



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Services District and the County have failed to act on two Proposition 218-based petition initiatives that would have repealed park assessments.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.

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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

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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 Antone 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

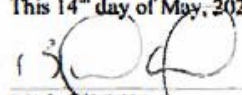
3. Pursuant to Elections Code section 9310, in order to be sufficient, for the next statewide election, the petition must have been signed by 77 qualified registered voters of the Carson Creek Park Landscaping and Lighting Assessment District #39, that number being equal to ten percent (10%) of the registered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



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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.

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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

A handwritten signature in blue ink, appearing to read "Bill O'Neill", written over a horizontal line.

BILL O'NEILL
Registrar of Voters



County Voter Information Guide

Gubernatorial General Election

Tuesday, November 8, 2022

What's Inside?	Important Dates:
<ul style="list-style-type: none">• 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	<p>October 10 - Ballots Mailed</p> <p>October 11 - Drop Boxes Open</p> <p>October 29 - 11 Day Vote Centers Open</p> <p>November 5 - 4 Day Vote Centers Open</p> <p>November 8 - Election Day</p>

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.

The logo for "Where's My Ballot?" featuring a ballot box icon with a location pin and the text "WHERE'S MY 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:

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El Dorado Hills Community Services District
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- 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

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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.

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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