPENDIX AND RELATED INFORMATION

APPENDIX 3 – REGISTRAR OF VOTERS CERTIFICATION, MAY 2020



COUNTY OF EL DORADO

REGISTRAR OF VOTERS

Bill O'Neill

2850 Fairlane Court
PO Box 678001
Placerville CA 95667
www.edogov.us/elections/
Phone: 530.621.7480 Fax: 530.626.5514
Linda Webster - Assistant Registrar of Voters

I, Bill O'Neill, Registrar of Voters, for the County of El Dorado, State of California, do hereby certify that:

1. An initiative petition entitled AN INITIATIVE MEASURE TO REPEAL OF EDHCSD LLAD #39 SPECIAL ASSESSMENT AND REFUND LEVIED TAXES was hand delivered to the Office of the Registrar of Voters on July 16, 2020 for signature verification; and

2. The petition contained 29 sections and 212 unverified signatures; and


3. Pursuant to Elections Code section 9310, in order to be sufficient for the next statewide election, the petition must have been signed by 86 qualified registered voters of the Carson Creek Park Landscaping and Lighting Assessment District #39, that number being equal to ten percent (10%) of the registered voters in the district; and

4. I have examined, or caused to be examined, signatures on the petition pursuant to Elections Code 9308 by numbering each signature on the petition and completing a full check. Based on the full check prescribed by section 9308, it was determined that 182 of the 212 signatures were valid, with 1 duplicate signature; and

5. That pursuant to Elections Code 9308(e), the initiative petition was found to be sufficient and the results are hereby certified; and

6. The initiative petition is in compliance with the specified threshold of the State Constitution Article XIII C, section C of 5% and Election Code 9309 level of 10%.

Witness my hand and official seal
This 9th day of, September 2020



BILL O'NEILL
Registrar of Voters



County Voter Information Guide

Gubernatorial General Election

Tuesday, November 8, 2022

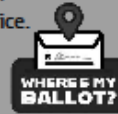
What's Inside?

- Voting Options
- Candidate Statements
- Ballot Measures
- Arguments
- Impartial Analyses
- Vote Center Locations
- Drop Box Locations
- How to Request a Remote Accessible Vote By Mail Ballot

Important Dates:

- October 10 - Ballots Mailed
- October 11 - Drop Boxes Open
- October 29 - 11 Day Vote Centers Open
- November 5 - 4 Day Vote Centers Open
- November 8 - Election Day

Track and receive notifications on the return status of your vote-by-mail ballot. You can track your ballot return to ensure it was received by our office. You will be notified when we receive it and when it has been accepted and tabulated. Sign-up at www.WheresMyBallot.sos.ca.gov to receive automatic email, SMS (text), or voice call notifications about your ballot.



El Dorado County Elections Department
2850 Fairlane Court
Placerville, CA 95667

Open Monday through Friday, 8am to 5pm

- <https://edcgov.us/Government/Elections>
- vbm@edcgov.us
- Office: 530-621-7480
- Toll Free: 800-730-4322
- TDD: 530-642-9432
- Fax: 530-626-5514

APPENDIX AND RELATED INFORMATION

FULL TEXT OF MEASURE H

RESOLUTION NO. 2022-19 OF THE EL DORADO HILLS COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS

CALLING AND ORDERING AN ELECTION RE: AN INITIATIVE MEASURE TO REPEAL AND REFUND THE CARSON CREEK PARK LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT #39 SPECIAL ASSESSMENT ON NOVEMBER 08, 2022 TO BE CONSOLIDATED WITH THE STATEWIDE ELECTION ON THE SAME DAY

WHEREAS, Elections Code section 9300 et seq. provides a process by which the registered voters of a district may submit to the governing board of the district an initiative for adoption after filing a copy of the same with the district elections official with a sufficient number of verified signatures of registered voters of the district, as verified by the elections official; and

WHEREAS, Elections Code section 9310 provides if such an initiative is submitted to the governing board of the district and is signed by 10% or more of the registered voters of the district, the district board shall either adopt the initiative without alteration or else submit the initiative without alteration to the voters pursuant to Elections Code section 1405; and

WHEREAS, Elections Code section 1405 provides that an election for a district initiative that meets the requirements of Section 9310 shall be held at the next general election occurring not less than 88 days after the date of the order of election; and

WHEREAS, Elections Code section 10403 provides such a vote on a district initiative may be consolidated with a statewide election and appear upon the same ballot as that provided for the statewide election and provides the form and method for the district board to place the initiative on the ballot; and

WHEREAS, the El Dorado Hills Community Services District's ("District") Board of Directors ("Board") has received an initiative signed by at least 10% of the registered voters of the District, as verified by the County of El Dorado Registrar of Voters Bill O'Neill, and self-titled "Repeal of EDHCSD LLAD #39 Special Assessment and Refund Levied Taxes"; and

WHEREAS, the Board wishes to submit the initiative to the voters at the next general election, to consolidate the vote on the initiative with the statewide election, and to have it appear on the same ballot as that provided for the statewide election; and

WHEREAS, the County of El Dorado Registrar of Voters and Elections staff has confirmed that the next general election date is November 08, 2022 and this is a proper date for the District to place the initiative before the voters.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the El Dorado Hills Community Services District, as follows:

BE IT RESOLVED, that the Board orders and calls an election on Tuesday, November 08, 2022, for the purpose of submitting to the voters the following question:

Shall the El Dorado Hills Community Services District repeal Resolutions 2019-11 and 2020-11 establishing assessments on the Carson Creek Park Landscaping and Lighting Assessment District #39 for fiscal years 2019-2020 and 2020-2021 for the provision of park improvements and maintenance and order a refund to homeowners of any monies currently held by the District that were collected pursuant to those resolutions?

BE IT FURTHER RESOLVED, that the Board requests that the vote on this initiative be consolidated with the statewide election to occur on Tuesday, November 08, 2022 as well as consolidated with any other elections occurring on that day and properly consolidated with the statewide election pursuant to the California Elections Code.

BE IT FURTHER RESOLVED, that the Board acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code section 10418 and directs that all proceedings related to, connected with, and incidental to the election shall be regulated and performed in accordance with the provisions of law regulating the statewide election.

BE IT FURTHER RESOLVED, that the Board directs District staff to file a copy of this resolution with the El Dorado County Board of Supervisors and a copy with the El Dorado County elections official.

BE IT FURTHER RESOLVED, that the Board directs the El Dorado County elections officials to administer and take all necessary actions and make all necessary reports and notices related to said election, and further directs District Staff to administer and take all necessary actions and make all necessary reports and notices related to said election and in collaboration with the El Dorado County elections official.

BE IT FURTHER RESOLVED, that if any part of this Resolution is held invalid the remainder of the resolution shall not be affected.

APPENDIX AND RELATED INFORMATION

IMPARTIAL ANALYSIS OF MEASURE H

Measure H (the "Measure"), if approved by a majority of the voters voting thereon, would repeal and refund assessments levied by the El Dorado Hills Community Services District ("EDHCSD") within Carson Creek Park Landscaping and Lighting Assessment District #39 (the "Assessment District"). This Measure was placed on the ballot by the Board of Directors of the EDHCSD pursuant to Resolution No. 2022-19, following certification of an initiative petition signed by the requisite number of voters.

The Assessment District was formed in 2015 by the EDHCSD pursuant to the Landscaping and Lighting Act of 1972 (Streets & Highways Code, § 22500 et seq.). The purpose of the Assessment District is to provide funding for the installation, maintenance, and operation of improvements for a park within the Assessment District's boundaries.

Districts such as the Assessment District are authorized to levy assessments subject to compliance with the Landscaping and Lighting Act of 1972 and California Constitution Article XIII D (commonly referred to as Proposition 218). An assessment differs from a tax in that a tax may be imposed without reference to peculiar benefits to particular individuals or property or without regard to whether the person or property subject to the tax received any particular benefit from the tax. An assessment, however, can be imposed only for a "special benefit" conferred on the real property assessed, and must be in proportion to, and not greater than, the special benefit conferred on the property assessed. Additionally, California Constitution Article XIII C, Section 3, states, "Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge."

The EDHCSD authorized the levy of special assessments on parcels within the Assessment District for Fiscal Years 2019-2020 and 2020-2021. As presented to the voters by EDHCSD Resolution No. 2022-19, this measure would repeal only those assessments levied in Fiscal Years 2019-2020 and 2020-2021 and order a refund of any monies collected pursuant to assessments levied in those two fiscal years. It is unclear, however, whether the initiative petition that was circulated for signatures is so limited. It states that the measure would "Repeal EDHCSD LLAD #39 Special Assessment and Refund levied taxes." Accordingly, whether the measure repeals and refunds only the assessments levied in Fiscal Years 2019-2020 and 2020-2021 or whether it also repeals the Assessment District's ability to levy assessments in the future cannot be determined at this time.

A "yes" vote is a vote to repeal and refund assessments levied within the Assessment District.

A "no" vote is a vote against the repeal and refund assessments levied within the Assessment District.

David A. Livingston
El Dorado County
County Counsel

ARGUMENT IN FAVOR OF MEASURE H

The Proponents endorse the measure as specified in the EDC County Counsel measure title, but we rigorously protest the insertion by the EDCSD of the following words: "2019-11 and 2020-11" and "for fiscal years 2019-2020 and 2002-2021 for the provision of park improvements and maintenance and order a refund to homeowners of any monies currently held by the District that were collected pursuant to those resolutions." These insertions significantly distort the spirit, intent and letter of the measure as submitted by the petitioners and the unbiased opinion of the EDC County Counsel. The inserted words must be deleted.

The inserted words violate Election Code 9310, requiring EDC CSD to submit the measure "without alternation." Further, a ballot label must be true, impartial, and not argumentative or likely to create prejudice. We call your attention to Elections Code Section 13119: https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=ELEC§ionNum=13119.

We concur with the unbiased opinion of the EDC County Counsel title: A measure to repeal and refund the Carson Creek Park Lighting and Landscape District Assessment District #39 Special Assessment. The title accurately reflects the intent of the petitioners. County Counsel notes fiscal years 2019-2020 and FY 2020-2021 to establish a historical perspective. No additional time references limit the applicability of the measure. Accordingly, the County Counsel concludes: "This initiative measure seeks to repeal that assessment and order a refund of any monies collected pursuant to that assessment."

The EDH CSD's resolution states that "if any part of this resolution is held invalid, the remainder of the resolution shall not be affected." Therefore, once the inaccurate, confusing, and prejudicial inserted text are removed, the resolution to place a true and accurate ballot measure must proceed.

Sue Ellen Williams – Proponent - Registered Voter in District
George Williams – Author - Registered Voter in District
LeeAnn Faucett – Proponent - Registered Voter in District

APPENDIX AND RELATED INFORMATION

APPENDIX 5 – MEMO TO CSD BOARD RE: LLAD #22 BALLOT INITIATIVE



To: Board of Directors
From: [REDACTED] Interim General Counsel
Meeting Date: April 11, 2024
Report Date: April 04, 2024
Subject: **Consideration of Action to be Taken Concerning Proposed Ballot Initiative: *Repeal of Landscape and Lighting Assessment District Number 22 and Refund of Levied Assessments***

Recommended Action:

The Board of Directors should take no action on the proposed ballot initiative due to the proponents' failure to comply with the California Elections Code.

Background and Summary:

The El Dorado Hills Community Services District ("District") has received a proposed ballot initiative from proponents who are voters residing within Landscape and Lighting Assessment District Number 22 ("LLAD No. 22"). (The Ballot Title and Summary for the proposed initiative is attached as **Exhibit A.**) The El Dorado County Registrar of Voters has certified that a sufficient number of registered voters have signed the initiative. (See Certification, **Exhibit B**; see also Notice of Intention to Circulate Petition, **Exhibit C.**) Ordinarily, receipt of this certification would trigger a ministerial District duty to either approve the proposed measure or call an election. If an election is called, the initiative would be placed on the November General Election ballot.

As explained within, the Board of Directors may not lawfully take action on the proposed initiative. The initiative proponents seem to have proceeded under the assumption their LLAD is a discrete political unit that may legislate. But an LLAD is merely a *funding entity*; it is not a political subdivision vested with legislative power. Under the California Elections Code, the initiative power belongs to *all* District voters and may be exercised only on a *District-wide* basis. Because the proposed initiative was not circulated District-wide, was not signed by the requisite number of District-wide voters, and is not proposed to be submitted to all District voters, it may not legally be placed on the ballot.

Discussion:

When the District receives certification from the County election official that a ballot measure has qualified to be placed on the ballot, it must ordinarily take one of two actions:

4881-2348-3828.1

APPENDIX AND RELATED INFORMATION

El Dorado Hills Community Services District
RE: Consideration of Action to be Taken Concerning Proposed Ballot Initiative: Repeal of Landscape and Lighting Assessment
District Number 22 and Refund of Levied Assessments
Meeting Date: April 11, 2024
Page 2 of 4

- Adopt the measure without alteration, or
- Submit the measure, without alteration, to the voters. (Elec. Code, § 9310(a)(1)-(2).)

Here, neither of these actions may be taken as there technically is no initiative to be considered. The proposed measure was signed only by voters who resided within LLAD No. 22 and took into account a significantly reduced signature threshold - a mere 58 voters¹ - that could only be sufficient only if just a single LLAD were considered.

It appears the proponents assume their LLAD is a discrete political unit that may hold its own election. It appears they believe this interpretation finds support in the usage of the word "district" throughout the Elections Code provisions governing special district initiatives. If the proponent believe their LLAD is such a "district," they are incorrect.

The authority for special district elections is stated in California Elections Code sections 9300 through 9323. The foundational of these sections, section 9300, states the general statutory right to special districts initiatives. The section states that "ordinances may be enacted *by any district* pursuant to this article [...]" (Emphasis added.) The next section, section 9301, states that the "proposed ordinance" must be "submitted to the governing board *of the district.*" (Emphasis added.)

An "ordinance" is a legislative enactment - like a bill in the State Legislature, or a county ordinance - that states the enactments of a legislative body. For special districts, the referenced Elections Code sections make clear that, when enacted by initiative, an "ordinance" is something that may only be enacted by a "district." These Elections Code provisions do not define the term "district," but it is clear from context and the statutory scheme the Code envisions that a "district" that enacts the initiative is a *political subdivision* - a unit of government capable of promulgating legislative enactments in the form of ordinances.

An LLAD is not such a "district." The organic law for LLADs, the Landscape and Lighting Act of 1972 ("LLA," Streets & Hwy Code, § 22500 et seq.), describes LLADs merely as mechanisms for assessing the parcels benefited by a public improvement or service. (Streets & Hwy Code, §§ 22503², 22521³.) As described, LLADs are nothing more than financing mechanisms. In this sense, they are like zoning districts - areas subject to particular legislation, but not a government that may legislate - by board action or by initiative. Although the LLA uses the term "district" in describing them, LLADs are not vested with any of the powers usually given to recognized units of government. LLADs are not given the *independent* powers, for instance, to enact legislation, sue or be sued, acquire property, or enter into contracts. They are entirely formed by, creatures of, and subservient to, the governments that create them.

A community services district ("CSD"), in contrast, is the type of "district" the Elections Code empowers to conduct elections. The organic law governing CSDs is the Community Services

¹ An initiative qualifies if more the number of verified signatures on the petition exceeds 5% of the votes cast in the last gubernatorial election. (Elec. Code, § 9310(a).)

² "An assessment district shall consist of all territory which, as determined by the legislative body, will be benefited by the improvements and is to be assessed to pay the costs thereof."

³ "Assessment district" means an assessment district formed pursuant to this part."

APPENDIX AND RELATED INFORMATION

El Dorado Hills Community Services District
RE: Consideration of Action to be Taken Concerning Proposed Ballot Initiative: Repeal of Landscape and Lighting Assessment District Number 22 and Refund of Levied Assessments
Meeting Date: April 11, 2024
Page 3 of 4

District Law ("CSD Law"), codified in the California Government Code, beginning at section 61000. The CSD Law uses the term "district," which it defines as an entity "created pursuant to this division [of the Government Code] [...]" (Gov. Code, § 61002(d).) The CSD Law in turn empowers such "districts" to exercise the powers that typically belong to political subdivisions (i.e., local governments). CSDs may adopt ordinances, sue and be sued, acquire property, make contracts, and take several other actions. (*Id.*, § 61060; see also *id.*, §§ 61061-61070 [stating the many independent powers CSDs may exercise].) Unlike LLADs, CSDs are not agents of any higher unit of government that creates them. They are political subdivisions in their own right.

For the above reasons, it is only reasonable to interpret the Election Code's references to "district" as requiring an independent political subdivision capable of enacting legislation in the form of ordinances.⁴ A CSD meets these characteristics, an LLAD does not. Although the word "district" is used in their titles, LLADs are not imbued with the statuses of political subdivisions and, therefore, do not have the initiative power.

Because an LLAD is not the type of "district" the Elections Code empowers, the initiative proponents have failed to submit a valid initiative. The "district" for which they were required to gather signatures was the District *as a whole*, not just their LLAD. Elections Code section 9310 required the proponents to obtain the verified signatures of not less than 5% "of the voters of the district" who voted in the last gubernatorial elections. (Emphasis added.) Because the proponents only gathered signatures from within their LLAD, they do not satisfy this foundational requirement.

Put more simply, there is no such thing as an LLAD initiative. Any initiative presented to the District must be presented to the *entire* District. The initiative must qualify using a threshold that considers the *District-wide* vote tally from the last gubernatorial election; it must be circulated for signature among *all* District voters; and it must allow *all* District voters to vote if it qualifies.

To be sure, this Staff Report acknowledges a provision of Proposition 218 (Article XIII C, section 3 of the California Constitution), which constitutionally guarantees the right of certain initiatives:

"Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and Sections 9 of Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives." (Emphasis added.)

This provision is intended to guarantee that voters may use initiatives to reduce or repeal taxes, assessments, fees, or charges. The section was intended to codify certain court cases that had

⁴ Notably, the Elections Code does contain a definition of "district" for purposes of special district initiatives and referenda. Elections Code section 317 states that "'district' for purposes of initiative and referendum under Chapter 4 (commencing with Section 9300) of Division 9, includes any regional agency that has the power to tax, to regulate land use, or to condemn and purchase land." Although this section is intended to address a special situation, its reference to agency powers to tax, regulate land use, or acquire land are consistent with this staff report's interpretation that Elections Code "districts" must be political subdivisions that are vested with prescribed powers.

APPENDIX AND RELATED INFORMATION

El Dorado Hills Community Services District
RE: Consideration of Action to be Taken Concerning Proposed Ballot Initiative: Repeal of Landscape and Lighting Assessment
District Number 22 and Refund of Levied Assessments
Meeting Date: April 11, 2024
Page 4 of 4

been decided before Proposition 218's enactment in 1996.

It may be that the initiative proponents rely on this provision in asserting authority for their proposed measure. But if they do so, they would be mistaken.

Nothing about this provision relieves or excuses the proponents from complying with the requirements of the Elections Code. The provision is not itself authority for interpreting LLADs as the type of "districts" for which initiatives are permissible. The emphasized text confirms the provision is applicable "to all local governments," indicating that the preserved powers must be exercised with reference to political subdivisions. The California Supreme Court has noted, moreover, that there is no constitutional right to a special district initiative. (See *Mission Springs Water Dist. v. Verjil* (2013) 218 Cal.App.4th 892, 914 fn. 4 [noting that the constitutional right to local initiatives is guaranteed only in county and city elections].) Article XIII C, section 3 accordingly does not provide any constitutional authority for an LLAD-specific initiative.

In sum, because of the fundamental defects in the proposed measure, this Board should take no action. Ordinarily, perceived defects in ballot measures are raised by pre- and post-election challenges in court. When an allegedly defective initiative is presented, courts have directed agencies not to withhold calling elections, but to place the measures on the ballot and seek appropriate judicial relief.

But here, there technically is no initiative that has met the requirements of the Elections Code for qualification. The proponents have presented a manifestly unlawful ballot measure, which seeks to give their limited, discrete LLAD the status of a full-fledged political subdivision, and which attempts to exercise a right that is reserved to *all* District voters. The District has no ministerial duty to act under these circumstances.

Fiscal Impact:

Should the Board of Directors agree to submit the measure to the voters, it would incur costs associated with the County's administration of the election concerning the proposed initiative. These costs are not known at this time.

Attachments:

- A. Ballot Title and Summary: *Repeal of Landscape and Lighting Assessment District Number 22 and Refund of Levied Assessments*
- B. El Dorado County Registrar of Voters, Certification, March 25, 2024
- C. Notice of Intention to Circulate Petition



2023-24 GRAND JURY REPORT
EL DORADO COUNTY
MAY 13, 2024 – CASE #24-07

COUNTY OFFICE OF EDUCATION: ARE
SCHOOLS DOING ENOUGH TO ADDRESS
SEXUAL HARASSMENT?

Are El Dorado County schools' current hiring practices, training, and policies sufficient in preventing sexual harassment?

TABLE OF CONTENTS

Contents

Summary	3
Background	5
Methodology	12
Reviewed relevant documents	12
Interviews	12
Discussion	14
Background Checks	14
Training and Education	16
Safety at Schools	16
Title IX	18
Conclusion	19
Findings	21
Recommendations	23
Request for Responses	25

SUMMARY

Summary

The El Dorado County (County) Civil Grand Jury received a complaint about the hiring practices of El Dorado County Office of Education (EDCOE) after the arrest of an EDCOE employee. A special education bus driver was arrested on August 4, 2023 for allegedly committing sexually related crimes (sexual harassment/assault) against an adult special education student ([article link](#)). During this investigation, new allegations of sexual assault by the bus driver were filed, via a complaint, in El Dorado County Superior Court ([KCRA.com article link](#)).

Other sexually related arrests of employees at different school districts in El Dorado County within the same year prompted this investigation to go beyond the EDCOE hiring practices to encompass education, prevention of, and processes countywide for addressing sexual harassment/assault of students by school employees:

- May 2023 - A janitor was arrested for sexual acts with a child under the age of ten. This case is currently pending in the courts ([article link](#)) ([article link](#)).
- October 17, 2023 - One arrest resulted in the principal of a school pleading guilty to the charges and is now in prison ([article link](#)) ([article link](#)).
- November 28, 2023 - In another incident, the public demanded the resignation of a new school superintendent/principal for making sexually inappropriate and disrespectful comments to students ([article link](#)). The superintendent/principal resigned in February 2024, along with all except one School Board member.

EDCOE's hiring practices meet the minimum standards established by local, state, and federal governments, but could use more stringent screening methods to prevent hiring sexual predators and to protect our students.

SUMMARY

EDCOE, on behalf of all County school districts, has a Memorandum of Understanding (MOU) with law enforcement and other partners to address violence and drug issues in the schools. The MOU is a step in the right direction but lacks a focus on preventing sexual crimes against students under school supervision.

EDCOE has cameras on their buses but do not monitor them. Bus locations are not monitored, providing ample opportunity and time for a bus driver to commit crimes. Some classified staff who work near students and might have the opportunity to commit sexual acts are not closely supervised while working on campus.

It appears sexual harassment prevention training is inconsistently provided to EDCOE employees. Required sexual harassment information on individual school district websites is incomplete and out of compliance with federal law.

EDCOE can do a better job of educating students and staff about preventing sexual harassment and assault. They can provide closer supervision of classified staff and ensure students are never alone while at school, such as by using a 'buddy system'. They can install GPS tracking and provide monitoring of buses to check bus locations while transporting students. EDCOE can install cameras on campuses such that no child is ever alone, and to ensure buses return to the yard on time. Cameras are a proven deterrent to crime. They can also expand their MOU to include a focus on preventing sexual harassment/assault of students at local schools.

BACKGROUND

Background

Many people believe that the County Offices of Education are an administrative umbrella over all schools and districts in the County. This is not the case. EDCOE is its own school district that provides fiscal and structural oversight to all school districts in the County. It administers the Early HeadStart Programs, the Juvenile Hall education programs, and Sugarloaf Fine Arts Summer Camp. They are also responsible for special education services for the other fifteen school districts in El Dorado County. EDCOE does not have authority over the operations of the other local school districts. They cannot direct school districts to do anything. EDCOE can provide information but does not provide recommendations or mandates. Each school district is its own separate entity that uses EDCOE services as needed. Each school district has its own governing Board, which determines curriculum and makes all other decisions for their individual district. The County school districts each have a vast and expansive multilayer administrative hierarchy. Sexual harassment/assaults of students are handled individually at each school district.

For this report, the definition below is why we use the term sexual harassment throughout and sexual assault intermittently. Sexual harassment includes sexual assault.

According to the Department of Education (emphasis added by Grand Jury):

*California Education Code section 212.5 defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, **or physical conduct of a sexual nature**, made by someone from or in the work or educational setting ([ED Code 212.5 link](#)).*

Time constraints prevented an in-depth investigation into all County school districts' policies and practices. The Grand Jury was able to investigate EDCOE's hiring practices and

BACKGROUND

compliance with federal and state laws. We also investigated all 15 County district websites for compliance with the laws.

Tragically, sexual assault occurs in all places, including schools. Violence against our youth, particularly students, is considered a worldwide health and social problem ([research link](#)). Fortunately, violent, and non-violent criminal incidents have reportedly decreased across the globe. Some believe the decrease is only due to a reduction in which crimes are considered serious enough to be included on the research list, leaving many unreported. Any violence on a school campus, particularly sexual violence by a school employee is unacceptable and should be prevented and reported when it occurs.

Schools attempt to prevent hiring criminals who might harm our students through conducting background checks. A criminal background check uses the applicant's fingerprints to obtain a record of criminal convictions, both misdemeanors and felonies.

Criminal background and reference checks are not enough. Schools are the primary place where students congregate. Sexual predators wanting access to young potential victims make their way into employment at our nation's schools. Schools must do everything possible to educate students, staff, and parents about the potential for sex crimes at schools. They must educate their employees about sexual harassment prevention and the consequences of engaging in this type of behavior. They must take exceptional steps to prevent such crimes by their employees and other students.

Prevention of sexual harassment is key to reducing the incidence of it. Rather than focusing on prevention, schools and other entities handling sexual harassment focus on treatment. Prevention has now received national attention as a necessary intervention to protect students. According to the National Sexual Violence Resource Center (NSVRC), prevention of sexual harassment in schools should include prevention education of students beginning as early as

BACKGROUND

kindergarten ([NSVRC link](#)). Prior parental approval is typically required so parents can opt out of this type of educational program. The national sexual harassment prevention programs for K-12 schools are available online for other states or counties to adopt. If the County schools choose to take advantage of these online programs, they would not have to create their own. If provided to students as well as staff, it would bring more visibility to the issue. The Grand Jury is not permitted by state law to investigate local school district curriculum offerings in any subject.

A recent national survey revealed that 88% of children in 7th – 12th grades felt their schools did not do enough to address sexual harassment. There is limited data on how extensive such crimes occur in US schools, or how many incidents remain unreported. The US Department of Education (DOE) revealed K-12 schools reported 2700 incidents of sexual assault in 2020-2021 ([DOE link](#)). This national DOE report included all assaults, not just a school employee against a student, as this Grand Jury report is focused on. National research results vary, but most report that approximately 1 in 4 girls and 1 in 20 boys are targeted for sexual crimes in all settings where students are present.

These crimes significantly affect the ability of students to learn. It affects their sense of security, self-esteem, confidence, ability to concentrate, and interferes with their academic performance and school attendance. Students who experience sexual crimes often develop anxiety, depression and other behavioral issues that can last a lifetime. These crimes also affect staff and educators, including in their ability to facilitate the learning of emotionally damaged students. Sexual assault victims are also at risk of becoming perpetrators in the future. According to the 2023 [Charliehealth.com](#) report, "... abuse is often a cyclical pattern. Approximately one-third of people who experience childhood abuse become abusive toward others later in life" ([Charliehealth.com link](#)). Due to the grim statistics, the United States took action to look for solutions.

BACKGROUND

In 1972, the federal government passed Title IX, a law requiring that all schools receiving federal funding (most public schools) “...must ensure that male and female students and employees in educational settings are treated equally and fairly.” It protects against discrimination based on sex (including sexual assault). The preamble to Title IX of the Education Amendments of 1972 states that: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” ([California Department of Education link](#)).

Title IX originally focused primarily on women’s sports, college, and work opportunities. Sexual assault/harassment of students was a small part of the law that was not often mentioned or intervened on. Most people today still think of Title IX as protecting women’s school and work opportunities, and do not associate it with prevention of sexual crimes, especially toward children and disabled students.

In February 2020, then U.S. Secretary of Education Betsy DeVos set out to correct that perception. She expanded the scope of Title IX and its requirements, making it clear K-12 schools are included in the law. She announced a ‘Final Rule’ to Title IX, stating, “We hear all too often about innocent children being sexually assaulted by an adult at school. That should never happen. No parent should have to think twice about their child’s safety while on school grounds” ([Final Rule link](#)). It states, “The final regulations specify how recipients of Federal financial assistance covered by Title IX, including elementary and secondary schools, ..., must respond to allegations of sexual harassment consistent with Title IX's prohibition against sex discrimination.” These regulations are intended to achieve Title IX's prohibition against sex discrimination by requiring financial recipients to address sexual harassment/assault as a form of sex discrimination in education programs and activities. The final regulations also clarify and modify Title IX regulatory requirements regarding remedies the Department of Education

BACKGROUND

may impose on recipients for Title IX violations. Title IX Final Rule states all schools, including K-12, must:

- Notify parents, students, staff, and applicants for admission and employment, parents or legal guardians of elementary and secondary school students, and all unions, of the name or title, office address, e-mail address, and telephone number of the Title IX Coordinator.
- Prominently display on their websites the required contact information for the Title IX Coordinator.
- Make all materials used to train Title IX personnel publicly available on the school's website, or, if the school does not maintain a website, make these materials available upon request for inspection by members of the public.
- Disseminate their non-discriminatory policy and Title IX Coordinator contact information, and inform all students, employees, parents, and others of how the school will respond to reports and complaints of sex discrimination (including sexual harassment).
- Document and keep records of all sexual harassment reports and investigations.
- Offer free supportive, individualized services, even if the complainant does not initiate a grievance process.
- Investigate every complaint, even if the complainant does not file a formal complaint.
- Conduct a fair and impartial grievance process for complainants that incorporates due process rights.
- And more ([Federal Register link](#)).

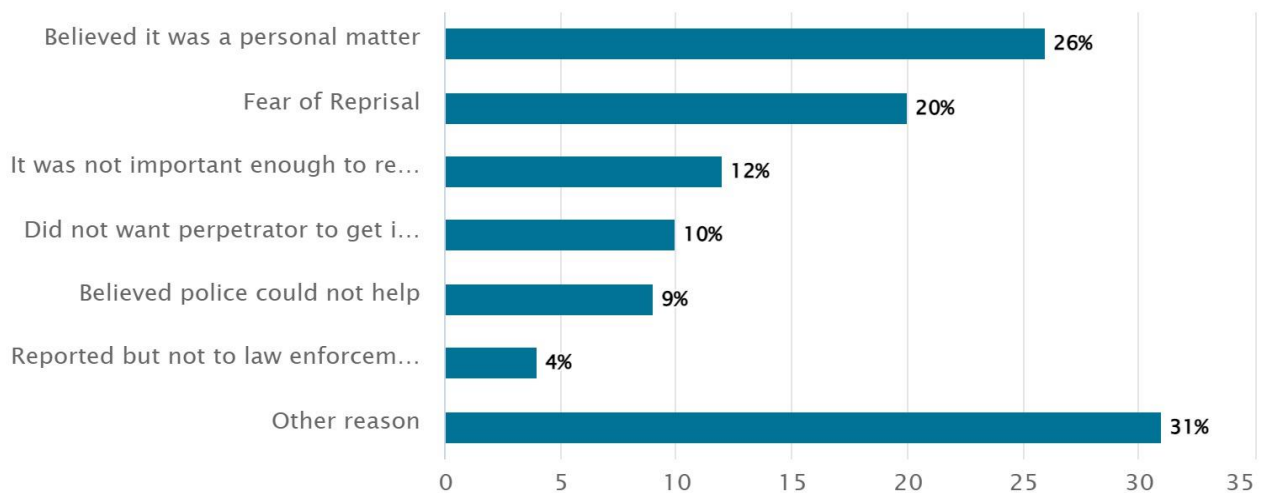
Incidents of sexual harassment largely go unreported. Keeping it personal and fear of reprisal are among the primary reported reasons for not reporting. The United States Department of Education found a 55% increase in reports of sexual harassment in schools between 2015 and

BACKGROUND

2016 ([report link](#)). They attribute this not to an increase in occurrence but to increased awareness due to the #MeToo Movement, as well as improved reporting methods following the Title IX Final Rule. This dramatic statistic seems to demonstrate the power and effectiveness of public awareness, education, and good reporting standards. Table 1 below shows survey results of reasons for not reporting sexual crimes ([Student Crimes Statistics link](#)).

Reasons For Not Reporting Sexual Violence Crimes

Data taken from female students aged 18–24



Designed by [Research.com](#)

It's not clear whether Title IX has made any difference nationally in reducing incidents of sexual harassment of students. A recent report from 2022 addressing 50 years of Title IX focuses on the advancements for women and girls in the workplace and sports since the inception of Title IX. It spends little time on sexual harassment and assault. Sexual assault and harassment of students is largely ignored.

Parents and students are fed up with the lack of appropriate school response to sexual harassment and are initiating lawsuits to correct the problem. Last year, 330 families brought

BACKGROUND

lawsuits against US schools for failure to protect their students from sexual harassment/assault, or mishandled incidents that came to light ([article link](#)).

Effective preventive measures, stringent background checks, preventive education, good reporting and responding policies, along with fair and equitable hearing processes, can go far to help prevent and address sexual harassment in our schools. El Dorado County school districts could benefit from utilizing more of these interventions.

METHODOLOGY

Methodology

REVIEWED RELEVANT DOCUMENTS

- Roles of the County Superintendent and County Board of Education
- San Jose’ State University RECORD CLEARANCE PROJECT, *How to Read a California Criminal History Report “RAP Sheet”*
- El Dorado County Office of Education – Organizational Chart
- Sample (redacted) criminal background checks previously passed by a school district
- EDCOE document titled ‘Reference Reminders for Supervisors – Checking References’
- School and College Legal Services of California Legal Update January 10, 2022 – ‘New Fingerprinting Requirements’ – Effective January 1, 2022 – Memo No. 02-2022
- Confidential El Dorado County Office of Education Human Resources Department Professional Reference Check Form
- Lozano Smith Attorneys at Law – PowerPoint – “High Crimes and Misdemeanors How to Handle Criminal Records in Hiring and Retention in California’s K-12 Public Schools” – Presented by: Michelle L. Cannon and Erin M. Hamor – November 20, 2020
- El Dorado County Office of Education Policy AR 1240 – Volunteer Instructional and Non-Teaching Aides
- Sample Background Check used for training
- El Dorado County Law Enforcement 2023-2024 Memorandum of Understanding
- EDCOE Program Assistant Interview Questions
- EDCOE Core Values

INTERVIEWS

- EDCOE employees

METHODOLOGY

Websites Consulted:

[South Tahoe High School teacher arrested on sexual misconduct charges | South Lake Tahoe - SouthTahoeNow.com](#)

[Camino School community demands Nelson resign | School | mtdemocrat.com](#)

[Sex-based Harassment](#)

[El Dorado High teacher arrested on suspicion of sex with a minor student | South Lake Tahoe - SouthTahoeNow.com](#)

[In the news in 2023: Principal guilty of child sex crimes | News | mtdemocrat.com](#)

[Search results for 'daniel mummy' | mtdemocrat.com](#) (article reporting his guilt)

[Former El Dorado High math teacher sentenced in sex case | News | mtdemocrat.com](#) (2017 case)

[Background Checks in California What Can Employers Check in CA? \(natlawreview.com\)](#)

[Sexual Violence \(PDF\) \(ed.gov\)](#)

[40 Student Crime Statistics: 2024 Data, Analysis & Predictions | Research.com](#)

[Sexual Violence in Schools | NEA](#)

[Bus driver pleads not guilty to slew of sexual assault charges | Crime | mtdemocrat.com](#)

[Report on the Condition of Education 2023](#)

[California Sexual Harassment Training | Traliant](#)

[2023 Sexual Assault Statistics | Charlie Health](#)

[K-12 schools keep mishandling sexual assault complaints. Will new Title IX regulations help? \(nbcnews.com\)](#)

[El Dorado County Office of Education, Placerville | Title IX Information \(edcoe.org\)](#)

[Sexual Violence \(PDF\) \(ed.gov\)](#)

[Two families claim their children with special needs were sexually assaulted by school van driver \(msn.com\)](#)

DISCUSSION

Discussion

BACKGROUND CHECKS

To begin our investigation, we focused on the hiring practices of EDCOE. Criminal background checks are a necessary part of hiring and are required for all school employees at EDCOE. This includes volunteer instructional and non-teaching aides working in the classroom, as well as parent volunteers.

Depending on the job type, the records searched will vary. Certified school employees (those who work with students) go through a California Department of Justice (DOJ) check. They also must be certificated and licensed at the state level, which includes a background check by the Federal Bureau of Investigation (FBI) for records of out of state convictions. Most schools check teacher licenses as part of their hiring practice. However, research has shown that not all national schools check teacher licenses. Classified employees (those who do not work with students) go through a DOJ and FBI check, as they are not checked in any other way. Ultimately, all employees submit to FBI and DOJ checks.

If a school employee is arrested within the United States, the arrest is reported to the Superintendent or HR department of the employer school district. That employee is typically placed on Administrative Leave, with or without pay, pending investigation. EDCOE does not conduct random periodic employment background checks after the employee is hired, due to this automatic reporting from law enforcement.

EDCOE has clear policies and procedures that appear to follow the minimum legally required laws and procedures regarding background checks, as well as their internal reviews. EDCOE provides information, training, and guidance for reading background checks, and interviewing references for prospective hires. The Grand Jury was informed that unfortunately, background

DISCUSSION

checks received from the DOJ or FBI are sometimes incorrect or incomplete. Convictions are sometimes missing from background checks, causing a failure of the system for the schools. This is not common but is a known occurrence that would be nearly impossible to eliminate as it is a DOJ and FBI issue.

EDCOE also provides training and guidelines to their employees for interviewing applicants, checking applicant's references and for providing references. The EDCOE application asks the applicant if they have ever been dismissed or asked to resign from a previous position. If the answer is yes, they ask for an explanation. They also ask if the applicant is on leave from another school district. When obtaining employment references, EDCOE asks prior employers whether the applicant is eligible for rehire. Many professional organizations do not permit disclosure of this information. School districts avoid costly litigation by settling termination claims and entering into non-disclosure agreements, preventing the public and other school districts from learning about the applicants' history.

Due to non-disclosure from references, applicants previously released or voluntarily resigned for inappropriate behavior toward students can easily move on to another unsuspecting school. This is a known problem nationally. The recent resignation of the previously mentioned County school district superintendent/principal leaves the opportunity for rehire open. They can seek employment in another school district and possibly commit similar, or worse offenses.

EDCOE follows the same minimum standard policies and procedures set by the state for background checks. The quality of the review process is up to the employee conducting them. These routine background checks are insufficient to protect our students from sexual predators being hired into our schools. We requested a sampling of redacted, approved background checks, chosen at random and received three background checks, none of which had any convictions. EDCOE provides training materials for reviewing background checks, and

DISCUSSION

interviewing references. Their job application asks applicants if they have ever been released from a position and they ask previous employer references if the candidate is eligible for rehire.

EDCOE should review their background check processes to ensure that background checks showing convictions are accurately reviewed and approved. They should provide enhanced reference checks, such as obtaining high school or college records and conduct personal character and professional reference checks. If there has been a gap in employment, they should ask why and then confirm the reasons for the gap.

TRAINING AND EDUCATION

Sexual harassment prevention training is State required for all EDCOE employees. EDCOE reported to the Grand Jury that all employees receive sexual harassment prevention training. However, a witness informed us that not all staff receive sexual harassment prevention training; only management and supervisors are trained. This is a contradiction to the state law requirement that all employees must receive training regarding sexual harassment prevention every two years. We also recommend that all County school districts offer sexual harassment prevention classes and education for students in grades as early as kindergarten, but no later than second grade, if not already offered. We were unable to obtain information about the curriculum for students.

SAFETY AT SCHOOLS

EDCOE classified staff, such as yard maintenance workers and janitors, are not closely supervised when outside on campus and around students. Young students may be alone on campus, providing an opportunity for a predator to victimize a student. Bus drivers' locations are not monitored, including their departures and arrivals (for example: no one would know if they returned an hour late). They do have cameras on the buses, but they are not monitored, and recordings are not saved, due to a prohibition by their bargaining agreement. Students are left potentially vulnerable to abuse on buses. One of the arrests last year was of a bus driver. There

DISCUSSION

are many opportunities to gain inappropriate access to students at and even away from our schools' campuses.

EDCOE has a Memorandum of Understanding (MOU) with the Sheriff and other County officials concerned with students' safety at school. The MOU, titled 'El Dorado County Law Enforcement and Education 2023-2024 MOU' appears to be an admirable collaboration among many service providers that primarily focuses on hate motivated behavior, illegal substances, and threatening and violent behavior. Sexual misconduct is mentioned in conjunction with cyber bullying but does not mention prevention of sexual assault in the primary, secondary, or high schools. It does not mention Title IX. The Grand Jury recommends this MOU be expanded to address sexual misconduct by both students and employees.

As independent entities, each County school district and school responds to their own allegations of sexual harassment, including conducting their own investigations and disciplinary hearings. Each County school district and each school has their own website. Each County school district and each school does their own hiring, which includes background checks. With each school and school district as independent entities, this allows for variances in how schools handle an important and sensitive subject such as sexual assault. This also increases the overhead costs of each County school district administration.

El Dorado County schools educate approximately 30,000 students per year. Three arrests for sexual harassment in one year comprises approximately .01% of the student body. Are the local incidents of sexual and sexually related misconduct by employees occurring at a higher rate than the rest of the United States? It's difficult to compare based on available data. According to national reports, 5.2% of US schools K-12 reported at least one incident of sexual harassment during the 2017-2018 school year ([article link](#)). These incidents, not arrests, include students as well as employees and cannot be compared side by side with the local arrests but can provide a useful visual. Furthermore, the study reveals, "... 31% of [all] crimes reported

DISCUSSION

were sexual harassment ...”. United States Elementary Schools had 75.2 million students in 2021-2022. This is .012% of US students, or approximately 8 incidents per 1000 students. El Dorado County may be slightly lower than the ‘average’, but again, this is comparing national incidents to local arrests. We would all agree, 0 is the only acceptable number.

TITLE IX

El Dorado County school districts are required to follow Title IX requirements. The Grand Jury checked the websites of EDCOE and the other 15 local school districts. The EDCOE Title IX website information was easy to find using ‘Title IX’ as the keyword search term. It has convenient links for Title IX information. The website information was very good, included information on the ‘Final Rule’ but was not complete. It does not list the materials used for training Title IX staff as required. More information about the EDCOE Title IX can be found at: [EDCOE link](#).

On other local school district websites, Title IX information was often difficult to find, and largely did not include information on sexual assault/harassment, as required in the Title IX ‘Final Rule’. They primarily focus on non-discrimination in sports and academic activities. Using Title IX as the keyword for search does not produce Title IX information. Most websites require the word harassment or discrimination to get a search result. Regarding counseling or ‘supportive services’ for alleged victims, the Grand Jury found no information on any of their websites about supportive services offered. Although this is not required, we believe it is an essential part of providing support, prevention, and transparency. None of the websites completely adhered to all the requirements of Title IX listed above.

One school district website within the County with the most comprehensive Title IX information is Indian Diggings School District, a one-classroom school. The website clearly identifies the ‘Final Rule’ regulations regarding sexual harassment/assault as included in Title

DISCUSSION

IX protections ([Indian Diggings link](#)). The website lists training materials used to train Title IX facilitators and has video links providing important Title IX information.

Reports of Title IX violations are kept as required by EDCOE. The Title IX Coordinator, along with the Title IX investigative team, assesses the services wanted and/or needed by the alleged victim. Services are offered to all reported victims of sexual harassment based on individual need. The EDCOE website does not identify how to access counseling services.

County schools, and EDCOE are out of compliance with other Title IX regulations. They seem to inconsistently provide sexual harassment prevention training to their employees. They must ensure all employees get training in sexual harassment prevention every two years as required by state law. It protects the students as well as the employees.

We encourage parents and other concerned individuals to find out about their district's Title IX processes and compliance, especially concerning the Final Rule.

CONCLUSION

Too many students were victims of sexual harassment/assault at County schools in 2023.

Though County schools may take the required precautions to prevent hiring sexual perpetrators, the requirements are not enough. The Grand Jury believes EDCOE and County school districts should go above and beyond to prevent students from falling victim to these crimes.

EDCOE should closely monitor classified employees on campus, as well as bus arrivals and departures. EDCOE should provide enhanced reference checks, such as obtaining high school or college records, and conduct personal character and professional reference checks for all job applicants who might have contact with students. If there has been a gap in employment, they should ask why and then confirm the reasons for the gap. EDCOE and all school districts should improve their Title IX information on all websites and at their school offices to bring

DISCUSSION

them into compliance with the requirements. They should review their background check processes to ensure that background checks are accurately reviewed and approved. If not already, all County school districts should start sexual harassment prevention education, including reporting processes, in grades as early as kindergarten, but no later than 2nd grade. If County school districts take these extra precautions, the incidence of sexual assault/harassment of their students should decrease. Our Findings and Recommendations follow.

FINDINGS

Findings

F1 – In 2023 there were three arrests of local school employees for sexual acts toward our students. This is three too many.

F2 - EDCOE has policies and procedures in place that follow the California Education Code and National Laws regarding background checks of applicants.

F3 – EDCOE screening and background checks, while in compliance with these laws, are inadequate to prevent the hiring of sexual predators.

F4 – EDCOE’s job application asks applicants and references about past release from employment for misconduct.

F5 – County school districts have entered into non-disclosure agreements with terminated or resigned employees who allegedly exhibited inappropriate behavior toward others.

F6 - EDCOE provides inconsistent sexual harassment prevention training to classified staff.

F7 – It is unclear when or if the County school districts provide student training on recognizing sexual harassment and how to report it.

F8 – EDCOE bus drivers are not monitored during transportation of students due to their collective bargaining agreement restrictions.

F9 - EDCOE and County school district websites are out of compliance with Title IX requirements.

FINDINGS

F10 - Classified staff at EDCOE lack close supervision and are outside alone on campus around students on a regular basis, increasing the risk of sexual misconduct.

F11 - EDCOE Law Enforcement MOU appears to be an excellent collaboration effort but does not adequately address sexual misconduct by both students and school employees.

RECOMMENDATIONS

Recommendations

R1 - EDCOE should implement enhanced and more stringent background check processes, including character checks for all applicants who might, or do work around, or with students to prevent sexual predators from being hired. This should begin by January 1, 2025.

R2 – EDCOE should ensure all employees complete state required sexual harassment prevention training by September 30, 2024. Local school districts should ensure the training is completed by all employees every two years and records are tracked.

R3 – EDCOE should work with the employee unions to revise their bargaining agreements to permit schools to automate tracking on all buses and monitor bus drivers' locations during transportation of students. This should be completed by March 31, 2025.

R4 – EDCOE should work with the employee unions to revise their bargaining agreements to permit schools to install cameras that have monitoring capability on all buses. A designated staff person or automation should monitor the locations of buses during transportation of students.

R5 - EDCOE should develop and implement policies and procedures that require supervisors and managers to closely monitor classified staff while working around students. If necessary, they should hire additional staff to achieve this goal. This should be done by March 31, 2025.

R6 – EDCOE should implement sexual harassment prevention training for all students, including how to recognize and report it. This training should begin in kindergarten. EDCOE should offer parents the option to opt out. This should begin by March 31, 2025.

RECOMMENDATIONS

R7 – EDCOE should implement a ‘buddy system’, or other means, for all students when traveling on school campus during class times.

R8 - EDCOE and County school districts should bring their Title IX website requirements up to date by December 31, 2024.

R9 – EDCOE should provide all classified staff with radio transmitters to enable contact with their supervisor while working on campus. EDCOE should also provide all classified staff with body cameras and make their use a condition of employment.

R10 - EDCOE should work with their MOU Law Enforcement partners to expand the MOU to address sexual misconduct by both students and school employees.

R11 - EDCOE should consider installing cameras in school hallways and classrooms so that no student or child is alone.

R12 - EDCOE should abolish the practice of allowing employees to resign and enter into a settlement agreement or enter into a non-disclosure agreement to avoid prosecution or public awareness of their inappropriate/illegal behavior.

REQUEST FOR RESPONSES

Request for Responses

A Civil Grand Jury report details a single investigation. Each report lists FINDINGS and RECOMMENDATIONS. The responsible organization is notified and is required to respond to the report.

The California Penal Code § 933(c) specifies response times.

- **PUBLIC AGENCIES.** The governing body of any public agency (also referring to a department) must respond within 90 days from the release of the report to the public.
- **ELECTIVE OFFICERS OR AGENCY HEADS.** All elected officers or heads of agencies/departments are required to respond within 60 days of the release of the report to the public.
- **FAILURE TO RESPOND.** Failure to respond, as required to a Jury report, violates California Penal Code Section 933.05 and is subject to further action that may include additional investigation on the subject matter of the report by the Jury.

The following responses are required pursuant to Penal Code § 933 and § 933.05:

From the following governing bodies:

- El Dorado County Office of Education – All Findings and Recommendations
- The following County School Districts – Findings F7, F9 and Recommendation R8
 - Pioneer Union School District
 - Camino Union School District
 - Buckeye Union School District
 - El Dorado Union High School District
 - Black Oak Mine Unified School District
 - Gold Oak Union School District
 - Gold Trail Union School District
 - Indian Diggings School District
 - Lake Tahoe Unified School District
 - Latrobe School District
 - Mother Lode Union School District
 - Placerville Union School District

REQUEST FOR RESPONSES

- Pollock Pines School District
- Rescue Union School District
- Silver Fork School District
- EDCOE
- El Dorado County Board of Supervisors – All Findings and Recommendations

For more information refer to *How to Respond to an El Dorado County Grand Jury Report* available on the El Dorado County Grand Jury webpage.



2023-24 GRAND JURY REPORT EL DORADO COUNTY MAY 13, 2024 – CASE #24-08

EMERGENCY SERVICES AUTHORITY: WHO PROVIDES OVERSIGHT?

While looking into a possible California State Constitution violation, we peeled the onion to find multiple concerns with the Joint Powers Authority for Emergency Services.

TABLE OF CONTENTS

Contents

Summary	3
Highlights	3
Recommendations Summary	4
Background	5
Methodology	7
Interviews	7
Documents reviewed	7
Discussion	8
Compensation	8
Transparency and Brown Act Compliance	10
JPA Annual Appropriation Reconciliation	11
Governance	13
Findings	16
Recommendations	18
Appendix and Related Information	20

Cover Photo: Courtesy of M. Orcutt

SUMMARY

Summary

“Only he who has no use for the empire is fit to be entrusted with it.”

— Zhuangzi, *The Complete Works of Chuang Tzu*

HIGHLIGHTS

The El Dorado County Grand Jury (Grand Jury) received a complaint in early November 2023 regarding salary compensation paid to the outgoing Executive Director of the El Dorado County Emergency Services Authority (EDCESA), a Joint Powers Authority (JPA). The complaint described how the JPA Board of Directors (Board) approved a retroactive 10% increase in salary for the outgoing Executive Director. This retroactive compensation appeared to have violated the California State Constitution, Article XI, Section 10(a):

“A local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part or pay a claim under an agreement made without authority of law.”

The Grand Jury started the investigation with a review of the EDCESA (edcjpa.org) website for documented meeting minutes. The website did not identify the Board members, nor did it have meeting minutes for the monthly Board meetings. The website did not provide the necessary information needed which should be available to the public. This is a violation of various provisions of the Ralph M. Brown Act (Brown Act), California Government Code §54950.

While interviewing numerous Board members, several troubling issues were uncovered regarding the governance and oversight of the JPA Board:

- The “inherent conflict of interest” built into the makeup of the Board was mentioned by all interviewees.
- The Board structure was a concern and was mentioned repeatedly during the interviews.

SUMMARY

- The Board has no public visibility or involvement with private citizens.
- Budget oversight and reporting processes were identified as possible concerns that should be looked at by the Grand Jury.

RECOMMENDATIONS SUMMARY

The Grand Jury has several recommendations that address JPA Board governance, policies, and procedures, as well as structural modifications that will ensure transparency and public involvement.

BACKGROUND

Background

A Joint Powers Authority (JPA) is a legal entity created by two or more public agencies, typically governmental entities such as cities, counties, or special districts, to jointly exercise powers that they possess separately. It allows these entities to collaborate and pool resources to address common issues or undertake projects that require cooperation across jurisdictional boundaries.

The El Dorado County Emergency Services Authority (EDCESA) is also known as “West Slope JPA,” or just “JPA” (Joint Powers Authority). The JPA is contracted by the County of El Dorado (County) to provide emergency ambulance transport services within County Service Area #7 (CSA7 or West Slope),. The JPA covers the area from Echo Summit to the western, southern, and northern borders of the County. From the County perspective, the JPA is a contracted service, not a component of the County government.

The JPA was formed in 1996 and is comprised of 11 Board members, 10 agency representatives (Fire Chiefs) and a Marshall Medical Center representative. The JPA is considered a local agency and required to follow the Ralph M. Brown Act.

BACKGROUND

JPA Board Representation

- Cal Fire – Emergency Command Center
- **El Dorado County Fire Protection District**
- **Georgetown Fire Protection District**
- **El Dorado Hills Fire Protection District**
- Diamond Springs/El Dorado Fire Protection District
- Cameron Park Community Services District
- Pioneer Fire Protection District
- Mosquito Fire Protection District
- Rescue Fire Protection District
- Garden Valley Fire Protection District
- Marshall Medical Center

Note: Bold represents an ambulance transporting agency

The County contracts with the JPA for a 5-year period. The last contract was established July 1, 2018 through June 30, 2023. To facilitate the completion of the comprehensive system assessment and an evaluation of a possible competitive process, the Board of Supervisors (BOS) authorized the Chief Administrative Officer (CAO) to negotiate an amendment to extend that agreement through June 30, 2025. The CAO was to develop a strategic plan to address findings from the assessment and to assist in the development of a request for proposal for pre-hospital emergency services and ambulance transport and dispatch services in CSA7. The following picture shows CSA7 area within the County:



METHODOLOGY

Methodology

INTERVIEWS

- Previous and current JPA employees
- JPA Board of Directors (6 of 11)
- El Dorado County officials and employees

DOCUMENTS REVIEWED

- EDCESA JPA Documents
 - Bylaws
 - Policies and Procedures
 - Training Materials
 - Semi-Annual Cost Report (period ending January 30, 2024)
 - Employment Contracts (Compensation)
 - Board of Directors Minutes (January - December 2023)
 - Strategic Plan 2023
 - Organization Chart
- County Contract #2298 for Prehospital Advanced Life Support, Ambulance and Dispatch Services
- County Contract #2298 Amendment 1
- Third-Party Consulting Reports (Fitch and Associates, Endpoint)
- California State Constitution on Compensation

DISCUSSION

Discussion

COMPENSATION

This Grand Jury investigation was initiated by a complaint detailing the approval of a retroactive 5% salary increase for January through June, and a 10% salary increase for July through September for the prior JPA Executive Director. These approvals were made at a special Board meeting on October 11, and a regular Board meeting on October 25, 2023.

Numerous interviews helped the Grand Jury understand the series of decisions and actions that led the JPA Board to unknowingly make a payroll decision that potentially violated the California State Constitution, Article XI, Section 10(a).

Initially, the Grand Jury suspected this action to be an incident of pension “spiking,” when an outgoing employee is given a pay increase to improve pension benefits which is prohibited under state law.

The Grand Jury determined that the JPA Board was not acting with malfeasance or impropriety. The retroactive pay increase was not done to increase pension benefits but to reconcile a delayed compensation situation.

The approval to give a retroactive pay increase to the prior Executive Director was done as an attempt to make up for the JPA Board’s previous inaction regarding a performance evaluation. Essentially, the Board recognized that there had been a lapse in the evaluation process and wanted to give the prior Executive Director the pay increase that was earned and deserved for the period January-September 2023.

The Grand Jury discovered that the employment contracts and the performance evaluation process occurred six months apart, necessitating retroactive pay increases. There have been other incidents of retroactive pay increases for other employees. Retroactive pay increases occurred because there was a lack of knowledge of the State employment and compensation restrictions detailed in the California State Constitution as noted earlier.

DISCUSSION

The timeline of mistakes and inaction started when the existing Deputy Director signed an employment contract amendment on March 24, 2022, changing the Deputy Director compensation and the employee performance evaluation date from January of each year to June of each year. In December 2022 the Executive Director resigned from the JPA. The existing Deputy Director was promoted to replace the outgoing Executive Director. As part of the promotion the new Executive Director signed an employment contract on December 29, 2022. The new contract did not have compensation details. It changed the performance evaluation date back to June of each year with compensation starting in January. The understanding was that the Board would make an adjustment to compensation during the performance evaluation process. This meant the new Executive Director would wait almost 18 months before a performance evaluation was completed and would not receive an immediate pay increase with the promotion. The performance evaluation was completed in June 2023, with no compensation adjustment. It is not clear why the compensation increase was not enacted by the JPA Board at that time. The Board never requested the payroll department within the County Auditor/Controller office to process a retroactive pay increase for the Executive Director for the period of January-June 2023.

Approximately a week after the performance evaluation was completed, the newly promoted Executive Director gave 90-day notice of their resignation, with the final date of employment being September 30, 2023.

In a special meeting on October 11, 2023, the JPA Board approved, in closed session, a retroactive 10% pay increase for the outgoing Executive Director for the months of July-September 2023. This action was reported to the general session in the meeting minutes.

The JPA Board had their regular Board Meeting on October 25, 2023 and reported out of closed session that they had approved a 5% retroactive increase covering the months of January-June 2023. The Board also reported out of closed session that they had reapproved the 10% increase to the Executive Directors compensation, retroactive covering the months of July-September.

DISCUSSION

During the investigation of this complaint the Grand Jury uncovered several other concerns regarding the JPA Board. Retroactive pay requests and delays continue to occur because of the timing of performance evaluations that occur in June each year versus the compensation adjustments in January each year. Given this difference, the JPA Board and its employees will always be subject to the possibility of retroactive pay increases and adjustments. Since the JPA currently has two employees, it makes sense to modify the employment contract(s) to align the review and compensation schedules.

The JPA's actions indicate a lack of knowledge of California employment laws regarding retroactive pay for former employees by the JPA Board and its General Counsel.

The Grand Jury determined that the outgoing Executive Director is entitled to the retroactive pay increase for time worked between January 2023 and the separation date of September 30, 2023. The JPA Board did not act promptly on the performance evaluation and the resulting pay increase, and then attempted to correct the compensation discrepancy after the last day of employment.

The payroll department flagged this retroactive pay request as a concern and processing was paused by the County Assessors payroll department as part of their normal processes.

The Grand Jury had many discussions with County management, JPA Board members, and others as to how the problem can be corrected moving forward. The County and JPA Board should look at all possible solutions to correct this situation. Despite the interest of the Grand Jury, and after multiple discussions with the JPA Board on how to take care of the problem, as of March 2024, the retroactive pay has not been provided to the former Executive Director.

TRANSPARENCY AND BROWN ACT COMPLIANCE

In late 2023, the West Slope JPA website included meeting agendas, but no minutes or Board member names. It is very difficult for the public to track decisions and provide oversight with such little transparency. The Grand Jury discovered that JPA staff are not knowledgeable on Brown Act requirements. The JPA is in the process of hiring new staff with Brown Act

DISCUSSION

experience. The JPA acknowledged their lack of transparency and indicated it was a product of being understaffed and focusing on transitioning to a new Executive Director. We noticed that they started posting meeting minutes on the website by early 2024 after several Grand Jury interviews, but they have not listed Board members as of the date of this report.

The JPA policy and procedures documents, which should have been available on the website, had to be forwarded to us. We found the documents were out of date, contained misinformation, and hadn't been reviewed for multiple years. It was encouraging to see creation dates, review dates, and revision dates on some of the documents, but review dates were not recent or were missing. For example, the policy document on the JPA organizational chart was created January 1, 1999 and reviewed/revised on June 23, 2021. It showed the appropriate agencies on the Board, but still had five transporting agencies when they currently only have three. Most of the documents need a thorough review and update by the JPA Board.

The JPA General Counsel's lack of Brown Act and municipal law knowledge was mentioned several times in our interviews. Examples were given of the General Counsel having to research Brown Act and conflict of interest requirements when that guidance was needed during the meetings. This is especially important when certain members of the Board are required to recuse themselves when ambulance transport is under discussion.

It was clear to this Grand Jury that the JPA Board members we interviewed knew their Brown Act shortcomings. They have communicated to us their desire to immediately focus on increasing transparency, updating documents, and hiring a qualified General Counsel.

JPA ANNUAL APPROPRIATION RECONCILIATION

The Grand Jury learned that the County contracts with the JPA for a 5-year term for Emergency Medical Services with the County Chief Administrative Officer (CAO) as the designated contract administrator. The BOS is the approving body for the contract.

The current JPA annual budget through June 2025 is \$14.3M. JPA funding is comprised of property taxes, special taxes, benefit assessments, and ambulance billing.

DISCUSSION

As shown in the table on page 6, there are three districts that provide ambulance transporting services: El Dorado County (EDC) Fire Protection, El Dorado Hills (EDH) Fire Protection, and Georgetown Fire Protection. Multiple witnesses informed the Grand Jury that they receive funding of \$1.3M per ambulance annually. This amount should be reconciled monthly, but has not been.

The Grand Jury was informed that the JPA submits two Actual Cost Reports to the County CAO, one at the end of June and one at the beginning of January. We learned during interviews that the inconsistent method of district reporting creates challenges in reconciliation of the expenditures and determining a basis for future funding. Additionally, it was confirmed to the Grand Jury that it's difficult to get answers in situations where there is no explanation of what expenses were for.

The Grand Jury discovered that there is a Monthly Appropriation Invoicing Policy that requires monthly expense reports, which is not being followed or enforced. When reviewing the Semi-Annual Actual Cost Reports (as an example, see Appendix 1), the Grand Jury found transporting agencies provide expense reports on different schedules and do not follow the JPA stated policy. For example, Georgetown provides monthly expense accounting where others provide either annual, quarterly, or sporadic expense accounting. Oversight is minimal on those expenses with only the Semi-Annual Actual Cost Report provided by the JPA to the CAO.

From July 1, 2023 through January 30, 2024, the County distributed \$7.1M of the annual \$14.3M to the JPA. In the Actual Cost Report, the transporting agencies had sporadic or no submittal for expenses. Georgetown submitted monthly expenses, EDC Fire submitted 2 full months of expenses and EDH showed no expenses. It was noted in the report that EDH had recently submitted an invoice in January that was still being reviewed by the JPA.

In the table below for the first half of the 2023/2024 fiscal cycle, the County allocated \$7.1M in funds to the JPA and they have reported \$1.69M of expenses, leaving \$5.4M unaccounted.

JPA Summary for July 2023 - January 2024

DISCUSSION

Revenue Allocated from County	\$ 7,143,937.05
Reported Expenses	\$ 1,693,424.40
Balance	\$ 5,450,512.65

By not submitting each Semiannual Actual Cost Report timely and detailed for the transporting agencies the impacts we see are:

- Limited County visibility
- Violation of Contract Requirements Article VI – Section 6.5
 - First report not submitted by December 31st
 - Each transporting agency does not report out monthly expenses
- Not following Generally Acceptable Accounting Principles (GAAP)
- Fiscal Responsibilities

Overall, we confirmed the oversight of the budget and actuals is very relaxed between the County and the JPA. The County needs to hold the JPA accountable for timely submittal of expenses for each transporting agency.

Due to time constraints, the Grand Jury did not review the details in the Semi-Annual Cost Allocation report but believe that alignment to GAAP and their Monthly Appropriation policy will improve transparency. We recommend that a future Grand Jury investigates this area further.

GOVERNANCE

EDCESA bylaws define the Governing Board for the JPA will be comprised of the Fire Chiefs of the member agencies in the West Slope of El Dorado County and a Marshall Hospital employee. There are eleven Board members. Three members contract to the JPA for Emergency Services – Ambulance Transport.

Multiple interviewees stated that three of the Board members who also contract with the JPA for ambulance transport services have an inherent conflict of interest. They all indicated that it

DISCUSSION

is a strange structure but works. We also need to note that the County has not received any complaints or problems with the metrics managed for ambulance transport.

As the Grand Jury looked deeper, it was clear that the JPA is its own self-governing body with little to no oversight. The County Civil Grand Jury appears to be the only oversight they have. This inherent conflict of interest has been reported in previous Grand Jury reports and in third party strategic reports with recommendations. In each of those reports, it is suggested that the Board realign itself with a mix of individuals, to include County employees and public citizens, but they have yet to be implemented.

With little to no agency oversight or public engagement, the Board relies on self-governance to avoid conflicts of interest and to recuse themselves as needed, including what level of recusal is required. The Board may struggle to conduct meetings and business related to the emergency medical and transport operations, where three members may be required to recuse themselves. It was not clear to the Board what recusal meant, whether it's removal for any discussion or just removal from any voting related to ambulance transport. There is no clear policy document that outlines what a Board member can or cannot participate in when they are a transporting agency with a contract to the JPA.

Hiring a qualified legal advisor with Brown Act and municipal governance experience would allow JPA to better structure their Board and manage their business. It could potentially remove any conflict of interest by revisiting the makeup of the Board to include public and County employee involvement. Attention should be given to developing a code of conduct and policy document that clearly outlines when a member who contracts with the JPA can and cannot sit in on agenda items. This will allow the recusal of the member agencies of the full Board's meeting attendance and hold each other accountable to comply.

FINDINGS

Findings

F1 – The JPA Board allowed an employment contract to be signed without compensation being identified for the promotion of Executive Director.

F2 - Retroactive pay was approved for the former Executive Director during multiple Board meetings, which occurred after separation of the Executive Director from employment. The October 25th, 2023 meeting minutes show a 5% increase for January-June 2023, and a 10% increase from July-September 2023.

F3: The employee performance review cycle and compensation cycle are not aligned in the employment contract, resulting in repeated retroactive pay situations.

F4: The JPA Board delayed a compensation increase for an employee who was promoted from Deputy Director to Executive Director in January, 2023.

F5: Providing retroactive pay for separated employees raises a potential violation of the California State Constitution prohibiting retroactive increase in compensation for services already rendered.

F6: Transparency and alignment to the Brown Act has been lacking.

F7: General Counsel employed by the JPA lacked Brown Act knowledge.

F8: Budget oversight is minimal. The only oversight is review of the Semiannual Actual Cost reports received by the office of the CAO.

F9: There is a JPA Monthly Appropriation Invoicing policy that is not followed. The three agencies contracted to provide emergency ambulance transport services to the JPA are not providing accurate or timely fiscal reports.

F10: The office of the CAO does not audit details due to fixed rate contracts and when pressing for details, does not receive them.

FINDINGS

F11: There is an inherent conflict of interest within the current Board structure. Three Board members' agencies may benefit from decisions made by the full Board.

F12: There is no code of conduct policy document regarding conflict of interest and recusal.

F13: The County BOS is not responsible for oversight, nor can they change the structure of the JPA Board. The JPA Board is its own governing body.

F14: There has been discussion about changing the JPA Board structure, but no efforts have received the super majority vote, making change unlikely with this Board.

RECOMMENDATIONS

Recommendations

R1: By December 31, 2024, the JPA Board should create a policy and ensure compensation is properly listed on employment contracts.

R2: By December 31, 2024, the JPA Board should revise all employment contracts to align the performance review and compensation timing to remove the retroactive pay cycle.

R3: By December 31, 2024, the JPA Board should ensure all Board documentation is reviewed, updated, and visible on their website for transparency purposes. This should include the Semiannual Actual Cost report after it is released to the County.

R4: By December 31, 2024, the JPA Board should obtain Brown Act and Ethics training, re-train every two years and track for compliance.

R5: By December 31, 2024, the JPA Board should proceed hiring new General Counsel with Brown Act and local government law experience.

R6: By December 31, 2024, the JPA Board should require their transporting agencies to follow the Monthly Appropriation Invoicing Policy and hold them accountable.

R7: By December 31, 2024, the JPA Board should ensure that their Semiannual Actual Cost reports to the County are in alignment with Generally Acceptable Accounting Principles (GAAP).

R8: By December 31, 2024, the County CAO should provide a status update of JPA compliance with County Contract #2298 for Prehospital Advanced Life Support, Ambulance and Dispatch Services to the County Board of Supervisors.

R9: By December 31, 2024, the JPA Board should task their new General Counsel to provide a restructuring model for this Board. Counsel should base this new structure on how best to remove any inherent conflict of interest with a clearly defined code of conduct policy for conflicts of interest.

REQUEST FOR RESPONSES

Request for Responses

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The California Penal Code §933(c) specifies response times.

- PUBLIC AGENCIES. The governing body of any public agency (also referring to a department) must respond within 90 days from the release of the report to the public.
- ELECTIVE OFFICERS OR AGENCY HEADS. All elected officers or heads of agencies/departments are required to respond within 60 days of the release of the report to the public.
- FAILURE TO RESPOND. Failure to respond, as required to a Jury report, violates California Penal Code §933.05 and is subject to further action that may include additional investigation on the subject matter of the report by the Jury.

The following responses are required pursuant to Penal Code §933 and §933.05:

From the following government bodies:

- El Dorado County Emergency Services Authority (EDCESA)/ JPA (Joint Powers Authority) Board of Directors
 - All Findings (except F8) and Recommendations (except R8)
- El Dorado County Board of Supervisors
 - F8 and R8

For more information refer to [*How to Respond to an El Dorado County Grand Jury Report*](#) available on the El Dorado County Grand Jury webpage.

APPENDIX AND RELATED INFORMATION

Appendix and Related Information

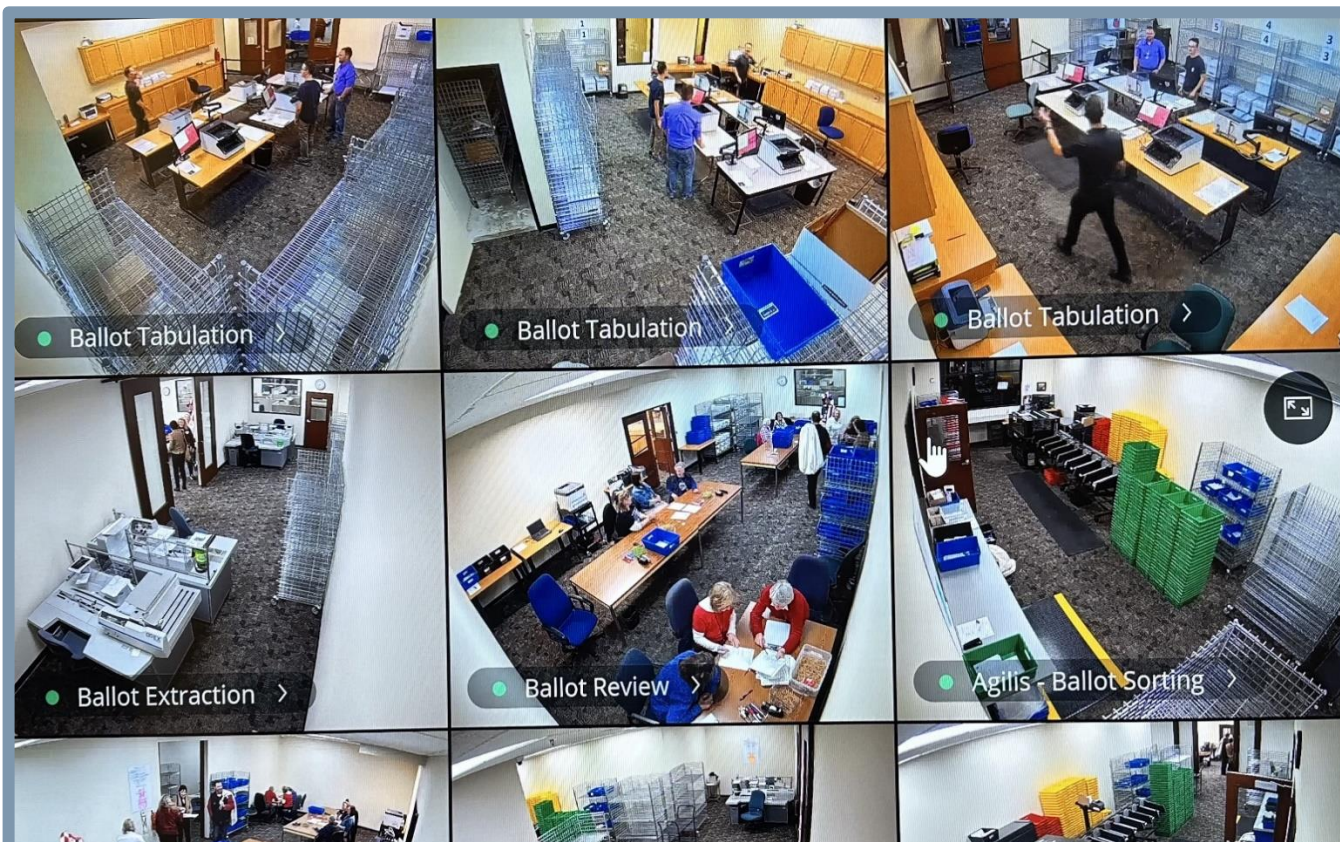
Appendix 1 – EDCSA Cost Report

FY 23-24 EDSA Balances																
ADMIN ACCOUNT: 8670761																
REVENUE	Description	BUDGET	July	August	September	October	November	December	January	February	March	April	May	June	TOTALS	Remaining Budget
0400 REV: Interest	County Interest Allocations	\$6,000.00	\$12,972.54	\$12,646.60	\$11,807.42	\$14,087.35	\$17,254.17								\$68,768.08	-104%
1200 REV: Other Gov Agencies	Base Contract Amount	\$14,016,996.00	\$1,168,083.00	\$1,168,083.00	\$1,168,083.00	\$1,168,083.00	\$1,168,083.00	\$1,168,083.00							\$7,008,498.00	50%
1740 REV: Charges for Service	District Reimbursement for Dispatch & AVL	\$337,786.18	\$22,682.15	\$0.00	(\$2,294.02)	\$39,581.02	\$358.75	\$0.00							\$60,327.90	82%
1940 REV: Miscellaneous Revenue	Misc. Revenue	\$0.00	\$0.00	\$0.00	\$304.65	\$0.00	\$877.70	\$5,160.72							\$6,343.07	0%
1942 REV: Miscellaneous Reimbursement	Agency Reimbursements	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00							\$0.00	0%
9001 Fund Balance	Allocated from 950	\$428,999.96	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00							\$0.00	0%
Revenue Totals		\$14,789,782.14	\$1,203,737.69	\$1,180,739.60	\$1,177,801.06	\$1,221,751.37	\$1,186,573.62	\$1,173,243.72	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$7,143,937.05	52%
EXPENSES																
EXPENSES	Description	BUDGET	July	August	September	October	November	December	January	February	March	April	May	June	TOTALS	Remaining Budget
3000 Reg: Employees	FY Executive Director, FT Admin Coord.	\$190,200.00	\$4,280.00	\$8,560.00	\$12,840.00	\$8,916.00	\$10,171.60	\$14,152.00							\$58,919.60	69%
3003 Temp Employees		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	0%	
3002 Overtime		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	0%	
3004 Other Compensation	Employee Stipend	\$60,000.00	\$0.00	\$1,000.00	\$1,500.00	\$13,277.33	\$3,807.56	\$4,846.04							\$24,930.93	58%
3023 Social Security		\$15,512.40	\$296.36	\$592.72	\$889.08	\$1,461.13	\$886.71	\$1,177.89							\$5,283.88	66%
3022 Medicare		\$1,627.90	\$69.11	\$138.62	\$207.93	\$311.81	\$202.70	\$275.47							\$1,215.94	66%
3041 Fed Unemployment		\$15,012.00	\$0.00	\$0.00	\$0.00	\$147.00	\$35.13	\$111.87							\$294.00	98%
3060 Workers Compensation		\$1,276.02	\$0.00	\$0.00	\$136.25	\$0.00	\$0.00	\$136.25							\$272.50	79%
Class 30 Wages & Benefits Totals		\$285,628.32	\$5,145.67	\$10,291.34	\$15,573.26	\$24,123.27	\$15,083.70	\$20,699.51	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$90,916.75	68%
EXPENSES																
EXPENSES	Description	BUDGET	July	August	September	October	November	December	January	February	March	April	May	June	TOTALS	Remaining Budget
4020 Clothing & Personal Supplies	Logo Apparel	\$6,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00							\$0.00	100%
4022 Uniforms	Transport Agency Allocation: Uniforms, Turnouts, Safety Boots, Gloves, Helmets, etc. \$7,600 per unit	\$60,800.00	\$0.00	\$0.00	\$0.00	\$0.00	\$23,659.35	\$837.31							\$24,496.66	60%
4040 Telephone Vendor Payments	Verizon: Cradlepoints (\$400/mo) AT&T FirstNet (\$1,800/mo), JPA Office Landline Alarm (\$40/mo)	\$24,480.00	\$0.00	\$784.70	\$3,981.72	\$152.04	\$2,017.05	\$3,772.23							\$10,707.74	56%
4042 Radio Vendor Payments	AVL Program (Server Maintenance @ \$5,700 annually, MDOT License Maintenance \$75/license, Tablet License Renewal \$300/license)	\$37,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00							\$0.00	100%
4043 Dispatch Services	Cal Fire ECC \$1,500,000 budgeted, Fully Funded \$1,683,280	\$1,500,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$293,523.73							\$293,523.73	80%
4044 Cable/Internet Service	Comcast JPA Office \$105/mo) HardBox H2 Panel & Supplies, Misc. Medic Unit Equipment, iPads (\$1000/ea. *4), iPad Cases	\$1,260.00	\$102.09	\$0.00	\$204.18	\$0.00	\$102.09	\$204.18							\$612.54	51%
4084 Expendable Equipment	Insurance Policy	\$30,000.00	\$0.00	\$1,225.00	\$0.00	\$4,500.00	\$0.00	\$600.00							\$6,325.00	79%
4100 Insurance		\$91,659.22	\$0.00	\$0.00	\$776.68	\$0.00	\$0.00	\$90,752.00							\$91,528.68	0%
4140 Equipment Maintenance	Medical Equipment Repairs: Zoll, Stryker, Teleflex, iPad Repairs, iPhone Repairs	\$6,000.00	\$7,644.07	\$0.00	\$2,436.58	\$0.00	\$0.00	\$3,719.94							\$13,800.59	-130%
4142 Maintenance: Telephone/Radio	Maintenance Fees for repeater site: Mt. Danaher	\$3,942.00	\$3,942.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00							\$3,942.00	0%
4144 Computer Sys/Server/Lic	Adobe Acrobat Creative Cloud Subscription (\$55/mo), Dropbox Subscription (550/yr), Office 365 Renewal (750/yr), Zoom Subscription (500/yr), ImageTrend CAD Interface (6000/yr), IntelliSite-Cradlepoint Net Cloud (4500/yr), ImageTrend License (6500/yr), AVL Server (475/mo), Streamline Website (200/mo), ESR Subscription (1200/yr) NarcoBox Subscription (1500/yr) Priority Dispatch (7500/yr) Survey Monkey (4500/yr) Vitrus (1000/yr)	\$39,175.00	\$0.00	\$1,166.00	\$66.00	\$638.76	\$0.00	\$25,230.99							\$27,101.75	31%
4145 Maint: Equipment Parts	Misc. Parts	\$1,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00						\$0.00	100%	
4160 Vehicle Maintenance	Vehicle Maintenance	\$78,000.00	\$4,302.50	\$8,252.50	\$4,440.00	\$12,397.68	\$8,151.00	\$13,132.73							\$50,676.41	35%
4162 Vehicle Main Supplies	Vehicle Parts	\$28,000.00	\$4,125.36	\$3,145.43	\$5,005.58	\$7,835.18	\$10,268.01	\$6,561.83							\$36,941.39	53%
4164 Vehicle Main Tires	Tires	\$51,600.00	\$0.00	\$0.00	\$10,227.56	\$0.00	\$0.00	\$10,227.56							\$20,455.12	60%
4200 Medical Supplies		\$576,067.60	\$9,515.39	\$3,857.28	\$8,258.63	\$21,205.90	\$51,840.77	\$75,005.33							\$269,683.30	53%

APPENDIX AND RELATED INFORMATION

4220 Memberships	EDC FCA (550), Cal Chiefs (5400), Cal Chiefs EMS Section (5150), CA Amb Assoc (52400), CSDA membership (51500), EDC Tos (5100), EDC Chamber (5325), EDH Chamber (5308)	\$6,100.00	\$0.00	\$565.00	\$50.00	\$0.00	\$0.00	\$2,549.08										\$3,164.08	48%
4260 Office Expense	Copier Paper, Misc Office Supplies, Misc JPA Supplies	\$9,600.00	\$0.00	\$1,888.76	\$781.30	\$548.11	\$31.30	\$394.25										\$3,643.72	62%
4261 Postage	Includes shipping cahrges	\$1,200.00	\$0.00	\$39.60	\$98.31	\$28.59	\$40.14	\$113.27										\$319.91	73%
4264 Books/Manuals	AHA Provider Manuals, NAEMT Provider Manuals	\$7,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00										\$0.00	100%
4266 Printing Services	Envelopes, Business Cards	\$600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00										\$0.00	100%
4300 Professional Services	Strategic Plan Consultant, Vehicle Registration Service (\$500/yr), Professional Services \$2800/mo	\$20,500.00	\$0.00	\$134.82	\$12,699.00	\$0.00	\$0.00	\$19,998.00										\$32,831.82	60%
4304 Agency Admin	\$25,000 per Unit + \$50,000	\$600,000.00	\$25,000.00	\$0.00	\$0.00	\$0.00	\$50,000.00	\$0.00										\$75,000.00	88%
4305 Audit & Accounting Services	Quickbooks & T Sheets	\$1,500.00	\$0.00	\$105.00	\$110.00	\$118.00	\$0.00	\$118.00										\$451.00	70%
4310 Contractual Service Programs	Fleet IO Annual Fees (\$3000/annually), Signal Service Alarm Monitoring (\$280/quarter), Viking Shred (\$200/yr), Hangtown Fire Control (\$150/yr)	\$34,470.00	\$0.00	\$285.00	\$27.50	\$43.00	\$385.00	\$39.99										\$680.49	98%
4311 Legal Services	Legal Services	\$63,000.00	\$0.00	\$175.00	\$1,125.00	\$2,125.00	\$5,100.00	\$1,775.00										\$11,300.00	82%
4324 Medical: Ambulance Service	\$1,300,000 per unit	\$10,400,000.00	\$0.00	\$0.00	\$433,654.31	\$0.00	\$0.00	\$0.00										\$433,654.31	96%
4324 Medical: CCTs	MMC CCT	\$2,400.00	\$0.00	\$0.00	\$3,312.00	\$0.00	\$0.00	\$12,809.50										\$15,815.50	52%
4400 Publications Advertising		\$2,750.00	\$0.00	\$1,043.00	\$276.00	\$0.00	\$0.00	\$977.00										\$2,596.00	48%
4420 Rent/Lease- Equip	Airgas	\$66,000.00	\$0.00	\$5,449.61	\$5,512.20	\$5,167.64	\$5,274.49	\$4,984.83										\$26,388.77	60%
4440 Rent/Lease- Bldg	JPA Office Lease (\$14,000), \$18,500 per Unit	\$162,000.00	\$1,100.00	\$0.00	\$11,450.00	\$1,100.00	\$1,100.00	\$1,100.00										\$15,850.00	90%
4502 Educational Materials	AHA Materials, NAEMT Materials	\$7,500.00	\$0.00	\$0.00	\$5,234.00	\$0.00	\$0.00	\$2,054.00										\$7,578.00	11%
4600 Transportation/Travel	FasTrak	\$200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00										\$0.00	100%
4602 Mileage- Employee		\$1,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00										\$0.00	100%
4606 Fuel	WEX Purchases	\$342,000.00	\$0.00	\$21,096.60	\$22,195.15	\$21,838.45	\$25,975.31	\$20,203.09										\$111,298.60	67%
4609 Staff Development	ECC EMD TRNG, Provider Awards, Brand Recognition, TRNG Reimbursement (\$1267 per medic), CE Provider App	\$60,800.00	\$0.00	\$188.86	\$634.72	\$2,640.70	\$253.33	\$2,552.68										\$6,270.29	90%
4650 Overnight Travel: Registration		\$7,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00										\$0.00	100%
4651 Overnight Travel-Meals/Per Diem Costs		\$1,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00										\$0.00	100%
4652 Overnight Travel- Mileage/Fuel		\$1,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00										\$0.00	100%

4653 Overnight Travel-Car Rentals		\$750.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00										\$0.00	100%
4654 Overnight Travel-Airfare Costs (Airfare, Baggage, Etc)		\$4,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00										\$0.00	100%
4655 Overnight Travel-Other Transportation Costs (Parking, Shuttles, Tolls)		\$500.00	\$0.00	\$64.72	\$0.00	\$66.16	\$0.00	\$0.00										\$130.88	74%
4656 Overnight Trvl- Hotel	PG&E EID Reimburs. Suburban Propane: \$9700 per unit	\$4,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00										\$0.00	100%
4700 Utilities		\$81,200.00	\$177.09	\$233.67	\$5,101.24	\$0.00	\$173.77	\$253.60										\$5,939.37	93%
Class 40 Totals		\$14,504,153.82	\$55,908.50	\$99,700.55	\$589,247.66	\$80,395.21	\$160,612.26	\$592,146.81	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$1,602,507.68	89%
Monthly Balance		\$0.00	\$1,142,683.52	\$1,070,737.71	\$573,080.13	\$1,117,232.89	\$1,010,877.66	\$560,397.40	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,450,512.68	
FY 22/23 Budget		\$14,360,782.18																\$5,475,000.31	
FY 22/23 Actual Revenue		\$7,143,937.05																	
FY 22/23 Actual Expense		\$1,693,424.40																	
FY 22/23 Balance		\$5,450,512.65																	
FIXED ASSET ACCOUNT:																			
8670720																			
OBJECT CODE	DESCRIPTION	BUDGET	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	TOTALS	REMAINING BUDGET			
001FA: Fund Balance: Fixed Assets	Budgeted from 350FND BAL: LNRSVD Undesignated	\$92,458.75	\$92,458.75	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$92,458.75	\$0.00			
1200FA: Fixed Asset Revenue	Capital Asset Plan Funds	\$899,000.00	\$899,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$899,000.00	\$0.00			
Fixed Asset Revenue		\$991,458.75	\$991,458.75	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$991,458.75	\$0.00			



2023-24 GRAND JURY REPORT EL DORADO COUNTY JUNE 5, 2024 – CASE #24-09

ELECTION INTEGRITY: SEPARATING FACT FROM FICTION

Election integrity issues remain a divisive topic across the country leading into a Presidential election this Fall. We try to separate fact from fiction to see if the Elections Department can or should do anything more to ensure election integrity.

TABLE OF CONTENTS

Contents

Summary _____	3
Highlights _____	3
Recommendations Summary _____	4
Background _____	5
Alleviating public concerns _____	5
Analyzing election processes and technology _____	6
California Elections Code and Technology Mandates _____	7
Methodology _____	8
Interviews _____	8
Documents Reviewed _____	8
Discussion _____	10
Voter Rolls, Eligibility Checks, and Identification _____	10
Mail-in Ballots and Ballot Drop-Box Monitoring _____	14
Signature Verification, Ballot Tracking and Curing _____	16
Security of Ballot Tabulation Systems _____	19
Concluding Remarks _____	24
Findings _____	26
Recommendations _____	27
Request for Responses _____	29
Appendix and Related Information _____	30

Cover Caption: Election night monitoring screens available to the public at the County Election Headquarters. Taken March 5, 2024.

SUMMARY

Summary

*“Voting is the most precious right of every citizen,
and we have a moral obligation to ensure the
integrity of our voting process.”*

- Hillary Clinton

HIGHLIGHTS

Election integrity issues continue to be one of the most controversial and divisive issues across the country. This is a major concern as we head into a Presidential election this November. Tension over easing voting accessibility at the expense of loosening identification and citizenship requirements fuel debate nationwide. Common concerns include: 1) management of voter rolls and voter eligibility, 2) processing of mail-in ballots, 3) the signature verification process and 4) security of the ballot tabulation machines. Despite claims to the contrary, credible news and technical reports have exposed potential security vulnerabilities in automated election systems that continue to trouble the public.

In the opinion of the Grand Jury, El Dorado County (County) is fortunate to have a very qualified and transparent Elections Department. They are eager to educate the public on the election process, the technologies involved, and the security measures they have in place. The Elections Department should be commended for the design and operations of the new offices and headquarters they moved into in 2023.

Nevertheless, legitimate public questions arise when looking at statewide election procedures and mandates that have come under fire and create concerns about the County election procedures. There are concerns about the accuracy of the statewide voter registration database as well as opportunities to exploit the mail-in ballot process which has largely replaced in-person voting since the Covid pandemic.

SUMMARY

In this report, the Grand Jury separates fact from fiction in the election integrity debate, alleviating public concerns where possible and suggesting cost-effective measures that could be added to further reduce potential risks to fraudulent and illegitimate voting and results.

Election integrity remains a deeply contentious topic nationwide. The Grand Jury collectively recognizes the proliferation of conflicting media narratives surrounding this issue, sparking widespread public unease. Within this report, we present select media articles that have contributed to this climate of uncertainty. It's important to note that we do not endorse the veracity of these articles but offer them as illustrative examples of the media's impact on public perception and the need for further scrutiny.

RECOMMENDATIONS SUMMARY

The Grand Jury recommends that the Elections Department furthers its public communications and education efforts by acknowledging legitimate risks and informing them of their preventative measures. There are opportunities to improve voter rolls within the County, drop box surveillance, as well as some security improvements that can be made to the tabulation room and systems that should be evaluated.

Our full analysis of the County election operations follows.

Background

Election integrity continues to be a controversial and divisive topic throughout the country. Multiple reports and news stories continue to surface about the vulnerabilities of the California-required automated tabulation machines as well as the vote-by-mail process used throughout our state and other parts of the country.

Shasta County, in 2023 went public with their intent to defy state mandates and perform a hand count of election results based on their own election integrity concerns ([news link](#)). Similar public concerns in El Dorado County are frequently discussed throughout social media and sent directly to the Elections Department.

The Grand Jury investigated the County's election procedures in detail to separate fact from fiction in the public's election integrity concerns.

UNDERSTANDING PUBLIC CONCERNS

The Grand Jury looked at a few comprehensive reports on election procedures in California and nationwide to better understand the source of public concerns and to focus our investigation efforts to determine facts from fiction.

On June 3, 2023, The Transparency Foundation, a non-partisan group focused on election integrity in California, released an analysis of the election procedures in the state during the 2021-2022 election cycle ([link](#)). Based on a 10-point scorecard, the investigation documented several deficiencies in how California conducts its elections statewide.

Notable statistics from the Transparency Foundation report indicated:

- 14.17% of voters with rejected ballots indicated that someone else must have voted their ballot
- 56% of ballots rejected with bad signatures remained uncured (unresolved after sending notification of signature mismatch to the voter) statewide

BACKGROUND

- 9.2% of households received an “erroneous” ballot for someone who doesn’t live there, is deceased or a duplicate/triplicate ballot
- 60% of California voters indicated they were concerned about election fraud

In December 2023, Rasmussen Reports and the Heartland Institute issued results of a nationwide survey which found, “... 21% of likely U.S. voters who voted by absentee or mail-in ballot in the 2020 election say they filled out a ballot, in part or in full, on behalf of a friend or family member, such as a child or spouse.” The report continued, “... 17% of mail-in voters say that in the 2020 election, they cast a ballot in a state where they were no longer a permanent resident. These practices are illegal, Heartland Institute officials noted.” ([link](#))

The Grand Jury believes poll results like these, if valid, cause legitimate public concern and could call for more proactive measures to reduce the possibility of any illegitimate votes. We sought to determine the validity of these concerns and learn about the County’s procedures to circumvent any illegitimate ballots.

The duty of election officials is to produce fair and transparent elections, respond to public concerns and ensure the community has faith in the election process that is the foundation of our system of government. The survey results mentioned above only serve to highlight the challenge of improving public perception of election integrity. The fact that these public concerns are not easily resolved underscores that potential or perceived problems with election transparency still need to be addressed.

ANALYZING ELECTION PROCESSES AND TECHNOLOGY

Since the pandemic, many states, including California, have increased the mail-in voter numbers. This may produce multiple or fraudulent ballots, a known vulnerability to mail-in voting. Many checks and balances are in place throughout the state to ensure these vulnerabilities do not affect ballot counts. Each county is responsible for ensuring the checks are in place, updated regularly and are secure, and we sought to understand our County’s procedures.

BACKGROUND

There are a few ways to analyze election integrity or audit election results that are not realistic for the Grand Jury to perform (although other jurisdictions have):

- Conduct a full hand recount of votes and compare the results to the machine tabulation.
- Canvass neighborhoods door to door to ensure that ballots were signed by eligible voters.
- Review election data from signature verification machines to re-verify signatures.

The Grand Jury's investigation was limited to an analysis of the systems and procedures to determine voter eligibility; collect, verify, tabulate votes; and report results. We looked for potential vulnerabilities in both systems and procedures that could be exploited rather than comparing any data from past elections or verifying voter eligibility data.

While there have been many suspicions or claims of fraud in past elections, the Grand Jury cannot weigh in on these specific concerns. No court has ruled on the merits of these claims and the Department of Justice stated they found no evidence of widespread voter fraud. We can only look at current procedures and make recommendations to ensure the most accurate and fair elections in the future.

CALIFORNIA ELECTIONS CODE AND TECHNOLOGY MANDATES

The County Elections Department is required to conform to numerous California state statutes and procedures for running elections, including procedures for accepting mail-in ballots and the choice of machines for voting, signature verification, and tabulation. California centrally manages the voter eligibility database and voter registration system. These statewide mandates and processes are outside the jurisdiction of the County Grand Jury. We can only investigate the County Elections Department and cannot make formal findings and recommendations regarding statewide election procedures.

METHODOLOGY

Methodology

INTERVIEWS

- Elections Department staff
- County Counsel staff
- Tour of the Elections Office and Public Open House

DOCUMENTS REVIEWED

- “Audit Reveals Evidence of Voter Fraud in California’s 2022 Election”, Report by the Transparency Foundation ([link](#))
- California Secretary of State Memorandum on Election Security, May 6, 2022 ([link](#))
- Prof. J. Alex Halderman, Ph.D., “Security Analysis of Georgia’s ImageCast X Ballot Marking Devices” ([link](#))
- “CISA Releases Security Advisory on Dominion Voting Systems Democracy Suite ImageCast X”, CISA Alert Bulletin, June 03, 2022 ([link](#))
- Dominion Democracy Suite 5.2 Source Code Test Report for California, prepared by SLI Compliance ([link](#))
- “Best Practices for Security Election Systems” CISA blog post, November 11, 2022. ([link](#))
- Article: “Reckless and stupid: Security world feuds over how to ban wireless gear in voting machines”, Politico, February 9, 2021 ([link](#))
- Article: NPR, March 10, 2023, “A California county has dumped Dominion, leaving its election operations up in the air” ([link](#))
- April 10, 2024 Letter from 16 Attorneys General to Merrick Garland (Homeland Security) on Mail-in Voting ([link](#))

METHODOLOGY

- May 15, 2024 Press Release from Ohio Secretary of State regarding expanded efforts to verify citizenship status of voter rolls. ([link](#))
- El Dorado County Elections Website: [Elections - El Dorado County \(edcgov.us\)](#)

Discussion

The Elections Department moved into a new facility in mid-2023 on Ponderosa Rd. in Shingle Springs. The new election headquarters is better designed to process a large number of ballots in a “vote center” model, where the majority of ballots cast are now mail-in or drop-box rather than in person, which has now become the norm across the state. The facility is laid out to process ballots throughout the voting period and through the various phases of ballot and voter verification and tabulation. The facility is well-designed from a security perspective with video surveillance, secure access to critical areas and systems isolated on their own local area networks where required. See the cover photo of this report for surveillance images from the election headquarters from election night, March 2024

The Grand Jury investigated key election processes in detail to see which, if any, election integrity concerns were valid. We broke down the election analysis into four key areas:

- 1) Management of voter rolls and voter eligibility
- 2) Processing mail-in ballots
- 3) Signature verification process
- 4) Ballot tabulation machines

VOTER ROLLS, ELIGIBILITY CHECKS, AND IDENTIFICATION

The Elections Department is subject to the state elections code to identify voters and verify voter eligibility. There are conflicting goals of ensuring that every vote is cast by an eligible voter versus imposing identification requirements on voters that could hinder the ability of certain demographics to vote. The current system in California, as in most states, does not require identification to verify voter eligibility and identity. Though this has not been identified as a current problem of major consequence, there is an opportunity for individuals to introduce illegitimate votes into the final tally. While the County does a lot to reduce the number of

DISCUSSION

ineligible votes through its own verification checks, it is hard to know the number of votes that are illegally cast in an imperfect system.

The Grand Jury found that the issue of ineligible voters ending up on the voter rolls and ineligible voters casting ballots is a relatively small percentage in the County. The Elections Department is doing a good job at minimizing this issue given constraints placed on it by the state. We researched how the County can improve its own voter eligibility data and potentially further reduce the number of fraudulently cast ballots as we describe below.

Federal law (the National Voter Registration Act passed in 1993) makes it a legal requirement for each state to maintain accurate voter lists. This is a challenging and expensive process considering that there are 22 million registered voters in California with a significant population moving between counties and states, new immigrants, and people dying or becoming ineligible to vote for another reason.

Starting in 2012, California implemented the VoteCal statewide database system to track voter registrations and eligibility. The job of maintaining voter lists is a shared responsibility between the state (mainly by the California Secretary of State) and the County (led by the Registrar of Voters). VoteCal has been integrated with the Department of Motor Vehicles (through the California New Motor Voter Program in 2015, Assembly Bill 1461) to facilitate voter registration with applications for identification cards and driver's licenses. AB 1461 made voter registration an opt-out process rather than an opt-in process. The default option for a DMV transaction is to register the person to vote unless they explicitly opt-out or state they are not eligible to vote. If a person who is ineligible to vote fails to provide the correct response, they can be incorrectly placed on the statewide voter roll. The County is not in a position to identify and correct those errors without access to other data.

Consistent with what is reported in other California counties, the County Elections Department has some frustrations with sharing data with VoteCal and maintaining a completely accurate voter registration list within the County. Synchronizing updates between the County and VoteCal

DISCUSSION

is a daily process of dozens or hundreds of records. Electronic communication between the two database systems has been slow in the past, although it has apparently improved in recent years. There is a potential for duplicate records for the same person with multiple DMV interactions that are not matched, causing duplicate ballots. The County, however, does its best to catch these in the ballot verification process.

Another known issue with VoteCal is that it doesn't remove voters from the database after moving out of state even if they register to vote in the new state. There are systems that track interstate voter registrations such as the Electronic Registration Information Center (ERIC). This system is used by 24 states and the District of Columbia, but not California. There are other datasets from federal and state agencies that VoteCal could leverage for more accurate data but elect not to do so, such as the U.S. Postal Service's National Change of Address (NCOA) database, federal tax returns or property tax rolls. NCOA is a public database, but only about 20% of interstate moves are reported to the Post Office. Even a small number of errors, duplicate ballots, or multiple registrations becomes a serious concern when elections can be decided by a few votes or a tenth of a percentage point or less.

To ensure address changes are identified, Elections Code 2220 requires county elections officials to conduct residency confirmation procedures at least 90 days before the direct primary election by mailing a non-forwardable preelection residency confirmation postcard to each registered voter in the county. As an alternative to sending this postcard, the county elections official may contract with the US Postal Service to use the NCOA database. (Elections Code 2222). County elections officials may also contract with a consumer credit reporting agency to obtain change of address data. (Elections Code 2227).

The Elections Department indicated they pursued their own attempts to improve the accuracy of the County-maintained voter roll database. They have spoken to Homeland Security about collecting immigrant data, that, for personal security reasons cannot be accessed. There is no way to check for residency status in statewide data resources, so there are no good answers at the federal or state level. The Elections Department indicated that non-citizens do not want to receive

DISCUSSION

ballots because they do not want their residency status known, and generally do not return completed ballots. However small the probability, best practices for creating accurate voter rolls should be maximized.

The Grand Jury was informed about a possible dataset available within the County that could be leveraged to screen out ineligible voters that is currently not being used. The Superior Court of El Dorado County receives responses to jury summons that are returned as ineligible to serve based on not being a U.S. citizen, no longer living, or no longer living in the state. This information can likely be shared directly with the Elections Department to screen out ineligible voters.

Just as this report was being finalized, the Ohio Secretary of State issued a press release on May 15, 2024 about expanding their efforts to verify citizenship status in Ohio. ([link](#)) Ohio uses very similar rules to California through their Bureau of Motor Vehicles (BMV). The review of identification records found 137 voter registrations to residents that had twice confirmed their non-citizenship status to the BMV. This would not even cover any ineligible voters that had neglected to twice confirm their non-citizen status to the BMV.

The Ohio Secretary of State indicated that they would take additional steps to verify these registration records. To help facilitate this review and cross-checks, Ohio is asking the Biden administration for:

- Access to the federal SAVE database, a U.S. Citizenship and Immigration Services resource used to verify citizenship status
- Access to citizenship-identifying records from Department of Homeland Security and Social Security Administration databases
- Federal district court records disclosing individuals disqualified from jury service due to a lack of United States citizenship

As we noted above, accessing jury service responses that indicate non-citizenship from either County Superior Court or Federal district court records could be worth pursuing. The County

DISCUSSION

also expressed to the Grand Jury that they had pursued some of these same immigration records from Homeland Security and elsewhere in the past which are currently not being used.

MAIL-IN BALLOTS AND BALLOT DROP-BOX MONITORING

The Grand Jury did not investigate in-person voting procedures, including identification checks (or lack thereof) and how fraudulent votes could potentially be cast. We believe that there is far more concern about the mail-in procedures that greatly exceed in-person voting (only 15-20% of votes are cast in person both statewide and in the County, with a low of 6% in a recent election). There is research that shows vulnerabilities with in-person ballot marking systems that could potentially be compromised to alter vote counts, although the Grand Jury did not look into details of these systems. The most thorough study of the Dominion ImageCast X ballot marking system used in both Georgia and California was released in July 2021, authored by Prof. J. Alex Halderman from the University of Michigan. ([link](#)).

Many of the public's concerns with mail-in voting and drop-boxes were spelled out in an April 2024 letter supported by 15 State Attorneys General, the Indiana Attorney General stated, citing multiple sources, "Numerous security risks exist with mail-in voting and drop boxes, and these methods of voting have led to the proliferation of election fraud." ([link](#)) The following few paragraphs describe how the Elections Department addresses these concerns in the County.

Prior to the 2020 election, California, based on Covid-19 concerns and stay-at-home orders, moved to a "vote center model" for elections. Under the Voter's Choice Act every voter in the voter eligibility database automatically gets sent a mail-in ballot, whether they request one or not. The mail-in ballot can be exchanged for an in-person ballot at any election office or any polling place.

El Dorado County now typically receives about 80-85% of ballots through mail-in or ballot drop box (the highest recorded being 94% per the County website). Voters can exchange their mail-in ballot for an in-person ballot at any vote center. This places a new burden on the Elections Department that did not exist more than five years ago. VoteCal helps determine if the same

DISCUSSION

person has voted multiple times across different counties through multiple ballots. If the County receives a second vote from the same person, it is easily identified and discarded. There appears to be virtually no enforcement of penalties for casting ineligible or multiple ballots in this manner.

The Elections Department is small (roughly seven full time employees) and does not have the capacity to monitor all video surveillance tapes of drop boxes throughout the County during the election cycle. Not all drop boxes have video surveillance. The County does spot checks of people dropping off ballots to ensure that a reasonable number are being deposited or that the same person doesn't appear multiple times, or at multiple locations. There's virtually no checking during night hours unless the tapes are reviewed in the morning, but that has been rare.

The Elections Department website states the following regarding surveillance cameras on drop boxes ([link](#)):

There are two types of Drop Boxes:

- *Manned: Located where they can be seen by someone which includes stores, libraries, vote centers or other locations where people are present.*
- *Unmanned: Those are typically outside boxes that provide 24-hour drive up availability.*

Placement of cameras at all drop boxes is not feasible:

- *The location is a private business, and they may have their own cameras, or for liability reasons we cannot add county equipment to their facility.*
- *Some locations are remote or do not have a way for us to cost effectively place a camera.*
- *The drop box at our office is under 24-hour camera monitoring. Others coming in the next year.*

DISCUSSION

The highest return of ballots in El Dorado County has historically had 94% of voted ballots arrive by mail. The bulk of these ballots are returned to drop boxes, approximately 60%.

The Elections Department indicated during an interview that they are currently looking at improving drop box video surveillance coverage to nearly 100% with newer solar powered surveillance cameras from remote locations, which we found very encouraging. The Grand Jury also raised the possibility that the drop box surveillance systems could be streamed online with public volunteers providing more thorough around-the-clock monitoring. This may not be practical, but it may be worth exploring at the discretion of the Elections Department to increase public trust. Knowing that surveillance videos are streamed online may be a deterrent to some illicit activity. It could be an additional deterrent if signs are put on all drop boxes that they are under surveillance (even if not) and any tampering will be prosecuted.

Finally, it may never be possible to address all concerns with predominantly mail-in voting even with the best of procedures. The public, for example, has been influenced by the 2022 movie release, “2000 Mules”, which covers issues with mail-in ballots and monitoring of drop boxes. The Grand Jury cannot verify the claims in this movie, and there was much controversy over its accuracy. We acknowledge the movie’s effect on some people and the Elections Department challenge to overcome these concerns.

SIGNATURE VERIFICATION, BALLOT TRACKING AND CURING

The Grand Jury investigated this phase of ballot handling and did not have any recommendations. We include the following information for interested readers.

Given the opportunity for fraudulent votes with mail-in ballots, the signature verification process has become a critically important step to ensure election integrity. When a voter uses a mail-in ballot, they must sign and date the accompanying envelope containing the ballot. The Elections Department must validate the signature on the envelope and compare it to online signatures the County has from the voter registration. This ensures that the registered voter is the one casting

DISCUSSION

the ballot. The California Secretary of State issues regulations that the Elections Department must follow to verify signatures. These requirements are broad and leave some flexibility to the County. There can be varying signature rejection rates across counties within the state as a result, which could be an opportunity to move an election one way or the other based on different rejection criteria.

One requirement that the state imposes is that the County needs to assume by default that the signature matches the voter's registration record, unless "... multiple, significant and obvious distinctive differing characteristics with all signatures in the voter's registration record" exist and will be subject to additional review by the elections official (2 California Code of Regulations Section 20960).

The Secretary of State guidelines continue that a ballot will only be rejected if "...two different elections officials unanimously find beyond a reasonable doubt that the signatures differ in multiple, significant, and obvious respects from all signatures in the voter's registration record." Ballots cannot be rejected if the last name differs from the original voter registration record, such as in the case of marriage. The below figure shows some of the complex details that must be evaluated in the signature verification process. These differences may be hard to see at quick glance (when not highlighted in red as in Figure 1).

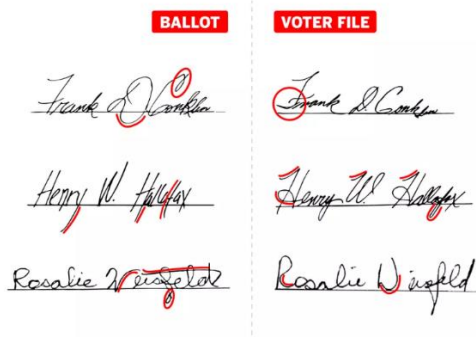


Figure 1 – Examples of some of the signature details that are compared in the verification process.

Source: <https://www.latimes.com/california/story/2020-10-28/2020-election-voter-signature-verification>

DISCUSSION

The Elections Department is compliant with all the state election procedures. The County's Agilis® mail sorting and signature verification system is used to provide an initial match and pass through a bulk of incoming ballots. (Note that the current County Registrar worked for Runbeck Election Services, the manufacturer of the Agilis election mail sorting and processing system, as the CIO and VP of Cybersecurity for approximately 10 years prior to working for El Dorado County). The Agilis system can be configured to different sensitivities for signature matches. We were told that the County sets the system at maximum sensitivity (requiring a nearly exact match) to manually inspect the greatest number of ballots for maximum security. We were also told by County officials that the usual signature match cleared by the Agilis system is either 30% or up to 40-55%. The rest of the ballots require a manual or visual verification process. A typical Presidential election requires hand-processing approximately 110,000 ballots in the County.

The Grand Jury learned that in the last Presidential election the County received approximately 88,000 mail-in ballots, and approximately 30% were cleared by the machine. Manually verifying upwards of 60,000 signatures is a necessary but time-consuming task for the elections staff and volunteers. They receive one day of training each election season on what to look for and what constitutes a significant deviation from the registration record. There could be ten people total working on batches of 300 ballots at a time. Signature verification may continue after the election up to one-and-a-half weeks.

Random audits are performed to verify the signatures being passed through the Agilis machines are legitimate. Signature verification staff are allowed to check multiple ballots and signatures in the same envelope from a husband and wife. Envelopes with no ballots or the wrong number of ballots for the signatures provided are also rejected. The entire signature verification process is one of the most highly scrutinized and observed by the public. Screens showing the evaluated ballots are available to the public every day during election season.

Rejected ballots go through a curing process (mismatched signatures attempting to be resolved by contacting the voter, if necessary) to confirm the registered voter was the one who signed the

DISCUSSION

ballot. This process works well in the County and throughout the state. A notification is sent to the voter, and they can submit a new signature or verification. The total number of ballots that were ultimately rejected by the verification process in recent elections is surprisingly low, around 200-500 out of nearly 100,000 mail-in ballots cast. This would indicate that most ballots are being cast by the registered voter.

These results can vary in other counties by comparison, according to statewide surveys we reviewed. The report from the Transparency Foundation surveyed rejection rates across nine California counties and found discrepancies in the 2022 general election. Rejected ballots (that remained uncured) for Los Angeles County was .76%, Sacramento County .24%, and San Joaquin County 2.18%. El Dorado County was not included in the survey, but it appears to be approximately .5% from the data we were provided. Public trust is reduced if there is wide disparity in individual county rejection rates, possibly suggesting one county is inappropriately accepting a greater percentage of illegally cast ballots.

Elections staff only have a few seconds to verify a match to get through the volume required. The default decision is to assume it's a valid signature without significant or obvious deviation between the signatures. There are concerns that quality control could take a backseat to just getting all the ballots processed and the election certified. Public oversight and participation during the election is the last resort safety measure in this phase of ballot verification. The Grand Jury does not believe it's a significant problem in our County, but the process appears imperfect enough that it could let a small number of illegitimate votes through.

SECURITY OF BALLOT TABULATION SYSTEMS

Once ballots have been verified and cured (if necessary), they are moved to an adjacent room for tabulation. The Dominion electronic tabulation systems required by the state and used by the County are among the most controversial aspects of election integrity. Controversies (both legitimate and illegitimate) surrounding Dominion voting systems have contributed to the public's loss of trust in California elections.

DISCUSSION

For example, a Politico article from February, 2021, covered the controversy in the security community about election systems that included hardware that could connect to wireless networks, but requiring that such capabilities be disabled ([link](#)). “Supporters say it’s reasonable for the Election Assistance Commission to adopt compromise language that falls short of a full prohibition. But many security experts say it opens the door to cyberattacks.”

The California Secretary of State (SOS) addresses a number of these concerns on the SOS elections web site ([link](#), see Appendix 3). The layered security approaches described therein include source code reviews, certification of trusted software builds, and physical intrusion prevention controls.

The Elections Department has done a lot of additional work to ensure the integrity of these machines, which are among just a few alternatives that have been certified by the state. Among the security measures employed by the County to ensure proper ballot counts by the Dominion systems:

- The Elections Department performs a logic test before every election, running a test set of ballots through the system to ensure an accurate count and no vote switching.
- During the election (and post-election), the Elections Department spot checks roughly 1%-2% of ballots by hand and compares them to the machine count. If the machines are not counting accurately during the election season, it will most likely be caught through this process.
- The Dominion systems are not connected to a network that can access the internet. They are on their own network in the room using color-coded cables for an isolated local network that does not access the internet.
- The tabulation room can only be accessed by three County staff. Access logs are maintained showing when the systems were physically accessed. Access logs are checked daily and kept for seven days.

DISCUSSION

- When a Dominion technician enters the machine room to administer the machine, County staff are always present.
- All maintenance of the Dominion systems is done physically on the system, never remotely. No software updates are allowed once a certified system (by the state) has been delivered to the County.

The Grand Jury, however, was left with a few concerns with the ballot tabulation process and the security of the systems. Even though there is no physical network connection, there is some controversy about Dominion voting machines accessing global networks through cellular networks ([link](#), [link](#)). The Elections Department stated they cannot rule out the possibility of the systems connecting wirelessly. We have a specific recommendation to remove this concern below.

The Elections Department regularly performs spot checks early in the election process to detect if the Dominion machines are communicating wirelessly and found no evidence that they were doing so. However, this was not an ongoing check, and the possibility still exists the machines may connect sporadically, even for a few seconds at a time. Even if votes are not being altered through any communication, any unauthorized communication of preliminary results to an outside party would be a serious breach of security and integrity.

More effort is required to ensure that the systems are perpetually isolated electronically from any wireless network. Shielding and isolating a device from all electronic signals can be achieved by using a Faraday cage, named for the English physicist who pioneered the field of electromagnetism and magnetic induction. A Faraday cage can be built from metallic screening material that can block wireless electronic signals in both directions relatively inexpensively [see Appendix 1]. Screening the work area around the systems in a shielded tent readily available in the marketplace could ensure complete electronic isolation of the Dominion systems.

DISCUSSION



Image – An example of a Faraday tent shielding a desktop system. Source: Faradaydefense.com

Dominion tabulation systems are complex systems that do not lend themselves to easy analysis or verification. Typically, vote recognition and tabulation are relatively simple processes used by all sorts of common tabulation machines, including those that score student exams. The Dominion machine requires more than 2.1 million lines of code to operate according to source code analysis reports we reviewed. That amount of source code makes it impossible to determine all the system behavior or vulnerabilities from inspection of the source code. Computer scientists, programmers, and operating specialists have questioned the Dominion software and firmware complexity. In addition, the Dominion software runs on complex operating system software such as Microsoft Windows, which can introduce its own set of vulnerabilities to access systems and data. The Elections Department concurred that the presence of Microsoft's Internet Explorer (a web browser and primarily means of internet communications) is always included along with Windows on these platforms, and which can't be removed, is concerning.

DISCUSSION

To improve system security, the state of California elections website states that Dominion voting systems undergo source code review and evaluation. We could find no evidence of California's source code certification process from the California Secretary of State website, although the Grand Jury found an undated "Dominion Source Code Test Report for California" ([link](#)). This level of source code review merely confirms security design best practices, coding conventions, and ability to handle common threats. For full list of source code review objectives, see Appendix 2.

This level of source code review is warranted and provides some measure of confidence in the integrity of the election systems, but they do not ensure the systems cannot be compromised, or are free from vulnerabilities, especially if an attacker is familiar with the system and has physical access. This specific test report, albeit on an older version of the Dominion system software, identified sixty-nine discrepancies with the Dominion 5.2 code base, although it concluded they were nearly all low-risk vulnerabilities and would require in-depth knowledge of the system and code base to subvert the system.

The conclusion reached from this report is that source code reviews are often loosely claimed to provide confidence that we can know exactly what the machines are doing and that they have no designed capability to allow for manipulation of election results. This is not the case, as the source code review can only verify design best practices and security implementations. The systems may still contain vulnerabilities, and key insiders could make changes with physical access to the systems without leaving a trace.

For example, in June 2022, the Cybersecurity & Infrastructure Security Agency (CISA), a department within Homeland Security, issued a technical alert for Dominion Voting Systems Democracy Suite ImageCast X systems. These are not the tabulation systems, but the in-person voting system that generates a printed ballot for tabulation. ([link](#))

The Grand Jury did not investigate the County Election Departments risk mitigation procedures for these specific vulnerabilities in the in-person ballot marking systems and has no evidence that

DISCUSSION

this is a risk in the County. It was not apparent that the vulnerability mentioned had ever been exploited and required physical access to the system to perform the exploit. But this serves as an example that vulnerabilities in complex voting systems do exist, however rare and difficult to exploit they can be.

Virtually all security vulnerabilities require some degree of physical access to the system. Authorized individuals (such as vendors and election officials) could bypass the system software and potentially manipulate the vote without risk of detection ([link](#)). This raises the possibility that authorized individuals could conceivably alter results, however unlikely it is that they would do so.. This is a small risk given the staff the County currently employs and the security measures already in place, but it is a risk that should be addressed. Performing a background check equivalent to a top-secret security clearance could potentially reduce this risk measurably, but maybe not completely, and is very expensive. Nor is it obvious who would be qualified to do it. The Grand Jury investigation learned that three County elections staff have access to the tabulation room. Requiring that two people always be present in the tabulation room together would also reduce risk measurably. These are typical countermeasures to ensure some of the most secure systems in the world. It might be time to consider that our elections systems require the same level of security hardening and procedures.

CONCLUDING REMARKS

The Grand Jury believes that the Elections Department is doing an excellent job of running free and fair elections. Virtually all the issues arise from state mandates, codes, and procedures. Some public concerns about election integrity are valid, and lack of information and some degree of speculation has led to some unfounded concerns.

More can be done by the Elections Department to acknowledge and address the concerns of the public and educate them on the reality of the situation. Election integrity concerns are not confined to the domain of conspiracy theories any longer, and the public doesn't want to be misled that current election processes are not without their vulnerabilities and could be ripe for

DISCUSSION

exploitation. It may be too expensive to fix in some cases, but it's not a perfect system. The best solution may be to acknowledge and accept some level of risk, while pursuing some prudent solutions to close known vulnerabilities and improve communication in addressing the public's reasonable concerns.

Hopefully this report has clarified some of the misleading information out there, separating fact from fiction in the mind of the public, and focusing on some specific worthwhile recommendations.

Findings

F1 – The new election headquarters is a well-designed and efficient operation for managing high-volume elections while providing transparency to the public. The Registrar of Voters and staff are to be commended for the design of the headquarters, integration of the systems and the oversight capability provided.

F2 – The Grand Jury did not find that any election results in the recent past have been materially altered or rigged through the voter eligibility procedures or vote tabulation systems.

F3 – The Registrar of Voters and the Elections Department are sincere in their desire for free and transparent elections but are required to utilize California certified voting equipment and procedures that may introduce vulnerabilities and a lack of transparency into the election process.

F4 – The Registrar of Voters and the Elections Department can do more to alleviate public concerns around election integrity through more frequent public communications (emails, newsletters, blogs, etc.), as they may have attempted in the past.

F5 – Due to the complexity of the Dominion vote tabulation systems, it is impossible to be completely assured of having removed all vulnerabilities. In addition, they are not physically shielded from wireless communications, which is apparently possible, causing additional concerns.

F6 – The video surveillance in use at ballot drop boxes is a spot check and does not cover all drop-boxes. Complete surveillance is likely impossible, but there may be additional ways to enhance coverage that should be considered.

F7 - The Elections Department is complying with all state statutes, although additional safety checks and procedures may be available in vote-by-mail procedures that should be considered.

RECOMMENDATIONS

Recommendations

R1 – By the November 2024 election, the Dominion vote tabulation systems should be electronically isolated (e.g., a Faraday cage surrounding the tabulation system) to improve security and remove the possibility of any cellular or internet communication. Fiscal impact: \$25,000-\$50,000 (See Appendix 1)

R2 – By the November 2024 election, the Elections Department should look into the feasibility of streaming drop box video surveillance cameras online for ad hoc public monitoring. In addition, all drop boxes should have signs that indicate they are under surveillance and illegal tampering will be prosecuted, which should be a further deterrent.

R3 – By the November 2024 election, the Elections Department should evaluate the feasibility of receiving non-citizen responses to jury summons from the Superior Court of El Dorado County or Federal district court records to cross-check County voter rolls and continue such periodic checks annually thereafter.

R4 – By January 1, 2025, the Elections Department should change security procedures to require a minimum of two people present when accessing the vote tabulation rooms and systems.

R5 – By November 2024, the Registrar of Voters should begin publishing a periodic newsletter (e.g., online blog or social media) designed to acknowledge and address public concerns. Questions should be solicited and screened to avoid the social media free-for-alls of the past.

R6 – The Elections Department should conduct a public poll of election integrity concerns by the end of 2024 and 2025 to measure any improvements in public perception and the success of the public outreach.

RECOMMENDATIONS

R7 – By January 1, 2025, the Registrar of Voters should establish a volunteer public advisory board to help monitor election processes, make improvements, and coordinate public outreach/communication.

REQUEST FOR RESPONSES

Request for Responses

A Civil Grand Jury report details a single investigation. Each report lists FINDINGS and RECOMMENDATIONS. The responsible organization is notified and is required to respond to the report.

The California Penal Code § 933(c) specifies response times.

- PUBLIC AGENCIES. The governing body of any public agency (also referring to a department) must respond within 90 days from the release of the report to the public.
- ELECTIVE OFFICERS OR AGENCY HEADS. All elected officers or heads of agencies/departments are required to respond within 60 days of the release of the report to the public.
- FAILURE TO RESPOND. Failure to respond, as required to a Jury report, violates California Penal Code Section 933.05 and is subject to further action that may include additional investigation on the subject matter of the report by the Jury.

The following responses are required pursuant to Penal Code § 933 and § 933.05:

From the following government bodies:

- El Dorado County Board of Supervisors
 - All Findings and Recommendations
- El Dorado County Registrar of Voters
 - All Findings and Recommendations

For more information refer to [*How to Respond to an El Dorado County Grand Jury Report*](#) available on the El Dorado County Grand Jury webpage.

APPENDIX AND RELATED INFORMATION

APPENDIX 2 – SOURCE CODE REVIEW

The detailed list of what the source code analysis includes:

- Adherence to applicable standards in the California Voting System Standard (CVSS)
- Adherence to coding format conventions and best practices for coding languages used
- Analysis of program logic and whether the system is designed in a way that allows meaningful analysis (using code analysis tools), including code complexity that hides logic
- Search for exposure to common vulnerabilities
- Correct implementation of cryptography and key management
- Analysis of error and exception handling
- Likelihood of security failures being detected
- User ability to escalate administration rights beyond those authorized
- Check for sound engineering practices
- Looking for embedded, exploitable code, e.g., backdoor access
- Other security best practices that would prevent vulnerabilities and system hacking

APPENDIX AND RELATED INFORMATION

APPENDIX 3 – CALIFORNIA SOS ON ELECTION SECURITY



SHIRLEY N. WEBER, Ph.D.

CALIFORNIA SECRETARY OF STATE

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Sacramento, CA 95814 | Tel 916.695.1680 | www.sos.ca.gov

May 6, 2022

County Clerk/Registrar of Voters (CC/ROV) Memorandum # 22105

TO: All County Clerks/Registrars of Voters

FROM: /s/ Susan Lapsley
Deputy Secretary of State, HAVA Director and Counsel

RE: OVSTA: Voting Technology Security

Security is layered into every aspect of California's voting technology. Our office, in partnership with county election offices, take election security very seriously. The following are reminders regarding security processes and procedures:

- California conducts source code review and evaluation, hardware and software security penetration testing, open ended vulnerability testing, operational testing to validate system performance and functioning under normal and abnormal conditions and more to identify any vulnerabilities and have our voting systems resolve or mitigate them.
- Every California registered voter receives a paper ballot – which creates a voter-verified paper audit trail that provides voters an opportunity to review their choices when casting their paper ballot and provides elections officials with a means to confirm the accuracy of tabulation.
- California voting systems and tabulators - ARE NOT connected to the internet, nor do they have modems or hardware in them that could be remotely "activated."
- California voting systems have physical intrusion prevention security controls and safeguards.
- California voting systems are installed only with trusted build software provided by the Secretary of State.

APPENDIX AND RELATED INFORMATION

CCROV # 22105

May 6, 2022

Page 2

- Every county must validate - before every election - that the voting system is identical to the Secretary of State supplied trusted build by reinstalling the trusted build or utilizing the Secretary of State trusted build cryptographic HASH (essentially a digital fingerprint of the software and firmware) to ensure it matches the approved version and has not been modified.
- Ballot printers are regularly inspected and certified by our office.
- Vendors and county officials follow strict physical security and chain of custody requirements for all voting technology software, firmware and hardware which meet or exceed federal guidance including that of the [Justice Department](#), the [Cybersecurity and Infrastructure Security Agency](#) and the [Election Assistance Commission](#).
- If chain of custody has been compromised or attempted to be breached, the Secretary of State must be notified immediately, and investigation, verification, and sanitization (e.g. NIST Media Sanitization guidelines <https://csrc.nist.gov/publications/detail/sp/800-88/rev-1/final>) procedures be followed.
- County election officials must follow specific role-based permissions, administrative and management controls, access controls, security procedures, operating procedures, physical facilities and arrangements controls, and organizational responsibilities and personnel screening.
- Minimum password complexity, length, strength, and lock out policies for failed attempts is required. Under no circumstances may default passwords be used.
- Every county performs logic and accuracy testing.
- For every election, each county must conduct an audit by manual tally or risk limiting auditing to identify and resolve any discrepancies.

Chain of Custody

The Secretary of State mandates voting system vendors, security consultants and county officials follow strict chain of custody requirements for voting system software, firmware and hardware throughout testing, certification, and operation. Voting system software, firmware and hardware is used at the jurisdiction in a process-controlled environment where chain of custody and software integrity is strictly controlled.

Counties must adhere to the security and chain of custody requirements in the certified Use Procedures, Certification document, and state law. If the chain of custody of voting technology has been breached, jurisdictions are required to notify the Secretary of State immediately.

APPENDIX AND RELATED INFORMATION

CCROV # 22105
May 6, 2022
Page 3

Further, pursuant to California Elections Code Sections 19216, 19217 and 19218, any modifications to a voting system, including additions, and/or deletions of certified firmware, software, or hardware, must be authorized by the Secretary of State. No addition and/or deletion of voting system components are allowed unless authorized and provided by our office.

Below are additional California Elections Code sections and California Code of Regulation sections that further protect voting systems from unauthorized access:

- Pursuant to Elections Code section 18564.5, tampering with a voting system is prohibited.
- Pursuant to California Code of Regulations section 20820 (e), during recounts, unauthorized parties are prohibited from “touching any voting system components, ballots, tally sheets, or other special recount board materials.”

We are in regular contact with and work closely with federal and state law enforcement and intelligence agencies to ensure we protect our elections. Should anyone attempt to interfere with our election, we will work with state and federal law enforcement agencies to prosecute them to the full extent of law and hold them accountable.