

County Park & Rec Commission Meeting – Public comment – November 2019

Subject: Understanding the budget & financials of the county program: El Dorado Western Railroad

Attached is a public request to see the 2019/2020 El Dorado Western Railroad budget.

The county response was: “The El Dorado Western Railroad Foundation operates on a calendar year basis. The County does not have any records responsive to this request.”

I did not ask about the El Dorado Western Railway Foundation. I asked about the El Dorado Western Railroad which is a county program. The answer is the County does not have any records responsive to this request.

How is it possible the county has no records and no budget for a county program??? They take in ticket revenue as a county program. There should be a record of revenue. It hardly seems possible this program costs nothing to run, there should be a record of costs. What does this program cost per year? Only because of my record requests, we know the library general fund has been allocating money to this program. How is there no budget and no accounting, but money is being allocated to this program? In what meeting is this all discussed and spelled out in? How would the public know about this?

Attached is an MOU between the county museum and a non-profit El Dorado Western Railway Foundation. It specifies “This MOU is a non-financial agreement.”

Has the Foundation and/or the museum director (who represents both the county as a museum director and the Foundation as a secretary and board member) been depositing these public funds into the Foundation’s account? There is no financial agreement that says the Foundation will manage the county’s budget, and even if they did, the county should have a record of that budget. The MOU states: Museum Staff and Volunteers will: 4. Maintain all required records for the operation of the El Dorado Western Railroad Program... There is a complete lack of transparency. There is no budget and no public meetings for this public program.

I’m going to save my first public request discussion for another day, but I want to touch on the 3rd item of my public request: How much has been budgeted from library general fund for the railroad program in 19/20, and specifically what it will be spent on. The answer: The 2019/20 Library budget includes \$20,000 for the CEQA analysis of a Diamond Springs Railroad Yard.

How is there \$20,000 allocated to a program with no budget? Where did the discussion take place to allocate this money? This item was brought before the park & rec commission in November of 2018 for approval. An item that had never been discussed with the public. The Parks & Rec commission agreed this item needed a public discussion and continued the item. It’s been a year. The item has never been brought back for public discussion. Yet here it is, only found through a public request, and with money approved. How was this decided? Has this money already been spent? Did the project move forward with no public input? There is no transparency.



Jackie Neau <jackieno@gmail.com>

Public Request

Jeanne Amos <jeanne.amos@edcgov.us>
Reply-To: jeanne.amos@edcgov.us
To: Jackie Neau <jackieno@gmail.com>

Mon, Nov 11, 2019 at 12:45 PM

Dear Jackie Neau,

This is in response to a Public Records Act request, sent by email dated October 24, 2019. Specifically, your request asks for:

Request 1:

- What was actually spent out of the library general fund for the railroad program for the fiscal 18/19 year, and specifically what it was spent on.

Response 1:

In 2018/19 the general fund contributed \$11,382 toward the repair of the SPTC track at the Rustling Pines road crossing in Shingle Springs.

Request 2:

- A copy of the El Dorado Western Railroad total budget for fiscal year 19/20.

Response 2:

The El Dorado Western Railroad Foundation operates on a calendar year basis. The County does not have any records responsive to this request.

Request 3:

- How much has been budgeted from library general fund for the railroad program in 19/20, and specifically what it will be spent on.

Response 3:

The 2019/20 Library budget includes \$20,000 for the CEQA analysis of a Diamond Springs Railroad Yard.

Sincerely,

Jeanne Amos

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Jeanne Amos
Library Director
El Dorado County Library
345 Fair Lane
Placerville, CA 95667

530 621-5546
530 622-3911 (Fax)

ORIGINAL

**MEMORANDUM OF UNDERSTANDING #220-M1610
(A Nonfinancial Agreement)**

Between

EL DORADO COUNTY HISTORICAL MUSEUM

and

EL DORADO WESTERN RAILWAY FOUNDATION

Regarding

**EL DORADO WESTERN RAILROAD PROGRAM
DEVELOPMENT AND OPERATION**

THIS Memorandum of Understanding (MOU) is entered into by and between the El Dorado County Historical Museum (hereinafter referred to as "Museum") and the El Dorado Western Railway Foundation (hereinafter referred to as "Foundation") (collectively hereinafter referred to as the "Parties"). This MOU sets forth each agency's role and responsibilities relative to the development and operation of the El Dorado Western Railroad Program.

RECITALS

WHEREAS, the Museum is a division of the Library Department and is overseen by the El Dorado County Board of Supervisors with a well-established and long standing volunteer program including the El Dorado Western Railroad Program Volunteers; and the Museum Administrator, an employee of the County of El Dorado, in her capacity as General Manager of the El Dorado Western Railroad Program, manages the volunteer program, and approves projects and programs including those funded by the Foundation; and

WHEREAS, the Foundation is a 501(c)3 non-profit public benefit corporation with a Board of Directors and an Associate Membership program, and with the mission to support the El Dorado Western Railroad Program on the Sacramento Placerville Transportation Corridor (SPTC) in the County; and

WHEREAS, the El Dorado Western Railroad Program is a benefit to the County as a tourist destination by successfully providing railroad experiences for the public, increasing appreciation of the County's railroading history, and eventually providing a variety of ride experiences including full size railroad rolling stock; and as the County of El Dorado's designated agency for maintenance of the track structure in the SPTC in El Dorado County; and

WHEREAS, on November 8, 2010 the County of El Dorado approved the passenger railroad program operated by El Dorado Western Railroad volunteers using track inspection cars on the

SPTC as a passenger and historical demonstration railroad utilizing equipment, facilities and volunteers; and on June 17, 2014 the County of El Dorado approved the current operation and future plans of El Dorado Western Railroad Program as regulated of the Federal Railroad Administration (FRA) and the California Public Utilities Commission (CPUC); and

WHEREAS, the Foundation owns the various pieces of equipment which are used in the operation of the El Dorado Western Railroad Program, and in the repair, maintenance and improvements to the SPTC track and rail bed, and raises funds to help support the El Dorado Western Railroad Program operation which includes collecting donations in exchange for rides and expends those funds on costs associated with the operation, maintenance and improvements related to the program; and

WHEREAS, County has determined that it is necessary to obtain a Memorandum of Understanding with the Foundation to provide the Scope of Services as described; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws.

NOW THEREFORE, the parties hereto mutually agree as follows:

ARTICLE I

Scope of Services:

El Dorado Western Railway Foundation will:

1. Acquire and provide program-related equipment to the County Museum for program-related purposes, and financially support the maintenance, repair and restoration of such equipment.
2. Allow only authorized, trained, and certified personnel to operate and maintain the program-related equipment while on the SPTC.
3. Financially support maintenance, repair and restoration of the SPTC Track (which includes rail, ties, fasteners, ballast, underlying subgrade and rail access points/crossings).
4. Financially support the maintenance, repair and improvements to the facilities associated with the El Dorado Western Railroad Program, such as the El Dorado Station leased to the County and the Shingle Springs Depot.
5. Obtain County Staff approval in writing before acquiring equipment and material to be used for County Museum programs.
6. Raise funds through passenger tickets and other fundraisers for the purpose of developing and operating the El Dorado Western Railroad Program.
7. Provide documentation on the revenue and expenditures as it relates to the El Dorado Western Railroad Program.
8. Maintain current records and give timely reports to Museum staff of all equipment owned by the Foundation and used for the purpose of maintenance and operation of the El Dorado Western Railroad Program and the maintenance of the SPTC Track.

9. Make recommendations to Museum staff and volunteers for future growth and long range planning.

Museum Staff and Volunteers will:

1. Set the schedule and operate the El Dorado Western Railroad Program for the benefit of the public.
2. Collect money donations from passengers for deposit by the Foundation.
3. Recruit volunteers with the expertise needed to plan, repair, and operate the El Dorado Western Railroad Program and provide training opportunities as needed.
4. Maintain all required records for the operation of the El Dorado Western Railroad Program, including Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC) required documentation and El Dorado County required documentation such as volunteer records.
5. Repair, refurbish, and bring up to the standard necessary for FRA certification of the track.
6. Conduct track Maintenance of Way, which includes track repair and maintenance, brush and fuel reduction.
7. Lay additional track for operation and display; develop storage and maintenance facilities and occupy the El Dorado depot leased to the County by Ed Hagen (or successor) as the Visitors Center/Railroad Station and for other Railroad Park sponsored activities complying with the terms of the lease and maintaining the building in a clean and safe manner; and be responsible for implementation of security and maintenance of the these facilities.
8. Coordinate with the County Parks Division on track maintenance projects and planning the El Dorado County Historical Railroad Park.
9. Coordinate activity on the track within the boundaries of the El Dorado County Historical Railroad Park with other rail use groups.
10. Participate on committees and commissions as established by the Board of Supervisors representing the interests of rail use on future development within the SPTC Corridor.
11. Comply with procedures in the County Historical Museum Volunteer Handbook set forth by the Museum Administrator and approved by the Museum Commission.

ARTICLE II

Term: This MOU shall become effective upon final execution by both parties hereto and shall expire after one year. The MOU may be renewed for five additional terms.

ARTICLE III

Compensation: This MOU is a non-financial agreement.

ARTICLE IV

Taxes: Foundation certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Foundation to County. Foundation agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE V

Changes to MOU: This MOU may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing.

ARTICLE VI

Foundation to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Foundation shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Foundation's responsibilities to County during term hereof.

ARTICLE VII

Assignment and Delegation: Foundation is engaged by County for its unique qualifications and skills as well as those of its personnel. Foundation shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VIII

Independent Contractor/Liability: Foundation is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Foundation exclusively assumes responsibility for acts of its employees, associates, and subContractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Foundation shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Foundation or its employees.

ARTICLE IX

Default, Termination and Cancellation: Either party may terminate this MOU upon twenty-one (21) days written notice

ARTICLE X

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notice to Museum shall be addressed as follows:

EL DORADO COUNTY
HISTORICAL MUSEUM
104 PLACERVILLE DRIVE
PLACERVILLE, CA 95667
ATTN: MARY CORY, MUSEUM ADMINISTRATOR

or to such other location as the COUNTY directs.

Notices to the EDWRF shall be addressed as follows:

EL DORADO WESTERN RAILWAY FOUNDATION
c/o EL DORADO COUNTY HISTORICAL MUSEUM
104 PLACERVILLE DRIVE
PLACERVILLE, CA 95667
ATTN: EDWARD CUNHA, PRESIDENT

or to such other location as EDWRF directs.

ARTICLE XI

Indemnity: The Foundation shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Foundation's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Foundation, subContractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Foundation to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XII

Insurance:

Foundation shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that the Foundation maintains insurance that meets the following requirements:

- A Full Worker's Compensation and Employer's Liability Insurance covering all employees of Foundation as required by law in the State of California.
- B Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Foundation in the performance of the Agreement.

- D In the event Foundation is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E Foundation shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G Foundation agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Foundation agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Foundation agrees that no work or services shall be performed prior to the giving of such approval. In the event the Foundation fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H The certificate of insurance must include the following provisions stating that:
- 1 The insurer will not cancel the insured's coverage without prior written notice to County, and;
 - 2 The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I The Foundation's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Foundation's insurance and shall not contribute with it.
- J Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Foundation shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

- K Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M Foundation's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N In the event Foundation cannot provide an occurrence policy, Foundation shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE XIII

Administrator: The County Officer or employee with responsibility for administering this MOU on behalf of the County is Mary Cory, Museum Administrator, or successor.

ARTICLE XIV

Authorized Signatures: The parties to this MOU represent that the undersigned individuals executing this MOU on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XV

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XVI

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XVII

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

ARTICLE XVIII

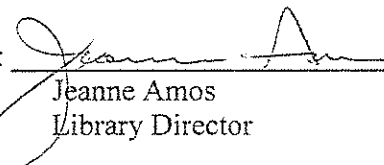
Entire Agreement: This document and the documents referred to herein are the entire agreement between the parties and they incorporate or supersede all prior written or oral agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding # 220-M1610 on the dates indicated below.

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:


By:  Dated: 5/18/2016
Mary Cory
Museum Administrator

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By:  Dated: 5/12/2016
Jeanne Amos
Library Director

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

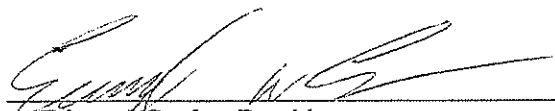
-- COUNTY OF EL DORADO --

Dated: 5/10/16
By: 
Chair
Board of Supervisors
"County"

ATTEST:
James S. Mitrison
Clerk of the Board of Supervisors

By:  Dated: 5/10/16
Deputy Clerk

--EL DORADO WESTERN RAILWAY FOUNDATION--

By:  Dated: 5-16-19
Edward Cunha, President

4. 18-1751 The El Dorado County Historical Museum, Library Department, is requesting the Parks and Recreation Commission discuss and approve the recommendation of the following items to the Board of Supervisors; 1) Receive a report on the El Dorado Western Railroad, a program of the El Dorado County Historical Museum; 2) Authorize the use of standard rolling stock on the section of track from MP 142 to MP 144.8, in compliance with Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC) requirements; 3) Approve the reinstallation of At-Grade Crossing equipment at the Forni Road railroad crossing; 4) Approve a Management Plan for SPTC Train Operations, Right of Way & Track Maintenance (MP 119.4 to MP 144.8) in El Dorado County; 5) Approve the Diamond Springs Railroad Maintenance Yard concept and give direction to staff to proceed with CEQA analysis budgeted for the 2018-19 fiscal year.

Public Comment - J Harville, J Neau, E Crim, D Rose, M Strong, C Cockrell, M Roque, S Taylor, M Kennison, E Cunha

A motion was made by Commissioner Payne, seconded by Commissioner Arenz to continue this item to the January 17, 2019 regular meeting.

Yes: 4 - Callahan, Payne, Arenz and Yonker

Absent: 1 - Morgan

COMMISSION MEMBER ANNOUNCEMENTS AND COMMENTS

Commissioner Callahan - Reported on the success of the Disc Golf Tournament held at Pioneer Park recently.

Commissioner Yonker - Reported on a bike trail project for the north east shore of Lake Tahoe which is coming to fruition because of the cooperation and participation of the stakeholders.

STAFF COMMENTS AND ANNOUNCEMENTS

Vickie Sanders, Park Manager reported on the following:

Old Depot Road - purchase is final for this parcel. Consultant was out to observe the property and provide the Parks Division with an estimate on a conceptual plan for the park.

Retirement - Donna Mullens is retiring effective Friday, November 9, 2018. A replacement has been hired and will be onboard in the later part of November.

Rubicon - reviewing projects on the trail that are required to "button up" the trail for the winter season.

Motherlode Washout - Thanked Kris Payne for his work on the Motherlode Washout project.



Donna Mullens <donna.mullens@edcgov.us>

Fwd: EDC Park & Rec special meeting

1 message

Vickie Sanders <vickie.sanders@edcgov.us>
 To: Donna Mullens <donna.mullens@edcgov.us>

Mon, Nov 5, 2018 at 7:46 AM

Post this to comments. I know you have it. Just trying to keep up.

Vickie Sanders
 Parks Manager
 County of El Dorado
 Chief Administrative Office
 530-621-7538
 FAX: 530-642-0301

----- Forwarded message -----

From: Jackie Neau <jackieno@gmail.com>
 Date: Sun, Nov 4, 2018 at 8:31 AM
 Subject: EDC Park & Rec special meeting
 To: <PRC@edcgov.us>, Vickie Sanders <vickie.sanders@edcgov.us>
 Cc: Steve Yonker <steveyonker@gmail.com>, Michael Kenison <mikejken@gmail.com>

Dear El Dorado County Park & Recreation Commission,

We, (Friends of El Dorado Trail and El Dorado Trail Development Group,) respectfully request you postpone item 18-1751. The trail community has not been engaged, invited, included, or notified by the museum for any of these items. Therefore, they have not gone through an open and inclusive process before asking for your approval. We'd like items 2-5 to come back to the parks and rec manager, scheduling meetings with all stakeholders, so the item can come to you fully vetted and with the endorsement of all interested and involved groups and entities.

The items and our comments:

- 1) **Receive a report on the El Dorado Western Railroad, a program of the El Dorado County Historical Museum;** We'd like to see included in the museum report an update of the El Dorado train park approved in 2009. It's been nearly 10 years since this project has been approved. Where is the project at, addressing each item of the park, funding secured, and when completion of each item is anticipated?
- 2) **Authorize the use of standard rolling stock on the section of track from MP 142 to MP 144.8, in compliance with Federal Railroad Administration (FRA) and California Public Utilities Commission (CPUC) requirements;** We are conceptually supportive of this as long as the CPUC understands exactly where both the dirt trail and the class 1 trail cross (or are about to cross) the tracks. We want to attend all CPUC meetings and make sure the CPUC understands the trail crossings. DOT should also be present, as they are currently planning this project. Let's plan these crossings and any potential conflicts together. We all know there is a paved trail, dirt trail, and excursion train to consider. Let's work together.
- 3) **Approve the reinstallation of At-Grade Crossing equipment at the Forni Road railroad crossing;** Again, we are conceptually supportive, but would like the opportunity to review what that would look like and how it would effect both the dirt and class 1 trail, and public safety. It again would be appropriate to have DOT review this also, as they have first hand knowledge of the project going in. Again, we're requesting a meeting with the parks and rec manager, the CPUC, DOT and the museum. A crossing that includes all the uses, with all the entities present, will be able to better anticipate and mitigate any potential conflicts. Let's work together.
- 4) **Approve a Management Plan for SPTC Train Operations, Right of Way & Track Maintenance (MP 119.4 to MP 144.8) in El Dorado County;** This is an 18 page document that claims to work with trail users. We need time to review this. The 2003 SPTC Master Plan is cited several times in this document. Is the museum

11/5/2018

Edogov.us Mail - Fwd: EDC Park & Rec special meeting

proposing we follow this document? The SPTC Master Plan states excursion trains will not be subsidized with taxpayer funds, yet the memo states \$33,000 of taxpayer funds through the general fund are going to be used to subsidize excursion rail projects. We would like to work with the parks and rec manager to address concerns, changes, etc. Let's work together.

5) Approve the Diamond Springs Railroad Maintenance Yard concept and give direction to staff to proceed with CEQA analysis budgeted for the 2018-19 fiscal year. This is a very big item that has never been mentioned before. It requires a much larger public process. Over 70 stakeholders were identified for the SPTC Alternatives Analysis conducted by the EDC Transportation Commission. None of these stakeholders have been contacted or included in the planning of this area. Again, we request meeting with the parks and rec manager as a starting point. Let's work together and consider all interests.

Additionally, We'd like to note that the museum does not hold public meetings for their train program and projects. El Dorado Western hosts meetings which members and volunteers are only invited. We'd like the commission to review these policies, and work with the museum to bring a more inclusive, transparent, and public process to the museum program.

Lastly, we'd like to note that these are 5 agenda items, not one. It is a disservice to the public to try to roll them all together.

Thank you for your consideration,

Jackie Neau on behalf of Friends of El Dorado Trail

Mike Kenison on behalf of El Dorado Trail Development Group